

DECREE

No. 308/2017

of 11 September 2017

on the more detailed regulation of certain rules in the provision of investment services

as follows from amendments introduced by Decree **No. 227/2022 Coll.**

The Czech National Bank stipulates, pursuant to Article 199(2) of Act No. 256/2004, on Capital Market Undertakings, as amended by Act No 204/2017, (the “Act”), for the implementation of Article 12f(b) and (d), Article 13(3), Article 15(7), and Article 32(7) of the Act:

PART ONE

GENERAL PROVISIONS

Article 1

Subject of regulation

This Decree incorporates the relevant European Union regulations¹⁾ and stipulates

- a) the requirements for the organisational arrangements of an investment firm in relation to the protection of a client’s assets,
- b) more detailed requirements for an investment firm in the creation, offering or distribution of financial instruments,
- c) the conditions under which research provided to an investment firm is not considered an inducement,
- d) the conditions under which an inducement is intended to contribute towards improving the quality of the service provided,
- e) the method in which an investment firm demonstrates an improvement in the quality of the service provided,
- f) more detailed requirements for the transfer of a received inducement in the form of a payment or other monetary benefit to the client,
- g) more detailed requirements regarding informing clients about inducements,
- h) the conditions under which a benefit may be considered a minor non-monetary benefit,
- i) the method of the management and the requisites of an investment firm’s transactions and orders book, and
- j) the details and method of keeping an investment intermediary’s records.

PART TWO

PROTECTION OF CLIENT ASSETS

[Re Article 12f(d) of the Act]

Article 2

Records of client assets

(1) In its internal records system, an investment firm shall ensure consistent and unambiguous identification of the financial instruments and cash resources of each client so that it can at any time distinguish assets held for one client from assets held for other clients,

¹⁾ Commission Delegated Directive (EU) 2017/593 of 7 April 2016, supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits, as amended by Commission Delegated Directive (EU) 2021/1269.

and from its own assets. The internal records shall also contain records of any third-party account on which the individual financial instruments and the funds of each client are held.

(2) An investment firm

- a) shall ensure checks of compliance between the data in its internal records and the actual state of the funds and financial instruments of the client held by a third party, and shall remove any detected irregularities (“reconciliation”) at least once a month,
- b) shall perform reconciliation
 1. based on a document provided by a third party,
 2. in a demonstrable and documented way that shows the course and outcome of the reconciliation,
- c) shall determine rules for checking compliance with the reconciliation obligation and the frequency and method of reconciliation.

(3) An investment firm shall also implement effective organisational measures to minimise the risk of loss or devaluation of the client’s assets or rights associated with such assets as a result of misuse of the client’s assets, fraud, bad management, insufficient records, or negligence.

(4) Where a client’s assets are located in a state whose legislation does not permit compliance with the requirements under paragraphs 1, 2 or 3, Article 3(1)(c), Article 3(2) or Article 4(4), the investment firm shall take such measures to comply as far as possible with the requirements pursuant to paragraphs 1, 2 or 3, Article 3(1)(c), Article 3(2) or Article 4(4). If equivalent measures are taken, the investment firm shall inform its clients that in such cases the equivalent measures will apply to them rather than the provisions laid down in the Act and this Decree.

(5) An investment firm shall ensure that a security interest, lien or right of set-off against a client’s financial instruments or funds that would enable a third party to dispose of the client’s financial instruments or funds in order to recover non-client debts or to provide services to the client is not exercised. This does not apply where required by the legislation of the third state in which the client’s financial instruments or funds are located. Where, under the legislation of a third state, an investment firm must enter into contracts that establish the indicated security interest, lien or right of set-off, it shall inform the client and indicate the risks associated with such arrangements. If an investment firm arranges a security interest, lien or right of set-off against financial instruments or client funds, or if an investment firm has been informed that such rights have been arranged or have otherwise been established, such rights shall be recorded in the client contracts and in the accounts of the investment firm to ensure that the assets of the client and the related proprietary right are clear and separable, in particular in the event of bankruptcy of the investment firm.

(6) At the request of the Czech National Bank or an insolvency trustee, the investment firm shall promptly provide information about a client’s financial instruments and funds, while this information shall include information about

- a) the accounts and internal records of clients’ financial instruments and funds,
- b) the accounts with third parties on which the client’s financial instruments are maintained under Article 3, and the contracts with such persons,
- c) the accounts on which the client’s funds are deposited pursuant to Article 4, and the contracts with the persons maintaining such accounts,
- d) the third parties entrusted with the performance of activities related to the registration and storage of the client’s assets,

- e) the key persons who directly perform or are responsible for the activities of the investment firm in relation to protection of client assets, and
- f) the contracts that are essential to determining a client's rights to the assets.

Article 3

Depositing client financial instruments

(1) An investment firm may deposit a client's financial instruments on a third-party account if

- a) in the context of its obligation to act with professional care, it takes into account the experience of this person, their reputation on the financial market, and the legal requirements governing the disposal of the client's financial instruments at such third party that could adversely affect the rights of the client,
- b) the depositing of client financial instruments in a third state is subject to regulation and supervision, except when
 1. the nature of the financial instruments or investment services associated with those financial instruments requires them to be deposited with a person in a third state where the depositing of financial instruments is not subject to regulation and supervision, or
 2. a professional client requests the investment firm in writing to deposit their financial instruments with a person in that state,
- c) it ensures separation of the client's financial instruments in the third party's records from the financial instruments of the investment firm and the person with whom they are deposited using nominally designated accounts or another comparable method.

(2) The investment firm shall verify compliance with the specified requirements for the deposit of the client's financial instruments on a third party's account when selecting a third party, when arranging services, and during their provision.

