# Translation of Liechtenstein Law

**Disclaimer**

English is not an official language of the Principality of Liechtenstein. This translation is provided for information purposes only and has no legal force. The contents of this website have been compiled with the utmost care to reflect the current situation and the current state of knowledge. However, the provider of this website cannot accept any liability if any of its contents should be found to be inaccurate, incomplete or out of date.

| | |
|---|---|
| **English title:** | Ordinance on the Asset Management Act (Asset Management Ordinance; VVO) |
| **Original German title:** | Verordnung zum Gesetz über die Vermögensverwaltung (Vermögensverwaltungsverordnung; VVO) |
| **Serial number (LR-Nr.):** | 950.41 |
| **First published:** | 30 December 2005 |
| **First publication no. (LGBl-Nr.):** | 2005-289 |
| **Last amended:** | 3 January 2018 |
| **Date of last amendment - publication no. (LGBl-Nr.):** | 2017-432 |
| **Translation date:** | 9 September 2018 |

Liechtenstein Law Gazette
Year 2005 No. 289 published on 30 December 2005

# Ordinance
of 20 December 2005
# on the Asset Management Act (Asset Management Ordinance; VVO)

Pursuant to Article 6(5), Article 7c(10), Article 8(7), Article 10(4), Article 12(5), Article 14(4), Article 16(10), Article 18(2), Article 19(5), Article 20(3), Article 23(8), Article 25(4), Article 28(3), Article 35(3), Article 41(8), Article 43(5), Article 44(6), Article 45(5), Article 48(6), Article 53(6), Article 61(1) and (4), Article 63a(4), and Article 66 of the Law of 25 November 2005 on Asset Management (Asset Management Act; VVG), LGBl. 2005 No. 278, as amended, the Government issues the following ordinance:[1]

## I. General provisions

### Article 1[2]

*Object and purpose*

1) This Ordinance, implementing the Asset Management Act, lays down detailed rules on the taking up, pursuit, and supervision of the provision and mediation of asset management.

2) In particular, it serves to transpose and implement the following EEA legislation:

a) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and

1 Preamble amended by LGBl. 2017 No. 432.
2 Article 1 amended by LGBl. 2017 No. 432.

amending Directive 2002/92/EC and 2011/61/EU (OJ L 173, 12.6.2014, p. 349);

b) 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 (OJ L 87, 31.3.2017, p. 500);

c) Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84);

d) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176/338, 27.6.2013, p. 338);

e) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (OJ L 176, 27.6.2013, p. 1).

3) It is without prejudice to the implementing measures for Directive 2014/65/EU and Regulation (EU) No 600/2014 enumerated in Annex 1.

Article 2

*Designations*

The designations of persons and functions contained in this Ordinance shall apply to persons of female and of male gender.

# II. Licences

## A. Licensing conditions

Article 3

*Business plan*

The business plan shall contain at a minimum the following information:

a) information on the persons entrusted with administration and general management, the total number of employees, including their workload in terms of full-time equivalents, and the office premises;

b) information on the organisation and the rules governing signatures;

c) information on the planned activities and target markets (countries of operation, distribution channels, any special risks); and

d) budgeted balance sheet and income statement.

Article 4

*Guarantee of sound and proper business operation*

1) As evidence that the persons entrusted with administration and general management guarantee sound and proper business operation, the following must be submitted to the FMA in particular:

a) documented and signed curricula vitae;

b) current criminal register extracts; and

c) written statements on any pending criminal and administrative criminal proceedings as well as on freedom from debt collection and bankruptcy proceedings.

2) The FMA shall be notified without delay of any changes to the information referred to in paragraph 1(c).

Article 5[3]

Repealed

## B. Own funds[4]

Article 6[5]

*Calculation of own funds*

1) Regulation (EU) No 575/2013, and in particular Article 95, applies to the calculation of own funds.[6]

2) The own funds of an asset management company which is neither the parent undertaking nor a subsidiary of a bank, an investment firm as defined in the Banking Act, a financial institution, or an asset management company shall be calculated on the basis of the annual financial statement.

3) Capital and reserves must additionally be calculated on a consolidated basis, provided that the asset management company:

a) is or holds an interest in a parent undertaking of a bank, investment firm, financial institution, or asset management company; or

b) is a subsidiary of a financial holding company as defined in Article 3a(1)(11) of the Banking Act.

4) The provisions of Articles 41a et seq. of the Banking Act apply *mutatis mutandis* to the consolidation of own funds under paragraph 3.

Article 7[7]

Repealed

3 Article 5 repealed by LGBl. 2017 No. 432.
4 Title preceding Article 6 amended by LGBl. 2007 No. 280.
5 Article 6 amended by LGBl. 2007 No. 280.
6 Article 6(1) amended by LGBl. 2015 No. 20.
7 Article 7 repealed by LGBl. 2007 No. 280.

Article 8[8]

Repealed

## III. Rights and duties

Article 9[9]

*Delegation of activities*

1) Main activities within the meaning of Article 12(2) of the Act are activities referred to in Article 3(1) of the Act, unless they are provided only on an auxiliary basis.

2) The asset management company shall take measures to ensure effective monitoring of delegation at all times. The asset management company may issue instructions to the delegatee at any time or withdraw the delegation with immediate effect.

3) The provisions of Annex 6 of the Banking Ordinance apply *mutatis mutandis* to asset management companies.

*Organisational requirements*[10]

Article 10[11]

*a) in general*

The FMA may require an asset management company to submit organisational and business rules if this appears necessary in particular due to the client structure, the amount of assets under management, or the number of employees.

8 Article 8 repealed by LGBl. 2017 No. 432.
9 Article 9 amended by LGBl. 2007 No. 280.
10 Heading preceding Article 10 inserted by LGBl. 2007 No. 280.
11 Article 10 amended by LGBl. 2017 No. 432.

Article 10a[12]

*b) in particular*

1) Depending on the nature, scope, and complexity of its business, as well as the nature and range of related services in accordance with Article 3(1) of the Act, the asset management company shall create the following bodies or functions as part of its organisation:

a) compliance function;

b) risk management function;

c) function of an internal auditor; and

d) client complaints body.

