

**ORDINANCE NO 16 OF JULY 7, 2004 FOR THE CONDITIONS  
AND THE ORDER FOR IMPLEMENTING MARGIN PURCHASES,  
SHORT SALES AND LOAN OF SECURITIES**

*COMMISSION FOR FINANCIAL SUPERVISION  
Prom. SG. 65/27 Jul 2004*

Chapter one.  
**GENERAL PROVISIONS**

Art. 1. (1) The ordinance shall provide the conditions and the order for implementing margin purchases, short sales and loan of securities.

(2) The ordinance shall also provide the cases in which the investment mediators have right to use pecuniary resources and securities of their clients for their own account or for the account of other of their clients as well as to use their own pecuniary resources and securities for the account of their clients.

Art. 2 (1) Margin purchase shall be purchase of securities, made by investment mediator for the account of his client at which for payment of the securities the client uses pecuniary loan from the investment mediator.

(2) The investment mediator can concede pecuniary loans to his clients only for implementing margin purchases.

(3) The pecuniary loan shall be considered secured with the securities, accounted in the margin purchases' account of the client as well as with the pecuniary resources of the client, accounted in his account for short purchases.

Art. 3. (1) Short sale shall be sale of securities, made by investment mediator for his account or for the account of his client, at which by the moment of its concluding the seller does not own the securities and intends to fulfil his obligation for transferring them with securities, taken as loan or used under the conditions of art. 5, para 1 and 3 and art. 6, para 1.

(2) The investment mediator can implement short sales only for his account and for the account of professional and institutional investors in the sense of §1, item 1 b) and c) of the transitional and concluding provisions of the Law of public offering of securities (LPOS).

Art. 4. (1) Loan of securities shall be transfer of securities by the lender as ownership of the borrower against obligation for returning of securities of the same kind, number and issue on defined future date or upon request.

(2) Loan of securities shall be admitted under the conditions that security is conceded according to art. 49.

(3) The investment mediator can take as loan securities only in order to:

1. fulfil obligation for transfer of securities, subject to short sale, made for his own account or for the account of client;

2. return securities, taken as loan under the conditions of item 1;
3. give as loan the securities to another investment mediator for the purposes of items 1 and 2.

(4) The investment mediator can give as loan only his own securities as well as securities of institutional investors in his quality of their agent.

Art. 5. (1) The investment mediator can use for the account of a client his own, as well as taken as loan securities, only in order to:

1. fulfil obligation for transfer of securities, subject to short sale, made for the account of client;

2. return securities, taken as loan for implementing short sale for the account of a client.

(2) The obligation of the client, for which account are used the securities, to return the securities, shall be considered secured with the pecuniary resources, accounted in his account for short sales, including with the pecuniary resources, received from short sales as well as with the securities, accounted in his account for margin purchases.

(3) For the objectives of para 1 the investment mediator can use for the account of a client also securities, accounted in the margin purchases' account of another client, up to the extent, to which they are considered as collateral according to art. 15. The obligation of the client, for which account are used the securities shall be considered secured under the conditions of para 2.

(4) The disposing with securities of para 1 and 3 shall be entered in the respective register, in which the securities are kept.

Art. 6. (1) The investment mediator can use for his own account securities, accounted in short purchases' accounts of clients up to the extent, to which they are considered as security according to art. 15, only in order to:

1. fulfil obligation for transfer of securities, subject to short sale, made for his own account;

2. return securities, taken as loan for implementing short sale for his own account;

3. for collateral of loan from a bank, received license for the Bulgarian national Bank (BNB) for implementing bank activity in the country, taken for financing of margin purchases;

4. give them as loan to another investment mediator.

(2) The disposing with securities shall be entered in the respective register, in which the securities are kept.

(3) The investment mediator shall be obliged to return to the client securities of the same kind, number and issue.

Art. 7. The investment mediator can use the pecuniary resources of a client, accounted in his short sales' account, for his own account or for the account of other clients, up to the extent, to which they are considered as security according to art. 29.

## Chapter two.

## SECURITIES, WITH WHICH MARGIN PURCHASES AND SHORT SALES CAN BE IMPLEMENTED

Art. 8. (1) Securities, with which margin purchases and short sales can be implemented, shall be securities, traded on regulated market in the country, which during the last 20 sessions of the regulated market meet simultaneously the following requirements:

1. transactions with them have been concluded during at least 15 sessions on the regulated market;

2. the minimum average daily amount of securities, with which transactions have been concluded on the regulated market is not less than 10 000;

3. the concluded transaction with these securities by no one investment mediator, for own account or for account of his clients, do not exceed 20 percent of the total amount of securities from the respective issue, with which transactions have been concluded on the regulated market for the period.

(2) In the amount of securities of para 1, items 2 and 3 shall not be included the securities, subject to block trade.

(3) The requirement of para 1, item 3 shall not refer to investment mediator, who has acted as market maker of the issue of securities.

Art. 9. (1) The regulated market of securities can establish additional requirements to the securities, which can be subject to margin purchases and short sales as well as more strict requirements than these, provided in art. 8, para 1, if this is necessary for ensuring the stability of the market of securities and for protection of the investors.

(2) The regulated market of securities shall announce every day through its system for trade and the exchange bulletin as well as in another appropriate way list of the securities, meeting the requirements of art. 8, para 1, respectively the additional and/or the more strict requirements of para 1.

