

**Law no. 158/2020**

**for the amendment, completion and repealing of certain legislative acts, as well as for the establishment of certain measures for the application of (EU) Regulation 2017/2.402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitization and creating a specific framework for simple, transparent and standardized securitization and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU, and Regulations (EC) no. 1060/2009 and (EU) no. 648/2012**

in force starting August 28<sup>th</sup>, 2020

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The Parliament of Romania adopts the present law.

**CHAPTER I**

**Amendment and completion of Law no. 24/2017 on issuers of financial instruments and market operations**

Art. I. - Law no. 24/2017 on issuers of financial instruments and market operations, published in the Official Gazette of Romania, Part I, no. 213 of March 29<sup>th</sup>, 2017, is being amended and supplemented shall have the following contents:

**1. Article 2 Paragraph (1), Items 9-11 are amended and shall have the following contents:**

"9. *subsidiary* - entity defined according to the provisions of Art. 3 Para. (1) Item 25 of Law no. 126/2018 on the markets for financial instruments;

10. *investment firm* - any legal person as defined in Art. 3 Para. (1) Item 26 of Law no. 126/2018;

11. *market maker* – person as defined in Art. 3 Para. (1) Item. 28 of Law no. 126/2018;"

**2. Article 2 Para. (1), Item 15 shall be repealed.**

**3. At article 2 Para. (1), Items 16 to 19 are amended and shall have the following contents:**

"16. *credit institution* – entity defined in Art. 3 Para. (1) Item 32 of Law no. 126/2018;

17. *financial instruments* – instruments provided in Art. 3 Para. (1) Item 34 of Law no. 126/2018;

18. *derivative financial instruments/derivatives* – instruments defined at Art. 3 Para. (1) Item 36 of Law no. 126/2018;

19. *money market instruments* – instrument categories as defined at Art. 3 Para. (1) Item 33 of Law no. 126/2018;"

**4. Article 2 paragraph (1), Item 21 shall be repealed.**

**5. At Article 2 Paragraph (1), Item 22 is being amended and shall have the following contents:**

"22. *trading venue* – a venue as defined in Art. 3 Para. (1) Item. 40 of Law no. 126/2018;"

**6. Article 2 Paragraph (1), Item 23 shall be repealed.**

**7. At article 2 Paragraph (1), Items 25 and 31 are amended and shall have the following contents:**

"25. *offeror or a person initiating an offer* - natural person or legal entity offering to buy securities, in the case of the public bid;

.....

31. *regulated market* – regulated market as defined according to the provisions of Art. 3 (1) Item 60 of law no. 126/2018;"

**8. Article 2 paragraph (1), Item 34 shall be repealed.**

**9. At Article 2 Paragraph (1), Items 36 and 37 are amended and shall have the following contents:**

"36. *multilateral trading system, hereinafter referred to as MTS (Ro.SMT)* – a multilateral system as defined in Art. 3 Para.(1) Item 68 of Law no. 126/2018;

37. *organized trading system, hereinafter referred to as OTS (Ro.SOT)* - a multilateral system as defined in Art. 3 Para. (1) Point 69 of Law no. 126/2018;"

**10. Article 2 Paragraph (1), Items 43 and 44 shall be repealed.**

**11. At article 2 Paragraph (1), Items 47, 48 and 50 are amended and shall have the following contents:**

"47. *algorithmic trading* - trading of financial instruments based on a computerized algorithm, as defined in Art. 3 Para. (1) Item 81 of Law no. 126/2018;

48. *high frequency trading* - a high frequency algorithmic trading technique, as defined in Art. 3 Para. (1) Item 80 of Law no. 126/2018;

.....

50. *securities* - securities as defined in Art. 3 Para. (1) Item 84 of Law no. 126/2018;"

**12. Article 2 Paragraph (1), Item 52 shall be repealed.**

**13. At Article 2, a new paragraph 10 is inserted after paragraph 9, with the following contents:**

“(10) In order to exercise the powers and competencies laid down in this law, ASF has direct and timely access to financial, fiscal, administrative information, as well as to any other information of other authorities for the proper performance of tasks, except those held or managed by the criminal investigation bodies and/or by the authorities and institutions from the national system of defense, public order and national security, as well as of the classified information according to the law, for which the access is made upon request, in accordance with specific legal rules.”

**14. Article 4 is being amended and shall have the following contents:**

“Art. 4. - (1) For the purpose of this title, in the case of a public takeover bid, issuer shall mean the legal entity issuing securities.

(2) In the case of provisions applicable to public offerings for the sale of securities, the terms and expressions used in this law have the meaning provided in Regulation (EU) 2017/1.129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published in the case of a public offer of securities or the admission of securities to trading on a regulated market and repealing Directive 2003/71/EC, hereinafter referred to as Regulation (EU) 2017/1.129, as well as in the European regulations issued in connection with Regulation (EU) 2017/1.129.”

**15. At Article 5, Paragraph (1) is being amended and shall have the following contents:**

"Art. 5. - (1) The provisions of this Title, applicable to public offerings for the sale of securities, relate to public offerings regulated by Regulation (EU) 2017/1.129, as well as by European regulations issued in connection with Regulation (EU) 2017/1.129, which shall apply accordingly."

**16. Article 5, Paragraph (2) shall be repealed.**

**17. At Article 6, Paragraph (2) is being amended and shall have the following contents:**

“(2) After its approval, the offering document must be available to the public, in accordance with ASF regulations.”

**18. Article 8 is being amended and shall have the following contents:**

"Art. 8. - (1) The approval of the prospectus, the offering document or, as the case may be, of the announcements does not guarantee and does not represent another form of appreciation of ASF regarding the opportunity, advantages or disadvantages, profit or risks that the transactions to be concluded should present by accepting the public offer subject to the approval decision or made as a result of the procedure object of the announcement. The approval decision certifies only the regularity of the prospectus/ offering document/announcement regarding the requirements of the law and of the norms adopted in its application.

(2) The provisions of the present law regarding the liability of ASF in relation to the approval of prospectuses/offering documents/announcements shall apply only in relation to the approval made by ASF according to Para. (1).

(3) By approving a prospectus, ASF performs exclusively the operations referred to in Art. 2 Letter (r) of Regulation (EU) 2017/1.129."

**19. At Article 9, Paragraph (2) is being amended and shall have the following contents:**

"(2) The offering document shall be available to the public after approval by ASF, but not later than 5 working days from the date of approval, in the form and content in which it has been approved."

**20. Article 11 is being amended and shall have the following contents:**

"Art. 11. - (1) Dissemination of marketing communications, prior to the issuance of the decision approving the offering document/prospectus, is prohibited.

(2) Any form of marketing communications which incites acceptance of the public offer, made with the presentation of the offer as benefiting from advantages or other qualities deriving from ASF decision approving the offer documentation/prospectus, constitutes misleading advertising, according to the provisions of Law no. 158/2008 on misleading advertising and comparative advertising, republished, which vitiate the transactions proven to be motivated by such a presentation."

**21. Article 12 shall be repealed.**

**22. Article 13 is being amended and shall have the following contents:**

"Art. 13. - (1) In a situation where it has approved a prospectus/offering document, ASF may order the prohibition of the offer by:

a) revocation of the approval of the prospectus/offering document, if it finds that the public offer is carried out in violation of the provisions of this law, of the regulations issued by ASF in its application, as well as in the following situations:

1. if it considers that circumstances subsequent to the approval decision lead to fundamental changes in the elements and data which motivated it; and/or

2. if the offeror informs ASF that he is withdrawing the offer, before launching the call for tender;

b) cancellation of the approval of the prospectus/offering document, if it was obtained on the basis of false or misleading information.

(2) ASF may exercise the competence provided in Para. (1) within one year from the closing of the public offer."

**23. At Article 15, Paragraph (1) is being amended and shall have the following contents:**

"Art. 15. - (1) The following persons are responsible for noncompliance with the legal provisions regarding the reality, accuracy and precision of the information included in a prospectus and any supplement thereto, in accordance with Art. 11 Para. (1) the first sentence of Regulation (EU) 2017/1.129, respectively of the information included in the offering document document and any supplement thereto, as well as in the related notice, depending on the role and responsibilities conferred by law and/or conventionally, as appropriate, the following:

a) the issuer;

b) the members of the Management Board, the directors, the members of the Supervisory Board, the directorship or any other bodies in positions related thereto of the issuer;

c) the offeror, if different from the issuer;

- d) the members of the Management Board, the directors, the members of the Supervisory Board, the directorship or any other bodies in positions related thereto of the offeror;
- e) the founders, in case of public subscription;
- f) the person requesting admission to trading, if it is different from the issuer or the offeror;
- g) the guarantor;
- h) the financial auditor/audit firm that audited the financial statements, the information of which was taken over in the prospectus and only with respect to that information;
- i) the offer intermediary or, as the case may be, the member of the responsible intermediation union;
- j) any other person, including offer intermediaries, who has accepted in the prospectus the responsibility for any information, study or evaluation inserted or provided in the prospectus. In this case, the person concerned is only responsible for the reality, accuracy and precision of the information, study or evaluation expressly indicated by it and only to the extent that the information, study or evaluation has been included in the prospectus in the form and context agreed by the responsible person."

**24. At Article 15, after Paragraph (2) two new paragraphs are inserted, Paragraphs (2<sup>1</sup>) and (2<sup>2</sup>), shall have the following contents:**

"(2<sup>1</sup>) The civil liability is not incumbent on any person solely on the basis of the summary of the prospectus in accordance with Art. 7 of Regulation (EU) 2017/1.129 or on the specific summary of an EU prospectus for growth according to the provisions of Art. 15 Para. (1) the second paragraph of the same Regulation, including a translation thereof, except in the following cases:

- a) the summary is misleading, inaccurate or contradictory in relation to the other parts of the prospectus; or
- b) the summary does not provide, in relation to the other parts of the prospectus, the essential information to help investors decide whether to invest in such securities.

(2<sup>2</sup>) The provisions of Para. (1) shall apply accordingly and in connection with the responsibility for the information included in a registration document or universal registration document, within the meaning of Art. 11 Para. (3) the first subparagraph of Regulation (EU) 2017/1.129, which shall apply accordingly."

**25. After Article 15, a new article shall be inserted, Article 15<sup>1</sup>, and shall have the following contents:**

"Art. 15<sup>1</sup>. - If an action is brought in court in Romania concerning the information contained in a prospectus which is not drawn up or made available to the public in Romanian language, the applicant investor shall bear the costs of translating the prospectus before the commencement of the legal proceedings."

**26. Article 16 is being amended and shall have the following contents:**

"Art. 16. - (1) A.S.F. is the competent authority in accordance with the provisions of Art. 31 of Regulation (EU) 2017/1.129.

(2) Without prejudice to the powers provided in Art. 2 Para. (9), which shall apply accordingly, ASF has, in order to fulfill its duties, the supervision and investigation powers provided in Art. 32

Para. (1) of Regulation (EU) 2017/1.129, exercised in accordance with the provisions of the same regulation.

(3) The jurisdiction referred to in Art. 32 Para. (1) Letter n) of Regulation (EU) 2017/1.129 is exercised by ASF directly in the case of regulated or supervised entities and/or by addressing the competent judicial authority in the case of other entities falling under the provisions of this law, in compliance with the applicable national law.

(4) ASF, as the competent authority, has access to relevant information and documents, has all supervisory and investigatory powers in order to carry out its duties and performs any operation intended to be performed in this capacity, according to Regulation (EU) 2017/1.129, European regulations issued in connection with the European regulation, as well as by this title."

**27. After Article 16 a new article shall be inserted, Article 16<sup>1</sup>, and shall have the following contents:**

"Art. 16<sup>1</sup>. - The public offer for sale is made through an intermediary or an intermediary union. Intermediary union means the association of two or more intermediaries in order to carry out the operations related to a public offer, whose responsibilities are expressly provided in the contracts concluded between the bidder and the manager of the intermediation union, respectively between the manager and the members of the intermediation union."

**28. At Article 17, Paragraphs (1) - (5) shall be repealed.**

**29. Articles 18 and 19 shall be repealed.**

**30. Article 20 is being amended and shall have the following contents:**

"Art. 20. - The content of the information to be included in the prospectuses or other documents related to the offerand operations provided for in Regulation (EU) 2017/1.129, the format for their presentation as well as, where applicable, the accompanying documents shall be provided for in Regulation (EU) 2017/1,129 and the European regulations issued in relation thereto or, as the case may be, by ASF regulations."

**31. Article 21 shall be repealed.**

**32. At Article 22, Paragraphs (1) and (2) shall be repealed.**

**33. At Article 22, Paragraph (3) is being amended and shall have the following contents:**

"(3) In the case of public offerings for the sale of securities, the right of investors to withdraw their acceptance, if they have already agreed to acquire or subscribe to securities, is exercised under the conditions and within the limits provided in the prospectus, the tenderer having the possibility to establish that the acceptance can be withdrawn only in the situations provided in Art. 8 Para. (11), Art. 17 Para. (1) Lett. a) and/or, as the case may be, Art. 23 Para. (2) - (4) of Regulation (EU) 2017/1.129."

**34. Article 24 is being amended and shall have the following contents:**

" Art. 24. - ASF shall issue regulations, in application of this Chapter, in accordance with the applicable European legislation."

**35. After Article 25, a new article shall be inserted, Article 25<sup>1</sup>, and shall have the following contents:**

"Art. 25<sup>1</sup>. - Without prejudice to the powers provided in Art. 2 Para. (9), which shall apply accordingly, in order to carry out its duties under this Title, ASF may, in connection with a public takeover bid:

a) request the offeror or other persons involved in the offering to insert additional information in the offering document if investor protection so requires;

b) request the issuer, the offeror or other persons involved in the offering and the persons who control them or are controlled by them to provide information and documents;

c) request the auditors and the management of the issuer, the offeror or other persons involved in the offering, as well as the intermediaries who mediate the public offering to provide information;

d) order the suspension of the running of a offering, for a period of maximum 10 consecutive working days, when it has solid indications regarding the violation of the provisions of this title and of the regulations issued by ASF in its application;

e) order the prohibition or suspension of the dissemination of advertisements or request the offeror or intermediaries involved in the offering to cease or suspend advertisements, for a period not exceeding 10 consecutive working days, each time it has solid indications of violation the provisions of this title and the regulations issued by ASF in its application;

f) prohibit a public purchase offer if there is violation or has good reason to suspect a violation of this title and the regulations issued by ASF in its application;

g) order the suspension at any time or request the relevant regulated markets, SMT or SOT to suspend trading on a regulated market or within an SMT or SOT for a period not exceeding 10 consecutive working days when it has strong indications of a breach to the provisions of this title and the regulations issued by ASF in its application;

h) prohibit trading on a regulated market, within a SMT or within a SOT if there are solid indications regarding the violation of the provisions of this title and of the regulations issued by ASF in its application;

i) make public that an issuer, an offeror or another person involved in the offering does not comply with its obligations;

j) present or request to the issuer the disclosure of all important information that may influence the valuation of the securities object of the offer, admitted to trading or traded on a trading venue, in order to guarantee the protection of investors or the proper functioning of the market;

k) suspend or require the regulated market, SMT or SOT to suspend the trading of securities if, in his opinion, the issuer's situation is such that the trading would harm the interests of investors;

l) carry out on-site inspections on the territory of Romania in accordance with the applicable national legislation, in order to ensure the observance of the provisions of this title and of the regulations issued in its application. ASF exercises this competence directly in the case of regulated or supervised entities and/or in cooperation with other authorities, in the case of other entities that fall under the provisions of this law."

**36. After Article 26, three new articles are inserted, Articles 26<sup>1</sup>-26<sup>3</sup>, and shall have the following contents:**

"Art. 26<sup>1</sup>. - (1) The public offering notice may be issued after the issuance of the decision approving the offering document by ASF and must be published in accordance with the regulations issued by ASF.

(2) The public offering notice contains information on how the offering document is made available to the public.

