

ASF / NBR Regulation no. 12/3/2019
for amending and supplementing the ASF / NBR Regulation no. 14/7/2018 regarding the
provision of services and investment activities on behalf of financial investment
companies and credit institutions

Pursuant to the provisions of art. 1 paragraph (2), art. 2 paragraph (1) let. a) and d), art. 6 paragraph (2) and of art. 14 of the Government Emergency Ordinance no. 93/2012 regarding the establishment, organization and functioning of the Financial Supervisory Authority, approved with amendments and completions by Law no. 113/2013, with subsequent amendments and completions, and by Law no. 312/2004 regarding the Statute of the National Bank of Romania,

taking into account the provisions of art. 2 letter d) and of art. 1 of Law no. 126/2018 regarding the markets of financial instruments,

The Financial Supervisory Authority (ASF) and the National Bank of Romania (NBR) issue this regulation.

Art. I. - The Financial Supervisory Authority / National Bank of Romania Regulation no. 14/7/2018 regarding the provision of services and investment activities on behalf of financial investment companies and credit institutions, published in the Official Journal of Romania, Part I, no. 10 of January 4, 2019, is amended and supplemented as follows:

1. Article 8 shall be amended and shall be worded as follows:

”Art. 8. - (1) The individual providing the investment service provided for in point 5 of Section A, annex no. 1 of Law no. 126/2018, must attend an initial professional training course that will ensure a minimum of 30 hours of training, and which shall be organized by one of the following:

a) a professional training body certified by the ASF according to the Regulation of the National Securities Commission no. 12/2010 regarding the professional training of operators and specialists for the capital market, approved by the Order of the National Securities Commission no. 36/2010, as subsequently amended and supplemented, hereinafter referred to as CNVM Regulation no. 12/2010, provided that the individual does not carry out his/her activity on behalf of a credit institution in connection with the financial instruments provided in art. 2 paragraph (3) of Law no. 126/2018;

b) a professional training body recognized by the NBR, according to Order no. 6/2019 regarding the establishment of the requirements for the recognition of professional training bodies in the field of Law no. 126/2018 regarding the markets of financial instruments, if the individual carries on his/her activity on behalf of a credit institution in connection with the financial instruments provided in art. 2 paragraph (3) of Law no. 126/2018.

(2) The course mentioned in para. (1) must include both theoretical and practical training and shall be organized remotely. The course shall be completed with an examination for the assessment of the acquired knowledge, which can be taken remotely. Following the promotion of the examination, the certified / recognized professional training authority shall issue a certificate on behalf of the person assessed, in the form provided in Annex no. 2.

(3) For an individual providing information in accordance with the provisions of art. 87 paragraph (1) of Law no. 126/2018, the initial professional training must include both theoretical and practical training. This can be done remotely and can be provided by the S.S.I.F. / credit institution, or by following an initial training course organized by a professional training body certified by the ASF or recognized by the N.B.R.

(4) In case the training mentioned in para. (3) is provided by the S.S.I.F. / credit institution, the following conditions must be complied with:

a) the board of directors or the directorate of the S.S.I.F. / credit institution shall ensure that there are consolidated control mechanisms to ensure that the persons have the necessary knowledge to provide information regarding financial instruments, investment services or ancillary services;

b) the compliance function:

(i) verifies if, following the training provided by the S.S.I.F. / credit institution, the respective personnel has acquired adequate knowledge;

(ii) includes in the annual report prepared for the members of the senior management body, information on the result of the assessment provided for under point (i).

(5) It is deemed that the studies followed at the CFA Institute or PRMIA Institute and the ACI Dealing Certificate and Diploma degrees issued by ACI Financial Markets Association, respectively the Certified European Financial Analyst issued by European Federation of Financial Analysts Societies, as well as the Chartered Institute for Securities & Investment Certification, for the Wealth and Investment Management, provides the necessary qualification provided in para. (1), respectively in para. (3).

(6) In order to organize the examination provided in para. (2), the professional training bodies will collaborate with the NBR, respectively the ASF, the two authorities ensuring that the examination is carried based on the bibliography and of the topics relevant to the specific area of competence of each authority, so that through the examination it can be verified that the personnel has acquired the appropriate qualification according to the minimum requirements set out in point 18 of the ESMA Guide.