(3) The regulated market of securities shall disseminate by the order of para 2 information about each implemented short sale as well as the total amount of the securities of each issue, subject to short sales.

Art. 10. (1) The investment mediators cannot implement margin purchases and short sales of securities, which have stopped to meet the requirements of art. 8, para 1, respectively art. 9, para 1.

(2) The settlement of the margin purchases and the short sales, concluded on the regulated market before the respective securities to stop meeting the requirements of art. 8, para 1, respectively art. 9, para 1, shall be implemented by the general order. The concluded contracts for loan of securities, which later have stopped to meet the requirements of art. 8, para 1, respectively art. 9, para 1, shall remain in force.

Art. 11. The Commission for financial supervision can impose restrictions and prohibitions for implementing margin purchases and/or short sales with separate kinds or issues of securities, meeting the requirements of art. 8, para 1, respectively art. 9, para 1, if this

is necessary for ensuring the stability of the market of securities or for protection of the investors.

## Chapter three. CONDITIONS AND ORDER FOR IMPLEMENTING MARGIN PURCHASES

### Section I. General requirements

Art. 12. The pecuniary resources, which the investment mediator gives as loan to his clients for implementing margin purchases, can have as source only:

1. his own resources in the sense of Ordinance No 6 of 2003 for the capital adequacy and the liquidity of the investment mediators (Ordinance No 6), approved with decision No 06-H of October 22, 2003 of the Commission for financial supervision (SG 101/03);

2. loan from a bank, received license fro BNB for implementing bank activity in the country;

3. pecuniary resources of clients, accounted in short sales' accounts up to the extent, to which they are considered as collateral according to art. 29.

Art. 13. The investment mediator shall implement margin purchases on the basis of written contract with the client for implementing margin purchases, concluded by the order of art. 12 of Ordinance No 1 of 2003 for the requirements to the activity of the investment mediators (Ordinance No 1), approved with decision No 01-H of September 15, 2003 of the Commission for financial supervision (SG 90/03).

(2) Before signing of the contract of para 1 the investment mediator shall be obliged to present to the client written explanation of the mechanism of implementing margin purchases and the risks, related to them, prepared according to instructions of the Commission for financial supervision.

Art. 14. (1) The investment mediator shall open account for margin purchases of a client, who implements margin purchases and/or concedes securities as collateral for short sales.

(2) The investment mediator shall account in the margin purchases' account also his receivables from the margin loans, conceded to the client.

(3) The margin purchases' account shall contain also information from the diary for securities about the number of securities from each issue, which have been acquired by the client through margin purchases or have been deposited by him in compliance with the initial or the maintaining margin requirements and/or in compliance with the initial or the maintaining requirements for short sales (securities at long positions).

Art. 15. The securities, accounted in margin purchases' account, shall be considered as collateral in favour of the investment mediator regarding to the loan, conceded to the client up to the extent of the maintaining margin requirement of art. 17.

## Section II. Specific requirements for implementing margin purchases

Art. 16. (1) A client, who has submitted order for margin purchase, shall be obliged to meet the initial margin requirement of para 2 till the day for settlement of the concluded transaction unless in the contract of art. 13, para 1 shorter term is provided.

(2) Initial margin requirement shall be the obligation of the client to present to the investment mediator deposit with value according to para 3, which can consist of:

1. pecuniary resources;
2. debt securities, issued or guaranteed by the Bulgarian state or by BNB, which have market value;
3. debt securities, meeting the requirements of art. 8, para 1, respectively art. 9, para 1;
4. each combination of items 1, 2 and 3.

(3) The pecuniary deposit of para 2, item 1 must be in amount not less than 50 percent of the value of each separate margin purchase. The deposit in securities of para 2, item 2 and/or 3 must be in amount not less than 100 percent of the value of each separate margin purchase. If the deposit is combination of pecuniary resources and securities the amount of the deposit in securities, which must be conceded, shall be calculated with the following formula:

$$PS = 100\% (MP - PR * 2),$$

Where:

PS is the current market value of the deposited securities, calculated according to art. 18;

MP – the value of the margin purchase;

PR – the deposit in pecuniary resources.

(4) The initial margin requirement shall be fulfilled:

1. by conceding of deposit of para 3; and/or
2. upon the existence of margin surplus according to art. 19, para 2 and/or surplus upon short sales according to art. 37, para 2.

(5) The regulated market, on which are traded the securities, subject to margin purchases, as well as the investment mediator may provide in their regulation, respectively in their general conditions, initial margin requirement, higher than this of para 3.

(6) The value of the margin loan, conceded by the investment mediator to a client for each separate margin purchase, shall be the difference between the value of the margin purchase and the amount of the pecuniary deposit of para 2, item 1.

(7) The total amount of the margin loan of the client shall be the sum of all unredeemed margin loans of para 6.

(8) If the client does not meet the initial margin requirement in the term of para 1 the investment mediator shall sell the securities, acquired by margin purchase.

Art. 17. (1) A client, to whom a margin purchases' account has been opened, shall be obliged every day to meet the maintaining margin requirement.

(2) Maintaining margin requirement shall be the obligation of the client to maintain with the investment mediator collateral of para 3 with value not less than 125 percent of the total amount of the margin loan.

