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COUNCIL DIRECTIVE 93/22/EEC
of 10 May 1993
on investment services in the securities field

(OJ L 141, 11.6.1993, p. 27)

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►**M1**	European Parliament and Council Directive 95/26/EC of 29 June 1995	L 168	7	18.7.1995
►**M2**	Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997	L 84	22	26.3.1997
►**M3**	Directive 2000/64/EC of the European Parliament and of the Council of 7 November 2000	L 290	27	17.11.2000
►**M4**	Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002	L 35	1	11.2.2003

Corrected by:

►**C1** Corrigendum, OJ L 170, 13.7.1993, p. 32 (93/22/EEC)

►**C2** Corrigendum, OJ L 194, 3.8.1993, p. 27 (93/22/EEC)

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COUNCIL DIRECTIVE 93/22/EEC

of 10 May 1993

on investment services in the securities field

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 57 (2) thereof,

Having regard to the proposal from the Commission ([1]),

In cooperation with the European Parliament ([2]),

Having regard to the opinion of the Economic and Social Committee ([3]),

Whereas this Directive constitutes an instrument essential to the achievement of the internal market, a course determined by the Single European Act and set out in timetable form in the Commission's White Paper, from the point of view both of the right of establishment and of the freedom to provide financial services, in the field of investment firms;

Whereas firms that provide the investment services covered by this Directive must be subject to authorization by their home Member States in order to protect investors and the stability of the financial system;

Whereas the approach adopted is to effect only the essential harmonization necessary and sufficient to secure the mutual recognition of authorization and of prudential supervision systems, making possible the grant of a single authorization valid throughout the Community and the application of the principle of home Member State supervision; whereas, by virtue of mutual recognition, investment firms authorized in their home Member States may carry on any or all of the services covered by this Directive for which they have received authorization throughout the Community by establishing branches or under the freedom to provide services;

Whereas the principles of mutual recognition and of home Member State supervision require that the Member States' competent authorities should not grant or should withdraw authorization where factors such as the content of programmes of operations, the geographical distribution or the activities actually carried on indicate clearly that an investment firm has opted for the legal system of one Member State for the purpose of evading the stricter standards in force in another Member State within the territory of which it intends to carry on or does carry on the greater part of its activities; whereas, for the purposes of this Directive, an investment firm which is a legal person must be authorized in the Member State in which it has its registered office; whereas an investment firm which is not a legal person must be authorized in the Member State in which it has its head office; whereas, in addition, Member States must require that an investment firm's head office must always be situated in its home Member State and that it actually operates there;

Whereas it is necessary, for the protection of investors, to guarantee the internal supervision of every firm, either by means of two-man management or, where that is not required by this Directive, by other mechanisms that ensure an equivalent result;

Whereas in order to guarantee fair competition, it must be ensured that investment firms that are not credit institutions have the same freedom to create branches and provide services across frontiers as is provided for by the Second Council Directive (89/646/EEC) of 15 December 1989 on the coordination of laws, regulations and administrative provi-

([1]) OJ No C 43, 22. 2. 1989, p. 7; and OJ No C 42, 22. 2. 1990, p. 7.
([2]) OJ No C 304, 4. 12. 1989, p. 39; and OJ No C 115, 26. 4. 1993.
([3]) OJ No C 298, 27. 11. 1989, p. 6.

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sions relating to the taking up and pursuit of the business of credit institutions ([1]);

Whereas an investment firm should not be able to invoke this Directive in order to carry out spot or forward exchange transactions other than as services connected with the provision or investment services; whereas, therefore, the use of a branch solely for such foreign-exchange transactions would constitute misuse of the machinery of this Directive;

Whereas an investment firm authorized in its home Member State may carry on business throughout the Community by whatever means it deems appropriate; whereas, to that end it may, if it deems it necessary, retain tied agents to receive and transmit orders for its account and under its full and unconditional responsibility; whereas, in these circumstances, such agents' business must be regarded as that of the firm; whereas, moreover, this Directive does not prevent a home Member State from making the status of such agents subject to special requirements; whereas should the investment firm carry on cross-border business, the host Member State must treat those agents as being the firm itself; whereas, moreover, the door-to-door selling of transferable securities should not be covered by this Directive and the regulation thereof should remain a matter for national provisions;

Whereas 'transferable securities' means those classes of securities which are normally dealt in on the capital market, such as government securities, shares in companies, negotiable securities giving the right to acquire shares by subscription or exchange, depositary receipts, bonds issued as part of a series, index warrants and securities giving the right to acquire such bonds by subscription;

Whereas 'money-market instruments' means those classes of instruments which are normally dealt in on the money market such as treasury bills, certificates of deposit and commercial paper;

Whereas the very wide definitions of transferable securities and money-market instruments included in this Directive are valid only for this Directive and consequently in no way affect the various definitions of financial instruments used in national legislation for other purposes such as taxation; whereas, furthermore, the definition of transferable securities covers negotiable instruments only; whereas, consequently, shares and other securities equivalent to shares issued by bodies such as building societies and industrial and provident societies, ownership of which cannot in practice be transferred except by the issuing body's buying them back, are not covered by this definition;

Whereas 'instrument equivalent to a financial-futures contract' means a contract which is settled by a payment in cash calculated by reference to fluctuations in interest or exchange rates, the value of any instrument listed in Section B of the Annex or an index of any such instruments;

Whereas, for the purposes of this Directive, the business of the reception and transmission of orders also includes bringing together two or more investors thereby bringing about a transaction between those investors;

Whereas no provision in this Directive affects the Community provisions or, failing such, the national provisions regulating public offers of the instruments covered by this Directive; whereas the same applies to the marketing and distribution of such instruments;

Whereas Member States retain full responsibility for implementing their own monetary-policy measures, without prejudice to the measures necessary to strengthen the European Monetary System;

Whereas it is necessary to exclude insurance undertakings the activities of which are subject to appropriate monitoring by the competent prudential-supervision authorities and which are coordinated at

([1]) OJ No L 386, 30. 12. 1989, p. 1. Directive as last amended by Directive 92/30/EEC (OJ No L 110, 28. 4. 1992, p. 52).

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Community level and undertakings carrying out reinsurance and retrocession activities;

Whereas undertakings which do not provide services for third parties but the business of which consists in providing investment services solely for their parent undertakings, for their subsidiaries, or for other subsidiaries of their parent undertakings should not be covered by this Directive;

Whereas the purpose of this Directive is to cover undertakings the normal business of which is to provide third parties with investment services on a professional basis; whereas its scope should not therefore cover any person with a different professional activity (e.g. a barrister or solicitor) who provides investment services only on an incidental basis in the course of that other professional activity, provided that that activity is regulated and the relevant rules do not prohibit the provision, on an incidental basis, of investment services; whereas it is also necessary for the same reason to exclude from the scope of this Directive persons who provide investment services only for producers or users of commodities to the extent necessary for transactions in such products where such transactions constitute their main business;

Whereas firms which provide investment services consisting exclusively in the administration of employee-participation schemes and which therefore do not provide investment services for third parties should not be covered by this Directive;

Whereas it is necessary to exclude from the scope of this Directive central banks and other bodies performing similar functions as well as public bodies charged with or intervening in the management of the public debt, which concept covers the investment thereof; whereas, in particular, this exclusion does not cover bodies that are partly or wholly State-owned the role of which is commercial or linked to the acquisition of holdings;

Whereas it is necessary to exclude from the scope of this Directive any firms or persons whose business consists only of receiving and transmitting orders to certain counterparties and who do not hold funds or securities belonging to their clients; whereas, therefore, they will not enjoy the right of establishment and freedom to provide services under the conditions laid down in this Directive, being subject, when they wish to operate in another Member State, to the relevant provisions adopted by that State;

Whereas it is necessary to exclude from the scope of this Directive collective investment undertakings whether or not coordinated at Community level, and the depositaries or managers of such undertakings, since they are subject to specific rules directly adapted to their activities;

Whereas, where associations created by a Member State's pension funds to permit the management of their assets confine themselves to such management and do not provide investment services for third parties, and where the pension funds are themselves subject to the control of the authorities charged with monitoring insurance undertakings, it does not appear to be necessary to subject such associations to the conditions for taking up business and for operation imposed by this Directive;

Whereas this Directive should not apply to ‘agenti di cambio’ as defined by Italian law since they belong to a category the authorization of which is not to be renewed, their activities are confined to the national territory and they do not give rise to a risk of the distortion of competition;

Whereas the rights conferred on investment firms by this Directive are without prejudice to the right of Member States, central banks and other national bodies performing similar functions to choose their counterparties on the basis of objective, non-discriminatory criteria;

Whereas responsibility for supervising the financial soundness of an investment firm will rest with the competent authorities of its home Member State pursuant to Council Directive 93/6/EEC of 15 March

