

**ORDINANCE NO 16  
of July 7, 2004**

**on the conditions and procedure for execution of  
margin purchases, short sales and lending of financial instruments  
(Title am. – SG, iss. 45 in 2008)**

Adopted by Decision № 24-H from 7 July, 2004 of the Financial Supervision Commission,  
prom. SG, iss. 65 from 27 July, 2004; am. and suppl. iss. 45 from 13 May, 2008 in effect from 14  
August, 2008.

**Chapter One.**

**GENERAL PROVISIONS**

**Art. 1.** (1) (Am. – SG, iss. 45 in 2008) The ordinance shall govern the conditions and procedure for execution of margin purchases, short sales and lending of financial instruments.

(2) (Am. – SG, iss. 45 in 2008) The ordinance shall also govern the cases in which the investment intermediaries have right to use monies and financial instruments of their clients for their own account or for the account of other of their clients as well as to use their own monies and financial instruments for the account of their clients.

**Art. 2.** (1) (Am. – SG, iss. 45 in 2008) Margin purchase shall be purchase of financial instruments, made by an investment intermediary for the account of its client where for payment of the financial instruments the client uses a pecuniary loan from the investment intermediary.

(2) The investment intermediary may grant pecuniary loans to its clients only for execution of margin purchases.

(3) (Am. – SG, iss. 45 in 2008) The pecuniary loan shall be secured according Art. 16, 16a and 17.

**Art. 3.** (1) (Am. – SG, iss. 45 in 2008) Short sale shall be sale of financial instruments, made by an investment intermediary for its own account or for the account of its client, where at the moment of its concluding the seller does not own the financial instruments and intends to fulfill its obligation for transferring them with financial instruments, which are borrowed or used under the conditions and procedure of this ordinance.

(2) (Canceled – SG, iss. 45 in 2008)

**Art. 4.** (1) (Am. – SG, iss. 45 in 2008) Lending of financial instruments shall be transfer of financial instruments by the lender as ownership of the borrower against obligation for returning financial instruments of the same kind, number and issue on defined future date or upon request.

(2) (Am. – SG, iss. 45 in 2008) Lending of financial instruments shall be permitted under the condition that collateral is furnished according to art. 49.

(3) (Am. – SG, iss. 45 in 2008) The investment intermediary may borrow financial instruments only in order to:

1. (Am. – SG, iss. 45 in 2008) fulfill an obligation for transfer of financial instruments, subject of a short sale, executed for its own account or for the account of a client;

2. (Am. – SG, iss. 45 in 2008) return financial instruments, borrowed under the conditions of item 1;

3. (Am. – SG, iss. 45 in 2008) lend the financial instruments to another investment intermediary for the purposes of items 1 and 2.

(4) (Am. – SG, iss. 45 in 2008) The investment intermediary may lend its own financial instruments, borrowed financial instruments on the conditions of art. 3, as well as financial instruments of its clients in the capacity of their agent.

**Art. 5.** (1) (Am. – SG, iss. 45 in 2008) The investment intermediary may use for the account of a client its own, as well as borrowed financial instruments, only in order to:

1. (Am. – SG, iss. 45 in 2008) fulfill an obligation for transfer of financial instruments, subject of a short sale, executed for the account of a client;

2. (Am. – SG, iss. 45 in 2008) return financial instruments, borrowed for execution of a short sale for the account of a client.

(2) (Am. – SG, iss. 45 in 2008) The obligation of the client, for whose account the financial instruments are used, to return the financial instruments, shall be deemed secured with the monies and financial instruments, accounted on his account for short sales, including with the monies, received from short sales.

(3) (Am. – SG, iss. 45 in 2008) For the purposes under para 1 the investment intermediary may also use for the account of a client financial instruments, accounted on the account for margin purchases or on the account for short sales of another client, up to the extent, to which they are deemed to be collateral. The obligation of the client, for whose account the financial instruments are used, to return the financial instruments, shall be deemed secured under the conditions of para 2.

(4) (Am. – SG, iss. 45 in 2008) The disposing of financial instruments under para 1 and 3 shall be entered in the respective register of the depository institution, in which the financial instruments are kept.

**Art. 6.** (1) (Am. – SG, iss. 45 in 2008) The investment intermediary may use for its own account financial instruments, accounted on accounts for margin purchases or on accounts for short sales of clients up to the extent, to which they are deemed to be collateral according to art. 15, or art. 39 only in order to:

1. (Am. – SG, iss. 45 in 2008) fulfill an obligation for transfer of financial instruments, subject of a short sale, executed for its own account;

2. (Am. – SG, iss. 45 in 2008) return financial instruments, borrowed for execution of a short sale for its own account;

3. (Am. – SG, iss. 45 in 2008) secure a loan from a credit institution, which has obtained a license from the Bulgarian National Bank (BNB) to carry out bank activity in the country, taken for financing margin purchases;

4. lend them to another investment intermediary.

(2) (Am. – SG, iss. 45 in 2008) The disposing of financial instruments shall be entered in the respective register in a depository institution, in which the financial instruments are kept.

(3) (Am. – SG, iss. 45 in 2008) The investment intermediary shall be obliged to return to the client financial instruments of the same kind, number and issue under conditions and procedure determined in the contract for margin purchases or for short sales..

**Art. 7.** The investment intermediary may use the monies of a client, accounted on his account for short sales, for its own account or for the account of other clients, up to the extent, to which they are deemed to be collateral according to art. 29.

**Art. 7a.** (New – SG, iss. 45 in 2008) (1) Margin purchases and short sales with financial instruments may be executed on the territory of the Republic of Bulgaria only on a regulated market under conditions and procedure envisaged in the rules of the regulated market. Short sales according sentence one may be executed only with financial instruments which satisfy the requirements of art. 8 para 1, respectively art. 9 para 1.

(2) The orders for margin purchase and for short sale shall be identified upon their entry in the system for trading on a regulated market.

(3) The investment intermediaries may execute margin purchases, short sales and lending of financial instruments also on the territory of other Member State while complying with the requirements of the relevant national legislation and the international practice, applicable to such types of transactions, as well as on the territory of a third country, if the applicable national legislation and international practice ensure at least equal extent of protection of the investors in financial instruments as that under the Bulgarian legislation.

(4) The investment intermediaries shall grant loans for execution of margin purchases, shall execute margin purchases and short sales, in compliance with the requirements for capital adequacy and liquidity according Ordinance No. 35 from 2006 on the capital adequacy and liquidity of investment intermediaries (SG, iss. 97 in 2006) (Ordinance No. 35).

(5) The investment intermediaries shall provide to the Financial Supervision Commission on a monthly basis, along with the report on the capital adequacy and liquidity under Art. 144 para 1 of Ordinance No. 35, also information on the amount of the granted by them loans to clients in relation to margin purchases and short sales and on the collaterals provided under these loans.

The information according sentence one shall first be provided separately for the margin purchases and for the short sales.

## **Chapter Two.**

### **FINANCIAL INSTRUMENTS WHICH MAY SERVE AS COLLETRAL ON MARGIN PURCHASES AND SHORT SALES AND WITH WHICH SHORT SALES MAY BE EXECUTED**

**(Title am. – SG, iss. 45 in 2008)**

**Art. 8.** (Am. – SG, iss. 45 in 2008) (1) Financial instruments, which may serve as collateral in the execution of margin purchases and short sales and with which short sales may be executed on the territory of the Republic of Bulgaria, shall be financial instruments, admitted to trading on a regulated market, which during the last 20 sessions of the regulated market meet simultaneously the following requirements:

1. transactions in them have been concluded during at least 15 sessions of the regulated market;
2. the minimum average daily amount of financial instruments, in which transactions have been concluded on the regulated market is not less than 5 000;
3. the average daily number of concluded transactions on the regulated market is not less than 30;
4. the product of the number of financial instruments from a given issue and the price of closing for the last day of trading with this financial instrument on the regulated market is not less than BGN 20 000 000.