(3) Collateral of the margin loan shall be the securities, accounted in the margin purchases' account of the client. If the current market value of these securities, calculated according to art. 18, is lower than the maintaining margin requirement, the surplus at short sales according to art. 37, para 2, if such exists, shall also be considered as collateral of the margin loan.

(4) The regulated market, on which are traded the securities, subject to margin purchases, as well as the investment mediator may provide in their regulation, respectively in their general conditions, maintaining margin requirement, higher than the defined in para 2.

(5) The client can order to the investment mediator to transfer the surplus at short sales if the client disposes with such, to his margin purchases' account with objective reduction of the total amount of the margin loan of the client.

Art. 18. The investment mediator shall implement every day revaluation of the securities, accounted in the margin purchases' account as well as the securities, subject to margin purchases, which settlement has not been implemented. The revaluation shall be made according to market prices by the order of Ordinance No 6.

Art. 19. (1) The investment mediator shall not have right to allow the client to increase the total amount of the margin loan by drawing pecuniary resources as well as to dispose with securities, which are collateral of the margin loan (restriction of the margin purchases' account), if as result of this the market value of the collateral of the margin loan, calculated according to art. 18, will decrease below 200 percent of the total amount of the margin loan.

(2) The margin surplus of the client shall serve for covering the maintaining requirement for short sales of the client under art. 35, para 3, when this is necessary. In the other cases the client shall have right to use his margin surplus:

1. in order to fulfil initial margin requirement and/or initial requirement for short sales according to art. 34; or

2. to dispose with securities, accounted in his margin purchases' account, or to increase the total amount of the margin loan by drawing pecuniary resources.

(3) Margin surplus shall be the difference, with which the market value of the securities, collateral of the margin loan, calculated according to art. 18, is higher than 200 percent of the total amount of the margin loan.

Art. 20. (1) If margin deficit occurs the investment mediator shall not have right to fulfil new orders for margin purchases and he shall be obliged till the end of the working day to notify the client that in 3 working days term he must cover the margin deficit by depositing at the investment mediator:

1. pecuniary resources, with which to pay the necessary part of the margin loan; and/or

2. additional collateral in securities of art. 16, para 2, item 2 and/or 3.

(2) Margin deficit exists when the market value of the collateral of the margin loan, calculated according to art. 18, is less than the maintaining margin requirement of art. 17.

Art. 21. (1) If the client does not cover the margin deficit of art. 20, para 1, the investment mediator shall sell respective quantity of securities in the margin purchases' account, necessary for covering the deficit by the day of the sale.

(2) In case the value of the collateral in the margin purchases' account decreases below 115 percent of the total amount of the margin loan the investment mediator shall have right to sell securities according to para 1 before elapse of the term 3 working days if this is necessary for preventing bigger losses for the investment mediator and/or the client.

(3) The investment mediator can determine according to his discretion which securities to sell according to para 1 unless other is provided in the contract of art. 13, para 1.

(4) In the case of para 1 the investment mediator shall have right to refuse fulfilment of the submitted orders of the client for concluding margin purchases and short sales as well as to terminate the contract for implementing margin purchases and the contract for implementing short sales of art. 27, para 1.

Art. 22. (1) The contract for implementing margin purchases shall be concluded without defined term and the client shall be obliged to return the margin loan upon request by the investment mediator.

(2) In case of termination of the contract for implementing margin purchases the investment mediator shall have the right under art. 21, para 1, as well as the right to transfer from the account for pecuniary resources of the client to his own pecuniary account the sum, necessary for redemption of the margin loan.

(3) The remaining securities of the client in the margin purchases' account and pecuniary resources in the short sales' account shall be transferred to the account for securities, respectively the account for pecuniary resources of the client, kept by the investment mediator.

### Section III.

#### Requirements to the general conditions of the investment mediators, applicable to the contracts for implementing margin purchases

Art. 23. The general conditions of the investment mediators, applicable to the contracts for implementing margin purchases, must include:

1. information about the increased risk, occurring for the client in connection with the implementing of margin purchases, including the possibility:

a) to have to concede additional collateral under art. 20, para 1, and upon delay the investment mediator can satisfy himself from the existing collateral;

b) not to be able to exercise the right to vote under the securities, accounted in his margin purchases' account, if they are used by the investment mediator according to art. 5, para 3 and art. 6, para 1, except in the case when they are pledged as collateral of a bank loan for financing of margin purchases;

c) to lose not only entirely the resources, which he has invested in securities through margin purchases, but in relation to them to have also additional liabilities to the investment mediator;

2. the interest rate of the margin loan, including on annual basis, and the formula for its calculation;

3. the frequency of calculating of the interest of the margin loan;

4. the terms, if there are such, and the way for payment of the interest of the margin loan;

5. the amount of the initial and the maintaining margin requirements;

6. the order, the terms and the way for fulfilment of the initial and the maintaining margin requirements, including description of the way for revaluation under art. 18 and the ways for notifying the client for conceding additional collateral;

7. the conditions for restriction of the margin purchases' account and for use of the margin surplus;

8. the restrictions, if there are such, about the admissible kinds of deposits and collaterals at margin purchases;

9. the conditions, under which the investment mediator has right to require additional collateral and its kind;

10. the right of the investment mediator to concede as collateral and to use the securities, accounted in the margin purchases' account of the client;

11. the grounds and the order for termination of the contract for implementing margin purchases;

12. the right of the investment mediator according to art. 21 to sell the securities, accounted in the margin purchases' account, and to implement compensation between his receivable and the adverse receivables of the client, ensuing from the contract for implementing margin purchases and/or from the contract for implementing short sales of art. 27, para 1;

13. pointing out that the contract for implementing margin purchases must be contained a clause that the client knows clearly the risks, related to the implementation of the margin purchases.