(7) The certified / recognized professional training bodies must have rules and procedures that ensure the separation of the members of personnel providing training from those performing the assessment. "

2. In Article 9 (1), the introductory part and letter c) shall be amended and shall have the following content:

"Art.9. – (1) For the persons provided in art. 5, respectively art. 6, the S.S.I.F. / credit institution will prepare and safeguard a file containing the following documents:

.....
c) the proof of passing the examination mentioned in art. 8 paragraph (2), or the proof of graduation of the studies mentioned in art. (8) para. (5), as the case may be, for the persons referred to in art. 5;"

3. In article 9, a new paragraph is inserted after paragraph 1, para. (1¹) with the following contents:

"(1¹) In order to register within the ASF Register, respectively to notify the ASF, as the case may be, on the person provided for in art. 5, respectively in art. 6, the S.S.I.F. / credit institution will submit to the ASF, a request prepared according to annex no. 3, respectively no. 4, accompanied by the following documents:

a) the statement of the legal representative / designated representative of the S.S.I.F. / credit institution in relation with the ASF, on the compliance of the respective persons with the conditions set forth in art. 5, respectively art. 6, as the case may be;

b) the proof of payment to the ASF account of the corresponding tariff provided by the ASF regulations.

4. Article 9 paragraph (2), letter b) shall be amended and worded as follows:

”b) notifies the ASF on the proof of the acquisition of the corresponding qualification according to the provisions of art. 5 paragraph (2) letter a) or art. 6 paragraph (2) letter a), as the case may be, at the latest upon the expiration of the period of activity under the supervision of another person.”

5. Article 18 shall be amended and shall be worded as follows:

”Art. 18. - (1) For the persons provided for in art. 17, the S.S.I.F. / credit institution will draw up and keep at its premises a file containing the following documents:

a) curriculum vitae, in Europass format, signed and dated, specifying the relevant studies and training courses, professional experience, including the name to all organizations for which the person concerned worked, the nature and duration of the duties performed, in particular as regards the activities that are relevant to the function envisaged;

b) the affidavit of the individual, under holographic signature, drawn up in the form presented in annex no. 10;

c) the statement of the legal representative / designated representative of the S.S.I.F. / credit institution in relation to the ASF, regarding the fulfilment of and compliance with the requirements provided in art. 99 paragraph (2) of Law no. 126/2018;

d) the information on the headquarters of the S.S.I.F. / credit institution from which the delegated agent will operate;

e) the proof of passing the examination mentioned in art. 8 paragraph (2) or the proof of graduation of the studies mentioned in art. 8 paragraph (5), as the case may be, for the persons referred to in art. 17 paragraph (2);

f) the statement of the legal representative regarding the assurance of the appropriate qualification, for the persons provided in art. 17 paragraph (3);

g) the proof of payment to the ASF account of the corresponding tariff provided by the ASF regulations;

(2) In order to register the delegated agent, individual, in the ASF Registry, the S.S.I.F. / credit institution will submit to the ASF, a request drafted according to annex no. 9, accompanied by the following documents:

a) the statement of the legal representative / designated representative of the S.S.I.F. / credit institution in relation to the ASF regarding the fulfilment and compliance with the requirements provided in art. 99 paragraph (2) of Law no. 126/2018;

(i) art. 17 paragraph (1)

or in

(ii) art. 17 paragraph (1) letters a) and c) - f) and paragraph (2)

or in

(iii) art. 17 paragraph (1) and paragraph (3)

b) the information provided in para. (1) letter d);

c) the proof of payment to the ASF account of the corresponding tariff provided by the ASF regulations”

6. Article 19, paragraph (3) shall be amended and shall be worded as follows:

”(3) By exception from art. 18 para. (1) letter e), for the person mentioned in para. (1) the S.S.I.F. / credit institution shall keep to the respective person’s file the documents in accordance with the legislation of the host Member State.”

7. Article 22, paragraph (3) shall be amended and shall be worded as follows:

”(ii) no other position within the senior or execution management within another S.S.I.F. or another credit institution but the one undwer letter a);”

8. Article 23, letter a) shall be amended and shall be worded as follows:

”g) the list of designated individuals through which the delegated agent will carry out his/her activity, where the full name, the series and the number of the identity document, and the personal numeric code will be mentioned, accompanied by an affidavit, under the holographic signature of the legal representative of the delegated agent, regarding the fact that these persons fulfil the conditions stipulated in art. 22 letter g);

9. Article 28, paragraph (1) shall be amended and shall be worded as follows:

”Art. 28 - (1) In the case of the modifications made in the composition of the list provided in art. 27 paragraph (1) as regards the persons providing also the investment service provided for in point 5 of Section A from annex no. 1 of Law no. 126/2018 or providing information on financial instruments, investment services or ancillary services on behalf of the S.S.I.F. / credit institution, in accordance with the provisions of art. 87 paragraph (1) of Law no. 126/2018, the S.S.I.F. / credit institution will notify the ASF in advance, by sending in this case the affidavit provided in art. 23 letter g).