(2) The transaction subject to block trade, repo transactions, transactions under registration agency and transactions on privatization market shall not be considered concluded on a regulated market.

(3) Within the scope of para 1 item 2, 3 and 4 shall not fall the transactions concluded by the investment intermediary when it has acted as a market maker of the issue of financial instruments.

(4) In the cases where the financial instruments under para 1 are shares, the free float shall be not less than 15% of the issue.

**Art. 9.** (Am. – SG, iss. 45 in 2008) (1) The regulated market may establish additional requirements to the financial instruments, subject of margin purchases and short sales as well as more stringent requirements than those, provided for in art. 8, para 1, if this is necessary for ensuring the stability of the market in financial instruments and for investor protection.

(2) The regulated market under para 1 shall announce every day, after the closing of the trade session, through its trading system and the stock exchange bulletin as well as in another appropriate way a list of the financial instruments, meeting the requirements under art. 8, para 1, respectively the additional and/or more stringent requirements under para 1, with which short sales may be executed and which may be used as collateral on margin purchases and short sales for the period of the next trading session.

(3) The regulated market shall disseminate according to the procedure under para 2 information on the total amount of the financial instruments of each issue, subject of margin purchases and short sales.

**Art. 10.** (1) (Am. – SG, iss. 45 in 2008) The investment intermediaries may not accept as collateral on margin purchases and short sales, as well as execute short sales with financial instruments, which have ceased to meet the requirements under art. 8, para 1, respectively art. 9, para 1.

(2) (Am. – SG, iss. 45 in 2008) The settlement of the margin purchases and short sales, concluded on the regulated market before the respective financial instruments have ceased meeting the requirements under art. 8, para 1, respectively art. 9, para 1, shall be executed in accordance with the general procedure. The concluded contracts for lending of financial instruments, which have subsequently ceased to meet the requirements under art. 8, para 1, respectively art. 9, para 1, shall remain in force.

**Art. 11.** (Am. – SG, iss. 45 in 2008) The Financial Supervision Commission may impose restrictions and prohibitions for execution of margin purchases and short sales in particular kinds or issues of financial instruments, if this is necessary for ensuring the stability of the securities market or for the investor protection.

### **Chapter Three**

## **CONDITIONS AND PROCEDURE FOR EXECUTION OF MARGIN PURCHASES**

### **Section I**

#### **General Requirements**

**Art. 12.** The monies, which the investment intermediary lends to its clients for execution of margin purchases, may have as source only:

1. (Am. – SG, iss. 45 in 2008) own funds of the investment intermediaries;
2. (Am. – SG, iss. 45 in 2008) a loan from credit institution;
3. monies of clients, accounted on accounts for short sales up to the extent, to which they are deemed to be collateral according to art. 29.

**Art. 13.** (Am. – SG, iss. 45 in 2008) The investment intermediary shall execute margin purchases on the basis of a written contract with the client for execution of margin purchases, concluded in accordance with the procedure under art. 24 of Ordinance No 38 of 2007 on the requirements to the activity of the investment intermediaries (SG, iss. 67 in 2007) (Ordinance No 38).

(2) Before signing of the contract under para 1 the investment intermediary shall be obliged to provide the client with a written explanation on the mechanism for execution of margin purchases and the risks, related to them. The client shall certify in writing of having received the information under sentence one.

(3) Before signing the contract under para 1 the investment intermediary shall require from the client to provide it with information about his financial situation with content according Art. 19 para 4 of Ordinance No. 38. On the basis of the information according sentence one, the investment

intermediary shall determine the maximum amount of the liability of any client under a loan for margin purchases.

(4) The investment intermediary shall calculate capital requirement for credit risk on provided loans for margin purchases in compliance with the requirements of Ordinance No. 35.

(5) The total amount of the loan for execution of margin purchases, provided to one person, or to a group of related clients, within the meaning of item 25 of the Additional Provisions of Ordinance No. 35 may not exceed 25% of the investment intermediary's own funds, determined according Chapter Three of Ordinance No. 35.

**Art. 14.** (Am. – SG, iss. 45 in 2008) (1) The investment intermediary shall open:

a) and keep with itself a separate account for margin purchases of every client executing margin purchases;

b) in a depository institution a separate margin account for financial instruments of every client, on which shall be kept the financial instruments provided by the client in fulfillment of the initial and maintaining margin requirements;

c) in a depository institution a separate cash account for margin purchases, on which shall be accounted the cash of the investment intermediary's clients, provided in connection with the execution of the margin purchases.

(2) The investment intermediary shall account on the client's account according para 1 point "a" the provided cash and financial instruments by the client in fulfillment of the initial and maintaining margin requirements and its claims from the margin loans, granted to the client.

(3) The account for margin purchases under para 1 point "a" shall also contain information on the number of financial instruments from each issue, which have been deposited by the client in compliance with the initial or the maintaining margin requirements as well as information on the liabilities to the client in connection with the use of financial instruments accounted on the account for margin purchases according art. 5.

**Art. 15.** (1) (Prev. text of art. 15, am. – SG, iss. 45 from 2008) The financial instruments, accounted on the account for margin purchases, shall be deemed to be collateral in favour of the investment intermediary regarding the loan, granted to the client up to the extent of the maintaining margin requirement under art. 17.

(2) (New – SG, iss. 45 in 2008) In the cases when the financial instruments subject of a margin purchase do not serve as collateral on the margin loan, the settlement of the margin purchase shall be performed by transfer of the financial instruments on account at the depository institution, indicated by the client, other than the margin account according Art. 14 para 1 point "b".

## **Section II**

### **Specific Requirements for Execution of Margin Purchases**

**Art. 16.** (Am. – SG, iss. 45 in 2008) (1) A client, who has submitted an order for a margin purchase of financial instruments which satisfy the requirements of art. 8 para 1, or art. 9 para 1, and for which it is envisaged in the contract to serve as collateral on the margin loan, shall be obliged to meet the initial margin requirement under para 2 on the day of the order submission and till the settlement day of the concluded transaction.

(2) Initial margin requirement shall be the obligation of the client to provide the investment intermediary with a deposit to the value according to para 3, which may consist of:

1. monies;
2. debt securities, issued or guaranteed by the Bulgarian state, which have market value;
3. financial instruments, meeting the requirements under art. 8, para 1, respectively art. 9, para 1;

4. any combination under items 1, 2 and 3.

(3) If the initial margin requirement is complied within in cash, the deposit under para 2 shall be in amount not less than 50 per cent of the value of each particular margin purchase.

(4) If the initial margin requirement is complied with in financial instruments under para 2 item 2 and/ or 3, the deposit shall be in amount not less than 100 percent of the value of each particular margin purchase.

(5) If the initial margin requirement is complied with as combination of monies and financial instruments the amount of the deposit in financial instruments, which must be provided, shall be calculated under the following formula:

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

Where:

PS is shall be the current market value of the deposited financial instruments, calculated according to art. 18;

MP – the value of the margin purchase;

M – the deposit in monies.

(6) The initial margin requirement may be met by the client also by available margin surplus according art. 19 para 2 item 1 and/or available surplus at short sales according art. 37 para 3 item 1, if that is agreed between the parties.