#### Section IV.

#### Additional requirements for accounting margin purchases

Art. 24. (1) The total amount of the margin loan shall form the debit balance of the margin purchases' account..

(2) The pecuniary sums, deposited by the client in compliance with the initial or the maintaining margin requirements, shall reduce the amount of the debit balance of the margin purchases' account.

(3) The margin purchases' account cannot remain with credit balance. If credit balance remains, it shall be transferred to the short sales' account of the same client or to his account for pecuniary resources, kept by the investment mediator.

(4) The securities, acquired through margin purchases, shall be recorded in the margin purchases' account on the date of the settlement of the transaction.



(5) The securities, deposited by the client in compliance with the initial and the maintaining margin requirements and/or the initial and the maintaining requirements for short sales, shall be recorded I his margin purchases' account on the day of depositing but not earlier than the date, on which the client has been entered as owner of the securities in the respective register of securities.

Art. 25. (1) The investment mediator shall keep accountancy for each client with margin purchases' account, containing at least data about:

1. the current (daily) market value of the securities, acquired through margin purchases or deposited by the client;
2. the margin surplus of art. 19, para 2, respectively the margin deficit of art. 20;
3. the number and the market value of the securities, subject to margin purchases, which settlement has not been implemented;
4. the purchase power of the client according to para 1.

(2) Purchase power of the client shall be the value of the securities, which the client can purchase through margin purchase or with which he can implement short sale without being obliged to concede new deposit according to the initial margin requirements, respectively the initial requirements for short sales, The purchase power shall be equal to the margin surplus of the client and/or his surplus at short sales.

Art. 26. For a client, who has opened account for margin purchases and account for short sales the investment mediator shall calculate the accumulated value of the collateral of the margin loan and the securities – subject to short sale, the total (net) value of the initial and maintaining margin requirements and/or requirements for short sales, as well as the total (net) value of the respective surplus or deficit.

## Chapter four.

### CONDITIONS AND ORDER FOR IMPLEMENTING SHORT SALES

#### Section I.

#### General requirements

Art. 27. (1) The investment mediator shall implement short sales for the account of a client on the basis of written contract for implementing short sales, concluded by the order of art. 12 of Ordinance No 1. With the contract for implementing short sales the investment mediator shall be obliged to supply the securities, necessary for implementing the settlement of the short sales.

(2) Before signing of the contract of para 1 the investment mediator shall be obliged to present to the client written explanation of the mechanism for implementing the short sales and the risks, connected with them, prepared according to instructions from the Commission for financial supervision.

Art. 28. (1) The investment mediator shall open short sales' account for a client, who implements short sales and/or concedes pecuniary deposit for margin purchases.

(2) The investment mediator shall account in the short sales' account his obligations to the client for the pecuniary resources from the short sale and for the pecuniary resources, conceded by the client as deposit.

(3) The short sales' account shall also contain information from the diary for securities about the number of securities from each issue, subject to short sale, implemented for the account of the client (securities at short positions).

Art. 29. The pecuniary resources, accounted in the short sales' account of the client, shall be considered as collateral in favour of the investment mediator for the securities, subject to short sale, up to the extent of the maintaining requirement of art. 35.

Art. 30. (1) Order for short sale shall be fulfilled on regulated market of securities only at a price, which is:

1. higher than the price of the last concluded transaction with the securities, announced through the system for trade as well as higher than the price of opening at the current session of the regulated market of securities; or

2. equal to the price of the last concluded transaction with the securities, but higher than the last different price of concluded transaction with the securities, announced through the system for trade, as well as higher than the price of opening at the current session of the regulated market of securities.

(2) The requirement of para 1 shall not apply if the investment mediator acts as market-maker of the issue of securities and this is provided in the regulation of the regulated market of securities.

Art. 31. The investment mediator of art. 149, para 9 of LPOS, authorised to implement tender offering of securities, shall be obliged not to admit at accepting the tender proposal short sales to be implemented.

Art. 32. The investment mediator shall introduce on the regulated market of securities order for short sale only under the condition that he will be able to supply the securities, subject to short sale, including in the cases when they are available in his account or in the account of his client, who has margin purchases' account as well as if he has concluded a contract for loan of securities.

Art. 33. (1) The seller in a short sale shall be obliged to present to the borrower of the securities, respectively the investment mediator or his clients with margin purchases' account, which securities have been used at the settlement of the short sales, a pecuniary sum, equal to the paid dividend, to the market price of the rights of art. 112 of LPOS and to all other payments, made in relation to the securities, subject to short sale, under the conditions and by the order of the contract of art. 27, para 1, respectively the contract for loan.

(2) The obligation of para 1 shall be fulfilled through the investment mediator.

## Section II. Specific requirements for implementing short sales

Art. 34. (1) A client, who has submitted order for short sale, shall be obliged to meet the initial requirement for short sale of para 2 till the day for settlement of the concluded transaction unless in the contract of art. 27, para 1 a shorter term has been provided.

