

FINANCIAL SUPERVISORY AUTHORITY

REGULATION NO. 4/2015

amending and supplementing CNVM Regulation No. 13/2005 on the authorisation and operation of the central depository, clearing houses and central counterparties, and amending and supplementing Para (1) of Art. 9 of CNVM Regulation No. 5/2010 on the use of global accounts system, implementation of mechanisms with or without pre-validation of financial instruments, performance of securities lending operations, operations of establishing associated guarantees and short selling

Pursuant to the provisions of Art. 1 Para (2), Art. 2 Para (1) Letters a) and d), Art. 3 Para (1) Letter b), Art. 6 Paras (1) and (2), and of Art. 14 of 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,

Based on the provisions of Art. 152 of Law No. 297/2004 on the capital market, as subsequently amended and supplemented,

further to the deliberations held in the meeting of the Financial Supervisory Authority's Board of 25 March 2015,

the Financial Supervisory Authority hereby issues this regulation:

Art. I. CNVM Regulation No. 13/2005 on the authorisation and operation of the central depository, clearing houses and central counterparties, approved by Order No. 60/2005 of the President of CNVM Commission, published in the Official Journal of Romania, Part I, Nos. 983 and 983bis of 4 November 2005 as subsequently amended and supplemented, is hereby amended and shall be supplemented as follows:

1. Under Article 2, Paragraph (2), after Letter h), two new letters, letters h¹) and h²) are hereby inserted, and shall read as follows:

“h¹) *direct electronic link* - the link between two clearing-settlement system operators whereby one operator becomes a participant in the clearing-settlement system of the financial instruments of another operator, under the same terms and conditions applied to any other participant in the clearing-settlement system of financial instruments managed by the latter;

h²) *indirect electronic link* - the agreement between a clearing-settlement system operator and a third party other than an operator, which is a participant in the clearing-settlement system of the financial instruments of another operator. Such link shall be established by a clearing-settlement system operator in order to facilitate the transfer of financial instruments to its participants from the participants of another operator.”

2. Under Article 2, Paragraph (2), Letter k) is hereby repealed.

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

“n) *participant* – the entity referred to in Art. 168, Para (1), Letter b) of Law No. 297/2004;”

4. Under Article 40, Letters a) and b) are hereby amended and shall read as follows:

“a) the payment of dividends, in accordance with the provisions of Art. 146 Para (5¹) of Law No. 297/2004;

b) the payment of the interest or principal, in accordance with the provisions of Art. 146, Para (5¹) of Law No. 297/2004;”

5. Article 42 is hereby amended and shall read as follows:

“Art. 42. - (1) The participants referred to in Art. 2 Para (2) Letter n) shall be deemed participants in the central depository’s system and shall be admitted to the system, in accordance with the procedures of the central depository.

(2) The central depository shall notify the Financial Supervisory Authority, hereinafter referred to as *ASF*, within one working day, of the admission to the system of the participants referred to in Para (1), including in the case of the participants for which ASF has issued a consent in principle in accordance with the provisions of Art.104.

(3) Participants must open accounts with the central depository so as to ensure the separation of financial instruments held in their own name from those held in the name of clients.”

6. Articles 51-53 are hereby amended and shall read as follows:

“Art. 51. - (1) The central depository may keep the following account systems:

a) individual financial instruments accounts opened in the name of the owners of financial instruments other than derivatives;

b) global financial instruments accounts opened by the participants, where financial instruments other than derivatives are registered.

(2) If the financial instruments accounts referred to in Para (1) are used, then the liability regarding the existence of financial instruments upon settlement shall devolve upon:

a) the intermediary that made the sales order; or, if applicable,

b) the authorised entity conducting custody activities for the seller, provided that the entity at issue confirms the settlement order.”

Art. 52. - In the case of the financial instruments accounts referred to in Art. 51 Para (1) Letter a), the central depository shall separately record:

a) the financial instruments held in the name and to the account of the participants;

b) the financial instruments held in the name and to the account of the participants’ clients;

c) the financial instruments which are subject to a security agreement, concluded in compliance with the legal provisions in force;

d) the financial instruments which are subject to seizure/garnishment;

e) the financial instruments of the owners which do not have accounts opened with a participant.”

Art. 53. - (1) In the case of the financial instruments accounts referred to in Art. 51 Para (1) Letter b), the participants in the central depository’s system must open and keep subaccounts for their own clients and register the holdings per each client in their accounts on a daily basis, in accordance with the provisions of Art. 151 Para (2) of Law No. 297/2004.

(2) The subaccounts referred to in Para (1) shall be entered so as to ensure separation of the financial instruments held on own name from those held in the name of clients.

