

**National Securities Commission (CNVM)**

**Regulation No. 3/2006**

**on the authorisation, organisation and operation of the Investor Compensation Fund**

*In force as of 9 February 2006*

*The consolidation of 6 July 2015 is based on the publication in the Official Journal of Romania, Part I No. 124 of 9 February 2006 and includes the amendments made by the following acts: Rectification 2006; Regulation 10/2006; Regulation 31/2006; Regulation 4/2008; Regulation 3/2010; Regulation 1/2011; Regulation 1/2013; Regulation 7/2014; Regulation 6/2015; Last amendment as at 29 May 2015.*

**CHAPTER I**  
**General Provisions**

**Art. 1.** - This regulation lays down the conditions and principles for the establishment, authorisation, organisation and operation of Fondul de Compensare a Investitorilor SA [*Investor Compensation Fund*], hereinafter referred to as the Fund, in accordance with the provisions of Title II, Chapter IX of Capital market Law No. 297/2004, as subsequently amended and of Company Law No. 31/1990, republished, as subsequently amended and supplemented.

**Art. 2.** - *Art. 2. was amended by Regulation 7/2014 on 24/04/2014.*

(1) The terms and expressions used herein shall have the meanings provided in Capital Market Law No. 297/2004, as subsequently amended and supplemented, hereinafter referred to as Law No. 297/2004.

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

**a)** FSA – the Financial Supervisory Authority, successor in rights of the National Securities Commission;

**b)** compensation claim – a request submitted to the competent body by an investor who has entrusted money funds and/or financial instruments to an intermediary/investment management company (SAI) which is in any of the situations referred to in Art. 47(1) of Law No. 297/2004;

*Letter b) was amended by Regulation 6/2015 on 29/05/2015.*

**c)** compensation – amount of money paid by the Fund to each investor to be compensated, in accordance with Art. 47 of Law No. 297/2004, up to the total obligation of the member to its investor, calculated according to law and this regulation, within the limit of the compensation ceiling applicable at the reference date;

**d)** contribution – non-repayable amount owed to the Fund, according to Art. 51 of Law No. 297/2004, by its members;

**e)** reference date – the date when FSA issues the document establishing the situation provided for in Letter a) of Art. 47(1) of Law No. 297/2004, or the issuance date of the final court decision to start insolvency proceedings, according to Letter b) of Art. 47(1) of Law No. 297/2004;

**f)** net holding – the value of the money funds and/or financial instruments that an intermediary/a SAI managing individual portfolios of investments owes to compensable investors, resulting further to the deduction of the value of the money funds and financial instruments owed by investors to

such entities on the reference date from the value of the money funds and financial instruments referred to in Art. 46(1) of Law No. 297/2004;

*Letter f) was amended by Regulation 6/2015 on 29/05/2015.*

**g)** Fund – Fondul de Compensare a Investitorilor SA;

**h)** investor – the person referred to in Art. 46(2) of Law No. 297/2004;

*Letter h) was amended by Regulation 6/2015 on 29/05/2015.*

**i)** compensated investment – the investment whose restitution is insured up to the limit of the compensation ceiling;

**j)** compensable investor – the person referred to in Letter h), other than the persons excluded from compensation, according to Art. 46(5) of Law No. 297/2004 and Art. 30<sup>1</sup> hereof;

**k)** investor to be compensated – the person referred to in Letter h), registered by the Fund, according to law, on the Payment List;

**k<sup>1</sup>)** entrustment of money funds and/or financial instruments – the operation whereby any investor transfers money funds and/or financial instruments to a member of the Fund; entrustment of money funds and/or financial instruments is also the operation whereby a member of the Fund, participant in the clearing-settlement system of the central depository, transfers without the investor's consent the financial instruments held by that investor from the individual account opened in its name at the central depository into the global account opened by the member of the Fund at the central depository;

*Letter k<sup>1</sup>) was inserted by Regulation 6/2015 on 29/05/2015.*

**l)** members of the Fund – the persons provided under Art. 45(1) of Law No. 297/2004, who acquired the capacity as member of the Fund and who pay their contributions to the Fund in accordance with this regulation;

**m)** Payment List – the document prepared by the Fund, provided for in Art. 6(1) of the annexe forming an integral part hereof, containing the identity of the investors to be compensated, the net holding of each of them and the compensation owed to each investor to be compensated by the Fund within the limit of the compensation ceiling applicable on the reference date;

**n)** competent body:

**(i)** the special administrator or liquidator appointed/agreed by FSA according to Art. 265, 269 or 270 of Law No. 297/2004, if the special administration proceedings are initiated for an intermediary/SAI managing individual portfolios of investments which cannot return the money and financial instruments belonging to the investors or the judicial administrator or liquidator appointed by the court of law within the insolvency proceedings, as the case may be, and who manages the compensation claims in accordance with this regulation;

**(ii)** if FSA determines that an intermediary/SAI managing individual portfolios of investments is unable to return the money and financial instruments belonging to the investors and does not decide to initiate the special administration proceedings, then the Fund shall be the competent body;

**o)** compensation ceiling – the maximum level of compensation for each investor provided under Art. 30(2).

**Art. 3. - (1)** Intermediaries registered with the National Securities Commission's Register, hereinafter referred to as CNVM's Register, for the supply of financial investment services on behalf of clients, and also the investment management companies registered in CNVM's Register, whose object of activity includes the management of individual portfolios of investments and pursuing their business

in the territory of Romania, must contribute to the establishment of the financial resources of the Fund in accordance with Art. 20.

*Paragraph (1) was amended by Regulation 10/2006 on 12/07/2006.*

**(2)** Any credit institution providing financial investment services may be exempted from the obligation to contribute to the Fund, only where it has been already exempted from the obligation to contribute to the deposit guarantee fund, provided that its investors enjoy protection at least equivalent to that afforded by the Fund.

**(3)** In applying Para (2), the Fund may release a credit institution from the payment obligation of the contributions based on the documents proving:

**a)** release by NBR or corresponding competent authority of the Member State of that credit institution from the payment obligation to the bank deposit guarantee fund or scheme;

**b)** provision of compensation to the credit institution representing protection at least equivalent to that afforded by the Fund.

**(4)** The branches of the intermediaries of the non-Member States that shall be authorised to provide financial investment services in Romania shall not be required to become members of the Fund if it can be shown that they participate in a system that may provide investors of Romania compensation at least equivalent to that afforded by the Fund.

**(5)** Where the provisions of Para (4) may not be applied, the branches of the non-Member States established in Romania shall be required to become members of the Fund.

**(6)** Where the member of the Fund is a branch of an intermediary of a non-Member State, the Fund shall compensate only investors that hold accounts opened with the authorised branch of Romania.

**(7)** The branches of the intermediaries of non-Member States that shall be authorised to provide financial investment services in Romania shall provide the current or prospective investors any relevant information concerning the compensation procedure of their investments.

**(8)** The information referred to in Para (7) shall be submitted in the Romanian language, in a clear and comprehensible form, in accordance with the procedure provided for in Art. 41.

**Art. 4. - (1)** The Fund's main activity is the collection of members' contributions and compensation of investors' claims resulting from any member's incapacity to repay the money funds and/or financial instruments owed or belonging to investors, held and/or managed in their name within the context of the supply of financial investment services, within the ceilings set in accordance with Art. 30.

**(2)** In the case of a credit institution member of the Fund, the compensation shall be provided by the Fund only for the money funds and financial instruments entrusted for the supply of investment services and activities.

*Paragraph (2) was amended by Regulation 6/2015 on 29/05/2015.*

## CHAPTER II

### Requirements concerning the Authorisation of the Fund

**Art. 5. - Art. 5. was amended by Regulation 10/2006 on 12/07/2006.**

**(1)** The Fund is a legal person established as a joint-stock company, issuer of registered shares, established in accordance with Company Law No. 31/1990, republished, as subsequently amended and supplemented, and in accordance with the provisions of Title II, Chapter IX of Capital Market Law No. 297/2004, as subsequently amended, and of this regulation.