(2) The initial requirement for short sale shall be the obligation of the client to concede to the investment mediator deposit of para 3 at value not less than 50 percent of the value of the short sale.

(3) The deposit of para 2 may consist of:

1. pecuniary resources;
2. debt securities, issued or guaranteed by the Bulgarian state or by BNB, which have market value;
3. securities of art. 8, para 1, respectively art. 9, para 1;
4. each combination of items 1, 2 and 3.

(4) The initial requirement for short sale shall be fulfilled:

1. through conceding of deposit in the for of para 3; and/or
2. upon the existence of surplus at short sales according to art. 37, para 2 and/or margin surplus according to art. 19, para 2.

(5) The regulated market, where are traded the securities, subject to short sales, as well as the investment mediator can provide in their regulation, respectively in their general conditions, initial requirement for short sale, higher than this of para 2.

(6) If the client does not meet the initial requirement for short sale in the term of para 1 the investment mediator shall purchase the securities, with which the short sale is implemented, with the pecuniary resources, received from the short sale.

Art. 35. (1) A client, to whom account for short sales has been opened, shall be obliged every day to meet the maintaining requirement for short sales.

(2) The maintaining requirement for short sales shall be the obligation of the client to maintain at the investment mediator collateral of para 3 at value not less than 130 percent of the current market value of the securities, subject to short sale, calculated according to art. 36.

(3) The collateral for the short sale shall be the pecuniary resources, received from the short sale as well as the other pecuniary resources, accounted of the short sales' account of the client. If the pecuniary resources, accounted in the short sales' account, are in extent, lower than the maintaining requirement for short sales, the margin surplus of art. 19, para 2, if such exists, shall also be considered as collateral for the short sales.

(4) The regulated market, on which are traded the securities, subject to short sales, as well as the investment mediator can provide in their regulation, respectively in their general conditions, maintaining requirement for short sales, higher than the defined in para 2.

(5) In case a client of the investment mediator has long and short position in defined securities, the regulated market and the investment mediator can provide according to para 4 maintaining requirement for short sales lower than the defined in para 2 but not lower than 110 percent.

Art. 36. The investment mediator shall implement every day revaluation of the securities, accounted in short sales' account, as well as the securities, subject to short sale, which settlement has not been implemented. The revaluation shall be implemented according to market prices by the order of Ordinance No 6.

Art. 37. (1) The investment mediator shall not have right to allow the client to dispose with pecuniary resources, accounted in the short sales' account (restriction of the short sales' account), if as result of this the value of the collateral for the short sales decreases below 150 percent of the current market value of the securities, subject to short sales, calculated according to art. 36.

(2) The surplus at short sales of the client shall serve for covering the maintaining margin requirement of art. 17, para 3, when this is necessary. In the other cases te client shall have right to use his surplus at short sales:

1. in order to fulfil initial margin requirement of art. 16 and/or initial requirement for short sales of art. 34; or

2. in order to dispose with pecuniary resources, accounted in the short sales' account.

(3) Surplus at short sales shall be the difference, with which the extent of the pecuniary resources, accounted in the short sales' account, is higher than 150 percent of the current market value of the securities, subject to short sales, calculated according to art. 36.

Art. 38. (1) If deficit occurs at short sales the investment mediator shall not have right to fulfil new orders of the client for short sales and he shall be obliged till the end of the working day to notify the client, that in 3 working days he must cover the deficit at the short sales by:

1. deposit at the investment mediator of additional collateral in money and/or securities of art. 34, para 3; and/or

2/ purchase the necessary number of securities, subject to the short sale.

(2) Deficit at short sales shall exist when the value of the collateral of the securities, subject to short sale, is lower than the maintaining requirement of art. 35.

Art. 39. (1) If the client does not cover the deficit at short sales under art. 38, para 1, the investment mediator shall be obliged to purchase the necessary number of the securities, subject to short sale, implemented for the account of the client, for covering the deficit by the day of the purchase. The investment mediator shall implement the purchases of the previous sentence with the pecuniary resources in the short sales' account of the client and/or with the revenues from the sale of securities, accounted in his margin purchases' account.

(2) In case the value of the collateral of the short sales' account decreases below 120 percent of the current market value of the securities, subject to short sales, calculated according to art. 36, the investment mediator shall have right to purchase securities according to para 1 before the elapse of the term of 3 working days if this is necessary for prevention of bigger losses for the investment mediator and/or the client.

(3) In the case of para 1 the investment mediator shall have right to refuse the fulfilment of the submitted orders of the client for concluding short sales and margin purchases as well as to terminate the contract for implementing short sales.

Art. 40. (1) The contract for implementing short sales shall be concluded without defined term and the client shall be obliged to return upon request the securities, subject to the short sale.

(2) In case the investment mediator must return the securities, which he has used from a margin purchases' account of a client for implementing a short sale and he cannot use other securities in order to fulfil his obligation, he shall be obliged to introduce order for purchase of these securities at the first session of the regulated market after the obligation for returning the securities becomes exigible.