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1993 on the capital adequacy of investment firms and credit institutions ([1]), which coordinates the rules applicable to market risk;

Whereas a home Member State may, as a general rule, establish rules stricter than those laid down in this Directive, in particular as regards authorization conditions, prudential requirements and the rules of reporting and transparency;

Whereas the carrying on of activities not covered by this Directive is governed by the general provisions of the Treaty on the right of establishment and the freedom to provide services;

Whereas in order to protect investors an investor's ownership and other similar rights in respect of securities and his rights in respect of funds entrusted to a firm should in particular be protected by being kept distinct from those of the firm; whereas this principle does not, however, prevent a firm from doing business in its name but on behalf of the investor, where that is required by the very nature of the transaction and the investor is in agreement, for example stock lending;

Whereas the procedures for the authorization of branches of investment firms authorized in third countries will continue to apply to such firms; whereas those branches will not enjoy the freedom to provide services under the second paragraph of Article 59 of the Treaty or the right of establishment in Member States other than those in which they are established; whereas, however, requests for the authorization of subsidiaries or of the acquisition of holdings by undertakings governed by the laws of third countries are subject to a procedure intended to ensure that Community investment firms receive reciprocal treatment in the third countries in question;

Whereas the authorizations granted to investment firms by the competent national authorities pursuant to this Directive will have Community-wide, and no longer merely nationwide application, and existing reciprocity clauses will henceforth have no effect; whereas a flexible procedure is therefore needed to make it possible to assess reciprocity on a Community basis; whereas the aim of this procedure is not to close the Community's financial markets but rather, as the Community intends to keep its financial markets open to the rest of the world, to improve the liberalization of the global financial markets in third countries; whereas, to that end, this Directive provides for procedures for negotiating with third countries and, as a last resort, for the possibility of taking measures involving the suspension of new applications for authorization and the restriction of new authorizations;

Whereas one of the objectives of this Directive is to protect investors; whereas it is therefore appropriate to take account of the different requirements for protection of various categories of investors and of their levels of professional expertise;

Whereas the Member States must ensure that there are no obstacles to prevent activities that receive mutual recognition from being carried on in the same manner as in the home Member State, as long as they do not conflict with laws and regulations protecting the general good in force in the host Member State;

Whereas a Member State may not limit the right of investors habitually resident or established in that Member State to avail themselves of any investment service provided by an investment firm covered by this Directive situated outside that Member State and acting outwith that Member State;

Whereas in certain Member States clearing and settlement functions may be performed by bodies separate from the markets on which transactions are effected; whereas, accordingly, any reference in this Directive to access to and membership of regulated markets should be read as including references to access to and membership of bodies performing clearing and settlement functions for regulated markets;

([1]) See page 1 of this Official Journal.

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Whereas each Member State must ensure that within its territory, treatment of all investment firms authorized in any Member State and likewise all financial instruments listed on the Member States' regulated markets is non-discriminatory; whereas investment firms must all have the same opportunities of joining or having access to regulated markets; whereas, regardless of the manner in which transactions are at present organized in the Member States, it is therefore important, subject to the conditions imposed by this Directive, to abolish the technical and legal restrictions on access to the regulated markets within the framework of this Directive;

Whereas some Member States authorize credit institutions to become members of their regulated markets only indirectly, by setting up specialized subsidiaries; whereas the opportunity which this Directive gives credit institutions of becoming members of regulated markets directly without having to set up specialized subsidiaries constitutes a significant reform for those Member States and all its consequences should be reassessed in the light of the development of the financial markets; whereas, in view of those factors, the report which the Commission will submit to the Council on this matter no later than 31 December 1998 will have to take account of all the factors necessary for the Council to be able to reassess the consequences for those Member States, and in particular the danger of conflicts of interest and the level of protection afforded to investors;

Whereas it is of the greatest importance that the harmonization of compensation systems be brought into effect on the same date as this Directive; whereas, moreover, until the date on which a Directive harmonizing compensation systems is brought into effect, host Member States will be able to impose application of their compensation systems on investment firms including credit institutions authorized by other Member States, where the home Member States have no compensation systems or where their systems do not offer equivalent levels of protection;

Whereas the structure of regulated markets must continue to be governed by national law, without thereby forming an obstacle to the liberalization of access to the regulated markets of host Member States for investment firms authorized to provide the services concerned in their home Member States; whereas, pursuant to that principle, the law of the Federal Republic of Germany and the law of the Netherlands govern the activities *Kursmakler* and *hoekmannen* respectively so as to ensure that they do not exercise their functions in parallel with other functions; whereas it should be noted that *Kursmakler* and *hoekmannen* may not provide services in other Member States; whereas no one, whatever his home Member State, may claim to act as a *Kursmakler* or a *hoekman* without being subject to the same rules on incompatibility as result from the status of *Kursmakler* or *hoekman*;

Whereas it should be noted that this Directive cannot affect the measures taken pursuant to Council Directive 79/279/EEC of 5 March 1979 coordinating the conditions for the admission of securities to official stock-exchange listing ([1]);

Whereas the stability and sound operation of the financial system and the protection of investors presuppose that a host Member State has the right and responsibility both to prevent and to penalize any action within its territory by investment firms contrary to the rules of conduct and other legal or regulatory provisions it has adopted in the interest of the general good and to take action in emergencies; whereas, moreover, the competent authorities of the host Member State must, in discharging their responsibilities, be able to count on the closest cooperation with the competent authorities of the home Member State, particularly as regards business carried on under the freedom to provide services; whereas the competent authorities of the home Member State are entitled to be informed by the competent authorities of the host Member State of any measures involving penalties on an investment

([1]) OJ No L 66, 16. 3. 1979, p. 21. Directive last amended by the Act of Accession of Spain and Portugal.

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firm or restrictions on its activities which the latter have taken *vis-à-vis* the investment firms which the former have authorized so as to be able to perform their function of prudential supervision efficiently; whereas to that end cooperation between the competent authorities of home and host Member States must be ensured;

Whereas, with the two-fold aim of protecting investors and ensuring the smooth operation of the markets in transferable securities, it is necessary to ensure that transparency of transactions is achieved and that the rules laid down for that purpose in this Directive for regulated markets apply both to investment firms and to credit institutions when they operate on the market;

Whereas examination of the problems arising in the areas covered by the Council Directives on investment services and securities, as regards both the application of existing measures and the possibility of closer coordination in the future, requires cooperation between national authorities and the Commission within a committee; whereas the establishment of such a committee does not rule out other forms of cooperation between supervisory authorities in this field;

Whereas technical amendments to the detailed rules laid down in this Directive may from time to time be necessary to take account of new developments in the investment-services sector; whereas the Commission will make such amendments as are necessary, after referring the matter to the committee to be set up in the securities-markets field,

HAS ADOPTED THIS DIRECTIVE:

TITLE I

Definitions and scope

Article 1

For the purposes of this Directive:

1. *investment service* shall mean any of the services listed in Section A of the Annex relating to any of the instruments listed in Section B of the Annex that are provided for a third party;
2. *investment firm* shall mean any legal person the regular occupation or business of which is the provision of investment services for third parties on a professional basis.

   For the purposes of this Directive, Member States may include as investment firms undertakings which are not legal persons if:

   — their legal status ensures a level of protection for third parties' interests equivalent to that afforded by legal persons, and

   — they are subject to equivalent prudential supervision appropriate to their legal form.

   However, where such natural persons provide services involving the holding of third parties' funds or transferable securities, they may be considered as investment firms for the purposes of this Directive only if, without prejudice to the other requirements imposed in this Directive and in Directive 93/6/EEC, they comply with the following conditions:

   — the ownership rights of third parties in instruments and funds belonging to them must be safeguarded, especially in the event of the insolvency of a firm or of its proprietors, seizure, set-off or any other action by creditors of the firm or of its proprietors,

   — an investment firm must be subject to rules designed to monitor the firm's solvency and that of its proprietors,

   — an investment firm's annual accounts must be audited by one or more persons empowered, under national law, to audit accounts,

   — where a firm has only one proprietor, he must make provision for the protection of investors in the event of the firm's cessa-

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tion of business following his death, his incapacity or any other such event.

No later than 31 December 1997 the Commission shall report on the application of the second and third subparagraphs of this point and, if appropriate, propose their amendment or deletion.