2) The person entrusted with the compliance function is responsible for regularly assessing the adequacy and effectiveness of the procedures, arrangements, and principles implemented to deal with the risk of non-compliance, and, if necessary, for remedying them, as well as for providing general advice and support to the asset management company. The person entrusted with the compliance function shall report to the general management at least once a year. The asset management company must ensure that the person entrusted with the compliance function has the necessary expertise, powers, and organisational independence. The person may not be included in the other service activities of the asset management company if the nature, scope, and complexity of the business of the asset management company as well as the nature and range of related services in accordance with Article 3(1) of the Act so require.

3) The person entrusted with risk management shall apply the principles laid down by the asset management company as well as the procedures, processes, and mechanisms instituted within the framework of risk management, report to the senior management on their adequacy and effectiveness and compliance therewith, and advise the general management on such matters. The person shall report to the senior management at least once a year.

4) The person entrusted with the function of internal audit shall carry out and assess a standardised audit of the adequacy and effectiveness of the systems, internal control mechanisms, and arrangements as well as make recommendations in this respect and document these audits in an audit report. The person shall report to the senior management at least once a year.

12 Article 10a inserted by LGBl. 2007 No. 280.

5) The person responsible for client complaints shall record and process incoming complaints appropriately and without delay.

Article 11

*Asset management agreements*

1) The asset management companies must conclude written agreements with their clients on the respective rights and duties as well as other conditions (asset management agreements).

2) Asset management agreements shall include in particular:

a) the precise designation of the asset management company and the client;

b) the banking relationships concerned;

c) the express mandate and authorisation to manage the assets;

d) the scope of the asset management authorisation;

e) the type of investments to be made, in particular as regards the permissible investments;

f) the concrete structure of reporting and accounting by the asset management company;

g) the type of instruction given by the client to the asset management company;

h) remuneration for the asset management company, in particular the treatment of retrocessions; and

i) the procedure for amending or terminating the asset management agreement.

3) The provisions set out in paragraphs 1 and 2 apply *mutatis mutandis* to the provision of services in accordance with Article 3(1)(c) of the Act.[13]

Article 12[14]

*Client classification*

In accordance with Annex 1 of the Act, the asset management company shall classify each of its clients as:

13 Article 11(3) inserted by LGBl. 2007 No. 280.
14 Article 12 amended by LGBl. 2017 No. 432.

a) a retail client;

b) a professional client; or

c) an eligible counterparty.

Article 12a[15]

Repealed

Article 12b[16]

*Prevention of conflicts of interest*

When treating conflicts of interest, the provisions set out in Annex 2 apply. This is true in particular of conflicts of interest arising from the receipt of inducements or other incentives.

Article 12c[17]

*Client information*

1) The asset management company shall provide adequate information to its clients in accordance with Articles 16 to 16c of the Act and Commission Delegated Regulation (EU) 2017/565.

2) If a credit agreement relating to residential immovable property, which is subject to the provisions concerning creditworthiness assessment of consumers laid down in Directive 2014/17/EU, has as a prerequisite the provision to that same consumer of an investment service in relation to mortgage bonds specifically issued to secure the financing of and having identical terms as the credit agreement relating to residential immovable property, in order for the loan to be payable, refinanced or redeemed, that service shall not be subject to the obligations set out in Article 14(3), Article 15, Article 16(1)(b), Article 18, and Article 19 of the Act.

15 Article 12a repealed by LGBl. 2017 No. 432.
16 Article 12b amended by LGBl. 2017 No. 432.
17 Article 12c amended by LGBl. 2017 No. 432.

Article 12d[18]

*Reporting duties*

The asset management company shall report to its clients in an appropriate form on the services provided for them under Article 19 of the Act and in accordance with Commission Delegated Regulation (EU) 2017/565.

*Transactions by governing bodies and employees[19]*

Article 12e[20]

*a) Definition*

1) All transactions in financial instruments as defined in Article 4(1)(10) of the Act carried out by the following persons for their own account or for the account of persons with whom there is a close relationship, in particular a family relationship, shall be considered transactions by governing bodies and employees:

a) governing bodies and employees of an asset management company;

b) governing bodies and employees of tied agents;

c) natural persons who, in the context of outsourcing of business processes of the asset management company, provide services that enable investment services.

2) Persons with whom there is a close relationship also include natural and legal persons as well as legally independent special-purpose assets with which a person referred to in paragraph 1 is in a relationship that establishes a direct or indirect, material interest in the execution of the transaction that goes beyond the interest in generating fees and commissions.

3) Transactions by governing bodies and employees also include transactions in financial instruments carried out by a person referred to in paragraph 1 for the account of persons not covered by paragraphs 1 and 2, where such transactions are beyond the scope of that person's responsibilities at the asset management company.

18 Article 12d amended by LGBl. 2017 No. 432.
19 Heading preceding Article 12e inserted by LGBl. 2007 No. 280.
20 Article 12e inserted by LGBl. 2007 No. 280.

Article 12f[21]

*b) Treatment of transactions by governing bodies and employees*

1) Asset management companies shall take suitable organisational measures, in particular prohibitions, inspections, and contractual agreements, to ensure that no transactions by governing bodies and employees are carried out which:

a) violate the provisions of market abuse legislation;

b) are based on the abuse of confidential information or use of such information contrary to the rules;

c) are in conflict with the duties of the asset management company set out in Articles 14 to 20 of the Act;

d) are carried out based on investment research produced by or on behalf of the asset management company, before the addressees of the investment research have had a reasonable opportunity to act on it after potentially gaining knowledge of it, unless they act in good faith on the basis of unsolicited client orders.

2) Asset management companies shall ensure that all persons referred to in Article 12e(1) are informed of the provisions relating to transactions by governing bodies and employees.

3) Asset management companies shall ensure that all persons referred to in Article 12e(1) are obliged by contractual agreements to notify transactions by governing bodies and employees to the persons responsible for such transactions. The persons responsible for accepting such notifications shall notify their own transactions by governing bodies or employees to the chief executive officer. A register shall be kept for the notification and approval of transactions with governing bodies and employees.

4) Exempted from the scope of paragraphs 1 and 3 are transactions by governing bodies and employees which relate exclusively to units in collective investment undertakings meeting the conditions for exercising the rights under Directive 85/611/EEC or which are subject to equivalent supervision by an EEA Member State with regard to risk diversification, and the person for whose account the transaction is carried out does not participate in the senior management of the undertaking in question.