(2) The instruments of incorporation, previously approved by CNVM, shall be drawn up in accordance with Law No. 297/2004, as subsequently amended, and of this regulation.

**Art. 6. - (1)** The share capital of Fondul de Compensare a Investitorilor SA must be at least the RON equivalent of EUR 20,000, calculated at the reference exchange rate communicated by the National Bank of Romania upon the execution of the instruments of incorporation.

(2) Upon establishment, the share capital must be equally subscribed by the legal persons provided for in Art. 44(2) of Capital Market Law No. 297/2004.

(3) The persons referred to in Para (2) are the founding shareholders of the Fund.

*Paragraph (3) was amended by Regulation 10/2006 on 12/07/2006.*

**Art. 7. - Art. 7. was amended by Regulation 1/2013 on 18/06/2013.**

(1) The Fund shall receive new shareholders that must meet the requirements set out in Art. 44(2) of Law No. 297/2004, as subsequently amended and supplemented, either by assignment of the shares of the existing shareholders, or by the issue of new shares, up to the limit of the number of shares approved by the instruments of incorporation, made quarterly, bi-annually or annually, if appropriate. The new shares shall be issued based on the decision of the board of directors, if such duty was delegated to it by the general meeting of shareholders of the Fund, as provided by law.

(2) In exceptional circumstances when the Fund finds that the assignment referred to in Para (1) was made in breach of the provisions of Art. 44(2) of Law No. 297/2004, as subsequently amended and supplemented, namely to persons not authorised to act as shareholders of the Fund, the Board of directors shall immediately enter the transfer in the Shareholder Register, and the voting rights corresponding to those shares shall be suspended in accordance with the provisions of Art. 283(1) of the above-mentioned law.

(3) Within two days of the date of the transfer referred to in Para (2), the Fund shall inform FSA of the actual situation and submit the documents based on which such transfer was made.

(4) Within 15 days after receipt of the notification referred to in Para (3), FSA shall take all necessary actions provided for in Art. 283(2) of Law No. 297/2004, as subsequently amended and supplemented, for the alienation of the shares of the Fund by the non-eligible shareholder or cancellation thereof followed by the issue of new shares with the same number, and sale thereof to the legal persons referred to in Art. 44(2) of Law No. 297/2004, as subsequently amended and supplemented.

**Art. 8. - (1)** The Fund shall be managed by a board of directors consisting of at least 3 members, legal persons authorised and/or registered with CNVM's Register and supervised by CNVM, shareholders of the Fund, under a management contract. The management contract shall be executed by the person appointed by the General Meeting of Shareholders to represent the Fund and, for the directors, by the legal representatives of the legal persons appointed in the Fund's Board of Directors.

*Paragraph (1) was amended by Regulation 10/2006 on 12/07/2006.*

(2) The directors of the Fund referred to in Para (1) shall conclude a mandate contract with the appointed natural persons. The contract shall expressly indicate the limits of the mandate.

(3) The representatives of the legal persons elected as directors of the Fund must be post-secondary graduates attested by bachelor's degree exam, must have a professional experience of at least 5 years in the financial-banking or capital market field, and to be of good repute.

(4) The representatives of the legal persons elected as directors of the Fund must not:

- a) have been punished in the last three years with the suspension of the authorisation, withdrawal of the authorisation or temporary prohibition of the pursuit of the activities and services provided for by the legislation in force, by CNVM, NBR, ISC or other similar financial institutions;
- b) have held managerial positions in a company under judicial reorganisation or declared bankrupt or suspended or whose authorisation was withdrawn by the competent authority, during the period when they held those positions;
- c) have been convicted for fraudulent management, abuse of trust, forgery of documents and trafficking therein, fraud, embezzlement, false statement, bribe giving or taking, or other economic crimes.

(5) The representatives of the legal persons elected as directors of the Fund may not participate in the decision-making process concerning a member of the Fund where they, or the persons involved with them, are significant shareholders, directors, auditors or employees.

**Art. 9.** - «repealed»

**Art. 10.** - (1) The Fund shall adopt an executive management structure to ensure operational independence from its shareholders.

(2) The members of the executive management and the other employees of the Fund may not be directors, auditors or employees of the members of the Fund.

**Art. 11.** - (1) After registration of Fondul de Compensare a Investitorilor SA with the Office of the Trade Register, the Fund shall apply for authorisation with CNVM, and submit the following documents for that purpose:

- a) the instruments of incorporation and registration certificate;
- b) proof of full payment of the share capital;
- c) legalised copy of the contract corresponding to the premises for the registered office;
- d) legalised copy of the management contract concluded with the legal persons;
- e) legalised copies of diplomas, *curriculum vitae*, valid criminal record certificate and tax offence record certificate, for the representatives of the legal persons elected as directors, general manager and financial auditors/censors;
- f) organisation and operation regulation;
- g) Fund's procedures.

(2) The representatives of the legal persons elected in the board of directors and the executive manager shall be individually validated by CNVM.

(3) Any amendment to the documents based on which the Fund was authorised shall be subject to CNVM's prior approval.

**CHAPTER III**  
**Organisation and Operation of the Fund**  
**Section 1**  
**Fund Management**

**Art. 12.** - (1) The board of directors of the Fund shall have the general duties provided for in Company Law No. 31/1990, republished, as subsequently amended and supplemented, and also the following responsibilities:

- a)** to appoint and revoke the executive manager of the Fund;
- b)** to approve the organisational and personnel structure;
- c)** to adopt and amend the Fund's procedures;
- d)** to approve the increase, decrease, suspension or resumption of the payment of the Fund members' contributions;
- e)** to approve loans;
- f)** to approve the policy on the investment of financial resources available to the Fund, within the limits provided for in Art. 26;
- g)** to approve the report on the election of the financial auditor by means of tendering procedures, unless otherwise provided by the GMS;
- h)** to exercise any other duties provided for by the regulations in force or ordered by CNVM.

**(2)** The decisions made in the exercise of its duties referred to in Letters a)-e) of Para (1) shall come into force or shall be effective after their approval by CNVM.

**(3)** The decisions made in the exercise of its duties referred to in Letters f) and g) of Para (1) shall be notified to CNVM within 5 working days after adoption.

**Art. 13. - (1)** The board of directors may be convened for an extraordinary meeting in accordance with Law No. 31/1990, and at the request of the general manager.

**(2)** The call of the board of directors shall be made not later than 24 hours after the occurrence of a situation which requires urgent decisions and measures, and the extraordinary meeting shall be held within maximum 48 hours after the call.

**Art. 14. - (1)** The executive manager shall efficiently manage the current activity of the Fund, ensure fulfilment of the decisions of the board of directors and inform the latter of the application thereof in compliance with the regulations and decisions of CNVM.

**(2)** The executive manager of the Fund shall have at least the following duties:

**a)** to represent the Fund in its relationships with any institution, natural or legal person, in accordance with the powers delegated to the executive manager by the board of directors, approved by GMS;

**b)** to commit the expenses related to the operation of the Fund;

**c)** to hire the personnel of the Fund;

**d)** to submit to the board of directors of the Fund, for approval, the materials and documentations necessary for the fulfilment of the duties provided for in Art. 12;

**e)** to request CNVM, capital market institutions and its members documents, data and information necessary for the verification of the financial situation and identification of the risk assumed by members;

**f)** to ensure and supervise fulfilment of all procedures required to make payments of compensation to investors;

**g)** to fulfil any other duty assigned by the board of directors of the Fund and to apply, on the basis of its powers, any decision or resolution of CNVM.

## **Section 2**

### **Regulations of the Fund**

**Art. 15.** - Art. 15. was amended by Regulation 10/2006 on 12/07/2006.

The Organisation and operation regulation of the Fund provided for in Letter f) of Art. 11(1) must also include provisions on the internal control system, including the internal audit.

**Art. 16.** -Art. 16. was amended by Regulation 10/2006 on 12/07/2006.

Art. 16. was amended by Regulation 7/2014 on 24/04/2014.

