

ORDINANCE NO. 23 FROM 8 FEBRUARY, 2006
ON THE TERMS AND PROCEDURE FOR CLIENT ASSETS VALUATION

Adopted by Decision No. 50-H dated 8 February, 2006 of the Financial Supervision Commission, promulgated in the State Gazette issue No. 19 from 2 March, 2006; in effect from 2 April, 2006; am. iss. 82 from 12 October, 2007; am. and suppl. iss. 32 from 25 March, 2008.

DIVISION I

GENERAL PROVISIONS

Art. 1. (1) This ordinance shall govern the conditions and procedure for the client assets valuation with the investment intermediaries.

(2) The valuation under para 1 shall be done with the purpose of:

1. (Am. – SG, iss. 32 in 2008) calculation of the amount of the owed by the investment intermediaries annual contribution to the Investor Compensation Fund;
2. (Am. – SG, iss. 32 in 2008) determination of the amount of compensation, which the Investor Compensation Fund shall pay to the investment intermediary's clients in the cases under Art. 77b, para 1 of the Law on Public Offering of Securities (LPOS).

Art. 2. (1) (Am. – SG, iss. 32 in 2008) Under this ordinance shall be valued the financial instruments and other assets, which the investment intermediary holds, administers or manages for the account of its clients in relation to the provided by it services under Art. 5 para 2 and 3 of the Markets in Financial Instruments Act (MFIA), including the interest, dividends and other such payments, with the exception of the deposits within the meaning of § 1 item 1 of the Additional Provisions of the Bank Deposits Guarantee Act, with the investment intermediaries – banks.

(2) Client assets shall also cover assets, on which there are imposed encumbrances, or which are used as collateral.

(3) To valuation under para 1 shall not be subject the client assets of:

1. members of the management and supervisory body of the investment intermediary, as well as its procurators;
2. (Am. – SG, iss. 32 in 2008) persons, who own directly or indirectly 5 or over 5 per cent from the votes at the general meeting of the investment intermediary or may

control it, as well as the persons, belonging to the same group to which the investment intermediary also belongs, for which consolidated reports are prepared.

3. the registered auditor, that has audited the investment intermediary's annual financial statement;

4. the spouses, relatives in the direct line without limitations, in the collateral line up to the second degree inclusive, and by affinity up to the second degree inclusive of the persons under item 1, 2 and 3;

5. investment intermediaries;

6. (Am. – SG, iss. 32 in 2008) credit institutions;

7. insurers;

8. pension and social insurance funds;

9. (Am. – SG, iss. 32 in 2008) closed-end investment companies, collective investment schemes and special purpose vehicles;

10. the government and the government institutions;

11. the municipalities;

12. the Investor Compensation Fund, the Deposit Insurance Fund and the Guarantee Fund under Art. 287 of the Insurance Code;

13. (Am. – SG, iss. 82 in 2007) other professional clients within the meaning of § 1 item 9 of the Additional Provisions of the Markets in Financial Instruments Act.

Art. 3. (1) (Am. – SG, iss. 32 in 2008) The investment intermediaries must value the financial instruments and other assets of their clients on a monthly basis as of the last day of the month at market price and submit by the 10th day of each month a check-up about the client assets as of the last day of the previous month on paper and/or electronic media to the Financial Supervision Commission and the Investor Compensation Fund.

(2) Where the last day of the month is a holiday, the client assets shall be valued as from the last business day of the relevant month.

(3) (Am. – SG, iss. 32 in 2008) The check-up under para 1 shall also cover information about the moneys, owed or belonging to the investment intermediary's clients, which it holds for their account in connection with the execution of a service or activity under Art. 5, para 2 and 3 of MFIA.

DIVISION II

RULES FOR CLIENT ASSETS VALUATION

Art. 4. (Am. – SG, iss. 32 in 2008) (1) The market value of shares admitted to trading on a regulated market shall be determined at the price of closing of the regulated market as of the last day of the month for which the valuation is made, or as of the day of pronouncing the decision under Art. 77b, para 1 of the LPOS. In case that there are no concluded transactions on that day, the market value shall be determined at the price of closing of the regulated market for the nearest day from the two-month period preceding the day of sentence one.

(2) In the cases where the shares under para 1 are admitted to trading also on other regulated market, or trading with them is also carried out on other trading venue, the market value of the shares shall be determined at price of closing or another analogous indicator, announced publicly by the trading venue on which the largest volume of shares has been traded for the relevant day.