(3) The offering document is considered to be available to the public in one of the following situations:

a) it is published in one or more paper or on-line newspapers, in accordance with the regulations issued by ASF;

b) may be obtained by a potential investor free of charge, on paper, at the premises of the offeror and the intermediary of the respective offeror or at the premises of the market operator on which the respective securities are traded;

c) it is published in electronic format on the website of the offeror or, as the case may be, of the offering intermediary;

d) it is published in electronic format on the website of the market operator on which the respective securities are traded;

e) it is published in electronic format on the website of ASF, in case it has decided to offer this service.

(4) The offeror who publishes the offering document, according to the means provided in Para. (3) Letter a) or b), has the obligation to publish the offer document in electronic format according to the provisions of Para. (3) Letter c).

(5) If the offering document has been made available to the public in electronic format, a paper copy must be provided, at the request of any investor, free of charge by the offeror or the offering intermediary.

Art. 26<sup>2</sup>. - (1) Any marketing communication that refers to a public offer for the purchase of securities is made in compliance with the provisions of this article.

(2) The marketing communication shall announce that an offer document has been or is being published and indicate the place and date from/from which the investors could or can procure the respective offer document.

(3) The information provided in the marketing communications must be correct, complete and accurate, and the information must be in accordance with those specified in the offering document.

(4) Any information disseminated orally or in writing, including in electronic format, regarding the public offering, even if it is not advertising, must be in accordance with the information provided in the offer document.

(5) If the offeror communicates orally or in writing important information related to the public offering of securities, this information is included in the offeror document or in an amendment to the offering document, in accordance with the provisions of Art. 26<sup>3</sup>.

(6) ASF verifies if the marketing activities regarding the public offering are in accordance with the provisions of Para. (2) - (5).



Art. 26<sup>3</sup>. - (1) Any significant new fact or any material error or material inaccuracy regarding the information contained in the offering document, which is likely to influence the valuation of securities and occurs or is found between the approval of the offering document and the closing of the offer validity period public procurement, shall be mentioned in an amendment to the tender document without delay.

(2) The amendment provided in Para. (1) is approved by ASF within a maximum of 7 working days from the date of its submission, following the same procedure applicable in case of approval of the offer document and the related announcement and is brought to public notice under the same conditions as the offering document, as well as the related advertisement were made known to the public.

(3) Investors who have agreed to subscribe to the public purchase offer before the amendment is published may withdraw their acceptance within two working days of the publication of the amendment, in accordance with ASF regulations."

**37. At Article 42, Paragraphs (7) and (8) are being amended and shall have the following contents:**

"(7) The price established according to the provisions of Para. (4) or (5) shall be made known to the public through the market on which it is traded, on the website of ASF and in two financial newspapers of national circulation, starting with the date of publication of the announcement.

(8) Following the completion of the procedure for exercising the right provided in Para. (1), the securities that have been the object of the public offer are withdrawn from trading."

**38. Article 47 is being amended and shall have the following contents:**

"Art. 47. - (1) The admission to trading of securities on a regulated market is carried out in compliance with the provisions of Regulation (EU) 2017/1.129, as well as the European regulations issued in connection with it, which apply accordingly.

(2) The provisions of chap. I and II of Title II shall apply mutatis mutandis to admission to trading on a regulated market.

(3) ASF issues regulations on admission to trading on a regulated market, in accordance with the applicable European legislation."

**39. At Article 65 Paragraph (2), Letter D) is being amended and shall have the following contents:**

"d) the full report of the financial auditor/audit firm, if the financial statements have been audited/reviewed. If the financial statements have not been audited or reviewed by the financial auditor/audit firm, the issuer expressly states this in the half-yearly report."

**40. Article 82 shall be repealed.**

**41. At Title III, the title of chapter V is being amended and shall have the following contents:**

## **„CHAPTER V**

### **Special provisions regarding the corporate events of issuers whose securities are admitted to trading on a regulated market, as well as regarding the exercise of certain rights of shareholders and their long-term involvement in these issuers"**

**42. At Title III, after the title of chapter V a new section is inserted, Section 1, containing articles 84-91 and shall have the following contents:**

#### *„SECTION 1*

*Provisions regarding corporate events of issuers whose securities are admitted to trading on a regulated market "*

**43. At Article 85, after Paragraph (2), a new paragraph is inserted, Paragraph (2<sup>1</sup>), and shall have the following contents:**

"(2<sup>1</sup>) The Management Board /Board of Directors may be delegated, by resolution of the Extraordinary General Shareholders Meeting, in addition to the power to decide on the share capital increase, also the power to suspend the pre-emption right within that operation, subject to the quorum and majority conditions provided in Art. 87. In case of suspension of the pre-emption right by the Management Board /Board of Directors, the provisions of Art. 87 Para. (5) shall apply accordingly"

**44. At Article 90, after Paragraph (4), seven new paragraphs are inserted, Paragraphs (5)-(11), and shall have the following contents:**

"(5) In the case of the corporate events provided in Para. (4), the statutory body of the issuer establishes the price of the financial instrument at which the fractions of financial instruments are offset, which cannot be lower than the highest value between the market value and the nominal value of the respective financial instrument. The market value of the respective financial instrument represents the average trading value related to the last 12 months prior to the convening of the meeting of the statutory body, adjusted accordingly to the changes generated by possible corporate events during this period, if applicable. In the case of corporate events in which, following the application of the algorithm specific to the respective event, results fractions of shares, the amounts due to the shareholders as a result of the compensation of the fractions of shares are not prescriptive, the shares having ownership.

(6) The operation of consolidating the nominal value of a share is approved by the extraordinary general shareholders meeting under the conditions provided in Art. 115 Para. (1) and Para. (2) the second thesis of the Companies' Law no. 31/1990, republished, with subsequent amendments and completions, which are applied accordingly in the case of consolidation of the nominal value, as well as at Art. 115 Para. (3) of Law no. 31/1990, republished, subsequent amendments and completions. For the purposes of these provisions, the consolidation of the nominal value of a share means the operation by which the nominal value is increased, simultaneously with the proportional reduction of the total number of shares issued by the respective company. In the case of an operation of consolidation of the nominal value of a share, in which, following the application of the specific algorithm, fractions of financial instruments result, their compensation is made with the application of

the rounding provided in Para. (4), at the price established by the extraordinary general meeting of shareholders, in accordance with the provisions of Para. (5).

(7) The number of shares resulting from the calculation as an effect of the consolidation of the nominal value of the shares is equal to the number of shares issued prior to the consolidation, divided by the value of the ratio between the consolidated nominal value and the nominal value prior to the consolidation.

(8) Under the circumstances of acquisition of own shares by the issuer as an effect of the rounding provided in Para. (6), the consolidation of the nominal value of the shares is allowed only under the condition of fulfilling the requirements provided in Art. 103<sup>1</sup> Para. (1) Letter b) and d) of Law no. 31/1990, republished, subsequent amendments and completions.

(9) In the event that the number of own shares that would be acquired by the issuer according to Para. (8) would be a fractional number, the rounding is done to the next higher whole, and the increase of the share capital of the company corresponding to this rounding is made in favor of the issuer, by incorporating reserves in the amount equal to the nominal value of the rounding, calculated on the basis of the consolidated nominal value of a share, in compliance with the provisions of Art. 210 Para. (2) of Law no. 31/1990, republished, subsequent amendments and completions.

(10) The Extraordinary General Shareholders Meeting convened for the application of the provisions of Para. (6) is competent to adopt, in addition to approving the consolidation of the nominal value of the shares, distinct points for the following:

a) the approval of the proposal of the Management Board, respectively of the Directorship of the company regarding the value of a consolidated share to be used for the calculation of the value of the compensations, in applying the provisions of Para. (6);

b) information on the amounts to be paid to shareholders according to Para. (6), the approval of the payment terms and conditions, as well as the approval for the calculation instructions to be made available to the shareholders;

c) mandating the issuer's Management Board /Board of Directors to amend the issuer's Articles of Incorporation as an effect of consolidating the nominal value of the shares and to perform all operations necessary for the registration and amendment of the Articles of Incorporation in the Trade Registry.

(11) The issuer shall pay the amounts to be paid to the shareholders according to Para. (6) within maximum 4 months from the EGMS date approving the consolidation of the nominal value of the shares. "

**45. After Article 91 is inserted the title of a new section, Section 2, and shall have the following contents:**

*„SECTION 2*

*Provisions regarding the exercise of certain rights of shareholders, as well as their long-term involvement in issuers whose shares are admitted to trading on a regulated market "*

**46. After Article 91, at Section 2 Chapter V of Title III, twelve new articles are inserted, Articles 91<sup>1</sup>-91<sup>12</sup>, and shall have the following contents:**

"Art. 91<sup>1</sup>. - (1) This section establishes the conditions for exercising certain rights of shareholders, related to voting rights shares, within the general meetings of issuers constituted according to Law no. 31/1990, republished, with subsequent amendments and completions, which have their registered office in Romania and whose shares are admitted to trading on a regulated market located or operating in a Member State, as well as specific requirements to encourage shareholder involvement, especially in the long term. These specific requirements apply to the identification of shareholders, transmission of information, facilitation of the exercise of shareholders' rights, transparency of institutional investors, asset managers and voting advisers, remuneration of managers and related party transactions.

(2) The aspects regulated by this section apply in case the issuer has its registered office in Romania. Any reference to the applicable law shall be construed as references to the national law applicable to that field. The provisions of Art. 91<sup>9</sup>-91<sup>12</sup> are applicable shall have the following contents:

a) for institutional investors and asset managers, if Romania is the home Member State, as defined in any sectoral legislative act of the European Union directly applicable on the territory of Romania or in any national sectoral legislative act transposing European directives;

b) for voting advisers, shall have the following contents:

(i) if the voting adviser has its registered office in Romania; or

(ii) if the voting adviser has its registered office neither in Romania nor in another Member State, if the voting advisor has its head office in Romania; or

(iii) if the voting adviser has neither the registered office nor the principal place of business in Romania or in another Member State, if the voting advisor has a registered office in Romania.

(3) The provisions of this section, except for the provisions provided in Art. 91<sup>9</sup>-91<sup>12</sup> which are applicable in case of all types of UCITS - Undertaking for Collective Investment in Transferable Securities (Ro. OPCVM) and AIF (Ro. FIA), are not applicable to issuers established according to Law no. 31/1990, republished, subsequent amendments and completions, which are defined at Art. 2 Para. (1) of the Emergency Government Ordinance no. 32/2012 on collective investment undertakings in investment securities and investment management companies, as well as for amending and supplementing Law no. 297/2004 regarding the capital market, approved with amendments and completions by Law no. 10/2015, subsequent amendments and completions, hereinafter referred to as *EGO no. 32/2012*, or FIA defined in Art. 3 Item 20 of Law no. 74/2015 regarding the administrators of alternative investment funds, subsequent amendments and completions, hereinafter referred to as *Law no. 74/2015*, and which are of the open type according to Art. 1 Item 2 of the Delegated Regulation (EU) 694/2014 of 17 December 2013 of the Commission supplementing Directive 2011/61/EU of the European Parliament and of the Council as regards the technical regulatory standards establishing the types of managers of alternative investments funds.

(4) This section and the ASF regulations issued in its application do not apply in the case of using the instruments, powers and resolution mechanisms provided by Law no. 312/2015 on the recovery and resolution of credit institutions and investment firms, as well as for the amendment and completion of some normative acts in the financial field.

(5) The provisions of Art. 91<sup>3</sup>-91<sup>8</sup> apply to intermediaries insofar as they provide services to shareholders or other intermediaries in respect of the shares of issuers having their registered office in Romania and whose shares are admitted to trading on a regulated market located or operating in a Member State.

(6) The provisions of Art. 91<sup>9</sup>-91<sup>12</sup> apply to:

- a) institutional investors, insofar as they invest directly or through an asset manager in shares traded on a regulated market;
- b) asset managers, insofar as they invest in such shares on behalf of investors;
- c) voting advisers, insofar as they provide services to shareholders in respect of the shares of issuers which have their registered office in a Member State and whose shares are admitted to trading on a regulated market situated or operating in a Member State.

(7) The provisions of this section are without prejudice to the provisions of sectoral legislative acts of the European Union directly applicable in Romania or of national sectoral legislative acts transposing European directives, which regulate specific types of issuers or specific types of entities.

(8) For the purposes of this section, by sectoral legislative acts of the European Union directly applicable on the territory of Romania, respectively national sectoral legislative acts are understood the legislative acts that regulate specific fields of activity, such as those regarding credit institutions, investment firms, investment management companies, the administrators of alternative investment funds, the insurance and reinsurance companies and the occupational pension funds, subject to the provisions of Law no. 1/2020 on occupational pensions.

(9) If this law provides specific rules or adds requirements compared to the provisions of Para. (7), those provisions shall apply in conjunction with the provisions of this section.

(10) This Section shall apply in compliance with the provisions of the Implementing Regulation (EU) 2018/1.212 of 3 September 2018 of the Commission of laying down the minimum requirements for the implementation of Directive 2007/36/EC of the European Parliament and of the Council with regard to the identification of shareholders, transmission of information and facilitation of the exercise of shareholders' rights.

Art. 91<sup>2</sup>. - The terms and expressions used in this section have the following meanings, unless expressly provided otherwise in this section:

a) *asset manager* - an investment firm that provides portfolio management services for investors, an AIFM – Alternative Investment Fund Manager (Ro. AFIA), as defined in Art. 3 Item 2 of Law no. 74/2015, which does not fall under the provisions of Art. 2 of the respective law or an management company as defined in Art. 4 Para. (1) of GEO no. 32/2012 or an investment company authorized in accordance with EGO no. 32/2012, provided that it has not designated for its administration an investment management company authorized under EGO no. 32/2012;

b) *manager* - any member of the Management Board, as well as any Director, in the case of the unitary management system, respectively any member of the Supervisory Board, as well as of the Directorate, in the case of the dual management system, according to Law no. 31/1990, republished, subsequent amendments and completions, including in all cases in which he was appointed, the Director General and, if this position exists, the Deputy Director General;

c) *voting adviser* - a legal entity that analyzes, professionally and commercially, the public communications of issuers and, if relevant, other information on issuers whose securities are admitted

to trading on a regulated market in order to inform investors about their voting decisions providing research, advice or voting recommendations related to the exercise of the voting rights;

d) *intermediary* - a person, such as an investment firm, a credit institution, as defined in Art. 4 Para. (1) Item 1 of Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) 648/2012 and a central depository, as defined in Art. 2 Para. (1) Item 1 of Regulation (EU) 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving the settlement of securities in the European Union and on the central depository of securities and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) 236/2012, which provide services safekeeping and administration of shares or for keeping securities accounts on behalf of the shareholders or other persons;

e) *institutional investor*:

(i) an institution that carries out life insurance activities, as provided in Art. 2 Para. (6) of Law no. 237/2015 on the authorization and supervision of the insurance and reinsurance activity, subsequent amendments and completions, as well as reinsurance operations, as defined in Art. 1 Para. (2) Item 44 of the same law, provided that the respective activities include life insurance obligations, and which is not excluded under the respective law;

(ii) an institution for the provision of occupational pensions subject to the provisions of Law no. 1/2020, in accordance with Art. 2 of the respective law;

f) *shareholder identity information* - information that allows the establishment of a shareholder's identity, including at least the following information:

(i) name and contact details of the shareholder, including full address and, if available, e-mail address and, if the shareholder is a legal entity, his registration number or, if not available, his unique identification number, such as the identifier of the legal entity;

(ii) number of shares held; and

(iii) only to the extent required by the issuer, one or more of the following details: the categories or classes of those shares or the date from which the shares are held;

g) *affiliated party* - has the meaning set out in the international accounting standards adopted in accordance with Regulation (EC) no 1.606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards.

Art. 91<sup>3</sup>. - (1) The issuers have the right to identify shareholders.

(2) At the request of the issuer or, as the case may be, of a third party designated by the issuer, the intermediaries shall communicate to the issuer, without delay, the information regarding the identity of the shareholder.

(3) If there are several intermediaries in a chain of intermediaries, the request of the issuer or of a third party designated by the issuer shall be transmitted between the intermediaries without delay.

(4) The information regarding the identity of the shareholder is transmitted directly to the issuer or to the third party designated by the issuer, without delay, by the intermediary who holds the requested information. The issuer may obtain information on the identity of shareholders from any intermediary in the chain that holds the information.

