

The Financial Supervisory Authority

**REGULATION No. 2/2016.
on the application of the principles of corporate governance by the entities authorised,
regulated and supervised by the Financial Supervisory Authority**

In force since: March 23, 2016.

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There are no amendments until June 1, 2016.

In accordance with the provisions of art.1 para. (2), art.2 para. (1), art.5, art. 6 para. (2), as well as with those of art.7 para. (2) of the Government Emergency Ordinance no. 93/2012 on the establishment, organisation and operation of the Financial Supervisory Authority, approved as amended and supplemented by Law no. 113/2013, as subsequently amended and supplemented.

in accordance with the provisions of art. 17- 5 of the Government Emergency Ordinance no. 32/2012 on undertakings for collective investment in transferable securities and investment management companies, and amending and supplementing Capital Market Law nr. 297/2004, approved as amended and supplemented by Law nr. 10/2015, with further amendments, of art.1 para. (6) and of art. 12-20 of Law no. 74/2015 on managers of alternative investment funds, as subsequently amended and supplemented, of art. 24 letter o) of Government Emergency Ordinance No. 50/2005 on the establishment, organisation and operation of the Private Pension System Supervisory Commission, approved as amended and supplemented by Law nr. 313/2005, as subsequently amended and supplemented, and art. 26 and art. 179 para. (4) of Law. No. 237/2015 on authorisation and supervision of the insurance and reinsurance business,

further to the deliberations held in the meeting of the Financial Supervisory Authority's Board of March 9, 2016,

the Financial Supervisory Authority hereby issues this regulation.

CHAPTER I

General Provisions

Art. 1. - (1) This regulation lays down the uniform regulatory framework for the application of the principles of corporate governance at the entities authorised, regulated and supervised by the Financial Supervisory Authority, hereinafter referred to as ASF, and promotes the development of the corporate governance subject to the application of the best practices and achievement of a prudent management.

(2) This regulation establishes a set of requirements underlying the application of the principles of corporate governance by the regulated entities set out in art. 3.

Art. 2. - (1) The terms and expressions used in this regulation shall have the meanings set out in the specific legislation applicable to the regulated entities, and also the meanings referred to in Para (2).

(2) For the purpose of this regulation, the terms and expressions below shall have the following meanings:

a) executive management/senior management – means the persons who, in accordance with the instruments of incorporation and/or resolution of the statutory structures of the regulated entity, are empowered to direct and coordinate its day-to-day business and invested with powers to engage the liability of the undertaking, i.e. the general director/managers appointed by the board of directors, for the monistic administration system, or the executive board appointed by the supervisory board, for the two-tier administration system; the persons who direct the compartments and secondary offices of the regulated entity shall not be included in this category;

b) conflict of interest – means the situation or circumstances which may occur in the operational or decision-making process, where the direct or indirect personal interest of the personnel and members of the management structure/persons holding key functions within the regulated entity is contrary to such entity's interest, so that it affects, or is likely to affect, their independence and impartiality in making decisions, professional judgment or the timely and objective fulfilment of their duties, or is likely to affect, by nature, the stability or integrity of the financial market;

c) professional competence and experience – means a body of theoretical and practical knowledge, acquired by a person in the course of his/her business;

d) board – means the board of directors for the monistic administration system, and the supervisory board for the two-tier administration system;

e) regulated entity – means the undertaking authorised, regulated and supervised by ASF which carries out the activities and operations referred to in the applicable specific legislation;

f) corporate governance – means the set of principles underlying the administration of a regulated entity, with the aim of protecting and harmonising the interests of all of the categories of participants in the activity of the regulated entity, i.e.: directors, managers, employees, clients and business partners, central and local authorities, civil society, etc.;

g) parties concerned – means the employees, consumers of financial products and/or suppliers of products and services offered by the regulated entity;

h) persons holding key functions – means the persons whose duties have a significant influence on the achievement of the strategic objectives of the regulated entity, who are not members of the management structure and who fulfil the following tasks within the regulated entity in accordance with the applicable specific legislation, as appropriate:

(i) risk assessment and management (risk management);

(ii) internal control/compliance;

(iii) internal audit;

(iv) investment manager, within private pension fund managers;

(v) actuary

i) management structure – means the members of the board and the executive management/senior management.

Art. 3. – This regulation shall apply to the following categories of entities, hereinafter referred to as regulated entities:

a) investment firms;

b) investment management companies;

c) undertakings for collective investment, established by instruments of incorporation/alternative investment funds (AIFs);

d) alternative investment fund managers (AIFMs)

e) central depositories;

f) clearing houses;

g) market/system operators;

h) insurance and/or reinsurance undertakings;

i) managers of privately managed pension funds and of voluntary pension funds.

