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DECREE

of 4 May 2009

on the expertise of persons through which an investment firm performs its activities

Pursuant to Article 199(2) of Act No. 256/2004 Coll., on the Capital Market Undertakings, as amended by Act No. 230/2008 Coll., the Czech National Bank stipulates the following to implement Article 14(3) of this Act:

Article 1

Subject of regulation

This Decree stipulates the extent of the necessary knowledge and experience on the part of persons[1]) through which an investment firm performs its activities, and the requirements on how to demonstrate such knowledge and experience.

Definition of terms

Article 2

(1) For the purposes of this Decree:

a) "person dealing with clients" shall mean a person who provides receipt and transmission of orders in relation to investment instruments from clients,

b) "investment broker" shall mean a person who executes orders on behalf of client or deals in investment instruments on its own account or provides underwriting or placing of investment instruments on or without a firm commitment basis,

c) "portfolio manager" shall mean a person who provides management of assets of a client under a contract with the client, if an investment instrument is part of such assets,

d) "investment advisor" shall mean a person who provides advices on investments in investment instruments,

e) "person performing risk management" shall mean a person who ensures risk management[2]) in an investment firm,

f) "person performing compliance activities" shall mean a person who ensures compliance activities[3]) in an investment firm or for an investment intermediary, and

g) "person performing internal audit" shall mean a person who ensures the performance of internal audit activities[4]) in an investment firm.

(2) For the purposes of this Decree, "person dealing with clients and performing a limited range of activities" shall mean a person who performs at least one of the following activities

a) receipt and transmission of orders from clients, provided that

1. the order relates to collective investment securities,

2. the order relates to investment instruments associated with a right to repayment of at least the invested amount, issued or guaranteed by a member state of the European Union or by the central bank of a member state of the Organization for Economic Cooperation and Development, by an regional authority of a member state of the European Union, by the European Central Bank, by the European Communities, by the European Investment Bank, or by an international organization a member of which is at least one member state of the European Union, or by a person licensed by a member state of the European Union or by a member state of the Organization for Economic

[1]) Article 14(2) of Act No. 256/2004 Coll., on the Capital Market Undertakings, as amended by Act No. 230/2008 Coll.

[2]) Article 12 of Decree No. 237/2008 Coll., on the Details of Certain Rules in the Provision of Investment Services.

[3]) Article 19 of Decree No. 237/2008 Coll.

[4]) Article 20 of Decree No. 237/2008 Coll.

Cooperation and Development and subject to supervision in the field of capital adequacy rules,

3. the person receipting an order relating to investment instruments from a clients does not affect the content of the order, or affects it solely within the scope of a fully standardized procedure regulated by an internal regulation, which the person is obliged to comply with, or

4. the order relating to investment instruments is given by a client who is a "professional client" pursuant to Article 2(a)(1 and 2) or Article 2(b)(1) of Act No. 256/2004 Coll., on the Capital Market Undertakings, as amended (hereinafter referred to as the "Act"), unless this client is not considered a professional client,

b) in connection with receipt and transmission of orders from clients relating to collective investment securities, the person also executes these orders, or

c) in connection with receipt and transmission of orders from clients pursuant to paragraph 2, letter a), items 2 to 4, the person executes these orders through purchase or sale to or from the assets of an investment firm or of a foreign person set out in Article 28(1) of the Act, on condition that the terms and conditions of purchase and sale are previously stipulated in writing by this investment firm or by this foreign person, and the person executing the instruction is obliged to comply with these terms and conditions.

Article 3

(1) For the purposes of this Decree, "professional experience in the financial market" (hereinafter referred to as the "professional experience") shall mean the activity in a statutory body of

a) a person specified in Article 2(a)(1)(a to l) and Article 2(a)(2)(a) of the Act,

b) an investment intermediary,

c) a tied agent,

d) an operator of a regulated market,

e) an operator of a settlement system,

f) a central depository, or

g) an issuer of a listed investment instrument materially connected with the financial market.

