

**REGULATION No. 6/2016**

**for the amendment and supplementation of Regulation No. 32/2006 of the National Securities Commission regarding financial investment services, approved by Order No. 121/2006 of the National Securities Commission and for the amendment of Regulation No. 5/2010 of the National Securities Commission regarding the use of global accounts system, mechanisms application with and without pre-validation of financial instruments, performance of securities borrowing operations, of operations to set up their related guarantees and of sale transactions in absence, approved by the Order No. 10/2010 of the National Securities Commission**

In force since August 2<sup>nd</sup>, 2016

Published in the Official Journal, Part I, No. 420 of June 3<sup>rd</sup>, 2016.

Based on the provisions of Art. 1 para. (2), Art. 2 para. (1) Letter a) and d), Art. 3 para. (1) Letter b), Art. 6 para. (1) and (2), as well as of Art. 14 of Government Emergency Ordinance No. 93/2012 on the establishment, organization and operation of the Financial Supervisory Authority, approved as amended and supplemented by Law No. 113/2013, as subsequently amended and supplemented,

Based on the provisions of Art. 26 para. (1) and of Art. 152 of Law No. 297/2004 regarding capital market, with further amendments and supplementations,

According to the proceedings of the Council of the Financial Supervisory Authority during the meeting of 11.05.2016,

the **Financial Supervisory Authority** hereby issues this regulation:

**Art. I. - Regulation No. 32/2006 of the National Securities Commission regarding financial investment services, approved by Order No. 121/2006 of the National Securities Commission, published in Romania's Official Journal, Part I, No. 103 and 103 bis of February 12<sup>th</sup>, 2007, with further amendments and supplementations, is amended and supplemented as follows:**

**1. Under Article 2 Paragraph (2), Letter m) is hereby amended and shall read as follows:**

“m) identification data:

(i) in case of natural persons: the data stipulated in Art. 11 para. (1) of Regulation No. 5/2008 of the National Securities Commission regarding the instating of prevention and control measures of money laundering and terrorism financing through capital market, approved by the Order No. 83/2008 of the National Securities Commission, further on called C.N.V.M. Regulation No. 5/2008, with further amendments and supplementations;

(ii) in case of legal persons: the data stipulated in Art. 12 para. (1) of C.N.V.M. Regulation No. 5/2008.”

**2. Under Article 2 Paragraph (2), after Letter m) a new Letter m<sup>1</sup>) is inserted, reading as follows:**

“m<sup>1</sup>) identity document in case of natural persons, clients of S.S.I.F., in the sense of Art. 11 para. (2) of C.N.V.M. Regulation No. 5/2008, means:

- (i) the identity document for the Romanian resident citizens;
- (ii) passport issued by the authorities of Romania within the validity period, confirming the statute of Romanian citizen, domiciled abroad;
- (iii) national identity document or passport for the citizens of Member States of European Union and of the European Economic Area;
- (iv) passport or identity card or another similar document for the citizens of third states.”

**3. Under Article 78, after Paragraph (3), a new Paragraph (4) is inserted reading as follows:**

“(4) In case the members of the board of directors/leaders do not take the required measures within maximum 10 days since the information date stipulated in para (2), the representative of the internal control department has the obligation to immediately notify A.S.F. about the found out infringements of the regulations in force.”

**4. Under Article 81, after Paragraph (3), a new Paragraph (4) is inserted reading as follows:**

“(4) In order to be authorized by A.S.F. as a person assuring the risk management function, the natural person should have attended the training stages and promoted the test on the knowledge of legislation in force, organized by professional training bodies certified by A.S.F.”

**5. Article 90 is hereby amended and shall read as follows:**

„**Art. 90.** - (1) S.S.I.F. is bound to distinctly record in the accounting the amounts received from the clients and to use in the settlement bank an account on its own name and an account on the client’s name. At the same time, the clients’ financial instruments will be recorded in separate accounts from those of S.S.I.F.

(2) S.S.I.F. is bound to transfer at the end of each settlement day from the account/accounts where the client’s funds are on their own name, the amounts related to the fees it is entitled to.

(3) S.S.I.F. should not endanger or be regarded as endangering or inducing a situation which might endanger the funds and/or financial instruments of the clients or the regulated market it is trading on and should make sure that the agents for financial investment services and the other of its employees shall behave in that way.

(4) S.S.I.F. should comply, in all situations, with the following obligations:

a) to assure the safekeeping of the financial instruments it has in custody;

b) not to abuse of any financial instruments it has in custody or the rights derived from them and not to transfer such financial instruments without the express accord of their owners;

c) to return to the clients, upon their request, the entrusted financial instruments and money funds.

(5) S.S.I.F., authorized to perform the financial investment services provided at point 2, Letter a) of Annex No. 9 is responsible for the payments and settlements related to the financial instruments held in custody.”

**6. Under Article 112, Paragraph (1) after Letter c) a new Letter c<sup>1</sup>) is inserted, and shall read as follows:**

“c<sup>1</sup>) a contractual clause regarding the way in which S.S.I.F. returns the money funds held in the client’s name if the client cannot be contacted/notified at the address stipulated in the intermediation contract/addenda to the intermediation contract within a preset term by the parties, including with the possibility of terminating the contractual relations;”

**7. Under Article 112, Paragraph (1) after Letter e) a new Letter e<sup>1</sup>), is inserted, and shall read as follows:**

“e<sup>1</sup>) the client’s declaration that he understands the obligation to update his identification and contact data whenever the case and that he assumes the effects of failing to meet that obligation;”

**8. Under Article 141, Paragraphs (2) and (3) are hereby amended and shall read as follows:**

“(2) In case S.S.I.F. simultaneously receives several orders at the same price level for the same financial instrument, which can be executed in market conditions, S.S.I.F. should introduce them in the trading system in the following order:

- a) the orders received from retail clients;
- b) the orders received from professional clients;
- c) the orders received from relevant persons;
- d) the orders to be executed by S.S.I.F. in its own name;

(3) In case of orders sent by phone, the registration on electronic/optical support or on an equivalent support shall be assured.”