Art. 4. (1) The regulated entities set out in art. 3 must take the appropriate measures concerning the application of corporate governance which shall ensure a correct, efficient and prudent management based on the business continuity principle.

(2) The corporate governance system in place must meet at least the following requirements:

- a)** to ensure a transparent and appropriate organisational structure;
- b)** to properly allocate and segregate duties;
- c)** to properly manage risks;
- d)** to ensure adequacy of policies and strategies and of internal control mechanisms;
- e)** to ensure a system for the efficient communication and transfer of information;
- f)** to have in place sound operational procedures which must prevent the disclosure of confidential information.

Art. 5. – The members of the board, the executive management/senior management, and the persons holding key functions within the regulated entity must have professional competence and experience, and must be of good repute and integrity.

Art. 6. – The regulated entities must have in place and apply adequate policies and procedures to ensure that the members of the board, of the executive management/senior management and the persons holding key functions shall always meet the good repute and integrity requirements in accordance with the regulations in the field.

CHAPTER II

Responsibilities of the board

Art. 7. – The structure and members of the board of a regulated entity shall be established in accordance with the requirements of the specific legislation applicable to each category of regulated entities, so that it shall efficiently fulfil its obligations.

Art. 8. – The responsibilities of the board concerning the implementation of the principles of corporate governance shall be defined in the instruments of incorporation of the entity and shall be developed in its internal rules of organisation and operation, in accordance with the specific legislation applicable to each category of regulated entities.

Art. 9. – The board may assemble, depending on the nature, extent and complexity of the activity of the regulated entity, advisory committees, entrusted with carrying out investigations and making recommendations.

Art. 10. –The responsibilities of the board shall be delegated to the executive management/senior management in accordance with the provisions of Company Law nr. 31/1990 republished, as subsequently amended and supplemented, and with the specific legislation applicable to each category of regulated entities.

Art. 11. – **(1)** The board shall be responsible for the strategic management of the regulated entity, achievement of the objectives set and, depending on the management system of the regulated entity, the drafting/approval of the business plan and has the obligation to assess the financial position of the regulated entity, based on formal and transparent orders.

(2) The board must establish relevant criteria for monitoring the results of the activity of the executive management/senior management and the regulated entity as a whole and biannually assess the manner in which criteria are applied.

Art. 12. – The activities carried out by the regulated entity and its development prospects shall be analysed at least once a year by the board.

Art. 13. – The board must be responsible for ensuring that there is an adequate framework for verifying the manner of implementation of the specific legislation concerning the reporting to ASF.

Art. 14. – The board may agree with the financial auditor a formal and transparent framework for the supply of correct, complete and timely information concerning the manner of application of the financial reporting principles and practices, including those of prudential reporting.

Art. 15. – The board shall be responsible for ensuring that the information sent to ASF, at the latter's request, concerning certain actions taken by the regulated entity are real, complete and timely supplied.

Art. 16. – **(1)** The board shall analyse the adequacy, efficiency and update of the administration/risk management system for the efficient management of the assets held by the regulated entity, and the manner of management of the risks to which it is exposed.

(2) The administration/risk management system referred to in Para (1) shall guarantee that the control activities are in line with the risks generated by the activities and processes subject to the control.

Art. 17. – **(1)** The regulated entity's internal control system shall be established at a proper hierarchical level and shall report directly to the board or the executive management/senior management, as appropriate, independent from the organisational operational and support structures controlled or monitored by it.

(2) The regulated entity's internal control system shall check the adequacy of the processes for the identification, assessment, monitoring, management and reporting of risks, of the reliability of the financial and non-financial information internally and externally reported, and their compliance with the applicable specific legislation, and with the regulated entity's internal decisions.

Art. 18. - **(1)** The board shall be responsible for meeting the requirements on the outsourcing of operational activities and functions, both before and throughout the outsourcing.

(2) Certain operational activities or functions shall be outsourced provided that the specific legislation is applied and none of the following consequences occur:

- a) the significant deterioration of the quality of the regulated entity's governance system;
- b) the unjustified increase of the operational risk;
- c) ASF's impossibility to monitor the fulfilment by the regulated entity of its obligations;
- d) the prevention of the supply of continuous and quality services to the consumers of financial products.

Art. 19. – **(1)** The board shall analyse and set the remuneration policy of the regulated entity so that it corresponds to the business strategy, objectives and long term interests and covers measures for the prevention of conflicts of interest.

