



Session 2 RIA exercise

Excerpts of regulation to practice RIA

WG 1

Requirements to the activities of investment intermediaries

Chapter 8

Section II (Internal Control)

**ORDINANCE No. 38 OF 25 JULY, 2007 ON THE REQUIREMENTS TO THE
ACTIVITIES OF INVESTMENT INTERMEDIARIES**

In effect as of 1st November, 2007, issued by the Financial Supervision Commission
Promulgated SG, issue 67 from 17 August, 2007

Chapter Eight

INTERNAL ORGANISATION, INTERNAL CONTROL, RISK MANAGEMENT AND
INTERNAL AUDIT

Section II

Internal Control

Art. 76. (1) An investment intermediary shall have an internal control department, which operates independently and:

1. exercises an ongoing control over and assesses the adequacy and efficiency of the measures and procedures under Art. 75 para 1, as well as the actions taken for removal of the inconsistencies in the investment intermediary's operation with the requirements of the MFIA and its implementing instruments;

2. provides advice and assists the persons responsible for the performed by the investment intermediary services and activities, with the purpose of ensuring their realization in compliance with the requirements of the MFIA and its implementing instruments;

3. executes other functions, assigned to it pursuant to the Ordinance and the rules under Art. 80.

(2) The internal control shall be established and realized in accordance with the nature, scale and the complexity of the investment intermediary's activities, as well as with the type and scope of the performed investment services and activities.

(3) The officials from the internal control department must satisfy the requirements under Art. 3, item 1 - 6 from Ordinance № 7 in 2003 on the requirements which must be met by natural persons who directly execute transactions in securities and provide investment advice on securities under a contract and also the procedure for acquisition and revocation of the right to carry out such activities and to possess the required for the performance of the assigned to them functions skills, knowledge and experience.

(4) An official from the internal control department shall be present at the registered office and in any branch or office, in which contracts under Art. 24, para 1 are concluded and orders are accepted.

(5) The way of fixing the labor remuneration and all additional payments to the persons from the internal control department must not create preconditions for non-objective performance of the functions of those persons.

(6) The officials from the internal control department shall be entitled to full access to the whole needed information and to all documents, related to the exercising of the control under para 1.

(7) The members of the management and supervisory bodies of the investment intermediary and all other persons who work under a contract for the investment intermediary are under the obligation to assist the officials from the internal control department in the exercising of their functions.

(8) The head of the internal control department shall conduct an instruction of the officials from the department upon their appointment, as well as regularly, by the 15th day of the month, following every quarter. In such case the head of the internal control department shall draw up a document, whereby he/she shall verify the carrying out of the instruction.

Art. 77. (1) The head of the internal control department shall be appointed, report to and dismissed on conditions and under a procedure according the investment intermediary's basic instruments.

(2) The head of the internal control department must satisfy the requirements of Art. 3, item 1, 2, 4 - 6 of Ordinance № 7 in 2003 on the requirements which must be met by natural persons who directly execute transactions in securities and provide investment advice on securities under a contract and also the procedure for acquisition and revocation of the right to carry out such activities, to have completed higher education and not less than 3 years of experience in the field of capital markets.

(3) The person in charge of the internal control department may not be a member of the management or supervisory bodies, broker, investment adviser or some other person, to whom the operating management of the investment intermediary has been entrusted or who participates in the execution of activities or separate actions, over which control is exercised. The preceding sentence shall also apply to all officials from the internal control department.

Art. 78. (1) At the end of every business week the internal control department shall make an inspection of the accepted orders, documents, presented or drawn up in relation thereto, the confirmations to clients given under Art. 45 and the payments made, as well as of the transactions which the members of its management and control bodies, and the persons working under a contract for the investment intermediary, have concluded for their account through the investment intermediary, respectively of the provided information under Art. 17 para 2 item 2 during that week, for compliance with the provisions of the MFIA and its implementing instruments.

(2) At the end of each month the internal control department shall conduct an inspection of the operations under every managed by the investment intermediary portfolio, and the reports submitted to the clients, during the relevant month, for compliance with the provisions of the MFIA and its implementing instruments.

(3) The internal control department shall also carry out other inspections for compliance of the investment intermediary's operation with the provisions of the MFIA and its implementing instruments.

(4) In the conducting of inspections under para 1 - 3, a protocol shall be drawn up indicating the concrete contracts and orders, subject of inspection, as well as the established irregularities and the directions given according Art. 76 para 1 item 2.

(5) Within 3 business days after the inspection's carrying out, the protocol shall be submitted to the person in charge of the internal control department, who shall acquaint himself with the findings therein and approve it, or direct the performance of additional actions.

Art. 79. (1) The person in charge of the internal control department shall prepare and present to the management body, as well as to the supervisory body, if any, of the investment intermediary by the 3rd day of every month a report on the inspections carried out by the internal control department during the preceding month. To the report shall be attached the protocols of the inspections carried out.

(2) The report according para 1 shall state the irregularities established and the measures undertaken for their elimination, and the adoption of new measures by the management body shall be proposed. The report shall also contain an assessment of the internal organization and internal control system acting in the investment intermediary, including the rules under Art. 75 para 1 and Art. 80, with a view to their ability to ensure the lawful functioning of the investment intermediary and the timely establishment of performance of activity in violation of the statutory requirements, as well as proposals to the management body for the adoption of amendments to the rules under Art. 75 para 1 and Art. 80, in case that they do not ensure to a sufficient extent the fulfillment of those requirements.

(3) The investment intermediary's management body shall inform within 3 business days of receiving the report under para 1, the Commission about the irregularities established by the internal control department, described therein, and about the undertaken in relation to them measures.

Art. 80. (1) The management body of the investment intermediary shall adopt internal control rules, as well as policies and procedures for the establishment of any risk of default on the investment intermediary's obligations under the MFIA and its implementing instruments and the related risks and adequate measures and procedures for the minimization of these risks, appropriate to the pursued by the investment intermediary business.:

(2) The management body of the investment intermediary on a yearly basis, by 31st of January shall review and assess the rules, policies and procedures under para 1 with the purpose of ensuring the lawful, efficient and reliable functioning of the internal control department, and in case of deficiencies and/or need of the internal control improvement, shall adopt amendments and supplements to the rules. Regardless of the requirement of the preceding sentence, the management body shall adopt amendments and supplements to the rules, policies and procedures according to para 1 whenever the necessity of it is established.

Art. 81. (1) An investment intermediary, by decision of the management body, may not apply in its activities the requirements under Art. 76, para 5 and/or Art. 77 para 3, if they are not needed with a view to the scale and complexity of its activities and the type and scope of the performed investment services and activities and non-compliance with them does not create jeopardy for the lawful, efficient and reliable exercising of the internal control in the investment intermediary.

(2) The investment intermediary shall latest on the next business day after taking the decision under para 1 notify the deputy chairman of that decision, producing evidence for compliance with the conditions under para 1.

(3) On the basis of the notification under para 2 the deputy chairman shall make an assessment of the compliance with the conditions under para 1, and may direct in writing to the investment intermediary to continue to apply in its activities the requirements under Art. 76 para 5 and/or Art. 77 para 3 if those conditions were not complied with. Direction under the preceding sentence may be given after the receiving of the notification under para 2, or upon receiving additional data, on the basis of which the conclusion can be made that the conditions under para 1 were not complied with.