Where a person provides one of the services referred to in Section A (1) (a) of the Annex and where that activity is carried on solely for the account of and under the full and unconditional responsibility of an investment firm, that activity shall be regarded as the activity not of that person but of the investment firm itself;

3. *credit institution* shall mean a credit institution as defined in the first indent of Article 1 of Directive 77/780/EEC [1] with the exception of the institutions referred to in Article 2 (2) thereof;

4. *transferable securities* shall mean:

   — shares in companies and other securities equivalent to shares in companies,

   — bonds and other forms of securitized debt

   which are negotiable on the capital market and

   — any other securities normally dealt in giving the right to acquire any such transferable securities by subscription or exchange or giving rise to a cash settlement

   excluding instruments of payment;

5. *money-market instruments* shall mean those classes of instruments which are normally dealt in on the money market;

6. *home Member State* shall mean:

   (a) where the investment firm is a natural person, the Member State in which his head office is situated;

   (b) where the investment firm is a legal person, the Member State in which its registered office is situated or, if under its national law it has no registered office, the Member State in which its head office is situated;

   (c) in the case of a market, the Member State in which the registered office of the body which provides trading facilities is situated or, if under its national law it has no registered office, the Member State in which that body's head office is situated;

7. *host Member State* shall mean the Member State in which an investment firm has a branch or provides services;

8. *branch* shall mean a place of business which is a part of an investment firm, which has no legal personality and which provides investment services for which the investment firm has been autorized; all the places of business set up in the same Member State by an investment firm with headquarters in another Member State shall be regarded as a single branch;

9. *competent authorities* shall mean the authorities which each Member State designates under Article 22;

10. *qualifying holding* shall mean any direct or indirect holding in an investment firm which represents 10 % or more of the capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the investment firm in which that holding subsists.

    For the purposes of this definition, in the context of Articles 4 and 9 and of the other levels of holding referred to in Article 9, the voting rights referred to in Article 7 of Directive 88/627/EEC [2] shall be taken into account;

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[1] OJ No L 322, 17. 12. 1977, p. 30. Directive last amended by Directive 89/646/EEC (OJ No L 386, 30. 12. 1989, p. 1).

[2] OJ No L 348, 17. 12. 1988, p. 62.

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11. *parent undertaking* shall mean a parent undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC ([1]);

12. *subsidiary* shall mean a subsidiary undertaking as defined in Articles 1 and 2 of Directive 83/349/EEC; any subsidiary of a subsidiary undertaking shall also be regarded as a subsidiary of the parent undertaking which is the ultimate parent of those undertakings;

13. *regulated market* shall mean a market for the instruments listed in Section B of the Annex which:

— appears on the list provided for in Article 16 drawn up by the Member State which is the home Member State as defined in Article 1 (6) (c),

— functions regularly,

— is characterized by the fact that regulations issued or approved by the competent authorities define the conditions for the operation of the market, the conditions for access to the market and, where Directive 79/279/EEC is applicable, the conditions governing admission to listing imposed in that Directive and, where that Directive is not applicable, the conditions that must be satisfied by a financial instrument before it can effectively be dealt in on the market,

— requires compliance with all the reporting and transparency requirements laid down pursuant to Articles 20 and 21;

14. *control* shall mean control as defined in Article 1 of Directive 83/349/EEC;

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15. *close links* shall mean a situation in which two or more natural or legal persons are linked by:

(a) *participation*, which shall mean the ownership, direct or by way of control, of 20 % or more of the voting rights or capital of an undertaking or

(b) *control*, which shall mean the relationship between a parent undertaking and a subsidiary, in all the cases referred to in Article 1 (1) and (2) of Directive 83/349/EEC ([2]), or a similar relationship between any natural or legal person and an undertaking; any subsidiary undertaking of a subsidiary undertaking shall also be considered a subsidiary of the parent undertaking which is at the head of those undertakings.

A situation in which two or more natural or legal persons are permanently linked to one and the same person by a control relationship shall also be regarded as constituting a close link between such persons.

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Article 2

1. This Directive shall apply to all investment firms. Only paragraph 4 of this Article and Articles 8 (2), 10, 11, 12, first paragraph, 14 (3) and (4), 15, 19 and 20, however, shall apply to credit institutions the authorization of which, under Directives 77/780/EEC and 89/646/EEC, covers one or more of the investment services listed in Section A of the Annex to this Directive.

([1]) OJ No L 193, 18. 7. 1983, p. 1. Directive last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).

([2]) OJ No L 193, 18. 7. 1983, p. 1. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).

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2. This Directive shall not apply to:

(a) insurance undertakings as defined in Article 1 of Directive 73/239/EEC [1] or Article 1 of Directive 79/267/EEC [2] or undertakings carrying on the reinsurance and retrocession activities referred to in Directive 64/225/EEC [3];

(b) firms which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

(c) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;

(d) firms that provide investment services consisting exclusively in the administration of employee-participation schemes;

(e) firms that provide investment services that consist in providing both the services referred to in (b) and those referred to in (d);

(f) the central banks of Member States and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;

(g) firms

— which may not hold clients' funds or securities and which for that reason may not at any time place themselves in debit with their clients, and

— which may not provide any investment service except the reception and transmission of orders in transferable securities and units in collective investment undertakings, and

— which in the course of providing that service may transmit orders only to

(i) investment firms authorized in accordance with this Directive;

(ii) credit institutions authorized in accordance with Directives 77/780/EEC and 89/646/EEC;

(iii) branches of investment firms or of credit institutions which are authorized in a third country and which are subject to and comply with prudential rules considered by the competent authorities as at least as stringent as those laid down in this Directive, in Directive 89/646/EEC or in Directive 93/6/EEC;

(iv) collective investment undertakings authorized under the law of a Member State to market units to the public and to the managers of such undertakings;

(v) investment companies with fixed capital, as defined in Article 15 (4) of Directive 77/91/EEC [4], the securities of which are listed or dealt in on a regulated market in a Member State;

— the activities of which are governed at national level by rules or by a code of ethics;

(h) collective investment undertakings whether coordinated at Community level or not and the depositaries and managers of such undertakings;

(i) persons whose main business is trading in commodities amongst themselves or with producers or professional users of such products

(1) OJ No L 228, 16. 8. 1973, p. 3. Directive last amended by Directive 90/619/EEC (OJ No L 330, 29. 11. 1990, p. 50).
(2) OJ No L 63, 13. 3. 1979, p. 1. Directive last amended by Directive 90/618/EEC (OJ No L 330, 29. 11. 1990, p. 44).
(3) OJ No 56, 4. 4. 1964, p. 878/64.
(4) OJ No L 26, 30. 1. 1977, p. 1. Directive last amended by the Act of Accession of Spain and Portugal.

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and who provide investment services only for such producers and professional users to the extent necessary for their main business;

(j) firms that provide investment services consisting exclusively in dealing for their own account on financial-futures or options markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets. Responsibility for ensuring the performance of contracts entered into by such firms must be assumed by clearing members of the same markets;

(k) associations set up by Danish pension funds with the sole aim of managing the assets of pension funds that are members of those associations;

(l) 'agenti di cambio' whose activities and functions are governed by Italian Royal Decree No 222 of 7 March 1925 and subsequent provisions amending it, and who are authorized to carry on their activities under Article 19 of Italian Law No 1 of 2 January 1991.

3. No later than 31 December 1998 and at regular intervals thereafter the Commission shall report on the application of paragraph 2 in conjunction with Section A of the Annex and shall, where appropriate, propose amendments to the definition of the exclusions and the services covered in the light of the operation of this Directive.

4. The rights conferred by this Directive shall not extend to the provision of services as counterparty to the State, the central bank or other Member State national bodies performing similar functions in the pursuit of the monetary, exchange-rate, public-debt and reserves management policies of the Member State concerned.

TITLE II

Conditions for taking up business

Article 3

1. Each Member State shall make access to the business of investment firms subject to authorization for investment firms of which it is the home Member State. Such authorization shall be granted by the home Member State's competent authorities designated in accordance with Article 22. The authorization shall specify the investment services referred to in Section A of the Annex which the undertaking is authorized to provide. The authorization may also cover one or more of the non-core services referred to in Section C of the Annex. Authorization within the meaning of this Directive may in no case be granted for services covered only by Section C of the Annex.

2. Each Member State shall require that:

— any investment firm which is a legal person and which, under its national law, has a registered office shall have its head office in the same Member State as its registered office,

— any other investment firm shall have its head office in the Member State which issued its authorization and in which it actually carries on its business.

3. Without prejudice to other conditions of general application laid down by national law, the competent authorities shall not grant authorization unless:

— an investment firm has sufficient initial capital in accordance with the rules laid down in Directive 93/6/EEC having regard to the nature of the investment service in question,

— the persons who effectively direct the business of an investment firm are of sufficiently good repute and are sufficiently experienced.

The direction of a firm's business must be decided by at least two persons meeting the above conditions. Where an appropriate arrangement ensures that the same result will be achieved, however, particularly in the cases provided for in the last indent of the third subparagraph of Article 1 (2), the competent authorities may grant

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authorization to investment firms which are natural persons or, taking account of the nature and volume of their activities, to investment firms which are legal persons where such firms are managed by single natural persons in accordance with their articles of association and national laws.