(2) "Professional experience" shall further mean the performance of an activity carried out to the extent of the stipulated weekly working hours[5]) or full weekly working hours usual for the given activity and actually consisting in professional work materially connected with the financial market by

a) a person performing its job, occupation or function for a person specified in paragraph 1,

b) an auditor or tax advisor of a person specified in paragraph 1,

c) a person practising legal profession or performing scientific or academic activities,

d) an employee of the Czech National Bank, of the Ministry of Finance or of a financial market supervisory authority and of a professional association, or

e) an employee of the World Bank, of the International Monetary Fund, of the European Investment Bank or of another international financial institution.

(3) "Professional experience" shall also mean the performance of the activity of a person specified in paragraph 1, provided that this person is a natural person.

(4) "Professional experience" shall also mean the performance of an activity for a foreign person or foreign natural person, provided that their performance of the activity is similar to the performance of the activities of persons specified in paragraph 1 or paragraph 2, letters a) to d), and on condition that it is being carried out in the territory of a member state of the European Union or of a member state of the Organization for Economic Cooperation and Development.

[5]) Article 79 of Act No. 262/2006 Coll., the Labour Code, as amended.

Article 4

Extent of necessary knowledge on the part of a person dealing with clients, of an investment broker, of a portfolio manager and of an investment advisor

(1) A person dealing with clients has the necessary professional knowledge particularly in the field of

a) legal regulations on the financial market, provided that they are materially connected with its activities,

b) investment instruments and their issues,

c) provision of investment services, and

d) principles and functioning of collective investments.

(2) An investment broker has the necessary professional knowledge particularly in the field of

a) as specified in paragraph 1, letters a) to c),

b) regulation and functioning of significant world financial markets,

c) financial market principles including the theory of finance,

d) organization and rules of regulated markets and other transfer points,

e) trading in the financial market including settlement, and

f) financial analysis, provided that it performs the underwriting or placing of investment instruments on or without a firm commitment basis.

(3) A portfolio manager has the necessary professional knowledge particularly in the field of

a) as specified in paragraph 1, letters a) to d),

b) regulation and functioning of significant world financial markets,

c) financial market principles including the theory of finance,

d) investments, investment strategy and portfolio and the related risks, and

e) financial analysis.

(4) An investment advisor has the necessary professional knowledge particularly in the field of

a) as specified in paragraph 1, letters a) to d),

b) regulation and functioning of significant world financial markets,

c) financial market principles including the theory of finance, and

d) investments, investment strategy and portfolio and the related risks.

(5) The extent of the required knowledge pursuant to paragraphs 1 to 4 must correspond to the material content of the activities of a person dealing with clients, of an investment broker, of a portfolio manager and of an investment advisor so as to ensure their competent performance.

Article 5

Extent of necessary knowledge on the part of a person performing risk management

(1) A person performing risk management has the necessary professional knowledge particularly in the field of

a) risk management,

b) legal regulations on the financial market, provided that they are materially connected with its activities,

c) regulation and functioning of significant world financial markets,

d) financial market principles including the theory of finance,

e) investment instruments and their issues,

f) organization and rules of regulated markets and other transfer points,

g) trading in the financial market including settlement,

h) provision of investment services,

i) principles and functioning of collective investments,

j) investments, investment strategy and portfolio and the related risks, and

k) financial analysis.

(2) The extent of the required knowledge pursuant to paragraph 1 must correspond to the material content of the activities of a person performing risk management so as to ensure their competent performance; in particular, it shall be taken into account whether a person performing risk management manages a credit risk[6]), market risk[7]), operating risk[8]), liquidity risk[9]), concentration risk[10]) or other risks.

Article 6

Extent of necessary knowledge on the part of a person performing compliance activities

(1) A person performing compliance activities has the necessary professional knowledge particularly in the field of

a) as specified in Article 5(1)(b to k), and

b) procedures applicable to the performance of compliance activities.

(2) The extent of the required knowledge pursuant to paragraph 1 must correspond to the material content of the activities of a person performing compliance activities so as to ensure their competent performance.

Article 7

Extent of necessary knowledge on the part of a person performing internal audit

(1) A person performing internal audit has the necessary professional knowledgeparticularly in the field of

a) as specified in Article 5(1)(b to k), and

b) procedures applicable to the performance of internal audit.

(2) The extent of the required knowledge pursuant to paragraph 1 must correspond to the material content of the activities of a person performing internal audit so as to ensure their competent performance.