**9. After Article 152 a new Article 152<sup>1</sup> is inserted and shall read as follows:**

“**Art 152<sup>1</sup>** - (1) The intermediaries have the obligation to daily reconcile in the IT recording system the funds and financial instruments recorded in the account of each client and in its own account, by checking up the match between the liabilities and the holdings of funds and/or financial instruments recorded in the respective accounts.

(2) The intermediaries have the obligation to record the balances of the client’s accounts in the IT systems, including for the settlement date.”

**10. Under Article 153, Paragraph (1) Letter b) is hereby amended and shall read as follows:**

“b) «the ratio between the record of borrowing operations, of purchases within the margin and of the assets established as margin for operations requiring guarantees in the margin account», by each client separately, drafted according to Annex No.7, within maximum 10 days since the end of the reporting month or within maximum 24 hours since A.S.F. request;”

**11. The name of Title V is hereby amended and shall read as follows:**

“TITLE V

**Transactions in margin. Loans granting and borrowing financial instruments”**

**12. Articles 190-194 are hereby amended and shall read as follows:**

“**Art. 190.** - (1) The provisions of the present title are applied to the transactions in margin performed by S.S.I.F. within a trading place or outside it made by S.S.I.F. and are supplemented, in case of transactions with derivative financial instruments admitted at trading/traded on a regulated market/alternative trading system, by the provisions of the regulations and procedures of the regulated market/alternative trading system approved by A.S.F.

(2) When applying the provisions of the present title, the terms below shall have the following meaning:

a) *agent in borrowing operations* – S.S.I.F. performing the operations related to the borrow of financial instruments made by the client of that S.S.I.F. and another client or another S.S.I.F. The agent in borrowing operations is acting in the name and on the accounts

of the clients holding financial instruments recorded in the accounts opened with the respective S.S.I.F.;

b) *SSIF acting as principal in the borrowing operation* – company of financial investment services granting the borrow to one of its client by using its own patrimony;

c) *margin call* – mandatory request to fall within the limits imposed by contract in case of the margin account;

d) *margin requirements* – minimum level of the amount to be secured by the assets brought in as margin for the opened positions or to cover the liabilities resulting from the sale transactions in absence or from the borrowing operation, recorded in the margin account opened with a S.S.I.F.;

e) *margin account* – the account where all operations are registered related to the purchases within margin and/or borrowing by financial instruments, as well as the transactions with derivative financial instruments. The margin account works by the deposit of an initial margin, marking at the market both the margin, and the covering of liabilities resulting from the sale transactions in absence or from the borrowing operation, as well as by keeping a minimum compulsory level according to the present regulation;

f) *purchase within margin* – purchase of financial instruments based on a credit granted by S.S.I.F.;

g) *marking at the market* – updating, at least daily, the margin accounts by the favorable/unfavorable differences resulted from the revaluation of the margins at current market price, the covering of liabilities resulting from the sale transactions in absence or from the borrowing operation and of the opened positions;

h) *margin* – A. for the transactions in margin with derivative financial instruments, as regards the margin and assets accepted as guarantee applicable shall be the provisions of Regulation (EU) No. 648/2012 of European Parliament and of the Council of July 4<sup>th</sup>, 2012 regarding OTC derivative financial instruments, central counterparties and central transaction registers, further on called Regulation (EU) No. 648/2012 and the European norms issued for its application;

B. for the transactions in margin with financial instruments, other than the derivative financial instruments, the asset deposited in the margin account used to cover the margin requirements; the margin can be made of the following categories of assets:

1. money funds:

(i) denominated in Romania's national currency;

(ii) denominated in foreign currencies, considering the foreign currency exchange risk;

2. government securities;

3. bonds fully secured by the state;

4. shares and bonds traded on a regulated market meeting the liquidity criteria imposed by the respective S.S.I.F., based on internal procedures, advised by the persons in charge of risk management;

5. tradable participating interests of O.P.C.V.M. (E.T.F.).

i) *transactions in margin* – transactions performed by S.S.I.F. either with financial instruments based on a credit granted to a purchase in margin or based on a borrow of financial instruments granted to perform some sales in absence, as well as for the other purposes provided in Art. 2 para. (1) of CNVM Regulation No. 5/2010 regarding the use of global accounts system, operations of securities borrowing, of those to set up their associated guarantees and of the sale transactions in absence, with further amendments and supplementations, further on called *CNVM Regulation No.5/2010*, or with derivative financial instruments;

j) *sale in absence* – to all financial instruments the definition of sale in absence is applied according to Regulation (EU) No. 236/2012 of European Parliament and of the Council of March 14<sup>th</sup>, 2012 regarding the sale in absence and certain aspects of swaps on credit risk, further on called the *Regulation (EU) No. 236/2012*.

(3) In case of shares admitted on trading in a trading place of Romania and in case of receivables issued by the Romanian state, the provisions of the present title shall be supplemented by the provisions of Regulation (EU) No. 236/2012 and of other regulations issued for its application.

**Art. 191.** - (1) The financial instruments admitted to trading on a regulated market/alternative trading system and the financial instruments making the object of a public offer in view of being admitted to trading on a regulated market/alternative trading system can make the object of credits granting in view of making purchases in margin, for any natural or legal person in the conditions of the present title.