(3) The requirements under paragraph 1(b) shall also apply where a third party entrusts the performance of certain activities related to the holding and safekeeping of financial instruments to another person.

Article 4

Depositing client funds

(1) An investment firm may only deposit a client's funds with

- a) a central bank,
- b) a credit institution authorised to operate in a European Union Member State,
- c) a foreign bank authorised to operate in a country that is not a European Union Member State, or
- d) a money market fund subject to supervision or authorised to operate in a European Union Member State, and
 1. whose primary objective is to preserve the net asset value in parity (without yields) or in the amount of the investment increased by yields,
 2. in accordance with the objective under item 1, it invests exclusively in high quality money market instruments with a maturity or residual maturity of less than 397 days and weighted average maturity of 60 days, or a regularly adjusted yield consistent with this maturity and with weighted average maturity of up to 60 days,
 3. which the money market fund manager considers to be of high quality on the basis of an evaluation of the credit quality of the money market instruments, and
 4. that provides liquidity through settlement on the same or the next day.

(2) The objectives referred to in paragraph 1(d)(1) may also be achieved through complementary investment in deposits with credit institutions. Where a credit rating agency registered with the European Securities and Markets Authority, which supervises it, has provided a rating for a money market fund instrument, when making the evaluation referred to in paragraph 1(d)(3) the money market fund manager shall take into account, *inter alia*, this credit assessment.

(3) Where an investment firm deposits a client's funds with a person under paragraph 1(b), (c) or (d), it will proceed with caution and with due care and take into account the person's experience, financial market reputation, legal requirements and the market practices that govern the disposal of the client's funds by that person and that could adversely affect the rights of the client, and the need for diversification of funds. The investment firm shall verify the fulfilment of the requirements under the first sentence when selecting the person referred to in paragraph 1(b), (c) or (d), when arranging the services, and during their provision.

(4) An investment firm shall ensure that the funds of the client and the investment firm are deposited with a person referred to in paragraph 1 on separate accounts. Client funds under paragraph 1 shall not include deposits received in connection with the activities of a bank that is also an investment firm.

(5) An investment firm shall deposit client funds into a money market fund pursuant to paragraph 1(d) only if the client agrees. At the same time, the investment firm shall inform the client that the funds deposited into the money market fund pursuant to paragraph 1(d) will not be held in accordance with the requirements for the deposit of client funds set out in this Decree.

(6) Where a person under paragraph 1(b), (c) or (d) is part of the same business group as an investment firm, the investment firm may deposit at most 20% of the value of the client's funds with persons who are members of such group; this upper limit does not apply if this limit is not proportionate with respect to the nature, scope and complexity of the activity of the investment firm, the security offered by those persons, or the low balance of the client's funds. An investment fund will regularly assess the need to apply this limit and, in the event of a change, will inform the Czech National Bank of its original and revised evaluation.

Article 5

Use of client financial instruments

(1) An investment firm may use a client's financial instruments to trade for its own account or for the account of another person or other client if the client has agreed in advance and explicitly in writing with the use the financial instruments under specified terms.

(2) An investment firm may use client financial instruments on an omnibus account kept by a third party for a transaction for its own account or for the account of another client under the conditions under paragraph 1 only if

- a) every client whose financial instrument is held on an omnibus account has given their consent in accordance with paragraph 1, or
- b) the investment firm has a system and control mechanisms that ensure that only the financial instruments of a client that has given their consent in accordance with paragraph 1 may be used in this way.

(3) For the purpose of properly attributing transaction losses under paragraph 1 or 2, an investment firm's records shall include information about

- a) each client whose financial instruments were used with their agreement, and
- b) the number of financial instruments used belonging to this client.

(4) An investment firm shall establish, maintain, and apply procedures and measures to prevent unauthorised use of a client's financial instruments for its own account or for the account of another person, in particular

- a) through concluding agreements with clients on the measures that the investment firm shall take if the client does not have a sufficient reserve on their account at the settlement date, such as borrowing the corresponding securities on behalf of the client, or cancelling a position without an instruction from the client,
- b) through an ongoing assessment of its ability to meet its obligations at the settlement date and, if this is not possible, by taking remedial measures,
- c) through carefully monitoring undelivered financial instruments at or after the settlement date, and promptly requiring delivery.

(5) An investment firm shall ensure that the borrower of a client's financial instruments provides adequate collateral. An investment firm shall continuously monitor the adequacy of such collateral, and take the necessary measures to ensure that the collateral is adequate in relation to the amount of the client's financial instruments.

Article 6

Agreements on title transfer collateral arrangements

(1) An investment firm shall properly and demonstrably consider the use of title transfer collateral arrangements in the context of the relationship between the client's obligation to the firm and the client assets subjected to title transfer collateral arrangements by the firm.

(2) When assessing and demonstrating the suitability of the use of a title transfer collateral arrangement, the investment firm shall take into account whether

- a) there is only a very weak connection between the client's obligation to the firm and the use of title transfer collateral arrangements, including whether the likelihood of a clients' liability to the firm is low or negligible,
- b) the amount of client funds or financial instruments subject to title transfer collateral arrangements far exceeds the client's obligation, or is even unlimited if the client has any obligation at all to the firm, and
- c) all clients' financial instruments or funds are made subject to title transfer collateral arrangements, without consideration of what obligation each client has to the firm.

(3) Where using title transfer collateral arrangements, investment firms shall inform professional clients and eligible counterparties about the risks involved and the effect of any title transfer collateral arrangement on the client's financial instruments and funds

Article 7

Governance arrangements concerning the safeguarding of client assets

An investment firm shall appoint at least one officer of sufficient skill and authority, who will be entrusted with checking compliance by the investment firm with its obligations regarding the safeguarding of client financial instruments and funds. An investment firm shall also decide whether the appointed officer will only perform this activity or whether the officer can discharge their responsibilities effectively whilst having additional responsibilities.