Article 8

Manner of demonstrating one's knowledge

A person through which an investment firm performs its activities shall demonstrate its knowledge to the investment firm by submitting a confirmation of having passed a professional examination acknowledged by the Czech National Bank pursuant to Article 14(a)(2 and 3) of the Act (hereinafter the "professional examination"), a confirmation of having completed a professional training course, a confirmation of having finished one's studies or by submitting another document to demonstrate compliance with the requirements pursuant to Article 9 to 15.

Article 9

Demonstrating one's knowledge by a person dealing with clients

(1) A person dealing with clients and performing a limited range of activities must have at least completed secondary education[11]) or secondary education with a vocational certificate[12]) and must complete the relevant professional training course. Completion of a professional training course is not required, provided that a person dealing with clients and performing a limited range of activities has professional experience of at least 2 years.

(2) A person dealing with clients whose activities do not include the investment instruments specified in Article 3(1)(d to k) of the Act (hereinafter the "derivate") must have at least completed a Bachelor programme[13]) or higher professional education[14]) and must complete the relevant professional training course. Compliance with these requirements is not required, provided that this person

a) passed the relevant professional examination,

b) completed secondary education with a school-leaving examination[15]) and has professional experience of at least 1 year, or

[6]) Article 13 of Decree No. 237/2008 Coll.
[7]) Article 14 of Decree No. 237/2008 Coll.
[8]) Article 15 of Decree No. 237/2008 Coll.
[9]) Article 16 of Decree No. 237/2008 Coll.
[10]) Article 17 of Decree No. 237/2008 Coll.

[11]) Article 58(2) of Act No. 561/2004 Coll., on the Preschool, Primary, Secondary, Higher Professional and Other Education (the Education Act), as amended.
[12]) Article 58(3) of Act No. 561/2004 Coll.
[13]) Article45 of Act No. 111/1998 Coll., on Universities and on Alteration and Amendment of Other Acts (the Universities Act), as amended.
[14]) Article 92(2) in connection with Section 101 of Act No. 561/2004 Coll.
[15]) Article 58(4) of Act No. 561/2004 Coll.

c) completed secondary education or secondary education with a vocational certificate and has professional experience of at least 2 years.

(3) A person dealing with clients whose activities do include derivates must have at least completed a Bachelor programme or higher professional education in the field of economy or mathematics and must complete the relevant professional training course. Compliance with these requirements is not required, provided that this person

a) passed the relevant professional examination,

b) completed a Bachelor programme or higher professional education in a field other than economy or mathematics and has professional experience of at least 1 year,

c) completed secondary education with a school-leaving examination and has professional experience of at least 2 years, or

d) completed secondary education or secondary education with a vocational certificate and has professional experience of at least 3 years.

(4) Professional experience pursuant to paragraph 2, letters b) and c), shall not include professional experience pursuant to Article 16(1). Professional experience pursuant to paragraph 3, letters b) to d), shall not include professional experience pursuant to Article 16(2).

Article 10

Demonstrating one's knowledge by an investment broker

(1) An investment broker whose activities do not include derivates must pass the relevant professional examination. Compliance with this requirement is not required, provided that an investment broker

a) completed at least a Masters programme[16]),

b) completed a Bachelor programme or higher professional education and has professional experience of at least 1 year, or

c) completed secondary education with a school-leaving examination and has professional experience of at least 2 years.

(2) An investment broker whose activities do include derivates must pass the relevant professional examination. Compliance with this requirement is not required, provided that an investment broker

a) completed at least a Masters programme in the field of economy or mathematics,

b) completed a Masters programme in a field other than economy or mathematics and has professional experience of at least 1 year,

c) completed a Bachelor programme or higher professional education in the field of economy or mathematics and has professional experience of at least 1 year,

d) completed a Bachelor programme or higher professional education in a field other than economy or mathematics and has professional experience of at least 2 years, or

e) completed secondary education with a school-leaving examination and has professional experience of at least 3 years.

(3) Professional experience pursuant to paragraph 1, letters b) and c), shall not include the relevant professional experience pursuant to Article 16(3). Professional experience pursuant to paragraph 2, letters b) to e), shall not include the relevant professional experience pursuant to Article 16(4).