10. Article 31 paragraph (1), letter b) shall be amended and shall be worded as follows:

„b) a professional training body recognized by the NBR, according to the NBR Order no. 6/2019 regarding the establishment of the requirements for the recognition of professional training bodies in the field of Law no. 126/2018 regarding the markets of financial instruments, if the individual carries on his/her activity on behalf of a credit institution in connection with the financial instruments provided in art. 2 paragraph (3) of Law no. 126/2018.”

11. Article 31 paragraph (1), letter j) is revoked.

12. Article 31, paragraph (2) shall be amended and shall be worded as follows:

”(2) The minimum continuous training of an individual providing information in accordance with the provisions of art. 87 paragraph (1) of Law no. 126/2018, must be 15 hours per year, must take into account the elements provided in art. 30 paragraph (3), as the case may be, it can be carried out remotely and can be provided by: the S.S.I.F. / credit institution, or professional training bodies certified by the ASF or recognized by the N.B.R.”

13. Article 32 paragraph (2), point (i) of letter a) shall be amended and shall be worded as follows:

”(i) the certificate issued by the certified / recognized professional training body.”

14. Article 33 shall be amended and shall be worded as follows:

”Art. 33 - During the unavailability of a person who falls under the provisions of this regulation, the senior management of the S.S.I.F. / credit institution has the obligation to ensure that the passwords and access codes allocated to that person are blocked.”

15. Article 46, paragraph (1) shall be amended and shall be worded as follows:

”Art. 46 - (1) The provisions of art. 3, 4, 27 - 29 and of Chapters V - VII of C.N.V.M. Regulation no. 12/2010 does not apply to the staff of the S.S.I.F. / credit institution provided in art. 11 of Law no. 126/2018 and the delegated agents.

16. In annex no. 3, points 1-3 are revoked.

17. In annex no. 3, after point 3, a new point is introduced, pt. 3¹, with the following contents:

3 ¹ . The statement of the legal representative / designated representative of the S.S.I.F. / credit institution in relation to the ASF regarding the compliance by the respective person with the conditions stipulated in art. 5 of the Regulation of the Financial Supervisory Authority and of the National Bank of Romania no. 14/7/2018, as amended and supplemented	•
---	---

18. In Annex no. 4, points 1 and 2 are revoked.

19. In article 4, paragraph (3) shall be amended and shall be worded as follows:

3. The statement of the legal representative / designated representative of the S.S.I.F. / credit institution in relation to the ASF regarding the compliance by the respective person with the conditions stipulated in art. 6 of the Regulation of the Financial Supervisory Authority and of the National Bank of Romania no. 7/14/2018, as amended and supplemented	•
---	---

20. In Annex no. 9, points 1 and 2 are revoked.

21. In article 9, point 3 shall be amended and shall be worded as follows:

3. The statement of the legal representative / designated representative of the S.S.I.F. / credit institution in relation with the ASF regarding the fulfilment and compliance with the requirements provided in art. 99 paragraph (2) of Law no. 126/2018, as well as the requirements provided in: (i) art. 17 paragraph (1) of the Regulation of the Financial Supervisory Authority and of the National Bank of Romania no. 14/7/2018, as amended and supplemented; or in (ii) art. 17 paragraph (1) letters a) and c) - f) and para. (2) of the Regulation of the Financial Supervisory Authority and of the National Bank of Romania no. 14/7/2018, as amended and supplemented; or in (iii) art. 17 paragraph (1) and para. (3) of the Regulation of the Financial Supervisory Authority and of the National Bank of Romania no. 14/7/2018, with subsequent modifications and completions	•
---	---

22. In annex no. 12, point 8 is revoked.

Art. II. - This Regulation shall be published in the Official Journal of Romania, Part I, and shall enter into force on the date of its publication in the Official Journal of Romania.

For the President of the Financial Supervisory
Authority,
Vice-President
Elena-Doina Dascălu

The Chairman of the Board of the National
Bank of Romania

Mugur Constantin Isărescu