21 Article 12f inserted by LGBl. 2007 No. 280.

Article 12g[22]

*c) Audit by the auditor*

The auditor shall regularly audit the transactions carried out for persons referred to in Article 12e(1) and shall determine whether those transactions comply with the provisions set out in Articles 14 to 20 of the Act and with the generally accepted principles of the asset management industry.

Article 13[23]

*Product governance obligation for the distribution of financial instruments*

1) When deciding the range of financial instruments issued by themselves or other firms and services they intend to offer or recommend to clients, asset management companies shall comply, in a way that is appropriate and proportionate, with the relevant requirements laid down in the following paragraphs, taking into account the nature of the financial instrument, the investment service and the target market for the product.

2) Asset management companies shall also comply with the requirements on product governance set out in the Act and this article when offering or recommending financial instruments manufactured by entities that are not subject to Directive 2014/65/EU. Asset management companies shall have in place effective arrangements to ensure that they obtain sufficient information about these financial instruments from these manufacturers.

3) Asset management companies shall have in place adequate product governance arrangements to ensure that products and services they intend to offer or recommend are compatible with the needs, characteristics, and objectives of an identified target market and that the intended distribution strategy is consistent with the identified target market. Asset management companies shall appropriately identify and assess the circumstances and needs of the clients they intend to focus on, so as to ensure that clients' interests are not compromised as a result of commercial or funding pressures. As part of this process, groups of clients must be identified for whose needs, characteristics and objectives the product or service is not compatible.

22 Article 12g amended by LGBl. 2017 No. 432.
23 Article 13 amended by LGBl. 2017 No. 432.

4) Asset management companies shall ensure that they receive information made available to them by banks and investment firms manufacturing financial products (Article 27f(13) of the Banking Ordinance). In the case of manufacturers not subject to Directive 2014/65/EU, they must take all reasonable steps to ensure that they obtain adequate and reliable information to ensure that products will be distributed in accordance with the characteristics, objectives and needs of the target market. Where relevant information is not publicly available, the distributing asset management company shall take all reasonable steps to obtain such relevant information from the manufacturer or its agent. Acceptable publicly available information is information which is clear, reliable and produced to meet regulatory requirements, such as the disclosure obligations under the Disclosure Act, the Securities Prospectus Act, and the Alternative Investment Fund Managers Act. This obligation is relevant for products sold on primary and secondary markets and shall apply in a proportionate manner, depending on the degree to which publicly available information is obtainable and the complexity of the product.

5) The distributing asset management company shall use the information obtained from manufacturers and information on their own clients to identify the target market and distribution strategy. This shall also apply even if the target market was not defined by the manufacturer.

6) When deciding the range of financial instruments and services that they offer or recommend and the respective target markets, asset management companies shall maintain procedures and measures to ensure compliance with all applicable requirements under the Act and this Ordinance including those relating to disclosure, assessment of suitability or appropriateness, incentives and proper management of conflicts of interest. In this context, asset management companies shall take particular care when they intend to offer or recommend new products or there are variations to the services they provide.

7) Asset management companies shall periodically review and update their product governance arrangements in order to ensure that they remain robust and fit for their purpose, and take appropriate actions where necessary.

8) Asset management companies shall review the investment products they offer or recommend and the services they provide on a regular basis, taking into account any event that could materially affect the potential risk to the identified target market. Asset management companies shall assess at least whether the product or service remains consistent with the needs, characteristics and objectives of the identified target market and whether the intended distribution strategy remains appropriate. Asset

management companies shall reconsider the target market or update the product governance arrangements if they become aware that they have 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 change.

9) Asset management companies shall ensure their compliance function oversee the development and periodic review of product governance arrangements in order to detect any risk of failure to comply with the obligations set out in this article.

10) Asset management companies shall ensure that relevant staff possess the necessary expertise to understand the characteristics and risks of the products that intend to offer or recommend and the services provided as well as the needs, characteristics and objectives of the identified target market.

11) Asset management companies shall ensure that the management body has effective control over the asset management company's product governance process to determine the range of investment products that they offer or recommend and the services provided to the respective target markets. Asset management companies shall ensure that the compliance reports to the management body systematically include information about the products they offer or recommend and the services provided. The compliance reports shall be made available to the FMA on request.

12) As distributors of financial products, asset management companies shall ensure distributors provide manufacturers with information on sales and, where appropriate, information on the above reviews to support product reviews carried out by manufacturers.

13) Where different banks, investment firms, and asset management companies work together in the distribution of a product or service, the asset management company with the direct client relationship has ultimate responsibility to meet the product governance obligations set out in this article. However, intermediary asset management companies shall:

a) ensure that relevant product information is passed from the manufacturer to the final distributor in the chain;

b) if the manufacturer requires information on product sales in order to comply with its own product governance obligations, enable the manufacturer to obtain it.

Article 14[24]

*Reporting*

1) Domestic asset management companies and domestic branches of foreign asset management companies must prepare a report in accordance with the form provided by the FMA every six months as of 30 June and 31 December and submit it to the FMA within two months of the applicable cut-off date.

2) The audit offices of domestic branches of foreign asset management companies shall audit the branches once a year with regard to compliance with the code of conduct referred to in Article 14 of the Act as well as the duty to keep and retain records in accordance with Article 22 of the Act and submit the report to the FMA no later than six months after the end of the FMA's fiscal year.

## IV. Auditors[25]

Article 15[26]

*Qualification of the auditor*

1) Auditors are qualified for the purposes of Article 43 of the Act if they possess the knowledge necessary – in light of the services offered by the asset management company under Article 3 of this Act – for auditing the asset management company and, due to their operational organisation, ensure that the auditing and reporting activities are carried out in an appropriate and permanent manner, in particular by means of appropriate substitution rules.

2) Auditors authorised in another EEA Member State in accordance with Directive 2006/43/EC and wishing to carry out auditing and reporting activities in Liechtenstein under the Act must regularly carry out activities comparable to auditing and reporting activities under the Act for the benefit of supervisory authorities of other EEA Member States.

3) Auditing companies under the Auditors and Auditing Companies Act are also auditors within the meaning of this Ordinance.

24 Article 14 amended by LGBl. 2017 No. 432.
25 Title preceding Article 15 amended by LGBl. 2017 No. 432.
26 Article 15 amended by LGBl. 2017 No. 432.

Article 15a[27]

*Evidence of qualification*

1) The auditor shall furnish the FMA with evidence of qualification.