Article 11

Demonstrating one's knowledge by a portfolio manager

(1) A portfolio manager whose activities do not include derivates must pass the relevant professional examination. Compliance with this requirement is not required, provided that a portfolio manager

[16]) Article 46 of Act No. 111/1998 Coll.

a) completed at least a Masters programme,

b) completed a Bachelor programme or higher professional education and has professional experience of at least 1 year, or

c) completed secondary education with a school-leaving examination and has professional experience of at least 2 years.

(2) A portfolio manager whose activities do include derivates must pass the relevant professional examination. Compliance with this requirement is not required, provided that a portfolio manager

a) completed at least a Masters programme in the field of economy or mathematics,

b) completed a Masters programme in a field other than economy or mathematics and has professional experience of at least 1 year,

c) completed a Bachelor programme or higher professional education in the field of economy or mathematics and has professional experience of at least 1 year,

d) completed a Bachelor programme or higher professional education in a field other than economy or mathematics and has professional experience of at least 2 years, or

e) completed secondary education with a school-leaving examination and has professional experience of at least 3 years.

(3) Professional experience pursuant to paragraph 1, letters b) and c), shall not include the relevant professional experience pursuant to Article 16(3). Professional experience pursuant to paragraph 2, letters b) to e), shall not include the relevant professional experience pursuant to Article 16(4).

Article 12

Demonstrating one's knowledge by an investment advisor

(1) An investment advisor whose activities do not include derivates must pass the relevant professional examination. Compliance with this requirement is not required, provided that an investment advisor

a) completed at least a Bachelor programme or higher professional education,

b) completed secondary education with a school-leaving examination and has professional experience of at least 1 year, or

c) completed secondary education or secondary education with a vocational certificate and has professional experience of at least 2 years.

(2) An investment advisor whose activities do include derivates must pass the relevant professional examination. Compliance with this requirement is not required, provided that an investment advisor

a) completed at least a Bachelor programme or higher professional education in the field of economy or mathematics,

b) completed a Bachelor programme or higher professional education in a field other than economy or mathematics and has professional experience of at least 1 year,

c) completed secondary education with a school-leaving examination and has professional experience of at least 2 years, or

d) completed secondary education or secondary education with a vocational certificate and has professional experience of at least 3 years.

(3) Professional experience pursuant to paragraph 1, letters b) and c), shall not include the relevant professional experience pursuant to Article 16(3). Professional experience pursuant to paragraph 2, letters b) to d), shall not include the relevant professional experience pursuant to Article 16(4).

Article 13

Demonstrating one's knowledge by a person performing risk management

(1) A person performing risk management must pass the relevant professional

examination. Compliance with this requirement is not required, provided that a person performing risk management

a) completed at least a Masters programme in the field of economy or mathematics,

b) completed a Masters programme in a field other than economy or mathematics and has professional experience of at least 1 year,

c) completed a Bachelor programme or higher professional education in the field of economy or mathematics and has professional experience of at least 1 year,

d) completed a Bachelor programme or higher professional education in a field other than economy or mathematics and has professional experience of at least 2 years, or

e) completed secondary education with a school-leaving examination and has professional experience of at least 3 years.

(2) Professional experience pursuant to paragraph 1, letters b) to e), shall not include the relevant professional experience pursuant to Article 17.

Article 14

Demonstrating one's knowledge by a person performing compliance activities

(1) A person performing compliance activities must pass the relevant professional examination. Compliance with this requirement is not required, provided that a person performing compliance activities

a) completed at least a Masters programme in the field of law or economy,

b) completed a Masters programme in a field other than law or economy and has professional experience of at least 1 year,

c) completed a Bachelor programme or higher professional education in the field of law or economy and has professional experience of at least 1 year,

d) completed a Bachelor programme or higher professional education in a field other than law or economy and has professional experience of at least 2 years, or

e) completed secondary education with a school-leaving examination and has professional experience of at least 3 years.

(2) Provided that a person performing compliance activities in an investment intermediary completed secondary education or secondary education with a vocational certificate and has professional experience in the financial market of at least 4 years, it does not have to comply with the requirements pursuant to paragraph 1.

(3) Professional experience pursuant to paragraph 1, letters b) to e), and paragraph 2 shall not include the relevant professional experience pursuant to Article 17.