(7) The regulated market, where the financial instruments, subject of margin purchases, are admitted to trading as well as the investment intermediary may envisage initial margin requirement, higher than the one under para 3, 4 and 5.

(8) The value of the margin loan, granted by the investment intermediary to a client for each particular margin purchase, shall be the difference between the value of the margin purchase and the amount of the client's pecuniary deposit under para 2, item 1.

(9) The total amount of the margin loan of the client shall be the sum owed of all margin loans under para 8.

(10) If the client does not meet the initial margin requirement upon submission of the order for execution of the margin purchase, the investment intermediary shall not execute the order.

**Art. 16a.** (New – SG, iss. 45 in 2008) In cases other than those under art. 16 para 1, a client who has submitted an order for execution of a margin purchase, shall be obligated on the day of the order submission to meet initial margin requirement in amount of 200 per cent of the total amount of the margin loan. Art. 16 shall apply accordingly.

**Art. 17.** (1) (Am. – SG, iss. 45 in 2008) A client, to whom an account for margin purchases has been opened, shall be obliged to meet the maintaining margin requirement every day since the settlement date of the margin purchase.

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

(3) (Am. – SG, iss. 45 in 2008) Collateral for the margin loan may be only financial instruments under art. 16 para 2 item 2 and/ or 3. The financial instruments of sentence one shall be accounted on an account for margin purchases of the client under art. 14 para 1 point “b”.

(4) (New – SG, iss. 45 in 2008) If the current market value of the financial instruments under para 3, calculated according to art. 18, is lower than the maintaining margin requirement, the surplus on the account for short sales according to art. 37, para 2, if such exists, may be transferred to be collateral for the margin loan, if that is agreed in the contract.

(5) (Prev. para 4, am. – SG, iss. 45 in 2008) The regulated market, where the financial instruments, subject of margin purchases, are admitted to trading as well as the investment

intermediary may envisage maintaining margin requirement, higher than the one determined under para 2.

(6) (Prev. para 5, am. – SG, iss. 45 in 2008) The client may order the investment intermediary to transfer the surplus on the account for short sales if the client has such, to his account for margin purchases for the purpose of reduction of the total amount of the margin loan of the client.

**Art. 18.** (Am. – SG, iss. 45 in 2008) The investment intermediary shall make day-to-day revaluation of the financial instruments, accounted on the account for margin purchases as well as of the financial instruments, subject of margin purchases, whose settlement has not been executed, in the cases when it is envisaged they to serve as collateral of the margin loan. The revaluation of the financial instruments shall be made according to market price.

**Art. 19.** (Am. – SG, iss. 45 in 2008) (1) The investment intermediary shall not have right to allow the client to increase the total amount of the margin loan by drawing monies as well as to dispose of financial instruments, which are collateral for the margin loan (restriction of the account for margin purchases), if as result of this the market value of the collateral for the margin loan, calculated according to art. 18, will fall below 200 percent of the total amount of the margin loan.

(2) The client shall have right to use his margin surplus:

1. in order to meet an initial or maintaining margin requirement and/or an initial or maintaining requirement for short sales according to art. 34; or
2. to dispose in another way of financial instruments, accounted on his account for margin purchases, or to increase the total amount of the margin loan by drawing monies.

(3) Margin surplus shall be the difference between the value of the financial instruments which serve as collateral for the margin loan, calculated according to art. 18, and 200 percent of the total amount of the margin loan.

**Art. 20.** (1) (Am. – SG, iss. 45 in 2008) If margin deficit occurs the investment intermediary shall not have right to execute new orders for margin purchases and shall be obliged till the end of the working day to notify the client that within two working days he must cover the margin deficit by depositing with the investment intermediary:

1. monies, with which to pay the necessary part of the margin loan; and/or
2. (Am. – SG, iss. 45 in 2008) additional collateral in financial instruments under art. 16, para 2, item 2 and/or 3.

(2) (Am. – SG, iss. 45 in 2008) Margin deficit shall exist when the market value of the collateral for the margin loan, calculated according to art. 18, is less than the maintaining margin requirement under art.17 para 2.

**Art. 21.** (Am. – SG, iss. 45 in 2008) (1) If the client does not cover the margin deficit under art. 20, para 1, the investment intermediary shall sell a respective quantity of financial instruments on the account for margin purchases, necessary for covering the deficit by the day of the sale.

(2) In case the value of the collateral of the margin loan is recovered within the term of Art. 20 para 1 to the required amount under art. 17 para 2 before the covering of the margin deficit by the client, the intermediary shall notify the client of it.

(3) In case that the amount of the collateral on the account for margin purchases falls below 115 per cent of the total amount of the margin loan, the investment intermediary has the right, before the expiration of the term under art. 20 para 1, to sell financial instruments on the account for margin purchases, to cover the deficit on the day of sale, according para 1, if that is necessary for prevention of greater losses for the investment intermediary and/ or the client.

(4) The investment intermediary shall sell financial instruments in the cases according to para 1 and 3 under conditions and procedure determined in the contract for execution of margin purchases.

(5) In the case under para 1 the investment intermediary shall have right to refuse execution of the submitted orders of the client for concluding margin purchases and short sales as well as to terminate the contract for execution of margin purchases.

**Art. 22.** (Am. – SG, iss. 45 in 2008) (1) The contract for execution of margin purchases shall be concluded with a term and the client shall be obliged to return the margin loan upon expiration of the contract's term.

(2) In case that on the day of expiration of the contract according to para 1, the client fails to repay the loan granted for execution of margin purchases, the investment intermediary shall have the right to transfer from the account for monies of the client to its own pecuniary account the sum necessary for redemption of the margin loan, as well as to dispose of the collateral in a manner determined in the contract.

(3) In the cases under para 2 the investment intermediary shall realize the collateral by giving an order for sale of the financial instruments used as collateral of the margin loan, on the date of termination of the contract for execution of margin purchases. With the monies received from the sale shall be repaid the client's liability to the intermediary under the margin loan.

(4) The remaining financial instruments on the account for margin purchases and the monies of the client shall be transferred to the account for financial instruments, respectively to the account for monies of the client, kept by the investment intermediary.

### **Section III** **Requirements to the Contracts for Execution of Margin Purchases** **(Title am. – SG, iss. 45 in 2008)**

**Art. 23.** (Am. – SG, iss. 45 in 2008) The contracts for execution of margin purchases shall include:

1. information on the increased risk, occurring for the client in connection with the execution of margin purchases, including:

a) the requirement to furnish additional collateral in the cases under art. 20, para 1, as well as statement that in case of delay the investment intermediary may satisfy itself from the existing collateral;

b) the possibility not to be able to exercise the voting right attaching to the securities, accounted on his account for margin purchases, if they are used by the investment intermediary 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) the possibility to lose not only all the funds, which he has invested in financial instruments by margin purchases, but in relation to them to have also additional liabilities to the investment intermediary;

2. the conditions and procedure for opening and closing of account for margin purchases for the financial instruments at a depository institution and for disposal of the financial instruments kept on the account for margin purchases;

3. the costs on the margin loan and the method for their calculation;

4. the frequency of calculation of the interest on the margin loan;

5. the terms and the way of payment of the interest and the other costs on the margin loan;

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

7. the procedure, terms and the way for meeting the initial and the maintaining margin requirements, including description of the way for revaluation under art. 18 and the ways for notification of the client to furnish additional collateral;

8. the conditions for restriction of the account for margin purchases as well as the conditions and procedure for use of the margin surplus;

9. additional restrictions, if there are such, on the admissible kinds of deposits and collaterals for margin purchases;

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

11. statement whether the surplus on the account for short sales of the client will be used as collateral on the margin loan or for reduction of the margin loan as well as the conditions and procedure for its use;

12. the right of the investment intermediary to furnish as collateral and to use the financial instruments accounted on the account for margin purchases of the client, which serve as collateral of the loan, as well as the conditions and procedure of their use;

13. the grounds and the procedure for amendment and termination of the contract for execution of margin purchases;

14. the conditions and procedure for satisfying the investment intermediary from the provided collateral in case of default by the client, including the right of the investment intermediary according to art. 21 and 22 to sell the financial instruments accounted on the client's account for margin purchases, and to compensate its claim with the adverse claims of the client, ensuing from the contract for execution of margin purchases;

15. indication whether the investment intermediary may compensate its claim under the contract for margin purchases with an adverse claim of the client, ensuing from a contract for execution of short sales between him and the investment intermediary;

16. a clause that the client clearly understands the risks, related to the implementation of the margin purchases.