(2) The borrowings granted by S.S.I.F. to its clients can be made with any financial instrument free of burdens admitted to trading on a regulated market/alternative trading system, for any natural or legal person in the conditions of the present title.

**Art. 192.** – (1) The total value of credits for purchases in margin and the total value of borrowings shall comply with the provisions of European regulations of direct application and of the national regulations issued for the application of Regulation (EU) No. 575/2013 of European Parliament and of the Council of June 26<sup>th</sup>, 2013 regarding prudential requirements for credit institutions and investment firms and for the amendment of the Regulation (EU) No. 648/2012, further on called *Regulation (EU) No.575/2013*.

(2) In view of calculating the capital requirements, the trading and borrowing operations in margin are performed in compliance of European regulations of direct application and of the national regulations issued for the application of Regulation (EU) No.575/2013.

**Art. 193.** - (1) A.S.F. can forbid to a S.S.I.F., by a justified decision considering SSIF conduct, the level of indicators calculated to assess prudential requirements and the risk induced by its financial position and the transactions performed by it, to perform transactions and/or operations such as those making the object of the present title, also notifying the central depository about that decision.

(2) In order to grant credits and borrowings of financial instruments, S.S.I.F. has to be authorized by A.S.F. to perform the connected service provided by Art. 5 para. (1<sup>1</sup>) Letter b) of Law No. 297/2004.

(3) In order to act as an agent in borrowing operations, S.S.I.F. has to be authorized by A.S.F. to perform the connected service provided by Art. 5 para. (1<sup>1</sup>) Letter a) of Law No. 297/2004.

**Art. 194.** - (1) S.S.I.F. is bound to open in its own records, a margin account for the borrowed financial instruments and a margin account for the transactions with derivative financial instrument performed on its own account.

(2) S.S.I.F. is bound to open in its own records, margin accounts for the purchases in margin and for borrowings of financial instruments, as well as transactions with derivative financial instrument performed in the name of each natural or legal person for which the transactions in margin will be performed.

(3) In case the credits for purchases in margins and the borrowings of financial instruments take place at the same time, these operations will be recorded in separate sub-accounts for each of the two types of operations.”

**13. The name of Chapter II of Title V is hereby amended and shall read as follows:**

“CHAPTER II  
Transactions in margin with financial instruments”

**14. Articles 195 - 200 are hereby amended and shall read as follows:**

“**Art. 195.** - (1) On opening a margin account it is mandatory to sign a frame contract for transactions in margin, which should include at least the following provisions:

- a) the contracting parties;
- b) the contract object;
- c) rights and obligations of the contracting parties;
- d) the client’s responsibilities for the payment of the borrowed amount and of the related interest to the credit obtained from S.S.I.F;
- e) the limits imposed on the margin account regarding at least: the determination way of margin requirements, the way of setting up and assessing the initial margin and the minimum level of margin requirements to be kept in the account;
- f) clauses regarding the assets which can be established as margin;
- g) clauses regarding the case in which the margin drops below the minimum level of margin requirements, respectively, the period during which the client is bound to answer the margin call and, if the case, the conversion in money funds of the financial instruments set up as margin, in view of meeting the obligations assumed by the operations performed in the margin account;
- h) clauses regarding the exertion of rights related to financial instruments, respectively to the interest related to money funds established as margin or obtained after transactions in margin;
- i) clauses regarding the replacement of assets established as margin from the margin account and the withdrawal/release of assets upon the credit or borrow repayment or during the frame contract for transactions in margin;
- j) clauses regarding the tariffs and commissions the client will pay for the transactions in margin, as well as setting up the conditions and ways for their payment;
- k) clauses regarding the contract termination, including the case in which limits, restrictions or interdictions are made over the transactions in margin performed by certain natural or legal persons, or with certain financial instruments;
- l) clauses regarding the possibility of repaying the credit in advance;
- m) clauses for the adequate application of the provisions of the legislation in force regarding the real estate mortgages, respectively some financial guarantee agreements;
- n) clause regarding the order of automatic sale of financial instruments set up as margin or obtained from transactions in margin;
- o) the principles to be applied in case of failure to pay in time.

(2) In order to perform transactions in margin (purchase in margin and borrow of financial instruments) it is mandatory to sign an Addendum to the frame contract for transactions in margin, which should include at least the following provisions:

- a) for purchases in margin, clauses regarding:
  1. the credit value, the credit tenor and its related interest;
  2. the repayment period of the credit used by the client;
  3. clauses regarding the transmission, validity and execution way of the orders for purchases in margin;
- b) for the borrowings related to sales in absence and for the borrowings granted to the other purposes provided by Art. 4 para. (1) of CNVM Regulation No. 5/2010, clauses regarding:
  1. the fact that for the sales in absence of shares admitted to trading on a regulated market/alternative trading system of Romania applicable are the provisions of Regulation (EU) No. 236/2012 and of the European regulations issued for its application, and the sales in

absence of financial instruments, other than the shares, are admitted in compliance of the provisions of Art. 12 para. (1) Letter a) and b) of Regulation (EU) No. 236/2012;

2. the transmission, validity and execution way of the orders for sales in absence;
3. type, number and market value of the borrowed financial instruments, at the borrowing moment, specifying the issuer and ISIN code;
4. calculation way of margin requirements to secure the borrowing;
5. duration and price of the borrow.

(3) The clauses listed in para. (2) can also be included in the frame contract mentioned in para. (1) to the extent the client expresses his accord on their validity in case of any borrowing contract he will sign after signing the frame contract.

**Art. 196.** - (1) Before sending the order for each transaction in margin implying the assumption of additional obligations compared to those already registered in the margin account, the client is obliged to have or deposit an initial margin which should be at least at the level of margin requirements set up in the contract.