**(1)** The Fund's procedures, provided for in Letter g) of Art. 11 (1) shall comprise at least the following:

- a) the modality to acquire or lose the capacity as member of the Fund;
- b) the modality to determine the elements included in the calculation base related to the managed financial instruments and money portfolios, in order to determine the annual and special contributions;
- c) the amount and payment deadlines of the annual and special contributions, and the application conditions of the delay penalties for the payment of contributions;
- d) the conditions in which the contribution payment by the Members of the Fund may be increased, reduced, suspended or resumed;
- e) the reports and the reporting deadlines to be submitted to the Fund by its members, to:
  1. determine the calculation base and the amount of the contribution to be paid;
  2. determine any payment obligations to be compensated by the Fund;
- f) the regime and the circulation of information and documents that may be accessed by the representatives of the legal persons elected as directors of the Fund, the employees and auditors of the Fund, during the exercise of their duties.

**(2)** The calculation modality of the compensation for each investor and the documents, conditions and formalities to be fulfilled-in order to benefit from the compensations paid by the Fund shall be established in accordance with Section 5 – Compensation Procedure of Chapter III, in consideration of the details presented in the annexe.

**Art. 17.** - **(1)** To verify the eligibility of the claim and value of the compensation to be paid by the Fund, if the payment incapacity of any of its members is established, the Fund may request any necessary information from the members of the board of directors, employees and auditors of such member.

*Paragraph (1) was amended by Regulation 6/2015 on 29/05/2015*

**(2)** The representatives of the legal persons elected as directors of the Fund, the auditors and employees of the Fund, must not disclose the information obtained during their activity except as provided by the legislation in force.

**Art. 18.** - The Fund must organise and keep accounting records in accordance with Law No. 82/1991, republished, as subsequently amended and supplemented, and any other applicable legal provisions issued by CNVM.

**Art. 19.** - **(1)** In order to carry out its duties, the Fund must have adequate internal control and internal audit mechanisms, which shall be established by its own rules, in accordance with the regulations in force.

**(2)** For the purposes of auditing the financial statements, the Fund shall conclude a contract with a legal person financial auditor registered with the Chamber of Financial Auditors of Romania.

**(3)** On an annual basis, no later than 10 days after the expiry date for the submission of annual financial statements as provided by law, the Fund shall send CNVM the annual report which must comprise: the annual financial statements, audit report and management report.

**(4)** The annual activity report shall be published.

**(5)** The Fund shall send CNVM current reports in connection with any event likely to impair the operation of the Fund.

### **Section 3 Financial Resources**

**Art. 20.** - *Art. 20. was amended by Regulation 1/2011 on 27/01/2011.*

The financial resources of the Fund shall consist of the:

- a)** members' initial contributions;
- b)** annual and/or special contributions;
- c)** income from investing the financial resources referred to in Letters a), b), f) and g);
- d)** income from recovery of claims compensated by the Fund, resulting from subrogation to investor's rights;
- e)** short-term loans to exclusively cover temporary needs resulting from compensation-granting;
- f)** donations, sponsorship, financial assistance;
- g)** other income, including members' contribution for the management and operation expenses of the Fund and delay increases.

*Letter g) was amended by Regulation 4/2008 on 12/06/2008.*

**Art. 21.** - *Art. 21. was amended by Regulation 10/2006 on 12/07/2006.*

The initial contribution of intermediaries and investment management companies whose object of activity comprises the management of individual portfolios of investments shall represent at least 1% of the initial capital provided for by Law No. 297/2004, as subsequently amended, corresponding to the authorised object of activity, but not less than the RON equivalent of EUR 1,000, calculated at the NBR's exchange rate valid on the payment date.

**Art. 22.** - *Art. 22. was amended by Regulation 4/2008 on 12/06/2008.*

*Art. 22. was amended by Regulation 3/2010 on 25/02/2010.*

**(1)** The amount of the annual contributions paid by the members of the Fund shall be calculated in accordance with the Fund's procedures.

**(2)** The level of annual contributions shall be determined by the Fund having regard at least to the following:

- a)** money funds and value of financial instruments entrusted by investors to the members of the Fund for the supply of financial investment services on behalf of clients;
- b)** value of the financial instruments calculated having regard to their number and at the market value and reporting deadlines set by the Fund in the procedures referred to in Art. 16;
- c)** level of the cap on compensation provided for in Art. 30.

**(3)** The annual contributions owed to the members of the Fund in a calendar year must be set so as their total value, together with the compensation amounts in the possession of the Fund, is at least equal to 1% of the value of the compensable investment. However, the total value of the annual



contributions corresponding to a calendar year shall not be less than 0.075% of the value of the compensable investment.

*Paragraph (3) was amended by Regulation 1/2013 on 18/06/2013.*

**(4)** FSA shall request the Board of Directors of the Fund to modify accordingly the quotas based on which annual contributions are calculated, where their level was set in breach of the provisions of Para (3).

*Paragraph (4) was amended by Regulation 10/2006 on 12/07/2006.*

*Paragraph (4) was amended by Regulation 1/2013 on 18/06/2013.*

**Art. 23.** - *Art. 23. was amended by Regulation 1/2011 on 27/01/2011.*

Where the board of directors of the Fund considers that the latter's financial resources are insufficient to discharge of the obligations to pay compensation, each member shall pay a special contribution equal to no more than the double of the annual contribution corresponding to the financial year concerned, whose amount shall be approved by the GMS.

**Art. 24.** - *Art. 24. was amended by Regulation 1/2011 on 27/01/2011.*

The Fund may apply for the loans referred to in Letter e) of Art. 20 only if its financial resources are not sufficient to fully cover its actual obligations. The decisions for loans shall be made by the board of directors of the Fund and shall be previously approved by CNVM.

**Art. 25.** - *Art. 25. was amended by Regulation 1/2011 on 27/01/2011.*

**(1)** Each category of financial resources provided for in Art. 20 shall be distinctly entered in the company's accounting records.

**(2)** The financial resources referred to in Letters a), b), d) and e) of Art. 20 shall be used only to compensate investors, in the situations provided for in Art. 47 of Law No. 297/2004, as subsequently amended and supplemented.

**(3)** The financial resources referred to in Letters c), f) and g) of Art. 20 may be used to cover the expenses related to the management and operation of the Fund, subject to the conditions established by its board of directors.

**(4)** Where the financial resources referred to in Para (3) are not sufficient so as to cover the expenses for the management and operation of the Fund, the Fund's management shall, subject to the conditions established by its board of directors, increase the amount of members' contributions for management and operation expenses of the Fund and that for delay increases for the payment of annual contributions referred to in Letter g) of Art. 20.

**(5)** Fondul de Compensare a Investitorilor SA must prepare and send the financial statements on a monthly basis, prior to the 25<sup>th</sup> day of the following month, to CNVM. The financial statements shall be approved by the company's internal auditor, and shall comprise the investments of the Fund and their sources.

**Art. 26.** - *Art. 26. was amended by Regulation 1/2011 on 27/01/2011.*

*Art. 26. was amended by Regulation 6/2015 on 29/05/2015.*

**(1)** The financial resources of the Fund may be invested only in government securities or other fixed-income securities fully secured by the state, and also in other low risk assets, in compliance with the risk dispersion principle for each financial instrument and for each issuer of that financial instrument, as follows:

**a)** bonds of the central and local public administration;

**b)** government securities and other low risk assets issued by the Member States, securities issued by the central banks thereof and of the US Treasury;

**c)** term deposits at credit institutions, Romanian legal persons or branches of foreign credit institutions authorised to operate in the territory of Romania, which are not under special supervision or administration;

**d)** other low-risk financial instruments, subject to approval by FSA's Board.

**(2)** The strategy on the Fund's exposure, both for financial instruments, and for each issuer, shall be established annually by the Fund's board of directors, subject to approval by FSA's Board.

**Art. 27.** - *Art. 27. was amended by Regulation 1/2011 on 27/01/2011.*

The profit obtained shall be used in particular to increase the Fund's financial resources, and for the management and operation of Fondul de Compensare a Investitorilor - SA.

