

Markets in financial instruments

2002/0269(COD) - 10/08/2006 - Implementing legislative act

ACT: Commission Directive 2006/73/EC implementing Directive 2004/39/EC of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

CONTENT: Directive 2004/39/EC establishes the framework for a regulatory regime applying to the Community's financial markets. Amongst others this Regulation governs:

- operating conditions relating to an investment firms service performance;
- ancillary services and investment activities;
- organisational requirements for investment firms performing such services and activities;
- regulated markets;
- reporting requirements in respect of transactions in financial instruments;
- transparency requirements in respect of transactions in shares admitted to trading on a regulated market.

This Commission Directive sets out the implementing rules needed to guarantee a uniform application of the provisions set out in Directive 2004/39/EC. They have been designed to ensure a high level of integrity, competence and soundness among investment firms and entities that operate regulated markets of MTFs.

The implementing rules provide for rigorous procedures particularly concerning matters such as compliance, risk management, handling complaints, personal transactions, outsourcing and the identification, management and conflicts of interest.

Uniform procedures allow investment firms to have equal access to Community markets. They also help eliminate obstacles linked to authorisation procedures and to any obstacles preventing cross-border activities. Further, unambiguous implementing rules ensure a high level of investor protection and help clarify the relationship between an investment firm and its clients.

The Directive specifies that in order to keep the rules uniform Member States may not add supplementary binding rules when transposing and applying the rules set out in this Directive – other than in exceptional circumstances. The Directive also requires the competent authorities to issue interpretative guidance on the Directive's provisions in order to help clarify some of the Directive's practical applications.

More specifically, the Directive:

- Sets and defines a number of terms. They are: distribution channels; durable medium; relevant person; financial analyst; group; outsourcing; person with who a relevant person has a family relationship; securities financing transaction; senior management.
- Sets out conditions for providing information.

- Sets out additional requirements on investment firms in certain cases.
- Establishes organisational requirements as established by Article 13 (2) – (8) of Directive 2004/34 /EC. This includes general requirements, compliance matters, risk management, internal audits; senior management responsibility, handling complaints, the meaning of a personal transaction and personal transactions. In other measures the Directive specifies provisions on outsourcing such as setting out the conditions for outsourcing critical or important operational function/investment services or activities. Amongst others, it also deals with service providers located in third countries and safeguarding/depositing client's financial instruments and funds.
- Establishes operating conditions for investment firms and refers to inducements, forwarding non-misleading information, information about the investment firm and its services for retail clients and potential clients.

ENTRY INTO FORCE: 22 September 2006.

TRANSPOSITION: 31 January 2007. It shall apply from 1 November 2007.