

Emergency Ordinance No. 32/2012

on undertakings for collective investment in transferable securities and investment management companies and amending and supplementing Capital Market Law No. 297/2004

Enforced by Regulation 9/2014
Annexe of 29 May 2014

Having regard to the Government's commitment to continue the economic and financial reforms to maintain the economic stability in the context of the current global financial crisis and to ensure the proper improvement of the relevant legislative framework, inclusively by transposing the Community acquis into the national legislation,

having regard to the fact that the adoption of this emergency ordinance is required as a result of the expiry of the time limit for the transposition into the national legislation (1 July 2011) of the provisions of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company and of Directive 2010/44/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure, and that failure to transpose as a matter of urgency the provisions of the above-mentioned directives would result in the loss of the credibility of the reform of undertakings for collective investment in transferable securities,

having regard to the fact that, upon the entry into force of Capital Market Law No. 297/2004, as subsequently amended and supplemented, legislation relevant in this field was adopted at the Community level with an impact on the capital market whose transposition requires the adoption of provisions at the level of the primary legislation,

having regard to the fact that the concrete situations occurred in practice subsequent to the adoption of the Capital Market Law require the amendment, as a matter of urgency, of certain existing provisions so as to ensure higher protection to investment and capital market investors, under Art. 115 Para (4) of the Constitution of Romania, republished,

the Government of Romania hereby adopts this emergency ordinance.

TITLE I
UNDERTAKINGS FOR COLLECTIVE INVESTMENT IN TRANSFERABLE SECURITIES AND INVESTMENT
MANAGEMENT COMPANIES

Chapter I
General Provisions

Art. 1

- (1) This title regulates the establishment and operation of undertakings for collective investment in transferable securities and investment management companies.
- (2) The National Securities Commission, hereinafter referred to as NSC, is the competent authority which applies the provisions hereof by exercising the prerogatives established in its Statute and by Capital Market Law No. 297/2004, as subsequently amended and supplemented, hereinafter referred to as Law No. 297/2004.

Art. 2

- (1) Undertakings for collective investment in transferable securities, hereinafter referred to as UCITS, are open-end funds and investment companies, which cumulatively meet the following requirements:
 - a) their sole object is collective investment, investing monetary resources in liquid financial instruments referred to in Art. 82 and which operate on the principle of risk-spreading and prudential management;
 - b) their units are, at the request of holders, continuously repurchased, directly or indirectly, out of those undertakings' assets. Action taken by UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value may be regarded as equivalent to the repurchase operation.
- (2) UCITS may consist of several investment compartments.
- (3) UCITS may be constituted either as open-end funds, under contract, or as investment companies, under their deed of constitution.
- (4) UCITS units are units or shares issued by UCITS, depending on their manner of constitution.
- (5) Investment companies investing their assets, through their subsidiaries, mainly otherwise than in securities, are not regulated by this emergency ordinance.
- (6) UCITS may not be converted to other types of undertakings for collective investment.
- (7) Any undertakings for collective investment may be converted to UCITS, in compliance with the provisions of this emergency ordinance and regulations issued by NSC.

Art. 3

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

1. *initial capital* means the funds defined in accordance with the common regulations of the National Bank of Romania/National Securities Commission (NBR/NSC) on their own funds issued for the application of Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, approved as subsequently amended and supplemented by Law No. 227/2007, hereinafter referred to as GEO No. 99/2006;
2. *client* means any natural or legal person or any other undertaking, including UCITS, to whom an investment management company provides collective portfolio management services or the services referred in Art. 5 Para (3);
3. *unit-holder* means any natural or legal person holding one or more units of a UCITS;
4. *synthetic risk and reward indicator* means the synthetic indicators referred to in Article 8 of Commission Regulation (EU) No. 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website;
5. *money market instruments* means instruments normally dealt in on the money market which are liquid and have a value which can be accurately determined at any time;
6. *own funds* means own funds defined in accordance with the common regulations of NBR/NSC on their own funds issued for the application of Government Emergency Ordinance No. 99/2006;
7. *UCITS merger* means an operation whereby:
 - (i) one or more UCITS or investment compartments thereof, hereinafter referred to as merging UCITS, on being dissolved without going into liquidation, transfer all of their assets and liabilities to another existing UCITS or an investment compartment thereof, hereinafter referred to as receiving UCITS, in exchange for the issue to their unit-holders of units of the receiving UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units;
 - (ii) two or more UCITS or investment compartments thereof, hereinafter referred to as merging UCITS, on being dissolved without going into liquidation, transfer all of their assets and liabilities to a UCITS which they form or an investment compartment thereof, hereinafter referred to as

receiving UCITS, in exchange for the issue to their unit-holders of units of the newly-formed UCITS and, if applicable, a cash payment not exceeding 10% of the net asset value of those units;

8. *UCITS national merger* means merger between UCITS established in Romania, if at least one of the UCITS involved notified the distribution of its units to another Member State;
9. *UCITS cross-border merger* means a merger of UCITS:
 - (i) of which at least one UCITS is established in Romania and the other UCITS in another Member State; or
 - (ii) which are established in Romania, but the merger results in a newly constituted UCITS established in another Member State; or
 - (iii) which are established in a Member State, other than Romania, but the merger results in a newly constituted UCITS established in Romania;
10. *close links* means the situation as referred to in Art. 2 Para (1) Item 16 of Law No. 297/2004;
11. *feeder UCITS* means a UCITS or investment compartment thereof which has been approved to invest, by way of derogation from Art. 2 Para (1) Letter a), Arts. 82, 85, 88 and 90 Para (2) Letter c), at least 85% of its assets in units of another UCITS or investment compartment thereof (master UCITS);
12. *master UCITS* means a UCITS or investment compartment thereof which:
 - a) has, among its unit-holders at least one feeder UCITS;
 - b) is not itself a feeder UCITS; and
 - c) does not hold units of a feeder UCITS;
13. *qualifying holding* means a direct or indirect holding in an investment management company which represents 10% or more of the share capital or the voting rights or which makes it possible to exercise a significant influence over the management of the investment management company in which that holding subsists. Holdings and voting rights shall be determined in accordance with the provisions of the NSC's regulations transposing the provisions of Articles 9 and 10 of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and regarding the harmonisation of transparency requirements, given the conditions regarding aggregation thereof referred to in Article 12 Paragraphs (4) and (5) of the same directive;

14. *relevant person in relation to the investment management company:*
- d) a director/member of the executive board, shareholder or equivalent, or an administrator/member of the supervisory board of an investment management company; or
 - e) an employee of an investment management company or any other natural person whose services are placed at the disposal and under the control of an investment management company and who is involved in the provision of collective portfolio management services by the investment management company; or
 - f) any natural person who is directly involved in the provision of services to an investment management company under a delegation agreement concluded with a third party for the provision by the investment management company of the collective portfolio management activity;
15. *market timing* means the fraudulent practice whereby an investor carries out systematically subscription and repurchase or conversion operations of units, over a short period of time, taking advantage of the time differences and/or of the inconsistencies in the method determining the net asset value;
16. *portfolio rebalancing* means any significant change in UCITS portfolio;
17. *counterparty risk* means the risk of loss for the UCITS resulting from the fact that a counterparty to a transaction may default on its obligations prior to the final settlement of the transaction's cash flow;
18. *liquidity risk* means the risk that a position in the UCITS portfolio may not be sold, liquidated or closed at limited cost in an adequately short time and that the ability of the UCITS to comply at any time with Art. 2 Para (1) Letter b) may be affected;
19. *operational risk* means the risk of loss for UCITS resulting from inadequate internal process and failures in relation to people and systems of the investment management company or from external events, and includes legal and documentation risk resulting from the trading, settlement and valuation procedures operated on behalf of the UCITS;
20. *market risk* means the risk of loss for UCITS resulting from fluctuation in the market value of positions in UCITS portfolio, attributable to changes in market variables, such as interest rates, foreign exchange rates, equity and commodity prices or an issuer's creditworthiness;
21. *Member States* means the Member States of the European Union and the other states belonging to the European Economic Area;

22. *home Member State*:
- a) the Member State where the registered office of the investment management company/investment company is located;
 - b) the Member State where UCITS is authorised and established;
23. *host Member State*:
- a) the Member State, other than the home Member State, where the branch of the investment management company is located or where the investment management company operates;
 - b) the Member State, other than the UCITS home Member State, in which the units of the UCITS are marketed;
24. *branch* means any organised structure, with no separate legal personality of an investment management company, supplying one or all of the services for which the company was authorised. All headquarters established in Romania by an investment management company with its registered office located in a Member State shall be treated as a single branch;
25. *durable medium* means an instrument which enables an investor to store information addressed personally to that investor, in a way that is accessible for future reference for a period of time adequate for the purpose of the information and which allows the unchanged reproduction of the information stored;
26. *transferable securities* means:
- g) shares in companies and other securities equivalent to shares in companies;
 - h) bonds and other forms of securitised debts;
 - i) any other negotiable securities which carry the right to acquire any such transferable securities by subscription or exchange.
- (2) For the purposes of Paragraph (1) Item 6, the national regulations transposing the provisions of Articles 13-16 of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment firms and credit institutions (recast) shall apply *mutatis mutandis*.
- (3) For the purposes of Para (1) Item 26, transferable securities shall exclude the techniques and instruments referred to in Art. 84.

CHAPTER II

Investment Management Companies

SECTION 1

Conditions for Authorisation and Withdrawal of the Authorisation of an Investment Management Company

SUBSECTION 1

General Provisions

Art. 4

- (1) The investment management company, hereinafter referred to as SAI, a Romanian legal person, shall be established as a joint stock company, issuer of registered shares, in accordance with Company Law No. 31/1990, republished, as subsequently amended and supplemented, hereinafter referred to as Law No. 31/1990, and shall operate only under the authorisation issued by NSC.
- (2) SAI shall be registered with NSC's Registry upon the authorisation date.
- (3) All official acts issued by SAI shall specify, in addition to its identification data, the number and date of registration with NSC's Registry.
- (4) NSC shall immediately notify the European Securities and Markets Authority, hereinafter referred to as ESMA, of any authorisation of SAI.

SUBSECTION 2

Services provided by Investment Management Companies

Art. 5

- (1) The scope of SAI is to manage UCITS established in Romanian or in other Member State.
- (2) In addition to managing UCITS as referred to in Para (1), SAI may also manage, subject to authorisation by NSC, other undertakings for collective investment, hereinafter referred to as NON-UCITS, for which it is subject to prudential supervision.
- (3) By way of derogation from Paras (1) and (2), SAI may carry out, in addition to the management of undertakings for collective investment, the following activities:
 - a) individual portfolio management, including the management of those owned by pension funds, in accordance with mandates given by investors on a discretionary basis, where such portfolios include one or more of the financial instruments listed in Art. 2, Para (1) Item 11 of Law No. 297/2004;
 - b) non-core services:
 - (i) investment advice concerning one or more of the financial instruments listed in Art. 2 Para (1) Item 11 of Law No. 297/2004;

- (ii) safekeeping and management in relation to units of undertakings for collective investment.
- (4) SAI may be authorised to carry out the activities referred to in Para (3) provided that it is authorised beforehand to carry out the activities referred to in Paras (1) or (2) and may be authorised to carry out the activities referred to in Para (3) Letter b) provided that it carries out the activities referred to in Para (3) Letter a).

Art. 6

The collective portfolio management refers to:

- a) investment management;
- b) activities concerning:
 - 1. legal and portfolio management accounting services;
 - 2. customer inquiries;
 - 3. valuation and pricing (including tax returns);
 - 4. regulatory compliance monitoring;
 - 5. maintenance of unit-holder register;
 - 6. distribution of income;
 - 7. unit issues and redemptions;
 - 8. record keeping;
- c) marketing and distribution.

Art. 7

- (1) The individual portfolio management referred to in Art. 5 Para (3) Letter a) shall be carried out in accordance with the regulations of NSC transposing the provisions of Article 2 Para (2), Articles 12, 13 and 19 of Directive 2004/39/EC.
- (2) The SAI carrying out the activities referred to in Art. 5 Para (3) may invest the entire investment portfolio managed or part thereof in units of the undertakings for collective investment under its management only with the investor's prior consent.

SUBSECTION 3 Initial Capital

Art. 8

- (1) The initial capital of investment management companies (SAIs) shall be at least the RON equivalent of EUR 125,000, calculated at the reference exchange rate communicated by the National Bank of Romania, valid on the date of submission of the request for authorisation.
- (2) Investment management companies (SAIs) shall supplement their initial capital if it decreases below the level referred to in Para (1), by no later than the date of transmission to NSC of the first report on the level of the initial capital.
- (3) To comply with the requirements provided by European legislation, NSC shall modify, by order of its president, the level of the initial capital of an investment management company (SAI).
- (4) When the value of the portfolio of the investment management company (SAI) exceeds the RON equivalent of EUR 250,000,000, the investment management company (SAI) must provide an additional amount of own funds which is equal to 0.02% of the amount by which the value of the portfolios of the investment management company (SAI) exceeds the RON equivalent of EUR 250,000,000, but the required total of the initial capital and the additional amount must not, however, exceed the RON equivalent of EUR 10,000,000.
- (5) For the purposes of this paragraph, the following portfolios must be deemed to be the portfolios of the investment management company (SAI):
 - a) portfolios of the open-end funds managed, including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation;
 - b) investment companies for which the investment management company (SAI) is the designated management company;
 - c) portfolios of other collective investment undertakings managed by the investment management company (SAI), including portfolios for which it has delegated the management function but excluding portfolios that it is managing under delegation by another investment management company (SAI).
- (6) The investment management company (SAI) must keep own funds equivalent to one fourth of the fixed overheads for the previous year. NSC may change this requirement if the company's activity changes substantially from the previous year. If an investment management company (SAI) did not operate for at least one year, including the day when it started to operate, the requirement shall be one fourth of the fixed overheads forecast in its business plan, if NSC does not request a revision of such plan.

SUBSECTION 4
Authorisation, Suspension and Withdrawal of the Authorisation

Art. 9

- (1) A Romanian legal person investment management company (SAI) may be authorised by NSC if it cumulatively fulfils at least the following conditions:
- a) the company is set up as a joint-stock company and the name includes the phrase “investment management company” or the abbreviation SAI;
 - b) the registered office and, if applicable, main office representing the main office where the investment management company (SAI) conducts its activity are located in Romania;
 - c) the professional training, experience and integrity of the members of the board of administration/supervisory board, directors/members of the executive board, internal auditors and staff of the internal control compartment comply with the requirements of NSC regulations;
 - d) the shareholders holding at least one qualifying participation in the investment management company (SAI) observe the criteria provided by NSC regulations regarding the procedure rules and criteria applicable to the prudential assessment of purchases and increase of participations in an investment firm (SSIF);
 - e) submits proof of the existence of the initial capital, subscribed and fully paid in in cash, provided hereunder;
 - f) the request for authorisation is accompanied by a business plan, which presents at least the company’s organisational structure;
 - g) has concluded a contract with a financial auditor, member of the Chamber of Financial Auditors of Romania, which complies with the common criteria established by NSC and the Chamber of Financial Auditors of Romania.
- (2) If the investment management company (SAI) has close links with other natural or legal persons, NSC shall grant the authorisation only if such links do not prevent it from exercising its supervisory functions.
- (3) NSC shall also not grant authorisation if the legal framework or administrative provisions of a third country governing one or more natural or legal persons with which the investment management company (SAI) has close links prevent the effective exercise of its supervisory functions.
- (4) The authorisation may be refused if, although the conditions mentioned under Para (1) are complied with, it is unequivocally deemed that prudential management may not be provided.

- (5) NSC shall grant the operation authorisation within maximum 6 months from the date of submission of the entire documentation provided by the regulations in force, or shall issue, in case of rejection of the request, a reasoned decision, which may be challenged within 30 days from the date of communication thereof.
- (6) The investment management company (SAI) may start its activity as of the date the authorisation is granted, except the activity mentioned under Art. 5 Para (3) Letter a), which shall also depend on becoming a member of the Investor Compensation Fund.
- (7) The investment management company (SAI) shall observe the authorisation conditions, prudential and capital adequacy requirements laid down hereunder and in NSC regulations, throughout its entire activity and shall notify or, if applicable, submit for prior authorisation, any changes in its organisation and operation, in accordance with NSC regulations.
- (8) The prudential supervision of an investment management company (SAI) authorised by NSC shall be the responsibility of NSC, whether the investment management company (SAI) establishes a branch or provides services in another Member State or not, without prejudice to the duties of the competent authorities of the host Member States.

Art. 10

NSC shall request information and shall consult with the competent authorities of another Member State prior to the authorisation of an investment management company (SAI), when the latter is:

- a) a subsidiary of another investment management company (SAI), an investment firm, a credit institution or an insurance undertaking authorised in such Member State;
- b) a subsidiary of the parent undertaking of another investment management company (SAI), an investment firm, a credit institution or an insurance undertaking authorised in such Member State;
- c) a company controlled by the same natural or legal persons as control another investment management company (SAI), an investment firm, a credit institution or an insurance undertaking authorised in such Member State.

Art. 11

NSC may withdraw the authorisation issued to an investment management company (SAI) if that company:

- a) does not make use of the authorisation within twelve (12) months, or has ceased any activity authorised by NSC for more than six (6) months;
- b) expressly renounces the authorisation;

- c) has obtained the authorisation by making false statements or by any misleading means;
- d) no longer fulfils the conditions under which the authorisation was granted;
- e) no longer fulfils the provisions of GEO No. 99/2006 and the regulations issued for the application thereof, when it is also authorised to conduct the activities provided under Art. 5 Para 3 Letter a);
- f) has seriously and/or systematically infringed the provisions adopted pursuant to this emergency ordinance and/or the regulations issued for the application hereof;
- g) falls within any other cases provided by NSC regulations.