2) The FMA shall publish on its website a list of auditors who are qualified for the purposes of Article 43 of the Act and Article 15 of this Ordinance.

Article 15b[28]

*Audit specifications*

1) The FMA may, after consulting the Liechtenstein Association of Auditors, provide mandatory audit forms for asset management companies.

2) The FMA may further specify the principle of risk-oriented auditing as well as the form and content of the annual audit report by issuing guidelines.

Article 15c[29]

*Duties of the auditors*

1) The fees received from an audit mandate may not exceed an average of 20% of the auditor's total annual fees.

2) The auditors are required:

a) to notify the FMA of any changes to the articles of association and regulations as well as any changes to the composition of its governing bodies and the lead auditors;

b) to entrust the audit management only to auditors who have been notified to the FMA and meet the necessary requirements;

c) to report the lead auditor to the FMA before the beginning of the audit; and

d) to submit the business report to the FMA each year.

27 Article 15a inserted by LGBl. 2017 No. 432.
28 Article 15b inserted by LGBl. 2017 No. 432.
29 Article 15c inserted by LGBl. 2017 No. 432.

3) The FMA may request information on the reasons for the departure of members of the senior management and lead auditors notified to the FMA.

Article 15d[30]

*Change of auditor*

1) Any intended change of the auditor requires approval by the FMA. The asset management company must furnish reasons in its application for approval.

2) The application pursuant to paragraph 1 must be signed by the previous auditor. If the asset management company and the auditor cannot agree on the reasons for the change, the previous auditor must make a separate notification under Article 45 of the Act.

3) If the qualification of the auditor ceases to apply or if an auditor's authorisation is withdrawn, the asset management company must appoint a new auditor without delay and at the latest within one month. In exceptional cases, the FMA may, upon request, extend this deadline by a reasonable amount. The appointment of the new auditor is subject to approval in advance by the FMA.

4) If an auditor does not properly conduct the supervisory audit of an asset management company, the FMA may require the asset management company to appoint another auditor for the following audit period.

Article 15e[31]

*Extraordinary audit*

1) The FMA may, for the purpose of conducting an extraordinary audit in accordance with Article 41(3)(b) of the Act, mandate a qualified auditor as referred to in Article 43 of the Act in conjunction with Article 15 of this Ordinance.

2) The FMA may require the asset management company to make an advance payment on costs.

30 Article 15d inserted by LGBl. 2017 No. 432.
31 Article 15e inserted by LGBl. 2017 No. 432.

Article 15f[32]

*Notification duties*

Notifications under Article 45(1) of the Act shall be made to the FMA within three working days from verification of the circumstances.

Article 15g[33]

*Audit reports*

1) The audit reports are the confidential, detailed reports of the auditor on the supervisory audit of the management company and the investment undertakings under its management. They are not for publication.

2) The FMA shall define the content and structure of the audit report.

Article 16[34]

Repealed

## V. Extrajudicial conciliation board

Article 17[35]

*Principle*

The provisions of the Ordinance on the Financial Services Conciliation Board shall apply to the extrajudicial conciliation board.

Articles 18 to 21[36]

Repealed

32 Article 15f inserted by LGBl. 2017 No. 432.
33 Article 15g inserted by LGBl. 2017 No. 432.
34 Article 16 repealed by LGBl. 2017 No. 432.
35 Article 17 amended by LGBl. 2009 No. 280.
36 Articles 18 to 21 repealed by LGBl. 2009 No. 280.

## VI. Transitional and final provisions

Article 22

*Transitional provision*

For trust companies that have a licence under the Professional Trustees Act (TrHG) at the time of entry into force of the Asset Management Act, the FMA shall grant facilitations in respect of Article 3(d).

Article 23

*Entry into force*

This Ordinance shall enter into force at the same time as the Asset Management Act of 25 November 2005.

The Government:
signed *Otmar Hasler*
Prime Minister

**Annex 1**[37]
(Article 1(3))

# Implementing measures for Directive 2014/65/EU and Regulation (EU) No. 600/2014

1. Commission Implementing Regulation (EU) 2016/824 of 25 May 2016 laying down implementing technical standards with regard to the content and format of the description of the functioning of multilateral trading facilities and organised trading facilities and the notification to the European Securities and Markets Authority according to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (OJ L 137, 26.5.2016, p. 10).
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 (OJ L 87, 31.3.2017, p. 1).
3. Commission Delegated Regulation (EU) 2017/566 of 18 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards for the ratio of unexecuted orders to transactions in order to prevent disorderly trading conditions (OJ L 87, 31.3.2017, p. 84).
4. Commission Delegated Regulation (EU) 2017/568 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the admission of financial instruments to trading on regulated markets (OJ L 87, 31.3.2017, p. 117).
5. Commission Delegated Regulation (EU) 2017/569 of 24 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the suspension and removal of financial instruments from trading (OJ L 87, 31.3.2017, p. 122).

37 Annex 1 inserted by LGBl. 2017 No. 432.

6. Commission Delegated Regulation (EU) 2017/570 of 26 May 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards for the determination of a material market in terms of liquidity in relation to notifications of a temporary halt in trading (OJ L 87, 31.3.2017, p. 124).
7. Commission Delegated Regulation (EU) 2017/571 of 2 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the authorisation, organisational requirements and the publication of transactions for data reporting services providers (OJ L 87, 31.3.2017, p. 126).
8. Commission Delegated Regulation (EU) 2017/573 of 6 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on requirements to ensure fair and non-discriminatory co-location services and fee structures (OJ L 87, 31.3.2017, p. 145).
9. Commission Delegated Regulation (EU) 2017/574 of 7 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the level of accuracy of business clocks (OJ L 87, 31.3.2017, p. 148).
10. Commission Delegated Regulation (EU) 2017/575 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards concerning the data to be published by execution venues on the quality of execution of transactions (OJ L 87, 31.3.2017, p. 152).
11. Commission Delegated Regulation (EU) 2017/576 of 8 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the annual publication by investment firms of information on the identity of execution venues and on the quality of execution (OJ L 87, 31.3.2017, p. 166).
12. Commission Delegated Regulation (EU) 2017/578 of 13 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying the requirements on market making agreements and schemes (OJ L 87, 31.3.2017, p. 183).
13. Commission Delegated Regulation (EU) 2017/584 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards

specifying organisational requirements of trading venues (OJ L 87, 31.3.2017, p. 350).