17. maximum amount of the client's liability to the investment intermediary under the loan granted for margin purchases, determined on the basis of the information under art. 19 para 4 of Ordinance No. 38;

18. term of the contract.

#### **Section IV**

#### **Additional Requirements for Accounting Margin Purchases**

**Art. 24.** (Am. – SG, iss. 45 in 2008) (1) The total amount of the margin loan shall be accounted on the debit balance of the account for margin purchases of the client kept by the investment intermediary.

(2) The monies under art. 16 para 2 item 1, deposited by the client on the account for margin purchases in compliance with the initial or the maintaining margin requirements, shall reduce the amount of the margin loan.

(3) The monies under art. 16 para 2 item 1 and the financial instruments under art. 16 para 2 item 2 and 3, deposited by the client in compliance with the initial and maintaining margin requirements shall be transferred to the client's account for margin purchases, or to the client's account for monies at a depository institution and shall be recorded on the credit balance on his account for margin purchases with the intermediary, on the day of depositing.

(4) In the cases when it is agreed between the parties to the contract, the financial instruments which meet the requirements of art. 8, or art. 9 para 1, subject of margin purchase, to serve as collateral of the margin loan, on the day of the settlement of the transaction they shall be transferred to the client's account for margin purchases at the depository institution and shall be recorded on the credit balance on the client's account for margin purchases with the investment intermediary. In cases other than those of sentence one, the financial instruments subject of margin purchase shall be transferred on the day of settlement of the transaction on account of the client at a depository institution, other than his account for margin purchases.

(5) If the amount of the credit balance exceeds 200% of the amount of the debit balance, the excess may be transferred to the account for short sales of the same client, if such exists, if there is deficit on that account and if that is agreed between the parties in the contract. In the other cases the client may dispose of the margin surplus.

**Art. 25.** (Am. – SG, iss. 45 in 2008) (1) The investment intermediary shall keep daily accounting for each client with an account for margin purchases, which shall contain at least data on:

1. the current (daily) market value of the financial instruments, deposited by the client in compliance with the initial and maintaining margin requirements;
2. the margin surplus under art. 19, para 3, respectively the margin deficit under art.20;
3. the number and the market value of the financial instruments, subject of margin purchases, for which it is envisaged to serve as collateral of the margin loan and whose settlement has not been executed.

**Art. 26.** (Am. – SG, iss. 45 in 2008) (1) In the cases where the client has an account for margin purchases and account for short sales with the investment intermediary, it may be envisaged in the contract between them that the investment intermediary shall on a daily basis perform netting of the margin surplus on the account for margin purchases of a client with the deficit on his account for short sales, or the surplus on the account for short sales of a client with the deficit on his account for margin purchases.

(2) The investment intermediary shall maintain data base for each client about:

1. total amount of the collateral of the margin loan;
2. total amount of the initial and maintaining margin requirements;
3. total amount of the margin surplus or deficit.

## **Chapter four**

### **CONDITIONS AND PROCEDURE FOR EXECUTION OF SHORT SALES**

#### **Section I**

#### **General Requirements**

**Art. 27.** (Am. – SG, iss. 45 in 2008) (1) The investment intermediary shall execute short sales for the account of a client on the basis of a written contract for execution of short sales, concluded in accordance with the procedure under art. 24 of Ordinance No 38. By the contract for execution of short sales the investment intermediary shall undertake to supply the financial instruments, necessary for implementing the settlement of the short sales.

(2) (Am. – SG, iss. 45 in 2008) Before signing of the contract under para 1 the investment intermediary shall be obliged to provide the client with a written explanation on the mechanism for execution of the short sales and the risks, related to them.

**Art. 28.** (Am. – SG, iss. 45 in 2008) (1) The investment intermediary shall:

- a) open and keep with itself a separate account for short sales to each client, who executes short sales;
- b) open at a depository institution a separate account for short sales of each client, on which shall be kept the financial instruments, furnished in compliance with the initial and maintaining requirements for the short sales;
- c) open at a depository institution a separate monies account for short sales, on which shall be accounted the provided by clients monies in connection with execution of short sales as well as monies received from the executed short sales.

(2) The investment intermediary shall account on the account for short sales of the client under para 1 point “a” the monies and financial instruments provided by the client in meeting initial and maintaining requirement, the monies from the short sale and its claim from the provided securities, subject to a short sale.

(3) The client account for short sales of the client under para 1 point “a” shall also contain information on the number of financial instruments from each issue, subject of short sale, executed for the account of the client (financial instruments at short positions), on the number of financial instruments provided in connection with meeting initial and maintaining requirement for short sales as well as information on the obligations to the client in connection with the use of financial instruments accounted on the account for short sales according art. 5.

**Art. 29.** (Am. – SG, iss. 45 in 2008) The monies and financial instruments, accounted on the account for short sales of the client with the investment intermediary, shall be deemed to be collateral in favour of the investment intermediary for the financial instruments, subject of short sale, up to the extent of the maintaining requirement under art. 35.

**Art. 30.** (1) (Am. – SG, iss. 45 in 2008) Order for short sale shall be executed on a regulated market in the Republic of Bulgaria only at price, which is:

1. (Am. – SG, iss. 45 in 2008) higher than the price of the last concluded transaction in the financial instruments, announced through the trading system as well as higher than the price at opening of the current session of the regulated market; or

2. (Am. – SG, iss. 45 in 2008) equal to the price of the last concluded transaction in the financial instruments, but higher than the last different price of concluded transaction in the financial instruments, announced through the trading system, as well as higher than the price at opening of the current session of the regulated market.

(2) (Am. – SG, iss. 45 in 2008) The requirement under para 1 shall not apply if the investment intermediary acts as market-maker of the issue and this is provided for in the rules of the regulated market.

**Art. 31.** (Canceled – SG, iss. 45 in 2008)

**Art. 32.** (Am. – SG, iss. 45 in 2008) The investment intermediary shall introduce an order for short sale on the regulated market only under the condition that it will be able to supply the financial instruments, subject of short sale, including in the cases when they are available on his account or on the sub-account of its client, who has an account for margin purchases as well as if it has concluded a contract for lending of financial instruments.

**Art. 33.** (Am. – SG, iss. 45 in 2008) (1) The seller in a short sale shall be obliged to provide the lender of the financial instruments, respectively the investment intermediary or its clients who have accounts for margin purchases, or whose financial instruments have been used at the settlement of the short sales, with compensation for non-exercising of the rights attaching to the financial instruments – subject of short sale, under the conditions and procedure of the contract under art. 27 para 1, respectively the contract for lending.