SUBSECTION 5
Management, Internal Control and Qualifying Holdings

Art. 12

- (1) Investment management companies (SAIs) shall be managed by at least two natural persons, herein after referred to as directors/members of the executive board, depending on the type of management of the investment management company (SAI). The names of such persons, and of their replacements, shall be communicated to NSC.
- (2) The persons mentioned under Para (1) must be of good repute and professional experience as regards the type of UCITS managed by the investment management company (SAI), as defined in NSC regulations.

Art. 13

NSC regulations regarding the procedure rules and criteria applicable to the prudential assessment of purchases and increase of participations in an investment firm (SSIF) shall also apply accordingly to qualifying holdings in an investment management company (SAI).

Art. 14

- (1) For the purpose of applying the provisions of Art. 22, investment management companies (SAIs) shall set up an internal control compartment specialized in supervising the observance by the company and its staff of the legislation in force applicable to the capital market, and the internal regulations.
- (2) The conditions for the authorisation of the staff, organisation and functioning of the internal control compartment shall be established by NSC regulations.

SECTION 2
Prudential Rules

Art. 15

Investment management companies (SAIs) authorised by NSC shall observe at all times in their activity the prudential rules laid down by NSC regarding the management of UCITS. Such rules shall refer to, without limitation:

- a) administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms, including rules for personal transactions by their employees and of the investment management company (SAI);
- b) proper procedures ensuring the separation among the financial instruments belonging to investors and from those of the investment management company (SAI), in order to protect the investors' titles over the instruments and against the use of such financial instruments by the investment management company (SAI) for its own transactions;
- c) proper procedures ensuring that the transactions conducted by the investment management company (SAI) may be reconstructed according to their origin, the parties to the transaction, and the time and place at which they were effected;
- d) keeping the record of the transactions effected, to allow NSC to supervise the observance of prudential rules, rules of business conduct, and other legislative and regulatory requirements;
- e) is structured and organised in such a way as to minimise the risk of conflict of interest between the investment management company (SAI) and investors, among investors, between investors and UCITS, or among UCITS.

Art. 16

(1) For the enforcement of the provisions of Art. 15, investment management companies (SAIs) shall meet the following requirements:

- a) to establish, implement and maintain decision-making procedures and an organisational structure which clearly and in a documented manner specifies reporting lines and allocates functions and responsibilities for such structures;
- b) to ensure that their relevant persons are aware of the procedures which must be followed for the proper discharge of their responsibilities;
- c) to establish, implement and maintain adequate internal control mechanisms designed to secure compliance with decisions and procedures at all levels of the investment management company (SAI);

- d) to establish, implement and maintain effective internal reporting and communication of information at all relevant levels of the investment management company (SAI) as well as effective information flows with any third party involved;
 - e) to maintain adequate and orderly records of their business and internal organisation.
- (2) To observe the provisions of Para (1), investment management companies (SAIs) shall take into account the nature, scale and complexity of their business, and the nature and range of services and activities undertaken in the course of that business.
- (3) Investment management companies (SAIs) shall establish, implement and maintain systems and procedures that are adequate to safeguard the security, integrity and confidentiality of information, taking into account the nature of the information in question.
- (4) Investment management companies (SAIs) shall establish, implement and maintain an adequate business continuity policy aimed at ensuring, in the case of an interruption to their systems and procedures, the preservation of essential data and functions, and the maintenance of services and activities, or, where that is not possible, the timely recovery of such data and functions and the timely resumption of their services and activities.
- (5) Investment management companies (SAIs) shall establish, implement and maintain accounting policies and procedures that enable them, at the request of NSC, to deliver in a timely manner financial reports which reflect a true and fair view of their financial position and which comply with all applicable accounting standards and rules.
- (6) Investment management companies (SAIs) shall monitor and, on a regular basis, evaluate the adequacy and effectiveness of their systems, internal control mechanisms and arrangements established in accordance with Paras (1) to (5), and to take appropriate measures to address any deficiencies.

Art. 17

- (1) Investment management companies (SAIs) shall employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them.
- (2) Investment management companies (SAIs) shall retain the necessary resources and expertise so as to effectively monitor the activities carried out by third parties on the basis of an arrangement with them, especially with regard to the management of the risk associated with those arrangements.
- (3) Investment management companies (SAIs) shall ensure that the performance of multiple functions by relevant persons does not and is not likely to prevent those relevant persons from discharging any particular function soundly, honestly, and professionally.

- (4) For the purposes laid down in Paras (1) to (3), investment management companies (SAIs) shall take into account the nature, scale and complexity of their business, and the nature and range of services and activities undertaken in the course of that business.

Art. 18

- (1) Investment management companies (SAIs) shall establish, implement and maintain effective and transparent procedures for the prompt handling of complaints received from investors and shall ensure that each complaint and the measures taken for its resolution are recorded.
- (2) Investors shall be able to file complaints free of charge. The information regarding procedures referred to in Para (1) shall be made available to investors free of charge.

Art. 19

- (1) Investment management companies (SAIs) shall make appropriate arrangements for suitable electronic systems so as to permit a timely and proper recording of each portfolio transaction or subscription or redemption request in order to be able to comply with Arts. 26 and 27.
- (2) Investment management companies (SAIs) shall ensure a high level of security during the electronic data processing as well as integrity and confidentiality of the recorded information, as appropriate.

Art. 20

- (1) Investment management companies (SAIs) shall ensure the employment of accounting policies and procedures as referred to in Art. 16 Para (5) so as to ensure the protection of unit-holders. UCITS accounting shall be kept in such a way that all assets and liabilities of the UCITS can be directly identified at all times.
- (2) If a UCITS has different investment compartments, separate accounts shall be maintained for those investment compartments.
- (3) Investment management companies (SAIs) shall have accounting policies and procedures established, implemented and maintained, in accordance with the accounting rules of the UCITS home Member States, so as to ensure that the calculation of the net asset value of each UCITS is accurately effected, on the basis of the accounting, and that subscription and redemption requests can be properly processed at that net asset value.
- (4) Investment management companies (SAIs) shall establish appropriate procedures to ensure the proper and accurate valuation of the assets and liabilities of the UCITS, as consistent with the regulations issued by NSC for the purposes of Art. 63 Para (3) Letter b).

Art. 21

- (1) When allocating functions internally, investment management companies (SAIs) shall ensure that directors/members of the executive board and members of the board of administration/supervisory board are responsible for the investment management company's (SAI) compliance with its obligations under this emergence ordinance and regulations issued for the purpose hereof.
- (2) Investment management companies (SAIs) shall ensure that their directors/members of the executive board:
 - a) are responsible for the implementation of the general investment policy for each managed UCITS, as defined, where relevant, in the prospectus, the fund rules or the deed of constitution of the investment management company (SAI);
 - b) oversee the approval of investment strategies for each managed UCITS;
 - c) are responsible for ensuring that the investment management company (SAI) has a permanent and effective compliance function, as referred to in Art. 22;
 - d) ensure and verify on a periodic basis that the general investment policy, the investment strategies and the risk limits of each managed UCITS are properly and effectively implemented and complied with, even if the risk management function is delegated to third parties;
 - e) approve and review on a periodic basis the adequacy of the internal procedures for undertaking investment decisions for each managed UCITS, so as to ensure that such decisions are consistent with the approved investment strategies;
 - f) approve and review on a periodic basis the risk management policy and arrangements, processes and techniques for implementing that policy, as referred to in Art. 44, including the risk limit system for each managed UCITS.
- (3) Investment management companies (SAIs) shall ensure that directors/members of the executive board and members of the board of administration/supervisory board shall:
 - a) assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations herein;
 - b) take appropriate measures to address any deficiencies.
- (4) Investment management companies (SAIs) shall ensure that their directors/members of the executive board receive on a frequent basis, and at least annually, written reports on matters of internal control, internal audit and risk management indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies.
- (5) Investment management companies (SAIs) shall ensure that their directors/members of the executive board receive on a regular basis reports on the implementation of investment

strategies and of the internal procedures for taking investment decisions referred to in Para (2) Letters b) to e).

- (6) Investment management companies (SAIs) shall ensure that their directors/members of the executive board receive on a regular basis written reports on the matters referred to in Para (4).
- (7) Members of the executive board/supervisory board shall supervise directors/members of the executive board of the investment management company (SAI).

Art. 22

- (1) Investment management companies (SAIs) shall establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by investment management companies (SAIs) to comply with their obligations hereunder, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable NSC to exercise its powers effectively hereunder.
- (2) For the purpose of Para (1), investment management companies (SAIs) shall take into account the nature, scale and complexity of their business, and the nature and range of services and activities undertaken in the course of that business.
- (3) Investment management companies (SAIs) shall establish and maintain a permanent and effective internal control function which operates independently and which has the following responsibilities:
 - a) to monitor and, on a regular basis, to assess the adequacy and effectiveness of the measures, policies and procedures put in place in accordance with Paras (1) and (2), and the actions taken to address any deficiencies in the investment management companies' (SAIs) compliance with their obligations;
 - b) to advise and assist the relevant persons responsible for carrying out services and activities to comply with the investment management companies' (SAIs) obligations hereunder.
- (4) In order to enable the internal control function to discharge its responsibilities properly and independently, investment management companies (SAIs) shall ensure that the following conditions are satisfied:
 - a) the internal control function must have the necessary authority, resources, expertise and access to all relevant information;
 - b) an internal control officer must be appointed and must be responsible for the internal control function and for any reporting on matters of compliance with the regulations in force, indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies;

- c) the relevant persons involved in the internal control function must not be involved in the performance of services or activities they monitor;
 - d) the method of determining the remuneration of the relevant persons involved in the internal control function must not compromise their objectivity and must not be likely to do so.
- (5) Investment management companies (SAIs) shall not be required to comply with Para (4) Letters (c) or (d) where they are able to demonstrate that in view of the nature, scale and complexity of their business, and the nature and range of their services and activities, that requirement is not proportionate and that their control function continues to be effective.

Art. 23

- (1) Investment management companies (SAIs) shall establish and maintain an internal audit function which is separate and independent from the other functions and activities of the investment management companies (SAIs). In view of the nature, scale and complexity of their business and the nature and range of collective portfolio management activities, investment management companies (SAIs) may delegate such function to a third party.
- (2) The internal audit function referred to in Para (1) shall have the following responsibilities:
- a) to establish, implement and maintain an audit plan to examine and evaluate the adequacy and effectiveness of the investment management company's (SAI) systems, internal control mechanisms and arrangements;
 - b) to issue recommendations based on the result of work carried out in accordance with Letter a);
 - c) to verify compliance with the recommendations referred to in Letter b);
 - d) to report in relation to internal audit matters in accordance with Art. 21 Para (4).

Art. 24

- (1) Investment management companies (SAIs) shall establish and maintain a permanent risk management function.
- (2) The permanent risk management function referred to in Para (1) shall be hierarchically and functionally independent from the other compartments, except where this is not justified in view of the nature, scale and complexity of the investment management company's (SAI) business and of the UCITS it manages.
- (3) If, in view of the nature, scale and complexity of their business, the investment management companies (SAIs) decide not to maintain an independent risk management function, they shall be able to demonstrate that appropriate safeguards against conflicts of interest have

been adopted so as to allow an independent performance of risk management activities and that their risk management process satisfies the requirements of Art. 84.

- (4) The permanent risk management function provided under Para (1) shall:
- a) implement the risk management policy and procedures;
 - b) ensure compliance with the UCITS risk limit system, including statutory limits concerning global exposure and counterparty risk in accordance with Articles 47, 48 and 49;
 - c) provide advice to the board of administration/members of the executive board as regards the identification of the risk profile of each managed UCITS;
 - d) provide regular reports to the board of administration/supervisory board on:
 - (i) the consistency between the current levels of risk incurred by each managed UCITS and the risk profile agreed for that UCITS;
 - (ii) the compliance of each managed UCITS with relevant risk limit systems;
 - (iii) the adequacy and effectiveness of the risk management process, indicating in particular whether appropriate remedial measures have been taken in the event of any deficiencies;
 - e) provide regular reports to the directors/members of the executive board outlining the current level of risk incurred by each managed UCITS and any actual or foreseeable breaches to their limits, so as to ensure that prompt and appropriate action can be taken;
 - f) review and support, where appropriate, the arrangements and procedures for the valuation of OTC derivatives as referred to in Art. 50.
- (5) The permanent risk management function provided under para (1) shall have the necessary authority and access to all relevant information necessary to fulfil the tasks set out in Para (4).

Art. 25

- (1) Investment management companies (SAIs) shall establish, implement and maintain adequate arrangements aimed at preventing the following activities in the case of any relevant person who is involved in activities that may give rise to a conflict of interest, or who has access to inside information within the meaning of Art. 244 Para (1), (2) and (4) of Law No. 297/2004 or to other confidential information relating to NSC or transactions with or for UCITS by virtue of an activity carried out by him on behalf of the investment management company (SAI):

- a) entering into a personal transaction which fulfils at least one of the following criteria:
 - (i) that person is prohibited from entering into that personal transaction within the meaning of Law No. 297/2004 and the regulations issued by NSC for the application thereof regarding market abuse;
 - (ii) it involves the misuse or improper disclosure of confidential information;
 - (iii) it conflicts or is likely to conflict with an obligation of the investment management company (SAI) under this emergency ordinance or the provisions of Law No. 297/2004;
 - b) advising or procuring, other than in the proper course of his employment or contract for services, any other person to enter into a transaction in financial instruments which, if a personal transaction of the relevant person would be covered by Art. 101 Para (2) Letter a) or b) of Regulation No. 32/2006 on financial investment services, approved by Order No. 121/2006 of the National Securities Commission, as subsequently amended and supplemented, or would otherwise constitute a misuse of information relating to pending orders;
 - c) disclosing, other than in the normal course of his employment or contract for services and without prejudice to Art. 246 Letter a) of Law No. 297/2004, any information or opinion to any other person if the relevant person knows, or reasonably ought to know, that as a result of that disclosure that other person will or would be likely to take either of the following steps:
 - (i) to enter into a transaction in financial instruments which, where a personal transaction of the relevant person would be covered by Art. 101 Para (2) Letter a) or b) of Regulation No. 32/2006 on financial investment services, approved by Order No. 121/2006 of the National Securities Commission, as subsequently amended and supplemented, or would otherwise constitute a misuse of information relating to pending orders;
 - (ii) to advise or procure another person to enter into such a transaction.
- (2) The procedures required under Para (1) shall in particular be designed to ensure that:
- a) each relevant person covered by Para (1) is aware of the restrictions on personal transactions, and of the measures established by the investment management company (SAI) in connection with personal transactions and disclosure, in accordance with Para (1);
 - b) the investment management company (SAI) is informed promptly of any personal transaction entered into by a relevant person, either by notification of that transaction or by other procedures enabling the investment management company (SAI) to identify such transactions;

- c) a record is kept of the personal transaction notified to the investment management company (SAI) or identified by it, including any authorisation or prohibition in connection with such a transaction.
- (3) For the purposes of Para (2) Letter b), where certain activities are delegated to third parties, the investment management company (SAI) shall ensure that the entity performing the activity maintains a record of personal transactions entered into by any relevant person and provides that information to the investment management company (SAI) promptly on request.
- (4) Paras (1) and (2) shall not apply to the following kinds of personal transactions:
- a) personal transactions effected under a discretionary portfolio management service where there is no prior communication in connection with the transaction between the portfolio manager and the relevant person or other person for whose account the transaction is executed;
 - b) personal transactions in UCITS or units in other collective undertakings that are subject to supervision under the law of a Member State which requires an equivalent level of risk spreading in their assets, where the relevant person and any other person for whose account the transactions are effected are not involved in the management of that collective undertaking.
- (5) For the purposes of this article, “personal transaction” shall have the same meaning as in Art. 88 of Regulation No. 32/2006 on financial investment services, approved by Order No. 121/2006 of the National Securities Commission, as subsequently amended and supplemented.

Art. 26

- (1) Investment management companies (SAIs) shall ensure, for each transaction with financial instruments from the portfolio of a UCITS, that a record of information which is sufficient to reconstruct the details of the order is produced without delay.
- (2) The record referred to in Para (1) shall include:
- a) the name or other designation of the UCITS and of the person acting on account of the UCITS;
 - b) the details necessary to identify the instrument in question;
 - c) the quantity;
 - d) the type of the order;
 - e) the price;

- f) the date and exact time of the transmission of the order and name or other designation of the person to whom the order was transmitted;
- g) the name of the person transmitting the order;
- h) where applicable, the reasons for the revocation of an order.

Art. 27

- (1) Investment management companies (SAIs) shall take all reasonable steps to ensure that the received UCITS subscription and redemption orders are centralised and recorded immediately after receipt of any such order.
- (2) That record provided under Para (1) shall include information at least on the following:
 - a) the relevant UCITS;
 - b) the person giving or transmitting the order;
 - c) the person receiving the order;
 - d) the date and time of the order;
 - e) the means of payment;
 - f) the type of the request (subscription/redemption);
 - g) the date of issuance/cancellation of the units;
 - h) the number of units subscribed or redeemed;
 - i) the subscription or redemption price for each unit;
 - j) the total subscription or redemption value of the units;
 - k) the gross value of the order including charges for subscription or net amount after charges for redemption.

Art. 28

- (1) Investment management companies (SAIs) shall ensure the retention of the records referred to in Arts. 26 and 27 for a period of at least 5 years.
- (2) NSC may, in exceptional circumstances, require investment management companies (SAIs) to retain any or all of those records for a period longer than the period provided under Para (1), determined by the nature of the instrument or transaction with financial instruments

from the UCITS portfolio, where it is necessary to enable NSC to exercise its supervisory functions hereunder.