(2) The financial instruments resulted from the settlement of the transaction of purchase in margin based on a credit granted by S.S.I.F. are regarded as client's assets and, except for the financial instruments traded on an alternative trading system, are set up as margin to secure the credit obtained by the investor.

(3) After the settlement of the purchase transaction mentioned in para. (2), the financial instruments set up as margin can be replaced by other financial instruments of the same value.

(4) By contract, S.S.I.F. can ask the clients different margin requirements depending on the associated risk to the assumed obligations, on the risk levels associated to the traded financial instruments or on the client's financial condition and can change these margin requirements depending on market conditions or the change of conditions compared to the moment they were established.

**Art. 197.** - (1) The assets established as margin in the margin account will be assessed by S.S.I.F., based on some internal procedures, advised by the persons in charge with risks management, considering at least the following principles regarding the current market price:

- a) the average acquisition price at the moment of transaction or transactions;
- b) the reference price at the end of the trading session.

(2) The value of assets established in the margin account for purchase in margin/borrowings of financial instruments resulted from the assessment mentioned in para. (1) can be adjusted by the following elements, by the case:

1. commissions or other costs related to transactions;
2. foreign exchange risk;
3. risk of price volatility;
4. risk of market liquidity.

(3) To assess the assets established as borrowings, the prices mentioned in para. (1) can be determined based on the returns of such instruments.

(4) The value of the margin account for the credits and borrowings of financial instruments is calculated based on the following elements:

- a) obligations taken by the purchase in margin/borrowings of financial instruments:
  - (i) value of principal;
  - (ii) value of costs with the principal;
  - (iii) value of margin requirements;
- b) assets established in margin account for the purchase in margin/borrowings of

financial instruments:

- (i) value of financial instruments established as margin, assessed according to the provisions of para. (1) and (2);
- (ii) value of money funds set up as margin.

**Art. 198.** - (1) Until the repayment of the credits related to purchases in margin of financial instruments, the margin should be kept in the client's margin account at least at the level of the margin requirements set up by contract, for the granted credit and its related interests and commissions.

(2) To fall within the limits imposed on the margin account in case the margin value drops below the minimum level of margin requirements and the client does not answer the margin call according to S.S.I.F. request, S.S.I.F. shall act according to the clause regarding the «automated sale order», provided in the contract.

(3) S.S.I.F. can ask its clients any additional measure to protect itself against any default case from the clients of the obligations assumed by contract.

**Art. 199.** - (1) S.S.I.F. has the obligation to calculate, at least daily, the value of assets and liabilities registered in the margin account of each client, to adjust it and to establish the minimum level of margin requirements according to the contract.

(2) If the margin value is below the minimum limit imposed on the margin account by contract, S.S.I.F. shall issue a margin call and shall inform the client about the date the margin deficit was found out, as well as the value of that deficit, requesting him to cover the deficit according to the provisions of the contract.

(3) If the client does not answer the margin call and the deficit is not covered or removed during the period set up by contract, but not more than two working days, S.S.I.F. is authorized to execute the order of automated sale and to use the resulted money funds to cut down the exposures depending on which the limits are calculated imposed on the margin account until the deficit is covered or removed.

(4) The margin call cannot be covered by assets from other client's accounts opened with S.S.I.F. without the client's authorization to this end.

**Art. 200.** – The income from interests, the rights obtained and the dividends related to the client's assets established as margin or obtained by transactions in margin and deposited to cover the minimum level of margin requirements are to be paid to the client.”

**15. Article 201 is hereby repealed.**

**16. The name of Chapter III of Title V is hereby amended and shall read as follows:**

“CHAPTER III  
Sale in absence of financial instruments”

**17. Articles 202-204 are hereby amended and shall read as follows:**

“**Art. 202.** - (1) Before making a sale in absence based on a borrow granted or intermediated by S.S.I.F., each client has to open a margin account with the respective S.S.I.F.

(2) The transactions of sale in absence with shares admitted to trading on a regulated market/alternative trading system of Romania are performed considering the provisions of Regulation (EU) No. 236/2012 and of the regulations issued for its application.

(3) The transactions of sale in absence with financial instruments, other than those mentioned in para. (2), admitted to trading on a regulated market/alternative trading system of Romania are performed in compliance of the provisions of Art. 12, para. (1) Letter a) and b) of Regulation (EU) No.236/2012 and of the regulations issued for its application.



**Art. 203.** - (1) The money funds resulted from the settlement of the transaction of sale in absence based on borrowed financial instruments are regarded as client's assets established as margin to secure the loan obtained by the investor.

(2) After settling the transaction of sale mentioned in para. (1), the money funds set up as margin can be replaced by financial instruments of the same value.

(3) The assets established as margin cannot be borrowed.

**Art. 204.** - (1) Any natural or legal person is obliged to report to A.S.F. or send for publication on A.S.F. website the significant net short positions by shares admitted to trading on a regulated market/alternative trading system of Romania, according to Regulation (EU) No.236/2012 and of the regulations issued for its application.

(2) In case of sales in absence performed according to the provisions of Art.12 para. (1) Letter b) and c) of Regulation (EU) No.236/2012 and the regulations issued for its application, the client is obliged to notify in writing or by the communication means agreed between the parties and which can be later verified, that S.S.I.F. order is "an order of sale in absence" and to send S.S.I.F. the proof of the borrowing accord, according to Art. 5 para 2 of the Regulation for the **application (EU) No.827/2012 of the Commission of June 29<sup>th</sup>, 2012 for the establishment of technical standards for the application of publication means of net positions by shares, to the information form to be supplied to the European Securities and Markets Authority as regards the net short positions, the types of agreements, understandings and measures to adequately warrant that the shares or the sovereign debt instruments are available for settlement, as well as the dates and period to establish the main trading place of a share according to Regulation (EU) No. 236/2012 of European Parliament and Council regarding the sale in absence and certain aspects of swaps on credit risk**, or the proof of the existence of understandings, confirmations and instructions according to Art. 6 para. (5) of the same regulation, by the case.