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Moreover, where close links exist between the investment firm and other natural or legal persons, the competent authorities shall grant authorization only if those links do not prevent the effective exercise of their supervisory functions.

The competent authorities shall also refuse authorization if the laws, regulations or administrative provisions of a non-member country governing one or more natural or legal persons with which the undertaking has close links, or difficulties involved in their enforcement, prevent the effective exercise of their supervisory functions.

The competent authorities shall require investment firms to provide them with the information they require to monitor compliance with the conditions referred to in this paragraph on a continuous basis.

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4. Member States shall also require that every application for authorization be accompanied by a programme of operations setting out *inter alia* the types of business envisaged and the organizational structure of the investment firm concerned.

5. An applicant shall be informed within six months of the submission of a complete application whether or not authorization has been granted. Reasons shall be given whenever an authorization is refused.

6. An investment firm may commence business as soon as authorization has been granted.

7. The competent authorities may withdraw the authorization issued to an investment firm subject to this Directive only where that investment firm:

(a) does not make use of the authorization within 12 months, expressly renounces the authorization or ceased to provide investment services more than six months previously unless the Member State concerned has provided for authorization to lapse in such cases;

(b) has obtained the authorization by making false statements or by any other irregular means;

(c) no longer fulfils the conditions under which authorization was granted;

(d) no longer complies with Directive 93/6/EEC;

(e) has seriously and systematically infringed the provisions adopted pursuant to Articles 10 or 11; or

(f) falls within any of the cases where national law provides for withdrawal.

Article 4

The competent authorities shall not grant authorization to take up the business of investment firms until they have been informed of the identities of the shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and of the amounts of those holdings.

The competent authorities shall refuse authorization if, taking into account the need to ensure the sound and prudent management of an investment firm, they are not satisfied as to the suitability of the aforementioned shareholders or members.

Article 5

In the case of branches of investment firms that have registered offices outwith the Community and are commencing or carrying on business, the Member States shall not apply provisions that result in treatment

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more favourable than that accorded to branches of investment firms that have registered offices in Member States.

Article 6

The competent authorities of the other Member State involved shall be consulted beforehand on the authorization of any investment firm which is:

— a subsidiary of an investment firm or credit institution authorized in another Member State,

— a subsidiary of the parent undertaking of an investment firm or credit institution authorized in another Member State,

or

— controlled by the same natural or legal persons as control an investment firm or credit institution authorized in another Member State.

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The competent authority of a Member State involved, responsible for the supervision of credit institutions or insurance undertakings, shall be consulted prior to the granting of an authorisation to an investment firm which is:

(a) a subsidiary of a credit institution or insurance undertaking authorised in the Community; or

(b) a subsidiary of the parent undertaking of a credit institution or insurance undertaking authorised in the Community; or

(c) controlled by the same person, whether natural or legal, who controls a credit institution or insurance undertaking authorised in the Community.

The relevant competent authorities referred to in the first and second paragraphs shall in particular consult each other when assessing the suitability of the shareholders and the reputation and experience of directors involved in the management of another entity of the same group. They shall inform each other of any information regarding the suitability of shareholders and the reputation and experience of directors which is of relevance to the other competent authorities involved for the granting of an authorisation as well as for the ongoing assessment of compliance with operating conditions.

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TITLE III

Relations with third countries

Article 7

1. The competent authorities of the Member States shall inform the Commission:

(a) of the authorization of any firm which is the direct or indirect subsidiary of a parent undertaking governed by the law of a third country;

(b) whenever such a parent undertaking acquires a holding in a Community investment firm such that the latter would become its subsidiary.

In both cases the Commission shall inform the Council until such time as a committee on transferable securities is set up by the Council acting on a proposal from the Commission.

When authorization is granted to any firm which is the direct or indirect subsidiary of a parent undertaking governed by the law of a third country, the competent authorities shall specify the structure of the group in the notification which they address to the Commission.

2. The Member States shall inform the Commission of any general difficulties which their investment firms encounter in establishing themselves or providing investment services in any third country.

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3. Initially no later than six months before this Directive is brought into effect and thereafter periodically the Commission shall draw up a report examining the treatment accorded to Community investment firms in third countries, in the terms referred to in paragraphs 4 and 5, as regards establishment, the carrying on of investment services activities and the acquisition of holdings in third-country investment firms. The Commission shall submit those reports to the Council together with any appropriate proposals.

4. Whenever it appears to the Commission, either on the basis of the reports provided for in paragraph 3 or on the basis of other information, that a third country does not grant Community investment firms effective market access comparable to that granted by the Community to investment firms from that third country, the Commission may submit proposals to the Council for an appropriate mandate for negotiation with a view to obtaining comparable competitive opportunities for Community investment firms. The Council shall act by a qualified majority.

5. Whenever it appears to the Commission, either on the basis of the reports referred to in paragraph 3 or on the basis of other information, that Community investment firms in a third country are not granted national treatment affording the same competitive opportunities as are available to domestic investment firms and that the conditions of effective market access are not fulfilled, the Commission may initiate negotiations in order to remedy the situation.

In the circumstances described in the first subparagraph it may also be decided, at any time and in addition to the initiation of negotiations, in accordance with the procedure to be laid down in the Directive by which the Council will set up the committee referred to in paragraph 1, that the competent authorities of the Member States must limit or suspend their decisions regarding requests pending or future requests for authorization and the acquisition of holdings by direct or indirect parent undertakings governed by the law of the third country in question. The duration of such measures may not exceed three months.

Before the end of that three-month period and in the light of the results of the negotiations the Council may, acting on a proposal from the Commission, decide by a qualified majority whether the measures shall be continued.

Such limitations or suspensions may not be applied to the setting up of subsidiaries by investment firms duly authorized in the Community or by their subsidiaries, or to the acquisition of holdings in Community investment firms by such firms or subsidiaries.

6. Whenever it appears to the Commission that one of the situations described in paragraphs 4 and 5 obtains, the Member States shall inform it at its request:

(a) of any application for the authorization of any firm which is the direct or indirect subsidiary of a parent undertaking governed by the law of the third country in question;

(b) whenever they are informed in accordance with Article 10 that such a parent undertaking proposes to acquire a holding in a Community investment firm such that the latter would become its subsidiary.

This obligation to provide information shall lapse whenever agreement is reached with the third country referred to in paragraph 4 or 5 or when the measures referred to in the second and third subparagraphs of paragraph 5 cease to apply.

7. Measures taken under this Article shall comply with the Community's obligations under any international agreements, bilateral or multilateral, governing the taking up or pursuit of the business of investment firms.

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TITLE IV

Operating conditions

Article 8

1. The competent authorities of the home Member States shall require that an investment firm which they have authorized comply at all times with the conditions imposed in Article 3 (3).

2. The competent authorities of the home Member State shall require that an investment firm which they have authorized comply with the rules laid down in Directive 93/6/EEC.

3. The prudential supervision of an investment firm shall be the responsibility of the competent authorities of the home Member State whether the investment firm establishes a branch or provides services in another Member State or not, without prejudice to those provisions of this Directive which give responsibility to the authorities of the host Member State.

Article 9

1. Member States shall require any person who proposes to acquire, directly or indirectly, a qualifying holding in an investment firm first to inform the competent authorities, telling them of the size of his intended holding. Such a person shall likewise inform the competent authorities if he proposes to increase his qualifying holding so that the proportion of the voting rights or of the capital that he holds would reach or exceed 20, 33, or 50 % or so that the investment firm would become his subsidiary.

Without prejudice to paragraph 2, the competent authorities shall have up to three months from the date of the notification provided for in the first subparagraph to oppose such a plan if, in view of the need to ensure sound and prudent management of the investment firm, they are not satisfied as to the suitability of the person referred to in the first subparagraph. If they do not oppose the plan, they may fix a deadline for its implementation.

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2. If the acquirer of the holding referred to in paragraph 1 is an investment firm, a credit institution or an insurance undertaking authorised in another Member State, or the parent undertaking of an investment firm, credit institution or insurance undertaking authorised in another Member State, or a natural or legal person controlling an investment firm, credit institution or insurance undertaking authorised in another Member State, and if, as a result of that acquisition, the undertaking in which the acquirer proposes to acquire a holding would become the acquirer's subsidiary or come under his control, the assessment of the acquisition must be subject to the prior consultation provided for in Article 6.

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3. Member States shall require any person who proposes to dispose, directly or indirectly, of a qualifying holding in an investment firm first to inform the competent authorities, telling them of the size of his holding. Such a person shall likewise inform the competent authorities if he proposes to reduce his qualifying holding so that the proportion of the voting rights or of the capital held by him would fall below 20, 33 or 50 % or so that the investment firm would cease to be his subsidiary.