PART THREE
CREATING AND OFFERING A FINANCIAL INSTRUMENT TO CLIENTS

[Re Article 12f(b) of the Act]

An investment firm creating a financial instrument offered to clients

Article 8

(1) An investment firm creating a financial instrument it intends to offer to clients must comply, in a way that is appropriate and proportionate, with the relevant requirements laid down in paragraphs 2 to 6, and Articles 9 and 10, taking into account the nature of the financial instrument, the investment service, and the target market for the given financial instrument.

(2) In particular, an investment firm creating financial instruments shall ensure that the design of a financial instrument, including its features, does not endanger end clients or threaten the stability and functioning of the financial market by allowing the investment firm to reduce or exclude its own risks or exposure associated with the underlying assets of the financial instrument, if the investment firm already holds these underlying assets for its own account.

(3) An investment firm shall assess potential conflicts of interest whenever it creates a financial instrument. In particular, it shall assess whether the financial instrument creates a situation that could harm clients if clients take the opposite position than originally held by the investment firm, or that the investment firm intends to hold after the sale of the financial instrument.

(4) An investment firm shall assess whether the financial instrument threatens the stability and functioning of the financial market before deciding to place the financial instrument on the market.

(5) An investment firm shall ensure that the officers involved in the creation of financial instruments have sufficient expertise to understand the characteristics of these financial instruments and the risks associated with them.

(6) An investment firm shall ensure

- (a) that its management body has effective control over the system for creating and offering financial instruments, and
- (b) that the compliance reports to the management body include information about the financial instruments manufactured by the firm, including information on the sales strategy.

Article 9

(1) An investment firm shall ensure that the person performing continuous checks of compliance with legislation (“compliance”) at the investment firm regularly monitors the system for creating financial instruments in order to detect any risk of failure by the firm to comply with the obligations set out in Articles 8 to 10.

(2) If an investment firm collaborates in the creation of a financial instrument with other persons, including with entities not authorised by a supervisory authority of a European Union Member State to provide investment services, or with foreign persons with registered office or actual registered office in a state that is not a European Union Member State, the investment firm shall regulate its mutual responsibilities with these persons through a written agreement.

(3) An investment firm shall determine the target market for each financial instrument and specify the type of clients whose needs, characteristics and objectives, including sustainability objectives³⁾, the financial instrument is compatible with, and shall also determine the type of clients with whose needs, characteristics and objectives the financial instrument is incompatible; however, such incompatibility cannot be based on sustainability factors pursuant to Article 2(24) of Regulation (EU) 2019/2088 of the European Parliament and of the Council⁴⁾ (hereinafter referred to as the “sustainability factor”).

(4) An investment firm creating a financial instrument that is distributed through another investment firm shall determine the needs and characteristics of the clients that the financial instrument is compatible with based on its theoretical knowledge and experience of such financial instrument or with similar financial instruments, and based on its knowledge of financial markets and the needs, characteristics, and objectives of end clients.

(5) An investment firm shall perform, for a financial instrument it creates, an analysis of scenarios to assess the risks the financial instrument carries for end clients and under what circumstances such results may occur, assessing the investment tool under unfavourable conditions, in particular

- a) a deterioration of the market environment,
- b) a situation where the manufacturer or a third party involved in the manufacturing and/or functioning of the financial instrument becomes bankrupt or other counterparty risk materializes,
- c) the financial instrument fails to become commercially viable, or
- d) demand for the financial instrument is much higher than anticipated, putting a strain on the investment firm’s resources and/or on the market of the underlying instrument.

(6) An investment firm shall determine whether a financial instrument meets the identified needs, characteristics and objectives of the target market, including by examining whether

- a) the financial instrument’s risk/reward profile is consistent with the target market,
- b) any sustainability factors of this investment instrument correspond to the target market, and
- c) the financial instrument design is driven by features that benefit the client and not by a business model that relies on poor client outcomes to be profitable.

Article 10

(1) An investment firm shall consider the charging structure, in particular whether

- a) the financial instrument’s costs and charges are compatible with the needs, objectives and characteristics of the target market,
- b) the charges do not undermine the financial instrument’s return expectations, primarily where the costs or charges equal, exceed or remove almost all the expected tax advantages linked to a financial instrument, and
- c) the charging structure of the financial instrument is appropriately transparent for the target market or is too complex to understand, and does not disguise charges.

³⁾ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

⁴⁾ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, as amended.

(2) An investment firm shall provide information about a financial instrument to persons that offer or distribute such financial instrument (“financial instrument distributor”). This information shall include information about the appropriate channels for distribution of the financial instrument, the financial instrument approval process and a target market assessment. This information shall be of adequate standard to enable a distributor of the financial instrument to understand the characteristics of the financial instrument and offer or distribute the financial instrument properly. An investment firm shall present the sustainability factors of an investment instrument in a transparent manner in order to provide the distributor of the investment instrument with information allowing him to consider all the sustainability objectives of the client³).

(3) An investment firm shall regularly review the financial instrument it manufactures, taking into account any event that could materially affect the potential risk to the identified target market. An investment firm shall consider if the financial instrument remains consistent with the needs, characteristics and objectives of the target market, including sustainability objectives³), and if it is distributed to the target market, or is also reaching clients with whose needs, characteristics and objectives the financial instrument is incompatible.

(4) An investment firm shall review a financial instrument prior to any further issue or re-launch if it is aware of any event that could materially affect the potential risk to investors, and at regular intervals to assess whether the financial instrument functions as intended. An investment firm shall determine how often to review its financial instruments based on relevant factors, including factors linked to the complexity or the innovative nature of the investment strategies pursued.