(2) The obligation under para 1 shall be fulfilled through the investment intermediary, through which the short sale is executed.

## **Section II**

### **Specific Requirements for Execution of Short Sales**

**Art. 34.** (Am. – SG, iss. 45 in 2008) (1) A client, who has submitted an order for short sale, shall be obliged to meet the initial requirement for short sale under para 2 on the day of the submission of the order to the investment intermediary and till the day for settlement of the short sale.

(2) Initial requirement for short sale shall be the obligation of the client to provide the investment intermediary with a deposit under para 3 to the value of not less than 50 percent of the value of the short sale.

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

1. monies;
2. debt securities, issued or guaranteed by the Bulgarian state, which have market value;
3. financial instruments under art. 8, para 1, respectively art. 9, para 1;
4. any combination under items 1, 2 and 3.

(4) The initial requirement for short sale may be met by the client also by existing surplus at short sales according to art. 37, para 2 and/or margin surplus according to art. 19, para 2, item 1 if this is provided for in the contract between the parties.

(5) The regulated market, where the financial instruments, subject of short sales, are admitted to trading as well as the investment intermediary may provide initial requirement for short sale, higher than the one under para 2.

(6) If the client does not meet the initial requirement for short sale on the day of submission of the order, the investment intermediary shall not execute the order.

**Art. 35.** (1) (Suppl. – SG, iss. 45 in 2008) A client, to whom an account for short sales has been opened, shall be obliged to meet the maintaining requirement for short sales every day since the date of settlement of the transaction.

(2) (Am. – SG, iss. 45 in 2008) Maintaining requirement for short sales shall be the obligation of the client to maintain with the investment intermediary collateral under para 3 to the value of not less than 130 percent of the current market value of the financial instruments, subject of short sale, calculated according to art. 36.

(3) (Am. – SG, iss. 45 in 2008) Collateral for the short sale shall be the monies, received from the short sale as well as the other monies and financial instruments, accounted on the account for short sales of the client. If the monies and financial instruments, accounted on the account for short sales, are in amount, lower than the maintaining requirement for short sales and the client has an open account for margin purchases with the investment intermediary, on which margin surplus exists according to art. 19, para 3, it may serve as collateral for the short sales, if that is provided for in the contract.

(4) (Am. – SG, iss. 45 in 2008) The regulated market, where the financial instruments, subject of short sales, are admitted to trading as well as the investment intermediary may provide maintaining requirement for short sales, higher than the one determined under para 2.

(5) (Canceled – SG, iss. 45 in 2008)

**Art. 36.** (Am. – SG, iss. 45 in 2008) The investment intermediary shall make day-to-day revaluation of the financial instruments, accounted on the account for short sales, as well as of the financial instruments, subject of short sale, whose settlement has not been executed. The revaluation of the financial instruments shall be made according to market price.

**Art. 37.** (Am. – SG, iss. 45 in 2008) (1) The investment intermediary shall not have right to allow the client to dispose of monies and financial instruments, accounted on the account for short sales (restriction of the account for short sales), if as result of this the value of the collateral for the short sales will fall below 150 percent of the current market value of the financial instruments, subject of short sales, calculated according to art. 36.

(2) If the client has an open account for margin purchases with the investment intermediary and this is agreed between the parties, the surplus at short sales of the client may serve for covering the maintaining margin requirement under art. 17, para 3, when this is necessary. In the other cases the client shall have right to use his surplus at short sales:

1. transferring financial instruments accounted on his account for short sales, including meeting initial margin requirement under art. 16 and/ or initial requirement for short sales under art. 34; or

2. disposing of monies, accounted on the account for short sales.

(3) Surplus at short sales shall be the difference between the amount of the monies and the value of the financial instruments, accounted on the account for short sales, and 150 percent of the current market value of the financial instruments, subject of short sales, calculated according to art. 36.

**Art. 38.** (1) (Am. – SG, iss. 45 in 2008) If deficit at short sales occurs the investment intermediary shall not have right to execute new orders of the client for short sales and shall be obliged till the end of the working day to notify the client, that within one working day he must cover the deficit at the short sales by:

1. (Am. – SG, iss. 45 in 2008) depositing with the investment intermediary additional collateral in money and/or securities under art. 34, para 3; and/or

2. (Am. – SG, iss. 45 in 2008) purchasing the necessary number of financial instruments, subject of the short sale.

(2) (Am. – SG, iss. 45 in 2008) Deficit at short sales shall exist when the value of the collateral for the financial instruments, subject of short sale, is lower than the maintaining requirement under art. 35 para 2.

**Art. 39.** (1) (Am. – SG, iss. 45 in 2008) If the client does not cover the deficit at short sales under art. 38, para 1, the investment intermediary shall purchase the necessary number of the financial instruments, subject of short sale, executed for the account of the client, for covering the deficit by the day of the purchase. The investment intermediary shall execute the purchases under the previous sentence with the monies on the account for short sales of the client.

(2) (Am. – SG, iss. 45 in 2008) In case the value of the collateral on the account for short sales falls below 120 percent of the current market value of the financial instruments, subject of short sales, calculated according to art. 36, the investment intermediary shall have right to purchase financial instruments according to para 1 before expiration of the term of one working day if this is necessary for preventing bigger losses for the investment intermediary and/or the client.

(3) (Am. – SG, iss. 45 in 2008) In the case under para 1 the investment intermediary shall have right to refuse the execution of the submitted orders of the client for concluding short sales as well as to terminate the contract for execution of short sales.

**Art. 40.** (Am. – SG, iss. 45 in 2008) (1) The contract for execution of short sales shall be concluded with a definite term and the client shall be obliged to return also upon request the financial instruments, subject of the short sale.

(2) In case the investment intermediary must return the financial instruments, which he has used from an account for margin purchases of a client for execution of a short sale and it may not use other financial instruments in order to fulfill its obligation, it shall give an order for purchase of these financial instruments at the first session of the regulated market after the obligation for returning the financial instruments becomes exigible.

(3) If the obligation for returning the financial instruments under para 2 relates to financial instruments, subject of short sale, executed for the account of a client, the investment intermediary shall pay these financial instruments with the monies, accounted on the account for short sales of this client. The investment intermediary shall be obliged to notify the client of the purchase of the financial instruments under conditions and, in accordance with procedure provided for in the contract for execution of short sales.

**Art. 41.** (Am. – SG, iss. 45 in 2008) (1) At termination of the contract for execution of short sales the investment intermediary shall give an order for purchase of the financial instruments, with which short sale has been executed, at the first session of the regulated market after termination of the

contract. At termination of the contract for execution of short sales the investment intermediary shall have the rights under art. 40, para 3.

(2) The remaining monies and financial instruments of the client, accounted on his account for short sales after purchase of the financial instruments under para 1 and the closing of the account, shall be transferred to the relevant pecuniary account of the client, kept by the investment intermediary.