(5) The issuer may require the central depository or other intermediary or service provider to collect information on the identity of shareholders, including from intermediaries in the chain of intermediaries, and to submit the information to the issuer.

(6) At the request of the issuer or of a third party designated by it, the intermediary shall communicate to the issuer, without delay, information on the next intermediary in the chain of intermediaries.

(7) The shareholders personal data shall be processed under this Article to enable the issuer to identify its existing shareholders, to communicate with them directly in order to facilitate the exercise of shareholders' rights and their involvement within the issuer.

(8) Without prejudice to any longer storage period provided for by any sectoral legislative act of the European Union directly applicable in Romania or by any national sectoral legislative act transposing European directives, the issuers and intermediaries shall not store the personal data of shareholders who have been transmitted in accordance with this Article for the purposes specified therein, for a period not exceeding 12 months from the date on which they became aware that the person concerned has ceased to be a shareholder.

(9) The provisions of Para. (7) shall apply without prejudice to the possibility of processing, by the issuer and/or intermediaries, the personal data of persons who have ceased to be shareholders, for other purposes, according to the regulations in force, such as for the ensurance of adequate records to enable the history of transfers of ownership of the issuer's shares to be kept, to maintain the necessary records of general meetings, including the validity of its resolutions, to fulfill the issuer's obligations with respect to the issuer's payment of dividends or any other amounts to be paid to former shareholders, taking into account, where applicable, the limitation periods provided for by the legislation in force.

(10) The Issuers have the right to correct/ update incomplete or inaccurate information regarding the identity of their shareholders.

(11) Disclosure by an intermediary of information relating to the identity of shareholders in accordance with this Article shall not be considered a violation of restrictions on the disclosure of information imposed by contract or by any legal or administrative act.

Art. 91<sup>4</sup>. - (1) Intermediaries shall convey/ forward, without delay, from the issuer to the shareholder or to a third party designated by the shareholder, the following information:

a) information that the issuer has the obligation to provide to the shareholder in order to allow him to exercise his rights related to his shares and which are intended for all shareholders with shares in that category; or

b) if the information provided in letter a) is made available to shareholders on the issuer's website, a note indicating the place within the issuer's website where this information can be found.

(2) Issuers shall provide intermediaries with the information provided in Para. (1) Letter a) or to the note provided in Para. (1) Letter b), in a standardized and timely format.

(3) The information provided in Para. (1) Lett. a) or to the note provided in Para. (1) Lett. b) shall not be transmitted or provided in accordance with Para. (1) and (2) when the issuers send the respective information or note directly to all shareholders or to a third party designated by the shareholder.

(4) The intermediaries shall transmit to the issuer, without delay, and according to the instructions received from the shareholders, the information received from them related to the exercise of the rights deriving from their shares.

(5) If there are several intermediaries in a chain of intermediaries, the information provided in Para. (1) and (4) shall be transmitted between intermediaries, without delay, unless the information may be transmitted directly by intermediaries to the issuer, shareholder or a third party designated by the shareholder.

(6) In the case of holdings which are not held in accounts managed by an intermediary who is a participant in the central depository system, access to information will be made according to the rules of the central depository, in compliance with legal provisions.

Art. 91<sup>5</sup>. - (1) The intermediaries facilitate the exercise of the rights by the shareholder, including the right to participate in the general meetings and to vote in them, by carrying out one of the following actions:

a) the intermediary shall take the necessary measures to enable the shareholder or a third party designated by the shareholder to exercise their rights;

b) the intermediary exercises the rights deriving from the shares on the basis of the shareholder's explicit authorization and instructions and for the benefit of the latter.

(2) If the votes are cast electronically, the issuer shall take the necessary steps to send an electronic confirmation of receipt of the votes to the person who cast the vote.

(3) After the general meeting, the shareholder or a third party appointed by the shareholder may obtain from the issuer, at least upon request, a confirmation that the votes have been validly counted and recorded by the issuer, unless this information is already available at their disposal. The request for such confirmation may be made within one month from the date of the vote.

(4) If the intermediary receives the confirmation provided in Para. (2) or (3), he shall deliver it, without delay, to the shareholder or to a third party designated by the shareholder. If there are several intermediaries in the chain of intermediaries, the confirmation shall be sent between the intermediaries, without delay, unless the confirmation can be sent directly to the shareholder or to the third party designated by the shareholder.

(5) In the case of holdings which are not held in accounts managed by an intermediary who is a participant in the central depository system, the facilitation of the exercise of rights shall be carried out according to the rules of the central depository, in compliance with the legal provisions.

Art. 91<sup>6</sup>. - (1) The intermediaries publish the fees applicable for the services provided pursuant to Art. 91<sup>3</sup>-91<sup>5</sup> and Art. 91<sup>7</sup>, separately for each service.

(2) Any fees that may be charged by an intermediary to shareholders, issuers and other intermediaries are non-discriminatory and proportional to the actual costs incurred in providing the services.

(3) The differences between fees levied for the exercise of rights at national level and those charged for the cross-border exercise of rights are allowed only if they are duly justified and reflect the variation in the actual costs incurred in providing the services.



Art. 91<sup>7</sup>. - The provisions of Art. 91<sup>3</sup>-91<sup>6</sup> also apply to intermediaries that have neither the registered office nor the main headquarters in the European Union, in case they provide the services provided in Art. 91<sup>1</sup> Para. (5).

Art. 91<sup>8</sup>. - ASF informs the European Commission about the substantial practical difficulties encountered in applying the provisions of Art. 91<sup>3</sup>-91<sup>7</sup> or regarding the non-compliance with the provisions of Art. 91<sup>3</sup>-91<sup>7</sup> by intermediaries from the European Union or from a third country, as soon as possible after the finding.

Art. 91<sup>9</sup>. - (1) Institutional investors and asset managers comply with either the requirements set out in Para. (2) - (4), or make public a clear and reasoned justification of the decision not to comply with one or more of the requirements of Para. (2) - (4).

(2) Institutional investors and asset managers develop and publish an engagement policy that describes how they integrate shareholder involvement into their investment strategies.

(3) The policy provided in Para. (2) describes how institutional investors and asset managers:

a) monitor relevant issues related to the issuers invested in, including strategy, financial and non-financial performance and risks, capital structure, social and environmental impact and corporate governance;

b) have dialogues with the issuers invested in;

c) exercise voting rights and other rights related to the shares;

d) cooperate with other shareholders, communicate with relevant stakeholders from the issuers invested in;

e) manage real and potential conflicts of interest related to their involvement.

(4) Institutional investors and asset managers publish annually information on how their involvement policy has been implemented, including an overview of voting behavior, an explanation of the most significant votes and the use of voting advisory services. They publish information on how they expressed their votes in the general meetings of the issuers in which they hold shares, except for the votes that were expressed secretly according to the legal provisions. This information may exclude votes that are insignificant in view of the matters subject to the vote or the shareholder's participation in the issuer.

(5) The information provided in Para. (4) shall be included in the annual report published by the institutional investor or asset manager according to the sectoral legislative acts of the European Union or the national ones. In the event that an annual report is not published according to the mentioned legislation, the information shall be published separately, within maximum 120 days from the end of the previous financial year.

(6) The information provided in Para. (1) - (4) is available free of charge on the website of the institutional investor or asset manager. If an asset manager implements the involvement policy, including voting, on behalf of an institutional investor, the institutional investor shall state where the asset manager published the information about the respective vote.

(7) The norms regarding the conflicts of interests applicable to institutional investors and asset managers, including those of Art. 14 of Law no. 74/2015, Art. 15 Letter e), Art. 29-32 and Art. 34 Para. (2) Lett. c) of EGO no. 32/2012 and of the relevant provisions of the European regulations or, as the case may be, of ASF regulations issued for their application, such as of Art. 78-80 of Law no. 126/2018, also apply to the involvement activities.

Art. 91<sup>10</sup>. - (1) Institutional investors shall publish in the annual report how the main elements of their capital investment strategy are consistent with the profile and duration of their liabilities, in particular long-term liabilities, and how they contribute to the medium- and long-term performance of their assets.

(2) If an asset manager invests on behalf of an institutional investor, either on a discretionary mandate or through a collective investment undertaking, the institutional investor shall disclose the following information regarding its agreement with the asset manager:

a) the manner in which the agreement with the asset manager stimulates the asset manager to align its investment strategy and decisions with the profile and duration of the institutional investor's debts, especially long-term debts;

b) the manner in which the agreement encourages the asset manager to make investment decisions based on medium- and long-term financial and non-financial performance assessments of the issuer in which it has invested and to engage in the activity of the issuers invested in, in order to improve their performance on medium and long term;

c) the manner in which the asset manager's performance evaluation method and period and the remuneration for asset management services are consistent with the profile and duration of the institutional investor's liabilities, especially long-term liabilities, and shall take account of absolute long-term performance;

d) the manner in which the institutional investor monitors the costs related to the trading volume of the portfolio, borne by the asset manager and how it defines and monitors the trading volume target of the portfolio or the range target thereof;

e) the duration of the agreement with the asset manager.

(3) If the agreement with the asset manager does not contain one or more of the elements provided in Para. (2), the institutional investor provides a clear and reasoned justification of this fact in the annual report provided in Para. (1).

(4) The information provided in Para. (1) - (3) are available, free of charge, on the website of the institutional investor and are updated annually, unless there are no significant changes. Institutional investors regulated by Law no. 237/2015, subsequent amendments and completions, may include this information in their report on solvency and financial situation provided in Art. 39 of this law. The institutional investors subject to Law no. 1/2020 may include this information in the annual reports provided by the respective law.

Art. 91<sup>11</sup>. - (1) The asset managers make available annually to the institutional investor with whom they concluded the agreements provided in Art. 91<sup>10</sup>, information on how the investment strategy and its application comply with the agreement and contribute to the medium and long-term performance of the assets of the institutional investor or of the fund.

(2) The information referred to in Para. (1) include:

a) information on the significant medium- and long-term substantial risks associated with the investments, the structure of the portfolio, the trading volume and the costs related to the trading volume of the portfolio, the use of voting advisers within their involvement activities and their securities lending policy and its implementation in order to carry out its involvement activities, where appropriate, in particular at the general meeting of issuers in which it has invested;

b) whether investment decisions are made on the basis of assessments of the medium and long-term performance of the issuer in which the investment is made, including non-financial performance and, if so, the manner in which those decisions are made;

c) whether conflicts of interest have arisen in connection with the involvement activities and, if so, what they are, and at the same time, which is the manner they have been solved by the asset managers.

(3) The information provided in Para. (1) and (2) shall be made available together with the annual report provided in Art. 92 of EGO no. 32/2012 or in Art. 21 of Law no. 74/2015 or in the periodical communications provided in Art. 82 Para. (2)-(7) of Law no. 126/2018. If the information disclosed pursuant to Para. (1) and (2) are already available to the public, the asset manager does not have to provide them directly to the institutional investor.

Art. 91<sup>12</sup>. - (1) The voting advisers publish the code of conduct data they apply and report on its application.

(2) In the event that voting advisers do not apply a code of conduct, they shall provide a clear and reasoned justification for this decision.

(3) If they fail to comply with any of the recommendations of the code of conduct in question, the voting advisers shall declare which parts have not been complied with, provide explanations for their decision and indicate, where appropriate, the alternative measures taken.

(4) The information provided in Para. (1)-(3) shall be made available to the public, free of charge, on the websites of voting advisers and shall be updated annually.

(5) In order to adequately inform clients about the accuracy and reliability of their activities, the voting advisers shall publish annually at least the following information in relation to their research, counselling and voting recommendations:

a) the essential characteristics of the methodologies and models they apply;

b) the main sources of information they use;

c) the procedures established to ensure the quality of research, counselling and voting recommendations, as well as the qualifications of the staff involved;

d) if and, if so, how they take into account the national market conditions, the national legislative and regulatory framework, as well as the issuer-specific conditions;

e) the essential characteristics of the voting policies applied for each market;

f) if they maintain a dialogue with the issuers subject to their research, counselling or voting recommendations and with the issuer's stakeholders and, if so, the extent and nature thereof;

g) the policy on preventing and managing potential conflicts of interest.

(6) The information provided in Para. (5) shall be made available to the public on the websites of the voting advisers and shall remain available free of charge for at least 3 years from the date of publication. The information does not have to be disclosed separately if it is available within the information published pursuant to Para. (1)-(4).

(7) The voting advisers shall identify and disclose without delay to their clients any existing or potential conflict of interest or any existing or potential business relationship that may influence the conduct of research, counselling or voting recommendations and the steps they have taken to eliminate, reduce or manage the existing or potential conflict of interest.

(8) This article shall also apply to voting advisers who have neither their registered office nor their principal place of business in the European Union, but who carry out their activities through a registered office located in Romania."

**47. Article 92 is being amended and shall have the following contents:**

"Art. 92. - (1) The Board of Administration or the Board of Directors, as the case may be, convenes the general meeting within the term provided in Art. 117 Para. (2) of Law no. 31/1990, republished, subsequent amendments and completions.

(2) The term provided in Para. (1) is not applicable for the second or the next convening of the general meeting determined by the failure to fulfil the quorum necessary for the meeting convened for the first time, provided that:

- a) the provisions of this article have been complied with on the occasion of the first convening;
- b) no new Item has been added to the agenda;
- c) at least 10 days between the final convening and the date of the general meeting has passed.

(3) One or more shareholders representing, individually or collectively, at least 5% of the share capital has/have the right to:

- a) introduce Items on the agenda of the general meeting, provided that each Item be attached by a substantiation or a draft decision proposed to be adopted by the general meeting;
- b) submit draft resolutions for Items included or proposed to be included on the Agenda of the general meeting.

(4) The rights provided in Para. (3) may be exercised only in writing, the proposals formulated shall be submitted by courier services or by electronic means.

(5) The shareholders may exercise the rights provided in Para. (3) within 15 days as of the convening notice publishing date.

(6) In case of exercising the right provided in Para. (3) Letter a) determines the amendment of the Agenda of the general meeting already communicated to the shareholders, the company will make available a revised agenda, using the same procedure as the one used for the previous agenda, before the reference date of the general meeting of shareholders, as defined by ASF regulations, as well as in compliance with the term provided in Art. 1171 Para. (3) of Law no. 31/1990, republished, subsequent amendments and completions, so as to allow the other shareholders to appoint a representative or, if necessary, to vote by correspondence.

(7) Access of the shareholders entitled to participate, on the reference date, in the General Shareholders Meeting is allowed by the simple proof of their identity, made, in the case of shareholders natural persons, with their identity document or, in the case of legal entities, of the legal representative, and in the case of legal entities and shareholders natural persons represented, with the empowerment granted to the person representing them, in compliance with the applicable legal provisions.

(8) The reference date shall be set by the issuer and may not be more than 30 days before the date of the general meeting to which it applies.

(9) Preventing access of a shareholder who meets the conditions of the law to participate in the general shareholders meeting gives the right to any interested person to request in court the annulment of the decision of the general shareholders meeting.

(10) Representation of shareholders in the general shareholders meeting may also be done by persons other than shareholders, based on a special or general empowerment.

(11) If a shareholder is represented by a credit institution performing custody services, it may vote in the general shareholders meeting under the voting instructions received by electronic communication means, without being necessary to draw up a special or general empowerment by the shareholder. The custodian votes in the general meeting of shareholders exclusively according to and within the limit of instructions received from its clients bearing the capacity of shareholders at the reference date

(12) The special empowerment may be granted to any person for representation in a single general meeting and contains specific voting instructions from the shareholder, clearly specifying the voting option for each Item on the agenda of the general meeting. In this situation, the provisions of Art. 125 Para. (5) of Law no. 31/1990, republished, subsequent amendments and completions, are not applicable. In the situation of discussing in the general meeting of shareholders, in accordance with the legal provisions, some Items not included on the published agenda, the proxy may vote thereon, according to the interest of the represented shareholder.

(13) The shareholder may grant an empowerment valid for a period that will not exceed 3 years if the parties have not expressly provided for a longer period, allowing his representative to vote in all aspects under the debate of general meetings of shareholders of one or more issuers identified in the empowerment, individually or by general formulation related to a certain category of issuers, including what relates to the acts of disposition, provided that the general empowerment be granted by the shareholder, as a customer, to an intermediary as defined in Art. 2 Para. (1) Item 20 or to an attorney.