#### **Section 4** **Exclusion of Members of the Fund**

**Art. 28.** - **(1)** Where intermediaries and investment management companies whose object of activity comprises the management of individual portfolios of investments fail to meet their obligations as members of the Fund, CNVM shall be notified and, in cooperation with the Fund, shall take the measures necessary to ensure the fulfilment by those intermediaries and investment management companies of their obligations. If the member of the Fund is a credit institution, CNVM shall notify NBR so that the necessary measures are taken.

**(2)** If the measures referred to in Para (1) may not ensure fulfilment of the obligations by a member, the Fund shall send the same a prior notice which may not be less than 12 months, in connection with its intention to exclude it from the members of the Fund.

**(3)** The Fund shall ensure the grant of compensation, in the situations provided for in Art. 47 of Capital Market Law No. 297/2004, in connection with the financial investment services provided by that member during the prior notice. If upon the expiry of that notice the member has not met its obligations, the Fund may, subject to CNVM's prior consent, exclude the company concerned from the members of the Fund.

**(4)** Where a member is excluded from the Fund, subject to approval by CNVM, then it may carry out financial investment activities only on own account or may continue to provide the financial investment services for which it was authorised if it proves that, prior to the exclusion, it participated in another recognised compensation scheme providing investors compensation at least equivalent to that afforded by the Fund.

**(5)** Exclusion, in accordance with the provisions of Para (3), of a Fund member not meeting the requirements referred to in Para (4) shall automatically result in cessation of provision of any services and, subsequently, after that member proves payment of all of its debts towards clients and transfer of securities to the central depository or into the accounts indicated by clients, withdrawal of the authorisation granted by CNVM. If the excluded member is a credit institution, CNVM shall immediately notify NBR of the withdrawal of the authorisation to provide financial investment services.

*Paragraph (5) was amended by Regulation 3/2010 on 25/02/2010.*

**Art. 29.** -*Art. 29. was amended by Regulation 3/2010 on 25/02/2010.*

*Art. 29. was amended by Regulation 7/2014 on 24/04/2014.*

If the authorisation of a member of the Fund is withdrawn, and the conditions provided for in Letter a) or b) of Art. 47(1) of Law No. 297/2004 are met either prior to, or upon the withdrawal of the authorisation or subsequently, the Fund shall ensure compensation, within the limit of the ceiling established under Art. 30, of the counter value of the financial instruments and money owed or belonging to the investors upon the withdrawal of the authorisation, that were entrusted to an intermediary or to SAI managing individual portfolios of investments based on a financial investment services and activities supply contract, in accordance with the procedures provided herein.

## **Section 5 Compensation Procedure**

**Art. 30. - (1)** The Fund shall equally and fairly compensate investors within a maximum ceiling representing the RON equivalent value of EUR 20,000.

**(2)** Prior to 31 December 2012, the limits of the compensation ceiling of investors shall be established gradually to reach the level of EUR 20,000, as follows:

*Paragraph (2) was amended by Regulation 10/2006 on 12/07/2006.*

- a)** upon authorisation of the Fund, the RON equivalent of EUR 1,000/ individual investor;
- b)** as of 1 January 2006, the RON equivalent of EUR 2,000/individual investor;
- c)** as of 1 January 2007, the RON equivalent of EUR 4,500/individual investor;
- d)** as of 1 January 2008, the RON equivalent of EUR 7,000/ individual investor;
- e)** as of 1 January 2009, the RON equivalent of EUR 9,000/ individual investor;
- f)** as of 1 January 2010, the RON equivalent of EUR 11,000/ individual investor;
- g)** as of 1 January 2011, the RON equivalent of EUR 15,000/ individual investor;
- h)** as of 1 January 2012, the RON equivalent of EUR 20,000/ individual investor.

**(3)** The RON equivalent of the compensation ceiling shall be calculated at the reference exchange rate communicated by NBR on the date of acknowledgment of the situations provided for in Art. 47 of Capital Market Law No. 297/2004.

**(4)** For the purpose of meeting the requirements provided for by the Community legislation, CNVM may amend by order of the president, the compensation ceiling referred to in Paras (1) and (2).

**Art. 30<sup>1</sup>.** - *Art. 30<sup>1</sup>. was inserted by Regulation 31/2006 on 04/01/2007.*

The following categories of investors shall be excluded from compensation:

- a)** professional and institutional investors, including:
  - investment firms, within the meaning of the legislation on credit institutions and capital adequacy;
  - credit institutions, within the meaning of the legislation on credit institutions and capital adequacy;
  - financial institutions, within the meaning of the legislation on credit institutions and capital adequacy;
  - insurance undertakings;
  - undertakings for collective investment;
  - pension funds.

Other professional and institutional investors established by CNVM's regulations:

- b)** international bodies, governments and other authorities of the central public administration;
- c)** authorities of the regional and local public administration;
- d)** directors, including heads, managers or other persons in charge, persons whose responsibility is to prepare the audit of the members of the Fund, and whose shareholders have holdings exceeding 5% of the share capital, and also investors of an equivalent status within other companies of the same group as the members of the Fund;
- e)** spouses, relatives and affines up to the first degree, and persons acting in the name of the investors referred to in Letter d);

*Letter e) was amended by Regulation 3/2010 on 25/02/2010.*

- f)** legal persons of the same group as the members of the Fund;
- g)** investors found responsible for or availing of certain situations in connection with a member of the Fund which resulted in a financial hardship for that member or likely to lead to the deterioration of its financial situation;
- h)** companies that, due to their size, are not allowed to prepare an abridged balance sheet in accordance with the applicable accounting regulations.

**Art. 31.** – In the situations provided for in Art. 47 of Capital Market Law No. 297/2004, the Fund must provide compensation in respect of the claims of each investor within ceiling provided for in Art. 30.

**Art. 32. - (1)** The compensation provided within the ceiling provided for in Art. 30 shall apply to all claims of the investor on the same member of the Fund, irrespective of the number of accounts opened, currency of the investment or location of the accounts in the European Union.

**(2)** The RON equivalent of the compensation obligation for the foreign currency money funds shall be calculated by using the reference exchange rate published by NBR for that foreign currency, in force on the date of acknowledgment of the situations provided for in Art. 47 of Capital Market Law No. 297/2004.

*Paragraph (2) was amended by Regulation 10/2006 on 12/07/2006.*

**(3)** The RON equivalent of the compensation obligation for the financial instruments shall be calculated by using the market value for those financial instruments on the date of acknowledgment of the situations provided for in Art. 47 of Capital Market Law No. 297/2004.

*Paragraph (3) was inserted by Regulation 10/2006 on 12/07/2006.*

**Art. 33. - (1)** Each investor that belongs to an investment collective account shall be considered upon the calculation of the compensation provided for in Art. 30. In the absence of special provisions, claims shall be equally divided among investors.

*Paragraph (1) was amended by Regulation 10/2006 on 12/07/2006.*

Claims related to operations carried out in a collective investment account to which 2 or more investors are entitled, as members of the partnership, association or similar group devoid of legal personality, for the purpose of calculating the investment compensated within the ceiling provided for in Art. 30, shall be treated as resulting from an investment made by one investor.

**(2)** Where an investor is not entitled to receive the amounts or financial instruments held, the compensation shall be paid to the person with a full right, provided that such person has been or may be identified prior to the date of acknowledgment or the date of the court ruling referred to in Art. 47 of Capital Market Law No. 297/2004.

If two or more persons are fully entitled to receive compensation, when calculating the share owed to each of them, within the ceiling provided for in Art. 30, account shall be taken of the contractual clauses based on which the money funds or financial instruments are managed. This provision shall not apply to undertakings for collective investments.

(3) The individual clients' account opened by an investment management company or by an investment firm at another investment firm shall not be deemed collective investment fund.

**Art. 34.** -*Art. 34. was amended by Regulation 7/2014 on 24/04/2014.*

The Fund shall take all necessary measures to inform the investors, in accordance with Art. 48(1) of Law No. 297/2004, in connection with FSA's finding or with the court decision referred to in Art. 47(1) of the same law, and shall pay the compensation as soon as possible, but no later than the term provided for in Art. 36(1).