Article 15

Demonstrating one's knowledge by a person performing internal audit

(1) A person performing internal audit must pass the relevant professional examination. Compliance with this requirement is not required, provided that a person performing internal audit

a) completed at least a Masters programme in the field of law, economy or mathematics,

b) completed a Masters programme in a field other than law, economy or mathematics and has professional experience of at least 1 year,

c) completed a Bachelor programme or higher professional education in the field of law, economy or mathematics and has professional experience of at least 1 year,

d) completed a Bachelor programme or higher professional education in a field other than law, economy or mathematics and has professional experience of at least 2 years, or

e) completed secondary education with a school-leaving examination and has

professional experience of at least 3 years.

(2) Professional experience pursuant to paragraph 1, letters b) to e), shall not include the relevant professional experience pursuant to Article 17.

Article 16

Extent of necessary experience on the part of a person dealing with clients, of an investment broker, of a portfolio manager and of an investment advisor

(1) Solely such a person may become a person dealing with clients whose activities do not include derivates, who previously performed the activities of a person dealing with clients and performing a limited range of activities for at least 6 months or has professional experience of at least 1 year.

(2) Solely such a person may become a person dealing with clients whose activities do include derivates, who previously performed the activities of a person dealing with clients pursuant to paragraph 1 for at least 1 year or has professional experience of at least 3 years.

(3) Solely such a person may become an investment broker, portfolio manager or investment advisor whose activities do not include derivates, who has professional experience of at least 1 year.

(4) Solely such a person may become an investment broker, portfolio manager or investment advisor whose activities do include derivates, who previously performed the relevant activities pursuant to paragraph 3 for at least 1 year or has professional experience of at least 3 years.

(5) The requirements pursuant to paragraphs 1 to 4 do not apply, provided that the persons specified therein

a) perform the activity under the supervision of a person who complies with the relevant requirement, or

b) performed the activity that they wish to perform for at least 1 year under the supervision of a person who complies with the relevant requirement.

(6) The requirements pursuant to paragraph 1 do not apply to a person dealing with clients and performing a limited range of activities.

Article 17

Extent of necessary experience on the part of a person performing risk management, compliance activities or internal audit

Solely such a person may become a person performing risk management, compliance activities or internal audit, who has professional experience of at least 1 year. This does not apply, provided that such a person performs its activities under the supervision of a person who complies with the requirements.

Article 18

Manner of demonstrating one's experience

A person through which an investment firm performs its activities shall demonstrate its experience to the investment firm at least by submitting

a) a structured professional curriculum vitae, which contains at least

1. an identification of the person through which the investment firm performs its activities,
2. information on the type of professional experience pursuant to Section 3,
3. an identification of the person at which the professional experience was acquired,
4. the title of the job position,
5. a description of the activities performed,
6. a specification of the period of time for which the activities pursuant to item 5 were performed,
7. a summary of short-term attachments/scholarships relevant to the activities on the financial market, with an indication of the year of their completion, focus and duration, and
8. a subscription of the person through which the investment firm performs its activities,

b) copies of the documents to certify (unless this is made impossible by their nature) the facts specified in item a); in cases deserving special attention, the copies of such documents may be replaced by an affidavit of a person through which an investment firm performs its activities.

Article 19

Inclusion of professional experience

Any professional experience acquired 10 or more years before the commencement of the performance of the activities pursuant to this Decree shall not be included in the professional experience required by this Decree.

Article 20

Transitory provisions

(1) An investment firm shall put its relations in compliance with this Decree at the latest within 12 months from the effective day of this Decree. Until then, it shall abide by the rules stipulated by this Decree as appropriate.

(2) Professional experience pursuant to Article 16 is not required, provided that a person dealing with clients, investment broker, portfolio manager and investment advisor passed a professional examination pursuant to Decree No. 59/2007 Coll., on the Types of Professional Trading Activities of an Investment Firm Performed through a Broker, on the Types of Broker Specialization and on the Broker Examination.

(3) Paragraph 2 is not applied, provided that a person dealing with clients, investment broker and portfolio manager should perform activities beyond the scope of the category of the professional examination passed by the same pursuant to Decree No. 59/2007 Coll., or provided that an investment advisor did not pass the examination pursuant to Article 3(3) of Decree No. 59/2007 Coll.

Article 21

Effective Day

This Decree shall become effective on 1 June 2009.

The Governor:

doc. Ing. **Tůma**, CSc., signed in his own hand