

MIFID

List of Minimum Records required by Article 51(3) of EC Directive 2006/73/EC and Regulation 40(5) of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. 60 of 2007)

Regulation 33(1)(g) of the European Communities (Markets in Financial Instruments) Regulations 2007 (**the Regulations**) establishes that investment firms and credit institutions shall arrange for records to be kept of all services and transactions undertaken by them which shall be sufficient to enable the Financial Regulator to monitor compliance with the requirements under the Regulations, and in particular to ascertain that the investment firm or credit institution has complied with all obligations with respect to clients or potential clients.

Regulation 40(5) of the Regulations requires the Financial Regulator to draw up and maintain a list of the minimum records that investment firms and credit institutions are required to keep under the Regulations and any other measures implementing the MiFID Directive into Irish law including the European Commission Regulation (EC) 1287/2006.

The Committee of European Securities Regulators (**CESR**) has issued a recommendation to its members with the content of the list of minimum records that must be drawn up. This list is being issued by the Financial Regulator based on the CESR list.

This list is without prejudice to other record keeping obligations arising from other legislation.

This list of minimum records is non-exhaustive and should not be understood as a limitation of the scope of the records that might have to be maintained to comply with obligations under the Regulations. Compliance with the list does not provide investment firms or credit institutions with a safe-harbour from the general record-keeping provisions in the Regulations. So, for example, records will be generated by the review by senior management of the effectiveness of policies, arrangements and procedures as required under Regulation 37(4).

The list does not refer to or include any of the policies that investment firms or credit institutions do need to maintain, and may need to maintain, pursuant to the Regulations. CESR is of the opinion, and the Financial Regulator agrees, that all such policies need to be kept in writing.

The Financial Regulator may, from time to time, add to this list other record keeping obligations under MiFID that it deems appropriate. Investment firms and credit institutions should compile their own list of what records they may need to maintain considering the nature, the scale, and the complexity of their operations.

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List of Minimum Records¹

| No. | Type of record | Indicative contents of record | Indicative time at which record be created |
|-----|---|--|---|
| 1. | Identity and categorisation of each client | The identity of each client and sufficient information to support categorisation as a retail client, professional client and/or eligible counterparty | When the client relationship begins or upon re-categorisation, including as a result of any review |
| 2. | Client agreement | Records provided for under Regulation 100 ² . | Before providing services to a new client for the first time |
| 3. | Client details (Regulation 76(3)) | The information about the client's or potential client's knowledge and experience, financial situation and investment objectives, relevant to the specific product or service, obtained by the investment firm or credit institution in complying with its obligation under Regulation 76(3) | On giving advice or being appointed as a portfolio manager |
| 4. | Client details (Regulation 76(4)) | The information about the client's or potential client's knowledge and experience, relevant to the specific product or service, obtained by the firm in complying with its obligation under Regulation 76(4) | Upon providing the relevant service |
| 5. | Records required under Regulation 112(1) | The information required under Regulation 112(1) | Such records should be kept for the period required by Regulation 112(1) |
| 6. | Aggregated transaction that includes two or more client orders, or one or more client orders and an own account order | Identity of each client; whether transaction is in whole or in part for discretionary managed investment portfolio and any relevant proportions as well as the intended basis of allocation | On executing an aggregated transaction and before the transaction is executed when the intended basis of allocation is contemplated |
| 7. | Allocation of an | The date and time of allocation; | Date on which the |

¹ This list is not exhaustive of the obligation on record-keeping set out in the Regulations.