**Art. 35.** -*Art. 35. was amended by Regulation 7/2014 on 24/04/2014.*

(1) The Fund shall set a term within which investors are required to file their claims.

(2) In the case provided for in Letter a) of Art. 47(1) of Law No. 297/2004, the term referred to in Para (1) shall not be less than 5 months from the reference date.

(3) In the case provided for in Letter b) of Art. 47(1) of Law No. 297/2004, the term referred to in Para (1) shall be set together with the judicial administrator/liquidator, in consideration of the provisions of Art. 61 and 62 of Law No. 85/2006 on the insolvency proceedings, as subsequently amended and supplemented, and of the terms established by the final court decision referred to in Letter e) of Art. 2(2) hereof.

(4) The expiry of the terms established in compliance with Para (2) or (3), as appropriate, cannot be invoked by the Fund to refuse to compensate an investor that is able to prove to the competent body or to the Fund that, for serious reasons, it could not exercise in due time its right to compensation.

**Art. 36.** - *Art. 36. was amended by Regulation 7/2014 on 24/04/2014.*

(1) The Fund shall ensure payment of the compensation within the limit of the ceiling established under Art. 30 as soon as possible, but no later than 3 months from the preparation of the Payment List in accordance with the procedures provided in the Annexe.

(2) In exceptional circumstances and in particular cases, the Fund may request FSA an extension of the term referred to in Para (1), which shall not exceed 3 months.

(3) Without regard to the deadline referred to in Para (1), where an investor or any other person entitled to compensation or having an interest in connection with the investment/investment management services and activities supplied by the member to which one of the situations provided by Art. 47(1) of Law No. 297/2004 applies is under criminal investigation in connection with a deed arising from or connected with money laundering, as defined by Law No. 656/2002 for the prevention and sanctioning of money laundering, and taking measures to prevent and combat terrorism financing, republished, as subsequently amended, or under investigation in connection with an international sanction, the Fund shall suspend any payment to the abovementioned persons until the issuance of a final decision by the competent court of law. In this respect, the Fund shall submit to FSA the Payment List, so it may verify it, together with the competent authorities, in order to confirm that they are not involved in money laundering activities and/or in activities forming the object of international sanctions.

(4) If the persons referred to in Para (3) were subsequently cleared, the Fund shall resume the compensation procedure and shall compensate their claims.

(5) The claims of an investor to be compensated resulting from market transactions or operations in connection with which the investor was convicted for a money laundering crime or who was applied international sanctions by acts of the United Nations Security Council and of the European Union, and of other international bodies or adopted by unilateral decisions of Romania or of other states, shall be excluded from compensation.

(6) For the application of the provisions of Letter e) of Art. 46(5) of Law No. 297/2004 and in consideration of the provisions of Letter g) of Art. 30<sup>1</sup> hereof, the claims of an investor to be compensated resulting from market transactions or operations in connection with which said investor was convicted for a crime of fraudulent management, forgery of documents and trafficking therein, fraud, false statement in connection with the event generating the compensation payments shall also be excluded from compensation.

**Art. 37.** -*Art. 37. was amended by Regulation 7/2014 on 24/04/2014.*

**(1)** In the case provided for in Letter a) of Art. 47(1) of Law No. 297/2004, the Fund's intervention shall take place after the publication of FSA's decision to start the special administration procedure, in accordance with Title IX of the abovementioned law and with the procedures provided herein.

(2) The provisions of Para (1) are applicable only if, by its decision to initiate the special administration measures, or subsequently, during the special administration, FSA determines that an intermediary or SAI managing individual portfolios of investments is unable to fulfil its obligations resulting from the investors' claims and there is no possibility for it to fulfil such obligations as soon as possible.

*Paragraph (2) was inserted by Regulation 3/2010 on 25/02/2010.*

**(3)** If FSA determines that an intermediary/SAI managing individual portfolios of investments is unable to return the money or financial instruments belonging to the investors without deciding to initiate the special administration procedure as provided by Paras (1) and (2), the Fund shall intervene after the publication of FSA's decision determining said situation and in compliance with the procedures provided herein.

(4) In the case provided for in Letter b) of Art. 47(1) of Law No. 297/2004, the Fund shall intervene after receiving from the judicial administrator/liquidator appointed within the insolvency proceedings by the court of law or from any party concerned the final court decision to initiate the insolvency proceedings issued by the competent court of law and in compliance with the procedures provided herein.

**Art. 38.** -*Art. 38. was amended by Regulation 7/2014 on 24/04/2014.*

(1) In order to pay the compensation, in the cases provided for in Art. 47 of Law No. 297/2004, the Fund shall calculate the net holding related to the account of each investor of the member which is unable to return the money and financial instruments belonging to them.

(2) After paying the compensation, the Fund shall subrogate to the rights of the compensated investors. The member of the Fund or its legal successor, in whose name compensation was paid, must return to the Fund the amount of the compensation, and the costs incurred with making the payments within a term established by the Fund's board of directors. If the liquidation process of a member is on-going, the Fund shall be registered in the creditors' table instead of the compensated investors.

**Art. 39.** - **(1)** Investors shall have capacity to bring proceedings against the Fund to protect their right to compensation.

**(2)** Litigation arising between the Fund and natural or legal persons may be also settled by arbitration, in accordance with the legal provisions applicable in the field.

**CHAPTER IV**  
**Obligations on the Transparency of the Fund and Members**

**Art. 40.** - *Art. 40. was amended by Regulation 10/2006 on 12/07/2006.*

The Fund shall publish on its own website, in the Romanian language, information on its members, procedures on the calculation and payment of contributions, investors' compensation procedure, and also information on the credit institutions exempt from the payment obligation of contributions, the fund or the scheme providing compensation to clients thereof.

**Art. 41. - (1)** Each financial investment services intermediary/investment management company whose object of activity comprises the management of individual portfolios of investments must publish on its website the information necessary for the identification of the investor compensation fund of which it is a member or other compensation scheme in which it participates, as provided by Art. 28(4).

Intermediaries that are not members of the Fund must indicate the compensation scheme that shall compensate their clients.

**(2)** Each financial investment services intermediary/investment management company whose object of activity comprises the management of individual portfolios of investments must take appropriate measures to provide the current investors or those seeking to invest the information referred to in Para (1), and that on the payment of compensation, the Fund's procedures and the compensation ceiling afforded by the Fund.

**(3)** Upon the conclusion of the intermediation/management contract, the intermediary/investment management company shall provide the investor in writing with the information referred to in Paras (1) and (2) and shall request such investor to give an affidavit that it became aware of the classification or not into the category of investors whose investments are compensated by the Fund, as provided by law. If the intermediary/investment management company is not a member of the Fund, its client shall indicate in the affidavit that it shall not take any actions against the Fund and that it became aware that the compensation scheme from which compensation may be claimed is that indicated by the intermediary in the intermediation/management contract.

*Paragraph (3) was amended by the Rectification of 01/03/2006 on 01/03/2006.*

**(4)** Intermediaries and investment management companies must notify the investor, in writing, of any change of the information provided upon the conclusion of the intermediation/management contract.

*Paragraph (4) was amended by the Rectification of 01/03/2006 on 01/03/2006.*

**(5)** The information referred to in Paras (1) and (2) shall not be used by the members of the Fund for advertising purposes. Advertising materials shall include only the information on the member's membership of the Fund or other compensation scheme of investors.

*Paragraph (5) was amended by the Rectification of 01/03/2006 on 01/03/2006.*

**(6)** The information referred to in this article shall also be published in the Romanian language.

*Paragraph (6) was amended by the Rectification of 01/03/2006 on 01/03/2006.*

## CHAPTER V

### Provisions Applicable to Cross-Border Operations

**Art. 42. - (1)** As from the date of accession of Romania to the European Union, the Fund established in accordance with the provisions of this regulation shall also ensure, within the ceiling set in Art. 30, the compensation of investors with accounts opened with the branches established by its members in the Member States.