(2) The board shall ensure that all commitments to remuneration are properly and responsibly structured and that the remuneration policies allow and promote an efficient risk management without leading to a risk-taking which may exceed the level of the regulated entity's risk tolerance.

(3) The remuneration policy shall be established based on a substantiated analysis of the individual performance of the person receiving the remuneration correlated to the collective performance of a prudent allocation of the regulated entity's expenses, where possible, and also in consideration of the avoidance of setting incentives which encourage excessive risk-taking.

Art. 20. – The level of the remuneration shall be established in close connection with the responsibilities and commitments of the duties.

Art. 21. – The board and the executive management/senior management, as appropriate, must communicate with the parties concerned based on a communication strategy which meets at least the following requirements:

- a) to ensure a fair treatment of shareholders and parties concerned;
- b) to timely communicate information;
- c) to ensure a transparent communication framework.

Art. 22. - **(1)** For all groups where the parent undertaking is based in Romania and it is one of the regulated entities provided in art. 3, the board of the parent undertaking shall have the overall responsibility to ensure a proper internal governance within the group, i.e. a governance system corresponding to the structure, activity and risks at the group and subsidiary level.

(2) The board of the parent undertaking shall establish a governance system which shall contribute to an efficient supervision of its subsidiaries and shall take into account the nature, extent and complexity of the risks to which the group and subsidiaries are exposed, whilst respecting the legal and governance responsibilities of the subsidiaries.

(3) The board of the subsidiary shall apply internal governance principles and policies similar to those of the parent-undertaking, except where there are other legal requirements which lead to the establishment of own policies.

(4) The board of the subsidiary together with the board of the parent undertaking based in Romania and it is one of the regulated entities provided in art. 3 shall assess the decisions and practices at the group level to ensure that they do not result in the breach of the legal provisions or prudential rules applicable thereto and do not affect its sound and prudent management.

CHAPTER III

Responsibilities of the executive management/senior management and persons holding key functions

Art. 23. – The executive management/senior management shall be responsible for the management, supervision and proper performance of the regulated entity, including for the implementation of the policies, strategies and achievement of objectives.

Art. 24. – **(1)** The regulated entities must draw up the procedure for the recruitment and selection of the members of the executive management/senior management and renewal of the existing mandates.

(2) The regulated entities shall ensure that the members of the executive management/senior management prove that they have professional competence and experience relevant in accordance with the activity carried out and appropriate for the duties assigned, knowledge of the applicable legislation and good practices, and are of good repute and integrity.

Art. 25. – For the purpose of performing its duties and exercise its powers, the executive management/senior management shall act within a well-structured framework, with specific, clearly defined objectives, and in accordance with the specific legislation applicable to each category of the regulated entities.

Art. 26. – The executive management/senior management shall timely supply qualitative and quantitative information to the board, at its request or on its own initiative as a result of the operative and efficient performance of duties.

Art. 27. – The executive management/senior management shall be responsible for the completeness and accuracy of the reports and other information on the activity and financial situation of the regulated entity in accordance with the provisions of the specific legislation.

Art. 28. – The executive management/senior management shall ensure that the information set out art. 15 is available in accordance with the specific legislation applicable to each category of regulated entities and that the reporting deadline of information is complied with.

Art. 29. – The duties corresponding to the key functions shall be assigned as provided in the specific legislation applicable to each category of regulated entities to persons with professional competence and experience.

Art. 30. – The regulated entities shall issue internal procedures for the assessment of the good repute and integrity both for their own personnel holding key functions and for the personnel of the supplier of outsourced activities or functions.

Art. 31. – The regulated entities must issue internal procedures for the transmission of the information necessary for the performance of the duties corresponding to the key-functions.

CHAPTER IV

Conflict of interest and management thereof

Art. 32. – The board shall develop and apply ethical and professional standards to ensure a professional and responsible behaviour at the level of the regulated entity in order to minimise any risk of conflict of interest.

Art. 33. – The board, executive management/senior management and their employees must comply with the standards set out in art. 32 and act with due care, to honestly and openly interact, both internally and externally.

Art. 34. – The regulated entity shall issue procedures for the identification of the current and potential conflicts of interest, and the procedure for the management of conflicts of interest which are approved by the Board

Art. 35. (1) For the purpose of identifying the current and potential conflicts of interest, account shall be taken of at least the following aspects:

a) the potential conflict of interest arises where there are personal interests likely to cause a conflict of interest if a decision must be made;

(i) the person in cause or a close one could obtain a financial earning or could avoid a financial loss on the regulated entity's behalf.