### **Section III. Requirements to the Contracts for Execution of Short Sales (Title am. – SG, iss. 45 in 2008)**

**Art. 42.** (Am. – SG, iss. 45 in 2008) The contracts for execution of short sales, shall include:

1. (Am. – SG, iss. 45 in 2008) information on the increased risk, occurring for the client in connection with the execution of short sales, including:

a) the requirement to furnish additional collateral under art. 38, para 1, and in case of delay the investment intermediary may satisfy itself from the existing collateral;

b) the possibility the client to owe to the investment intermediary bigger amount of monies than the ones received at the short sales;

2. (Am. – SG, iss. 45 in 2008) the obligation of the investment intermediary to supply the financial instruments, necessary for the settlement of the short sales;

3. (Am. – SG, iss. 45 in 2008) the amount of the initial and the maintaining requirements for short sales;

4. (Am. – SG, iss. 45 in 2008) the procedure, the terms and the way for meeting the initial and the maintaining requirements for short sales, including description of the way for revaluation of the financial instruments under art. 36 and the ways for notification of the client for furnishing additional collateral;

5. (Am. – SG, iss. 45 in 2008) the conditions for restriction of the account for short sales as well as the conditions for use of the surplus at the short sales;

6. (Am. – SG, iss. 45 in 2008) indication whether the margin surplus on the account for margin purchases of the client may be used as collateral for the account for short sales as well as the conditions and procedure for that;

7. (Prev. item 6, suppl. – SG, iss. 45 in 2008) additional restrictions, if there are such, on the admissible kinds of deposits and collaterals for short sales;

8. (Prev. item 7 – SG, iss. 45 in 2008) the conditions, under which the investment intermediary has right to require additional collateral and its kind;

9. (Prev. item 8, suppl. – SG, iss. 45 in 2008) the right of the investment intermediary to use in its activity the monies and financial instruments of the client, accounted on the account for short sales and the restrictions of that right under art. 29;

10. (Prev. item 9 – SG, iss. 45 in 2008) the obligation of the client under art. 33, para 1 to furnish an amount of money, equal to the paid dividend and the other payments, made in connection with the securities, subject of short sale;

11. (Prev. item 10 – SG, iss. 45 in 2008) the grounds and the procedure for amendment and termination of the contract for execution of short sales;

12. (Prev. item 11, am. – SG, iss. 45 in 2008) conditions and procedure for satisfying of the intermediary from the provided collateral in case of default by the client, including the right of the investment intermediary under art. 39, para 1 and art. 40, para 3 to use the monies and financial instruments of the client, accounted on the account for short sales;

13. (New – SG, iss. 45 in 2008) indication whether compensation is allowed of the adverse liabilities, arising from the contract for execution of short sales and the contract for execution of margin purchases, as well as conditions and procedure of making the compensation;

14. (Prev. item 12, am. – SG, iss. 45 in 2008) a clause that the client clearly understands the risks, related to the short sales;

15. (New – SG, iss. 45 in 2008) the ways of determination of the remuneration of the investment intermediary, including the fees and commissions in relation to the short sale;

16. (New – SG, iss. 45 in 2008) the conditions and procedure for returning of the financial instruments upon request by the investment intermediary;

17. (New – SG, iss. 45 in 2008) conditions and procedure for opening and closing of accounts for short sales at a depository institution;

18. (New – SG, iss. 45 in 2008) term of the contract.

#### **Section IV**

#### **Additional Requirements for Accounting Short Sales**

**Art. 43.** (Am. – SG, iss. 45 in 2008) (1) The monies under art. 34 para 3 item 1 and the financial instruments under art. 34 para 3 item 2 and 3, 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 be recorded on the credit balance of the account for short sales with the investment intermediary, respectively shall be registered on the relevant accounts at a depository institution on the day of depositing.

(2) The claim of the intermediary in connection with the financial instruments, owed by the client, which have been subject of short sale, shall be recorded on the debit balance of the account for short sales of the client on the date of settlement of the respective transaction.

(3) The amounts under art. 33, para 1 shall reduce the credit balance of the account for short sales unless the client of short sale pays them to the investment intermediary.

(4) If the credit balance of the account for short sales of a client exceeds 150% of the amount of the debit balance, the surplus may be transferred to his account for margin purchases, if such exists in case of margin deficit and if this is agreed between the parties. In the other cases the client may dispose of the surplus at the short sales.

**Art. 44.** (Suppl. – SG, iss. 45 in 2008) The investment intermediary shall keep daily accounting for each client with an account for short sales, which shall contain at least data on:

1. (Am. – SG, iss. 45 in 2008) the current (daily) market value of the financial instruments, subject of short sale, as well as of the financial instruments subject of deposit under art. 34 para 3;

2. (Am. – SG, iss. 45 in 2008) the surplus at short sales under art. 37, para 2, respectively the deficit at short sales under art. 38;

3. (Am. – SG, iss. 45 in 2008) the number and the market value of the financial instruments, subject of short sale, whose settlement has not been executed;

4. (Canceled – SG, iss. 45 in 2008)

**Art. 45.** (Am. – SG, iss. 45 in 2008) (1) For a client, to whom an account for short sales and account for margin purchases has been opened with the investment intermediary, art. 26 para 1 shall apply accordingly.

(2) The investment intermediary shall maintain data base for each client on:

1. the accumulated value of the collateral for financial instruments, subject of short sales;

2. the total value of the initial and maintaining requirements for short sales;

3. the total value of the surplus or deficit at the short sales.

## **Chapter Five**

### **CONDITIONS AND PROCEDURE FOR LENDING OF SECURITIES**

**Art. 46.** (1) (Am. – SG, iss. 45 in 2008) The investment intermediary shall borrow, or lend financial instruments on the basis of a written contract for lending with the following minimum content:

1. (Am. – SG, iss. 45 in 2008) the capacity, in which the investment intermediary acts – as lender, or borrower for its own account or as agent of a client;

2. (Suppl. – SG, iss. 45 in 2008) the amount of the remuneration under art. 51, if such is provided for, the way and the frequency of its calculation and payment;

3. (Am. – SG, iss. 45 in 2008) the admissible kinds of collaterals and the minimum amount of the collateral for the loan of financial instruments;

4. (Am. – SG, iss. 45 in 2008) the term for the supply of the borrowed financial instruments and the collateral and the right of the borrower of the financial instruments, if such is provided, to change the collateral;

5. (Am. – SG, iss. 45 in 2008) in the cases when subject of the contract are securities - a clause that the lender of the securities loses the possibility to exercise the right to vote under the securities until they are not returned to him;

6. (Am. – SG, iss. 45 in 2008) the way and the procedure for furnishing of compensation for non-exercising of the rights attaching to the financial instruments - amount of money, equal to the paid dividend and the other payments under art. 53, para 1 and 2;

7. (Am. – SG, iss. 45 in 2008) the right of the lender of the financial instruments to use the pecuniary collateral for the loan of financial instruments and his responsibility for the losses, ensuing from this use;

8. (Am. – SG, iss. 45 in 2008) description of the way of revaluation under art. 52 and the ways for notification of the borrower of the financial instruments of the furnishing of additional collateral;

9. (Am. – SG, iss. 45 in 2008) the right of the borrower of the financial instruments to use the surplus from the collateral;

10. (Am. and suppl. – SG, iss. 45 in 2008) the grounds and the procedure for amendment and termination of the contract for lending of financial instruments;

11. (Am. – SG, iss. 45 in 2008) the rights of the lender of the financial instruments under art. 55 and the rights of the borrower under art. 56;

12. (Am. – SG, iss. 45 in 2008) the conditions and procedure for returning of the financial instruments upon request of the lender;

13. (New – SG, iss. 45 in 2008) term of the contract.

(2) (Am. – SG, iss. 45 in 2008) The contract for lending under para 1 may contain a clause that the financial instruments, subject of each loan, the collateral for it as well as the remuneration of the lender under art. 51, para 1, respectively of the borrower under art. 51, para 2, shall be determined in additional agreements.