4. On becoming aware of them, investment firms shall inform the competent authorities of any acquisitions or disposals of holdings in their capital that cause holdings to exceed or fall below any of the thresholds referred to in paragraphs 1 and 3.

At least once a year they shall also inform the competent authorities of the names of shareholders and members possessing qualifying holdings and the sizes of such holdings as shown, for example, by the information received at annual general meetings of shareholders and members

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or as a result of compliance with the regulations applicable to companies listed on stock exchanges.

5. Member States shall require that, where the influence exercised by the persons referred to in paragraph 1 is likely to be prejudicial to the sound and prudent management of an investment firm, the competent authorities take appropriate measures to put an end to that situation. Such measures may consist, for example, in injunctions, sanctions against directors and those responsible for management or suspension of the exercise of the voting rights attaching to the shares held by the shareholders or members in question.

Similar measures shall apply to persons failing to comply with the obligation to provide prior information imposed in paragraph 1. If a holding is acquired despite the opposition of the competent authorities, the Member States shall, regardless of any other sanctions to be adopted, provide either for exercise of the corresponding voting rights to be suspended, for the nullity of the votes cast or for the possibility of their annulment.

Article 10

1. Each home Member State shall draw up prudential rules which investment firms shall observe at all times. In particular, such rules shall require that each investment firm:

— have sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing, and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees,

— make adequate arrangements for instruments belonging to investors with a view to safeguarding the latter's ownership rights, especially in the event of the ►C1 investment firm's insolvency, and to preventing the investment firm's using investors' instruments for its own account ◄ except with the investors' express consent,

— make adequate arrangements for funds belonging to investors with a view to safeguarding the latter's rights and, except in the case of credit institutions, preventing the investment firm's using investors' funds for its own account,

— arrange for records to be kept of transactions executed which shall at least be sufficient to enable the home Member State's authorities to monitor compliance with the prudential rules which they are responsible for applying; such records shall be retained for periods to be laid down by the competent authorities,

— be structured and organized in such a way as to minimize the risk of clients' interests being prejudiced by conflicts of interest between the firm and its clients or between one of its clients and another. Nevertheless, where a branch is set up the organizational arrangements may not conflict with the rules of conduct laid down by the host Member State to cover conflicts of interest.

Article 11

1. Member States shall draw up rules of conduct which investment firms shall observe at all times. Such rules must implement at least the principles set out in the following indents and must be applied in such a way as to take account of the professional nature of the person for whom the service is provided. The Member States shall also apply these rules where appropriate to the non-core services listed in Section C of the Annex. These principles shall ensure that an investment firm:

— acts honestly and fairly in conducting its business activities in the best interests of its clients and the integrity of the market,

— acts with due skill, care and diligence, in the best interests of its clients and the integrity of the market,

— has and employs effectively the resources and procedures that are necessary for the proper performance of its business activities,

— seeks from its clients information regarding their financial situations, investment experience and objectives as regards the services requested,

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— makes adequate disclosure of relevant material information in its dealings with its clients,

— tries to avoid conflicts of interests and, when they cannot be avoided, ensures that its clients are fairly treated, and

— complies with all regulatory requirements applicable to the conduct of its business activities so as to promote the best interests of its clients and the integrity of the market.

2. Without prejudice to any decisions to be taken in the context of the harmonization of the rules of conduct, their implementation and the supervision of compliance with them shall remain the responsibility of the Member State in which a service is provided.

3. Where an investment firm executes an order, for the purposes of applying the rules referred to in paragraph 1 the professional nature of the investor shall be assessed with respect to the investor from whom the order originates, regardless of whether the order was placed directly by the investor himself or indirectly through an investment firm providing the service referred to in Section A (1) (a) of the Annex.

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Article 13

This Directive shall not prevent investment firms authorized in other Member States from advertising their services through all available means of communication in their host Member States, subject to any rules governing the form and the content of such advertising adopted in the interest of the general good.

TITLE V

The right of establishment and the freedom to provide services

Article 14

1. Member States shall ensure that investment services and the other services listed in Section C of the Annex may be provided within their territories in accordance with Articles 17, 18 and 19 either by the establishment of a branch or under the freedom to provide services by any investment firm authorized and supervised by the competent authorities of another Member State in accordance with this Directive, provided that such services are covered by the authorization.

This Directive shall not affect the powers of host Member States in respect of the units of collective investment undertakings to which Directive 85/611/EEC ([1]) does not apply.

2. Member States may not make the establishment of a branch or the provision of services referred to in paragraph 1 subject to any authorization requirement, to any requirement to provide endowment capital or to any other measure having equivalent effect.

3. A Member State may require that transactions relating to the services referred to in paragraph 1 must, where they satisfy all the following criteria, be carried out on a regulated market:

— the investor must be habitually resident or established in that Member State,

— the investment firm must carry out such transactions through a main establishment, through a branch situated in that Member State or under the freedom to provide services in that Member State,

— the transaction must involve a instrument dealt in on a regulated market in that Member State.

4. Where a Member State applies paragraph 3 it shall give investors habitually resident or established in that Member State the right not to

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([1]) OJ No L 375, 31. 12. 1985, p. 3. Directive last amended by Directive 88/220/EEC (OJ No L 100, 19. 4. 1988, p. 31).

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comply with the obligation imposed in paragraph 3 and have the transactions referred to in paragraph 3 carried out away from a regulated market. Member States may make the exercise of this right subject to express authorization, taking into account investors' differing needs for protection and in particular the ability of professional and institutional investors to act in their own best interests. It must in any case be possible for such authorization to be given in conditions that do not jeopardize the prompt execution of investors' orders.

5. The Commission shall report on the operation of paragraphs 3 and 4 not later than 31 December 1998 and shall, if appropriate, propose amendments thereto.

Article 15

1. Without prejudice to the exercise of the right of establishment or the freedom to provide services referred to in Article 14, host Member States shall ensure that investment firms which are authorized by the competent authorities of their home Member States to provide the services referred to in Section A (1) (b) and (2) of the Annex can, either directly or indirectly, become members of or have access to the regulated markets in their host Member States where similar services are provided and also become members of or have access to the clearing and settlement systems which are provided for the members of such regulated markets there.

Member States shall abolish any national rules or laws or rules of regulated markets which limit the number of persons allowed access thereto. If, by virtue of its legal structure or its technical capacity, access to a regulated market is limited, the Member State concerned shall ensure that its structure and capacity are regularly adjusted.

2. Membership of or access to a regulated market shall be conditional on investment firms' complying with capital adequacy requirements and home Member States' supervising such compliance in accordance with Directive 93/6/EEC.

Host Member States shall be entitled to impose additional capital requirements only in respect of matters not covered by that Directive.

Access to a regulated market, admission to membership thereof and continued access or membership shall be subject to compliance with the rules of the regulated market in relation to the constitution and administration of the regulated market and to compliance with the rules relating to transactions on the market, with the professional standards imposed on staff operating on and in conjunction with the market, and with the rules and procedures for clearing and settlement. The detailed arrangements for implementing these rules and procedures may be adapted as appropriate, *inter alia* to ensure fulfilment of the ensuing obligations, provided, however, that Article 28 is complied with.

3. In order to meet the obligation imposed in paragraph 1, host Member States shall offer the investment firms referred to in that paragraph the choice of becoming members of or of having access to their regulated markets either:

— directly, by setting up branches in the host Member States, or
— indirectly, by setting up subsidiaries in the host Member States or by acquiring firms in the host Member States that are already members of their regulated markets or already have access thereto.

However, those Member States which, when this Directive is adopted, apply laws which do not permit credit institutions to become members of or have access to regulated markets unless they have specialized subsidiaries may continue until 31 December 1996 to apply the same obligation in a non-discriminatory way to credit institutions from other Member States for purposes of access to those regulated markets.

The Kingdom of Spain, the Hellenic Republic and the Portuguese Republic may extend that period until 31 December 1999. One year before that date the Commission shall draw up a report, taking into account the experience acquired in applying this Article and shall if appropriate, submit a proposal. The Council may, acting by qualified

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majority on the basis of that proposal, decide to review those arrangements.

4. Subject to paragraphs 1, 2 and 3, where the regulated market of the host Member State operates without any requirement for a physical presence the investment firms referred to in paragraph 1 may become members of or have access to it on the same basis without having to be established in the host Member State. In order to enable their investment firms to become members of or have access to host Member States' regulated markets in accordance with this paragraph home Member States shall allow those host Member States' regulated markets to provide appropriate facilities within the home Member States' territories.

5. This Article shall not affect the Member States' right to authorize or prohibit the creation of new markets within their territories.

6. This Article shall have no effect:

— in the Federal Republic of Germany, on the regulation of the activities of *Kursmakler*, or

— in the Netherlands, on the regulation of the activities of *hoekmannen*.