- (3) NSC may require the investment management company (SAI) to retain, upon withdrawal of the authorisation, the records referred to in Para (1) for the outstanding term of the 5-year period.
- (4) Where the investment management company (SAI) transfers its responsibilities in relation to the UCITS to another investment management company (SAI), NSC may require that arrangements are made that such records provided under Para (1) for the past five (5) years are accessible to that investment management company (SAI).
- (5) The records provided under Para (1) shall be retained in a medium that allows the storage of information in a way accessible for future reference by NSC, and in such a form and manner that the following conditions are met:
 - a) NSC must be able to access them readily and to reconstitute each key stage of the processing of each transaction with financial instruments from the UCITS portfolio;
 - b) it must be possible for any corrections or other amendments, and the contents of the records prior to such corrections or amendments, to be easily ascertained;
 - c) it must not be possible for the records to be otherwise manipulated or altered.

SECTION 3

Conflict of Interest

Art. 29

- (1) For the purposes of identifying the types of conflict of interest that arise in the course of providing services and activities and whose existence may damage the interests of a UCITS, investment management companies (SAIs) shall take into account, by way of minimum criteria, the question of whether the investment management company (SAI) or a relevant person, or a person directly or indirectly linked by way of control to the investment management company (SAI), is in any of the following situations, whether as a result of providing collective portfolio management activities or otherwise:
 - a) the investment management company (SAI) or that person is likely to make a financial gain, or avoid a financial loss, at the expense of the UCITS;
 - b) the investment management company (SAI) or that person has an interest in the outcome of a service or an activity provided to the UCITS or another client or of a transaction carried out on behalf of the UCITS or another client, which is distinct from the UCITS interest in that outcome;

- c) the investment management company (SAI) or that person has a financial or other incentive to favour the interest of another client or group of clients over the interests of the UCITS;
 - d) the investment management company (SAI) or that person carries on the same activities for the UCITS and for another client or clients which are not UCITS;
 - e) the investment management company (SAI) or that person receives or will receive from a person other than the UCITS an inducement in relation to collective portfolio management activities provided to the UCITS, in the form of monies, goods or services, other than the standard commission or fee for that service.
- (2) Investment management companies (SAIs) when identifying the types of conflict of interests, shall take into account:
- a) the interests of the investment management company (SAI), including those deriving from its belonging to a group or from the performance of services and activities, the interests of the clients and the duty of the investment management company (SAI) towards the UCITS;
 - b) the interests of two or more managed UCITS.

Art. 30

- (1) Investment management companies (SAIs) shall establish, implement and maintain an effective conflicts of interest policy. That policy shall be set out in writing and shall be appropriate to the size and organisation of the investment management company (SAI) and the nature, scale and complexity of its business.
- (2) Where the investment management company (SAI) is a member of a group, the policy shall also take into account any circumstances of which the company is or should be aware which may give rise to a conflict of interest resulting from the structure and business activities of other members of the group.
- (3) The conflicts of interest policy established in accordance with Paras (1) and (2) shall include the following:
- a) the identification of, with reference to the collective portfolio management activities carried out by or on behalf of the investment management company (SAI), the circumstances which constitute or may give rise to a conflict of interest entailing a material risk of damage to the interests of the UCITS or one or more other clients;
 - b) procedures to be followed and measures to be adopted in order to manage such conflicts.
- (4) The procedures and measures provided for in Para (3) Letter b) shall be designed to ensure that relevant persons engaged in different business activities involving a conflict of interest

such as that provided under Para (3) Letter b) carry on those activities at a level of independence appropriate to the size and activities of the investment management company (SAI) and of the group to which it belongs and to the materiality of the risk of damage to the interests of clients.

- (5) Within the meaning of Para (3) Letter b), the procedures to be followed and measures to be adopted shall include the following where necessary and appropriate for the investment management company (SAI) to ensure the requisite degree of independence:
- a) effective procedures to prevent or control the exchange of information between relevant persons engaged in collective portfolio management activities involving a risk of a conflict of interest where the exchange of that information may harm the interests of one or more clients;
 - b) the separate supervision of relevant persons whose principal functions involve carrying out collective portfolio management activities on behalf of, or providing services to, clients or to investors whose interests may conflict, or who otherwise represent different interests that may conflict, including those of the investment management company (SAI);
 - c) the removal of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration of, or revenues generated by, different relevant persons principally engaged in another activity, where a conflict of interest may arise in relation to those activities;
 - d) measures to prevent or limit any person from exercising inappropriate influence over the way in which a relevant person carries out collective portfolio management activities;
 - e) measures to prevent or control the simultaneous or sequential involvement of a relevant person in separate collective portfolio management activities where such involvement may impair the proper management of conflicts of interest.
- (6) Where the adoption or the practice of one or more of those measures and procedures provided under Para (3) Letter b) does not ensure the requisite degree of independence, investment management companies (SAIs) shall adopt such alternative or additional measures and procedures as are necessary and appropriate for those purposes.

Art. 31

- (1) Investment management companies (SAIs) shall keep and regularly update a record of the types of collective portfolio management activities undertaken by or on behalf of the investment management company (SAI) in which a conflict of interest entailing a material risk of damage to the interests of one or more UCITS or other clients has arisen or, in the case of an on-going collective portfolio management activity, may arise.

- (2) Where the organisational or administrative arrangements made by the investment management company (SAI) for the management of conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to the interests of UCITS or of its unit-holders will be prevented, the directors/members of the executive board of the investment management company (SAI) shall be promptly informed in order for them to take any necessary decision to ensure that in any case the investment management company (SAI) acts in the best interests of the UCITS and of its unit-holders.
- (3) The investment management company (SAI) shall report situations referred to in Para (2) to investors by any appropriate durable medium and give reasons for its decision.

Art. 32

- (1) Investment management companies (SAIs) shall develop adequate and effective strategies for determining when and how voting rights attached to instruments held in the managed portfolios are to be exercised, to the exclusive benefit of the UCITS concerned.
- (2) The strategy referred to in Para (1) shall determine measures and procedures for:
 - a) monitoring relevant corporate events occurring within the companies in the UCITS portfolio;
 - b) ensuring that the exercise of voting rights is in accordance with the investment objectives and policy of the relevant UCITS;
 - c) preventing or managing any conflicts of interest arising from the exercise of voting rights.
- (3) A summary description of the strategies referred to in Para (1) shall be made available to investors.
- (4) Details of the actions taken on the basis of the strategies provided under Para (1) shall be made available to the unit-holders free of charge and on their request.

SECTION 4

Delegation of Collective Portfolio Management

Art. 33

- (1) Investment management companies (SAIs) may delegate to third parties, provided NSC approves or is notified in advance, and based on a written contract, the exercise of the activities mentioned under Art. 6, in accordance with NSC regulations issued for the application hereof.
- (2) The activities mentioned under Para (1) shall be delegated in the following conditions:

- a) NSC shall, without delay, notify the competent authorities of the UCITS home Member State, if the UCITS is authorised in another Member State;
 - b) the mandate must not prevent the effectiveness of supervision over the investment management company (SAI), and must not prevent the investment management company (SAI) from acting, or the UCITS from being managed, in the best interests of investors;
 - c) when the delegation concerns the investment management, the mandate must be given only to investment management companies (SAIs) which are registered in Romania and in other Member States or to investment management companies (SAIs) which fulfil the authorisation and supervision requirements similar to those mentioned in NSC regulations and which are authorised to conduct such activity by the competent authority from a third country with which NSC has concluded a cooperation agreement;
 - d) measures must exist which enable the persons who conduct the business of the investment management company (SAI) to monitor effectively at any time the activity of the entity to which the activity was delegated;
 - e) the delegation must not prevent the directors/members of the executive board of the investment management company (SAI) from giving further instructions to the entity to which the activity is delegated at any time or from withdrawing the mandate with immediate effect when this is in the interest of investors;
 - f) the entity to which the activity was delegated must be qualified and capable of undertaking the functions in question;
 - g) the UCITS issuance prospectus must list the activities which were delegated.
- (3) The investment management company (SAI) and the depositary with which it has concluded a depositary contract for a managed UCITS shall not be exempt from liability if the investment management company (SAI) has delegated certain functions to third parties. The investment management company (SAI) may not delegate its functions to third parties in such manner as to remain without an object of activity as regulated hereunder.
- (4) The activities delegated to third parties under the conditions of this article shall be conducted by observing the same regime applicable to investment management companies (SAIs).

SECTION 5
Rules of Conduct

SUBSECTION 1
General Provisions

Art. 34

- (1) Investment management companies (SAIs) shall observe during their entire activity, the rules of conduct issued by NSC
- (2) The investment management company (SAI) shall at least:
 - a) act fairly and with professional diligence in the best interests of the investors of the UCITS it manages and the integrity of the market;
 - b) have and employ effectively all the resources, and design and use effectively the procedures that are necessary for the proper performance of its business activities;
 - c) avoid conflicts of interests and, when they cannot be avoided, ensures that the UCITS it manages are fairly treated and in an unbiased manner;
 - d) complies with NSC requirements applicable to the conduct of its business activities so as to promote the best interests of its investors and the integrity of the market.
- (3) The investment management company (SAI) shall operate in accordance with the fund rules or the constitutive act of the investment company and shall not conduct operations which would benefit certain individual businesses, NON-UCITS or UCITS to the detriment of the others.
- (4) The investment management company (SAI) may not effect transactions with the UCITS and NON-UCITS it manages.

Art. 35

- (1) Investment management companies (SAIs) or, where relevant, self-managed investment companies shall take measures in accordance with Art. 158 Para (5) and establish appropriate procedures and arrangements to ensure that they deal properly with investor complaints and that there are no restrictions on investors exercising their rights in the event that Romania is not the home Member State of the UCITS managed by the investment management company (SAI) authorised by NSC. Those measures shall allow investors to file complaints in the official language or one of the official languages of their Member State.
- (2) Investment management companies (SAIs) shall also establish appropriate procedures and arrangements to make information available at the request of the public or the competent authorities of the UCITS home Member State.

- (3) Investment management companies (SAIs) that are registered in other Member States managing UCITS authorised by NSC shall take measures in accordance with Art. 174 Para (2) and establish appropriate procedures and arrangements to ensure that they deal properly with investor complaints and that there are no restrictions on Romanian investors exercising their rights. Those measures shall allow investors to file complaints in the Romanian language.
- (4) Investment management companies (SAIs) mentioned under Para (3) shall establish appropriate procedures and arrangements to make information available at the request of the public or NSC.

Art. 36

- (1) Investment management companies (SAIs) shall ensure that all unit-holders of managed UCITS are treated fairly.
- (2) Investment management companies (SAIs) shall refrain from placing the interests of any group of unit-holders above the interests of any other group of unit-holders.
- (3) Investment management companies (SAIs) shall apply appropriate policies and procedures for preventing malpractices that might be expected to affect the stability and integrity of the market.
- (4) Investment management companies (SAIs) shall use fair, correct and transparent pricing models and valuation systems for the UCITS they manage, in order to comply with the duty to act in the best interests of the unit-holders. Investment management companies (SAIs) must be able to demonstrate that the UCITS portfolios are accurately valued.
- (5) Investment management companies (SAIs) shall act in such a way as to prevent undue costs being charged to the UCITS and its unit-holders.

Art. 37

- (1) Investment management companies (SAIs) shall take all necessary steps in the selection and on-going monitoring of investments, in the best interests of UCITS and the integrity of the market and must have adequate knowledge and understanding of the assets in which the UCITS are invested.
- (2) Investment management companies (SAIs) shall establish written policies and procedures on due diligence and implement effective arrangements for ensuring that investment decisions on behalf of the UCITS are carried out in compliance with the objectives, investment strategy and risk limits of the UCITS.
- (3) When implementing their risk management policy, and where it is appropriate after taking into account the nature of a foreseen investment, investment management companies (SAIs) shall formulate forecasts and perform analyses concerning the investment's contribution to the UCITS portfolio composition, liquidity and risk and reward profile before

carrying out the investment. The analyses must only be carried out on the basis of reliable and up-to-date information, both in quantitative and qualitative terms.

- (4) Investment management companies (SAIs) shall exercise due skill, care and diligence when entering into, managing or terminating any arrangements with third parties in relation to the performance of risk management activities.
- (5) Before entering into arrangements according to Para (4), investment management companies (SAIs) shall take the necessary steps in order to verify that the third party has the ability and capacity to perform the risk management activities reliably, professionally and effectively. The investment management company (SAI) shall establish methods for the on-going assessment of the standard of performance of the third party.

SUBSECTION 2

Subscription and Redemption Requests

Art. 38

- (1) Where investment management companies (SAIs) have processed a subscription or redemption request from a unit-holder, they must notify the unit-holder, by means of a durable medium, confirming issuance/cancellation of the units as soon as possible, and no later than the first business day following issuance/cancellation.
- (2) The provisions of Para (1) shall not apply where the confirmation would contain the same information as a confirmation that is to be promptly dispatched to the unit-holder by another person.
- (3) The confirmation referred to in Para (1) shall, where applicable, include at least the following information:
 - a) the identification details of the investment management company (SAI);
 - b) the name of the unit-holder or any information alike in relation thereto;
 - c) the date and time of the request and means of payment;
 - d) the date of issuance/cancellation of the units;
 - e) the UCITS;
 - f) the type of the request (subscription or redemption);
 - g) the number of units;
 - h) the value per share at which the units were subscribed or redeemed;
 - i) the date of the reference value;

- j) the gross value of the request including charges for subscription or net amount after charges for redemption;
 - k) the total charges and expenses and, at the investor's request, an apportioned presentation thereof.
- (4) Where requests for a certain unit-holder are processed periodically, investment management companies (SAIs) shall either report according to Para (1) or provide the unit-holder, at least once every six (6) months, with the information listed in Para (3) in respect of those transactions.
- (5) Investment management companies (SAIs) shall provide the unit-holder, on demand, with information on its request.

SUBSECTION 3 **Best Execution**

Art. 39

- (1) Investment management companies (SAIs) shall act in the best interests of the UCITS they manage when placing trading orders on behalf of the managed UCITS to be executed by other entities.
- (2) Investment management companies (SAIs) shall design and implement a policy of placing orders so as to obtain the best possible result for the UCITS, taking into account price, costs, speed, likelihood of execution and settlement, order size and nature, or any other consideration relevant to the execution of the order.
- (3) The relative importance of the factors provided under Para (2) shall be determined by reference to the following criteria:
- a) the objectives, investment policy and risks specific to the UCITS, as indicated in the prospectus or as the case may be in the fund rules or constitutive act of the investment company;
 - b) the characteristics of the order;
 - c) the characteristics of the financial instruments that are the subject of that order;
 - d) the characteristics of the execution venues to which that order can be directed.

Art. 40

- (1) The policy provided under Art. 39 Para (2) shall identify, in respect of each class of instruments, the entities with which the orders may be placed. The investment management

company (SAI) shall only enter into arrangements for execution where such arrangements are consistent with obligations laid down in this Article.

- (2) Investment management companies (SAIs) shall make available to unit-holders appropriate information on the policy established in accordance with Art. 39 Para (2) and on any material changes to this policy.
- (3) Investment management companies (SAIs) shall monitor on a regular basis the effectiveness of the policy established in accordance with Art. 39 Para (2) and, in particular, the execution quality of the entities identified in that policy and, where appropriate, correct any deficiencies.
- (4) Investment management companies (SAIs) shall review the policy provided under Art. 39 Para (2) on an annual basis. Such a review shall also be carried out whenever a material change occurs that affects the investment management company's (SAI) ability to continue to obtain the best possible result for the managed UCITS.
- (5) Investment management companies (SAIs) shall be able to demonstrate that they have placed orders on behalf of the UCITS in accordance with the policy established in accordance with Art. 39 Para (2).

SUBSECTION 4 **Management of Orders**

Art. 41

- (1) Investment management companies (SAIs) shall establish and implement procedures and arrangements which provide for the placement of orders for the prompt, fair and expeditious execution of transactions with financial instruments in the UCITS portfolio, on behalf of the UCITS.
- (2) The procedures and arrangements implemented by investment management companies (SAIs) in accordance with Para (1) shall satisfy the following conditions:
 - a) ensure that orders executed on behalf of UCITS are promptly and accurately recorded and allocated;
 - b) execute otherwise comparable UCITS orders promptly unless the characteristics of the order or prevailing market conditions make this impracticable, or the interests of the UCITS require otherwise.
- (3) Investment management companies (SAIs) shall ensure that the financial instruments or sums of money, received in settlement of the executed orders are promptly and correctly delivered to the account of the appropriate UCITS.

- (4) An investment management company (SAI) shall not misuse information relating to pending UCITS orders, and shall take all reasonable steps to prevent the misuse of such information by any of its relevant persons.

Art. 42

- (1) Investment management companies (SAIs) shall not aggregate a UCITS order with any of the following orders:
- (i) an order of another UCITS;
 - (ii) an order of another client; or
 - (iii) an order on their own account, unless the following conditions are met:
 - a) the aggregation of orders will not work to the disadvantage of any UCITS or clients whose order is to be aggregated;
 - b) an order allocation policy must be established and implemented, providing in sufficiently precise terms for the fair allocation of aggregated orders, including how the volume and price of orders determines allocations and the treatment of partial executions.
- (2) The investment management company (SAI) that has aggregated a UCITS order with one or more orders of other UCITS or clients and the aggregated order is partially executed, shall allocate the related trades in accordance with its order allocation policy.
- (3) Investment management companies (SAIs) which have aggregated transactions for own account with one or more UCITS or other clients' orders shall not allocate the related trades in a way that is detrimental to the UCITS or another client.
- (4) An investment management company (SAI) which has aggregated an order of a UCITS or another client with a transaction for own account and the aggregated order is partially executed, shall allocate the related trades to the UCITS or other client in priority over those for own account.
- (5) If the investment management company (SAI) is able to demonstrate to the UCITS or its other client that it would not have been able to carry out the order on such advantageous terms without aggregation, or at all, it may allocate the transaction for own account proportionally, in accordance with the policy as referred to in Para (1) Letter b).