(14) The empowerments, before their first use, are submitted to the company 48 hours before the general meeting or within the term provided by the issuer's articles of incorporation, in copy, with the mention of conformity with the original under the signature of the legal representative. Copies of the empowerments are retained by the company, this being mentioned in the minutes of the general meeting.

(15) The shareholders cannot be represented in the general shareholders meeting on the basis of an empowerment indicated in Para. (13) by a person who is in a situation of conflict of interest which may arise in particular in one of the following cases:

- a) is a majority shareholder of the issuer or another person, controlled by that shareholder;
- b) is a member of an administrative, management or supervisory body of the issuer, of a majority shareholder or of a controlled person, according to the provisions of Letter a);
- c) is an employee or an auditor of the company or of a majority shareholder or of a controlled entity, according to the provisions of Letter a);
- d) is the husband, relative or next of kin up to and including the fourth degree of one of the natural persons provided in Let. a)-c).

(16) The proxy may not be replaced by another person unless this right has been expressly conferred to him by the shareholder in the proxy. Provided that the authorized person is a legal person, it may exercise the mandate received through any person who is part of its administrative or management body or among its employees. The provisions of this paragraph shall not affect the shareholder's right to appoint by proxy one or more alternate proxies, to ensure his representation in the general meeting, in accordance with the regulations issued by ASF in applying these provisions.

(17) The issuers may allow their shareholders any form of participation in the general meeting by electronic means of data transmission.

(18) The shareholders may appoint and revoke their representative by electronic means of data transmission.

(19) The issuers have the obligation to draw up procedures that give shareholders the opportunity to vote in the general meeting, both by participating in person or by representative in the general meeting, and by representation, respectively by email. If resolutions requiring a secret vote are on the agenda of the general meeting of shareholders, the vote of the participating shareholders in person or by proxy, as well as of those voting by mail, shall be expressed by means which do not permit its disclosure but only to the members of the secretariat responsible for counting the secret votes cast and only when the other votes cast in secret by the shareholders present or by the representatives of the shareholders attending the meeting are known. In the case of voting by proxy, the disclosure of the vote to him before the general meeting does not constitute a breach of the requirement of secrecy of the vote.

(20) If the shareholder who expressed his vote by mail attends personally or through a representative the general meeting, the vote by mail cast for that general meeting is annulled. In this case, only the vote cast in person or through a representative shall be taken into account.

(21) If the person representing the shareholder by personal participation in the general meeting is other than the one who expressed the vote by mail, for the validity of his vote he will present in the meeting a written revocation of the vote by correspondence, signed by the shareholder or by the representative who expressed the vote by correspondence. This is not necessary if the shareholder or his legal representative attends the general meeting.

(22) At least 30 days prior to the date of the general meeting of shareholders, the company makes available to shareholders the documents or information regarding the issues on the agenda, on its website, including the annual financial statements, the annual report of the Management Board, respectively the report the Board of Directors and the Supervisory Board, as well as the proposal on the distribution of dividends

(23) The Management Administration, respectively the Board of Directors are obliged to convene the general meeting at the request of the shareholders specified in Art. 119 Para. (1) of Law no. 31/1990, republished, subsequent amendments and completions, if the request includes provisions that fall within the attribution of the meeting, so that the meeting is held, in first or second call, within 60 days from the date of the request.

(24) Based on the provisions of Law no. 312/2015, the general meeting may, by a two-thirds majority of the valid votes cast, decide or amend the statutes to provide that a convening of the general meeting, in order to decide on a capital augmentation, is made in a shorter term than the one stipulated in Para. (1), provided that there are at least 10 calendar days between the date of the convening and the date of the general meeting, the conditions regarding the early intervention measures or the appointment of the temporary administrator provided by Law no. 312/2015 are fulfilled, and the capital augmentation is necessary in order to avoid the conditions for initiating the resolution procedure provided by the same law.

(25) Based on Para. (24), the obligation to set a single deadline for exercising the rights of the shareholders to introduce Items on the agenda of the general meeting or to submit draft resolutions for the Items included or proposed to be included on the agenda of the meeting general, according to the provisions of Para. (5), the obligation to ensure in time the availability of a revised agenda according

to the provisions of Para. (6), as well as the obligation for all issuers to establish a single reference date according to the provisions of ASF regulations does not apply."

**48. After Article 92, new four articles are inserted, Articles 92<sup>1</sup>-92<sup>4</sup>, and shall have the following contents:**

„Art. 92<sup>1</sup>. - (1) The issuer establishes a remuneration policy regarding the management body in respect of which the shareholders have the right to vote in the ordinary general meeting of shareholders.

(2) The issuers have the obligation to submit to the approval of the shareholders the remuneration policy within the ordinary annual general shareholders meeting provided in Art. 111 of Law no. 31/1990, republished, subsequent amendments and completions.

(3) The issuers pay remuneration to their directors only in accordance with a remuneration policy that has been approved in the ordinary general shareholders meeting.

(4) If there is still no approved remuneration policy, and the ordinary general shareholders meeting does not approve the policy proposed and included on the agenda, the issuer may continue to pay the remuneration for the management body in accordance with existing practices and it shall present a revised policy for approval within the next ordinary general meeting of shareholders held by the issuer, be it not the annual ordinary general meeting of shareholders.

(5) If there is an approved remuneration policy and the ordinary general shareholders meeting does not approve the new proposed policy, the issuer may continue to remunerate management body in accordance with the existing approved policy and shall present a revised policy for approval within the next ordinary general shareholders meeting.

(6) Issuers may, in exceptional circumstances, temporarily derogate from the remuneration policy, provided that such a policy include procedural clauses under which the derogation may be applied and specify from which elements of the policy it may derogate. These exceptional circumstances only apply to situations where the derogation from the remuneration policy is necessary to serve the long - term interests and sustainability of the issuer as a whole or to ensure its viability.

(7) The issuers submit to the vote the remuneration policy within the ordinary general meeting of shareholders, whenever any significant change is made and, in any case, at least once every 4 years.

(8) The remuneration policy must contribute to the issuer's business strategy, as well as its sustainability and long-term interests and include an explanation in this respect. The policy must be clear and easy to understand and describe the various elements of fixed and variable remuneration, including all bonuses and other benefits in any form, that may be granted to managers and present the relative proportion of these elements. The remuneration policy explains the way in which the remuneration and employment conditions of the issuer's employees were taken into account, when establishing the remuneration policy.

(9) If the issuer grants variable remuneration, the remuneration policy establishes clear, complete and varied criteria for the granting of variable remuneration. The policy indicates the criteria regarding the financial and non-financial performance, including, if applicable, criteria regarding the social responsibility of the companies and explains the way in which they contribute to the objectives provided in Para. (8), as well as the methods to be applied to determine the extent to which the performance criteria have been met. The policy provides information on any deferral periods and the issuer's ability to recover variable remuneration.

(10) If the issuer grants a share-based remuneration, the policy specifies the periods in which the persons are entitled to be allotted shares, respectively the scheme of the allocation periods and, where applicable, the period of unavailability of shares after the final allotment and explains how the remuneration based on shares contributes to the objectives provided in Para. (8).

(11) The remuneration policy indicates the duration of the contracts or agreements with the directors and the applicable notice periods, the main features of the supplementary pension or early retirement schemes, as well as the conditions for terminating the contracts and the payments related to their termination.

(12) The remuneration policy explains the decision-making process leading to its establishment, review and implementation, including measures to avoid conflicts of interest and, where appropriate, the role of the remuneration committee or other committees involved. In case of policy review, a description and explanation of all significant policy changes and how the votes and shareholders' views on the remuneration policy are taken into account shall be included and also a report from the last vote of the general meeting of shareholders on the remuneration policy.

(13) Following the voting of the remuneration policy within the general meeting of shareholders, the remuneration policy, together with the date and results of the vote, shall be published without delay on the issuer's website and shall remain available to the public, free of charge, for at least as long as applicable.

Art. 92<sup>2</sup>. - (1) The Issuer shall prepare a clear and comprehensible remuneration report that provides a comprehensive overview of remuneration, including all benefits, regardless of form, granted or due during the last financial year, to individual managers, including new recruits, and former managers in accordance with the remuneration policy provided in Art. 92<sup>1</sup>.

(2) The remuneration report shall contain, as appropriate, the following information on the remuneration of each manager:

a) the total remuneration broken down by components, the relative proportion of fixed and variable remuneration, an explanation of how the total remuneration complies with the remuneration policy adopted, including how it contributes to the issuer's long-term performance, and information on how the performance criteria have been applied;

b) the annual change in the remuneration, performance of the issuer and average remuneration based on the full-time equivalent of the issuer's employees who are not managers for at least the last 5 financial years, presented together in a manner that allows comparison;

c) any remuneration received from any entity belonging to the same group;

d) the number of shares and stock options granted or offered, as well as the main conditions for exercising the related rights, including the exercise price and the date, together with any changes thereto;

e) information on the use of the possibility to recover variable remuneration;

f) information on any deviation from the procedure for implementing the remuneration policy provided in Art. 92<sup>1</sup> Para. (8)-(12) and regarding any derogations applied in accordance with Art. 92<sup>1</sup> Para. (6), including explanations of the nature of the exceptional circumstances and an indication of the specific elements from which the derogation was made.

(3) The issuers do not include in the remuneration report special categories of personal data of the managers within the meaning of Art. 9 Para. (1) of Regulation (EU) 2016/679 of the European



Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation) or personal data relating to the family situation of each manager.

(4) The issuers process the personal data of managers included in the remuneration report under this article in order to increase transparency regarding the remuneration of managers, to increase the responsibility of managers and the supervision by shareholders of their remuneration. Without prejudice to the longer periods provided for by sectoral legislative acts of the European Union directly applicable on the Romanian territory or by national sectoral legislative acts transposing European directives, after 10 years from the publication of the remuneration report, issuers no longer make available to the public, based of Para. (7), the personal data of the managers included in the remuneration report in accordance with this article.

(5) The provisions of Para. (4) shall be applied without prejudice to the possibility of processing, by the issuers, the personal data of the managers, for other purposes, according to the regulations in force.

(6) The remuneration report for the most recent financial year is submitted to vote within the annual ordinary general shareholders meeting provided in Art. 111 of Law no. 31/1990, republished, subsequent amendments and completions, the opinion of the shareholders within the general meeting regarding the remuneration report, resulting from the vote, having advisory character. The issuer explains in the next remuneration report how the vote of the general meeting was taken into account.

(7) Without prejudice to Art. 92 Para. (22), after the ordinary general shareholders meeting, issuers make the remuneration report available to the public on their websites, free of charge, for a period of 10 years, and may choose to keep it available for a longer period, provided that it no longer contains the personal data of the managers. The financial auditor/audit firm performing the statutory audit shall verify whether the information provided in this article have been submitted. The management body of the issuer, acting within the limits of their area of competence conferred by the applicable rules, have the collective responsibility to ensure that the remuneration report is prepared and published in accordance with the requirements of this law. The management body of the issuer are liable for the breach of the responsibilities incumbent on the issuer, provided in this paragraph.

Art. 92<sup>3</sup>. - (1) The issuers publicly announce, by drawing up and publishing a report, the significant transactions with affiliated parties, following their approval according to Para. (8) and at the latest at the time of their conclusion.

(2) The report shall include at least information on the nature of the relationship with the affiliated party, the name of the affiliated party, the date and nature of the transaction, the description of its object, the value of the transaction, mutual debts, guarantees, terms and conditions of payment, as applicable, as well as other essential information necessary in order to determine the effects of the respective transaction on the financial situation of the company, respectively in order to be able to evaluate the economic correctness of the transaction from the perspective of the issuer and of the non-affiliated shareholders, including the minority shareholders.

(3) For the purposes of Para. (1), "significant transaction" means any transfer of resources, services or obligations whether or not it involves the payment of a price, the individual or cumulative value of which represents more than 5% of the issuer's net assets, according to the latest reports on the individual financial statements published by the issuer, in compliance with Para. (12).

(4) If the issuer concludes significant transactions according to Para. (1), its interests are respected, in relation to the offers of the same type existing on the market.

(5) If significant transactions have been concluded, at the end of each semester, the financial auditor/audit firm analyzes the transactions reported during the respective semester according to Para. (1) and draws up, within a maximum of 30 days from the end of the reporting period, a report assessing whether the transaction is correct and justified from the point of view of the issuer and non-affiliated shareholders, including minority shareholders, and explains the assumptions on which they are based and the methods used.

(6) The report provided in Para. (5) specifies, in the applicable cases, including whether the price related to the transaction, corroborated with the rights and obligations assumed by the parties, is correct in relation to the other existing offers on the market. If the transactions are not carried out at the market price, the reasons that led to this derogation and the pricing policies shall be specified.

(7) Within a maximum of 24 hours from receiving the report from the financial auditor/audit firm, the issuer prepares, publishes and sends to ASF and the market operator a report, having the format established by ASF regulations, by which it submits, for publication, the report prepared by the financial auditor/audit firm.

(8) Significant transactions with related parties are approved by the issuer's Management Board or Supervisory Board in accordance with procedures that prevent an affiliated party from taking advantage of its position and provide adequate protection for the interests of the issuer and non-affiliated shareholders, including minority shareholders. The affiliated party may not participate in the approval, respectively in the vote of the significant transaction involving the respective affiliated party, under the sanction of nullity, by decision of the court, of the decision taken in violation of this prohibition.

(9) Issuers apply the requirements of Para. (1), (2) and (4) - (8) including in the case of transactions carried out during the normal course of business and concluded under normal market conditions.

(10) The requirements provided in Para. (1), (2) and (4) - (8) are not applicable in the case of the following transactions:

a) transactions regarding the remuneration of managers or certain elements of their remuneration, granted or due in accordance with Art. 92<sup>1</sup>;

b) transactions carried out by credit institutions on the basis of measures aimed at guaranteeing their stability, adopted by the competent authority responsible for prudential supervision within the meaning of European Union law;

c) transactions offered to all shareholders under the same conditions, in which case equal treatment of all shareholders and protection of the issuer's interests are ensured;

d) transactions for which the law requires their approval by the extraordinary general shareholders meeting, provided that in their conclusion the fair treatment of all shareholders be ensured and the interests of the issuer and all non-affiliated shareholders, including minority shareholders, be respected.

(11) On the date of registration on the agenda of the extraordinary general shareholders meeting provided in Para. (10) Letter d), of approval of a transaction that falls within the definition provided in Para. (3), the Management Board, respectively the directorship of the issuer has the obligation to

present to the shareholders, for information purposes, a report specifying the way in which the respective transactions comply with the conditions provided in Para. (10) Letter d).

(12) The issuers publicly announce, by drawing up and publishing a report, the significant transactions concluded between the affiliated party of the issuer and the subsidiary of the respective issuer, at the latest within 24 hours from their conclusion. The provisions of Para. (9) and (10) shall apply accordingly to the transactions provided for in this paragraph.

(13) Transactions with the same affiliated party that were concluded in any period of 12 months or within the same financial year and that were not subject to the obligations provided in Para. (1), (2) and (4) - (8) are cumulated within the meaning of those paragraphs. If the 5% threshold is exceeded following the cumulation of transactions with the same affiliated party, transactions that have already been concluded and which, individually or cumulatively, did not meet the requirement provided in Para. (3) are made public together with the transaction/transactions to be concluded and made public according to Para. (1), as a result of exceeding the 5% threshold provided in Para. (3), individually or as a result of the cumulation with the previously mentioned transactions, already concluded.

(14) This Article shall be without prejudice to the rules on the publication of inside information provided for in Article 17 of Regulation (EU) 596/2014.

Art. 92<sup>4</sup>. - A.S.F. issues regulations in applying the provisions of this chapter."

**49. Article 93 is being amended and shall have the following contents:**

"Art. 93. - The financial-accounting statements and those regarding the operations of issuers whose securities are admitted to trading on a regulated market are prepared in accordance with the specific applicable requirements and are audited by financial auditors/audit firms, authorized in accordance with Law no. 162/2017 regarding the statutory audit of the annual financial statements and of the consolidated annual financial statements and of amendment of some normative acts, members of the Romanian Chamber of Financial Auditors."