14. Commission Delegated Regulation (EU) 2017/586 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the exchange of information between competent authorities when cooperating in supervisory activities, on-the-spot verifications and investigations (OJ L 87, 31.3.2017, p. 382).
15. Commission Delegated Regulation (EU) 2017/588 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on the tick size regime for shares, depositary receipts and exchange-traded funds (OJ L 87, 31.3.2017, p. 411).
16. Commission Delegated Regulation (EU) 2017/589 of 19 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards specifying the organisational requirements of investment firms engaged in algorithmic trading (OJ L 87, 31.3.2017, p. 417).
17. Commission Delegated Regulation (EU) 2017/591 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the application of position limits to commodity derivatives (OJ L 87, 31.3.2017, p. 479).
18. Commission Delegated Regulation (EU) 2017/592 of 1 December 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for the criteria to establish when an activity is considered to be ancillary to the main business (OJ L 87, 31.3.2017, p. 492).
19. Commission Implementing Regulation (EU) 2017/953 of 6 June 2017 laying down implementing technical standards with regard to the format and the timing of position reports by investment firms and market operators of trading venues pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (OJ L 144, 7.6.2017, p. 12).
20. Commission Implementing Regulation (EU) 2017/980 of 7 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation in supervisory activities, for on-site verifications, and investigations and exchange of information between competent authorities in accordance with Directive 2014/65/EU of the European Parliament and of the Council (OJ L 148, 10.6.2017, p. 3).

21. Commission Implementing Regulation (EU) 2017/981 of 7 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation of other competent authorities prior to granting an authorisation in accordance with Directive 2014/65/EU of the European Parliament and of the Council (OJ L 148, 10.6.2017, p. 16).
22. Commission Implementing Regulation (EU) 2017/988 of 6 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for cooperation arrangements in respect of a trading venue whose operations are of substantial importance in a host Member State (OJ L 149, 13.6.2017, p. 3).
23. Commission Implementing Regulation (EU) 2017/1005 of 15 June 2017 laying down implementing technical standards with regard to the format and timing of the communications and the publication of the suspension and removal of financial instruments pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (OJ L 153, 16.6.2017, p. 1).
24. Commission Delegated Regulation (EU) 2017/1018 of 29 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions (OJ L 155, 17.6.2017, p. 1).
25. Commission Implementing Regulation (EU) 2017/1093 of 20 June 2017 laying down implementing technical standards with regard to the format of position reports by investment firms and market operators (OJ L 158, 21.6.2017, p. 16).
26. Commission Implementing Regulation (EU) 2017/1110 of 22 June 2017 laying down implementing technical standards with regard to the standard forms, templates and procedures for the authorisation of data reporting services providers and related notifications pursuant to Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (OJ L 162, 23.6.2017, p. 3).
27. Commission Implementing Regulation (EU) 2017/1111 of 22 June 2017 laying down implementing technical standards with regard to procedures and forms for submitting information on sanctions and measures in accordance with Directive 2014/65/EU of the European Parliament and of the Council (OJ L 162, 23.6.2017, p. 14).

28. Commission Delegated Regulation (EU) 2017/1943 of 14 July 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards on information and requirements for the authorisation of investment firms (OJ L 276, 26.10.2017, p. 4).
29. Commission Implementing Regulation (EU) 2017/1944 of 13 June 2017 laying down implementing technical standards with regard to standard forms, templates and procedures for the consultation process between relevant competent authorities in relation to the notification of a proposed acquisition of a qualifying holding in an investment firm in accordance with Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council (OJ L 276, 26.10.2017, p. 12).
30. Commission Implementing Regulation (EU) 2017/1945 of 19 June 2017 laying down implementing technical standards with regard to notifications by and to applicant and authorised investment firms according to Directive 2014/65/EU of the European Parliament and of the Council (OJ L 276, 26.10.2017, p. 22).
31. Commission Delegated Regulation (EU) 2017/1946 of 11 July 2017 supplementing Directives 2004/39/EC and 2014/65/EU of the European Parliament and of the Council with regard to regulatory technical standards for an exhaustive list of information to be included by proposed acquirers in the notification of a proposed acquisition of a qualifying holding in an investment firm (OJ L 276, 26.10.2017, p. 32).
32. Commission Delegated Regulation (EU) 2016/2020 of 26 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on criteria for determining whether derivatives subject to the clearing obligation should be subject to the trading obligation (OJ L 313, 19.11.2016, p. 2).
33. Commission Delegated Regulation (EU) 2016/2021 of 2 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on access in respect of benchmarks (OJ L 313, 19.11.2016, p. 6).
34. Commission Delegated Regulation (EU) 2016/2022 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards concerning the information for registration of third-country

firms and the format of information to be provided to the clients (OJ L 313, 19.11.2016, p. 11).

35. Commission Delegated Regulation (EU) 2017/567 of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions (OJ L 87, 31.3.2017, p. 90).
36. Commission Delegated Regulation (EU) 2017/572 of 2 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on the specification of the offering of pre-and post-trade data and the level of disaggregation of data (OJ L 87, 31.3.2017, p. 142).
37. Commission Delegated Regulation (EU) 2017/577 of 13 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the volume cap mechanism and the provision of information for the purposes of transparency and other calculations (OJ L 87, 31.3.2017, p. 174).
38. Commission Delegated Regulation (EU) 2017/579 of 13 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on the direct, substantial and foreseeable effect of derivative contracts within the Union and the prevention of the evasion of rules and obligations (OJ L 87, 31.3.2017, p. 189).
39. Commission Delegated Regulation (EU) 2017/580 of 24 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the maintenance of relevant data relating to orders in financial instruments (OJ L 87, 31.3.2017, p. 193).
40. Commission Delegated Regulation (EU) 2017/581 of 24 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on clearing access in respect of trading venues and central counterparties (OJ L 87, 31.3.2017, p. 212).
41. Commission Delegated Regulation (EU) 2017/582 of 29 June 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards specifying the obligation to clear derivatives traded on regulated markets and timing of acceptance for clearing (OJ L 87, 31.3.2017, p. 224).