(5) An investment firm shall also identify crucial events that could affect the potential risk or return expectations of the financial instrument, such as

- a) the crossing of a threshold that will affect the return profile of the financial instrument, or
- b) the solvency of certain issuers whose underlying securities or guarantees may impact the performance of the financial instrument.

(6) When the events indicated in paragraphs 4 or 5 occur, an investment firm shall take appropriate action, which may consist of

- a) providing any relevant information on the event and its consequences on the financial instrument to the client or the distributor of the financial instrument,
- b) changing the financial instrument approval process,
- c) stopping further issuance of the financial instrument,
- d) changing the financial instrument to avoid unfair contract terms being arranged,
- e) changing the distribution channel through which the financial instrument is sold, where an investment firm becomes aware that the financial instrument is not being sold as envisaged,
- f) contacting the distributor of the financial instrument to discuss a modification of the distribution process,
- g) terminating the contractual relationship with the distributor of the financial instrument, or
- h) informing the Czech National Bank.

An investment firm offering a financial instrument

Article 11

(1) An investment firm, when deciding on the financial instrument issued by it or another investment firm and the investment services it intends to offer or recommend to clients, shall comply, in a way that is appropriate and proportionate, with the requirements laid down in

paragraphs 2 to 6, and Articles 12 and 13, taking into account the nature of the financial instrument, the investment service and the target market. An investment firm shall also comply with the requirements of European Union legislation governing activities on financial markets when offering or recommending a financial instrument manufactured by a person not subject to European Union legislation governing activities on financial markets. As part of this process, such investment firm shall have in place effective arrangements to ensure that they obtain sufficient information about these financial instruments from these manufacturers. An investment firm shall determine the target market for the respective financial instrument, even if the target market was not defined by the manufacturer.

(2) An investment firm shall introduce, maintain and apply an adequate system for offering financial instruments to ensure that the financial instrument and investment service they intend to offer or recommend is compatible with the needs, characteristics and objectives of an identified target market, including sustainability objectives³⁾, and that the intended distribution strategy is consistent with the identified target market. An investment firm shall appropriately identify and assess the nature and needs of the clients it intends to focus on, so as to ensure that client interests are not compromised as a result of commercial or funding pressures. As part of this process, an investment firm shall identify any groups of clients with whose needs, characteristics and objectives the financial instrument or investment service is incompatible; however, sustainability factors shall not be applied to assess incompatibility.

(3) An investment firm shall obtain from the manufacturer of a financial instrument adequate and reliable information needed to gain the necessary understanding and knowledge of the financial instrument it intends to offer or recommend in order to ensure that this financial instrument will be distributed in accordance with the needs, characteristics and objectives of the identified target market.

(4) In order to comply with the obligation under paragraph 3, an investment firm may use publicly available information that is clear and reliable and provided for the purpose of compliance with statutory requirements, such as the disclosure requirements of Part Four and Nine of the Act. Where publicly available information cannot be used, the investment firm shall obtain the information requested from the financial instrument manufacturer or its representative. In the case of a financial instrument distributed on a primary and secondary market, the requirement to obtain information is applied proportionately, depending on the degree of availability of publicly available information and the complexity of the financial instrument.

(5) An investment firm shall use the information obtained from the manufacturer of a financial instrument and information about its clients to determine the target market and the sales strategy. When an investment firm acts both as a manufacturer and a distributor of a financial instrument, only one target market assessment shall be required

(6) An investment firm, when deciding the range of financial instruments and services they offer or recommend and the respective target markets, shall maintain procedures and measures to ensure compliance with European Union law, including those relating to disclosure, assessment of suitability or appropriateness, inducements and proper management of conflicts of interest. In this context, particular care shall be taken when distributors intend to offer or recommend new financial instruments or there are variations to the services they provide.

Article 12

(1) An investment firm shall periodically review and evaluate its system for offering financial instruments to ensure that it remains fit and appropriate for its purpose, and take

appropriate actions where necessary without undue delay.

(2) An investment firm shall regularly review a financial instrument it offers or recommends, and an investment service it provides, taking into account any event that could materially affect the potential risk to the identified target market. An investment firm shall always assess whether the financial instrument or investment service remains consistent with the needs, characteristics and objectives of the identified target market, including sustainability objectives³, and whether the intended distribution strategy remains appropriate. An investment firm shall reconsider the target market and/or update the system for offering financial instruments if it becomes aware that it has wrongly identified the target market for a specific product or service or that the product or service no longer meets the circumstances of the identified target market, such as where the product becomes illiquid or very volatile due to market changes.

(3) An investment firm shall ensure its compliance function oversees the development and periodic review of its system for offering financial instruments and significant changes to it in order to detect any risk of failure to comply with the obligations set out in Articles 11 to 13.

(4) An investment firm shall ensure that its staff possess the necessary expertise to understand the characteristics and risks of the financial instruments it offers or recommends and the services provided, as well as the identified target market.

(5) An investment firm shall ensure that its management body has effective control over the system for offering financial instruments to determine the range of financial instruments that the investment firm offers or recommends, and the services provided to the respective target markets. An investment firm shall ensure that the compliance reports to the management body systematically include information about the financial instruments it offers or recommends, and the services it provides.

(6) A distributor of a financial instrument shall provide the manufacturer of the financial instrument with information on sales and, where appropriate, also the results of its evaluation of the financial instrument.

Article 13

(1) Where different investment firms work together in the distribution of a financial instrument or investment service, these investment firms shall ensure that the investment firm with the direct client relationship has ultimate responsibility to meet the product governance obligations set out in Articles 11 and 12.