**50. At Article 125, Paragraph (2) is being amended, and shall have the following contents:**

"(2) In order to fulfill the duties provided for in Art. 23 Para. (2) Letter b) of Regulation (EU) 596/2014, ASF may request any necessary information and documents indicating the legal basis, purpose, deadlines and sanctions provided in Art. 132 Para. (4). ASF may hear any person who has given its consent."

**51. At Article 125, after Paragraph (2), two new paragraphs are inserted, Paragraphs (3) and (4), and shall have the following contents:**

"(3) In order to carry out the hearing provided in Para. (2), ASF issues a decision that will be sent to the person to be heard, indicating the legal basis, the purpose, date and place of the hearing, as well as the sanctions provided in Art. 132 Para. (4).

(4) The hearing will be recorded on a durable medium and documented in a report signed by all participants."

**52. After Article 125, three new articles are inserted, Articles 125<sup>1</sup>-125<sup>3</sup>, and shall have the following contents:**

"Art. 125<sup>1</sup>. - (1) ASF exercises the powers provided for in Art. 23 Para. (2) Letter e) of Regulation (EU) 596/2014, based on a decision issued by it and with the judicial authorisation given by conclusion by the President of the Bucharest Court of Appeal or by a judge delegated by him and, as the case may be, with the support of the Romanian Gendarmerie, according to legal powers.

(2) For exercising the powers provided for in Para. (1), ASF experts have the following inspection powers:

- a) to enter the residences of natural persons and the premises of legal entities;
- b) to examine any documents related to the activity of natural and legal persons subject to inspection, regardless the place they are stored in and physical or electronic support on which are kept
- c) to ask the natural person or any representative of the legal person for explanations regarding the facts or documents related to the object and purpose of the inspection and to record their answers;
- d) to pick up or obtain in any form copies or extracts from documents related to the action for which the inspection is carried out;
- e) to seal any site and any documents related to the activity of natural and legal persons subject to inspection, regardless the place they are stored in and the physical or electronic medium on which they are kept, for as long as necessary for the inspection.

(3) No appeal shall lie against the conclusion provided in Para. (1).

(4) The request for authorisation concerning the residential and/or computer inspection, formulated by ASF, is judged in closed session, without summoning the parties. The judge shall rule on the application for authorisation within a maximum of 48 hours from the date of registration of the application. The conclusion shall contain a statement of reasons and shall be communicated to ASF within a maximum of 48 hours from the reference.

(5) If the inspection must be carried out simultaneously in several spaces from those provided in Art. 23 Para. (2) Letter e) of Regulation (EU) 596/2014, ASF will introduce a single application, the court ruling by a decision indicating the spaces in which the inspection will be carried out.

(6) The request for authorisation must contain all the information necessary to justify the inspection, including its duration, and the referred judge shall verify that the request is well founded. Judicial authorisation shall cover the right to enter the residences of natural persons and the premises of legal persons, to examine any documents related to the activity of natural persons and legal persons, which are subject to inspection, regardless the place they are stored in and physical or electronic support on which are kept, to confiscate documents and data in any form related to the action for which the inspection is carried out, to seal any location and any documents related to the activity of natural and legal persons subject to inspection, regardless the place they are stored in and the physical or electronic support on which they are kept, for the duration and to the extent necessary for the inspection, and to request explanations from the persons requested on the spot.

(7) The inspection takes place between 6.00 AM and 20.00 PM and must be carried out in the presence of the person being inspected or his representative. The inspection may continue after 20.00 PM only with the consent of the person being inspected or his representative.

(8) A copy of the ASF decision and of the judicial authorisation is mandatory to be handed over to the person subject to the inspection or to his representative before the start of the inspection.

(9) After identification, the data and documents, regardless of the storage method, shall be presented to the person from whom they are collected, in order to be recognized and marked by him as unchangeable, thereafter being labeled and sealed.

(10) The activities carried out during the inspection are recorded in a report. The report shall be signed on each page and at the end by the person concluding it, by the person subject to the inspection or, as the case may be, by his legal or conventional representative, by his lawyer, if present. If any of these persons cannot or refuses to sign, this shall be stated, as well as the reasons for the impossibility or refusal to sign.

(11) A copy of the report shall be handed over to the inspected person.

(12) During the unannounced inspection, the information stored or archived in the electronic support may be copied in full and collected on electronic media, by affixing seals, following the collection of information necessary for the investigation to be made in the presence of the natural person or any representative of the legal entity, at the premises of ASF.

(13) The data and documents collected, regardless of the method of storage, which constitute means of proof are attached to the file, and those that are not related to the case are returned to the person to whom they belong.

Art. 125<sup>2</sup>. - All data and documents obtained by ASF in exercising the powers provided in Art. 125 and 1251, regardless of the physical or electronic support on which they are kept, may be used, as appropriate, as evidence in criminal proceedings.

Art. 125<sup>3</sup>. - ASF issues regulations on market abuse in application of this chapter, in compliance with the provisions of Regulation (EU) no. 596/2014."

**53. At Article 126 Paragraph (1), the introductory part of Letter a) and Items 1-5 are amended, and shall have the following contents:**

"a) entities authorised, regulated and supervised by ASF, issuers of securities and/or by the members of the Management Board or of the Supervisory Board, managers or members of the Directorate, respectively, in all cases where appointed, the Director General and, if this position exists, the Deputy Director General, the employees of the authorised, regulated and supervised entity or of the issuers of securities, natural or legal persons exercising de jure or de facto management positions or exercising professionally activities regulated by this law, offerors and/or persons with whom they act in concert, the person requesting for admission to trading of an issuer, the persons responsible for drawing up the prospectus, the holders of financial instruments and/or the persons with whom they act in concert, central and local public administration bodies, international bodies, after case, in connection with:

1. infringements of the provisions regarding the public offers and the operations of withdrawal of the shareholders from a company provided at Art. 6 Para. (2), Art. 7 Para. (2), Art. 9, 10, Art. 11 Para. (1), Art. 161, Art. 23, Art. 25 Para. (2), Art. 26<sup>1</sup> Para. (1), (4) and (5), Art. 26<sup>2</sup> Para. (1) - (5), Art. 26<sup>3</sup>, Art. 27 Para. (1), Art. 30 Para. (2) and (3), Art. 31 Para. (1) - (3), (6) and (7), Art. 32 Para. (1), Art. 33, Art. 38 Para. (7), Art. 40, Art. 41 and Art. 42 Para. (7);

2. infringements of the provisions regarding the admission, respectively the removal of securities from trading provided at Art. 48, 51, 52, Art. 53 Para. (1), Art. 55, Art. 56 Para. (1)-(3), Art. 57, 58, Art. 59 Para. (1) and Art. 60;

3. infringements of reporting obligations, of carrying out operations and complying with the conduct and conditions provided at Art. 46 Para. (1), (2) and (4), Art. 62, 77-79, Art. 80 Para. (1), Art.

81, Art. 84 Para. (1), (3) and (4), Art. 85, Art. 86 Para. (3), Art. 87 Para. (3), Art. 90 Para. (1), (2) and (4), Art. 91, Art. 91<sup>3</sup> Para. (2)-(4) and (6)-(8), Art. 91<sup>4</sup>, Art. 91<sup>5</sup> Para. (1), (2) and (4), Art. 91<sup>6</sup>, 91<sup>7</sup>, Art. 92 Para. (1), (2), (6)-(8), (19), (20), (22) and (23), Art. 92<sup>1</sup>, Art. 92<sup>2</sup> and Art. 92<sup>3</sup> Para. (1), (2), (4), (7)-(9) and (11)-(13);

4. conducting a public offer without the approval of ASF of the offer document, as well as carrying out without the ASF approval any activities or operations for which this law requires the approval for;

5. noncompliance with the conditions established by ASF decision approving the prospectus/offer document, any amendments thereto, as well as the notice/preliminary announcement or marketing materials related to a public offer (takeover bid);".

**54. At Article 126 Paragraph (1), after Item 7 of Letter a) two new Items are inserted, Items 8 and 9, and shall have the following contents:**

"8. impeding the exercise of the rights of shareholders, provided for in Art. 91<sup>5</sup> Para. (3) thesis I, Art. 92 Para. (3), (5), (10), Para. (11) thesis I and Para. (18);

9. infringements of reporting obligations, conduct of operations and compliance with the conduct and conditions set out in Art. 91<sup>9</sup> -91<sup>12</sup>."

**55. At Article 126 Paragraph (2), Letter A) is being amended, and shall have the following contents:**

"a) noncompliance with the provisions of the regulations in force, issued by ASF, as well as the measures established by the acts of authorisation, supervision and control or other measures adopted by ASF;"

**56. At Article 126 Paragraph (2), after Letter e) a new letter is inserted, Letter f), and shall have the following contents:**

"f) the infringements provided for in Art. 38 Para. (1) Letter a) and b) of Regulation (UE) 2017/1.129."

**57. At Article 127 Paragraph (1) Letter C), the introductory part of Items 1 and 2 is being amended, and shall have the following contents:**

"1. in the case of infringements under Art. 126 Para. (1) Letter a) Item 4, 5, 9 and Letter d) and Para. (2) Letter c) and e):

.....

2. in the case of infringements under Art. 126 Para. (1) Letter a) Item. 1-3, 7 and 8 and Para. (2) Letter a) and d):".

**58. At Article 130, after Paragraph (1), a new paragraph is inserted, Paragraph (1<sup>1</sup>), and shall have the following contents:**

"(1<sup>1</sup>) ASF publishes the decisions regarding the sanctions and measures imposed for non-compliance with the provisions of Art. 91<sup>9</sup>-91<sup>12</sup> by the institutional investors provided in Art. 9<sup>12</sup>

letter e) Item (i), in accordance with the publication regime provided by Law no. 237/2015, subsequent amendments and completions. "

**59. After Article 131, two new articles are inserted, Articles 131<sup>1</sup> and 131<sup>2</sup>, and shall have the following contents:**

"Art. 131<sup>1</sup>. - (1) ASF imposes adequate administrative sanctions and effective, proportionate and dissuasive administrative measures, in compliance with the provisions of Regulation (EU) 2017/1.129 and of this law, to the persons who commit the acts provided in Art. 126 Para. (2) Letter f).

(2) The limits of the fines provided in this article are established by derogation from Art. 8 of the Government Ordinance no. 2/2001.

(3) In the case of infringements under Art. 38 Para. (1) Letter a) of Regulation (EU) 2017/1.129, ASF may impose the following sanctions and administrative measures:

a) the penalties and measures provided in Art. 38 Para. (2) Letter a)-c) of Regulation (EU) 2017/1.129. The limits of the penalty provided in Art. 38 Para. (2) Letter c) of Regulation (EU) 2017/1.129 are contained between a date and up to twice the amount of profits obtained or losses avoided as a result of the infringement, where those can be determined;

b) for natural persons, fine starting from 10,000 RON up to 9,000,000 RON;

c) for legal persons, fine starting from 15,000 RON up to 45,000,000 RON or 5% from the total annual turnover of the respective legal person according to the last available financial statements approved by the management body.

(4) In the case of infringements under Art. 38 Para. (1) Letter b) of Regulation (EU) 2017/1.129, ASF may impose the following administrative sanctions and measures:

a) sanctions and measures provided by Art. 38 Para. (2) Letter a) and b) of Regulation (EU) 2017/1.129;

b) for natural persons, warning or fine starting from 1,000 RON up to 2,000,000 RON;

c) for legal persons, warning or fine starting from 7,000 RON up to 4,000,000 RON or 1% from the total annual turnover of the respective legal person according to the last available financial statements approved by the management body.

(5) In case of application of the sanctions provided by Para. (3) letter c), respectively at Para. (4) letter c), the provisions of Art. 38 Para. (2) Letter d) the last paragraph of Regulation (EU) 2017/1.129 shall apply accordingly.

(6) In the taking of a decision on the type and level of sanctions and administrative measures applied according to this article, ASF shall take into account all relevant circumstances, respectively cooperates and coordinates its activities, in applicable cases, with other competent authorities, in accordance with the provisions of Art. 39 of Regulation (EU) 2017/1.129.

(7) A.S.F. has the power to cooperate with the relevant national legal authorities, respectively they provide specific information in connection with investigations or criminal proceedings initiated regarding cases that are likely to fall under Art. 134 Para. (1) and which would constitute infringements of Regulation (EU) 2017/1.129, as well as the prerogative to provide the same type of information to other competent authorities and ESMA, for the application of Art. 33 Para. (1) of Regulation (EU) 2017/1.129.

(8) ASF publishes any decision imposing an administrative sanction or other administrative measure according to this article, as well as information related to it, in accordance with the provisions of Art. 42 of Regulation (EU) 2017/1.129.

(9) ASF delivers to ESMA, in accordance with Art. 43 of Regulation (EU) 2017/1.129, information on the administrative sanctions and measures applied according to this article, respectively on the criminal investigations carried out and the criminal sanctions applied in cases falling under Art. 134 Para. (1) and which constitutes an infringement of the provisions of Regulation (EU) 2017/1.129, provided by Art. 38 Para. (1) Letter a) of the same regulation.

(10) For the application of Art. 43 of Regulation (EU) 2017/1.129, ASF has access to the information and the final decision in connection with any criminal sanction provided in Para. (9) and transmits them to ESMA.

Art. 131<sup>2</sup>. - (1) The provisions of Art. 137-149 shall apply accordingly regarding the establishment by ASF of mechanisms in accordance with Art. 41 of Regulation (EU) 2017/1.129.

(2) Employers engaged in activities that are regulated for financial services purposes shall have in place appropriate procedures for their employees to report internally, through a specific, independent and autonomous channel, actual or potential infringements of Regulation (EU) 2017/1.129. For the application of this paragraph, the expression "*specific channel*" has the meaning provided by Art. 41 of Regulation (EU) 2017/1.129."

**60. At Article 133, Paragraphs (1) and (7) are being amended, and shall have the following contents:**

"Art. 133. - (1) Having committed the contraventions provided by this chapter is ascertained by the authorized persons within the specialized structures of ASF; if it is found non-compliance with one of the legal provisions whose infringement is provided as a contravention of Art. 126, the person concerned is granted a period of 5 days from the date of communication of the findings, in which to formulate objections regarding the committed violation.

.....

(7) The sanctioning decision provided in Para. (2), as well as other administrative acts adopted by ASF in accordance with the provisions of this law, including through the proper application of European regulations directly applicable in the Member States, issued at European Union level in the areas provided by this law, shall be duly motivated, in accordance with the provisions of Para. (3), and may be appealed at the Bucharest Court of Appeal - Administrative and Fiscal Litigation Section, according to the Law on Administrative Litigation no. 554/2004, subsequent amendments and completions."

**61. At Article 133, after Paragraph (7) a new paragraph is inserted, Paragraph (7<sup>1</sup>), and shall have the following contents:**

"(7<sup>1</sup>) Under Art. 20 of Regulation (EU) 2017/1.129, the right to appeal applies according to Para. (7) and in case ASF has not taken any decision of approval or, as the case may be, a decision of refusal of an application for approval nor has it requested modifications or additional information



within the term provided in Art. 20 Para. (2), (3) and (6) of the stated European Regulation in respect of that application."

**62. After Article 133, a new article is inserted, Article 133<sup>1</sup>, and shall have the following contents:**

"Art. 133<sup>1</sup>. - By derogation from the provisions of Art. 10 Para. (2) of Government Ordinance no. 2/2001, in case of committing two or more contraventions, the highest sanction is applied, increased by up to 50%, as the case may be."

**63. When reference is made to the transposition of European Union rules, Point 2 is repealed.**

**64. When reference is made to the transposition of European Union rules, after Item 8 a new Item is inserted, Item 9, and shall have the following contents:**

"9. Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term involvement of shareholders, published in the Official Journal of the European Union (OJEU), L series, no. 132 of May 20<sup>th</sup>, 2017."