42. Commission Delegated Regulation (EU) 2017/583 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of bonds, structured finance products, emission allowances and derivatives (OJ L 87, 31.3.2017, p. 229).
43. Commission Delegated Regulation (EU) 2017/585 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards for the data standards and formats for financial instrument reference data and technical measures in relation to arrangements to be made by the European Securities and Markets Authority and competent authorities (OJ L 87, 31.3.2017, p. 368).
44. Commission Delegated Regulation (EU) 2017/587 of 14 July 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards on transparency requirements for trading venues and investment firms in respect of shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and on transaction execution obligations in respect of certain shares on a trading venue or by a systematic internaliser (OJ L 87, 31.3.2017, p. 387).
45. 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 (OJ L 87, 31.3.2017, p. 449).
46. Commission Delegated Regulation (EU) 2017/1799 of 12 June 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council as regards the exemption of certain third countries central banks in their performance of monetary, foreign exchange and financial stability policies from pre- and post-trade transparency requirements (OJ L 259, 7.10.2017, p. 11).
47. Commission Delegated Regulation (EU) 2017/2154 of 22 September 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements (OJ L 304, 21.11.2017, p. 6).
48. Commission Delegated Regulation (EU) 2017/2194 of 14 August 2017 supplementing Regulation (EU) No 600/2014 of the European

Parliament and of the Council on markets in financial instruments with regard to package orders (OJ L 312, 28.11.2017, p. 1).

**Annex 2**[38]
(Article 12b)

# Identification and treatment of conflicts of interest and inducements

## I. Identification and treatment of conflicts of interest

### A. Identification of conflicts of interest

#### 1. Conflicts of interest potentially detrimental to a client

For the purposes of identifying the types of conflict of interest that may arise in the course of providing asset management services under Article 3(1) of the Act, the asset management company shall take into account whether the asset management company, a governing body, an employee, or a person with direct or indirect controlling influence on the asset management company is in any of the following situations:

a) The asset management company or a person referred to above is likely to make a financial gain, or avoid a financial loss, at the expense of the client.

b) The asset management company or a person referred to above has an interest in the outcome of a service provided to the client or of a transaction carried out on behalf of the client, which is distinct from the client's interest in that outcome.

c) The asset management company or a person referred to above has a financial or other incentive to favour the interests of another client or group of clients over the interests of the client.

d) The asset management company or a person referred to above carries on the same business as the client.

e) The asset management company or a person referred to above receives or will receive from a person other than the client an incentive in relation to a service provided to the client, in addition to the commission or fee customary for that service, in the form of economic benefits or services.

38 Annex 2 inserted by LGBl. 2017 No. 432.

### 2. Groups of persons to be considered

1) The following persons belong to the group of persons relevant for the identification of possible conflicts of interest:

a) governing bodies and employees of an asset management company;

b) governing bodies and employees of tied agents;

c) natural persons who, in the context of outsourcing of business processes of the asset management company, provide services that enable investment services.

2) Persons with whom there is a close relationship also include natural and legal persons as well as legally independent special-purpose assets with which a person referred to in paragraph 1 is in a relationship that establishes a direct or indirect, material interest in the execution of the transaction that goes beyond the interest in generating fees and commissions.

3) If the asset management company is part of a group, the asset management company must include persons and groups of persons from other group companies in the group of persons relevant for the identification of possible conflicts of interest, applying due and reasonable care.

## B. Treatment of conflicts of interest

### 1. Separation of functions

The asset management company shall ensure an effective separation of functions between asset management/investment advice and settlement, provided such a measure is appropriate to the size and organisation of the asset management company and the type, scope, and complexity of the asset management services provided.

### 2. Information exclusions and firewalls

The asset management company shall create effective internal procedures that prevent the exchange of information between persons or groups of persons whose activities could lead to a conflict of interest (e.g. Chinese walls).

### 3. Special monitoring of individual persons

The asset management company shall ensure the separate monitoring of individual persons or groups of persons whose main task is to perform activities for clients whose interests may conflict or who otherwise represent different interests – including those of the asset management company – that might conflict.

### 4. Elimination of financial incentives

The asset management company shall eliminate any direct link between, on the one hand, the remuneration of relevant persons under point A(2) who are primarily engaged in an activity and, on the other hand, the remuneration of other relevant persons or the income generated by them who are primarily engaged in another activity, if these two activities could give rise to a conflict of interest.

### 5. Temporary revocation of power to issue instructions

The asset management company shall – temporarily and with respect to the affected transactions, clients, or groups of clients in question – revoke the power to issue instructions of persons who may have a conflict of interest with respect to a client or group of clients in the execution of certain asset management services.

### 6. Exclusion from certain activities

The asset management company shall exclude persons who may have a conflict of interest in the execution of certain asset management transactions from the execution of these transactions.

### 7. Disclosure

1) If the above measures are not sufficient to reasonably ensure that the risk of prejudice to client interests is avoided or if such measures are not appropriate to the asset management company's size, organisation, and – where applicable – group structure as well as the nature, scope, and complexity of its transactions, the asset management company shall disclose to the client the general nature and/or sources of conflicts of interest before carrying out a transaction involving conflicts of interest.

2) The asset management company may disclose regularly occurring types of conflicts of interest to clients in a standardised manner before entering into relevant transactions.

3) The asset management company must in a general manner disclose the nature and sources of conflicts of interest on a durable medium as referred to in Article 4(1)(28) of the Act and must provide sufficient detail so that the client can make an informed decision on the asset management service in the context of which the conflict of interest arises.

### 8. Records

The asset management company shall keep records of the kinds of asset management services provided in which a conflict of interest entailing a risk of damage to the interests of one or more clients has arisen or, in the case of an ongoing service or activity, may arise.

## II. Additional requirements in connection with investment research

### A. Information requirements

1) The Ordinance on the Production of Investment Research under the Market Abuse Act (Investment Research Market Abuse Ordinance; FinMV) applies to the production or distribution of investment research.

2) A recommendation that concerns financial instruments referred to in Annex 2 of the Act but does not constitute investment research within the meaning of the Investment Research Market Abuse Ordinance:

a) shall be considered a marketing communication and must be clearly identified as such; and

b) must clearly state that it does not constitute investment research within the meaning of the Investment Research Market Abuse Ordinance and is not subject to a prohibition on trading under point 2(1)(a).

### B. Additional organisational requirements

1) In addition to the requirements referred to under point I, an asset management company shall have in place arrangements designed to ensure that the following conditions are met:

a) Persons who produce the essential part of investment research (financial analysts) and other persons with knowledge of the likely timing or content of that investment research which is not publicly available or available to clients and whose content cannot readily be inferred from information that is so available, may not undertake personal transactions in financial instruments or such transactions on behalf of any other person to which the investment research relates, other than:

   1. as market makers acting in good faith;
   2. in the ordinary course of market making; or
   3. in the execution of an unsolicited client order.