(2) An intermediary investment firm shall

- a) ensure that relevant information about the financial instrument is passed from the manufacturer of the financial instrument to the distributor of the financial instrument with the direct client relationship,
- b) ensure that the manufacturer of the financial instrument receives information about the sales of the financial instrument if the manufacturer requires it in order to comply with its own product governance obligations, and
- c) apply the product governance obligations for manufacturers, as relevant, in relation to the financial instruments and services it provides.

PART FOUR

INDUCEMENTS

(Re Article 15(7) of the Act)

Article 14

Rules for accepting and providing inducements

(1) An inducement shall be considered to be designed to enhance the quality of the relevant service to the client if all of the following conditions are met:

- a) the inducement is connected with the provision of an additional or higher level service to the client, at least proportional to the level of the inducement received, in particular
 - 1. the provision of other than non-independent investment advice on a wide range of suitable financial instruments including an appropriate number of financial instruments from third party product providers having no close links with the investment firm, and ensuring access to such financial instruments,
 - 2. the provision of other than non-independent investment advice combined with either an offer to the client, at least on an annual basis, to assess the continuing suitability of the financial instruments in which the client has invested, or with another on-going service that is likely to be suitable for the client such as advice about the suggested optimal asset allocation of the client, or
 - 3. the provision of access, at a competitive price, to a wide range of financial instruments that are likely to meet the needs of the client, including an appropriate number of instruments from third party product providers having no close links with the investment firm, together with either the provision of added-value tools, such as objective information tools helping the client to take investment decisions or enabling the client to monitor, model and adjust the range of financial instruments in which they have invested, or providing periodic reports of the performance, costs and charges associated with the financial instruments,
- b) the inducement does not directly benefit the recipient investment firm, its shareholders, members or employees without tangible benefit to the relevant client,
- c) the inducement is justified by the provision of an on-going benefit to the client in relation to an on-going inducement.

(2) An inducement shall not be considered acceptable if the provision of investment services to the client is biased or distorted as a result.

(3) An investment firm shall fulfil the requirements set out in paragraphs 1 and 2 on an ongoing basis as long as it continues to provide or receive the inducement.

(4) An investment firm shall hold evidence that any inducement it received or provided serves to enhance the quality of the investment service to the client

- a) by keeping an internal list of all inducements it received from a third party in relation to the provision of investment services,
- b) by recording how the inducements provided or received by the investment firm, or inducements it intends to use, enhance the quality of the services provided to clients, and
- c) by recording the measures taken in order to ensure that the inducement does not impair the investment firm's duty to act professionally, honestly and fairly and in accordance with the best interests of the client.

(5) An investment firm shall disclose to the client information about inducements received from third parties or provided to third parties before the provision of an investment service in accordance with Article 15e(1) and (2) of the Act. Minor non-monetary benefits may be described by the investment firm in a generic way, while it shall price and disclose other non-monetary benefits separately. Where an investment firm was unable to ascertain on an ex-ante basis the amount of an inducement it should receive or provide, and instead disclosed to the client the method of calculating that amount, it shall also provide its clients with information

about the exact amount of the payment or benefit received or provided on an ex-post basis. At least once a year, as long as on-going inducements are received by the investment firm in relation to the investment services provided to clients, the investment firm shall inform each of its clients on an individual basis about the actual amount of payments or benefits received in relation to it.

(6) In implementing the requirements pursuant to paragraph 5, an investment firm shall take into account the rules regulating costs and charges set out in Article 15d(3) of the Act and in Article 50 of the directly applicable regulation of the European Commission governing the organisation of requirements and operating conditions of investment firms.²⁾ When more investment firms are involved in a distribution channel, each investment firm providing an investment service shall comply with its obligations to make disclosures to its clients.

Article 15

Inducements in respect of investment advice on an independent basis or asset management services

(1) An investment firm providing a main investment advice pursuant to Article 4(2)(e) of the Act on an independent basis or a main management service pursuant to Article 4(2)(d) of the Act, shall return to clients in full any inducements provided to it by a third party or a person acting on behalf of a third party in relation to the services provided to that client as soon as reasonably possible after receipt.

(2) An investment firm pursuant to paragraph 1 shall inform the client about inducements transferred to it, in particular through regular reports.

Article 16

Minor non-monetary benefits

(1) The following benefits shall be considered minor non-monetary benefits if they are justifiable and reasonable and are of such a scope that it is unlikely they will affect the behaviour of the investment firm in a way that would harm the interests of that client:

- (a) information or documentation relating to a financial instrument or an investment service, which is generic in nature or personalised to reflect the circumstances of an individual client,
- (b) documentation from a third party that is commissioned and paid for by a legal person or potential issuer to promote a new issuance by this issuer, or where the third party firm is contractually engaged and paid by the issuer to produce such material on an ongoing basis, provided that the relationship is clearly disclosed in the material and that the material is made available at the same time to any investment firms wishing to receive it or to the general public,
- (c) participation in conferences, seminars and other training events on the benefits and features of a specific financial instrument or investment service,
- (d) hospitality of minor value offered during a business meeting or a conference, seminar or other training events mentioned under point (c), or
- (e) other minor non-monetary benefits, an overview of which the Czech National Bank will publish on its website; such benefits must enhance the quality of service provided to a client and, having regard to the total level of benefits provided by one entity or group of entities, are of a scale and nature that are unlikely to impair compliance with an investment firm's duty to act in the best interest of the client.

²⁾ Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU 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.

(2) An investment firm shall inform the client, pursuant to Article 15(5) of the Act, the part of the sentence after the semicolon, of the receipt of minor non-monetary benefits prior to the provision of the investment service.