Article 16

For the purposes of mutual recognition and the application of this Directive, it shall be for each Member State to draw up a list of the regulated markets for which it is the home Member State and which comply with its regulations, and to forward that list for information, together with the relevant rules of procedures and operation of those regulated markets, to the other Member States and the Commission. A similar communication shall be effected in respect of each change to the aforementioned list or rules. The Commission shall publish the lists of regulated markets and updates thereto in the *Official Journal of the European Communities* at least once a year.

No later than 31 December 1996 the Commission shall report on the information thus received and, where appropriate, propose amendments to the definition of regulated market for the purposes of this Directive.

Article 17

1. In addition to meeting the conditions imposed in Article 3, any investment firm wishing to establish a branch within the territory of another Member State shall notify the competent authorities of its home Member State.

2. Member States shall require every investment firm wishing to establish a branch within the territory of another Member State to provide the following information when effecting the notification provided for in paragraph 1:

(a) the Member State within the territory of which it plans to establish a branch;

(b) a programme of operations setting out *inter alia* the types of business envisaged and the organizational structure of the branch;

(c) the address in the host Member State from which documents may be obtained;

(d) the names of those responsible for the management of the branch.

3. Unless the competent authorities of the home Member State have reason to doubt the adequacy of the administrative structure or the financial situation of an investment firm, taking into account the activities envisaged, they shall, within three months of receiving all the information referred to in paragraph 2, communicate that information to the competent authorities of the host Member State and shall inform the investment firm concerned accordingly.

They shall also communicate details of any compensation scheme intended to protect the branch's investors.

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Where the competent authorities of the home Member State refuse to communicate the information referred to in paragraph 2 to the competent authorities of the host Member State, they shall give reasons for their refusal to the investment firm concerned within three months of receiving all the information. That refusal or failure to reply shall be subject to the right to apply to the courts in the home Member States.

4. Before the branch of an investment firm commences business the competent authorities of the host Member State shall, within two months of receiving the information referred to in paragraph 3, prepare for the supervision of the investment firm in accordance with Article 19 and, if necessary, indicate the conditions, including the rules of conduct, under which, in the interest of the general good, that business must be carried on in the host Member State.

5. On receipt of a communication from the competent authorities of the host Member State or on the expiry of the period provided for in paragraph 4 without receipt of any communication from those authorities, the branch may be established and commence business.

6. In the event of a change in any of the particulars communicated in accordance with paragraph 2 (b), (c) or (d), an investment firm shall give written notice of that change to the competent authorities of the home and host Member States at least one month before implementing the change so that the competent authorities of the home Member State may take a decision on the change under paragraph 3 and the competent authorities of the host Member State may do so under paragraph 4.

7. In the event of a change in the particulars communicated in accordance with the second subparagraph of paragraph 3, the authorities of the home Member State shall inform the authorities of the host Member State accordingly.

Article 18

1. Any investment firm wishing to carry on business within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information to the competent authorities of its home Member State:

— the Member State in which it intends to operate,

— a programme of operations stating in particular the investment service or services which it intends to provide.

2. The competent authorities of the home Member State shall, within one month of receiving the information referred to in paragraph 1, forward it to the competent authorities of the host Member State. The investment firm may then start to provide the investment service or services in question in the host Member State.

Where appropriate, the competent authorities of the host Member State shall, on receipt of the information referred to in paragraph 1, indicate to the investment firm the conditions, including the rules of conduct, with which, in the interest of the general good, the providers of the investment services in question must comply in the host Member State.

3. Should the content of the information communicated in accordance with the second indent of paragraph 1 be amended, the investment firm shall give notice of the amendment in writing to the competent authorities of the home Member State and of the host Member State before implementing the change, so that the competent authorities of the host Member State may, if necessary, inform the firm of any change or addition to be made to the information communicated under paragraph 2.

Article 19

1. Host Member States may, for statistical purposes, require all investment firms with branches within their territories to report periodically on their activities in those host Member States to the competent authorities of those host Member States.

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In discharging their responsibilities in the conduct of monetary policy, without prejudice to the measures necessary for the strengthening of the European Monetary System, host Member States may within their territories require all branches of investment firms originating in other Member States to provide the same particulars as national investment firms for that purpose.

2. In discharging their responsibilities under this Directive, host Member States may require branches of investment firms to provide the same particulars as national firms for that purpose.

Host Member States may require investment firms carrying on business within their territories under the freedom to provide services to provide the information necessary for the monitoring of their compliance with the standards set by the host Member State that apply to them, although those requirements may not be more stringent than those which the same Member State imposes on established firms for the monitoring of their compliance with the same standards.

3. Where the competent authorities of a host Member State ascertain that an investment firm that has a branch or provides services within its territory is in breach of the legal or regulatory provisions adopted in that State pursuant to those provisions of this Directive which confer powers on the host Member State's competent authorities, those authorities shall require the investment firm concerned to put an end to its irregular situation.

4. If the investment firm concerned fails to take the necessary steps, the competent authorities of the host Member State shall inform the competent authorities of the home Member State accordingly. The latter shall, at the earliest opportunity, take all appropriate measures to ensure that the investment firm concerned puts an end to its irregular situation. The nature of those measures shall be communicated to the competent authorities of the host Member State.

5. If, despite the measures taken by the home Member State or because such measures prove inadequate or are not available in the State in question, the investment firm persists in violating the legal or regulatory provisions referred to in paragraph 2 in force in the host Member State, the latter may, after informing the competent authorities of the home Member State, take appropriate measures to prevent or to penalize further irregularities and, in so far as necessary, to prevent that investment firm from initiating any further transactions within its territory. The Member States shall ensure that within their territories it is possible to serve the legal documents necessary for those measures on investment firms.

6. The foregoing provisions shall not affect the powers of host Member States to take appropriate measures to prevent or to penalize irregularities committed within their territories which are contrary to the rules of conduct introduced pursuant to Article 11 as well as to other legal or regulatory provisions adopted in the interest of the general good. This shall include the possibility of preventing offending investment firms from initiating any further transactions within their territories.

7. Any measure adopted pursuant to paragraphs 4, 5 or 6 involving penalties or restrictions on the activities of an investment firm must be properly justified and communicated to the investment firm concerned. Every such measure shall be subject to the right to apply to the courts in the Member State which adopted it.

8. Before following the procedure laid down in paragraphs 3, 4 or 5 the competent authorities of the host Member State may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The Commission and the competent authorities of the other Member States concerned must be informed of such measures at the earliest opportunity.

After consulting the competent authorities of the Member States concerned, the Commission may decide that the Member State in question must amend or abolish those measures.

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9. In the event of the withdrawal of authorization, the competent authorities of the host Member State shall be informed and shall take appropriate measures to prevent the investment firm concerned from initiating any further transactions within its territory and to safeguard investors' interests. Every two years the Commission shall submit a report on such cases to the committee set up at a later stage in the securities field.

10. The Member States shall inform the Commission of the number and type of cases in which there have been refusals pursuant to Article 17 or measures have been taken in accordance with paragraph 5. Every two years the Commission shall submit a report on such cases to the committee set up at a later date in the securities field.

Article 20

1. In order to ensure that the authorities responsible for the markets and for supervision have access to the information necessary for the performance of their duties, home Member States shall at least require:

(a) without prejudice to steps taken in implementation of Article 10, that investment firms keep at the disposal of the authorities for at least five years the relevant data on transactions relating to the services referred to in Article 14 (1) which they have carried out in instruments dealt in on a regulated market, whether such transactions were carried out on a regulated market or not;

(b) that investment firms report to competent authorities in their home Member States all the transactions referred to in (a) where those transactions cover:

— shares or other instruments giving access to capital,

— bonds and other forms of securitized debt,

— standardized forward contracts relating to shares or

— standardized options on shares.

Such reports must be made available to the relevant authority at the earliest opportunity. The time limit shall be fixed by that authority. It may be extended to the end of the following working day where operational or practical reasons so dictate but in no circumstances may it exceed that limit.

Such reports must, in particular, include details of the names and numbers of the instruments bought or sold, the dates and times of the transactions, the transaction prices and means of identifying the investment firms concerned.

Home Member States may provide that the obligation imposed in (b) shall, in the case of bonds and other forms of securitized debt, apply only to aggregated transactions in the same instrument.

2. Where an investment firm carries out a transaction on a regulated market in its host Member State, the home Member State may waive its own requirements as regards reporting if the investment firm is subject to equivalent requirements to report the transaction in question to the authorities in charge of that market.

3. Member States shall provide that the report referred to in paragraph 1 (b) shall be made either by the investment firm itself or by a trade-matching system, or through stock-exchange authorities or those of another regulated market.

4. Member States shall ensure that the information available in accordance with this Article is also available for the proper application of Article 23.