   Furthermore, they may do so only once the addressees of the investment research have had a reasonable opportunity to act on it.

b) In circumstances not covered by point I(B), financial analysts and any other relevant persons involved in the production of investment research may not undertake personal transactions in financial instruments to which the investment research relates, contrary to current recommendations, except in exceptional circumstances and with the prior approval of the person entrusted with the legal entity's compliance function.

c) The asset management companies themselves, financial analysts, and other persons involved in the production of the investment research may not accept inducements as referred to in point III from those with a material interest in the subject-matter of the investment research.

d) The asset management companies themselves, financial analysts, and other persons involved in the production of the investment research may not promise issuers favourable research coverage.

e) Before the dissemination of investment research, only financial analysts are permitted to review a draft of the investment research for the purpose of verifying the accuracy of factual statements made in that research, where the draft includes a recommendation or a target price; this provision is subject to verification of compliance with the legal entity's legal obligations.

   Subparagraphs (a) to (e) also apply to related financial instruments. Related financial instruments are any financial instrument the price of which is closely affected by price movements in another financial instrument which is the subject of investment research; this includes a derivative on that other financial instrument.

2) Asset management companies which disseminate investment research produced by a third party to the public or to clients shall be exempt from complying with point I(B) if the following criteria are met:

a) The person that produces the investment research is not a member of the same group as the asset management company.

b) The asset management company does not substantially alter the recommendations within the investment research.

c) The asset management company does not present the investment research as having been produced by it.

d) The asset management company verifies that the producer of the research is subject to requirements equivalent to the requirements under this Annex in relation to the production of that research, or that the producer has defined internal rules corresponding to these requirements.

## III. Inducements

### A. Non-independent investment advice and portfolio management

1) The provision or receipt of fees or commissions or non-monetary benefits (inducements) are permissible under Article 20 of the Act if:

a) they are proper fees which enable or are necessary for the provision of the relevant service, including custody costs, commissions for the acquisition and sale of securities, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the asset management company's duties to act honestly, fairly and professionally in accordance with the best interests of its client; or

b) they are inducements paid or provided to or by the client or a person on behalf of the client; or

c) they are inducements paid or provided to or by a third party or a person acting on behalf of a third party not covered by paragraph (b) where:

   1. the existence, nature and amount of the inducement, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the client, in a manner that is comprehensive, accurate and understandable, prior to the provision of the asset management service. Where applicable, the asset management company shall also inform the client on mechanisms for transferring to the client the fee, commission,

monetary or non-monetary benefit received in relation to the provision of the asset management service; and

2. the inducement is designed to enhance the quality of the relevant service to the client and not impair compliance with the asset management company's duty to act in the best interests of the client.

2) The following inducements in particular are suitable for enhancing the quality of the service:

a) inducements serving to establish or maintain resources and infrastructure to provide information on the acquisition and sale of financial instruments;

b) inducements serving to expand the range of products offered to the client;

c) inducements serving to make the services offered to the client possible in the first place.

3) It is presumed that the receipt or provision of an inducement in connection with investment advice or general recommendations is designed to bring about qualitative improvement of such service offered to the client if the advice or recommendation is impartial.

4) In the following cases in particular, compliance with the asset management company's duty to act in the best interests of the client within the meaning of paragraph 1(c)(2) is not impaired:

a) execution only and non-advisory transactions;

b) where appropriate measures are available to guarantee impartiality towards its clients.

5) A fee, inducement or non-monetary benefit shall in any event 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) They are justified by the provision of an additional or higher level service to the relevant client, proportional to the level of inducements received, such as:

1. the provision of non-independent investment advice on and access to a wide range of suitable financial instruments including an appropriate number of instruments from third party product providers having no close links with the asset management company;

2. the provision of 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 of value to the client such as advice about the suggested optimal asset allocation of the client;

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 asset management company, together with either the provision of added-value tools, such as objective information tools helping the relevant client to take investment decisions or enabling the relevant client to monitor, model and adjust the range of financial instruments in which they have invested, or providing periodic reports of the performance and costs and charges associated with the financial instruments; or
4. if access to investment advice is made possible by the on-site availability of qualified advisors who are able to provide clients personally with investment services and investment advice.

b) It does not directly benefit the recipient asset management company, its shareholders or employees without tangible benefit to the relevant client.

c) It is justified by the provision of an on-going benefit to the relevant client in relation to an on-going incentive.

6) Fees, inducements or non-monetary benefits shall not be considered acceptable if the provision of relevant services to the client is biased or distorted as a result of the fee, inducement or non-monetary benefit.

7) Asset management companies shall fulfil the requirements set out in paragraph 5 on an ongoing basis as long as they continue to pay or receive the fee, inducement or non-monetary benefit.

8) Asset management companies shall hold evidence that any fees, inducements or non-monetary benefits paid or received by the asset management company are designed to enhance the quality of the relevant service to the client:

a) by keeping an internal list of all fees, inducements and non-monetary benefits received by the asset management company from a third party in relation to the provision of investment or ancillary services; and

b) by recording how the fees, inducements and non-monetary benefits paid or received by the asset management company, or that it intends to use, enhance the quality of the services provided to the relevant

clients and the steps taken in order not to impair the asset management company's duty to act honestly, fairly and professionally in accordance with the best interests of the client.

9) In relation to any payment or benefit received from or paid to third parties, asset management companies shall disclose to the client the following information:

a) prior to the provision of the relevant investment or ancillary service, the asset management company shall disclose to the client information on the payment or benefit concerned in accordance with paragraph 1(c)(1). Minor non-monetary benefits may be described in a generic way. Other non-monetary benefits received or paid by the asset management company in connection with the investment service provided to a client shall be priced and disclosed separately;

b) where an asset management company was unable to ascertain on an ex-ante basis the amount of any payment or benefit to be received or paid, and instead disclosed to the client the method of calculating that amount, the firm shall also provide its clients with information of the exact amount of the payment or benefit received or paid on an ex-post basis; and

c) at least once a year, as long as (on-going) incentives are received by the asset management company in relation to the investment services provided to the relevant clients, the asset management company shall inform its clients on an individual basis about the actual amount of payments or benefits received or paid. Minor non-monetary benefits may be described in a generic way.