SUBSECTION 5 Inducements

Art. 43

- (1) Investment management companies (SAIs) are not regarded as acting honestly, fairly and professionally in accordance with the best interests of the UCITS if, in relation to the activities of provided under Art. 6 Letters a) and b), they pay or are paid any fee or commission, or provide or are provided with any non-monetary benefit, other than the following:
- a) a fee, commission or non-monetary benefit paid or provided to or by the UCITS or a person on behalf of the UCITS;
 - b) a fee, commission or non-monetary benefit paid or provided to or by a third party or a person acting on behalf of a third party, where the following conditions are satisfied:
 - (i) the existence, nature and amount of the fee, commission or benefit, or, where the amount cannot be ascertained, the method of calculating that amount, must be clearly disclosed to the UCITS in a manner that is comprehensive, accurate and understandable, prior to the provision of the relevant service;
 - (ii) the payment of the fee or commission, or the provision of the non-monetary benefit must be designed to enhance the quality of the relevant service and not impair compliance with the investment management company's (SAI) duty to act in the best interests of the UCITS;
 - c) proper fees which enable or are necessary for the provision of the relevant service, including custody costs, settlement and exchange fees, regulatory levies or legal fees, and which, by their nature, cannot give rise to conflicts with the investment management company's (SAI) duties to act honestly, fairly and professionally in accordance with the best interests of the UCITS.
- (2) An investment management company (SAI), for the purposes of Para (1) Letter b) Item (i), may disclose the essential terms of the arrangements relating to the fee, commission or non-monetary benefit in summary form in the issuance prospectus, provided that the investment management company (SAI) undertakes to disclose further details at the request of the unit-holder and provided that it honours that undertaking.

SECTION 6
Risk Management

SUBSECTION 1
Risk Management Policy and Risk Measurement

Art. 44

- (1) For the purposes of Art. 84 Para (1), investment management companies (SAIs) shall establish, implement and maintain an adequate and documented risk management policy which identifies the risks the UCITS they manage are or might be exposed to.
- (2) The risk management policy provided under Para (1) shall comprise such procedures as are necessary to enable the investment management company (SAI) to assess for each UCITS it manages the exposure of that UCITS to market, liquidity and counterparty risks, and the exposure of the UCITS to all other risks, including operational risks, which may be material for each UCITS it manages.
- (3) Investment management companies (SAIs) shall address at least the following elements in the risk management policy provided under Para (1):
 - a) the techniques, tools and arrangements that enable them to comply with the obligations set out in Arts. 46 and 47;
 - b) the allocation of responsibilities within the investment management company (SAI) pertaining to risk management.
- (4) Investment management companies (SAIs) shall ensure that the risk management policy referred to in Para (1) states the terms, contents and frequency of reporting of the risk management function referred to in Art. 24 to the board of administration/supervisory board and directors/members of the executive board.
- (5) For the purposes of Paras (1) to (4), investment management companies (SAIs) shall take into account the nature, scale and complexity of their business and of the UCITS they manage.

Art. 45

- (1) Investment management companies (SAIs) shall assess, monitor and periodically review:
 - a) the adequacy and effectiveness of the risk management policy and of the arrangements, processes and techniques referred to in Arts. 46 and 47;
 - b) the level of compliance by the investment management company (SAI) with the risk management policy and with arrangements, processes and techniques referred to in Arts. 46 and 47;

- c) the adequacy and effectiveness of measures taken to address any deficiencies in the performance of the risk management process.
- (2) Investment management companies (SAIs) shall notify to NSC any material changes to the risk management process.
- (3) The requirements laid down in Para (1) are subject to review by NSC on an on-going basis and accordingly when granting authorisation to the investment management company (SAI).

SUBSECTION 2

Risk Management Processes, Counterparty Risk Exposure and Issuer Concentration

Art. 46

- (1) Investment management companies (SAIs) shall adopt adequate and effective arrangements, processes and techniques in order to:
 - a) measure and manage at any time the risks which the UCITS they manage are or might be exposed to;
 - b) ensure compliance with limits concerning global exposure and counterparty risk, in accordance with Arts. 47 and 49.
- (2) The arrangements, processes and techniques referred to in Para (1) shall be proportionate to the nature, scale and complexity of the business of the investment management companies (SAIs) and of the UCITS they manage and be consistent with the UCITS risk profile.
- (3) For the purposes of Paras (1) and (2), investment management companies (SAIs) shall take the following actions for each UCITS they manage:
 - a) put in place such risk measurement arrangements, processes and techniques as are necessary to ensure that the risks of taken positions and their contribution to the overall risk profile are accurately measured on the basis of sound and reliable data and that the risk measurement arrangements, processes and techniques are adequately documented;
 - b) conduct, where appropriate, periodic back-tests in order to review the validity of risk measurement arrangements which include model-based forecasts and estimates;
 - c) conduct, where appropriate, periodic stress tests and scenario analyses to address risks arising from potential changes in market conditions that might adversely impact the UCITS;
 - d) establish, implement and maintain a documented system of internal limits concerning the measures used to manage and control the relevant risks for each

UCITS taking into account all risks which may be material to the UCITS as referred to in Art. 44 and ensuring consistency with the UCITS risk-profile;

- e) ensure that the current level of risk complies with the risk limit system as set out in Letter (d) for each UCITS;
 - f) establish, implement and maintain adequate procedures that, in the event of actual or anticipated breaches to the risk limit system of the UCITS, result in timely remedial actions in the best interests of unit-holders.
- (4) Investment management companies (SAIs) shall employ an appropriate liquidity risk management process in order to ensure that each UCITS they manage is able to comply at any time with the provisions of Art. 2 Para (2) Letter b). Where appropriate, investment management companies (SAIs) shall conduct stress tests which enable assessment of the liquidity risk of the UCITS under exceptional circumstances.
- (5) Investment management companies (SAIs) shall ensure that for each UCITS they manage the liquidity profile of the investments of the UCITS is appropriate to the redemption policy laid down in the fund rules or the constitutive acts of the investment company or the prospectus.

Art. 47

- (1) Investment management companies (SAIs) shall calculate the global exposure of a managed UCITS as referred to in Art. 84 Para (6), as either of the following:
- a) the incremental exposure and leverage, defined according to NSC regulations issued for the purposes hereof, generated by the managed UCITS through the use of financial derivative instruments including transferable securities or money market instruments embedding derivatives pursuant to Art. 84 Para (10), which may not exceed the total of the UCITS net asset value;
 - b) the market risk of the UCITS portfolio.
- (2) Investment management companies (SAIs) shall calculate the UCITS global exposure on at least a daily basis.
- (3) Investment management companies (SAIs) may calculate global exposure by using the commitment approach, the value at risk approach or other advanced risk measurement methodologies as may be appropriate. For the purposes of this provision, “value at risk” shall mean a measure of the maximum expected loss at a given confidence level over a specific time period.
- (4) Investment management companies (SAIs) shall ensure that the method selected to measure global exposure is appropriate, taking into account the investment strategy pursued by the UCITS and the types and complexities of the financial derivative instruments

used, and the proportion of the UCITS portfolio which comprises financial derivative instruments.

- (5) Where a UCITS, in accordance with Art. 84 Para (4), employs techniques and instruments, including repurchase agreements or securities lending transactions in order to generate additional leverage or exposure to market risk, investment management companies (SAIs) shall take these transactions into consideration when calculating global exposure.

Art. 48

- (1) Where the commitment approach is used for the calculation of global exposure, investment management companies (SAIs) shall apply this approach to all financial derivative instrument positions including security or money-market instrument positions embedding derivatives as referred to in Art. 84 Para (10), whether used as part of the UCITS general investment policy, for purposes of risk reduction or for the purposes of efficient portfolio management.
- (2) Where the commitment approach is used for the calculation of global exposure, investment management companies (SAIs) shall convert each financial derivative instrument position into the market value of an equivalent position in the underlying asset of that derivative.
- (3) Investment management companies (SAIs) may take account of netting and hedging arrangements when calculating global exposure, where these arrangements do not disregard obvious and material risks and result in a clear reduction in risk exposure.
- (4) Where the use of financial derivative instruments does not generate incremental exposure for the UCITS, the underlying exposure need not be included in the commitment calculation.
- (5) Where the commitment approach is used, temporary borrowing arrangements entered into on behalf of the UCITS in accordance with Art. 103 need not be included in the global exposure calculation.

Art. 49

- (1) Investment management companies (SAIs) shall ensure that counterparty risk arising from an over-the-counter (OTC) financial derivative instrument is subject to the limits set out in Art. 85.
- (2) When calculating the UCITS exposure to a counterparty in accordance with the limits as referred to in Art. 85 Para (2), investment management companies (SAIs) shall use the positive mark-to-market value of the OTC derivative contract with that counterparty
- (3) Investment management companies (SAIs) may net the derivative positions of a UCITS with the same counterparty, provided that they are able to legally enforce netting agreements with the counterparty on behalf of the UCITS. Netting shall only be permissible with respect to OTC derivative instruments with the same counterparty and not in relation to any other exposures the UCITS may have with that same counterparty.

- (4) Investment management companies (SAIs) may reduce the UCITS exposure to a counterparty of an OTC derivative transaction through the receipt of collateral. Collateral received shall be sufficiently liquid so that it can be sold quickly at a price that is close to its pre-sale valuation.
- (5) Investment management companies (SAIs) shall take collateral into account in calculating exposure to counterparty risk as referred to in Art. 85 Para (2) when the investment management company (SAI) passes collateral to OTC counterparty on behalf of the UCITS. Collateral passed may be taken into account on a net basis only if the investment management company (SAI) is able to legally enforce netting arrangements with this counterparty on behalf of the UCITS.
- (6) Investment management companies (SAIs) shall calculate issuer concentration limits as referred to in Art. 85 on the basis of the underlying exposure created through the use of financial derivative instruments pursuant to the commitment approach.
- (7) With respect to the exposure arising from OTC derivatives transactions as referred to in Art. 85 Paras (3) and (4), investment management companies (SAIs) shall include in the calculation any exposure to OTC derivative counterparty risk.

SUBSECTION 3

Procedures for the Valuation of the OTC Derivatives

Art. 50

- (1) Investment management companies (SAIs) shall verify that UCITS exposures to OTC derivatives are assigned fair values that do not rely only on market quotations by the counterparties of the OTC transactions and which fulfil the criteria set out in NSC regulations transposing the provisions of Article 8 paragraph (4) of Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions.
- (2) For the purposes of Para (1), management companies shall establish, implement and maintain arrangements and procedures which ensure appropriate, transparent and fair valuation of UCITS exposures to OTC derivatives.
- (3) Investment management companies (SAIs) shall ensure that the fair value of OTC derivatives is subject to adequate, accurate and independent assessment.
- (4) The valuation arrangements and procedures shall be adequate and proportionate to the nature and complexity of the OTC derivatives concerned.
- (5) Investment management companies (SAIs) shall comply with the requirements set out in Art. 17 Para (2) and Art. 37 Para (4) when arrangements and procedures concerning the valuation of OTC derivatives involve the delegation of certain activities to third parties.

- (6) The valuation arrangements and procedures referred to in Para (2) shall be adequately documented.

SUBSECTION 4

Transmission of Information on Financial Derivative Instruments

Art. 51

- (1) Investment management companies (SAIs) authorised by NSC shall deliver to NSC, at least on an annual basis, reports containing information which reflects a true and fair view of the types of financial derivative instruments used for each managed UCITS, the underlying risks, the quantitative limits and the methods which are chosen to estimate the risks associated with the financial derivative transactions.
- (2) NSC shall review the regularity and completeness of information referred to in Para (1) and may intervene where appropriate.

CHAPTER III

The Depositary

SECTION 1

General Provisions

Art. 52

- (1) The depositary of a UCITS authorised by NSC shall mean a Romanian credit institution, authorised by the National Bank of Romania, according to the legislation applicable to credit institutions, or a Romanian branch of a credit institution authorised in another Member State, approved by NSC to conduct the depositary activity, in accordance with the provisions hereof, to which the assets of a UCITS are entrusted for safe-keeping.
- (2) The depositary shall:
- a) ensure that the sale, issue, repurchase, redemption and cancellation of units are effected on behalf of the UCITS by an investment management company (SAI) or by another entity in accordance herewith, NSC regulations and the fund rules/constitutive act of the investment company;
 - b) ensure that the value of the units is calculated in accordance with the fund rules/constitutive act of the investment company and provisions hereof;
 - c) carry out the instructions of the investment management company (SAI) or the self-managed investment company, unless they conflict with the applicable law or the fund rules/constitutive act of the investment company;
 - d) ensure that in transactions involving assets of UCITS, any consideration is remitted to it within the established time limits;

- e) ensure that a UCITS income is applied in accordance with the applicable law and the fund rules/constitutive act of the investment company.
- (3) A depositary shall either have its registered office or be established in the UCITS home Member State.
- (4) To obtain NSC approval, the credit institution shall submit documents and records according to NSC regulations attesting that it presents sufficient financial and professional guarantees to be able effectively to pursue its business as depositary and meet the commitments inherent in that function.

Art. 53

- (1) The depositary shall submit to NSC, on request, all of the information that the depositary has obtained while discharging its duties and that is necessary for NSC to supervise the UCITS compliance with the provisions hereof and NSC regulations issued for the application hereof.
- (2) Where the investment management company's (SAI) home Member State is not the UCITS home Member State, the depositary shall sign a written agreement with the investment management company (SAI) regulating the flow of information deemed necessary to allow the depositary to perform the functions set out in Art. 52 and in the legal framework of the UCITS home Member State which are relevant for depositaries.

Art. 54

- (1) A depositary shall be liable to the investment management company (SAI), the self-managed investment company and the unit-holders for any loss suffered by them as a result of its unjustifiable failure to perform its obligations or its improper performance of them.
- (2) The depositary's liability to investors may be invoked by unit-holders, directly or indirectly through the investment management company (SAI), depending on the nature of the relationship between the depositary, the investment management company (SAI) and the investors.
- (3) The depositary referred to in Art. 52 Para (1) may transfer to a third person, the sub-depositary, the safe-keeping of a portion of UCITS assets, according to the regulations issued by NSC.
- (4) The activities delegated to third parties under the conditions of Para (3) shall be conducted by observing the same regime applicable to the depositary.
- (5) The depositary's obligations referred to in Para (3) shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

Art. 55

- (1) A trading company may not be an investment management company (SAI) and a depositary at the same time.
- (2) The investment management company (SAI) and the depositary shall act independently one towards the other and exclusively in the unit-holders' best interests.

Art. 56

The conditions for the replacement of the depositary and rules to ensure the protection of unit-holders shall be provided in the fund rules or the constitutive act of the investment company, in accordance with NSC regulations.

Art. 57

- (1) No other values or wordings to express the net asset value, the net asset value per share and the number of unit-holders except for those certified by the depositary shall be disclosed and used.
- (2) The entities' deposited assets shall be listed in separate individual accounts and separate from those of the depositary.
- (3) The depositary shall inform NSC promptly of any abuse of the investment management company (SAI) in relation to the UCITS assets deposited.

SECTION 2

Agreement between the Depositary and the Investment Management Company (SAI)

Art. 58

The depositary and the investment management company (SAI) shall include in the written agreement referred to in Art. 53 Para (2) at least the following particulars related to the services provided by and procedures to be followed by the parties to the agreement:

- a) a description of the procedures, including those related to the safe-keeping of assets, to be adopted for each type of asset of the UCITS entrusted to the depositary;
- b) a description of the procedures to be followed where the investment management company (SAI) envisages a modification of the fund rules or prospectus of the UCITS, and identifying when the depositary should be informed, or where a prior agreement from the depositary is needed to proceed with the modification;
- c) a description of the means and procedures by which the depositary will transmit to the investment management company (SAI) all relevant information that the investment management company (SAI) needs to perform its duties including a description of the means and procedures related to the exercise of any rights attached to financial instruments, and the means and procedures applied in order to

allow the investment management company (SAI) and the UCITS to have timely and accurate access to information relating to the accounts of the UCITS;

- d) a description of the means and procedures by which the depositary will have access to all relevant information it needs to perform its duties;
- e) a description of the procedures by which the depositary has the ability to enquire into the conduct of the investment management company (SAI) and to assess the quality of information transmitted, including by way of on-site visits;
- f) a description of the procedures by which the investment management company (SAI) can review the performance of the depositary in respect of the depositary's contractual obligations.

Art. 59

- (1) The depositary and the investment management company (SAI) shall include in the written agreement referred to in Art. 53 Para (2) at least the following elements related to the exchange of information and obligations on confidentiality and money laundering in that agreement:
 - a) a list of all the information that needs to be exchanged between the UCITS, the investment management company (SAI) and the depositary related to the subscription, redemption, issue, cancellation and repurchase of units of the UCITS;
 - b) the confidentiality obligations applicable to the parties to the agreement;
 - c) information on the tasks and responsibilities of the parties to the agreement in respect of obligations relating to the prevention of money laundering and the financing of terrorism, where applicable.
- (2) The obligations referred to in Para (1) Letter b) shall be drawn up so as not to impair the ability of either the competent authorities of an investment management company's (SAI) home Member State or the competent authorities of the UCITS home Member State in gaining access to relevant documents and information.