(3) If the obligation for returning of the securities of para 2 is about the securities, subject to short sale, implemented for the account of a client, the investment mediator shall have right to pay these securities with the pecuniary resources, accounted in the short sales' account of this client and/or with the pecuniary revenues from the sale of securities, accounted in the margin purchases' account of the client, if the last is necessary. The investment mediator shall be obliged to notify the client about the purchase of the securities under conditions and by order, provided in the contract for implementing short sales.

Art. 41. (1) At termination of the contract for implementing short sales the investment mediator shall be obliged to introduce order for purchase of the securities, with which short sale has been implemented, at the first session of the regulated market of securities after termination of the contract. At termination of the contract for implementing short sales the investment mediator shall have the rights of art. 40, para 3.

(2) The remaining pecuniary resources of the client, accounted in his short sales' account after purchase of the securities of para 1 shall be transferred to the pecuniary account of the client, kept by the investment mediator.

### Section III.

#### Requirements to the general conditions of the investment mediators, applicable to the contracts for implementing short sales

Art. 42. The general conditions of the investment mediators, applicable to the contracts for implementing short sales, must include:

1. Information about the increased risk, occurring for the client in connection with the implementing of short sales, including the possibility:

a) to have to concede additional collateral under art. 38, para 1, and upon delay the investment mediator can satisfy himself from the existing collateral;

b) to owe to the investment mediator bigger amount of pecuniary resources from the received at the short sales;

2. pointing out the obligation of the investment mediator to supply the securities, necessary for the settlement of the short sales;

3. the amount of the initial and the maintaining requirements for short sales;

4. the order, the terms and the way for fulfilment of the initial and the maintaining requirements for short sales, including description of the way for revaluation under art. 36 and the ways for notifying the client for conceding additional collateral;

5. the conditions for restriction of the short sales' account and for use of the surplus at the short sales;

6. restrictions, if there are such, about the admissible kinds of deposits and collaterals at short sales;

7. the conditions, under which the investment mediator has right to require additional collateral and its kind;

8. the right of the investment mediator to use in his activity the pecuniary resources of the client, accounted in the short sales' account and the restrictions of this right under art. 29; concede as collateral and to use the securities, accounted in the margin purchases' account of the client;

9. the obligation of the client of art. 33, para 1 to concede pecuniary sum, equal to the paid dividend and the other payments, made in connection with the securities, subject to short sale;

10. the grounds and the order for termination of the contract for implementing short sales;

11. the right of the investment mediator according to art. 39, para 1 and art. 40, para 3 to use the pecuniary resources of the client, accounted in the short sales' account and/or the securities in his margin purchases' account, for purchase of the securities, subject to short sale, and for compensation of the adverse liabilities, ensuing from the contract for implementing short sales and/or from the contract for implementing margin purchases;

12. pointing out that the contract for implementing short sales must contain a clause that the client knows clearly the risks, related to the short sales.

## Section IV.

### Additional requirements for accounting short sales

Art. 43. (1) The pecuniary sums, deposited by the client in compliance with the initial or the maintaining margin requirements, as well as the pecuniary revenues from the short sales shall form the credit balance of the short sales' account.

(2) The payments of art. 33, para 1 shall reduce the credit balance of the short sales' account unless the client of short sale does not pay to the investment mediator their amount.

(3) The short sales' account cannot remain with debit balance. If debit balance occurs, it shall be transferred to the margin purchases' account of the same client.

(4) The securities, subject to short sale, shall be recorded in the short sales' account on the date of the settlement of the respective transaction.

Art. 44. The investment mediator shall maintain accounting for each client with short sales' account, which shall contain at least data about:

1. the current (daily) market value of the securities, subject to short sale;

2. the surplus at short sales under art. 37, para 2, respectively the deficit at short sales under art. 38;

3. the number and the market value of the securities, which settlement has not been implemented;

4. the purchase power of the client according to art. 25, para 2.

Art. 45. For a client, to which short sales' account and margin purchases' account have opened the investment mediator shall calculate the accumulation value of the collateral of the securities, subject to short sales and of the margin loan, the total (net) value of the initial and the maintaining requirements for short sales and/or margin requirements, as well as the total (net) value of the respective surplus or deficit.

## Chapter five.

### CONDITIONS AND ORDER FOR LOAN OF SECURITIES

Art. 46. (1) The investment mediator shall take as loan securities from institutional investors or other investment mediators on the basis of written loan contract with the following minimum content:

1. the quality, in which the investment mediator acts – as borrower for his account or as agent of an institutional investor;
2. the amount of the remuneration of art. 51, if such is provided, the way and the frequency of its calculation;
3. the admissible kinds of collaterals and the minimum amount of the collateral for the loan of securities;
4. the term for the supply of the borrowed securities and the collateral of the right of the borrower of the securities, if such is provided, to exchange the collateral;
5. pointing out that the borrower of the securities loses the opportunity to exercise the right to vote under the securities until they are not returned to him;
6. the way and the order for conceding the pecuniary sum, equal to the paid dividend and the other payments under art. 53, para 1 and 2;
7. the right of the borrower of the securities to use the pecuniary collateral for the loan of securities and his responsibility for the losses, ensuing from this use;
8. description of the way of revaluation of art. 52 and the ways for notification of the borrower of the securities about the conceding of additional collateral;
9. the right of the borrower of the securities to use the surplus from the collateral;
10. the grounds and the order for termination of the contract for loan of securities;
11. the rights of the creditor of the securities of art. 55 and the rights of the borrower of art. 56.