**65. Throughout Law no. 24/2017 on issuers of financial instruments and market operations, as amended and completed by the present law, the phrase "*financial auditor*" is replaced by the phrase "*financial auditor/audit firm*", and the phrase "*international valuation standards*" is replaced with the phrase "*evaluation standards in force, according to the law*".**

Art. II. - (1) Prospectuses approved in accordance with the legal provisions applicable to the sale offers, in force at the date of their approval, are further regulated by the respective provisions in accordance with Art. 46 Para. (3) of Regulation (EU) 2017/1.129.

(2) The entities provided for in Art. 91<sup>9</sup>, 91<sup>12</sup> and 92<sup>1</sup> of Law no. 24/2017 on issuers of financial instruments and market operations, as amended and supplemented by the present law, have a period of 12 months from the entry into force of this law to comply with the obligations set out in the articles set put above.

Art. III. - Law no. 24/2017 on issuers of financial instruments and market operations, published in the Official Gazette of Romania, Part I, no. 213 of March 29<sup>th</sup>, 2017, as amended and completed by the present law, will be republished in the Official Gazette of Romania, Part I, giving the texts a new numbering.

## **CHAPTER II**

### **Amendment and completion of the Emergency Government Ordinance no. 32/2012 on collective investment undertakings in transferable securities and investment management companies, as well as amendment and supplementation of Law no. 297/2004 regarding the capital market**

Art. IV. – The Emergency Government Ordinance no. 32/2012 on collective investment undertakings in transferable securities and investment management companies, as well as for the

amendment and completion of Law no. 297/2004 regarding the capital market, published in the Official Gazette of Romania, Part I, no. 435 of June 30<sup>th</sup>, 2012, approved with amendments and completions by Law no. 10/2015, subsequent amendments and completions, is being amended and supplemented shall have the following contents:

**1. At Article 83, after Paragraph (2), a new paragraph is inserted, Paragraph (3), and shall have the following contents:**

"(3) Where UCITS management companies or the Self-managed Investment Companies are exposed to a securitisation that no longer meets the requirements provided for in the Regulation (EU) 2.402/2017 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU, and Regulations (EC) 1.060/2009 and (EU) 648/2012, they shall in the best interest of the investors in the relevant UCITS, act and take corrective actions, if appropriate."

**2. At Article 193<sup>2</sup>, after Letter l) a new letter is inserted, Letter m), and shall have the following contents:**

"m) to request and be entitled to receive from credit institutions authorised by the National Bank of Romania information necessary for ASF investigations, as well as to respond to requests for assistance received by ASF based on international agreements to which ASF is a party."

**3. After Article 195, a new article is inserted, Article 195<sup>1</sup>, and shall have the following contents:**

"Art. 195<sup>1</sup>. - (1) Infringement by a UCITS management company or a self-managed investment company of the provisions of Art. 3-13 and Art. 15 of Regulation (EU) no. 2019/2.088 of the European Parliament and of the Council of 27 November 2019 regarding information on sustainability in the financial services sector and of the regulations adopted in its application, hereinafter referred to as *Regulation (EU) no. 2019/2088*, is being ascertained and sanctioned by ASF, as a competent authority, and draws to contravention liability, in accordance with the law.

(2) It is a contravention to violate the provisions of Art. 3-13 and Art. 15 of Regulation (EU) no. 2019/2.088, committed by the UCITS management company or the self-managed UCITS investment company, depending on the obligations under their responsibility, according to the provisions of the respective regulation."

**4. At Article 196, the introductory part of Paragraph (1) and the introductory part of Letter a) are being amended, and shall have the following contents:**

„Art. 196. - (1) By derogation from the provisions of Art. 8 of the Government Ordinance no. 2/2001 regarding the legal regime of contraventions, approved with amendments and completions by Law no. 180/2002, subsequent amendments and completions, hereinafter referred to as *GO no. 2/2001*, committing the contraventions provided in Art. 195 and 195<sup>1</sup> are sanctioned shall have the following contents:

a) in the case of contraventions provided in Art. 195 Letter a)-m) and p), as well as at Art. 195<sup>1</sup>.”

### **CHAPTER III**

#### **Amendment and completion of Law no. 74/2015 regarding the administrators of alternative investment funds**

Art. V. - Law no. 74/2015 regarding the administrators of alternative investment funds, published in the Official Gazette of Romania, Part I, no. 274 of April 23<sup>rd</sup>, 2015, subsequent amendments and completions, is being amended and supplemented shall have the following contents:

**1. After Article 16, a new article is inserted, Article 16<sup>1</sup>, and shall have the following contents:**

"Art. 16<sup>1</sup>. - Where AIFMs are exposed to a securitisation that no longer meets the requirements provided for in Regulation (EU) 2.402/2017 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for a simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU, and Regulations (EC) 1.060/2009 and (EU) 648/2012, they shall, in the best interest of the investors in the relevant AIFs, act and take corrective action , if appropriate."

**2. At Article 50 Paragraph (2), after Letter m), two new letter are inserted, Letters n) and o), and shall have the following contents:**

"n) to hear any person and to request information in connection with the activities carried out by them on the capital market and/or in connection with requests for assistance made by similar ASF authorities, on the basis of international agreements to which ASF is a party;

o) to request and be entitled to receive from credit institutions authorized by the National Bank of Romania information necessary for ASF investigations, as well as to respond to requests for assistance received by ASF based on international agreements to which the latter is a party."

**3. At Article 51 Paragraph (2), Letter e) is being amended and shall have the following contents:**

"e) non-compliance with the provisions of Art. 15 Para. (1)-(3) and (5) regarding the risk management, of Art. 16 regarding the administration of liquidity and of Art. 16<sup>1</sup> on the requirements applicable to securitisations in the AIF portfolio;"

**4. After Article 51<sup>1</sup> a new article is inserted, Article 51<sup>2</sup>, and shall have the following contents:**

"Art. 51<sup>2</sup>. - (1) Infringement by an AIFM of the provisions of Regulation (EU) no. 2019/2.088 of the European Parliament and of the Council of 27 November 2019 on information on sustainability in the financial services sector and of the regulations adopted in its application, hereinafter referred to as *Regulation (EU) no. 2019/2.088*, is ascertained and sanctioned by ASF, as a competent authority, and attracts the contravention liability, in accordance with the law.

(2) Shall constitute contraventions the infringement of the provisions of Art. 3-13 and 15 of Regulation (EU) no. 2019/2.088, committed by the AIFM, depending on the obligations in their charge, according to the provisions of the respective regulation."

**5. At Article 52, the introductory part of Paragraph (1) is being amended and shall have the following contents:**

"Art. 52. - (1) By derogation from the provisions of Art. 8 Para. (2) of the Government Ordinance no. 2/2001 regarding the legal regime of contraventions, amended and completed by Law no. 180/2002, subsequent amendments and completions, committing the contraventions provided in Art. 51, Art. 51<sup>1</sup> Para. (2) and (4) and Art. 51<sup>2</sup> is sanctioned, shall have the following contents:".

#### **CHAPTER IV**

#### **Amendment and completion of Law no. 237/2015 regarding the authorization and supervision of the insurance and reinsurance activity**

Art. VI. - Law no. 237/2015 on the authorisation and supervision of the insurance and reinsurance activity, published in the Official Gazette of Romania, Part I, no. 800 of October 28<sup>th</sup>, 2015, as subsequently amended and supplemented, is being amended and supplemented shall have the following contents:

**1. At Article 1 Paragraph (2), Items 8, 16 are 37 are being amended, and shall have the following contents:**

"8. *national auto office* - the organization defined in Art. 2 Item 8 of Law no. 132/2017 on the compulsory motor vehicle liability insurance for damages caused to third parties by vehicle and tram accidents, in Romania being the Romanian Motor Insurers Bureau, hereinafter referred to as *BAAR*, defined in Art. 2 Item 9 of the same law;

.....

16. *national protection fund* - the body provided in Art. 10 Para. (1) of Directive 2009/103/EC of the European Parliament and of the Council of 16 September 2009 on motor third party liability insurance and control of liability insurance in Romania, this being *BAAR*;

.....

**37. legal provisions:**

- a) this law and the regulations issued by ASF for its application;
- b) delegated acts or regulations, technical regulatory standards, implementing rules, implementing acts and other acts issued by the European Commission or by the Council and the European Parliament, directly applicable in the Member States;"

**2. At Article 12 Paragraph (5) Letter A), after Item (iv) a new Item is inserted, Item (v), and shall have the following contents:**

"(v) authorities or national organisms and the ones from other Member States responsible for the supervision of credit institutions and financial institutions referred to in Art. 2 Para. (1) Items 1 and 2 of Directive (EU) 2015/849 of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, amending Regulation (EU) no. 648/2012 of the European Parliament and of the Council and repealing Directive 2005/60/EC of the European Parliament and of the Council and Commission Directive 2006/70/EC to ensure compliance with the respective Directive;"

**3. At Article 12, Paragraph (6) is being amended and shall have the following contents:**

"(6) ASF may exchange information with authorities, including those for the supervision of credit institutions and financial institutions, with bodies or persons from other Member States and from third countries, which have tasks similar to those provided in Para. (5)."

**4. At Article 21, after Paragraph (5) a new paragraph is inserted, Paragraph (5<sup>1</sup>), and shall have the following contents:**

"(5<sup>1</sup>) The companies request ASF's opinion on the changes of the documents and/or of the conditions based on which the operating authorisation was granted in accordance with the regulations issued by A.S.F."

**5. At Article 38, Paragraph (4) is being amended and shall have the following contents:**

"(4) At the request of a supervisor from a Member State, in the case of a full or partial transfer of the portfolio of contracts, concluded on the basis of the right of establishment or the freedom to provide services, of a transferring company with head offices in the Member State, respectively, ASF, within 3 months:

a) if the transferee is established in Romania, certifies that the transferee, after taking over the portfolio, holds or does not hold eligible own funds to cover SCR, unless it is in the situations provided by Art. 99 Para. (2) and (3) and Art. 100 Para. (2);

b) expresses its agreement or disagreement that the transfer should include the portfolio of branches established on the territory of Romania or the contracts concluded by the transferring companies on the territory of Romania based on the freedom to provide services."

**6. At Article 38, after Paragraph (4) a new paragraph is inserted, Paragraph (4<sup>1</sup>), and shall have the following contents:**

"(4<sup>1</sup>) The absence of a response from the supervisors consulted within 3 months is considered tacit agreement."

**7. At Article 39, after Paragraph (8) a new paragraph is inserted, Paragraph (9), and shall have the following contents:**

"(9) Insurers offering insurance-based investment products comply with the applicable provisions of Regulation (EU) no. 2019/2088 of the European Parliament and of the Council of 27 November 2019 regarding information on sustainability in the financial services sector."

**8. At Article 49, the introductory part of Paragraph (1) is being amended and shall have the following contents:**

"Art. 49. - (1) The composite insurers and those who obtained authorisation following the request provided by Art. 20 Para. (5):".

**9. At Article 49, Paragraph (6) is being amended and shall have the following contents:**

"(6) If the amount of the eligible basic own fund Items related to one of the activities is insufficient to cover the respective national RCM, ASF enforces measures to remedy the situation of the defective activity, in accordance with the legal provisions, regardless of the results of the other activity, as if the respective activity was carried out by a separate entity; by exception from the interdiction not to use elements of basic own funds related to an activity to cover the MCR of the other activity, provided by Para. (3), these measures may include the approval by ASF of an explicit transfer of eligible basic own fund Items from one activity to another."

**10. At Article 55, Paragraph (13) is being amended and shall have the following contents:**

"(13) For each relevant jurisdiction, the volatility premium is increased by the difference between the risk-adjusted margin of jurisdiction and double the margin of currency, if the difference is positive and the risk-adjusted margin of jurisdiction exceeds 85 basis points."

**11. At Article 55 Paragraph (17), Letter c) is being amended and shall have the following contents:**

"c) the volatility premium for each relevant national insurance market; companies can apply the volatility premium only in respect of national currencies and markets for which the directly applicable normative acts issued by the European Commission provide for this."

**12. Article 126 is being amended and shall have the following contents:**

"Art. 126. - Activities similar to tourist assistance

The assistance activities granted to persons in difficulty in other circumstances than those provided by Art. 2 Para. (2) Letter f) and Para. (5) are subject to the provisions of this part and are treated as activities included in class 18 of Annex no. 1 Section A."

**13. At Article 163 Paragraph (1), Letters a) and h) are being amended and shall have the following contents:**

"a) noncompliance by companies and persons who are part of their management or by those who hold key or other critical positions with the provisions of this law, delegated acts or regulations, technical regulatory and enforcement standards, implementing acts and other acts issued by the European Commission or by the Council and the European Parliament, directly applicable in the Member States, as well as the regulations issued by ASF in application of this law;

.....  
„h) noncompliance by companies with the provisions of Art. 20 Para. (15) and the non-maintenance by the companies of the conditions provided in Art. 21 Para. (1) Letter (a), (b), (h) and (i);”.

**14. At Article 163, after Paragraph (16) a new paragraph is inserted, Paragraph (16<sup>1</sup>), and shall have the following contents:**

"(16<sup>1</sup>) In the case of sanctions applied for committing the contraventions provided in Para. (1), the sanctioned persons pay the contravention fine within maximum 15 days from the date of communication by ASF of the sanctioning decision, by derogation from the provisions of Art. 16 Para. (1) and of Art. 28 Para. (1) of Government Ordinance no. 2/2001, approved with amendments and completions by Law no. 180/2002, subsequent amendments and completions."

**15. At Article 163, Paragraphs (17) and (18) are being amended and shall have the following contents:**

"(17) By derogation from the provisions of Art. 13 Para. (1) of Government Ordinance no. 2/2001, approved with amendments and completions by Law no. 180/2002, subsequent amendments and completions, the application of the contravention sanctions provided by the present law is prescribed within 3 years from the date of committing the deed.

(18) The finding of the contraventions provided in Para. (1) is made by the specialized structures within ASF, and the application of the administrative sanctions provided in Para. (2) - (8) shall be performed by the ASF Board, under the conditions of Art. 212 of the Emergency Government Ordinance no. 93/2012, approved with amendments and completions by Law no. 113/2013, subsequent amendments and completions."

**16. At Article 163, after Paragraph (18) three new paragraphs are inserted, Paragraphs (18<sup>1</sup>)-(18<sup>3</sup>), and shall have the following contents:**

"(18<sup>1</sup>) ASF notifies the companies and/or the persons concerned on the noncompliance with the legal provisions, the latter having the right to explain within 7 days from the receipt of the notification the reason for non-compliance or to formulate objections.

(18<sup>2</sup>) After the expiry of the term provided by Para. (18<sup>1</sup>), ASF may take appropriate measures to prevent or remedy any situations of noncompliance with the established legal provisions or may apply administrative sanctions.

(18<sup>3</sup>) The specialized structures within ASF having control tasks draw up a report, following the periodical or unexpected control at the premises of the companies'; the companies may object to the report within the terms established by the legal provisions."

**17. At Article 167, Paragraph (9) shall be repealed.**

**18. At Article 167 Paragraph (10), Letters c) and d) are being amended and shall have the following contents:**

"c) in 2019, the standard parameters used in the calculations sub-module concentration risk of the market risks and of the sub-module credit margin risk of the standard formula are reduced by 50% in the case of exposures to Member States' central governments or central banks, denominated and financed in the national currency of any other Member State;

c) starting January 1<sup>st</sup>, 2020, the standard parameters used in the calculations of the sub-module concentration risk of the market risks and of the sub-module credit margin risk of the standard formula shall not be reduced in the case of exposures to Member States' central governments or central banks, denominated and financed in the national currency of any other Member State."

**19. In the statement transposing the rules of the European Union, after Item 3, three new points are inserted, Points 4-6, and shall have the following contents:**

"4. the provisions of Art. 63 Item 1 of Directive (EU) 2016/2341 of the European Parliament and of the Council of 14 December 2016 on the activities and supervision of institutions for occupational retirement provision (Ro. IORP);

5. the provisions of Art. 2 of Directive (EU) 2018/843 of the European Parliament and of the Council amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing, as well as amending Directives 2009/138/EC and 2013/36/EU;

6. the provisions of Art. 2 Item 1 of Directive (EU) 2019/2177 of the European Parliament and of the Council of 18 December 2019 amending Directive 2009/138/EC on access to employment and insurance and reinsurance activities (Solvency II), Directive 2014/65/EU on markets of financial instruments and Directive (EU) 2015/849 on the prevention of the use of the financial system for the purpose of money laundering or terrorist financing."