**(2)** If the compensation ceiling and the categories of investors to be compensated under the compensation scheme of investors existing in the host Member State exceed the level or extent provided by the Fund, the branches referred to in Para (1) may join that compensation scheme of the host Member State to supplement coverage of the claim that its investors have under the membership of the compensation scheme afforded by the Fund in Romania.

**Art. 43. - (1)** Branches of the intermediaries of Member States which shall provide financial investment services in Romania may join the Fund, if the level of the ceiling and extent afforded by the compensation Fund of Romania exceed the level and coverage afforded by the investor compensation scheme of the home Member State, to supplement coverage of its investors under the membership of the compensation scheme of the home member State.

**(2)** The Fund's procedures shall set objective and generally applicable conditions for the branches of the intermediaries of the Member States to join and participate in the Fund. Joining must be conditional upon the fulfilment by the branch of the member's relevant obligations, including payment of all contributions, and other costs.

**(3)** The provisions of Paras (1) and (2) shall also apply to intermediaries of the Member States providing financial investment services in Romania under the free movement of services.

**Art. 44. - (1)** In applying the provisions of Art. 43, where a branch requests to join an investor compensation fund in Romania, to supplement coverage of claims, the Fund shall set together with the correspondent investor compensation scheme of the home Member State, adequate rules and procedures for the payment of investors' compensation from that branch.

**(2)** In drawing up the procedures and conditions for the branch referred to in Para (1) to join the fund, account shall be taken of the following principles:

**a)** the investor compensation fund of Romania shall preserve the full right to impose the objectives and regulations generally applicable to its members; it may request the branch to provide any relevant data and shall be entitled to verify such information with the competent authorities of the home Member State of the branch;

**b)** the Fund shall satisfy compensation claims of investors after it has been informed by the competent authorities of the home Member State of the branch of the finding or court ruling provided for in Art. 47(1) of Capital Market Law No. 297/2004. Before payment of the additional compensation, the Fund shall verify whether the investor meets the payment requirements in connection therewith, in accordance with its own standards and procedures;

**c)** the investor compensation fund of Romania and the correspondent investor compensation scheme of the home Member State shall cooperate and exchange information to ensure that investors shall be compensated in time and amounts shall be correctly calculated. The two compensation schemes shall agree on how a challenge which may give rise to compensation under any of the two schemes shall affect the compensation paid to the investor by each scheme;

**d)** the Fund is entitled to request the branches of the intermediaries of Member States to pay contributions for the additional coverage financed by the Fund. Liability of the Fund shall be, in all



cases, limited to the additional coverage it assumed to compensate in addition to the coverage afforded by the compensation scheme of the home Member State.

**Art. 45. - (1)** Where a branch of an intermediary of a Member State that exercised its option to become a member in accordance with Art. 43 fails to fulfil its obligations as a member of the Fund, the competent authorities of the home Member State that issued its operation authorisation shall be notified by CNVM and, in cooperation with the Fund, shall take all necessary actions to ensure that such branch shall fulfil such obligations.

**(2)** If those measures do not result in the fulfilment of the obligations referred to in this article, after a proper notice period which may not be less than 12 months, the Fund shall inform CNVM and the competent authority of the home Member State and shall exclude the branch from among its members.

**(3)** The Fund shall provide compensation for the financial investment services provided by the branch prior to its exclusion also after the date of exclusion of the branch referred to in Para (2).

**(4)** The exclusion of the branch shall be published on the website of the Fund and of the capital market institutions so as its investors are informed of such exclusion and of the date on which the additional coverage shall cease.

## **CHAPTER VI**

### **Penalties**

**Art. 46. –** Infringement of the provisions of this regulation and of the procedures of the Fund approved by CNVM is punishable in accordance with Capital Market Law No. 297/2004.

**Art. 47. - (1)** If the members of the Fund and/or any of the directors or heads, managers or their internal control representatives are guilty of:

**a)** breach of the regulations applicable to the Fund;

**b)** breach of the provisions on reporting deadlines and forms which must be sent to the Fund;

**c)** breach of the provisions on the obligations to pay the contributions, CNVM, upon notification by the Fund or *ex officio*, may impose the following sanctions:

**1.** written warning;

**2.** fine to the members or directors, heads, managers and/or internal control representatives, as provided by Capital Market Law No. 297/2004;

**3.** limits on the operation of the member within the meaning of withdrawal of the right to supply financial investment services in the name and on the account of clients;

**4.** suspension or withdrawal of the member's authorisation.

**(2)** If the members of the Fund are credit institutions and intermediaries of a Member State, CNVM shall inform NBR, or the competent authority of the home State, to impose the sanctions referred to in Para (1).

**Art. 48. - (1)** Use of the financial resources at the disposal of the Fund for purposes other than as provided by law, or their investment in other assets than those expressly provided herein, shall incur the punishment of the persons responsible by:

**a)** non-criminal fine imposed as provided by Art. 276 of Capital Market Law No. 297/2004;

**b)** temporary or definitive prohibition on the exercise of any activity on the capital market.

(2) If the financial resources at the disposal of the Fund are misappropriated, CNVM shall request the competent courts to start the criminal prosecution of the persons responsible.

## **CHAPTER VII**

### **Transitional and Final Provisions**

**Art. 49. - (1)** Branches of the intermediaries whose registered office is located in Member States, which may supply financial investment services in Romania under a reciprocity agreement, shall contribute to the establishment of the financial resources of the Fund prior to the date of accession of Romania to the European Union.

(2) Branches of the intermediaries whose registered office is located in Romania which shall supply financial investment services in a Member State prior to the date of accession of Romania to the European Union under a reciprocity agreement must register as members of the compensation scheme of that Member State.

**Art. 50. –** In applying Art. 45(2) of Capital market Law No. 297/2004, Fondul de Compensare a Investitorilor SA shall be established within maximum 90 days after the entry into force of this regulation.

**Art. 51. - (1)** Intermediaries and investment management companies provided for in Art. 21(1) must pay the initial contribution within 60 days after the date of authorisation of the Fund.

(2) Upon expiry of the deadline referred to in Para (1), the Fund shall send CNVM a report on the collection of contributions and investments made.

(3) The members of the Fund must comply with the provisions of Chapter IV within maximum 90 days after the date of establishment of the Fund.

**Art. 52. - (1)** This regulation shall enter into force on the date of its publication and of the approval order in the Official Journal of Romania, Part I and shall be published in the Bulletin of the National Securities Commission and on its website ([www.cnvm.ro](http://www.cnvm.ro)).

(2) CNVM Regulation No. 8/2004 on the authorisation, organisation and operation of the Investor compensation fund and CNVM Regulation No. 18/2005 amending CNVM Regulation No. 8/2004 on the authorisation, organisation and operation of the Investor compensation fund shall be repealed as of the date of entry into force of this regulation.

**Art. 53. - Art. 53. was inserted by Regulation 31/2006 on 04/01/2007.**

This regulation transposes provisions of Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes published in the Official Journal of the European Communities 84/26.03.1997.

PRESIDENT

Professor Gabriela ANGHELACHE, PhD

The Annexe was inserted by Regulation 7/2014 on 24/04/2014.

## PROCEDURES

### regarding the payment of compensations by the Investor Compensation Fund

**Art. 1.** - (1) In the situations provided for in Art. 47(1) of Capital Market Law No. 297/2004, as subsequently amended and supplemented, hereinafter referred to as *Law No. 297/2004*, Fondul de Compensare a Investitorilor SA, hereinafter referred to as the *Fund*, shall publish, within 3 working days from the receipt from the Financial Supervisory Authority, hereinafter referred to as *FSA*, the document acknowledging the situation provided for in Letter a) of Art. 47(1) of Law No. 297/2004 of the member of the Fund and appointing the entity in charge of handling the compensation claims, or from the receipt from the judicial administrator/liquidator appointed in the insolvency proceedings by the competent court of law, or from any party concerned of the final court decision to initiate the insolvency proceedings issued by the competent court of law, in the situation provided for in Letter b) of Art. 47(1) of Law No. 297/2004, on its own web page, in a local newspaper, at the territorial headquarters of the intermediary/investment management company (*SAI*) that is unable to return the money and/or the financial instruments belonging to the investors, and in at least two national newspapers, information regarding: the legal person's incapacity to fulfil its obligations towards its investors, the place, modality and deadline within which the compensation claims may be filed, details regarding the necessary documentation, and the date when the payment of compensations to investors shall commence.