(2) The loan contract of para 1 may contain agreement that the securities, subject to any loan, the collateral to it as well as the remuneration of the creditor of art. 51, para 1, respectively of the borrower of art. 51, para 2, shall be determined in additional agreements.

Art. 47. (1) The investment mediator, who keeps accounts for the securities of institutional investors, wishing to lend securities, may be defined as their agent under art. 4, para 4. The contract between the institutional investor and the investment mediator must be with the following minimum content:

1. the obligation of the agent of the lender to revalue according to the market of the lent securities and the received non pecuniary collateral, as well as upon need to require additional collateral from the lender;

2. the obligation of the agent of the lender to follow the payment of dividend and other payments for the lent securities and to ensure their conceding to the lender by the borrower.

(2) The investment mediator may borrow securities from an institutional investor, with whom he has concluded contract of para 1. In this case the contract for loan of securities shall be signed by the investment investor as lender and the investment mediator as borrower.

Art. 48. (1) The lender of securities shall be obliged to transfer according to art. 4, para 1 the lent securities and to order to the respective register of securities as their owner to be entered the borrower, respectively the buyer in short sale, according to the instructions of the lender.

(2) The orders to the register of securities of para 1 should contain special indication, that the transfer of the securities is in connection with lending them. The previous sentence shall also be applied for the orders to the register about returning of the borrowed securities.

Art. 49. (1) The loan of securities may be secured with:

1. pecuniary resources; or

2. debt securities, issued or guaranteed by the Bulgarian state or by BNB, which have market value.

(2) Till the day, on which are transferred the lent securities the investment mediator borrower shall be obliged to transfer the pecuniary collateral of para 1, item 1 to bank account, pointed out by the investment mediator lender, respectively agent of lender of art. 4, para 4. If the investment mediator borrower acts simultaneously also as agent of art. 4, para 4 of his client institutional investor, the pecuniary collateral of para 1, item 1 shall be transferred from the bank account of the investment mediator, determined for his own pecuniary resources, to the bank account of the investment mediator, determined for pecuniary resources of clients, unless other is provided in the contract for loan of securities.

(3) The investment mediator borrower shall transfer to the investment mediator lender, respectively agent of lender, the non pecuniary collateral of para 1, item 2, applying respectively the conditions of para 2.

(4) The value of the collateral of para 1 must be at any time at least 100 percent of the market value of the borrowed securities.

Art. 50. (1) The lender of the securities shall have right to use the pecuniary collateral of art. 49, para 1, item 1.

(2) The lender cannot use the non pecuniary collateral of art. 49, para 1, item 2 except for satisfaction of receivables, ensuing from the contract for loan of securities.

(3) The losses in result of unsuccessful investing or use in another way of the pecuniary collateral of para 1 shall be for the account of the lender of the securities.

Art. 51. (1) When conceding non pecuniary collateral of art. 49, para 1, item 2 the investment mediator lender shall pay to the borrower of the securities remuneration, if it is provided in the contract for loan of securities.



(2) When received pecuniary collateral, the investment mediator lender, respectively agent of the lender, shall pay to the borrower of the securities remuneration, if it is provided in the contract for loan of securities.

Art. 52. (1) The investment mediator lender as well as the investment mediator borrower, respectively agent of the lender, shall implement every day revaluation of the securities, subject to contract for loan, as well as of the non pecuniary collateral of art. 49, para 1, item 2, if such has been conceded, with objective establishing of the compliance of the collateral with the requirements of art. 49, para 4. The revaluation shall be implemented according to market prices by the order of Ordinance No 6.

(2) If the market value of the lent securities increases and/or the market value of the non pecuniary collateral of art. 49, para 1, item 2 decreases below 100 percent of the current market value of the lent securities the investment mediator borrower shall be obliged not later than the end of the following working day to transfer to the respective account of the investment mediator lender, respectively agent of the lender, the necessary additional collateral.

(3) If the market value of the lent securities decreases and/or the market value of the non pecuniary collateral increases so that the current value of the collateral exceeds 100 percent of the current market value of the lent securities, the investment mediator borrower shall have right to receive the surplus of the collateral.

Art. 53. (1) Till the termination of the contract for loan of the securities the lender shall have right to receive from the investment mediator lender pecuniary sum, equal to the paid dividend, the market value of the rights of art. 112 of LPOS and other similar payments, made in connection with the lent securities under the conditions and by the order of the order for loan of securities.

(2) The investment mediator borrower shall have right to receive from the lender of the securities pecuniary sum, equal to the receivable for rents in connection with the conceded non pecuniary collateral.

(3) The lender of securities cannot exercise the right to vote of the lent securities until they are not returned to him.

Art. 54. (1) The contract for loan of securities shall be concluded without defined term and the investment mediator borrower shall be obliged to return upon request the borrowed securities.

(2) The investment mediator borrower shall be obliged till the end of the following working day after receiving the notification for termination of the contract to order to the respective register to enter as owner of the borrowed securities their lender.

(3) The contract for loan of securities shall be disaffirmed by the right party if the investment mediator borrower does not concede additional collateral according to art. 52, para 2 or pecuniary sum, equal to the payments of art. 53, para 1, respectively in case the investment mediator lender or agent of lender does not return the surplus from the collateral according to art. 52, para 3 or does not concede pecuniary sum under art. 53, para 2.