**Art. 47.** (1) (Am. – SG, iss. 45 in 2008) The investment intermediary, which keeps accounts for financial instruments of clients, wishing to lend financial instruments, may be defined as their agent under art. 4, para 4. The contract between the client and the investment intermediary agent shall be with the following minimum content:

1. (Am. – SG, iss. 45 in 2008) the obligation of the agent of the lender to revalue daily according to the market the lent financial instruments and the received non-pecuniary collateral, as well as upon need to require additional collateral from the borrower;

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 furnishing to the lender by the borrower.

(2) (Am. – SG, iss. 45 in 2008) The investment intermediary may borrow financial instruments from a client, with whom it has concluded contract under para 1. In this case the contract for lending of financial instruments shall be signed by the client as lender and the investment intermediary as borrower.

**Art. 48.** (1) (Am. – SG, iss. 45 in 2008) The lender of financial instruments shall be obliged to transfer according to art. 4, para 1 the lent financial instruments and to order to the depository institution to enter the borrower, respectively the buyer in short sale as their owner according to the instructions of the borrower.

(2) (Am. – SG, iss. 45 in 2008) The orders to the depository institution under para 1 should contain a special indication, that the transfer of the financial instruments is in connection with lending them. The previous sentence shall also apply to the orders to the depository institution about returning of the borrowed financial instruments.

**Art. 49.** (1) (Am. – SG, iss. 45 in 2008) The loan of financial instruments may be secured with:

1. monies; or
2. (Am. – SG, iss. 45 in 2008) debt securities, issued or guaranteed by the Bulgarian state, which have market value.

(2) (Am. – SG, iss. 45 in 2008) Till the day, on which the lent financial instruments are transferred the investment intermediary borrower shall be obliged to transfer the pecuniary collateral under para 1, item 1 to an account for monies at a depository institution, pointed out by the investment intermediary lender, respectively agent of lender under art. 4, para 4. If the investment intermediary borrower acts simultaneously also as agent under art. 4, para 4 of its client, the pecuniary collateral under para 1, item 1 shall be transferred from the account of the investment intermediary, determined for its own monies, to the account of the investment intermediary, determined for monies of clients, unless otherwise provided for in the contract for lending of financial instruments.

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

(4) (Am. – SG, iss. 45 in 2008) The value of the collateral under para 1 must at any time be at least 100 percent of the market value of the borrowed financial instruments.

**Art. 50.** (1) (Am. – SG, iss. 45 in 2008) The lender of the financial instruments shall have right to use the pecuniary collateral under art. 49, para 1, item 1.

(2) (Am. – SG, iss. 45 in 2008) The lender may not use the non-pecuniary collateral under art. 49, para 1, item 2 except for satisfaction of claims, ensuing from the contract for lending of financial instruments.

(3) (Am. – SG, iss. 45 in 2008) The losses in result of unsuccessful investing or use in another way of the pecuniary collateral under para 1 shall be for the account of the lender of the financial instruments.

**Art. 51.** (1) (Am. – SG, iss. 45 in 2008) When furnishing non-pecuniary collateral under art. 49, para 1, item 2 the investment intermediary borrower shall pay to the lender of the financial instruments remuneration, if this is provided for in the contract for lending of financial instruments.

(2) (Am. – SG, iss. 45 in 2008) When it has received pecuniary collateral, the investment intermediary lender, respectively agent of the lender, shall pay to the borrower of the financial instruments remuneration, if this is provided for in the contract for lending of financial instruments.

**Art. 51a** (New – SG, iss. 45 in 2008) An investment intermediary which acts as agent for account of clients on the ground of a contract under art. 47 shall open and keep with itself separately

for each client an account, on which it shall account the lent financial instruments and the monies and/ or the financial instruments provided as collateral for the loan according art. 49.

**Art. 52.** (1) (Am. – SG, iss. 45 in 2008) The investment intermediary borrower as well as the investment intermediary lender, respectively agent of the lender, shall make day-to-day revaluation of the financial instruments, subject of contract for lending, as well as of the non-pecuniary collateral under art. 49, para 1, item 2, if such has been furnished, for the purpose of establishing the compliance of the collateral with the requirements under art. 49, para 4. The revaluation of the lent financial instruments shall be made according to market prices.

(2) (Am. – SG, iss. 45 in 2008) If the market value of the lent financial instruments rises and/or the market value of the nonpecuniary collateral under art. 49, para 1, item 2 falls so that the current value of the collateral falls below 100 percent of the current market value of the lent financial instruments, the investment intermediary borrower shall be obliged not later than the end of the following working day to transfer to the respective account of the investment intermediary lender, respectively agent of the lender, the necessary additional collateral.

(3) (Am. – SG, iss. 45 in 2008) If the market value of the lent financial instruments falls and/or the market value of the nonpecuniary collateral rises so that the current value of the collateral exceeds 100 percent of the current market value of the lent financial instruments, the investment intermediary borrower shall have right to receive the surplus of the collateral.

**Art. 53.** (1) (Am. – SG, iss. 45 in 2008) Till the termination of the contract for lending of the financial instruments the lender shall have right to receive from the investment intermediary borrower compensation in relation to the rights attaching to the lent financial instruments under the conditions and in accordance with the procedure provided for in the contract for lending of financial instruments.

(2) (Am. – SG, iss. 45 in 2008) The investment intermediary borrower shall have right to receive from the lender of the financial instruments an amount of money, equal to the claim for interest in connection with the furnished non-pecuniary collateral.

(3) The lender of securities may not exercise the voting right attaching to the lent securities until they are not returned to him.

**Art. 54.** (Am. – SG, iss. 45 in 2008) (1) The contract for lending of financial instruments shall be concluded with a term and the investment intermediary borrower shall be obliged to return also upon request the borrowed financial instruments.

(2) The investment intermediary borrower till the end of the following working day after expiration of the contract's term, or till the end of the following working day after receiving the notification whereby returning of the lent financial instruments is requested, shall give order to the depository institution to enter as owner of the lent financial instruments their lender.

(3) The contract for lending of financial instruments shall be disaffirmed by the right party if the investment intermediary borrower does not furnish additional collateral according to art. 52, para 2 or an amount of money, equal to the payments under art. 53, para 1, respectively in case the investment intermediary lender or agent of the lender does not return the surplus from the collateral according to art. 52, para 3 or does not furnish an amount of money under art.53, para 2.

**Art. 55.** (1) (Am. – SG, iss. 45 in 2008) If the investment intermediary borrower does not fulfill its obligation under art. 54, para 2 and does not return the financial instruments on time the investment intermediary lender, respectively agent of the lender, shall have right to purchase the lent financial instruments with the monies, received as collateral, respectively with the revenues from the sale of the nonpecuniary collateral.

(2) (Am. – SG, iss. 45 in 2008) In case the price of the lent financial instruments under para 1 together with the other expenses, connected with the purchase, exceeds the amount of the collateral, the investment intermediary borrower shall be obliged to pay to the lender the difference together with the agreed in the contract interest on it.

(3) (Am. – SG, iss. 45 in 2008) The investment intermediary lender, respectively agent of the lender, may use the collateral according to para 1 also for its other claims, ensuing from the contract for lending of financial instruments, including for the payments under art. 53, para 1.

(4) (Am. – SG, iss. 45 in 2008) The lender of the financial instruments shall be obliged to return to the investment intermediary borrower the remaining part of the collateral.

**Art. 56.** (1) (Am. – SG, iss. 45 in 2008) The investment intermediary lender, respectively agent of the lender, shall be obliged when the contract for lending is disaffirmed due to his fault, till the end of the following working day after receiving the notification for disaffirming of the contract to order to the respective depository institution the returning of the received collateral.