(3) The market value of bonds and other financial instruments admitted to trading on a regulated market shall be determined according para 1 and 2 if in relation to the transactions concluded with the relevant financial instrument, information is published under conditions and procedure analogous to those envisaged for the shares.

(4) The regulated markets, multilateral trading systems and systematic internalisers pursuing business on the territory of the Republic of Bulgaria shall announce on a daily basis after the completion of the trade session, in an appropriate way, information on the price at closure of the traded through their systems financial instruments admitted to trading on a regulated market as well as the traded off volumes.

(5) The market value of shares or units of collective investment schemes shall be the last announced redemption price. Where the contractual fund units have not reached the minimum required net asset value of BGN 500 000, as a market value shall be accepted the net asset value per one unit.

(6) The market value of the government securities issued by the Republic of Bulgaria shall be the price determined as the average arithmetic of the “bid” prices announced by two primary dealers on the last day of the month for which the valuation is made, or on the date when the decision under Art. 77b para 1 of LPOS is pronounced.

Art. 5. (Am. – SG, iss. 32 in 2008) Where shares have been the subject of public offering in the Republic of Bulgaria and are not admitted to trading on a regulated market, they shall be valued at the acquisition price for the period from the

acquisition to the publishing of the relevant financial statement of the company – issuer, containing the data under Art. 6 para 1 item 1.

Art. 6. (1) In case it is impossible to form the market value of the financial instruments according Art. 4, including where the financial instruments are not admitted to trading on a regulated market, the market value shall be determined as follows

1. for the shares of a public company which have been subject to public offering in the Republic of Bulgaria, or shares of a company admitted to trading on a regulated market, from the day of publishing the relevant financial statement of the company – by the method of the asset net book value (NBV), where the value per one share by this method is determined by dividing the assets as per the company's balance sheet, minus the value of the current liabilities and non-current liabilities as per balance sheet, by the number of shares, less the redeemed by the company, if the net book value is positive;

2. for the bonds – by the method of the discounted future net cash flows, the discount factor being determined by the investment intermediaries for the relevant year till 31 January and reflecting as a minimum the base interest rate of the Bulgarian National Bank at the end of the preceding year and the inflation index for the preceding year, declared by the National Statistical Institute;

3. financial instruments and other client assets, beyond those under item 1 and 2 – by generally accepted valuation methods determined in the rules under Art. 71.

(2) The method of the net book value under para 1 item 1 shall also apply in the valuation of shares and units of collective investment schemes in cases of temporary suspension of their redemption.

(3) The value of the assets, of the current and non-current liabilities of the company when applying the method of the net book value under para 1 item 1 shall be determined on the basis of the last published balance sheet.

Art. 7. (Suppl. – SG, iss. 32 in 2008) The client assets in foreign currency shall be recalculated in their BGN equivalence at the exchange rate of the Bulgarian National Bank at the last business day of the month, on which the valuation is made, respectively at the date of the decision under Art. 77b, para 1 of the LPOS.

Art. 7a. (New – SG, iss. 32 in 2008) (1) The investment intermediaries shall made valuation of the financial instruments under Art. 6 para 1 item 2 and 3 on the basis of adopted by them rules which shall contain as a minimum the following:

description of the selected method for valuation of any financial instrument, or other asset as well as rationale for its determination;

the sources of information on the basis of which the valuation is made as well as the conditions and procedure of its obtaining;

the conditions and procedure for safekeeping of the data and documents received or prepared in relation to making the valuation;

(2) The method determined in the rules under para 1 for valuation of the relevant financial instrument shall be applied consistently.

(3) The investment intermediaries shall submit at the Commission the rules under para 1 within a seven day period after their adoption, respectively after adoption of any amendments thereto.

Art. 8. (Am – SG, iss. 32 in 2008) The investment intermediaries must account for the client assets analytically for the purposes of the valuation made, and to storage the information and documents, that served for valuation of the financial instruments and the other client assets in the course of 5 years.