Art. 60

Where the depositary or the investment management company (SAI) envisage appointing third parties to carry out their respective duties, the depositary or the investment management company (SAI) shall include in the written agreement referred to in Art. 53 Para (2) at least the following elements:

- a) an undertaking by both parties to the agreement to provide details, on a regular basis, of any third parties appointed by the depositary or the investment management company (SAI) to carry out their respective duties;

- b) an undertaking that, upon request by one of the parties, the other party will provide information on the criteria used for selecting the third party and the steps taken to monitor the activities carried out by the selected third party;
- c) a statement that a depositary's liability as referred to in Art. 54 Para (2) shall not be affected by the fact that it has entrusted to a third party all or some of the assets in its safe-keeping.

Art. 61

The depositary or the investment management company (SAI) shall include in the written agreement referred to in Art. 53 Para (2) at least the following particulars related to amendments and the termination of the agreement in that agreement:

- a) the period of validity of the agreement;
- b) the conditions under which the agreement may be amended or terminated;
- c) the conditions which are necessary to facilitate transition to another depositary and, in case of such transition the procedure by which the depositary shall send all relevant information to the other depositary.

Art. 62

- (1) The depositary or the investment management company (SAI) shall specify in the written agreement referred to in Art. 53 Para (2) that the law of the UCITS home Member State applies to that agreement.
- (2) In cases where the parties to the agreement referred to in Art. 53 Para (2) agree to the use of electronic transmission for part or all of information that flows between them, such agreement shall contain provisions ensuring that a record is kept of such information.
- (3) The agreement referred to in Art. 53 Para (2) may cover more than one UCITS managed by the investment management company (SAI). In such case, the agreement shall list the UCITS covered.
- (4) Details of means and procedures referred to in Art. 58 Letters c) and d) may be included either in the agreement referred to in Art. 53 Para (2), or in a separate written agreement.

CHAPTER IV
Undertakings for Collective Investment in Transferable Securities

SECTION 1
Authorisation of UCITS

Art. 63

- (1) The UCITS for which Romania is a home Member State shall pursue the activity based on NSC authorisation, according to this emergency ordinance and the regulations issued for the application hereof.
- (2) A UCITS shall be authorised after NSC has authorised the investment management company (SAI) in advance or has approved the request of an investment management company (SAI) from a Member State to manage the UCITS, has authorised the fund rules or, where applicable, the constitutive act of the investment company, the choice of the depositary and the issuance prospectus.
- (3) NSC shall issue regulations regarding the contents of the rules of a common fund and the constitutive act of an investment company, which shall take at least the following into consideration:
 - a) the methods of subscription, redemption, issue, cancellation and repurchase of units;
 - b) the methods of calculation of the net asset value per share;
 - c) the identification details of the investment management company (SAI), the depositary and the relationship between them and investors;
 - d) the conditions to replace the investment management company (SAI), the depositary and the rules to ensure the investors' protection in such cases;
 - e) the charges of the investment management company (SAI) and the expenses that the investment management company (SAI) is empowered to incur for the UCITS, and the method of calculation of such charges.
- (4) Notwithstanding Para (2), if Romania is the UCITS home Member State, but not that of the investment management company (SAI) as well, then NSC shall decide with regard to the request of the investment management company (SAI) to manage the UCITS in accordance with Art. 168. The management of the UCITS by an investment management company (SAI) having its registered office in Romania or the carrying out or delegation of activities of the investment management company (SAI) in Romania shall not condition the authorisation.

Art. 64

- (1) NSC shall not authorise a UCITS if:

- a) it decides that the investment company does not fulfil the prior conditions referred to in Chapter IV Section 3; or
 - b) the investment management company (SAI) is not authorised to manage the UCITS in its home Member State.
- (2) NSC shall grant the authorisation to a UCITS and the authorisation to initiate and carry on the continuous public offer of units, within maximum two months from receipt of the full documentation provided by the regulations in force or, in case of rejection, shall issue a reasoned decision.
 - (3) NSC may not issue the authorisation to a UCITS if the persons who actually manage the depositary activity do not enjoy the repute or experience required to carry out specific activities for such UCITS. The identity of such persons and of those who succeed them in office shall be communicated promptly to NSC, in accordance with the provisions of Law No. 677/2001 on the protection of individuals regarding the personal data processing and the free movement thereof, as subsequently amended and supplemented.
 - (4) NSC shall not grant the authorisation to a UCITS if the latter is legally restricted, including by inserting a provision in the fund rules or the constitutive act of the investment company, to distribute its units on the Romanian territory.
 - (5) The authorisation may be refused if NSC decides that prudential management cannot be provided.

Art. 65

The conditions based on which NSC authorisation was issued shall be maintained throughout the entire operation of a UCITS. Any change thereof shall be subject to NSC prior authorisation.

Art. 66

- (1) NSC shall ensure that complete information on this emergency ordinance and the regulations issued for the application hereof regarding the constitution and functioning of UCITS are easily available remotely or by electronic means.
- (2) NSC shall ensure that the information referred to in Para (1) is available at least in a language customary in the sphere of international finance, provided in a clear and unambiguous manner, and kept up to date.

Art. 67

- (1) The investment management company (SAI)/self-managed investment company shall launch the continuous public offer of units within maximum twelve (12) months from the date the

authorisation to initiate and carry on the continuous public offer of units provided under Art. 64 Para (2) was granted.

- (2) Open-end funds Open-end funds and investment companies authorised shall be listed in the NSC Registry.
- (3) The investment management company (SAI) shall indicate the number under which it is listed in the registry provided under Para (2) in all the acts, documents and correspondence that the investment management company (SAI) issues or initiates, on behalf of the UCITS it manages.

SECTION 2

Open-end funds

Art. 68

The rules of a common fund shall form an integral part of the issuance prospectus, and shall be an annexe thereto.

Art. 69

- (1) The fund units issued by open-end funds shall be of a single type and shall confer equal rights on their holders, except unit funds issued by open-end funds consisting of several investment compartments and fund units divided into classes of fund units. Fund units shall be registered, dematerialised and fully paid upon subscription.
- (2) Participation in a common fund shall be attested through a document confirming the holding of fund units.
- (3) NSC shall issue regulations regarding the authorisation by NSC and the functioning of open-end funds consisting of several investment compartments.

Art. 70

Open-end funds shall issue no other financial instruments but fund units.

Art. 71

- (1) The investment management company (SAI) shall publish the net asset value and the value of a fund unit of a common fund daily, for each business day, based on the data certified by the depositary.
- (2) NSC shall issue regulations regarding the method of calculation of the net asset value and net asset value per share.

SECTION 3

Investment Companies

Art. 72

- (1) Investment companies shall issue registered shares, fully paid upon subscription.
- (2) No investment company may engage in activities other than those referred to in Art. 2 Para (1).
- (3) Investment companies may manage only their own assets and may not in any case be mandated to manage assets for a third party.

Art. 73

An investment company shall be managed by an investment management company (SAI) or by a board of administration/supervisory board, according to its deed of constitution.

Art. 74

- (1) The initial capital of self-managed investment companies shall be calculated according to NSC regulations and shall be at least the RON equivalent of EUR 300,000, calculated at the reference exchange rate published by the National Bank of Romania, valid on the date of submission of the request for authorisation.
- (2) Self-managed investment companies shall supplement the initial capital if it decreases below the level provided under Para (1), by no later than the date of transmission to NSC of the first report on the level of the initial capital.
- (3) To comply with the requirements provided by European legislation, NSC shall modify periodically, by order of its president, the level of the initial capital of a self-managed investment company.

Art. 75

- (1) Self-managed investment companies shall observe accordingly the provisions hereof applicable to investment management companies (SAIs), referred to under Art. 6, Art. 9 Para (1) Letters b), c), e), f), g) and Paras (2) and (3), Arts. 12, 33, Art. 52 Para (1), Art. 55, and the conditions laid down in NSC' regulations.
- (2) By way of derogation from Art. 64 Para (2), NSC shall grant the authorisation to a self-managed investment company, within 6 months from receipt of the entire documentation provided by the regulations, or shall issue, in case of rejection of the request, a grounded decision, which may be challenged within 30 days from the date of communication thereof.
- (3) The authorisation may be refused if, although the conditions mentioned under Paras (1) and (2) and in NSC regulations are complied with, prudential management may not be provided.

- (4) NSC may withdraw the authorisation issued to an investment company under the conditions provided under Art. 11.

Art. 76

The provisions of Sections 2, 3 and 6 of Chapter II, and the provisions of Art. 34 Paras (1) and (2) and Arts. 36 to 43 shall also apply accordingly to self-managed investment companies, according to NSC regulations.

Art. 77

Changes further to issuances and redemptions of shares, occurring during each financial year, shall be made, by way of derogation from Law No. 31/1990, and shall be recorded at the office of the registry of commerce once a year, within maximum thirty (30) days from the approval of the financial statements.

Art. 78

- (1) NSC shall issue regulations regarding the conditions that must be fulfilled and the procedures to authorise an investment company, the minimum contents of the constitutive act and the management contract.
- (2) The constitutive act of the investment company shall form an integral part of the prospectus, and shall be an annexe thereto.

Art. 79

- (1) Investment companies shall apply for admission to dealing on a regulated market within ninety (90) business days from the date they obtain the authorisation.
- (2) The shares of an investment company may be redeemed at any time in accordance with the provisions of Art. 106.

Art. 80

- (1) The general meeting of shareholders shall take place in accordance with the provisions of Law No. 31/1990, of this emergency ordinance and NSC regulations.
- (2) By way of derogation from the provisions of Art. 122 of Law No. 31/1990, the shareholders of an investment company may also vote by correspondence, through electronic means of transmission or may be represented in the general meeting of shareholders by persons other than the shareholders, based on a special power of attorney. If the agenda of the general meeting of shareholders comprises resolutions that require a secret ballot, then vote by correspondence shall be cast by means that do not permit the disclosure thereof except to the members of the secretariat in charge of counting the votes cast and only when the other votes secretly cast by the shareholders present or the shareholders' representatives attending the meeting are known. NSC shall issue regulations regarding this procedure.

- (3) If the vote is cast by post or electronic means of transmission, then the call of the general meeting of shareholders shall comprise the full text of the resolution proposed for approval. The call shall be published at least thirty (30) days prior to the general meeting of shareholders and in a national daily newspaper.
- (4) Votes transmitted by post or electronic means of transmission and annulled for failure to observe the procedure laid down by NSC shall not be taken into account when the related topic on the agenda is adopted, but shall be counted to determine the quorum of the general meeting of shareholders.
- (5) The resolution subject to the approval of the general meeting of shareholders shall be drawn up and subject to voting during the general meeting of shareholders, identically to the entire text of the resolution published, in accordance with the provisions of Paras (2) and (3).

SECTION 4

Investment Policy of UCITS

Art. 81

If a UCITS consists of several investment compartments, each compartment shall be construed as a separate UCITS, for the purpose of this chapter.

Art. 82

The investments of a UCITS shall be solely in one of the following assets:

- a) transferable securities and money market instruments registered or dealt in on a regulated market, as defined under Art. 125 of Law No. 297/2004, in Romania or a Member State;
- b) transferable securities and money market instruments admitted to official listing on a stock exchange in a non-member State or dealt in on another regulated market in a non-member State which operates regularly and is recognized and open to the public provided that the choice of stock exchange or market has been approved by NSC or is provided for in the fund rules or the investment company's deed of constitution approved by NSC;
- c) recently issued transferable securities, provided that:
 - 1. the terms of issue include a firm undertaking that application will be made for admission to official listing on a stock exchange or to another regulated market which operates regularly and is recognized and open to the public, provided that the choice of stock exchange or market has been approved by NSC or is provided for in the fund rules or the investment company's deed of constitution approved by NSC;

2. such admission is secured within a year of issue;
- d) UCITS or NON-UCITS units having the characteristics provided under Art. 2 Para (1) Letter a) and b), should they be situated in a Member State or not, cumulatively meeting the following conditions:
1. such other collective investment undertakings are authorised under laws which provide that they are subject to supervision considered by NSC to be equivalent to that laid down in government emergency ordinance, and there is a cooperation agreement between NSC and the home state;
 2. the level of protection for unit-holders in the other collective investment undertakings is equivalent to that provided for unit-holders in a UCITS, and in particular that the rules on assets segregation, borrowing, lending, and uncovered sales of transferable securities and money market instruments are equivalent to the requirements of this government emergency ordinance;
 3. the business of the other collective investment undertakings is reported in half-yearly and annual reports to enable an assessment to be made of the assets and liabilities, income and operations over the reporting period;
 4. no more than 10% of the UCITS and/or the other collective investment undertakings' assets, whose acquisition is contemplated, can, according to their fund rules or deed of constitution of the investment company, be invested in aggregate in units of other UCITS or other collective investment undertakings;
- e) deposits with credit institutions which are repayable on demand or have the right to be withdrawn, and maturing in no more than twelve (12) months, provided that the credit institution has its registered office in Romania or a Member State or, if the registered office of the credit institution is situated in a non-Member State, provided that it is subject to prudential rules considered by NSC as equivalent to those issued by the European Union;
- f) financial derivative instruments, including equivalent cash-settled instruments, dealt in on a regulated market referred to under Letters a) and b) and/or financial derivative instruments dealt in over-the-counter, cumulatively meeting the following conditions:
1. the underlying assets consists of instruments covered by this article, financial indices, interest rates, foreign exchange rates, in which the UCITS may invest according to its investment objectives as stated in the UCITS fund rules or deed of constitution of the investment company;

2. the counterparties to over-the-counter derivative transactions are institutions subject to prudential supervision, and belonging to the categories approved by NSC;
 3. the over-the-counter derivatives are subject to reliable and verifiable valuation on a daily basis and can be sold, liquidated or closed by an offsetting transaction at any time at their fair value at the UCITS initiative;
- g) money market instruments other than those dealt in on a regulated market, which are liquid and have a value which can be accurately determined at any time, if the issuer or issuer of such instruments is itself regulated for the purpose of protecting investors and savings, and provided that they are:
1. issued or guaranteed by a central, regional or local authority or central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank, a non-Member State or, in the case of a Federal State, by one of the members making up the federation, or by a public international body to which one or more Member States belong; or
 2. issued by an undertaking any securities of which are dealt in on regulated markets referred to in Letter a) and b); or
 3. issued or guaranteed by an establishment subject to prudential supervision, in accordance with criteria defined by Community law, or by an establishment which is subject to and complies with prudential rules considered by NSC to be equivalent to those laid down by Community law; or
 4. issued by other bodies belonging to the categories approved by NSC provided that investments in such instruments are subject to investor protection equivalent to that laid down in Items 1, 2 and 3 and provided that the issuer is a company whose capital and reserves amount to at least EUR 10 million and which presents and publishes its annual accounts in accordance with the applicable European legislation, or is an entity which, within a group of companies which includes one or several listed companies, is dedicated to the financing of the group or is an entity which is dedicated to the financing of securitisation vehicles which benefit from a banking liquidity line.

Art. 83

- (1) By exception from the provisions of Art. 82:
- a) a UCITS may invest no more than 10% of its assets in transferable securities and money market instruments other than those referred to in Art. 82;
 - b) an investment company may acquire movable and immovable property which is essential for the direct pursuit of its business;

- c) a UCITS may not acquire either precious metals or certificates representing them.
- (2) A UCITS may hold liquid assets in cash or in a current account on a temporary basis and within the limits provided by NSC regulations.

Art. 84

- (1) Investment management companies (SAIs) and self-managed investment companies shall use a risk management system allowing them to:
 - a) monitor and quantify, at any time, the risk associated with their position and influence on the general risk profile of the portfolio;
 - b) ensure a correct and independent evaluation of the value of the over-the-counter derivative financial instruments.
- (2) Investment management companies (SAI) and self-managed investment companies shall communicate to NSC, on a regular basis, the types of derivative financial instruments, the risk of underlying shares, the quantitative limits and the methods chosen to estimate the risk associated to derivative financial instruments transactions for each managed UCITS.
- (3) The information received in accordance with Para (2) aggregated for all investment management companies (SAIs) and self-managed investment companies shall be accessible by ESMA, in compliance with Article 35 of Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC and for the European Systemic Risk Board, in compliance with Article 15 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board to monitor systemic risks at the level of the European Union.
- (4) NSC may authorize UCITS to employ techniques and instruments relating to transferable securities and money market instruments, under the conditions and within the limits established by this government emergency ordinance, provided that such techniques and instruments are used for the purpose of efficient and prudential portfolio management. When these operations require the use of derivative financial instruments, the conditions and the limits shall be compliant with the provisions of this emergency ordinance.
- (5) Under no circumstance shall the operations provided under Para (4) cause a UCITS to diverge from its investment objectives as laid down in the UCITS fund rules, deed of constitution of the investment company or prospectus.
- (6) A UCITS shall ensure that its global exposure relating to derivative instruments does not exceed the total net value of its portfolio.

- (7) The exposure is calculated taking into account the current value of the underlying assets, the counterparty risk, future market movements and the time available to liquidate the positions.
- (8) A UCITS may invest, as a part of its investment policy and within the limit provided under Art. 85 Paras (9) to (12), in financial derivative instruments provided that the exposure to risk of the underlying assets does not exceed in aggregate the investment limits laid down in Art. 85.
- (9) When a UCITS invests in index-based financial derivative instruments, NSC may allow that these investments do not have to be combined to the limits laid down in Art. 85.
- (10) When a transferable security or money market instrument embeds a derivative, the latter must be taken into account when complying with the requirements of this article.