(3) Before making the sale in absence and based on the information and documents supplied by the client according to para. (2), S.S.I.F. has to check up the meeting of conditions regarding the applicable restrictions to sales in absence without covering, as they are specified in Regulation (EU) No. 236/2012 and the regulations issued for its application, to identify if the respective financial instruments are available to be borrowed or acquired and to make sure the client has the capacity to make the settlement of the sale in absence on its due date."

**18. Article 205 is hereby repealed.**

**19. The name of Chapter IV of Title V is hereby amended and shall read as follows:**

"CHAPTER IV  
**Borrowing financial instruments"**

**20. Article 206 is hereby amended and shall read as follows:**

„**Art. 206.** - (1) S.S.I.F. shall grant the borrowing of financial instruments in compliance of the provisions of the present chapter.

(2) The following financial instruments can make the object of the borrow granted by S.S.I.F.:

- a) owned by S.S.I.F. on its own account;
- b) borrowed by S.S.I.F. from another intermediary;
- c) belonging to S.S.I.F. clients and borrowed by S.S.I.F. from them based on the contract signed between the two parties.

(3) S.S.I.F. can act as agent in borrowing operations for the borrowed financial instruments by the clients of that S.S.I.F. from:

- a) other clients of the same S.S.I.F.;
- b) other S.S.I.F.

(4) In case it is acting as agent in borrowing operations, S.S.I.F. performs the following:

- a) intermediates the borrow of financial instruments by:
  1. concluding the contract in the client's name and on his account, according to the respective client's mandate and instructions, or
  2. by concluding contracts with each involved party in the borrowing operation;
- b) performs the transfers of financial instruments making the object of the borrowing, based on some transfer instructions sent to the central depository, according to the CNVM Regulation No. 13/2005 regarding the authorization and operation of central depository, clearing houses and central counterparties, approved by the Order No. 60/2005 of the National Securities Commission, with further amendments and supplementations and according to the regulations of the central depository;
- c) manages the guarantees related to the borrowing;
- d) sends reports to each client for all operations performed on his account.”

**21. After Article 206, a new Article 206<sup>1</sup> is hereby inserted and shall read as follows:**

“**Art. 206<sup>1</sup>.** - (1) In case of using the global accounts system to run borrowing operations of financial instruments between 2 clients of the same participant to the central depository system, the respective participant has the obligation and the exclusive responsibility to notify the central depository by sending an adequate instruction, in the form stipulated by the regulations of the central depository regarding the transfer of the financial instrument making the object of the borrowing operation performed by the clients within the global account. The participant shall register in his back-office system the transfer of the financial instruments.

(2) When returning the financial instruments, object of borrowing operations of financial instruments between 2 clients of the same participant to the central depository system, the respective participant has the obligation to notify the central depository by sending an adequate instruction, in the form stipulated by the regulations of the central depository regarding the transfer of the financial instrument making the object of the borrowing operation performed by the clients within the global account. The participant shall register in his back-office system the transfer of the financial instruments.

(3) The participants to the central depository's system have the obligation to match the operations provided in para. (1) and (2) to each borrowing operation separately.”

**22. Articles 207-209 are hereby amended and shall read as follows:**

“**Art. 207.-** (1) The borrow of financial instruments is granted in exchange of a price by holder of financial instruments, further on called *creditor*, to a natural or legal person, further on called *debtor*, for the purposes stipulated in Art. 4 of CNVM Regulation No. 5/2010. The debtor has the obligation to return the creditor the same financial instrument at the end of a period of time specified in the Addendum to the frame contract for transactions in margin.

(2) The borrow of financial instruments is granted only after signing the frame contract for transactions in margin and, by the case, if the respective contract does not include clauses according to Art. 195 para. (3) of the Addendum for the performance of borrowing financial instruments according to Art. 195, as well as after opening a margin account. The contract

cannot be included within other contracts concluded by S.S.I.F. with the holders of borrowed financial instruments or with the clients wanting to borrow financial instruments from S.S.I.F.

**Art. 208.** - (1) S.S.I.F. which is not acting as agent, will register in its own margin account all operations of borrowing financial instruments and will establish a margin for these operation. The value of margin requirements for the borrowed financial instruments by S.S.I.F will be mutually agreed by the parties within the contract concluded, and these margin requirements cannot be smaller than the lowest margin requirement set up for its clients.

(2) The provisions of para. (1) are also adequately applied if S.S.I.F. borrows financial instruments from another S.S.I.F.

(3) During this period of borrow, if the issuing company distributes dividends or interest for the lent financial instruments on the date of their collection, the respective payment has to be done by the debtor to the creditor.

**Art. 209.** – The borrowings of financial instrument are recorded in the margin accounts and the provisions of the present title are adequately applied to them regarding the margin requirements, marking at the market and margin setting up and maintenance, as well as those regarding the margin call.”

**23. Under Article 211, Paragraph (1) is hereby amended and shall read as follows:**

“**Art. 211.** - (1) The provisions of Art.195 para. (1) regarding the opening of a margin account are also applied to the accounts for derivative financial instruments.”

**24. Under Article 212, Paragraphs (1), (4) and (5) are hereby amended and shall read as follows:**

“**Art. 212.** - (1) S.S.I.F. has the obligation to perform, at least daily, the marking at market for the margin account of each client, according to the rules of the central counterparty.