² A reference to a Regulation is to a Regulation of the European Communities (Markets in Financial Instruments) Regulations 2007 (S.I. 60 of 2007).

| No. | Type of record | Indicative contents of record | Indicative time at which record be created |
|-----|--|--|--|
| | aggregated transaction that includes the execution of a client order | relevant financial instrument; identity of each client and the amount allocated to each client | transaction is allocated |
| 8. | Re-allocation | The basis and reason for any reallocation | At the time of the re-allocation |
| 9. | Order received or arising or decision to deal taken in providing the service of portfolio management | The records provided for under Article 7 of Commission Regulation (EC) 1287/2006. Investment firms or credit institutions may wish to consider the date and hour that the order was sent by the investment firm or credit institution for execution | Immediately after receipt of the order or after taking the decision |
| 10. | Orders executed on behalf of clients | Records provided for under Article 8(1) of Commission Regulation (EC) 1287/2006 | At the time of the execution of the order |
| 11. | Transactions effected for own account | The records provided for under Article 8(1) of Commission Regulation (EC) 1287/2006 | Immediately after the transaction is carried out |
| 12. | Transmission of order received by an investment firm or credit institution | The records provided for under Article 7 and Article 8(2) of Commission Regulation (EC) 1287/2006 | Immediately after transmission of the order and immediately after receiving the confirmation that an order has been executed |
| 13. | Periodic statements to clients | Information to evidence the content and the sending of the periodic statement to the client in respect of services provided, either as a copy, or in a manner that would enable reconstruction | On date on which it is sent |
| 14. | Client financial instruments held by an investment firm or credit institution | The records required under Regulations 33(1)(h) and under paragraphs (a) and (b) of Regulation 160(2) | On commencement of the holding |
| 15. | Client financial instruments available for, and subject to, stock lending activities | The identity of client financial instruments that are available to be lent, and those which have been lent as well as information to evidence client consent (note also the requirements under Regulation 33(1)(h) and Regulation 162(3) where applicable) | On such assets being made available for lending and on such assets being lent |
| 16. | Client funds | Sufficient records to show and explain | As soon as monies |

| No. | Type of record | Indicative contents of record | Indicative time at which record be created |
|-----|--|---|---|
| | | the transactions of the investment firm or credit institution, and commitments under Article 8 of Commission Regulation (EC) 1287/2006 (note also the requirements under Regulation 33(1)(i) and paragraphs (a) and (b) of Regulation 160(2)) | received and paid out |
| 17. | Marketing communications (except in oral forms) | Sample of each marketing communication addressed by the investment firm or credit institution to retail clients or potential retail clients | At the time the investment firm or credit institution first issues the marketing communication |
| 18. | Investment research | Each item of investment research, in accordance with Regulation 151, issued by an investment firm or credit institution in writing | At the time the investment firm or credit institution first issues the item of investment research |
| 19. | The business and internal organisation of an investment firm or credit institution | Records provided for under Regulation 34 | On the business and organisation being established or amended |
| 20. | Compliance procedures | The essential compliance procedures of the investment firm or credit institution under Regulation 34 | On the procedures being established or amended (in respect of each version the period in Regulation 40 shall commence on the date on which the relevant version is amended) |
| 21. | Services or activities giving rise to detrimental conflict of interest | The services or activities under Regulation 75(8) | At the time the conflict of interest is identified |
| 22. | Compliance reports | Each compliance report to senior management, under Regulations 35(3) and 37(5) | At time of the relevant report |
| 23. | Risk management reports | Each risk management report to senior management under Regulations 36(2) and 37(5) | At time of the relevant report |
| 24. | Internal audit reports | Each internal audit report to senior management, under Regulations 37(2) and 37(5) | At the time of the relevant report |
| 25. | Complaints records | Each complaint referred to Regulation 38 received | On receipt of complaint |
| 26. | Complaints handling | The measures taken for the resolution of each such complaint, according to Regulation 38 | As measures are taken |

| No. | Type of record | Indicative contents of record | Indicative time at which record be created |
|------------|--|---|---|
| 27. | Records of prices quoted by systematic internalisers | The quoted prices under paragraph (b) of Article 24 of Commission Regulation (EC) 1287/2006 | As prices are quoted |
| 28. | Records of personal transactions | The information required under Regulation 39(3) | As notifications of personal transactions are received by the firm or when the firm identifies them |
| 29. | Record of the information disclosed to clients regarding inducements | The information disclosed to clients under Regulation 78 | As the information is disclosed |
| 30. | Investment advice to retail clients | (i) The fact that investment advice was rendered and (ii) the financial instrument that was recommended | Upon providing investment advice |

November 2007