5. Each Member State may, in a non-discriminatory manner, adopt or maintain provisions more stringent in the field governed by this Article with regard to substance and form in respect of the conservation and reporting of data relating to transactions:

— carried out on a regulated market of which it is the home Member State or

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— carried out by investment firms of which it is the home Member State.

Article 21

1. In order to enable investors to assess at any time the terms of a transaction they are considering and to verify afterwards the conditions in which it has been carried out, each competent authority shall, for each of the regulated markets which it has entered on the list provided for in Article 16, take measures to provide investors with the information referred to in paragraph 2. In accordance with the requirements imposed in paragraph 2, the competent authorities shall determine the form in which and the precise time within which the information is to be provided, as well as the means by which it is to be made available, having regard to the nature, size and needs of the market concerned and of the investors operating on that market.

2. The competent authorities shall require for each instrument at least:

(a) publication at the start of each day's trading on the market of the weighted average price, the highest and the lowest prices and the volume dealt in on the regulated market in question for the whole of the preceding day's trading;

(b) in addition, for continuous order-driven and quote-driven markets, publication:

— at the end of each hour's trading on the market, of the weighted average price and the volume dealt in on the regulated market in question for a six-hour trading period ending so as to leave two hours' trading on the market before publication, and

— every 20 minutes, of the weighted average price and the highest and lowest prices on the regulated market in question for a two-hour trading period ending so as to leave one hour's trading on the market before publication.

Where investors have prior access to information on the prices and quantities for which transactions may be undertaken:

(i) such information shall be available at all times during market trading hours;

(ii) the terms announced for a given price and quantity shall be terms on which it is possible for an investor to carry out such a transaction.

The competent authorities may delay or suspend publication where that proves to be justified by exceptional market conditions or, in the case of small markets, to preserve the anonymity of firms and investors. The competent authorities may apply special provisions in the case of exceptional transactions that are very large in scale compared with average transactions in the security in question on that market and in the case of highly illiquid securities defined by means of objective criteria and made public. The competent authorities may also apply more flexible provisions, particularly as regards publication deadlines, for transactions concerning bonds and other forms of securitized debt.

3. In the field governed by this Article each Member State may adopt or maintain more stringent provisions or additional provisions with regard the substance and form in which information must be made available to investors concerning transactions carried out on regulated markets of which it is the home Member State, provided that those provisions apply regardless of the Member State in which the issuer of the financial instrument is located or of the Member State on the regulated market of which the instrument was listed for the first time.

4. The Commission shall report on the application of this Article no later than 31 December 1997; the Council may, on a proposal from the Commission, decide by a qualified majority to amend this Article.

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TITLE VI

Authorities responsible for authorization and supervision

Article 22

1. Member States shall designate the competent authorities which are to carry out the duties provided for in this Directive. They shall inform the Commission thereof, indicating any division of those duties.

2. The authorities referred to in paragraph 1 must be either public authorities, bodies recognized by national law or bodies recognized by public authorities expressly empowered for that purpose by national law.

3. The authorities concerned must have all the powers necessary for the performance of their functions.

Article 23

1. Where there are two or more competent authorities in the same Member State, they shall collaborate closely in supervising the activities of investment firms operating in that Member State.

2. Member States shall ensure that such collaboration takes place between such competent authorities and the public authorities responsible for the supervision of financial markets, credit and other financial institutions and insurance undertakings, as regards the entities which those authorities supervise.

3. Where, through the provision of services or by the establishment of branches, an investment firm operates in one or more Member States other than its home Member State the competent authorities of all the Member States concerned shall collaborate closely in order more effectively to discharge their respective responsibilities in the area covered by this Directive.

They shall supply one another on request with all the information concerning the management and ownership of such investment firms that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such firms. In particular, the authorities of the home Member State shall cooperate to ensure that the authorities of the host Member State collect the particulars referred to in Article 19 (2).

In so far as it is necessary for the purpose of exercising their powers of supervision, the competent authorities of the home Member State shall be informed by the competent authorities of the host Member State of any measures taken by the host Member State pursuant to Article 19 (6) which involve penalties imposed on an investment firm or restrictions on an investment firm's activities.

Article 24

1. Each host Member State shall ensure that, where an investment firm authorized in another Member State carries on business within its territory through a branch, the competent authorities of the home Member State may, after informing the competent authorities of the host Member State, themselves or through the intermediary of persons they instruct for the purpose carry out on-the-spot verification of the information referred to in Article 23 (3).

2. The competent authorities of the home Member State may also ask the competent authorities of the host Member State to have such verification carried out. Authorities which receive such requests must, within the framework of their powers, act upon them by carrying out the verifications themselves, by allowing the authorities who have requested them to carry them out or by allowing auditors or experts to do so.

3. This Article shall not affect the right of the competent authorities of a host Member State, in discharging their responsibilities under this

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Directive, to carry out on-the-spot verifications of branches established within their territory.

Article 25

1. Member States shall provide that all persons who work or who have worked for the competent authorities, as well as auditors and experts instructed by the competent authorities, shall be bound by the obligation of professional secrecy. Accordingly no confidential information which they may receive in the course of their duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that individual investment firms cannot be identified, without prejudice to cases covered by criminal law.

Nevertheless, where an investment firm has been declared bankrupt or is being compulsorily wound up, confidential information which does not concern third parties involved in attempts to rescue that investment firm may be divulged in civil or commercial proceedings.

2. Paragraph 1 shall not prevent the competent authorities of different Member States from exchanging information in accordance with this Directive or other Directives applicable to investment firms. That information shall be subject to the conditions of professional secrecy imposed in paragraph 1.

▼M3

3. Member States may conclude cooperation agreements providing for exchange of information with the competent authorities of third countries or with authorities or bodies of third countries as defined in paragraphs 5 and 5a only if the information disclosed is subject to guarantees of professional secrecy at least equivalent to those referred to in this Article. Such exchange of information must be intended for the performance of the supervisory task of the authorities or bodies mentioned.

Where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

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4. Competent authorities receiving confidential information under paragraph 1 or 2 may use it only in the course of their duties:

— to check that the conditions governing the taking up of the business of investment firms are met and to facilitate the monitoring, on a non-consolidated or consolidated basis, of the conduct of that business, especially with regard to the capital adequacy requirements imposed in Directive 93/6/EEC, administrative and accounting procedures and internal-control mechanisms,

— to impose sanctions,

— in administrative appeals against decisions by the competent authorities, or

— in court proceedings initiated under Article 26.

5. Paragraphs 1 and 4 shall not preclude the exchange of information:

(a) within a Member State, where there are two or more competent authorities, or

(b) within a Member State or between Member States, between competent authorities and

— authorities responsible for the supervision of credit institutions, other financial organizations and insurance undertakings and the authorities responsible for the supervision of financial markets,

— bodies responsible for the liquidation and bankruptcy of investment firms and other similar procedures and

— persons responsible for carrying out statutory audits of the accounts of investment firms and other financial institutions,

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in the performance of their supervisory functions, or the disclosure to bodies which administer compensation schemes of information necessary for the performance of their functions. Such information shall be subject to the conditions of professional secrecy imposed in paragraph 1.

▼M1

5a. Notwithstanding paragraphs 1 to 4, Member States may authorize exchanges of information between, the competent authorities and:

— the authorities responsible for overseeing the bodies involved in the liquidation and bankruptcy of investment firms and other similar procedures, or

— the authorities responsible for overseeing persons charged with carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditions are met:

— the information shall be for the purpose of performing the task of overseeing referred to in the first subparagraph,

— information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,

— where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Member States shall communicate to the Commission and to the other Member States the names of the authorities which may receive information pursuant to this paragraph.

5b. Notwithstanding paragraphs 1 to 4, Member States may, with the aim of strengthening the stability, including integrity, of the financial system, authorize the exchange of information between the competent authorities and the authorities or bodies responsible under the law for the detection and investigation of breaches of company law.

Member States which have recourse to the option provided for in the first subparagraph shall require at least that the following conditons are met:

— the information shall be for the purpose of performing the task referred to in the first subparagraph,

— information received in this context shall be subject to the conditions of professional secrecy imposed in paragraph 1,

— where the information originates in another Member State, it may not be disclosed without the express agreement of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Where, in a Member State, the authorities or bodies referred to in the first subparagraph perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector, the possibility of exchanging information provided for in the first subparagraph may be extended to such persons under the conditions stipulated in the second subparagraph.

In order to implement the final indent of the second subparagraph, the authorities or bodies referred to in the first subparagraph shall communicate to the competent authorities which have disclosed the information, the names and precise responsibilities of the persons to whom it is to be sent.

Member States shall communicate to the Commission and to the other Member States the names of the authorities or bodies which may receive information pursuant to this paragraph.

▼M1

Before 31 December 2000, the Commission shall draw up a report on the application of the provisions of this paragraph.