.....  
(4) In case in the margin account the assets were deposited mentioned in Art. 190 para. (2) Letter h) Letter B. points 2-5, to cover the margin calls at the same time with closing the client’s positions, S.S.I.F is authorized to liquidate these financial assets, too (at current market price) until covering the client’s debits.

(5) In case the value of margin account drops below the level set up in the contract, S.S.I.F. is authorized to sell the financial assets mentioned in para. (4) until covering the deficit.

**25. Article 213 is hereby amended and shall read as follows:**

“**Art. 213** - (1) In case of wrong transactions performed in the client’s account, S.S.I.F. is obliged to execute contrary orders in the market, with the same quantity of derivative financial instruments.

(2) The possible losses, as well as the commissions related to the transactions performed in the conditions of para. (1) will be borne by S.S.I.F.

**26. Annexes No. 7A, 7B and 7C are hereby amended and shall read as follows:**

“**ANNEX No. 7A:**

1.	Name of the company of financial investment services
2.	No. and date of operating authorization

### 1. Records of borrowing operations of S.S.I.F. acting as principal

Symbol	Due date	Financial instruments lent to				Financial instruments borrowed from			
		Clients		Intermediaries		Clients		Intermediaries	
		Quantity	Market value	Quantity	Market value	Quantity	Market value	Quantity	Market value
1	2	3	4	5	6	7	8	9	10
SMB	< 30 days								
	30-60 days								
	> 60 days								

### 2. Records of borrowing operations of S.S.I.F. acting as agent

Symbol	Due date	Financial instruments lent to				Financial instruments borrowed from			
		Clients		Intermediaries		Clients		Intermediaries	
		Quantity	Market value	Quantity	Market value	Quantity	Market value	Quantity	Market value
1	2	3	4	5	6	7	8	9	10
SMB	< 30 days								
	30-60 days								
	> 60 days								

- 1 – Fill in the symbol of the financial instrument making the object of reporting;
- 2 – Fill in the due date of the granted/taken borrow: < 30 days, 30-60 days, over 60 days;
- 3, 5 – Fill in the quantity of financial instruments lent to clients, to other intermediaries, depending on the due date mentioned at point 2;
- 4, 6 – Fill in the current market value (Quantity X Reference price for the reporting date) of the financial instruments lent to clients, to other intermediaries, depending on the due date mentioned at point 2;
- 7, 9 - Fill in the quantity of financial instruments borrowed from clients, from other intermediaries, depending on the due date mentioned at point 2;
- 8, 10 - Fill in the current market value (Quantity \* Reference price for the reporting date) of the financial instruments received as borrow by clients, other intermediaries, depending on the due date mentioned at point 2.

**ANNEX No. 7B**

**Record of purchases in margin on the date of.....**

Client	Symbol	Due date	Financial instruments purchased in margin		
			Quantity	Average purchase price	Market value
1	2	3	4	5	6
	SMB	< 30 days			
		30-60 days			
		> 60 days			

1- Fill in for each client

2 - Fill in the symbol of the financial instrument making the object of reporting;

3 – Fill in the due date of purchase in margin: < 30 days, 30-60 days, over 60 days;

4 – Fill in the total quantity of financial instruments purchased by investors based non the credits granted by S.S.I.F.;

5 – Fill in the purchase value of the financial instruments purchased by investors based non the credits granted by S.S.I.F. (Quantity \* Average purchase price).

6 - Fill in the current market value of the financial instruments purchased by investors based non the credits granted by S.S.I.F. (Quantity \* Reference price for the reporting date).

#### ANNEX No. 7C

**Record of assets established as margin for operations requiring guarantees in the margin account on the date of .....**

Symbol	Guarantees for purchases in margin		Guarantees for borrowings of financial instruments		Total values of assets deposited in margin account
	Quantity	Market value	Quantity	Market value	
1	2	3	4	5	6=3+5
SMB					

1 – Fill in the symbol of the asset deposited as guarantee for the operations requiring guarantees in the margin account (money funds symbols are compliant with international conventions, and financial instruments symbols are according to the markets such instruments are traded);

2 and 4 – Fill in the total quantity for each asset established as margin and for each operation requiring guarantees in the margin account;

3 and 5 – Fill in the current market value for each asset established as margin and for each operation requiring guarantees in the margin account (Quantity \* Reference price for the reporting date);

6 – Fill in the total value of assets established as margin for all operation requiring guarantees in the margin account (6=3+5).”

**Art. II. - Regulation No. 5/2010 of the National Securities Commission regarding the use of global accounts system, application of mechanisms with and without pre-validation of the financial instruments, performance of securities borrowing operations, of the operations to set up their associated guarantees and of transactions of sale in**

**absence, approved by Order No. 10/2010 of the National Securities Commission, published in Romania's Official Journal, Part I, No. 169 of March 16<sup>th</sup>, 2010, with further amendments, is hereby amended and shall read as follows:**

**1. Article 1 is hereby amended and shall read as follows:**

“**Art.1.** – The provisions of the present regulation set up rules regarding the use by the central depository, the market operator and, by the case, the system operator and the participants in the systems managed by them of the global accounts system and of the mechanism, with and without pre-validation of financial instruments, as well as rules regarding the performance between two intermediaries of the operations of financial instruments borrowing, of those to set up their associated guarantees and of the transactions of sales in absence.”

**2. Under Article 2, Paragraph (2) is hereby amended and shall read as follows:**

“(2) Within the meaning of the present regulation, the guarantees associated to the operations of financial instruments borrowing concluded between two intermediaries can be established exclusively by financial guarantees, defined according to the Government Ordinance No. 9/2004 regarding some financial guarantee agreements, approved with amendments and supplementations by Law no. 222/2004, with further amendments and supplementations.”