Inducements in relation to research

Article 17

(1) The receipt of research from a third party by an investment firm shall not be regarded as an inducement if it is received in return for

(a) direct payments by the investment firm out of its own resources, or
(b) payments from a separate research payment account controlled by the investment firm, provided the following conditions are met:

1. the research payment account is funded by a specific research charge paid by the client,
2. as part of establishing a research payment account and agreeing the research charge that the investment firm establishes with its clients, the investment firm sets and regularly assesses a research budget,
3. the investment firm is responsible for the research payment account, and
4. the investment firm regularly assesses the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions.

(2) An investment firm using a research payment account shall provide to a client

1. before the provision of an investment service, information about the budgeted amount for research and the amount of the estimated research charge for the client,
2. annual information on the total costs that the client has incurred in connection with third party research.

(3) An investment firm that operates a research payment account shall, upon request by its client or the Czech National Bank, provide a summary of the providers paid from this account, the total amount they were paid over a defined period, the benefits and services received by the investment firm, and how the total amount spent from the account compares to the budget set by the investment firm for that period, noting any rebate or carry-over if residual funds remain in the account.

(4) For the purposes of letter (b)(1) of paragraph 1, the specific research charge shall

(a) only be based on a research budget set by the investment firm for the purpose of establishing the need for third party research in respect of investment services this investment firm rendered to its clients,
(b) not be linked to the volume and/or value of transactions executed on behalf of the clients.

(5) Where the research charge is not collected separately but alongside a transaction commission, the investment firm shall indicate a separately identifiable research charge and shall fully comply with the conditions set out in paragraph 1(b) and paragraph 2.

(6) The total amount of research charges received may not exceed the research budget.

Article 18

(1) An investment firm shall agree with clients, in the firm's investment management agreement or general terms of business, the research charge as budgeted by the investment firm and the frequency with which the specific research charge will be deducted from the

resources of the client over the year. Increases in the research budget shall only take place after the provision of clear information to clients about such intended increases. If there is a surplus in the research payment account at the end of a period, the investment firm shall introduce a process to rebate those funds to the client or to offset them against the research budget and charge calculated for the following period.

(2) For the purposes of Article 17(1)(b)(2), the research budget shall be managed solely by the investment firm and shall be based on a reasonable assessment of the need for third party research. The allocation of the research budget to purchase third party research shall be subject to appropriate controls by senior management to ensure the funds are managed and used in the best interests of the investment firm's clients. Those controls shall include records of payments made to research providers and how the amounts paid were determined with reference to the quality criteria referred to in Article 17(1)(b)(4). An investment firm shall not use the research budget and research payment account to fund internal research.

(3) For the purposes of Article 17(1)(b)(3), an investment firm may delegate the administration of the research payment account to a third party, provided that the arrangement facilitates the purchase of third party research and payments to research providers in the name of the investment firm without any undue delay in accordance with the investment firm's instructions.

(4) For the purposes of Article 17(1)(b)(4), an investment firm shall define all necessary elements in procedures indicated in a written document and provide it to its clients. In this document it shall also address the extent to which research purchased through the research payment account may benefit clients' portfolios, while in suitable cases it shall also take into account investment strategies applicable to various types of portfolios, and the approach the investment firm will take to allocate such costs fairly to the various clients' portfolios.

(5) An investment firm providing execution services shall identify separate charges for these services that only reflect the cost of executing the transaction. The provision of each additional benefit or service by the same investment firm to persons with authorisation from a supervisory authority in a European Union Member State shall be subject to a separately identifiable charge; the supply of and charges for those benefits or services shall not be influenced or conditioned by levels of payment for execution services.

PART FIVE

AN INVESTMENT FIRM'S TRANSACTIONS AND ORDERS BOOK AND AN INVESTMENT INTERMEDIARY'S RECORDS

Article 19

The requisites of an investment firm's transactions and orders book

(Re Article 13(3) of the Act)

An investment firm's transactions and orders book shall contain information pursuant to Annex 1 to this Decree.

Article 20

The requisites of the records of an investment intermediary

(Re Article 32(7) of the Act)

The records of an investment intermediary shall contain information pursuant to Annex 2 to this Decree.

Article 21

The method of keeping an investment firm's transactions and orders book and an investment intermediary's records

(1) The electronic information system in which an investment firm's transactions and orders book is kept must automatically record the time of entry of data together with the identification of the natural person who entered the data, the time of any change to these data with an identification of the person who made the change, and the time and method of acquisition of the data output with an identification of the person who acquired the data output.

(2) Entering data into an investment firm's transactions and orders book or an investment intermediary's records shall be performed immediately upon the receipt of an instruction, a decision of the investment firm regarding trading, the commencement or termination of the brokerage activity when concluding a contract or obtaining the relevant data.

(3) An investment firm and an investment intermediary shall record changes in data in the investment firm's transactions and orders book or in the investment intermediary's records without undue delay as follows:

- a) in the case of a change to an instruction, transaction or transfer, it shall perform the change by recording the cancellation of the original record and recording the new transaction or transfer instruction,
- b) in the case of a change other than that referred to in letter (a), it shall correct the data in the records.

(4) An investment firm shall ensure the possibility of obtaining an output from the investment firm's transactions and orders book in electronic form in the structure pursuant to another legal regulation governing the information obligations of some entities operating on the capital market.

(5) An investment firm shall ensure the possibility of obtaining an output from an investment intermediary's records in electronic form in the structure according to Annex 2 to this Decree in a spreadsheet or database format.

PART SIX FINAL PROVISIONS

Article 22

Cancellation provisions

The following shall be cancelled:

1. Decree No. 231/2009, on the requisites and manner of keeping a transactions and orders book of an investment firm, and on the principles of keeping records of received and transmitted orders of an investment intermediary.
2. Decree No. 208/2013 amending Decree No 231/2009, on the requisites and manner of keeping a transactions and orders book of an investment firm, and on the principles of keeping records of received and transmitted orders of an investment intermediary

Article 23

Effect

This Decree shall come into effect on 3 January 2018.