## CHAPTER V

### Completion of Law no. 236/2018 regarding the Insurance Distribution

Art. VII. - Law no. 236/2018 regarding the insurance distribution, published in the Official Gazette of Romania, Part I, no. 853 of October 8<sup>th</sup>, 2018, subsequent additions, is being completed shall have the following contents:

**1. At Article 3 Paragraph (1), after Item 4 a new Item is inserted, Item 4<sup>1</sup>, with the following contents:**

" 4<sup>1</sup>. *financial adviser* - consultant, as referred to in Art. 2 Item 11 letter a) and letter b) of Regulation (EU) no. 2019/2088 of the European Parliament and of the Council of 27 November 2019 regarding information on sustainability in the financial services sector, hereinafter referred to as *Regulation (EU) no. 2019/2088*."

**2. At article 27, after paragraph (2) a new paragraph is inserted, paragraph (2<sup>1</sup>), with the following contents:**

"(2<sup>1</sup>) Insurance intermediaries and insurers, as financial advisers, comply with the provisions of Regulation (EU) no. 2019/2088."



## CHAPTER VI

### Amendment and completion of Law no.126/2018 on financial instruments markets

Art. VIII. - Law no. 126/2018 on financial instruments markets, published in the Official Gazette of Romania, Part I, no.521 from June 26<sup>th</sup>,2018, is being amended and supplemented shall have the following contents:

**1. At Article 2, para (5) is being amended and shall have the following contents:**

"(5) In exercising the attributions established within BNR, as per the provisions of Para (2) and Art. 234<sup>1</sup>, any reference to ASF is considered to be made corresponding to BNR."

**2. At Article 3, para (1), Item 70 is being amended and shall have the following contents:**

"70. *spread* – the difference between the sale quotation and purchase quotation;".

**3. At Article 5, para (1) is being amended and shall have the following contents:**

"Art. 5. - (1) Dispositions of Art. 2, Art. 6 para (4), Art. 10-12, 14, 15, 18, Art. 21 Para. (1), Art. 25, 48, 49-56, 60, 61, Art. 62 Para. (3) and (4), Art. 63-65, 67-74, Art. 76 Para. (1), Art. 77-103, Art.105-109, Art.110 Para. (8) and (9), Art. 111-113, 115, 116, 118-121, Art. 236 Para. (1) - (4), Art. 238, 243, 244, Art. 252-254, 257, 259, Art. 261-263, 270 and 271 also applies to credit institutions authorized based on the Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, approved with amendments and completions by Law no.227/2007, subsequent amendments and completions, in case they supply one or more investment services and/or perform one or more investment activities."

**4. At Article 11, after paragraph (1) is being introduced a new paragraph, paragraph (1<sup>1</sup>), with the following contents:**

"(1<sup>1</sup>) By way of exception to the provisions of para (1), one of the persons who is part of the superior management of SSIF can provide services and investment activities on behalf of the respective SSIF, without being employed at SSIF".

**5. At Article 12, paragraph (2) is being amended and shall have the following contents:**

"(2) The ASF Registry contains information on the services and activities for which SSIF and credit institutions are being authorised."

**6. At Article 82, paragraph (7) is being amended and shall have the following contents:**

"(7) The direct interaction provided at Para. (6) Letter a) includes, at least, meetings with the client, telephone calls with or without human intervention, seminars and presentations allowing the interaction with the client, messages received on telephone, e-mail, chat, personalized letter, fax, and excludes the media statements, audio ads, video and internet, billboards, posters, catalogues, brochures."

**7. At Article 99, para (1) is being amended and shall have the following contents:**

"Art. 99. - (1) The tied agents established in Romania are being registered in ASF Registry".

**8. At Article 104 para (6), letter e) shall be repealed.**

**9. At Article 109, para (5) and shall have the following contents:**

"(5) Following the fulfilment of the notification procedure, the investments firms and the credit institutions provided at Art. (1) and Art.113 para (1) can promote their services by all means of communications available in Romania, in compliance with the marketing rules set out by ASF, inclusively can perform their marketing through web sites owned by another person, which enable the redirection of the potential client to the own site".

**10. At Article 111, paragraph (1) is being amended and shall have the following contents:**

"Art. 111. - (1) Any credit institution that intends to provide investment services and ancillary services or perform investment activities as per Art. 110 by way of tied agents communicate ASF the identity of the respective tied agents."

**11. At Article 124, after paragraph (4) a new paragraph is inserted, paragraph (5), with the following contents:**

"(5) Following the granting of the authorisation of the branch of a third-country company, the entity can promote the services supplied by the branch by all means of communication available in Romania, in compliance with the marketing rules set out by ASF, inclusively can perform their marketing through web-sites owned by another person besides the respective company/branch, which enable the redirection of the potential client to the branch's site."

**12. At Article 129 para (3), letter g) is being amended and shall have the following contents:**

" g) the contract concluded with a financial auditor or an audit company endorsed by ASF.

**13. At Article 145, after paragraph (1) a new paragraph is inserted, paragraph (1<sup>1</sup>), with the following contents:**

"(1<sup>1</sup>) The application of the tick sizes by the regulated markets do not impede the regulated markets to correlate the large size orders at the midpoint between the current purchase price and the sale price."

**14. At Article 162, paragraph (4) is being amended and shall have the following contents:**

"(4) The registry provided at para (3) contains information on services for which the data reporting services is being authorized ."

**15. At Article 166, para (4) is being amended and shall have the following contents:**

"(4) In case a market operator wishes to obtain an APAs, of CTP or of an ARM and the members of the management body of the APA, CTP or ARM are the same as the members of the management body of the market operator, it shall be deemed that the respective persons meet the requirements provided in para (1)-(3)."

**16. At Article 177, paragraphs (3) and (5) are amended and shall have the following contents:**

"(3) The central depository provides to the issuers for which it also performs the recording operations by book-entry and the services related to the shareholders registries provided at Item 2 letter (a) of Section B from the annex to the (EU) Regulation 909/2014 the necessary information for exercising the rights related to the financial instruments deposited, others than the derivatives ones, being able to provide services to the fulfillment of the issuer's obligations against the financial instruments holders, others than the derivatives ones.

.....

(5) In case of using the global accounts system, in view of determining the structure of the financial instruments holders issued by an issuer, at a certain date, participants shall report to the central depository, in case the central depository also performs book - entry operations and services related to the shareholders registries, information on the financial instruments holders and the holdings thereof in the individual subaccounts and the information provided by the holders of global subaccounts on the financial instruments holders and the holdings thereof emphasized in the global subaccounts."

**17. The Appellation of Title VIII is being amended and shall have the following contents:**

**„TITLE VIII  
Competences of the National Authorities”**

**18. At Article 234, Letters c) and d) are amended and shall have the following contents:**

"c) the competent authority within the meaning of the provisions of Art.4 Item 8 of the Regulation (EU) 1.286/2014, responsible for supervising the compliance with the requirements imposed by the European Regulation to the PRIIP manufacturers and the persons advising on, or selling the PRIIP, which fall under ASF's supervision and regulation sphere;

d) the competent authority, within the meaning of the provisions of Art.40 of (EU Regulation) 1.011/2016 of the European Parliament and the Council in June 8<sup>th</sup>, 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, *hereinafter called the Regulation (EU) 1.011/2016*, in case of administrators and entities subject to the supervision stipulated at Art.3 Para (1) Item 6 and Item 17 Letter b) -g) and Letter j) - m) of the respective European regulation, which fall under ASF competence."

**19. After Article 234 two new Articles are being inserted, Articles 234<sup>1</sup> and 234<sup>2</sup>, with the following contents:**

"Art. 234<sup>1</sup>. - BNR is:

a) the competent authority, within the meaning of the provisions of Art.4 Item. 8 of (EU) Regulation 1.286/2014, responsible with the supervision of the requirements imposed by the European Regulation to credit institutes in what regards PRIIP based on the instruments provided at Art 2 Para (2) Letter d) and Para (3);

b) the competent authority, within the meaning of the provisions of Art. 40 of (EU) Regulation 1.011/2016, in case of administrators and entities subject to supervision, stipulated at Art.3 Para (1) Item 6 and Item 17 Letter a), h), i) and m) of the respective European regulation, which administrates, uses and contributes, with input data, to the calculation of benchmarks related to the monetary market, currencies, interests rates or of the return and of the exchange rates/index published by BNR and the European Central Bank.

Art. 234<sup>2</sup>. - ASF is the competent authority responsible with the coordination of the cooperation and exchange of information with the European Commission, ESMA and the competent authorities of the other member states with regards to the supervision of the compliance with the requirements imposed by (EU) Regulation no.1.011/2016.”

**20. At Article 236 Paragraph (3), after Letter u) a new letter is being inserted, Letter v), with the following contents:**

"v) to request and to be within its right to receive, from the credit institutions authorized by BNR, information necessary for ASF investigations, as well as to answer the request for assistance received from ASF based on the international agreements ASF is being part of.”

**21. After Article 236 a new Article is being inserted, Article 236<sup>1</sup>, with the following contents:**

"Art. 236<sup>1</sup>. - (1) ASF holds a registry, named ASF Registry, which contains information on entities providing services and activities which fall under the competence of the Financial Instruments and Investment Sector within ASF.

(2) The ASF Registry is accessible to the public and is periodically updated.”

**22. Articles 250 and 251 are amended and shall have the following contents:**

"Art. 250. - ASF establishes, by regulations, the endorsement conditions of the financial auditors and the audit companies, authorized according to the provisions of Law no.162/2017 on the statutory audit of the annual financial statements and annual consolidated financial statements, and the amendment conditions of some normative acts, hereinafter called *Law no. 162/2017*, which audit the financial statements and the operations of any entity subject to authorisation, supervision and control of ASF as per the provisions of this law.

Art. 251. - The financial statements and those related to the operations of each entity subject to authorisation, supervision and control of ASF will be elaborated in compliance with the specific requirements established by ASF, will be audited by the financial auditors and audit companies, authorized in compliance with the provisions of Law no.162/2017, endorsed by ASF and will be submitted to ASF according to the specific requirement set out by ASF regulations.”

**23. At Article 257 Para (1) Letter a), Item (i) is being amended and shall have the following contents:**

"(i) to the provisions of the regulations in force, issued by ASF as per the conditions provided by the respective regulations;”.

**24. At Article 257 Paragraph (2) Letter a), after Item (ii) a new Item is inserted, Item (iii), with the following contents:**

"(iii) warning the persons responsible for the facts determined as low gravity facts;"

**25. At Article 257 Paragraph (2) Letter b), after Item (ii) a new Item is introduced, Item (iii), with the following contents:**

"(iii) warning the persons responsible for the facts determined as low gravity facts;"

**26. At Article 260, Paragraph (2) is being amended and shall have the following contents:**

"(2) By exemption from the provisions of the Government Ordinance no.2/2001, approved with amendments and completions by Law no.180/2002, ulterior amendments and completions, in case of the entities for which BNR represents the competent authority, as per the provisions of Art.2 Para (2) and Art.234<sup>1</sup> of thid law, the determination of contraventions is being performed by empowered persons within BNR and the application of the sanctions and measures is made by order issued by the governor, First Deputy Governor or one of the First Deputy governors of BNR."

**27. At Article 261, after Paragraph (1) a new parapgraph is inserted, Paragraph (1<sup>1</sup>), with the following contents:**

"(1<sup>1</sup>) The failure to comply with the provisions provided at Art.3-13 and Art.15 of (EU) Regulation 2019/2.088 of the European Parliament and the Council in November 27<sup>th</sup>, 2019, on the information regarding the durability in the financial services sector and the regulations adopted in the application thereof by a SSIF providing portfolio management mentioned at Item 4 Section A of Annex no.1or investment advice mentioned at Item 5 Section A of Annex no. 1, represents contravention and is sanctioned by ASF, in its capacity of competent authority."

**28. At Article 261, the introductory part of Paragraph (2) is being amended and shall have the following contents:**

"(2) Committing the contraventions provided at Para. (1) and (1<sup>1</sup>), as well as the Art.258 is sanctioned with one of the main contraventional sanctions:"

**29. At article 261 Paragrph (3), Letters a) and b) is being amended and shall have the following contents:**

"a) withdrawal or suspension of the authorisation of a credit institution providing services and investment activities and ancillary services in compliance with the dispositions of Art.17, of a SSIF, of a person provided at Art.7, of a market operator, of an APA, of an CTP and of an ARM;

b) the temporary or permanent ban to exercise some management positions in SSIF, for serious repeated infringements, in case of any member of the management body of SSIF or of a credit institution providing services and intestment activities and ancillary services or any other person considered responsible:"

**30. At Article 269, Paragraph (2) is being amended and shall have the following contents:**

"(2) Represent contraventions, to the extent that the facts are not committed in such conditions so as to be considered, as per the criminal law, crimes, the failure to observe the provisions of Art. 4-16, 19a, 19b, 19c, 21, 23-29 and 34 of the (EU) Regulation no. 1.011/2016, as well as any refuse to cooperate within the investigation carried out by ASF or compliance with a request of the authority, subject to Art.41 of the same regulation."

**31. At Article 269 Paragraph (3) Letter a), Item 1 is being amended and shall have the following contents:**

"1. from 1,000 RON to 2,260,500 RON the infringement of the provisions of Art. 4-10, Art. 11 Para. (1) Letter a) -c) and e), Art. 11 Para. (2) and (3), Art. 12-16, Art. 19a, 19b, 19c, 21, Art. 23-29 and 34 of (EU) Regulation no. 1.011/2016;"

**32. At Article 269 Paragraph (3) Letter b), Item 1 is being amended and shall have the following contents:**

"1. from 10,000 RON to 4,521,000 RON or up to 10% of the annual turnover as per the last financial statements available approved by the management body, any value is higher, the infringement of the provisions of Art. 4-10, Art. 11 Para. (1) Letter a) -c) and e), Art. 11 Para. (2) and (3), Art. 12-16, 19a, 19b, 19c, 21, 23-29 and 34 of (EU) Regulation no. 1.011/2016;"

**33. At Article 272, after Paragraph (5) a new Paragraph is inserted, Paragraph (6), with the following contents:**

"(6) The provisions of these article are applied to the entities subject to the application of the provisions of this law, as well as the UCITS management companies, managers of alternative investment funds and the self-managed alternative investment funds."

**34. At the mention of transposition of the European Union norms, after Item 3 a new Item is inserted, Item 4, with the following contents:**

"4. Art. 64 Item 5 of (UE) Directive 2019/2.034 of the European Parliament and the Council from November 27,2019 on the prudential supervision of the investment companies and the amendment of the Directives, 2009/65/EC, 2014/59/EU and 2014/65/EU, published in the Official Journal of EU (Ro. JOUE), series L, no. 314 from December 5<sup>th</sup>, 2019."

**35. At Annex no. 2 Article 2 Paragraph (1) Letter a), Item 8 is being amended and shall have the following contents:**

"8. The local firm, defined at Art. 4 Para (1) Item 4 of (EU) Regulation 575/2013;"

**36. At Annex no. 2 Article 3 Para (5), Letter c) is being amended and shall have the following contents:**

"c) the client has been working for at least one year or has worked for at least one year in the financial sector, in a professional position requiring knowledge of the transactions or of services in question"

**CHAPTER VII**  
**Amendment of Law no. 297/2004 on the capital market**

Art. IX. - At Article 2 of Law no. 297/2004 on the capital market, published in the Official Gazette of Romania, Part I, no. 571 of June 29<sup>th</sup>, 2004, ulterior amendments and completions, Para (6) is repealed.

**CHAPTER VIII**  
**The Completion of Art. 141 Para. (1) of Law no. 411/2004 on privately managed pensions funds**

Art. X. - At Article 141 Paragraph (1) of Law no. 411/2004 on privately managed pensions funds, republished in the Official Gazette of Romania, Part I, no. 482 of July 18<sup>th</sup>, 2007, ulterior amendments and completions, after Letter h) a new letter is inserted, Letter i), with the following contents:

"i) the failure to comply with the provisions provided at Art.3-13 of (EU) Regulation 2019/2.088 of the European Parliament and the Council from November 27, 2019 on the information related to the durability in the financial services sector and the regulations adopted in the application thereof."