**3. Under Article 3, the introductive part and Letters a) - c) are hereby amended and shall read as follows:**

“**Art. 3.-** The use of global accounts system and of the mechanisms with and without pre-validation of the financial instruments for trading and recording the holding of financial instruments in the central depository system shall be done by cumulatively meeting the following conditions:

a) no transfer between the house account and the global clients' account or between the clients' individual sub-accounts within the global account, recorded in the intermediary's own back-office system – participant in the central depository system can take place in the absence of a transaction, except for the operations of financial instrument borrowing, of operations to set up financial guarantee with property transfer made of securities, of operations to acquire guarantees without property transfer made of securities;

b) it is forbidden the conclusion by intermediaries, except the market makers according to Art. 24, of the transactions of sale in absence on the global accounts, without meeting the conditions provided in Art. 12 of Regulation (EU) No. 236/2012 of European Parliament and of the Council of March 14<sup>th</sup>, 2012 regarding the sale in absence and certain aspects of swaps on credit risk, further on called Regulation (EU) No. 236/2012, respectively of the conditions provided in the technical standards issued for its application;

c) intermediaries are responsible with the permanent monitoring of the compliance with the incident legal provisions, of operations of financial instruments borrowing, as well as of those of setting up their associated guarantees, performed within global accounts in the clients' name and registered in the intermediaries' own back-office systems.”

**4. Under Article 3, Letter d) is repealed.**

**5. Article 4 is hereby amended and shall read as follows:**

“**Art. 4. -** (1) The operations of borrowing financial instruments can be performed exclusive to the following purposes:

a) in view of making transactions of sale in absence, including if the financial instruments are initially borrowed by intermediaries to be later lent to their own clients in view of making transactions of sale in absence;

b) in view of performing operations in the margin account;

c) in view of finalizing the transactions settlement if the intermediary performing custody services does not send to central depository the transfer order corresponding to the instruction related to the settlement of an allocation transaction;

d) in view of finalizing the transactions settlement, in case on the settlement date the financial instruments are not available for settlement;

e) in the context of market maker activities;

f) in view of making the settlement operations of derivative financial instruments implying physical delivery;

g) in the context of exerting the role of authorized participant of a tradable collective placement body in securities (O.P.C.V.M.) or of the management of a tradable O.P.C.V.M.;

h) in any other case, in view of finalizing the settlement, case in which the central depository will immediately notify A.S.F. and apply the adequate sanctions, according to its own regulations.

(2) It is forbidden to borrow financial instrument exclusively to get dividends or to exert voting rights within the general meeting of shareholders.

(3) The involved intermediaries are in charge with the observance of the purpose for which the financial instruments were borrowed.”

## **6. Articles 13-16 are hereby amended and shall read as follows:**

“**Art. 13.** - (1) The borrowing operations between two intermediaries can be performed with any financial instrument registered in the system of a central depository authorized by A.S.F. or in the system of another central depository having electronic connections with the central depository of Romania.

(2) The borrowing operations mentioned in para. (1) can be performed by any intermediary which can perform the investments service provided in Art. 5 para. (1) Letter c) of Law No. 297/2004.

(3) The operations of setting up guarantees can be performed with any financial instrument accepted by the guarantee beneficiary and which is registered in the system of a central depository authorized by A.S.F. or in the system of another central depository having electronic connections with the central depository of Romania.

(4) The total value of the borrowings between two intermediaries will comply with the provisions of Regulation (EU) No.575/2013 of European Parliament and of the Council of June 26<sup>th</sup>, 2013 regarding the prudential requirements for credit institutions and investment firms and for the amendment of Regulation (EU) No. 648/2012.

(5) A.S.F. can forbid an intermediary, by a justified decision and considering its financial position and the transactions performed by it, to grant loans of financial instruments to other intermediaries, also notifying the central depository about that decision.

**Art. 14.** - (1) The central depository monitoring of the borrowing operations of financial instruments, as well as those of setting up their associated guarantees performed in the global accounts opened by intermediaries in the central depository system in the clients’ name shall be exclusively performed at the level of the total number of financial instruments free of burdens, and respectively affected by the financial guarantee or mortgaged, segregated on ISIN.

(2) In view of recording the total number of financial instruments making the object of borrow operations and of the charges registered in the global accounts opened by intermediaries in the central depository system in the client’s name, the central depository’s

own regulations should provide the obligation of the participants in the central depository system to adequately instruct the central depository whenever such an operation is registered in their own back-office systems.

**Art. 15.** – In case we consider the financial instruments registered in the system of a central depository authorized by A.S.F., the central depository’s monitoring of the transfers related to financial instruments borrow operations, as well as of those of setting up their associated guarantees, registered in the global accounts opened by intermediaries in the central depository system, shall be performed by the daily reconciling with the central depository’s system of information regarding the holding of financial instruments in intermediaries’ own accounts, so as to observe for each account the relation: TOTAL FINANCIAL ASSETS FOR EACH ISIN = FINANCIAL ASSETS AFFECTED BY BURDENS + FINANCIAL ASSETS FREE OF BURDENS.

**Art. 16.** - (1) All operations of financial instrument borrow between intermediaries will rely on a frame contract and its addenda, drafted according to the provisions of Art. 207 of CNVM Regulation No. 32/2006, with further amendments and supplementations.

(2) the borrowings based on addenda are granted by the parties as follows:

a) before introducing the sale order in the trading system, in case of using the mechanism with pre-validation of financial instruments;

b) the latest on the settlement date according to the settlement term, in case of using the mechanism without pre-validation of financial instruments.