(ii) the person in cause or a close one could have an interest related to the result of a service or an activity supplied to the regulatory entity or any other client or with regard to a transaction carried out in the name of the regulated entity or of another client, interest that is different from the interest of the regulatory with regards to that result;

(iii) the person in cause or a close one could benefit of a financial incentive and not only, in order to favour a company, on the regulated entity's behalf;

b) a conflict of interest is deemed to have arisen when the person concerned participates in making a decision in connection with which there is a personal interest, that lead to the emersion of one of the situations provided in letter a).

(2) Within the meaning of the provisions of para. (1), the regulated entity issues procedures with regards to the identification of the relationships, services, activities or transactions of a regulated entity where conflicts of interest could arise.

(3) For the groups where the parent undertaking is based in Romania, and the parent undertaking is one of the regulated entities provided in art. 3, the parent undertaking shall take into account and balance the interest of all of its subsidiaries and shall analyse the manner in which such interest contributes to the common purpose and interest of the group as a whole in the long term.

Art. 36. – (1) The procedure for the management of conflict of interest lays down the manner in which the conflict of interest is managed and covers references to the next steps, treatment applied and the measures taken if the procedure is not complied with care.

(2) The procedure set out in para (1) shall include information at least on the following:

a) the proper segregation of tasks, such as the entrustment of certain activities likely to trigger conflict situations of the chain of transactions or services to different persons;

b) the entrustment of the supervisory and reporting tasks for the activities triggering conflicts of interest to different persons;

c) the identification of the persons who may have, from outside the regulated entity, a negative influence on such entity in connection with the activities concerned.

Art. 37. - (1) The potential or current conflicts of interest shall be reported to the executive management/senior management, in accordance with the specific legislation applicable. They shall be managed and settled in accordance with the procedure set out in art. 36.

- **(2)** The potential or current conflicts of the executive management/senior management and the persons holding key-functions shall be reported to the Board, according to the specific legislation applicable and these shall be managed in accordance with the procedure set out in art. 36.

Art. 38. – **(1)** The board shall ensure that the regulated entity has in place proper internal whistleblowing procedures for reporting any real and significant suspicions of the employees in connection with the manner in which the activity is managed.

(2) The procedures set out in Para (1) shall ensure the confidentiality of the whistleblowers who report suspicions outside the normal reporting channels through the compliance or internal audit function.

(3) The whistleblowing mechanisms covered by the procedure set out in Para (1) may be used by all employees of the regulated entity, and the relevant information shall be sent to the executive management/senior management or to the board, as appropriate.

Art. 39. – The board, executive management/senior management and the persons holding key functions shall ensure the transparency of the activities at the individual level or at the level of the regulated entity and shall apply certain internal policies/regulations in order to avoid conflicts of interests, considering at least the following:

a) additional tasks shall be assigned to the persons holding key functions so as not to trigger a conflict of interest and comply with the restrictions set out in the specific legislation applicable to each category of regulated entities.

b) the participation of any persons in a state of conflict of interest in making a decision related to the conflict of interest shall be prohibited.

Art. 40. Where a conflict of interest is identified, the board, executive management/senior management and the persons holding key functions must manage the situation in order to annul or minimise the effects of the conflict of interest through the proper management of that situation.

CHAPTER V

Risk management and risk management function

Art. 41. – The regulated entity shall apply risk management procedures and strategies and shall lay down the conditions of their regular review.

Art. 42. – The board shall approve the risk appetite and risk tolerance limits of the regulated entity, and the procedure for the identification, assessment, monitoring, management and reporting of significant risks to which the regulated entity is, or is likely to be, exposed.

Art. 43. The procedure for the identification, assessment, monitoring, management and reporting of significant risks set out in art. 42 shall make clear references to at least the following aspects:

a) the categories of risk identified and methods of assessment thereof;

b) the manner in which the regulated entity manages each relevant risk category and area, and any potential accumulation of risks;

c) the risk tolerance limits for each relevant risk category depending on the general risk appetite, according to the specific requirements of the legislation in the area;

d) the frequency and content of periodical stress tests and the situations justifying the ad-hoc organisation of other stress tests.

Art. 44. – The board, the executive management/senior management, as appropriate, shall ensure that the regulated entity applies the procedure set out in art. 42 and, when doing so, adequate instruments, techniques and mechanisms are used.

Art. 45. – The efficiency of the risk management system adopted by the regulated entity shall be assessed by the board at least once a year, depending on the policies, procedures and controls associated thereto.