Art. 85

- (1) A UCITS may invest no more than 5% of its assets in transferable securities or money market instruments issued by the same body. A UCITS may not invest more than 20% of its assets in deposits made with the same body.
- (2) The risk exposure to a counterparty of the UCITS in an over-the-counter derivative transaction may not exceed:
 - a) 10% of its assets when the counterpart is a credit institution referred to in Art. 82 Letter e); or
 - b) 5% of its assets, in other cases.
- (3) The 5% limit provided in Para (1) may be raised to maximum 10% provided that the total value of the transferable securities and the money market instruments held by the UCITS in the issuing bodies in each of which it invests more than 5% of its assets must not then exceed 40% of the value of its assets.

This limitation does not apply to deposits and over-the-counter derivative transactions made with financial institutions subject to prudential supervision.

- (4) Notwithstanding the individual limits laid down in Paras (1) and (2), a UCITS may not combine, in a proportion exceeding 20% of its assets:
 - a) investments in transferable securities or money market instruments issued by the same body;
 - b) deposits made with the same body; or
 - c) exposures arising from over-the-counter derivative transactions undertaken with the same body.

- (5) The 5% limit provided in Para (1) may be raised to maximum 35%, if the transferable securities or money market instruments are issued or guaranteed by a Member State, by its local authorities, by a non-member State or by public international bodies to which one or more Member States belong.
- (6) The 5% limit provided in Para (1) may be raised to maximum 25% in the case of certain bonds when these are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bondholders. In particular, sums deriving from the issue of these bonds must be invested in conformity with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.
- (7) When a UCITS invests more than 5% of its assets in the bonds referred to in Para (6) and issued by one issuer, the total value of these investments may not exceed 80% of the value of the assets of the UCITS.
- (8) NSC shall send to ESMA and the Commission a list of the categories of bonds provided under Para (6) together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in Para (6), to issue bonds complying with the criteria set out above. A notice specifying the status of the guarantees offered shall be attached to these lists.
- (9) The transferable securities and money market instruments referred to in Paras (5) and (6) shall not be taken into account for the purpose of applying the limit of 40% referred to in Para (3).
- (10) The limits provided for in Paras (1) to (7) may not be combined, and thus investments in transferable securities or money market instruments issued by the same body or in deposits or derivative instruments made with this body carried out in accordance with Paras (1) to (7) shall under no circumstances exceed in total 35% of the assets of the UCITS.
- (11) Companies which are included in the same group for the purposes of consolidated accounts, in accordance with European laws or in accordance with recognised international accounting rules, are regarded as a single body for the purpose of calculating the limits contained in this article.
- (12) Cumulative investment in transferable securities and money market instruments within the same group are allowed up to a limit of 20%.

Art. 86

- (1) Without prejudice to the limits laid down in Art. 90, the limits provided in Art. 85 may be raised to maximum 20% for investment in shares and/or debt securities issued by the same body when, according to the fund rules or deed of constitution of the investment company,

the aim of the UCITS investment policy is to replicate the composition of a certain stock or debt securities index which is recognised by the competent authorities, on the following basis:

- a) the index's composition is sufficiently diversified, in accordance with the NSC regulations issued for the application of this emergency ordinance;
 - b) the index represents an adequate benchmark for the market to which it refers;
 - c) the index is published in an appropriate manner.
- (2) NSC may raise the limit provided under Para (1) to a maximum of 35% where that proves to be justified by exceptional market conditions in particular in regulated markets where certain transferable securities or money market instruments are highly dominant. The investment up to this limit is only permitted for a single issuer.

Art. 87

- (1) By way of derogation from Art. 85, NSC may authorize UCITS to invest in accordance with the principle of risk-spreading up to 100% of their assets in different transferable securities and money market instruments issued or guaranteed by any Member State, its local authorities, a non-member State or public international bodies of which one or more Member States are members.
- (2) NSC may grant such a derogation only if it considers that unit-holders in the UCITS have protection equivalent to that of unit-holders in UCITS complying with the limits laid down in Art. 85.
- (3) The UCITS referred to in Para (1) must hold securities and money market instruments from at least six different issues, but securities and money market instruments from any one issue may not account for more than 30% of its total assets.
- (4) The UCITS referred to in Para (1) must make express mention in the fund rules or in the investment company's deed of constitution of the investment company of the States, local authorities or public international bodies issuing or guaranteeing securities and money market instruments in which the UCITS intends to invest more than 35% of its assets.
- (5) Each such UCITS referred to in Para (1) must include a prominent statement in its prospectus and any promotional literature drawing attention to the authorisation provided in Para (4) and indicating the States, local authorities and/or public international bodies in the securities and money market instruments of which it intends to invest or has invested more than 35% of its assets.

Art. 88

- (1) A UCITS may acquire the units of UCITS and/or other collective investment undertakings referred to in Art. 82 Letter d), provided that no more than 20% of its assets are invested in units of a single UCITS, or 10% in units of other collective investment undertaking.
- (2) Investments made in units of collective investment undertakings other than UCITS may not exceed, in aggregate, 30% of the assets of the UCITS.
- (3) When a UCITS has acquired units of UCITS and/or other collective investment undertakings, NSC may allow the assets of the respective UCITS or other collective investment undertakings do not have to be combined for the purposes of the limits laid down in Art. 85.

Art. 89

- (1) When a UCITS invests in the units of other UCITS and/or other collective investment undertakings that are managed, directly or by delegation, by the same investment management company (SAI) or by any other company with which the investment management company (SAI) is linked by common management or control, or by a substantial direct or indirect holding, that investment management company (SAI) or other company may not charge subscription or repurchase fees on account of the UCITS investment in the units of such other UCITS and/or collective investment undertakings.
- (2) A UCITS that invests a substantial proportion of its assets in other UCITS and/or collective investment undertakings shall disclose in its prospectus the maximum level of the management fees that may be charged both to the UCITS itself and to the other UCITS and/or collective investment undertakings in which it intends to invest. In its annual report it shall indicate the maximum proportion of management fees charged both to the UCITS itself and to the UCITS and/or other collective investment undertaking in which it invests.

Art. 90

- (1) An investment company or an investment management company (SAI) acting in connection with all of the UCITS which it manages, as applicable, may not acquire shares representing more than 10% of the share capital of an issuer or of the voting rights or shares which would enable it to exercise significant influence over the management of an issuing body. In the case of investment management companies (SAIs), this limit shall be calculated as an aggregate for all UCITS it manages.
- (2) A UCITS may acquire no more than:
 - a) 10% of the non-voting shares of any single issuing body;
 - b) 10% of the debt securities of any single issuing body;
 - c) 25% of the units of any single collective investment undertaking within the meaning of Art. 82 Letter d);
 - d) 10% of the money market instruments of any single issuing body.

- (3) The limits laid down in Para (2) Letters b), c) and d) may be disregarded at the time of acquisition if at that time the gross amount of the debt securities or of money market instruments or the net amount of the securities in issue cannot be calculated.

Art. 91

- (1) UCITS need not comply with the limits laid down in this chapter when exercising subscription rights attaching to transferable securities or money market instruments which form part of their assets.
- (2) NSC may allow a UCITS to derogate from the provisions of Art. 85-88 for six (6) months from its authorisation, while supervising the observance of the principle of risk-spreading.
- (3) If the acquisition limits are exceeded or reasons beyond the control of a UCITS or as a result of the exercise of subscription rights, that UCITS must adopt as a priority objective for its sales transactions the remedying of that situation as soon as possible, taking due account of the interests of its unit-holders.
- (4) The investment limits of a UCITS may be exceeded in accordance with the provisions hereof only provided that this is mentioned in the prospectus.

SECTION 5

Transparency and Marketing Rules

SUBSECTION 1

Publication of a prospectus and periodical reports

Art. 92

- (1) An investment management company (SAI), for each of the UCITS managed and authorised by NSC and self-managed investment companies authorised by NSC shall publish and submit to NSC the following documents:
- a) the prospectus;
 - b) the annual report;
 - c) the half-yearly report;
 - d) periodical reports regarding the net asset value and the net asset value per share, in accordance with NSC's regulations.
- (2) The reports provided under Para (1) Letter d) shall be submitted free of charge, at the investors' request, and shall be submitted to NSC under the terms and conditions established by regulations.

- (3) The annual and half-yearly reports shall be published within the following time limits, with effect from the end of the period to which they relate:
 - a) four (4) months in the case of the annual report;
 - b) two (2) months in the case of the half-yearly report.
- (4) The annual report shall include a balance-sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the financial year as well as any significant information which will enable investors to make an informed judgement on the development of the activities of the UCITS and its results, provided in the NSC regulations.
- (5) The half-yearly report shall include the information provided in the NSC regulations issued in compliance with the applicable European legislation.

Art. 93

- (1) The prospectus shall include the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular, of the risks attached thereto. The prospectus shall include, independent of the instruments invested in, a clear and easily understandable explanation of the fund's risk profile.
- (2) NSC shall issue regulations regarding the minimum content and the form of the prospectus. The information included in the fund rules or deed of constitution of the investment company, attached to the prospectus need not be inserted in the prospectus.
- (3) Any person investing in the units shall give a written statement confirming that it received, read and understood the prospectus.
- (4) The essential elements of the UCITS prospectus shall be updated in accordance with all of the amendments to the NSC regulations.

Art. 94

The accounting information given in the annual report shall be audited by a financial auditor, in compliance with the provisions of Art. 258 of Law No. 297/2004. The auditor's report, including any qualifications, shall be reproduced in full in the annual report.

Art. 95

If an investment management company (SAI) authorised by NSC manages a UCITS from another Member State, the investment management company (SAI) shall submit to NSC, on request, for each managed UCITS the prospectus, any amendments thereto, and the annual and half-yearly reports.

Art. 96

- (1) The prospectus and the latest published annual and half-yearly reports shall be provided to investors on request and free of charge.
- (2) The prospectus may be provided in a durable medium or by means of a website. A paper copy shall be delivered to the investors on request and free of charge.
- (3) The annual and half-yearly reports shall be available to investors in the manner specified in the prospectus and in the key investor information referred to in Art. 98. A paper copy of the annual and half-yearly reports shall be delivered to the investors on request and free of charge.

SUBSECTION 2

Publication of Marketing Materials

Art. 97

- (1) All marketing communications to investors shall be clearly identifiable as such. They shall be fair, clear and not misleading, in compliance with the provisions of Law No. 158/2008 on misleading advertising and comparative advertising.
- (2) Any marketing communication comprising an invitation to purchase units of UCITS that contains specific information about a UCITS shall make no statement that contradicts or diminishes the significance of the information contained in the prospectus and the key investor information referred to in Art. 98.
- (3) The marketing communication referred to in Para (1) shall indicate that a prospectus exists and that the key investor information referred to in Art. 98, is available and it shall specify where and in which language such information or documents may be obtained by investors or potential investors or how they may obtain access to them.
- (4) The publication of any marketing material in connection with a UCITS is allowed only in accordance with the NSC regulations regarding the contents and structure of marketing materials, in order to ensure the transparency and correctness of the information.

SUBSECTION 3

Key investor information

Art. 98

- (1) Self-managed investment companies/investment management companies (SAIs), for each UCITS managed, shall draw up a short document containing key information for investors. The words 'key investor information' shall be clearly stated in that document, in the official language or in one of the official languages of the host Member State of the UCITS or in a language approved by the competent authorities of such Member State.
- (2) Key investor information shall include appropriate information about the essential characteristics of the UCITS concerned, which is to be provided to investors so that they are

reasonably able to understand the nature and the risks of UCITS and, consequently, to take investment decisions on an informed basis.

- (3) Key investor information shall provide information on the following essential elements in respect of the UCITS concerned:
 - a) identification of the UCITS;
 - b) a short description of its investment objectives and investment policy;
 - c) past-performance presentation or, where relevant, performance scenarios;
 - d) costs and associated charges; and
 - e) risk/reward profile of the investment, including appropriate guidance and warnings in relation to the risks associated with investments in the relevant UCITS.
- (4) Those essential elements shall be comprehensible to the investor without any reference to other documents.
- (5) Key investor information shall clearly specify where and how to obtain additional information relating to the proposed investment, including but not limited to where and how the prospectus and the annual and half-yearly report can be obtained on request and free of charge at any time, and the language in which such information is available to investors.
- (6) Key investor information shall be written in a concise manner and in non-technical language. It shall be drawn up in a common format, allowing for comparison, and shall be presented in a way that is likely to be understood by retail investors.
- (7) Key investor information shall be used without alterations or supplements, except translation, in all Member States where the UCITS is notified to market its units.

Art. 99

- (1) Key investor information shall constitute pre-contractual information. It shall be fair, clear and not misleading. It shall be consistent with the relevant parts of the prospectus.
- (2) Key investor information or its translation shall not incur the civil liability of a person, unless it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus. Key investor information shall contain a clear warning in this respect.

Art. 100

- (1) Self-managed investment companies and investment management companies (SAIs) for each UCITS managed, which sell UCITS units directly or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility provide

investors with key investor information on such UCITS in good time before their proposed subscription of units in such UCITS.

- (2) Self-managed investment companies and investment management companies (SAIs) for each UCITS managed, which do not sell UCITS units directly or through another natural or legal person who acts on its behalf and under its full and unconditional responsibility to investors provide key investor information to product manufacturers and intermediaries selling or advising investors on potential investments in such UCITS or in products offering exposure to such UCITS upon their request.
- (3) The intermediaries selling or advising investors on potential investments in UCITS, provide key investor information to their clients.
- (4) Key investor information shall be provided to investors free of charge.

Art. 101

- (1) Self-managed investment companies and investment management companies (SAIs) for each UCITS managed, may provide key investor information in a durable medium or by means of a website. A paper copy shall be delivered to the investor on request and free of charge.
- (2) An up-to-date version of the key investor information shall be made available on the website of the investment company or the investment management company (SAI)

Art. 102

- (1) Investment management companies (SAIs), for each UCITS managed and authorised by NSC, and self-managed investment companies authorised by NSC shall submit to NSC the key investor information, and any amendments and supplementations thereto.
- (2) The essential elements of key investor information shall be kept up to date.

SECTION 6

General Obligations of UCITS

Art. 103

- (1) No self-managed investment company, investment management company (SAI) or depositary acting on behalf of a UCITS may contract loans on their behalf.
- (2) By way of derogation from Para (1), NSC may authorise a UCITS to borrow provided that such borrowing is:
 - a) on a temporary basis and represents maximum 10% of the UCITS assets;

- b) in the case of an investment company, it is intended to enable the acquisition of immovable property essential for the direct pursuit of its business and represents maximum 10% of its assets.
- (3) Where a UCITS is authorised to borrow under Para (2) Letters a) and b), such borrowing shall not exceed 15% of its assets in total.
- (4) A UCITS may acquire foreign currency by means of a 'back-to-back' loan.
- (5) Without prejudice to the application of Arts. 82 and 84, self-managed investment companies, investment management companies (SAIs) or depositaries acting on behalf of a UCITS, shall not grant loans or act as a guarantor on behalf of third parties.
- (6) The provisions of Para (5) shall not prevent the undertakings referred to therein from acquiring transferable securities, money market instruments or other financial instruments referred to in Art. 82 Letters d), f) and g), which are not fully paid.

Art. 104

- (1) In exceptional cases and only to protect the interests of unit-holders, self-managed investment companies and investment management companies (SAIs) acting on behalf of a UCITS may temporarily suspend the issue and repurchase of units, in compliance with the fund rules or the investment company's deed of constitution approved by NSC.
- (2) To protect the interest of the unit-holders or of the public, NSC may decide on the temporary suspension or limitation of the issue and/or repurchase of a UCITS units, authorised in accordance with the provisions hereof.
- (3) The suspension act shall specify the terms and reason for the suspension. The suspension may be extended if the reasons of the suspension are still operating.
- (4) In the cases provided under Para (1), UCITS shall communicate, without delay, its decision to NSC and the competent authorities in the Member States where it distributes its units.

Art. 105

- (1) The distribution or reinvestment of the income of a UCITS shall be effected in accordance with the law and with the fund rules or the deed of constitution of the investment company.
- (2) The creditors of an investment management company (SAI), of the depositaries and sub-depositaries cannot initiate legal proceedings on UCITS assets.

Art. 106

- (1) The securities of a UCITS shall only be issued after their counter value, at the net issue price, is recorded in the UCITS account.

- (2) The repurchase price of units of a UCITS shall be calculated depending on the date when the repurchase request is received, in accordance with the NSC regulations issued for the application of this emergency ordinance. The payment shall be made within a reasonable term, but not more than ten (10) working days from the submission of the application.

Art. 107

Self-managed investment companies , investment management companies (SAIs) and the depositaries acting on behalf of a UCITS may not carry out uncovered sales of transferable securities, money market instruments or other financial instruments referred to in Art. 82 Letters d), f) and g), defined in accordance with the NSC regulations issued for the application hereof.

SECTION 7 Mergers of UCITS

SUBSECTION 1 Authorisation of Mergers

Art. 108

- (1) For the purposes of this Chapter, a UCITS shall include investment compartments thereof.
- (2) Irrespective of the manner in which UCITS are constituted under Art. 2 Para (3), NSC shall allow for cross-border and domestic mergers as defined in Art. 3 Para (1) Items 8 and 9 in accordance with the merger techniques provided for in Art. 3 Para (1) Item 7.

Art. 109

- (1) Mergers shall be subject to prior authorisation by NSC, if Romania is the home Member State of the merging UCITS.
- (2) The merging UCITS shall provide the following information to NSC:
- a) the common draft terms of the proposed merger duly approved by the merging UCITS and the receiving UCITS;
 - b) an up-to-date version of the prospectus and the key investor information, referred to in Art. 98, of the receiving UCITS, if established in another Member State;
 - c) statement by each of the depositaries of the merging and the receiving UCITS confirming that, in accordance with Art. 112, they have verified compliance of the particulars set out in Art. 111 Para (1) Letters a), f) and g) with the requirements of this emergency ordinance and the fund rules or deed of constitution of their respective UCITS; and
 - d) the information on the proposed merger that the merging and the receiving UCITS intend to provide to their respective unit-holders.