(2) The term within which the compensation claims may be filed is established in accordance with the provisions of Art. 2(1) and (2).

(3) The Fund shall communicate, at the investors' request, for documentation purposes, information on the documents, conditions and formalities required for compensation.

(4) If the information mentioned under Para (1) is not available for the Fund within the established term, the Fund shall publish it as soon as it is available.

(5) The competent body shall post the information published by the Fund in accordance with Para (1) and (4), within 3 working days from receiving it from the Fund, at all headquarters of the legal person that is in any of the situations provided under Art. 47(1) of Law No. 297/2004.

(6) The competent body shall communicate to the Fund its contact details, based on the form provided by the Fund.

**Art. 2.** - (1) The investors shall file the compensation claims with the competent body within the deadline established by it together with the Fund and communicated to the latter, in accordance with the provisions of Art. 1(1) and (2) of these procedures and in consideration of the provisions of Art. 35(2) and (3) of the Regulation. In the case referred to in b) of Art. 47(1) of Law No. 297/2004, the competent body and the Fund shall take into consideration only the compensation claims of the investors which submitted lodgements of claim, if such claims were registered in the final creditors' table.

(2) The deadline referred to in Para (1) is established individually, for each intermediary/*SAI* managing individual portfolios of investments that is in any of the situations provided by Art. 47(1) of Law No. 297/2004, depending on the complexity and technical and legal circumstances known. Any compensation claims of investors that are in the situation provided for in Art. 35(4) of the

Regulation shall be submitted within 5 months from the expiry of the deadline provided for in Paras (2) or (3) of the same article.

(3) The compensation claim shall be prepared in writing in accordance with the form provided by the Fund to the competent body and shall include at least the following information:

a) for natural persons:

- (i) surname, name and father's initial;
- (ii) domicile or address for correspondence;
- (iii) series and number of ID/IC;
- (iv) personal number code;
- (v) bank account number;
- (vi) value of the compensation claimed;

b) for legal persons and entities devoid of legal personality:

- (i) name;
- (ii) address of the registered office or address for correspondence;
- (iii) registration number with the Trade Register;
- (iv) sole registration code;
- (v) legal representatives;
- (vi) number of the bank account where compensation should be paid;
- (vii) value of the compensation claimed.

(4) The compensation claim shall be accompanied by the following supporting documents:

a) for natural persons:

- (i) copy of the identity document of the person filing the claim;
- (ii) the documents provided for in Art. 9, if the payment is to be made to a natural person, other than the investor;
- (iii) documents regarding the collective investment account, if applicable;
- (iv) statement of account to confirm the account number filled-in in the compensation claim;
- (v) the investment services and activities supply contract, provided for in Art. 28(1) of Law No. 297/2004, including the annexes to the contract and addenda. If such contract was lost, destroyed or deteriorated, then it may be replaced with any other documents attesting to the relationship between the person concerned and the intermediary/SAI; in the case of an investor whose financial instruments were transferred by a member of the Fund, participant in the clearing-settlement system of the central depository, without its consent, the contract may be replaced by documents attesting to the notification of the competent bodies of that transfer and by the document issued by the central depository at the request of the investor claiming compensation attesting to the history of the transfers of the holdings of that investor from the individual account opened in its name at the central depository into the global account of the member of the Fund, participant in the clearing-settlement system of the central depository;

*Subpoint (v) was amended by Regulation 6/2015 la 29/05/2015.*

(vi) any supporting document regarding the money and/or financial instruments claimed, issued by the insolvent member, the central depository and/or other institutions (statement of account,

account history for the claimed financial instruments);

(vii) other documents attesting to the claim if the portfolio includes financial instruments on external markets;

b) for legal persons:

(i) the company details certificate issued by the office of the trade register within maximum 30 days prior to the submission of the compensation claim;

(ii) the registration certificate issued by the office of the trade register or the certificate issued by the registry of associations/foundations or any instrument of registration with the competent authorities, as appropriate, revealing the identification data of the legal person (name, address of the registered office, sole registration code, persons authorised to duly represent the legal person, any spin-offs, mergers, dissolutions or judicial liquidations, bankruptcies, etc.);

(iii) the document appointing the new representative of the company, if he/she is the judicial administrator or liquidator, in legalised copy;

(iv) statement of account to confirm the account number filled-in in the compensation claim;

(v) copy of the identity document of the person filing the claim (the director appointed by the instruments of incorporation registered with the office of the trade register or an attorney-in-fact of the company);

(vi) the investment services and activities supply contract referred to in Art. 28(1) of Law No. 297/2004, including the annexes to the contract and addenda; in the case of the legal persons the financial instruments of which were transferred by a member of the Fund, participant in the clearing-settlement system of the central depository, without the investor's consent, the provisions of Letter a) point (v) second sentence shall apply;

*Subpoint (vi) was amended by Regulation 6/2015 la 29/05/2015*

(vii) any supporting document regarding the money and/or financial instruments claimed, issued by the insolvent member, the central depository and/or other institutions (statement of account, account history for the claimed financial instruments);

(viii) other documents attesting to the claim if the portfolio includes financial instruments on external markets;

c) for the entities devoid of legal personality: the incorporation documents specific to these entities (instruments of incorporation, operation authorization, sole registration code, etc.) in legalised copies or copies certified true to the original, and the documents referred to in Letter b) Points (iv) through (viii).

(5) If, prior to the commencement of the compensation payment, the information included in the compensation claim is changed, the investor must communicate these changes to the Fund. The Fund cannot be held liable for the failure to communicate or the improper communication by the investor of information that may affect the payment of compensation.

**Art. 3. - (1)** Within 10 days after the expiry date of the period for the registration of compensation claim, the competent body shall transmit to the Fund, in the form requested by the Fund, on paper or in electronic form, using the contact details listed in Art. 1(6), the final list of the investors of the intermediary/SAI managing individual portfolios of investments unable to refund the money funds and financial instruments belonging to investors on the reference date, their identification attributes, bank account or address to which payment must be made by postal money order, net holdings, as well as the final table of claims, in the case referred to in Letter b) of Art. 47(1) of Law No. 297/2004. At the Fund's request, the list shall be accompanied by the compensation claims, the related supporting documents, the investment services and activities contracts, the account opening

applications, the situation of the investors' portfolios, statements of account of the investors, the investors' statements that they are/are not classified as compensable investors, documents regarding the collective investment accounts, the lodgings of claims registered in the final creditors' table and any other documents deemed necessary by the Fund to prepare the Payment List.

*Paragraph (1) was amended by Regulation 6/2015 la 29/05/2015.*

(2) Prior to the completion of the Payment List, the competent body shall send the Fund, on a weekly basis, in hard copy or in electronic form, using the contact details mentioned under Art. 1(6), provisional statements containing information regarding the investors' identity and the net holdings of each of them.

(3) In the case mentioned under Art. 35(2) of the Regulation, the final list shall be supplemented accordingly.

(4) The information in the final list shall be presented and supplemented separately for the natural and legal person investors to be compensated, including entities devoid of legal personality.

(5) The competent body shall only be liable for the manner in which it extracts data from the back-office records and the archive of the member which is in the situations provided under Art. 47(1) Letter a) or b) of Law No. 297/2004 and from the compensation claims filed by the investors and recorded in the statements submitted to the Fund.

**Art. 4.** - (1) If the Fund is appointed by FSA as competent body, in accordance with the provisions of Letter n) of Art. 2(2) of the Regulation, it shall meet the same requirements applicable to the entities handling the compensation claims in accordance with this procedure [including those related to preparing the Payment List provided under Art. 6 Para (1)].