Governor:

per pro. Tomšík, duly signed

Deputy Governor

I. Information about received instructions

1. The records of instructions shall include the following information (a) relating to all instructions for the purchase, sale or other transfer of financial instruments received by the investment firm from clients, and (b) its own trading decisions (the “Records of Instructions”).
2. The Records of Instructions shall contain at least information according to a directly applicable EU regulation governing the organisational requirements and operating conditions of investment firms¹⁾ or a directly applicable European Union regulation governing organisational requirements for investment firms engaged in algorithmic trading²⁾ and data provided to the Czech National Bank according to another legal regulation governing the submission of statements by certain entities operating on the capital market.

II. Information about transactions and transfers

Records of information about transactions and transfers shall include data on all transactions³⁾ with financial instruments regardless of whether they are admitted to trading on a trading system, to the extent according to the directly applicable European Union regulation governing the reporting of transactions to the competent authorities⁴⁾ and data provided to the Czech National Bank pursuant to another legal regulation governing the submission of statements by certain entities operating on the capital market.

III. Information about instruments

The records of information about financial instruments whose identification is used in data about instructions and in data about transactions, shall contain at least data relating to the identification of the financial instrument, its name and type, data relating to its underlying asset, and data relating to its currency and price.

IV. Information about persons

Records of the persons whose identification appears in data about instructions and in data about transactions and transfers, shall contain at least data relating to the identification of the person, the date of birth, name and surname or title, and the economic sector in which that person operates.

V. Records of contracts relating to the investment services provided

1. Records of contracts relating to the investment services provided shall contain the basic data regarding the concluded contract. Each entry in the records of contracts shall be

¹⁾ Annex IV, Article 2 of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and on defining terms for the purposes of that Directive.

²⁾ Tables 2 and 3 of Annex II to Commission Regulation (EU) 2017/589 of 19 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards regulatory technical standards specifying organisational requirements for investment firms engaged in algorithmic trading.

³⁾ Transaction, exercise of an option or right, buy and sell, repo loan, custody transfer, surrendered settlement, primary market transaction, billing on a collection account.

⁴⁾ Commission Delegated Regulation (EU) 2017/590 of 28 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the reporting of transactions to competent authorities.

adapted to the nature of the particular contract. Only the data relevant for the type of contract are filled in.

2. Records of contracts relating to the investment services provided shall contain the following information:
 - a) Contract identification
 - b) Client identification
 - c) Contract conclusion – date
 - d) Contract duration
 - e) Contract – type
 - f) Contract – subject
 - g) Contract – other information
 - h) Investment frequency
 - i) Investment currency
 - j) Investment amount
 - k) Transfer of the contract to the person referred to in Article 29(4) of the Act – date
 - l) Contract transfer – method
 - m) Identification of the person acting for the client
 - n) Identification of the receiving person

The requisites of the records of an investment intermediary

An investment intermediary shall keep records recording the data on financial instrument instructions received and transferred, and information on contracts relating to provided investment services (Part 1). It shall also keep records of persons (Part 2), including information about the persons whose identification is recorded in the records of contracts and the received and transferred instructions.

I. Records of contracts and received and transferred instructions

1. An investment intermediary’s records regarding the investment services provided shall include the basic information regarding concluded contracts and the records of the received and transferred instructions regarding financial instruments and instructions regarding a recorded contract.
2. Each entry in the records shall be adapted to the nature of the particular contract or instruction.
3. An investment intermediary shall only fill in the data that is relevant for the type of contract or instruction in question.
4. An entry in the records of concluded contracts shall contain at least the data in the fields: “Contract number”, “client identification”, “Contract – type”, “Contract – subject”, “Transfer of instruction/contract – date”, “Method of instruction/contract transfer”, “Identification of Person dealing with the client 1” and “Third-party identification”.
5. The records shall contain at least the following data:

| | Field name | Field format | Possible field values | Concise description |
|---|-------------------------------|---------------------|--|--|
| 1 | Contract number | 16(x) | | The number of the contract based on which the instruction is entered. |
| 2 | Client identification | Max 29(x) | Birth ID No/Passport No/Business ID No | Unique client identification. In the case of natural persons, the birth ID number shall be used, however if this is not available then the passport number or that of another comparable document. The business ID No shall be used for legal persons. |
| 3 | Ordering party identification | Max 29(x) | Birth ID No/Passport No | The unique identification of the natural person from whom an instruction to purchase, sell or transfer a financial instrument is received. This is the client or their agent. For the rules of the use of individual types – see the “Client identification” field for more details. |

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| 4 | Contract – type | 1(a) | K = An agency contract for the purchase or sale of a security | Type of concluded contract. If the value J is indicated, the type of contract is entered in the “Other instruction” field. |
| | | | A = A securities management contract | |
| | | | J = Other type of contract | |
| 5 | Contract – subject | 1 (a) | K = Collective investment securities | Specification of the type of financial instruments that are the subject of the contractual obligation. |
| | | | D - Bonds and mortgage bonds | |
| | | | B = No differentiation of the type of financial instruments | |
| 6 | Instruction number | 16(x) | | A unique instruction number in the investment intermediary’s records. |
| 7 | Instruction receipt – date | 10(x) | ISO 8601 Extended Date Format; YYYY-MM-DD | Instruction receipt date. |
| 8 | Instruction receipt – date | 10(x) | ISO 8601 Extended Date Format; YYYY-MM-DD | Contract conclusion date. |
| 9 | Instruction receipt – method | 1(a) | T = Telephone | Instruction receipt method. |
| | | | E = E-mail, internet | |
| | | | O = In person | |
| | | | P = By post, courier | |
| | | | J = Other method | |
| 10 | Financial instrument identification type | 1(a) | I = ISIN | Whether the instruction relates to a single financial instrument or whether it is an instruction to invest in a portfolio of more than one financial instruments. |
| | | | P = Portfolio investment | |