- (3) The information referred to in Para (2) shall be provided in such a manner as to enable both NSC and the competent authorities of the receiving UCITS home Member State to read them in the official language or one of the official languages of that Member State or those Member States, or in a language approved by those competent authorities.
- (4) In the case of a cross-border merger, once the file is complete, NSC shall immediately transmit copies of the information referred to in Para (2) to the competent authorities of the receiving UCITS home Member State. NSC shall consider the potential impact of the proposed merger on unit-holders of the merging UCITS, to assess whether appropriate information is being provided to unit-holders. NSC may require, in writing, that the information to unit-holders of the merging UCITS be clarified.
- (5) In the case of a domestic merger, NSC shall consider the impact of the proposed merger on the unit-holders of the merging and receiving UCITS, to assess whether appropriate information is being provided to unit-holders, and may require, in writing, that the information to unit-holders of the merging UCITS be clarified according to Para (4) or the amendment of the information to be provided to unit-holders of the receiving UCITS in accordance with Para (6).
- (6) In the case of a cross-border merger in which NSC is the competent authority of the home Member State of the receiving UCITS and receives from the competent authority of the home Member State of the merging UCITS the information provided under Para (2), it may request in writing, and no later than fifteen (15) working days from receiving the copies containing all information referred to in Para (2) the receiving UCITS to amend the information to be provided to its unit-holders.
- (7) In the situation provided under Para (6), NSC shall send an indication of its dissatisfaction to the competent authorities of the merging UCITS home Member State. NSC shall inform the competent authorities of the merging UCITS home Member State whether it is satisfied with the modified information to be provided to the unit-holders of the receiving UCITS within twenty (20) working days of being notified thereof.

Art. 110

- (1) NSC shall authorise the proposed merger if the following conditions are met:
 - a) the proposed merger complies with all of the requirements of Arts. 109 to 113;
 - b) the receiving UCITS has notified the distribution of its units to the competent authorities of the Member States where the merging UCITS is either authorised or it notified the distribution of its units, in accordance with Art. 158; and
 - c) NSC and the competent authorities of the receiving UCITS home Member State are satisfied with the proposed information to be provided to unit-holders, or no indication of dissatisfaction from the competent authorities of the receiving UCITS home Member State has been received.

- (2) NSC shall authorise a proposed domestic merger, if the conditions provided under Para (1) Letters a) and b) are met and NSC is satisfied with the proposed information to be provided to unit-holders of the merging and receiving UCITS.
- (3) If NSC considers that the file is not complete, they shall request additional information within ten (10) days of receiving the information referred to in Art. 109 Para (2).
- (4) NSC shall inform UCITS, within twenty (20) working days of submission of the complete file, in accordance with Art. 109 Para (2), whether or not the merger has been authorised.
- (5) In the case of a cross-border merger, NSC shall inform the competent authorities in the home Member State of the receiving UCITS of its decision, in compliance with Para (4).
- (6) NSC may provide for a derogation from the provisions of Arts. 85 to 88 for the receiving UCITS, in compliance with Art. 91 Para (2).

Art. 111

- (1) The merging and the receiving UCITS draw up common draft terms of merger which shall set out the following particulars:
 - a) an identification of the type of merger and of the UCITS involved;
 - b) the background to and rationale for the proposed merger;
 - c) the expected impact of the proposed merger on the unit-holders of both the merging and the receiving UCITS;
 - d) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio as referred to in Art. 123 Para (1);
 - e) the calculation method of the exchange ratio;
 - f) the planned effective date of the merger;
 - g) the rules applicable, respectively, to the transfer of assets and the exchange of units; and
 - h) in the case of a merger pursuant to Art. 3 Para (1) Item 7 point (ii), the fund rules or deed of constitution of the newly constituted receiving UCITS.
- (2) NSC shall not require that any additional information is included in the common draft terms of mergers.
- (3) The merging UCITS and the receiving UCITS may decide to include further items in the common draft terms of merger.

SUBSECTION 2

Third-party control, information of unit-holders and other rights of unit-holders

Art. 112

The depositaries of the merging and of the receiving UCITS shall verify the conformity of the particulars set out in Art. 111 Para (1) Letters a), f) and g) with the requirements of this emergency ordinance and the fund rules or deed of constitution of the UCITS.

Art. 113

- (1) In the case provided under Art. 109 Para (1), NSC shall entrust either a depositary or an independent auditor, approved in accordance with Government Emergency Ordinance No. 90/2008 on statutory audits of annual accounts and consolidated accounts, approved as amended by Law No. 278/2008, as subsequently amended and supplemented, hereinafter referred to as GEO No. 90/2008, to validate the following:
 - a) the criteria adopted for valuation of the assets and, where applicable, the liabilities on the date for calculating the exchange ratio, as referred to in Art. 123 Para (1);
 - b) where applicable, the cash payment per unit; and
 - c) the calculation method of the exchange ratio as well as the actual exchange ratio determined at the date for calculating that ratio, as referred to in Art. 123 Para (1).
- (2) The statutory auditors of the merging UCITS or the statutory auditor of the receiving UCITS, defined in accordance with GEO No. 90/2008, shall be considered independent auditors for the purposes of Para (1).
- (3) A copy of the reports of the independent auditor, or, where applicable, the depositary shall be made available on request and free of charge to the unit-holders of both the merging UCITS and the receiving UCITS and to their respective competent authorities.

Art. 114

- (1) Merging and receiving UCITS shall provide appropriate and accurate information on the proposed merger to their respective unit-holders so as to enable them to make an informed judgement of the impact of the proposal on their investment and to be able to exercise the rights provided under Arts. 120 and 121.
- (2) The information referred to in Para (1) shall be provided to unit-holders of the merging and of the receiving UCITS only after NSC has authorised the proposed merger.
- (3) The information referred to in Para (1) shall be provided at least thirty (30) days before the last date for requesting repurchase or, where applicable, conversion without additional charge under Art. 121 Para (1).

- (4) The information referred to in Para (1) shall include the following:
- a) the background to and the rationale for the proposed merger;
 - b) the possible impact of the proposed merger on unit-holders, including but not limited to any material differences in respect of investment policy and strategy, costs, expected outcome, periodic reporting, possible dilution in performance, and, where relevant, a prominent warning to investors that their tax treatment may be changed following the merger;
 - c) any specific rights unit-holders have in relation to the proposed merger, including but not limited to the right to obtain additional information, the right to obtain a copy of the report of the independent auditor or the depositary on request, and the right to request the repurchase or, where applicable, the conversion of their units without charge as specified in Art. 121 Para (1), and the last date for exercising that right;
 - d) the relevant procedural aspects and the planned effective date of the merger;
 - e) a copy of the key investor information, referred to in Art. 98 of the receiving UCITS.
- (5) If the merging or the receiving UCITS has notified the distribution of its units in other Member States, the information referred to in Para (4) shall be provided in the official language, or one of the official languages, of the relevant UCITS host Member State, or in a language approved by its competent authorities. The UCITS required to provide the information shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.

SUBSECTION 3

Content of the merger information

Art. 115

- (1) The information to be provided to unit-holders pursuant to Art. 114 Para (1) shall be written in a concise manner and in non-technical language that enables unit-holders to make an informed judgement of the impact of the proposed merger on their investment.
- (2) In the case of a proposed cross-border merger, the merging UCITS and the receiving UCITS, respectively, shall explain in plain language any terms or procedures relating to the other UCITS which differ from those commonly used in the other Member State.
- (3) The information to be provided to the unit-holders of the merging UCITS shall meet the needs of investors who have no prior knowledge of the features of the receiving UCITS or of the manner of its operation. It shall draw their attention to the key investor information of the receiving UCITS and emphasise the desirability of reading it.

- (4) The information to be provided to the unit-holders of the receiving UCITS shall focus on the operation of the merger and its potential impact on the receiving UCITS.

Art. 116

- (1) The information to be provided in accordance with Art. 114 Para (4) Letter b) to the unit-holders of the merging UCITS shall also include:
- a) details of any differences in the rights of unit-holders of the merging UCITS before and after the proposed merger takes effect;
 - b) if the key investor information of the merging UCITS and the receiving UCITS show synthetic risk and reward indicators indifferent categories, or identify different material risks in the accompanying narrative, a comparison of those differences;
 - c) a comparison of all charges, fees and expenses for both UCITS, based on the amounts disclosed in their respective key investor information;
 - d) if the merging UCITS applies a performance-related fee, an explanation of how it will be applied up to the point at which the merger becomes effective;
 - e) if the receiving UCITS applies a performance-related fee, how it will subsequently be applied to ensure fair treatment of those unit-holders who previously held units in the merging UCITS;
 - f) in cases where Art. 122 permits costs associated with the preparation and the completion of the merger to be charged to either the merging or the receiving UCITS or any of their unit-holders, details of how those costs are to be allocated;
 - g) an explanation of whether the investment management company (SAI) of the merging UCITS intends to undertake any rebalancing of the portfolio before the merger takes effect.
- (2) The information to be provided in accordance with Art. 114 Para (4) Letter b) to the unit-holders of the receiving UCITS shall also include an explanation of whether the investment management company (SAI) of the receiving UCITS or the receiving self-managed investment company expects the merger to have any material impact on the portfolio of the receiving UCITS, and whether it intends to undertake any rebalancing of the portfolio either before or after the merger takes effect.
- (3) The information to be provided in accordance with Art. 114 Para (4) Letter c) shall also include:
- a) details of how any accrued income in the respective UCITS is to be treated;
 - b) an indication of how the report of the independent auditor or the depositary referred to in Art. 113 Para (3) may be obtained.

- (4) If the terms of the proposed merger include provisions for a cash payment in accordance with Art. 3 Para (1) Item 7 points (i) and (ii), the information to be provided to the unit-holders of the merging UCITS shall contain details of that proposed payment, including when and how unit-holders of the merging UCITS will receive the cash payment.
- (5) The information to be provided in accordance with Art. 114 Para (4) Letter d) shall include:
- a) where relevant under the fund rules or deed of constitution of the particular UCITS, the procedure by which unit-holders will be asked to approve the merger proposal, and what arrangements will be made to inform them of the outcome;
 - b) the details of any intended suspension of dealing in units to enable the merger to be carried out efficiently;
 - c) when the merger will take effect in accordance with Art. 123.
- (6) In cases where the merger proposal must be approved by unit-holders, the information may contain a recommendation by the respective investment management company (SAI) or the self-managed investment company as to the course of action.
- (7) The information to be provided to the unit-holders of the merging UCITS shall include:
- a) the period during which the unit-holders shall be able to continue making subscriptions and requesting repurchases of units in the merging UCITS;
 - b) the time when those unit-holders not making use of their rights granted pursuant to Art. 121 Para (1) within the relevant time limit, shall be able to exercise their rights as unit-holders of the receiving UCITS;
 - c) an explanation that in cases where, under the fund rules or deed of constitution of the UCITS, the merger proposal must be approved by the unit-holders of the merging UCITS under national law and the proposal is approved by the necessary majority, those unit-holders who vote against the proposal or who do not vote at all, and who do not make use of their rights granted pursuant to Art. 121 Para (1) within the relevant time limit, shall become unit-holders of the receiving UCITS.
- (8) If a summary of the key points of the merger proposal is provided at the beginning of the information document, it must cross-refer to the parts of the information document where further information is provided.

Art. 117

- (1) An up-to-date version of the key investor information of the receiving UCITS shall be provided to existing unit-holders of the merging UCITS.

- (2) The key investor information of the receiving UCITS shall be provided to existing unit-holders of the receiving UCITS where it has been amended for the purpose of the proposed merger.

Art. 118

Between the date when the information document pursuant to Art. 114 Para (1) is provided to unit-holders and the date when the merger takes effect, the information document and the up-to-date key investor information of the receiving UCITS shall be provided to each person who purchases or subscribes units in either the merging or the receiving UCITS or asks to receive copies of the fund rules or deed of constitution of the investment company, prospectus or key investor information of either UCITS.

SUBSECTION 4
Method of providing the information

Art. 119

- (1) The merging and the receiving UCITS shall provide the information pursuant to Art. 114 Para (1) to unit-holders on paper or in another durable medium.
- (2) Where the information is to be provided to all or certain unit-holders using a durable medium other than paper, the following conditions shall be fulfilled:
- a) the provision of the information is appropriate to the context in which the business between the unit-holder and the merging or receiving UCITS or, where relevant, the respective investment management company (SAI) is, or is to be, carried on;
 - b) the unit-holder to whom the information is to be provided, when offered the choice between information on paper or in another durable medium, specifically chooses the durable medium other than paper.
- (3) For the purposes of Para (1) and (2), the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the merging and receiving UCITS or their respective investment management company (SAI) and the unit-holder is, or is to be, carried on if there is evidence that the unit-holder has regular access to the Internet. The provision by the unit-holder of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence.

Art. 120

- (1) If the fund rules or deed of constitution of the UCITS require approval by the unit-holders of mergers between UCITS, that such approval does not require more than 75% of the votes actually cast by unit-holders present or represented at the general meeting of unit-holders.
- (2) The provisions of Para (1) shall be without prejudice to any presence quorum, as applicable, imposed by Law No. 31/1990, by the fund rules or deed of constitution of the UCITS. NSC

shall impose neither more stringent presence quorums for cross-border than for domestic mergers nor more stringent presence quorums for UCITS mergers than for mergers of corporate entities.

Art. 121

- (1) Unit-holders of both the merging and the receiving UCITS have the right to request, without any charge other than those retained by the UCITS to meet disinvestment costs, the repurchase of their units or, where possible, to convert them, free of charge, into units in another UCITS with similar investment policies and managed by the same investment management company (SAI) or by any other company with which the investment management company (SAI) is linked by common management or control, or by a substantial direct or indirect holding.
- (2) The right referred to in Para (1) shall become effective from the moment that the unit-holders of the merging UCITS and those of the receiving UCITS, have been informed of the proposed merger in accordance with Art. 114 and shall cease to exist five (5) working days before the date for calculating the exchange ratio referred to in Art. 123 Para (1).
- (3) Without prejudice to Para (1) and by way of derogation from Art. 2 Para (1) Letter b), NSC may require or allow the temporary suspension of the subscription, repurchase of units provided that such suspension is justified for the protection of the unit-holders.

SUBSECTION 5
Costs and entry into effect

Art. 122

Except in cases where UCITS have not designated an investment management company (SAI), any legal, advisory or administrative costs associated with the preparation and the completion of the merger shall not be charged to the merging or the receiving UCITS, or to any of their unit-holders.

Art. 123

- (1) The date on which a merger takes effect as well as the date for calculating the exchange ratio of units of the merging UCITS into units of the receiving UCITS and, where applicable, for determining the relevant net asset value for cash payments shall be provided in the common draft terms of merger referred to in Art. 111.
- (2) If the fund rules or deed of constitution of the UCITS require approval by the unit-holders of mergers between UCITS, the dates provided under Para (1) are after the approval of the merger by unit-holders of the receiving UCITS or the merging UCITS.
- (3) The entry into effect of the merger shall be made public through all appropriate means by the receiving UCITS and shall be notified to the competent authorities of the home Member States of the receiving and the merging UCITS.

Art. 124

- (1) A merger effected in accordance with in Art. 3 Para (1) Item 7 point (i) shall have the following consequences:
 - a) all the assets and liabilities of the merging UCITS are transferred to the receiving UCITS or, where applicable, to the depositary of the receiving UCITS; and
 - b) the unit-holders of the merging UCITS become unit-holders of the receiving UCITS and, where applicable, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS;
 - c) the merging UCITS cease to exist on the entry into effect of the merger.
- (2) A merger effected in accordance with Art. 3 Para (1) Item 7 point (ii) shall have the following consequences:
 - a) all the assets and liabilities of the merging UCITS are transferred to the newly constituted receiving UCITS or, where applicable, to the depositary of the receiving UCITS; and
 - b) the unit-holders of the merging UCITS become unit-holders of the newly constituted receiving UCITS and, where applicable, they are entitled to a cash payment not exceeding 10% of the net asset value of their units in the merging UCITS;
 - c) the merging UCITS cease to exist on the entry into effect of the merger.
- (3) The investment management company (SAI) of the receiving UCITS or the receiving self-managed investment company, as applicable, confirms to the depositary of the receiving UCITS that the transfer of assets, and, where applicable, liabilities is complete.
- (4) If the receiving investment company resulting from the merger effected in accordance with Art. 3 Para (1) Item 7 point (i) is situated in Romania, the document amending its deed of constitution shall be registered, according to law, in the registry of commerce in whose jurisdiction the company is situated. The Office of the Registry of Commerce shall transmit the amending document, *ex officio*, to the Official Journal of Romania to be published in Part IV, at the company's expense.
- (5) If the investment company resulting from the merger effected in accordance with Art. 3 Para (1) Item 7 point (ii) is newly established in Romania, it shall be incorporated, according to law, in the registry of commerce in whose jurisdiction it is situated.