(2) In the situation provided under Para (1), the Fund shall exercise its prerogatives in close cooperation with FSA. In this case, the compensation claims shall be processed by the Fund, in accordance with the provisions of the document acknowledging the situation that generated the compensatory payments issued by FSA, the Payment List being prepared by the Fund and approved for compliance by FSA.

**Art. 5.** - (1) In order to prepare the Payment List provided under Art. 6(1) and initiate the compensation of the investors to be compensated in compliance with the provisions of Art. 36 of the Regulation and Art. 8(1) of these procedures, the Fund shall compare the data included in the final list and the statements submitted by the competent body in accordance with Art. 3(1) and (2) of these procedures with any document possessed by the Fund and/or with the documents obtained from the competent body in compliance with Art. 3(2) and shall make the necessary amendments.

(2) Any errors or inconsistencies found between the information in the list and those collected by the Fund shall be communicated to the competent body, in writing, within 30 days from receiving the final list of compensable investors from the competent body, for review and correction, if applicable, and the competent body shall re-send to the Fund the result of its review and/or the corrected list within 30 days from the date when the Fund communicated the inconsistencies or the error found.

(3) After the Fund prepares the Payment List, it shall be submitted to FSA so that it may verify, together with the competent authorities, that the persons entitled to compensation are not involved in money laundering operations and/or they are not subject to international sanctions.

(4) Within 5 working days from receiving from FSA of the confirmation of the competent authorities, the Fund shall initiate the compensation payment procedure to the persons included in the Payment List and who are not involved in money laundering actions and/or are not subject to international sanctions, and shall suspend the compensatory payments to those persons as provided by Art. 36 of the Regulation.

(5) The persons whose compensation payment was suspended shall be notified in writing by the Fund regarding the grounds of the suspension.

(6) If the Fund is required to compensate the investor for financial instruments denominated in lei, which the insolvent member owes, their value at the reference date shall be calculated in consideration of the valuation rules of the financial assets provided in the regulations issued by FSA and, if applicable, of the reference exchange rate communicated by the National Bank of Romania (NBR) for the reference date.

(7) If the Fund is required to compensate the investor for money expressed in foreign currency, its value shall be calculated in consideration of the reference exchange rate communicated by NBR for the reference date.

(8) Under no circumstances will these procedures be construed as entitling an investor to double compensation, i.e. both through the Fund and through the Bank Deposit Guarantee Fund (BDGF).

(9) If the intermediary that cannot return the money funds and/or financial instruments owed or belonging to investors is a credit institution participating in BDGF, the two funds shall cooperate, under a protocol executed in this regard, to differentiate the compensation of an investor, the amounts resulting from the insolvent member's activity of providing investment services and activities being separated from the amounts that constitute deposits guaranteed by BDGF.

*Paragraph (9) was amended by Regulation 6/2015 la 29/05/2015.*

(10) The Fund shall establish a single compensation for each investor to be compensated, regardless of the number of accounts opened with the insolvent member, of the currency in which the compensated investments were made or of the location of the accounts within the European Union.

(11) In the case of collective investment accounts, defined by Law No. 297/2004, the compensation shall be established depending on the participation share of each investor to be compensated or, in the absence of relevant information, by equal distribution among such investors to be compensated.

(12) The deadlines mentioned in this article may be extended by the Fund for substantive reasons, with FSA's consent, in observance of the provisions of Art. 7 and of the applicable legal provisions.

**Art. 6.** - (1) The Fund shall prepare the Payment List, by establishing the due compensation for each compensable investor, taking into account the compensation ceiling. The Payment List and its amendments shall be approved by the board of directors of the Fund and shall be communicated to FSA.

(2) The compensation shall be included in the Payment List as follows:

a) if the net holding is negative, the compensable investor does not have the right to collect the compensation and shall not be included on the Payment List prepared by the Fund;

b) if the net holding is positive, and does not exceed the legal level of the compensation ceiling, this value shall be included on the Payment List prepared by the Fund;

c) if the net holding is positive and exceeds the legal level of the compensation ceiling, an amount equal to the compensation ceiling shall be included on the Payment List.

(3) If in the case provided under Art. 35(4) of the Regulation, the Fund/competent body confirms the investor's claim, the Payment List shall be amended accordingly.

(4) The Fund shall prepare separately a Payment List for the natural person investors to be compensated and a Payment List for the legal person investors to be compensated. The lists shall include elements necessary to identify the natural person, legal person and entity devoid of legal personality investor to be compensated, or to identify the person authorised or empowered to receive the amount of money, and the amount they are entitled to.

**Art. 7.** – For the compensation validated in accordance with the provisions of Art. 6(3), the payment deadlines specified under Art. 36(1) and Para (2) of the Regulation shall start running upon the modification of the Payment List of compensation.

**Art. 8.** - (1) The compensation shall be paid by the Fund in lei, either in the bank account opened in the name of the investor to be compensated or of the persons authorised/empowered in this respect in accordance with Art. 9, communicated in the compensation claim, or through the collector account, as determined by the Fund in the notice provided under Art. 1(1).

(2) The costs incurred with the fulfilment of the compensation payment obligation shall be borne by the Fund.

(3) The Fund has the right to request the competent body its subrogation in the rights of the investor to be compensated, in consideration of the compensation paid by the Fund. In this respect, the Fund shall request the competent body the subrogation in the rights of the investors to be compensated, in consideration of the compensation paid by the Fund.

(4) The general limitation period of compensation shall start running as of the approval date of the Payment List by the Fund's board of directors, or from its amendment in accordance with the provisions of Art. 6(3).

**Art. 9.** - (1) The payment to a natural person other than the investor to be compensated included on the Payment List shall be made as follows:

a) to the legal heir or the legatee of any kind of the investor to be compensated, based on the heir certificate, or legatee certificate (for the sole heir or legatee);

b) to the legal heir or legatee of any kind of the investor to be compensated, appointed by authenticated limited power of attorney to represent the other legal heirs or legatees, based on the heir certificate or the legatee certificate (when there are several legal heirs or legatees). This provision shall apply if not all legal heirs or legatees provided in the heir or legatee certificate appear. The payment by shares of the compensation to each individual heir of the investor to be compensated, in the proportions established by the succession deed (or the court decision) for each heir, may only be made by the Fund directly;

c) to the legal heir or legatee of the investor to be compensated which, by the final court decision regarding the inheritance, benefits from the compensated investment of the deceased investor to be compensated, based on such decision;

d) to a parent, for his/her minor child up to the age of 18, based on the parent's identity document and the child's birth certificate for children up to the age of 14; children between 14 and 18 years of age may collect personally their compensation, with the prior written approval of their parents or guardian. In these cases, in addition to the written consent, the investor shall also present his/her birth certificate, in original and in copy, and copies of the identity documents of his/her parents or of the identity document of his/her guardian, and the copy of the decision appointing the guardian;

e) to the guardian or curator, for the investors whose guardianship or curatorship was instituted, based on the guardianship or curatorship notification act;

f) to the investor's attorney-in-fact, based on a limited power of attorney to collect the compensation, authenticated in accordance with the applicable legislation.

*Letter f) was amended by Regulation 6/2015 la 29/05/2015.*

g) 'repealed'.

(2) 'repealed'.

**Art. 10.** - (1) The payment of the compensation to the investors to be compensated, entities devoid of legal personality, shall be treated similar to that to legal persons.



(2) From a technical and administrative standpoint, the entities devoid of legal personality, other than natural persons, shall be included on the same list as the legal persons.

**Art. 11.** – The Fund shall periodically inform FSA and/or the competent bodies, as the case may be, on the amounts paid to the to the natural and legal person investors to be compensated.

**Art. 12.** - (1) Within 3 working days from the end of the compensation payment period, the Fund shall inform the investors, through a notification, of:

- the end of the payment period;
- the possibility to obtain the unpaid compensation from the Fund, and how such payments shall be made;
- the deadline for the payment of compensation by the Fund;
- the documents, conditions and formalities necessary for obtaining and/or collecting the compensation.

(2) The notification referred to in Para (1) shall be submitted to FSA and shall be published in at least two national newspapers and on the Fund's webpage.