10) In implementing the requirements set out in paragraph 9, asset management companies shall take into account the rules on costs and charges set out in Article 16(1)(e) of the Act and in Article 50 of Commission Delegated Regulation (EU) 2017/565.

11) When more firms are involved in a distribution channel, each asset management company providing an investment or ancillary service shall comply with its obligations under paragraph 9 to make disclosures to its clients.

12) In accordance with Article 20 of the Act, the disclosure under paragraph 1(c)(1) may also be in summarised form and in general terms.

13) The disclosure obligation does not apply if the services referred to in paragraph 1(c)(1) are transferred to the client in accordance with paragraph 1(b).

**B. Independent investment advice and portfolio management**

1) Asset management companies providing investment advice on an independent basis or portfolio management shall:

a) return to clients any fees, inducements or any monetary benefits paid or provided by any 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. All fees, inducements or monetary benefits received from third parties in relation to the provision of independent investment advice and portfolio management shall be transferred in full to the client;

b) set up and implement a policy to ensure that any fees, inducements or any monetary benefits paid or provided by any third party or a person acting on behalf of a third party in relation to the provision of independent investment advice and portfolio management are allocated and transferred to each individual client;

c) inform clients about the fees, inducements or any monetary benefits transferred to them, such as through the periodic reporting statements provided to the client.

2) Asset management companies providing investment advice on an independent basis or portfolio management shall not accept non-monetary benefits that do not qualify as minor. The following benefits shall qualify as acceptable minor non-monetary benefits only if they are:

a) information or documentation relating to a financial instrument or an investment service, where such information or documentation is generic in nature or personalised to reflect the circumstances of an individual client;

b) written material from a third party that is commissioned and paid for by an corporate issuer or potential issuer to promote a new issuance by the company, 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 banks, investment firms and asset management companies 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 an investment service;

d) hospitality of a reasonable de minimis value, such as food and drink during a business meeting or a conference, seminar or other training events mentioned under point (c); and

e) other minor non-monetary benefits capable of enhancing 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 the duty of a bank, investment firm or asset management company to act in the best interest of the client.

3) Minor non-monetary benefits shall be proportionate and of such a scale that they are unlikely to influence the asset management company's behaviour in any way that is detrimental to the interests of the relevant client.

4) Disclosure of minor non-monetary benefits must be made prior to the provision of the relevant investment or ancillary services to clients. Minor non-monetary benefits may be described in a generic way.

**C. Incentives in relation to research**

1) The provision of research by third parties to asset management companies providing portfolio management or other investment or ancillary services to clients shall not be regarded as an incentive if it is received in return for either of the following:

a) direct payments by the asset management company out of its own resources;

b) payments from a separate research payment account controlled by the asset management company, provided the following conditions relating to the operation of the account are met:

   1. The research payment account is funded by a specific research charge to the client.
   2. As part of establishing a research payment account and agreeing the research charge with their clients, the asset management company sets and regularly assesses a research budget as an internal administrative measure.
   3. The asset management company is held responsible for the research payment account.
   4. The asset management company regularly assesses the quality of the research purchased based on robust quality criteria and its ability to contribute to better investment decisions.

2) Where an asset management company makes use of the research payment account referred to in paragraph 1(b), it shall provide the following information to clients:

a) before the provision of an investment service to clients, information about the budgeted amount for research and the amount of the estimated research charge for each of them;

b) annual information on the total costs that each of them has incurred for third party research.

3) Where an asset management company operates a research payment account, the asset management company shall be required, upon request by its clients or the FMA, to provide a summary of the providers paid from this account, the total amount it was paid over a defined period, the benefits and services received by the asset management company, and how the total amount spent from the account compares to the budget set by the asset management company for that period, noting any rebate or carry-over if residual funds remain in the account. For the purposes of paragraph 1(b)(1), the specific research charge shall:

a) only be based on a research budget set by the asset management company for the purpose of establishing the need for third party research in respect of investment services rendered to its clients;

b) not be linked to the volume and/or value of transactions executed on behalf of the clients.

4) Every operational arrangement for the collection of the client research charge, where it is not collected separately but alongside a transaction commission, shall indicate a separately identifiable research charge and shall fully comply with the conditions set out in paragraph 1(b) and paragraph 2.

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

6) The asset management company shall agree with clients, in the asset management agreement or general terms of business, the research charge as budgeted by the asset management company 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 asset management company must have a process to rebate those funds to the client or to offset it against the research budget and charge calculated for the following period.

7) For the purposes of paragraph 1(b)(2), the research budget shall be managed solely by the asset management company 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 and senior management oversight to ensure it is managed and used in the best interests of the clients. Those controls include a clear audit trail of payments made to research providers and how the amounts paid were determined with reference to the quality criteria referred to in paragraph 1(b)(4). The asset management company may not use the research budget and research payment account to fund internal research.

8) For the purposes of paragraph 1(b)(3), the asset management company 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 asset management company without any undue delay in accordance with the asset management company's instruction.

9) For the purposes of paragraph 1(b)(4), asset management companies shall establish all necessary elements in a written policy and provide it to their clients. It shall also address the extent to which research purchased through the research payment account may benefit clients' portfolios, including, where relevant, by taking into account investment strategies applicable to various types of portfolios, and the approach the asset management company will take to allocate such costs fairly to the various clients' portfolios.

10) An asset management company providing execution services shall identify separate charges for these services that only reflect the cost of executing the transaction. The provision of each other benefit or service by the same asset management company to investment firms established in the EEA 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.

# Transitional provisions

## 950.41 Asset Management Ordinance (VVO)

Liechtenstein Law Gazette
Year 2007 No. 280 published on 31 October 2007

# Ordinance
of 16 October 2007
# amending the Asset Management Ordinance

. . .

## III.

### Transitional provisions

The new law shall apply to procedures pending at the date of entry into force[1] of this Ordinance.

. . .

1 Entry into force: 1 November 2007.

Liechtenstein Law Gazette
Year 2009 No. 256 published on 2 October 2009

# Ordinance
of 29 September 2009
# amending the Asset Management Ordinance

. . .

## III.

### Transitional provision

The new law shall apply to supervisory procedures pending at the date of entry into force[1] of this Ordinance.

. . .

1 Entry into force: 2 October 2009.