(3) The subaccounts referred to in Para (1) may be:

- a) individual financial instruments accounts in the name of the financial instruments’ owners;
- b) global financial instruments accounts in the name of other entities authorised to open financial instruments accounts for their own clients.

(4) Participants and/or the central depository, as appropriate, shall have the following obligations:

- a) to ensure the safekeeping of the financial instruments registered in the accounts kept by them;
- b) to facilitate the receipt or exercise by their own clients of the rights corresponding to financial instruments;
- c) to follow the orders of their own clients, in accordance with the contracts concluded with them;
- d) not to use the financial instruments of their own clients, without their express consent.

(5) The clients’ express consent referred to in Para (4) Letter d) shall not apply in the case of special/imposed sale transactions, in accordance with the regulations of the clearing-settlement system operator.

(6) In the case of a foreign participant in the central depository’s system or of a foreign client of a participant in the central depository’s system, as appropriate, the central depository or the participant in the central depository’s system, as appropriate, must take the necessary measures to ensure the exercise of the rights corresponding to the financial instruments that the foreign participant in the central depository’s system or the foreign client, as appropriate, might keep in the name of third parties.”

7. Article 54 is hereby repealed.

8. Article 55 is hereby amended and shall read as follows:

“Art. 55. - At the request of ASF, of any other institutions authorised by law or the central depository, the central depository’s participants opening global financial instruments accounts shall report the holdings of each investor as soon as possible. In this regard, participants must request and send the required information to identify the owner of financial instruments and the real beneficiary, as appropriate.”

9. Article 61 is hereby amended and shall read as follows:

“Art. 61. - (1) The central depository must keep financial instruments registers in electronic form and shall also have an IT system able to fulfil the following data processing functions:

a) carrying out financial instruments transfer operations based on the principle of double entry recording, by previously verifying the following conditions:

1. the number of financial instruments credited equals the number of financial instruments debited and the number of financial instruments transferred from an account equals the number of financial instruments added to the account or accounts where the financial instruments have been transferred;

2. the account to be debited holds a sufficient number of financial instruments;

3. the financial instruments to be transferred are not frozen;

b) changing the nominal value of the shares and the conversion of financial instruments into shares.

(2) The participants in the central depository’s system must keep financial instruments registers in electronic form and shall also have an IT system able to fulfil the following data processing functions:

a) carrying out financial instruments transfer operations among the subaccounts of a global account based on the principle of double entry recording, by previously verifying the following conditions:

1. the number of financial instruments credited equals the number of financial instruments debited and the number of financial instruments transferred from an account equals the number of financial instruments added to the account or accounts where the financial instruments have been transferred;

2. the account to be debited holds a sufficient number of financial instruments;

3. the financial instruments to be transferred are not frozen;

b) changing the nominal value of the shares and the conversion of financial instruments into shares.

(3) The central depository shall be held liable for identifying the owner of all financial instruments deposited in the system managed by it, if such financial instruments are registered in individual accounts opened by the central depository in the name of owners of financial instruments; if the financial instruments are registered in individual and/or global accounts opened by such participants in the central depository’s system, then the participants of the central depository shall be held liable for identifying the owner of financial instruments from among those deposited in the system managed by the central depository.”

10. Under Article 63, Paragraph (1), Letter e) is hereby amended and shall read as follows:

“e) information on the payment of dividends, interest or other amounts distributed, indicating the declared date, the value of the dividend or the amount distributed, the withholding tax, if appropriate, and the payment date.”

11. Under Article 64, Paragraph (1) is hereby amended and shall read as follows:

“Art. 64. - (1) The entries concerning the investors, volume of the financial instruments held by each investor and the status of such instruments are made by:

a) the central depository, for the individual financial instruments accounts managed by it in the name of investors;

b) the participants, for global accounts, both for those in own name, and for those of the clients, in accordance with the provisions of Art. 151 Paras (1) and (2) of Law No. 297/2004.”

12. Under Article 66, Letter b) is hereby amended and shall read as follows:

“b) the records regarding the ownership transfers made in the central depository’s system, other than those resulting from the transactions carried out on regulated markets and/or in alternative trading systems;”

13. Article 100 is hereby amended and shall read as follows:

“Art. 100. - (1) The central depository shall establish the conditions and issue procedures on cross-border operations and direct and indirect electronic links, in both directions, established with other clearing-settlement system operators, which shall include special remarks on the national law which shall apply to each operation carried out through such electronic links.