Art. 46. – The risk management function shall report to the board and executive management/senior management the risks identified as potentially significant in accordance with the applied procedure.

Art. 47. – The risk management function must report on the specific risk areas both on its own initiative and at the request of the board or executive management/senior management.

Art. 48. – **(1)** The regulated entity shall draw up clear action plans to ensure the business continuity and for any emergency situations in order to eliminate or minimise risks.

(2) The business continuity and emergency plans shall be assessed by the board and the executive management/senior management at least twice a year.

CHAPTER VI

Transitional and final provisions

Art. 49. – **(1)** The regulated entities must file to ASF the statement on the application of the principles of corporate governance, drawn up in accordance with the annexe which is an integral part hereof within maximum 30 days from the entry into force of this regulation.

(2) The regulated entities' annual report shall be accompanied by an explanatory note describing the relevant events in connection with the compliance of the requirements of this regulation, occurring over the financial year for which the report is drawn up.

Art. 50. – The provisions of this regulation shall be supplemented with the specific provisions on the governance system, set out in the specific legislation applicable to the regulated entity.

Art. 51. – The breach of the provisions of this regulation shall be sanctioned by ASF in accordance with the specific legislation applicable to the regulated entity.

Art. 52. - **(1)** The present Regulation will be published in the Official Journal of Romania, Part 1, and shall enter into force starting with January 1, 2017.

Art. 53. – NSC Order No. 17/11.11.2009, NSC Approval No. 43/2010, NSC Executive Order of NSC No. 1/18.01.2010 and NSC Executive Order of NSC No. 22/23.12.2010 shall be repealed with effect from the date of entry into force of this regulation.

¹ The acts set out in Art. 53 have not been published in the Official Journal of Romania, Part I.

President of the Financial Supervisory Authority
Gheorghe Cornel Coca Constantinescu

Bucharest, March 15, 2016

Nr. 2

Annex:

Statement on the application of the principles of corporate governance

Crt. no.	Rules for the application of the principles of corporate governance	Conformity		If NO - explanations
		YES	NO	
1.	The regulated entity defined in its instruments of incorporation and internal policies the responsibilities of the board on the implementation and compliance with the principles of corporate governance.			
2.	The internal policies lay down the corporate governance structures, functions, competences and responsibilities of the board and executive management/senior management.			
3.	The annual report of the regulated entity is accompanied by an explanatory note which shall describe the relevant events in connection with the application of the principles of corporate governance, occurring over the financial year.			
4.	The regulated entity has drawn up a communication strategy with the parties concerned to ensure proper information.			
5.	The structure of the board ensures, if the case, a balance between the executive and non-executive members so that no person or small group of persons influences the decision-making process.			
6.	The board is convened at least every three months to monitor the performance of the regulated entity's business.			
7.	The board or the executive management/senior management regularly reviews the policies on the financial reporting, internal control and risk management system adopted by the regulated entity.			
8.	In fulfilling its duties, the board is assisted by advisory committees for information on various topics subject to decision-making.			
9.	The advisory committees submit to the board works/reports on the topics entrusted by it.			

10.	There are internal procedures/policies/regulations of the regulated entities for the selection of applications for the persons of the executive management/senior management, appointment of new persons or renewal of the existing mandates.			
11.	The regulated entity shall ensure the continuous professional training of the executive management/senior management so that it efficiently performs its tasks.			
12.	Key functions are established so as to match the organisational structure of the regulated entity compliant with the applicable regulations.			
13.	The board regularly reviews the efficiency of the internal control system of the regulated entity and the update manner to ensure a rigorous management of the risks to which the regulated entity is exposed.			
14.	The audit committee makes recommendations to the board on the selection, appointment and replacement of the financial auditor, and on the terms and conditions of his remuneration.			
15.	The board review at least once a year and ensures that the remuneration policies are consistent and are subject to an efficient risk management.			
16.	The remuneration policy of the regulated entity is set out in the internal regulations on the implementation and compliance with the principles of corporate governance.			
17.	The board has adopted a procedure for the identification and proper settlement of any conflict of interest.			
18.	The executive management/senior management, as appropriate, informs the board of any conflict of interest and does not participate in the decision-making process which is related to the state of conflict.			
19.	The board analyses at least once a year the efficiency of the risk management system of the regulated entity.			
20.	The regulated entity has drawn up procedures for the identification, assessment and management of the significant risks to which it			

	is, or is likely to be, exposed.			
21.	The regulated entity has in place clear action plans for the business continuity and for any emergency situations.			