(2) (Am. – SG, iss. 45 in 2008) If the investment intermediary lender, respectively agent of the lender, does not fulfill its obligation under para 1 and does not return on time the received collateral, the investment intermediary borrower shall have right to sell the necessary number of the borrowed financial instruments and to withhold the monies from the sale in amount of the value of the collateral.

(3) (Am. – SG, iss. 45 in 2008) In case the sale price of the borrowed financial instruments under para 2, reduced with the other expenses, related to the sale, is less than the value of the collateral and the other liabilities of the lender of financial instruments, ensuing from the contract for lending, the lender of financial instruments shall be obliged to pay to the borrower the difference together with the interest on it.

(4) (Am. – SG, iss. 45 in 2008) The investment intermediary borrower shall have the rights under para 2 also for its other claims, ensuing from the contract for lending of financial instruments, including for the payments under art. 53, para 2.

(5) (Am. – SG, iss. 45 in 2008) The investment intermediary borrower shall be obliged to return to the lender the remaining part of the borrowed financial instruments.

## **Chapter Six**

### **CONDITIONS AND PROCEDURE FOR USING OF FINANCIAL INSTRUMENTS BY THE INVESTMENT INTERMEDIARY**

**(Title am. – SG, iss. 45 in 2008)**

**Art. 57.** (Am. – SG, iss. 45 in 2008) The investment intermediary shall have right to use financial instruments, accounted on accounts for margin purchases and short sales of clients according to art. 5, para 3 and art. 6, para 1 only on the basis of a concluded contract for execution of margin purchases, or short sales.

**Art. 58.** (Am. – SG, iss. 45 in 2008) (1) The client shall have right to receive from the investment intermediary compensation for non-exercising of the rights attaching to the used financial instruments, under the conditions and the procedure provided for in the contract for execution of margin purchases, or of the contract for execution of short sales.

(2) In the cases when the used financial instruments according art. 57 are securities the client may not exercise the voting right attaching to the securities, while the investment intermediary is using them.

**Art. 59.** (Suppl. and am. – SG, iss. 45 in 2008) The investment intermediary shall be obliged to return to the client the used financial instruments according to the conditions in the contract for execution of margin purchases, or for short sales, as well as in the cases when the account for margin purchases or short sales is closed.

**Chapter Seven**  
**(New – SG, iss. 45 in 2008)**  
**SYSTEM FOR INTERMEDIATION IN LENDING OF**  
**FINANCIAL INSTRUMENTS**

**Art. 59a.** (Am. – SG, iss. 45 in 2008) (1) The Central Depository shall create and administer a system for intermediation in lending of financial instruments with the purpose of securing the settlement of short sales, the lending and returning of borrowed financial instruments under the conditions and procedure of this Ordinance.

(2) The system under para 1 shall constitute data base about the financial instruments which satisfy the conditions under art. 8 para 1, or art. 9 para 1, and whose holders wished to lend them.

(3) The Central Depository shall ensure an access to the system under para 1 of investment intermediaries which for their own account or for account of their clients lend or borrow financial instruments in the cases provided for in the Ordinance.

(4) The relations between the Central Depository and the investment intermediaries in connection with the access to the system under para 1 shall be settled by a contract with equal conditions for all participants.

(5) The conditions and procedure for operating the system under para 1 and the requirements to the participants in the system shall be determined by the Rules of the Central Depository.

**Art 59b.** (New – SG, iss. 45 in 2008) (1) The investment intermediary under art. 61 para 4 which lends financial instruments for its own account, or in its capacity of an agent, with the intermediation of the Central Depository shall submit to the Central Depository information about the financial instruments it offers to lend, and the conditions on which they may be lent The information according sentence one shall contain data on the financial instruments which are lent as well as the data under art. 46 para 1 item 1, 2, 3, 4, 6, 8, 10, 12 and 13.

(2) Upon conclusion of a contract for lending of financial instruments according art. 46 with or without the intermediation of the Central Depository, the investment intermediary which borrows the financial instruments and the investment intermediary which lends the financial instruments for its own account, or in its capacity of agent, shall send counter orders for transfer of the financial instruments – subject of the contract for lending, respectively of the collateral according art. 49, to the relevant depository institution.

(3) The depository institution shall transfer the lent financial instruments from the lender's account to the borrower's account only after the borrower certifies that it has transferred on relevant account at a depository institution the collateral due under art. 49.

(4) Upon execution of the transfer of the lent financial instruments, the depository institution shall reflect in the relevant register that the transfer is in connection with the lending of the financial instruments.

**Chapter Eight**  
**(Previous Chapter Seven – SG, iss. 45 in 2008)**  
**ADMINISTRATIVE PENALTY PROVISION**

**Art. 60.** (1) (New – SG, iss. 45 in 2008) The persons who have committed violations of the ordinance as well as the persons who have admitted the committing of such violations, shall be punished according to art. 227 of the MFIA.

(2) The acts for the violations shall be drawn up by officials, authorized by the deputy chairperson of the Financial Supervision Commission in charge of Investment Activities Supervision Division, and the penal warrants shall be issued by the deputy chairperson of the Financial Supervision Commission in charge of Investment Activities Supervision Division.

(3) The establishing of the violations, the issuing, appeals and enforcement of the penal warrants shall be implemented in accordance with the procedure provided for in the Administrative Violations and Sanctions Act.

### **Additional provisions**

**§ 1.** Within the meaning of the ordinance:

1. "Free float" means the shares dispersed among persons owning directly not more than 2% of the issue. From the free float are not excluded the shares owned/ held by undertakings for collective investment and pension funds, regardless that they own directly more than 2%. The free float does not include the shares owned directly by the management and control bodies and procurators of the issuer.

2. "Market value" of a financial instrument admitted to trading on a regulated market for a definite day means the price announced by the regulated market after the closing of the trade session for that day, which is calculated by methodology developed and declared by the Regulated market (price of closing). For the financial instruments under art. 16 para 2 item 2, art. 34 para 3 item 2 and art. 49 para 1 item 2 the market value shall be determined according to § 1 item 6 letters "f" and "g" of Ordinance No. 25 from 2006 on the requirements to the activities of investment companies and contractual funds (SG, iss. 36 in 2006).

3. "Trade session" means the officially announced working hours of the regulated market during which the members and participants of the regulated market announce their orders for purchase and sale of financial instruments and conclude transactions.

### **Final provisions**

**§ 2.** In Ordinance No 1 of 2003 on the requirements to the activity of the investment intermediaries, adopted with decision No 01-H of September 15, 2003 of the Financial Supervision Commission (SG 90/03), the following amendments and supplements shall be made:

1. In art. 18, para 1, item 3 shall be amended as follows:

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

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

"(2) The investment intermediary, which has concluded a contract for management of individual portfolio of securities and/or money at its own discretion without instructions by the client, contract for execution of margin purchases or contract for execution of short sales according to the ordinance under art. 54, para 5, item 5 and under § 16, para 2, item 1 of the transitional and final provisions of the LPOS, shall at least once at the end of each month, and if no transactions have been concluded – at the end of each quarter, provide the client with a report under para 1."

**§ 3.** The ordinance is issued pursuant to § 16, para 1 of the transitional and final provisions in conjunction with art. 54, para 5, item 5, art. 75, para 5 and § 16, para 2, item 1 of the transitional and final provisions of the LPOS and is adopted with decision No 24-H of July 7, 2004 of the Financial Supervision Commission.

**§ 4.** The Financial Supervision Commission shall give instructions for the application of the ordinance.