(3) The transfers related to financial instruments borrowing operations, of their return, as well as those related to the establishment, execution, acquiring or return of the financial guarantees associated to the financial instruments borrow between two intermediaries will be based on transfer instructions sent to the central depository, according to the provisions of C.N.V.M. Regulation No.13/2005 and according to the regulations of central depository.

(4) The participants which sent the transfer instructions to the central depository have the full and exclusive responsibility of the transfers related to borrowing operations, as well as those related to the establishment, execution, acquiring or restitution of the financial guarantees.”

## **7. Articles 17-19 and 21 are repealed.**

## **8. Articles 22-24 are hereby amended and shall read as follows:**

“**Art. 22.** - (1) The central depository has the obligation to send monthly reports to A.S.F within maximum 10 days since the end of the reporting period or within 24 hours since A.S.F. request, regarding the transfers related to financial instruments borrowing operations, specifying the following:

a) number of transfers related to financial instruments borrowing operations;

b) volume of financial instruments which made the object of transfers related to financial instruments borrowing operations, centralized by ISIN code;

c) intermediaries and the accounts involved in such operations, specifying the quality of creditor or debtor, by the case.

(2) Intermediaries have the obligation to send monthly reports to A.S.F within maximum 10 days since the end of the reporting period or within 24 hours since A.S.F. request, regarding the financial instruments borrowing operations made by them or by their clients, according to Art. 153 para. (1) Letter b) of C.N.V.M. Regulation No. 32/2006, also specifying the following:

a) number of borrowing operations;

b) volume of borrowed financial instrument, respectively lent, centralized by ISIN code;



- c) value, at the reporting date, of borrowed financial instruments, respectively lent, centralized by ISIN code;
- d) value, at the reporting date, of borrowed financial instruments, respectively lent, centralized by the purpose of borrowing operations;
- e) identity of the client who borrowed financial instruments, specifying the volume by each symbol and the value of the respective financial instruments.

**Art.23** - Intermediaries have the obligation to make sure that when taking over the order, their clients have the capacity to settle the transaction of sale in absence on its maturity.

**Art. 24.** - (1) The intermediaries' conclusion, on their own name, on their own accounts of transactions of sale in absence of financial instruments without meeting the conditions provided by Art. 12 of Regulation (EU) No. 236/2012 is allowed only for the transactions performed in the context of market maker activities.

(2) To benefit of the derogation in para. (1), a person should carry on the market maker activity as it is defined by Art. 1 para. (1) Letter k of Regulation (EU) No. 236/2012 and in compliance with the provisions of Regulation (EU) No. 236/2012 and of the regulations issued for its application.

(3) Intermediaries which do not benefit of the derogation in para. (1), can conclude on their own name, transactions of sale in absence of any financial instrument admitted to trading in a trading place of Romania exclusively in compliance with the provisions of Art. 12 of Regulation (EU) No.236/2012.”

## **9. Article 25 is hereby repealed.**

## **10. Article 27 is hereby amended and shall read as follows:**

“**Art. 27.** - (1) In view of using the global accounts system, as well as to make borrowing operations of financial instruments and transactions of sale in absence, the own regulations of the central depositories, market operators and, by the case, of system operators should include specific provisions compliant with the requirements stipulated in Chap. II-V.

(2) The participant's obligations stipulated in Chap. II-V should be specific requirements for their preservation in the systems managed by the central depository, market operator and, by the case, system operator and the observance of such obligations should lead to the application of adequate measures.”

**Art. III.** - (1) The present regulation is published in Romania's Official Journal, Part I and shall come into force at 60 days since the date of its publication.

(2) Until the date of the present regulation coming into force, the market/system operators, central depositories and intermediaries shall issue their own regulations for the application of the provisions of the present regulation.

(3) In case a central depository or a market operator finds out some facts breaching the provisions of their own regulations regarding the transactions in margin, borrowing operations and their related guarantees, the respective central depository/market operation is bound to take the adequate measures provided in these regulations.

(4) In case a central depository or a market operator finds out some facts breaching the provisions of Law No. 297/2004 regarding capital market, with further amendments and supplementations, of the European regulations of direct application, as well as of A.S.F. regulations regarding the transactions in margin, borrowing operations and their related guarantees, it has the obligation to immediately notify A.S.F.

(5) Within maximum 12 months since the date of the present regulation coming into force, A.S.F. together with the central depositories and market operators shall make an analysis and draft a report on the application of the provisions of the present regulation as

regards the mechanism of performing sales in absence and borrowing operations, taking, if the case, the adequate measures, including of legislative nature.

(6) Upon the date of the present regulation coming into force, the following shall be repealed:

a) point 1 of Art. III of the Regulation No. 11/2015 of the Financial Supervisory Authority for the amendment and supplementation of some regulatory documents, published in Romania's Official Journal, Part I, No. 747 of October 7<sup>th</sup>, 2015;

b) Disposition of measures No. 4/06.03.2006 of the National Securities Commission;

c) Disposition of measures No.5/26.03.2009 of the National Securities Commission;

d) Disposition of measures No. 13/12.07.2010 of the National Securities Commission;

e) Disposition of measures No. 2/09.02.2011 of the National Securities Commission;

f) Disposition of measures No. 20/31.10.2012 of the National Securities Commission;

g) Decision No. 1075/21.11.2012 of the National Securities Commission.\*)

President of Financial Supervisory Authority,

Mișu Negrițoiu

Bucharest, May 13<sup>th</sup>, 2016

No. 6

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\*) The documents provided in Art III para. (5) Letters b) - g) were not published in Romania's Official Journal, Part I.