(2) In the case of a direct or indirect electronic link through which another clearing-settlement system operator becomes a participant or client of a participant in the central depository’s system, at least the following shall apply:

a) the clearing-settlement system operator shall observe the regulations applicable in Romania;

b) the central depository must measure, monitor and manage the additional risks arising out of the use of such direct and indirect link or of the services of such intermediary, and take proper measures to mitigate such risks.

(3) A direct electronic link, through which another clearing-settlement system operator becomes a participant in the central depository’s system, may be set through the operation of the account(s) opened in the central depository’s system for the transfer of financial instruments among systems by such system operator/another participant in the central depository’s system, in accordance with the regulations issued by the central depository in this respect.

(4) To set the specific requirements referred to in Para (1), the central depository must aim at counteracting any potential risk resulting from the direct and indirect electronic links. For that purpose, the legal, financial and operational risk and any other relevant risks identified by the central depository must be taken into account.

(5) Until the establishment of the conditions and issuance of the procedures by the central depository as provided in Para (1), any electronic link shall be established only in compliance with the provisions of this regulation.”

14. Article 101 is hereby amended and shall read as follows:

“Art. 101 - (1) The central depository may conclude contracts with other clearing-settlement system operators in order to issue common procedures for the centralised management of the financial instruments issued by issuing companies headquartered in Member or Non-Member States and registered in such clearing-settlement systems.

(2) The central depository may establish direct or indirect electronic links in both directions, with other clearing-settlement system operators, provided such links do not affect the length of the

settlement cycle and the settlement continues to be performed based on the DvP principle, in all cases in which such settlement modality is applicable.

(3) The central depository must assess the financial integrity and operational reliability of any clearing-settlement system with which it intends to establish a direct or indirect electronic link.

(4) The central depository shall establish direct or indirect electronic links, in both directions, for the cross-system transfer of financial instruments, so as the risks related to the operations involved are mitigated. For such purpose, prior to establishing a direct or indirect electronic link, and permanently after the link is established, the central depository shall identify, assess, monitor and manage all potential risk sources for its own clearing-settlement system and for the participants, arising out of such link, and shall take appropriate measures to mitigate such risks.

(5) If the central depository considers that by establishing a direct electronic link requested by another clearing-settlement system operator the orderly and efficient conduct of its activity is damaged, then it may refuse access to the clearing-settlement system managed by it based on a reasoned decision, notifying ASF in this respect.

(6) If access of another depository in the clearing-settlement system is refused, the requesting central depository shall have the right, within a term set by the central depository through its own regulations, as of the receipt of the refusal, to fulfil all requirements indicated in the grounds for the refusal.

(7) If access to the central depository's system is refused, the applicant shall have the right to object to such refusal with ASF."

Art. II. Paragraph (1) of Article 9 of CNVM Regulation No. 5/2010 on the use of global accounts system, implementation of mechanisms with or without pre-validation of financial instruments, performance of securities lending operations, operations of establishing associated guarantees and short selling, approved by Order No. 10/2010 of the President of CNVM Commission, published in the Official Journal of Romania, Part I, No. 169 of 16 March 2010, as subsequently amended and supplemented, is hereby amended and shall read as follows:

"Art. 9. - (1) The central depository must provide at all times the technical support required for the participants in the central depository's system to send the reports provided by Art. 146 Paras (6) and (7) of Law No. 297/2004 and the information referred to in Art. 67 Para (1) of Regulation No. 13/2005 on the authorisation and operation of the central depository, clearing houses and central counterparties, approved by CNVM Order No. 60/2005, as subsequently amended, hereinafter referred to as *CNVM Regulation No. 13/2005*, and the daily reconciliation referred to in Art. 8. If they do not hold the required information themselves, in order to identify the owner of the shares or the real beneficiary, as appropriate, the participants in the central depository's system shall request the necessary information from their own clients, which must provide the requested information."

Art. III. – The term "*member*" (of a central depository) shall be replaced with the term "*participant*" throughout CNVM Regulation No. 13/2005 on the authorisation and operation of the central depository, clearing houses and central counterparties, approved by Order No. 60/2005 of the President of CNVM Commission, published in the Official Journal of Romania, Part I, Nos. 983 and 983bis of 4 November 2005 as subsequently amended and supplemented, including those made hereby.

Art. IV. — This regulation shall be published in the Official Journal of Romania, Part I, in the Bulletin of the Financial Supervisory Authority, and on its website and shall enter into force as of the date of its publication in the Official Journal of Romania, Part I.

PRESIDENT OF THE FINANCIAL SUPERVISORY AUTHORITY,

Mișu Negrițoiu

Bucharest, 25 March 2015

No. 4