6. This Article shall not prevent a competent authority from transmitting:

— to central banks and other bodies with a similar function in their capacity as monetary authorities,

— where appropriate, to other public authorities responsible for overseeing payment systems,

information intended for the performance of their task, nor shall it prevent such authorities or bodies from communicating to the competent authorities such information as they may need for the purposes of paragraph 4. Information received in this context shall be subject to the conditions of professional secrecy imposed in this Article.

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7. This Article shall not prevent the competent authorities from communicating the information referred to in paragraphs 1 to 4 to a clearing house or other similar body recognized under national law for the provision of clearing or settlement services for one of their Member State's markets if they consider that it is necessary to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants. The information received shall be subject to the conditions of professional secrecy imposed in paragraph 1. The Member States shall, however, ensure that information received under paragraph 2 may not be disclosed in the circumstances referred to in this paragraph without the express consent of the competent authorities which disclosed it.

8. In addition, notwithstanding the provisions referred to in paragraphs 1 and 4, Member States may, by virtue of provisions laid down by law, authorize the disclosure of certain information to other departments of their central government administrations responsible for legislation on the supervision of credit institutions, financial institutions, investment firms and insurance undertakings and to inspectors instructed by those departments.

Such disclosures may, however, be made only where necessary for reasons of prudential control.

Member States shall, however, provide that information received under paragraphs 2 and 5 and that obtained by means of the on-the-spot verifications referred to in Article 24 may never be disclosed in the cases referred to in this paragraph except with the express consent of the competent authorities which disclosed the information or of the competent authorities of the Member State in which the on-the-spot verification was carried out.

9. If, at the time of the adoption of this Directive, a Member State provides for the exchange of information between authorities in order to check compliance with the laws on prudential supervision, on the organization, operation and conduct of commercial companies and on the regulation of financial markets, that Member State may continue to authorize the forwarding of such information pending coordination of all the provisions governing the exchange of information between authorities for the entire financial sector but not in any case after 1 July 1996.

Member States shall, however, ensure that, where information comes from another Member State, it may not be disclosed in the circumstances referred to in the first subparagraph without the express consent of the competent authorities which disclosed it and it may be used only for the purposes for which those authorities gave their agreement.

The Council shall effect the coordination referred to in the first subparagraph on the basis of a Commission proposal. The Council notes the Commission's statement to the effect that it will submit proposals by 31 July 1993 at the latest. The Council will act on those proposals within the shortest possible time with the intention of bringing the rules proposed into effect on the same date as this Directive.

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Article 25a

1. Member States shall provide at least that:

(a) any person authorized within the meaning of Directive 84/253/EEC [1], performing in an investment firm the task described in Article 51 of Directive 78/660/EEC [2], Article 37 of Directive 83/349/EEC or Article 31 of Directive 85/611/EEC or any other statutory task, shall have a duty to report promptly to the competent authorities any fact or decision concerning that undertaking of which he has become aware while carrying out that task which is liable to:

— constitute a material breach of the laws, regulations or administrative provisions which lay down the conditions governing authorization or which specifically govern pursuit of the activities of investment firms, or

— affect the continuous functioning of the investment firm, or

— lead to refusal to certify the accounts or to the expression of reservations;

(b) that person shall likewise have a duty to report any facts and decisions of which he becomes aware in the course of carrying out a task as described in (a) in an undertaking having close links resulting from a control relationship with the investment firm within which he is carrying out the abovementioned task.

2. The disclosure in good faith to the competent authorities, by persons authorized within the meaning of Directive 84/253/EEC, of any fact or decision referred to in paragraph 1 shall not constitute a breach of any restriction on disclosure of information imposed by contract of by any legislative, regulatory or administrative provision and shall not involce such persons in liability of any kind.

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Article 26

Member States shall ensure that decisions taken in respect of an investment firm under laws, regulations and administrative provisions adopted in accordance with this Directive are subject to the right to apply to the courts; the same shall apply where no decision is taken within six months of its submission in respect of an application for authorization which provides all the information required under the provisions in force.

Article 27

Without prejudice to the procedures for the withdrawal of authorization or to the provisions of criminal law, Member States shall provide that their respective competent authorities may, with regard to investment firms or those who effectively control the business of such firms that infringe laws, regulations or administrative provisions concerning the supervision or carrying on of their activities, adopt or impose in respect of them measures or penalties aimed specifically at ending observed breaches or the causes of such breaches.

Article 28

Member States shall ensure that this Directive is implemented without discrimination.

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[1] OJ No L 126, 12. 5. 1984, p. 20.

[2] OJ No L 222, 14. 8. 1978, p. 11. Directive as last amended by Directive 90/605/EEC (OJ No L 317, 16. 11. 1990, p. 60).

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TITLE VII

Final provisions

Article 29

Pending the adoption of a further Directive laying down provisions adapting this Directive to technical progress in the areas specified below, the Council shall, in accordance with Decision 87/373/EEC [1],20acting by a qualified majority on a proposal from the Commission, adopt any adaptations which may be necessary, as follows:

— expansion of the list in Section C of the Annex,

— adaptation of the terminology of the lists in the Annex to take account of developments on financial markets,

— the areas in which the competent authorities must exchange information as listed in Article 23;

— clarification of the definitions in order to ensure uniform application of this Directive in the Community,

— clarification of the definitions in order to take account in the implementation of this Directive of developments on financial markets,

— the alignment of terminology and the framing of definitions in accordance with subsequent measures on investment firms and related matters,

— the other tasks provided for in Article 7 (5).

Article 30

1. Investment firms already authorized in their home Member States to provide investment services before 31 December 1995 shall be deemed to be so authorized for the purpose of this Directive, if the laws of those Member States provide that to take up such activities they must comply with conditions equivalent to those imposed in Articles 3 (3) and 4.

2. Investment firms which are already carrying on business on 31 December 1995 and are not included among those referred to in paragraph 1 may continue their activities profided that, no later than 31 December 1996 and pursuant to the provisions of their home Member States, they obtain authorization to continue such activities in accordance with the provisions adopted in implementation of this Directive.

Only the grant of such authorization shall enable such firms to qualify under the provisions of this Directive on the right of establishment and the freedom to provide services.

3. Where before the date of the adoption of this Directive investment firms have commenced business in other Member States either through branches or under the freedom to provide services, the authorities of each home Member State shall, between 1 July and 31 December 1995, communicate, for the purposes of Articles 17 (1) and (2) and 18, to the authorities of each of the other Member States concerned the list of firms that comply with this Directive and operate in those States, indicating the business carried on.

4. Natural persons authorized in a Member State on the date of the adoption of this Directive to offer investment services shall be deemed to be authorized under this Directive, provided that they fulfil the requirements imposed in Article 1 (2), second subparagraph, second indent, and third subparagraph, all four indents.

Article 31

No later than 1 July 1995 Member States shall adopt the laws, regulations and administrative provisions necessary for them to comply with this Directive.

[1] OJ No L 197, 18. 7. 1987, p. 33.

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These provisions shall enter into force no later than 31 December 1995. The Member States shall forthwith inform the Commission thereof.

When Member States adopt the provisions referred to in the first paragraph they shall include a reference to this Directive or accompany them with such a reference on the occasion of their official publication. The manner in which such references are to be made shall be laid down by the Member States.

Article 32

This Directive is addressed to the Member States.

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ANNEX

SECTION A

Services

1. (a) Reception and transmission, on behalf of investors, of orders in relation to one or more of the instruments listed in Section B.

   (b) Execution of such orders other than for own account.

2. Dealing in any of the instruments listed in Section B for own account.

3. ►C2 Managing portfolios of investments in accordance with mandates given by investors on a discretionary, ◄ client-by-client basis where such portfolios include one or more of the instruments listed in Section B.

4. Underwriting in respect of issues of any of the instruments listed in Section B and/or the placing of such issues.

SECTION B

Instruments

1. (a) Transferable securities.

   (b) Units in collective investment undertakings.

2. Money-market instruments.

3. Financial-futures contracts, including equivalent cash-settled instruments.

4. Forward interest-rate agreements (FRAs).

5. Interest-rate, currency and equity swaps.

6. Options to acquire or dispose of any instruments falling within this section of the Annex, including equivalent cash-settled instruments. This category includes in particular options on currency and on interest rates.

SECTION C

Non-core services

1. Safekeeping and administration in relation to one or more of the instruments listed in Section B.

2. Safe custody services.

3. Granting credits or loans to an investor to allow him to carry out a transaction in one or more of the instruments listed in Section B, where the firm granting the credit or loan is involved in the transaction.

4. Advice to undertakings on capital structure, industrial strategy and related matters and advice and service relating to mergers and the purchase of undertakings.

5. Services related to underwriting.

6. Investment advice concerning one or more of the instruments listed in Section B.

7. Foreign-exchange service where these are connected with the provision of investment services.