Art. 55. (1) If the investment mediator borrower does not fulfil his obligation of art. 54, para 2 and does not return the securities on time the investment mediator lender, respectively agent of the lender, shall have right to purchase the lent securities with the pecuniary sum, received as collateral, respectively with the revenues from the sale of the non pecuniary collateral.

(2) In case the price of the lent securities of para 1 together with the other expenses, connected with the purchase, exceeds the amount of the collateral, the investment mediator borrower shall be obliged to pay to the lender the difference together with the interest on it.

(3) The investment mediator lender, respectively agent of lender, can use the collateral according to para 1 also for other his receivables, ensuing from the contract for loan of securities, including for the payments of art. 53, para 1.

(4) The lender of the securities shall be obliged to return to the investment mediator borrower the remained part of the collateral.

Art. 56. (1) The investment mediator lender, respectively agent of a lender, shall be obliged when the contract for loan is disaffirmed due to his fault, till the end of the following working day after receiving the notification for breaking of the contract to order to the respective bank or register of securities returning of the received collateral.

(2) If the investment mediator lender, respectively agent of a lender, does not fulfil his obligation of para 1 and does not return on time the received collateral the investment mediator borrower shall have right to sell the necessary number of the borrowed securities and withhold the pecuniary resources from the sale in amount of the value of the collateral.

(3) In case the sale price of the borrowed securities of para 2, reduced with the other expenses, connected with the sale, is less than the value of the collateral and the remaining liabilities of the lender of securities, ensuing from the contract for loan, the lender of securities shall be obliged to pay to the borrower the difference together with the interest on it.

(4) The investment mediator borrower shall have the rights of para 2 also for other his receivables, ensuing from the contract for loan of securities, including the payments of art. 53, para 2.

(5) The investment mediator borrower shall be obliged to return to the lender the remaining part of the borrowed securities.

## Chapter six.

### CONDITIONS AND ORDER FOR USING OF SECURITIES BY THE INVESTMENT MEDIATOR

Art. 57. The investment mediator shall have right to use securities, accounted in margin purchases' accounts of clients according to art. 5, para 3 and art. 6, para 1 only on the basis of concluded contract for implementing margin purchases.

Art. 58. (1) The client shall have right to receive from the investment mediator pecuniary sum, equal to the paid dividend, the market value of the rights of art. 112 of LPOS and other similar payments, made in connection with the used securities, under the conditions and by the order of the contract for implementing margin purchases.

(2) The client cannot exercise the right to vote of the securities, accounted in the margin purchases' account till the investment mediator is using them.

Art. 59. The investment mediator shall be obliged to return to the client the used securities according to the conditions in the contract for implementing margin purchases, as well as in the cases when the margin purchases' account is closed.

## Chapter seven. ADMINISTRATIVE PUNITIVE PROVISIONS

Art. 60. (1) The persons, who have implemented breaches of the ordinance as well as the persons, who have admitted the implementing of such breaches, shall be punished according to art. 221 of LPOS.

(2) The acts for the breaches shall be compiled by officials, authorised by the deputy chairman of the Commission for financial supervision, managing department "Supervision of the investment activity", and the punitive decrees shall be issued by the deputy chairman of the Commission for financial supervision, managing department "Supervision of the investment activity".

(3) The establishing of the breaches, the issuing, the appealing and the execution of the punitive decrees shall be implemented by the order of the Law of the administrative offences and sanctions.

### Additional provisions

§ 1. In the sense of the ordinance:

1. "Margin purchases' account" is an account, kept by the investment mediator, in which are reflected the credit relations between the investment mediator and the client in connection with implementing of margin purchases, as well as in connection with the conceding of collateral in securities at implementing short sales.

2. "Short sales' account" is an account, kept by the investment mediator, in which are reflected the credit relations between the investment mediator and the client in connection with implementing of short sales, as well as in connection with the conceding of pecuniary collateral at implementing margin purchases.

3. "Market-maker" is an investment mediator, who maintains bilateral quotations of securities, traded on regulated market of securities under conditions and by order, determined with the regulation of the regulated market.

### Concluding provisions

§ 2. In Ordinance No 1 of 2003 for the requirements to the activity of the investment mediators, approved with decision No 01- H of September 15, 2003 of the Commission for financial supervision (SG 90/03), the following amendments and supplements shall be made:

1. In art. 18, para 1, item 3 shall be changed to:

"3. kind of the order (purchase, sale – long or short, exchange);".

2. In art. 31, para 2 shall be changed as follows:

"(2) The investment mediator, who has concluded contract for management of individual portfolio of securities and/or money upon own discretion without order by the client, contract for implementing margin purchases or contract for implementing short sales according to the ordinance of art. 54, para 5, item 5 and under §16, para 2, item 1 of the transitional and concluding provisions of LPOS, shall at least once at the end of each month, and if no transactions have been concluded – at the end of each quarter, present to the client report of para 1."

§ 3. The ordinance is issued pursuant to §16, para 1 of the transitional and concluding provisions in connection with art. 54, para 5, item 5, art. 75, para 5 and §16, para 2, item 1 of the transitional and concluding provisions of LPOS and is approved with decision No 24-H of July 7, 2004 of the Commission for financial supervision.

§ 4. The Commission for financial supervision shall give instructions for the application of the ordinance.