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| | | | | In the case of a portfolio investment, the name of the investment strategy shall be entered in the “Financial instrument name” field. |
| 11 | Financial instrument identification | 2(a)9(x)1(n) | ISO 6166 – International Securities Identification Number (ISIN) | The investment intermediary shall identify the financial instrument by entering the identification mark according to the international numbering system for the identification of securities (ISIN – according to ISO 6166). |
| 12 | Financial instrument name | Max90(x) | | The name of the financial instrument refers to the issuer and contains additional specific information about the financial instrument. The use of ISO 18774 FISN (Financial Instrument Short Name) is recommended. |
| 13 | Purchase/sale indicator | 1(a) | B = Purchase S = Sale | Direction of the instruction from the client point of view. |
| 14 | Transaction type | 1(a) | D = Transaction T = Transfer between funds | An instruction for a transfer between funds is an instruction to sell securities of one collective investment (sub-)fund and to subsequently purchase securities of a different (sub-)fund. |
| 15 | Limit price | Max19(d) | | The limit price at which a financial instrument is to be purchased or sold. |
| 16 | Limit volume | Max19(d) | | The maximum financial limit for which the instruction is to be executed; for bonds, the volume includes accrued interest. |
| 17 | Investment currency | 3(a) | ISO 4217 - Currency Code | The code of the currency in which the order is entered. |
| 18 | Requested quantity/nominal value | Max19(x) | | The number of financial instrument units or total nominal value of bonds and mortgage bonds. Or the value “ALL” if all the financial instruments are to be sold while the number of units, the price and the volume of the transaction are not known. |
| 19 | Notation of quantity | 1(a) | K = Pieces N = Nominal value | A notation of quantity that is expressed in the “Required quantity/nominal value” field. |
| 20 | Investment frequency | 1(a) | A = Annually S = Half-yearly Q = Quarterly M = Monthly | Specification of the frequency of a regular investment. |

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| | | | B = Every two months J = One-off | |
| 21 | Third-party identification | 11(x) | Business ID No | Identification of the person pursuant to Article 29(4) of the Act to whom the investment intermediary transfers the instruction or the contract. |
| 22 | Instruction/contract transfer - date | 10(x) | ISO 8601 Extended Date Format; YYYY-MM-DD | Date of the transfer of an instruction/contract to a third party. |
| 23 | Instruction/contract transfer method | 1(a) | T = Telephone E = E-mail, internet O = In person P = By post, courier J = Other method | Method of the transfer of an instruction/contract to a third party. |
| 24 | Receipt of the cancellation of an instruction - date | 10(x) | ISO 8601 Extended Date Format; YYYY-MM-DD | Date of receipt of the cancellation of an instruction from a client. |
| 25 | Transfer of the cancellation of an instruction - date | 10(x) | ISO 8601 Extended Date Format; YYYY-MM-DD | Date of the transfer of the cancellation of an instruction to a third party. |
| 26 | Other instruction | Max 90(x) | | Additional specific information regarding an instruction or concluded contract. In the case of an instruction for a transfer between funds, the number of the related instruction or related instructions is given here. |
| 27 | Person dealing with the client 1 | Max29(x) | Birth ID No/Passport No/Business ID No | Identification of the person, including a tied agent, who accepted the instruction or arranged a contract (Article 32(5), Article 32j of the Act). Identification rules, see the "Client identification" field. |
| 28 | Person dealing with the client 2 | Max29(x) | Birth ID No/Passport No | Identification of the other person, including a tied agent, who accepted the instruction or arranged a contract (Article 32(5), Article 32j of the Act). Identification rules, see the "Client identification" field. |

II. Records of persons

The records of information about persons whose identification appears in the records of contracts and received transferred instructions shall include at least the following:

| | Field name | Field format | Possible field values | Concise description |
|---|---|--------------|--|--|
| 1 | Person identification | Max 29(x) | Birth ID No/Passport No/Business ID No | Identification of the person whose appears in the records of received and transferred instructions. In the case of natural persons, the birth ID number shall be used; however, if this is not available, the passport number or that of another comparable document shall be used. The business ID No shall be used for legal persons. |
| 2 | Date of birth | 10(x) | ISO 8601 Extended Date Format; YYYY- MM-DD | Date of birth of the natural person for whose identification the birth ID number was not used. |
| 3 | Title/Surname | Max 90(x) | | Company name/name of the legal entity or surname of the natural person. This is the surname of the citizen entered in the register of births and deaths or other official document, or the surname of a person who is not a citizen of the Czech Republic listed in an official document such as a passport. |
| 4 | Name | Max 40(x) | | Name of natural person. This is the name of the citizen entered in the register of births and deaths or other official document, or the name of a person who is not a citizen of the Czech Republic listed in an official document such as a passport. |
| 5 | Address of the registered office – street, number | Max 90(x) | | Street name and indication number of the permanent residence of the natural person or registered office of the legal person, or its organisational unit or workplace, or the registered office of the natural person - entrepreneur. |
| 6 | Address of the registered office – municipality | Max 90(x) | | The name of the municipality, possibly supplemented with the number or name of the city district. |
| 7 | Address of the registered office – postcode | Max 90(x) | | Postcode. |

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|---|--|------|-----------------------------|---------------|
| 8 | Address of the registered office – country | 2(a) | ISO 3166 – ISO country code | Country code. |
|---|--|------|-----------------------------|---------------|