**CHAPTER IX**  
**The Completion of Art. 121 Para (1) of Law no. 204/2006 on facultative pensions**

Art. XI. - At Article 121 Paragraph (1) of Law no. 204/2006 on facultative pensions, published in the Official Gazette of Romania, Part I no. 470 of May 31<sup>st</sup>,2006, ulterior amendments and completions, after Letter k) a new letter is inserted, letter l), with te following contents:

"l) the failure to comply with the the provisions provided at Art. 3-13 of the (EU) Regulation 2019/2.088 of the European Parliament and the Council in November 26<sup>th</sup>, 2019 on the information related to the durability in the financial services sector and the regulations adopted in the application thereof."

**CAPITOLUL X**  
**The completion of Art.146 Para (1) of Law no. 1/2020 on occupational pensions**

Art. XII. - At Art.147 Paragraph (1) of Law no. 1/2020 on occupstional pensions, published in the Official Gazette of Romania, Part I, no.10 from January 8<sup>th</sup>, 2020, after Letter o) a new letter is inserted, Letter p), with the following contents:

"p) the failure to comply with the the provisions provided at Art. 3-13 and Art. 15 of the (EU) Regulation 2019/2.088 of the European Parliament and the Council in November 27<sup>th</sup>,2019 on the information related to the durability in the financial sector services and the regulations adopted in the application thereof."

## CHAPTER XI

### **Measures of Application of the (EU) Regulation 2017/2.402 of the European Parliament and the Council in December 12<sup>th</sup>, 2017 related to the settlement of a General Framework for the Securitization and Creation of a specific Framework for a simple, transparent and standardized Securitization and for the amendment of the Directives 2009/65/EC, 2009/138/EC și 2011/61/EU, as well as the (EC) Rules no. 1060/2009 and (EU) no. 648/2012**

Art. XIII. - This chapter establish measures in application of the dispositions of (EU) Regulation 2017/2.402 of the European Parliament and the Council from December 12<sup>th</sup>,2017, laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012 hereinafter called the *(EU) Regulation 2017/2.402*, as well as the European regulations issued in connection thereof.

Art. XIV. - The Financial Supervisory Authority, hereinafter called ASF, is the competent authority applying the provisions of this chapter, by exercising the prerogatives established by the Government Emergency Ordinance no. 93/2012 on the establishment, organisation and operation of the Financial Supervisory Authority, approved with amendments and completions by Law no.113/2013, ulterior amendments and completions.

Art. XV. - (1) The terms and expressions used in this chapter have their meaning provided at Art.2 of the (EU) Regulation 2017/2.402.

(2) Whether the (EU) Regulation 2017/2.402 or, as the case may be, the regulations issued in connection thereof refer to the national law, the relevant national rules governing the domain concerned shall apply accordingly, taking into account, where applicable, , , the dispositions of this chapter.

Art. XVI. - ASF is competent authority, shall have the following contents:

a) for the purposes of Art. 29 Para. (4) of (EU) Regulation 2017/2.402:

(i) for SSPEs;

(ii) for originators and original lenders , if they are entities that fall under ASF supervision;

b) for the purposes of Art. 29 Para. (5) of (EU) Regulation 2017/2.402:

(i) for SSPEs;

(ii) for sponsors and originators, if they are entities that fall under ASF supervision;

(iii) for the third party, if the entity which uses the services of that third party as per Art. 27 Para. (2) of (EU) Regulation 2017/2.402 is an entity that falls under ASF supervision, according to Item (i) and (ii).

Art. XVII. - (1) As competent authority for the purposes of Art. 29 of (EU) Regulation 2017/2.402 and Art. XVI, ASF has , as per Art.30 Para (1) of the European regulation, the supervisory, investigatory and sanctioning powers necessary to fulfil its duties under Regulation (UE) 2017/2.402 and this chapter.

(2) Without prejudicing ASF competences set out by the specific legislation applicable to the financial supervisory sectors within ASF, which is being correspondingly applied, ASF has the following competences:



a) to have access to any document or information it considers necessary for the fulfillment of its attributions, held by any person, namely receive or make a copy thereof;

b) to impose or request to any person to provide information and, when necessary, to summon and question any such person, with a view to obtain information, with the corresponding application of the provisions of Art.125 Para (2) – (4) of Law no.24/2017 on issuers of financial instruments and market operations, with the amendments and completions brought by this law;

c) to carry out investigations or inspections at the premises of the legal entities, as defined in Art.2 Para (1) pf Law no. 24/2017, and in case of natural persons by the support of the institutions/authorities/competent bodies for exercising this right;

d) to notify the competent judicial authorities in view of disposing some precautionary measures, such as freezing or sequestration of the assets of the entities for which ASF is competent authority as per Art.29 of the (EU) Regulation 2017/2.402 and Art. XVI;

e) to dispose the temporary or permanent ban of exercising the activities regulated by the (EU) Regulation 2017/2.402 and by this chapter, provided by the entities for which ASF is comptent authority as per Art.29 of the European regulation and Art. XVI;

f) to demand information from financial auditors/audit companies, entities for which ASF is competent authority as per Art.29 of Regulation (EU) 2017/2.402 and Art.XVI;

g) to notify the prosecuting authorities ;

h) to request the financial auditors/audit companies or experts to carry out verifications or investigations with regards to the activites regulated by (UE) Regulation 2017/2.402 and by this chapter, performed by the entities for which ASF is comptent authority as per Art.29 of the (EU) regulation 2017/2.402 and Art. XVI;

i) to impose the temporary or permanent cease of any practice or any behavior that it consideres to be contrary to the dispositions of (EU) Regulation 2017/2.402 and of this chapter and establish measures meant to prevent the practice repetition or the behavior in question;

j) to dispose any type of measure, as per the provisions of this law and the Government emergency Ordinance no. 93/2012, approved with amendments and completions by Law no.113/2013, ulterior amendments and completions, which it considers necessary for making sure that the entities for which it is comptent authority as per Art. 29 of (EU) Regulation 2017/2.402 and Art. XVI, which carry out activities or which perform operations regulated by the (EU) Regulation 2017/2.402 and by this chapter continue to respect the provisions of the (EU) Regulation 2017/2.402 and of this chapter;

k) to suspend or request the market operator operating the trading venue the suspension of a financial instrument;

l) to remove or request the market operator operating the trading venue the removal of a financial instrument from trading on any trading venue;

m) to make public announcements concerning the aspects regulated by (EU) Regulation 2017/2.402 and by this chapter;

n) to suspend or request the entity in question the suspension of the marketing activities, sale or publicity of the financial instruments issued by SSPE for which ASF is competent authority as per Art.29 of (EU) Regulation 2017/2.402 and Art. XVI;

o) to reasonably request the management board or, as the case may be, the supervisoryboard , respectively to the members of the directorate or the directors of an entity for which ASF is competent authority as per Art.29 of (EU) Regulation 2017/2.402 and Art.XVI, the meeting of its members.

(3) ASF, in its capacity of competent authority as per (EU) Regulation 2017/2.402, has access to information and relevant document and has all the powers to carry out of any operation envisaged to be carried out by the competent authority as per the European regulation.

Art. XVIII. - (1) Entities for which A.S.F. is the competent authority within the meaning of Art. 29 of (EU) Regulation 2017 / 2402 and Art. XVI implement arrangements, processes and mechanisms which are reviewed by A.S.F., in accordance with the provisions of Art. 30 Para. (2) of Regulation (EU) 2017 / 2.402 .

(2) The entities provided at Art. 30 Para. (3) of (UE) Regulation 2017/2.402, for which ASF is the competent authority provided at Art. XVII Para. (1), assess the risks arising from the securitisation transactions, including reputational risks and elaborate appropriate policies and procedures for the management thereof.

Art. XIX. - (1) In case of the entities for which ASF is competent authority for the purposes of Art.29 of (EU) Regulation 2017/2.402 and Art. XVI, represent contraventions, as long as they are not committed in such conditions as to be considered crimes, pursuant to the criminal law, the deeds provided at Art.32 Para (1) Letter a) – h) of the (EU) Regulation 2017/2.402, as well as the following acts:

a) the institutional investors do not fulfill the requirement provided at Art.5 of (EU) Regulation 2017/2.402;

b) the entity did not comply with the interdiction provided at Art.8 Para (1) of the (EU) Regulation 2017/2.402;

c) there are not being respected the provisions of the regulations in force, issued by ASF, neither the measures set out by the authorisation, supervision and control acts or other measures adopted by ASF;

d) it is impeded without right the exercising of the rights conferred by the law to ASF and is being unreasonably refused, by any person, to be answered to ASF requests in exercising the attributions deriving thereto pursuant to the law;

e) the entity does not fulfill its obligations according to Art. art XVIII.

(2) Without impacting the possibility to impose, by the abilitated bodies, in applicable cases, of some criminal sanctions, ASF applies, pursuant to Art.32 Para (1) of (EU) Regulation 2017/2.402, contraventional sanctions, in case of infringements committed on purpose or by negligence by the respective entities, as well as appropriate administrative measures, to the entities for which it is competent authority, as defined in Art.29 of (EU) Regulation 2017/2.402 and Art. XVI, committing the contraventions provided at Para (1).

(3) ASF makes sure that the contraventional sanctions and/or the administrative measures are effectively implemented.

Art. XX. - (1) In the situations provided at Art.XIX Para (1), ASF may apply the followings:

1. main contraventional sanctions:

a) for natural persons, warning notice or fine from 10,000 RON to 23,500,000 RON;

b) for the legal persons, warning notice or fine of 10,000 RON up to 23,500,000 RON or up to 10% of the total annual net turnover of the legal person as per the last available accounts, approved by

the management body. When a legal person is a parent- undertaking or a subsidiary of the parent undertaking which has to prepare consolidated financial accounts in accordance with the applicable accounting regulations, the relevant total annual net turnover shall be the total net annual turnover or the corresponding type of income in accordance with the relevant accounting legislative acts according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;

c) fine ranging from a date and up to twice the amount of the benefit derived from the infringement where that benefit can be determined, even if that exceeds the maximum amounts in Letter a) and b);

2. complementary contraventional sanctions, according to the nature and gravity of the deed:

a) the sanctions provided at Art. 32 Para. (2) Letter. c), d) and h) of (EU) Regulation 2017/2.402. The temporary interdiction provided at Art. 32 Para. (2) Letter. c) and d) of the (EU) Regulation 2017/2.402 can be disposed for a period between 90 days and 5 years. The temporary withdrawal of the authorisation provided at Art.32 Para (2) Letter h) of the (EU) Regulation 2017/2.402 can be disposed for a period between one year and 5 years;

b) the withdrawal of the authorisation granted by ASF;

3. administrative measures:

a) a public statement which indicates the identity of the natural or legal person and the nature of the infringement in accordance with Art. 37 of (EU) Regulation 2017/2.402 and Art. XXV;

b) the measure provided at Art. 32 Para (2) Letter b) of the (EU) Regulation 2017/2.402;

c) warning the responsible persons for the facts considered of low gravity;

d) the necessary measures for the prevention or remediation of the situations of non-compliance with the norms in force.

(2) The main contraventional sanctions provided at Para (1) Item 1 can be applied cumulatively with one or more complementary contraventional sanctions provided at Para (1) Item 2.

(3) The administrative measures provided at Para (1) Item 3 can be distinctly applied and the administrative measures provided at Para (1) Item 3 Letter a) and d) can be applied as well along with main sanctions or the complementary sanctions provided at Para (1) Item 1 and 2.

(4) The limits of the fines provided in this chapter are being established by way of derogation from Art.8 of the Government Ordinance no.2/2001 on the legal regime of contraventions, approved with amendments and completions by Law no.180/2002, ulterior amendments and completions.

Art. XXI. - In the situations provided at Art. XIX Para (1) where the entity is a legal person, ASF can apply the contraventional sanctions and the administrative measures provided at Art. XX Para (1) to the members of the management board or the supervisory board, directors and members of the directorate, as well as to other persons responsible for the infringement, such as the employees of the respective legal person or other persons responsible for the infringement, such as the employees of the respective legal person or other legal persons or other persons exercising *de jure* and *de facto* management positions or exercise activities being under ASF supervisions, with the appropriate observance of the incidental legislation in force, as well as the acts of the respective legal person, as the case may be.

Art. XXII. - The provisions of Art. 133 of Law no. 24/2017 are being applied appropriately and in connection to the acts of non-compliance with the dispositions established as per Art. XIX Para

(1), namely in connection to any decisions of imposing of certain contraventional sanctions or administrative measures taken as per Art. XX Para (1).

Art. XXIII. - (1) ASF exercises its powers to apply the contraventional sanctions and the administrative measures provided at Art.32 of (EU) Regulation 2017/2.402 and Art. XIX-XXII, in any of the manners provided at Art. 33 Letter a)-d) of the European regulation, if applicable:

- a) directly;
- b) in collaboration with other authorities;
- c) under their responsibility by delegation to other authorities ;
- d) by application to the competent judicial authorities

(2) The settlement of the type and level of a contraventional sanction or of an administrative measure imposed under Art. 32 (EU) Regulation 2017/2.402 and under Art. XIX-XXII is made by ASF, by considering the dispositions of Art.33 Para (2) of the European regulation.

Art. XXIV. - Where an institutional investor has given another institutional investor authority to make investment management decisions , as part Art.5 Para (5) of the (EU) Regulation 2017/2.402 and the institutional investor fails to fulfill the obligations of the other institutional investor, pursuant to the mentioned request, the managing party , and not the institutional investor, is liable to any sanction based on Art. 32 and 33 of (EU) Regulation 2017/2.402 and Art. XIX-XXIII.

Art. XXV. - In its capacity of competent authority for the purposes of Art.29 of (EU) Regulation 2017/2.402 and Art. XII, ASF publishes the decisions taken as per this chapter, of imposing a contraventional sanction, namely the related information, pursuant to Art.37 of (EU) Regulation 2017/2.402.

Art. XXVI. - (1) The dispositions of these chapter shall be completed in accordance with the dispositions of the Government Ordinance no.2/2001 approved with amendments and completions by Law no.180/2002, ulterior amendments and completions, as long as this law does not dispose otherwise.

(2) ASF issues regulations in the application of this chapter.

## **CHAPTER XII**

### **Final Dispositions**

Art. XXVII. - Romania's obligations to notify ESMA, EIOPA, the European Commission and, as the case may be, other member states, deriving from the European normative acts transposed or in the application of which have been introduced provisions in the normative acts amended and/or completed at chapter I-X, namely at chapter XI of this law, are fulfilled by ASF, in case the respective notification refers to situations under the competence and/or supervision of ASF, is related or derives from the appointment of ASF as competent authority in the meaning of the respective European normative acts.

Art. XXVIII. - This law takes effect at 30 from the date of publishing thereof in the Official Gazette of Romania, Part I, except for the provisions of Art. I Item 46 on the provisions of Art. 91<sup>3</sup> - Art. 91<sup>5</sup> of Law no. 24/2017 regarding the issuers of financial instruments and market operations, with the amendments and completions brought by this law and the provisions related to sanctioning thereof from Art.I Item 53, as well as the provisions of Art.VIII Item 16, becoming effective at September 3<sup>rd</sup>, 2020.

Art. XXIX. - At the date of entering into force of this law, the Law no. 31/2006 on securitisation of receivables, published in the Official Gazette of Romania, Part I, no.255 from March 13<sup>th</sup>, 2006, is hereby repealed.

This law has been adopted by the Parliament of Romania, in compliance with the provisions of Art. 75 and Art. 76 Para (2) of the Constitution of Romania, republished.

p. PRESIDENT  
OF THE CHAMBER OF  
DEPUTIES,  
FLORIN IORDACHE

p. PRESIDENT OF THE SENATE  
ROBERT-MARIUS CAZANCIUC

Bucharest, July 27<sup>th</sup>, 2020.

No.158.