DIVISION III

WAY OF DETERMINING THE AMOUNT OF THE ANNUAL CONTRIBUTIONS

Art. 9. (Am – SG, iss. 32 in 2008) (1) The amount of the annual contribution for the current year, which investment intermediaries will make to the Investor Compensation Fund shall be formed as a sum of the product of the average monthly availability of cash for the preceding year and the relevant percent, determined according Art. 77m, para 3 of the LPOS, and the product of the average monthly availability of financial instruments and other assets, valued according this Ordinance for the preceding year, and the respective percent, determined according Art. 77m para 3 of the LPOS.

(2) For the credit institutions which carry out activity as investment intermediaries, the amount of the annual contribution for the current year under para 1 shall be determined on the basis of the product of the average monthly availability of the financial instruments and the other assets valued according this Ordinance, and the respective percent, determined according Art. 77m para 3 of the LPOS. From the scope of the client assets of sentence one shall be excluded the deposits within the meaning of § 1 item 1 of the Additional Provisions of the Bank Deposits Guarantee Act.

DIVISION IV

ADMINISTRATIVE AND PENAL PROVISIONS

Art. 10. (1) Any person, who commits an offence of the ordinance, as well as the person, who admits the committing of such an offence, shall be liable to a penalty under Art. 221 of the LPOS.

(2) The acts on the offences shall be drawn up by officials, authorized by the Deputy Chairperson of the Financial Supervision Commission in charge of Investment Activity Supervision Division, and the penalty warrants shall be issued by the Deputy Chairperson of the Financial Supervision Commission in charge of Investment Activity Supervision Division.

(3) The establishment of the offences, the issue, appeal against and execution of the penal warrants shall be done under the Administrative Offences and Penalties Act.

ADDITIONAL PROVISION

(Title am. – SG, iss. 32 in 2008)

§ 1. (Canceled – SG, iss. 82 in 2007; new iss. 32 in 2008) For the purposes of the Ordinance:

1. “Price of closing” of financial instruments admitted to trading on a regulated market for a given day means the price announced by the regulated market or other trading venue after the completion of the trade session for that day, which is determined by methodology developed and declared by the trading venue.

2. “Trading venue” means a regulated market, multilateral trading facility or systematic internaliser acting in the capacity of such, as well as a system outside the European Union performing such functions of regulated market or multilateral trading facility.

§ 2. (New – SG, iss. 32 in 2008) For the investment vouchers and compensatory instruments within the meaning of the Transactions with Compensatory Instruments Act, which the investment intermediaries hold, administrate or manage for the account of their clients, Art. 3 para 1 and 2, Art. 4 para 1-4, Art. 6 para 1 item 3, Art. 7a, Art. 8 and Art. 9 para 1 and 2 shall apply accordingly.

FINAL PROVISION

§ 3. (Prev. § 2 – SG, iss. 32 in 2008) (1) This Ordinance shall come into effect within a one-month period from its promulgation in State Gazette, with the exception of the provision of Art. 4 para 2, which comes into effect from the day of the Ordinance promulgation.

(2) On the day of the Ordinance coming into effect, the investment intermediaries shall present at the Financial Supervision Commission and the Fund for Compensation of Investors in Securities a check-up about the client assets at the last day of every month for the period from October, 2005 until the coming into effect of the Ordinance, reflecting the client assets amount, calculated under this Ordinance.

(3) The regulated securities market, in relation to the obligation of the investment intermediaries under paragraph two, shall announce within a period not later than 14 days before the expiration of the term under para 2 through its official bulletin and in another appropriate way information about the price under Art. 4 para 1 of the securities and other client assets for the period from August 2005 until the coming into effect of the Ordinance.

§ 4. (Prev. § 3 - SG, iss. 32 in 2008) This Ordinance has been issued on the grounds of § 16, para 1 of the Transitional and Final Provisions, in relation to Art. 77c, para 3 and Art. 77m, para 5 of the LPOS and was adopted by Decision № 50-H of the Financial Supervision Commission from 8 February, 2006.

§ 5. (Prev. § 4 - SG, iss. 32 in 2008) The Financial Supervision Commission shall give guidance on the Ordinance applying.

TRANSITIONAL AND FINAL PROVISIONS TO THE ORDINANCE ON AMENDMENT AND SUPPLEMENT TO ORDINANCE № 23 FROM 2006 ON THE TERMS AND PROCEDURE FOR CLIENT ASSETS VALUATION (SG, ISS. 32 IN 2008)

§ 10. The investment intermediaries, regulated markets and systematic internalisers shall bring their activity in compliance with the requirements of the Ordinance within three months after its coming into effect.