SECTION 8

Master UCITS and feeder UCITS

SUBSECTION 1

Scope and approval

Art. 125

- (1) A feeder UCITS defined according to Art. 3 Para (1) Item 11 may hold up to 15% of its assets in one or more of the following:
 - a) ancillary liquid assets in accordance with Art. 83 Para (2);
 - b) financial derivative instruments, which may be used only for hedging purposes, in accordance with Art. 82 Letter f) and Art. 84 Paras (4) to (10);
 - c) movable and immovable property which is essential for the direct pursuit of the business, if the feeder UCITS is an investment company.
- (2) For the purposes of compliance with Art. 84 Paras (6) to (10), the feeder UCITS shall calculate its global exposure related to financial derivative instruments by combining its own direct exposure under Para (1) Letter b) with:
 - a) the master UCITS actual exposure to financial derivative instruments in proportion to the feeder UCITS investment into the master UCITS; or
 - b) the master UCITS potential maximum global exposure to financial derivative instruments provided for in the master UCITS fund rules or deed of constitution of the investment company in proportion to the feeder UCITS investment into the master UCITS.
- (3) The following derogations for a master UCITS shall apply:
 - a) if a master UCITS has at least two feeder UCITS as unit-holders, Art. 2 Para (1) Letter a), shall not apply, giving the master UCITS the choice whether or not to raise capital from other investors;
 - b) If a master UCITS does not raise capital from the public in a Member State other than that in which it is established, but only has one or more feeder UCITS in that Member State, Chapter V Section 1 Subsection 2 or Section 2 Subsection 2 and the provisions of Art. 191 Para (2) shall not apply.

Art. 126

- (1) If NSC is the competent authority of the feeder UCITS, the investment of a feeder UCITS into a given master UCITS which exceeds the limit applicable under Art. 88 Para (1) for investments into other UCITS shall be subject to prior approval by NSC.

- (2) The feeder UCITS shall be informed within fifteen (15) working days following the submission of a complete file, whether or not NSC has approved the feeder UCITS investment into the master UCITS.
- (3) For the purpose of obtaining the approval provided under Para (2), the feeder UCITS shall provide to NSC the following documents:
 - a) the fund rules or deed of constitution of the feeder UCITS and the master UCITS;
 - b) the prospectus and the key investor information referred to in Art. 98 of the feeder and the master UCITS;
 - c) the agreement between the feeder and the master UCITS or the internal conduct of business rules referred to in Art. 127 Para (4);
 - d) where applicable, the information to be provided to unit-holders referred to in Art. 143 Para (1);
 - e) if the master UCITS and the feeder UCITS have different depositaries, the information-sharing agreement referred to in Art. 135 Para (1) between their respective depositaries;
 - f) if the master UCITS and the feeder UCITS have different auditors, the information-sharing agreement referred to in Art. 139 Para (1) between their respective auditors.
- (4) Where the feeder UCITS is established in a Member State other than the master UCITS home Member State, the feeder UCITS shall also provide an attestation by the competent authorities of the master UCITS home Member State that the master UCITS is a UCITS, or an investment compartment thereof, which fulfils the conditions set out in Art. 3 Para (1) Item 12 Letters b) and c).
- (5) Documents shall be provided by the feeder UCITS in the Romanian language or in a language approved by NSC.

SUBSECTION 2

Common provisions for feeder and master UCITS

Art. 127

- (1) The master UCITS shall provide the feeder UCITS with all documents and information necessary for the latter to meet the requirements laid down in this emergency ordinance.
- (2) For the purpose of Para (1), the feeder UCITS shall enter into an agreement with the master UCITS.
- (3) The feeder UCITS shall not invest in excess of the limit applicable under Art. 88 Para (1) in units of that master UCITS until the agreement referred to in the first subparagraph Para (2),

which shall be available, on request and free of charge, to all unit-holders, has become effective.

- (4) In the event that both master and feeder UCITS are managed by the same investment management company (SAI), the agreement may be replaced by internal conduct of business rules ensuring compliance with the requirements set out in this emergency ordinance.
- (5) The master and the feeder UCITS shall take appropriate measures to coordinate the timing of their net asset value calculation and publication in order to avoid market timing in their units, preventing arbitrage opportunities.
- (6) If a master UCITS temporarily suspends the repurchase or subscription of its units, whether at its own initiative or at the request of its competent authorities, each of its feeder UCITS is entitled to suspend the repurchase or subscription of its units notwithstanding the conditions laid down in Art. 104, within the same period of time as the master UCITS.
- (7) If a master UCITS is liquidated, the feeder UCITS shall also be liquidated, unless NSC, as the competent authority of the feeder UCITS home Member State, approves:
 - a) the investment of at least 85% of the assets of the feeder UCITS in units of another master UCITS; or
 - b) the amendment of its fund rules or deed of constitution of the investment company in order to enable the feeder UCITS to convert into a UCITS which is not a feeder UCITS.
- (8) The liquidation of a master UCITS shall take place no sooner than three (3) months after the master UCITS has informed all of its unit-holders and NSC, as the competent authority of the feeder UCITS home Member State, of the binding decision to liquidate.
- (9) If a master UCITS merges with another UCITS or is divided into two or more UCITS, the feeder UCITS shall be liquidated, unless NSC, as the competent authority of the feeder UCITS home Member State, grants approval to the feeder UCITS to:
 - a) continue to be a feeder UCITS of the master UCITS or another UCITS resulting from the merger or division of the master UCITS; or
 - b) invest at least 85% of its assets in units of another master UCITS not resulting from the merger or the division; or
 - c) amend its fund rules or its deed of constitution of the investment company in order to convert into a UCITS which is not a feeder UCITS.
- (10) No merger or division of a master UCITS shall become effective, unless the master UCITS has provided all of its unit-holders and NSC, as the competent authority of the feeder UCITS

home Member State, with the information referred to, or comparable with that referred to, in Art. 114 by sixty (60) days before the proposed effective date.

- (11) Unless NSC has granted approval pursuant to Para (9) Letter a), the master UCITS shall enable the feeder UCITS to repurchase or redeem all units in the master UCITS before the merger or division of the master UCITS becomes effective.

SUBSECTION 3
Agreement and internal conduct of business rules between
feeder UCITS and master UCITS

Art. 128

The agreement between the master UCITS and the feeder UCITS referred to in Art. 127 Para (2) shall include the following provisions:

- a) how and when the master UCITS provides the feeder UCITS with a copy of its fund rules or deed of constitution of the investment company, prospectus and key investor information or any amendment thereof;
- b) how and when the master UCITS informs the feeder UCITS of a delegation of investment management and risk management functions to third parties in accordance with Art. 33;
- c) where applicable, how and when the master UCITS provides the feeder UCITS with internal operational documents, such as its risk management process and its internal control reports;
- d) what details of breaches by the master UCITS of the law, the fund rules or deed of constitution of the investment company and the agreement between the master UCITS and the feeder UCITS the master UCITS shall notify the feeder UCITS of and the manner and timing thereof;
- e) where the feeder UCITS uses financial derivative instruments for hedging purposes, how and when the master UCITS will provide the feeder UCITS with information about its actual exposure to financial derivative instruments to enable the feeder UCITS to calculate its own global exposure as envisaged by Art. 125 Para (2) Letter a);
- f) a statement that the master UCITS informs the feeder UCITS of any other information-sharing arrangements entered into with third parties and where applicable, how and when the master UCITS makes those other information-sharing arrangements available to the feeder UCITS;
- g) a list of which share/unit classes of the master UCITS are available for investment by the feeder UCITS;

- h) the charges and expenses to be borne by the feeder UCITS, and details of any rebate or retrocession of charges or expenses by the master UCITS;
- i) if applicable, the terms on which any initial or subsequent transfer of assets in kind may be made from the feeder UCITS to the master UCITS;
- j) coordination of the frequency and timing of the net asset value calculation process and the publication of the net asset value per share;
- k) coordination of transmission of dealing orders by the feeder UCITS, including, where applicable, the role of transfer agents or any other third party;
- l) where applicable, any arrangements necessary to take account of the fact that either or both UCITS are listed or traded on a secondary market;
- m) where necessary, other appropriate measures to ensure compliance with the requirements of Art. 127 Para (5);
- n) where the units of the feeder UCITS and the master UCITS are denominated in different currencies, the basis for conversion of dealing orders;
- o) settlement cycles and payment details for purchases or subscriptions and repurchases of units of the master UCITS including, where agreed between the parties, the terms on which the master UCITS may settle repurchase requests by a transfer of assets in kind to the feeder UCITS, notably in the cases referred to in Art. 127 Paras (7) and (9);
- p) procedures to ensure enquiries and complaints from unit-holders are handled in compliance with the legal provisions in force;
- q) where the fund rules or deed of constitution of the investment company and prospectus of the master UCITS give it certain rights or powers in relation to unit-holders, and the master UCITS chooses to limit or forego the exercise of all or any such rights and powers in relation to the feeder UCITS, a statement of the terms on which it does so;
- r) the manner and timing of a notification by either UCITS of the temporary suspension and the resumption of repurchase or subscription of units of that UCITS;
- s) arrangements for notifying and resolving pricing errors in the master UCITS;
- ş) where the feeder UCITS and the master UCITS have the same accounting years, the coordination of the production of their periodic reports;
- t) where the feeder UCITS and the master UCITS have different accounting years, arrangements for the feeder UCITS to obtain any necessary information from the master UCITS to enable it to produce its periodic reports on time and which ensure

that the auditor of the master UCITS is in a position to produce an ad hoc report on the closing date of the feeder UCITS in accordance with Art. 139 Para (3);

- t) the manner and timing of notice to be given by the master UCITS of proposed and effective amendments to its fund rules or deed of constitution of the investment company, prospectus and key investor information, if these details differ from the standard arrangements for notification of unit-holders laid down in the master UCITS fund rules, deed of constitution of the investment company or prospectus;
- u) the manner and timing of notice by the master UCITS of a planned or proposed liquidation, merger, or division;
- v) the manner and timing of notice by either UCITS that it has ceased or will cease to meet the qualifying conditions to be a feeder UCITS or a master UCITS respectively;
- w) the manner and timing of notice by either UCITS that it intends to replace its investment management company (SAI), its depositary, its auditor or any third party which is mandated to carry out investment management or risk management functions;
- x) the manner and timing of notice of other changes to standing arrangements that the master UCITS undertakes to provide.

Art. 129

- (1) Where the feeder UCITS and the master UCITS are established in Romania, the agreement between the master UCITS and the feeder UCITS referred to in Art. 127 Para (2) provides that the national law shall apply to the agreement and that both parties agree to the exclusive jurisdiction of the courts of law, in compliance with the legal provisions in force.
- (2) Where the feeder UCITS and the master UCITS are established in Romania, the agreement between the master UCITS and the feeder UCITS referred to in Art. 127 Para (2) provides that the applicable law shall be either the law of the Member State in which the feeder UCITS is established or that it shall be that of the Member State in which the master UCITS is established and that both parties agree to the exclusive jurisdiction of the courts, in compliance with the rules of private international law included in Book VII of Law No. 287/2009 regarding the Civil Code, republished, as subsequently amended.

Art. 130

- (1) The investment management company's (SAI's) internal conduct of business rules referred to in Art. 127 Para (4) shall include procedures to mitigate conflicts of interest that may arise between the feeder UCITS and the master UCITS, or between the feeder UCITS and other unit-holders of the master UCITS, to the extent that these are not sufficiently addressed by the measures applied by the investment management company (SAI) in order to meet requirements of this emergency ordinance.

- (2) The investment management company's (SAI's) internal conduct of business rules shall include at least the provisions of Art. 128 Letters g) to o) and Letters q) to t).

SUBSECTION 4
Liquidation, merger or division of the master UCITS

Art. 131

- (1) no later than two (2) months after the date on which the master UCITS informed the feeder UCITS feeder of the binding decision to liquidate, the feeder UCITS shall submit to NSC the following information:
- a) where the feeder UCITS intends to invest at least 85% of its assets in units of another master UCITS in accordance with Art. 127 Para (7) Letter a):
 - (i) its application for approval for that investment;
 - (ii) its application for approval of the proposed amendments to its fund rules or instrument of incorporation of the investment company;
 - (iii) the amendments to its prospectus and its key investor information in accordance with Art. 95 and 102;
 - (iv) the other documents required pursuant to Art. 126 Paras (3) to (5);
 - b) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with Art. 127 Para (7) Letter b):
 - (i) its application for approval of the proposed amendments to its fund rules or instrument of incorporation of the investment company;
 - (ii) the amendments to its prospectus and its key investor information in accordance with Arts. 95 and 102;
 - c) where the feeder UCITS intends to be liquidated, a notification of that intention.
- (2) By way of derogation from Para (1), where the master UCITS informed the feeder UCITS of its binding decision to liquidate more than five (5) months before the date at which the liquidation will start, the feeder UCITS shall submit to NSC its application or notification in accordance with Para (1) Letter a), b) or c) at the latest three (3) months before that date.
- (3) The feeder UCITS shall inform its unit-holders of its intention to be liquidated without undue delay and as a matter of priority.

Art. 132

- (1) Within fifteen (15) working days following the complete submission of the documents referred to in Art. 131 Para (1) Letter a) or b), respectively, NSC shall inform the feeder UCITS whether it has granted the required approvals.
- (2) On receiving the NSC's approval pursuant to Para (1), the feeder UCITS shall inform the master UCITS of it.
- (3) The feeder UCITS shall take necessary measures to comply with the requirements of Art. 143 as soon as possible after NSC has granted the necessary approvals pursuant to Art. 131 Para (1) Letter a).
- (4) Where the payment of liquidation proceeds of the master UCITS is to be executed before the date on which the feeder UCITS is to start to invest in either a different master UCITS pursuant to Art. 131 Para (1) Letter a), or in accordance with its new investment objectives and policy pursuant to Art. 131 Para (1) Letter b), NSC shall grant approval subject to the following conditions:
 - a) the feeder UCITS shall receive the proceeds of the liquidation:
 - (i) in cash; or
 - (ii) some or all of the proceeds as a transfer of assets in kind where the feeder UCITS so wishes and where the agreement between the feeder UCITS and master UCITS or the internal conduct of business rules and the binding decision to liquidate provide for it;
 - b) any cash held or received in accordance with this paragraph may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS is to start to invest either in a different master UCITS or in accordance with its new investment objectives and policy.
- (5) Where the provisions of Para (4) Letter a) Item (ii) apply, the feeder UCITS may realise any part of the assets transferred in kind for cash at any time.

Art. 133

- (1) The feeder UCITS shall submit to NSC, no later than one (1) month after the date on which the feeder UCITS received the information of the planned merger or division in accordance with Art. 127 Para (10), the following:
 - a) where the feeder UCITS intends to continue to be a feeder UCITS of the same master UCITS:
 - (i) its application for approval thereof;
 - (ii) where applicable, its application for approval of the proposed amendments to its fund rules or instrument of incorporation of the investment company;

- (iii) where applicable, the amendments to its prospectus and its key investor information;
 - b) where the feeder UCITS intends to become a feeder UCITS of another master UCITS resulting from the proposed merger or division of the master UCITS or where the feeder UCITS intends to invest at least 85% of its assets in units of another master UCITS not resulting from the merger or division:
 - (i) its application for approval of that investment;
 - (ii) its application for approval of the proposed amendments to its fund rules or deed of constitution of the investment company;
 - (iii) the amendments to its prospectus and its key investor information in accordance with Arts. 95 and 102;
 - (iv) the other documents required pursuant to Art. 126 Para (3)-(5);
 - c) where the feeder UCITS intends to convert into a UCITS that is not a feeder UCITS in accordance with Art. 127 Para (7) Letter b):
 - (i) its application for approval of the proposed amendments to its fund rules or instrument of incorporation of the investment company;
 - (ii) the amendments to its prospectus and its key investor information in accordance with Arts. 95 and 102;
 - d) where the feeder UCITS intends to be liquidated, a notification of that intention.
- (2) For the purpose of the application of Para (1) Letters a) and b), the following should be taken into account:
 - The wording “continues to be a feeder UCITS of the same master UCITS” refers to cases where:
 - a) the master UCITS is the receiving UCITS in a proposed merger;
 - b) the master UCITS is to continue unchanged as one of the resulting UCITS in a proposed division.
 - The expression “becomes a feeder UCITS of another master UCITS resulting from the merger or division of the master UCITS” refers to cases where:
 - a) the master UCITS is the merging UCITS and, due to the merger, the feeder UCITS becomes a unit-holder of the receiving UCITS;

- b) the feeder UCITS becomes a unit-holder of a UCITS resulting from a division that is materially different to the master UCITS.
- (3) By way of derogation from Para (1), in cases where the master UCITS provided the information referred to in or comparable with Art. 114 to the feeder UCITS more than four (4) months before the proposed effective date, the feeder UCITS shall submit to NSC its application or notification in accordance with one of Letters a) to d) of Para (1) at the latest three (3) months before the proposed effective date of the merger or division of the master UCITS.
- (4) The feeder UCITS shall inform its unit-holders and the master UCITS of its intention to be liquidated without undue delay and as a matter of priority.

Art. 134

- (1) Within fifteen (15) working days following the complete submission of the documents referred to in Art. 133 Para (1) Letters a) to c), respectively, NSC shall inform the feeder UCITS whether it has granted the required approvals.
- (2) Upon receipt of the information that NSC has granted approval according to Para (1), the feeder UCITS shall inform the master UCITS of it.
- (3) After the feeder UCITS has been informed that NSC has granted the necessary approvals pursuant to Art. 133 Para (1) Letter b), the feeder UCITS shall take the necessary measures to comply with the requirements of Art. 143 without undue delay.
- (4) In the cases of Art. 133 Para (1) Letters b) and c), the feeder UCITS shall exercise the right to request repurchase of its units in the master UCITS in accordance with Art. 127 Para (11) and Art. 121 Para (1), where NSC has not granted the necessary approvals required pursuant to Art. 133 Para (1) by the working day preceding the last day on which the feeder UCITS can request repurchase of its units in the master UCITS before the merger or division is effected.
- (5) The feeder UCITS shall also exercise the right provided under Para (4) in order to ensure that the right of its own unit-holders to request repurchase of their units in the feeder UCITS according to Art. 143 Para (1) Letter d) is not affected.
- (6) Before exercising the right referred to in Para (4), the feeder UCITS shall consider available alternative solutions which may help to avoid or reduce transaction costs or other negative impacts for its own unit-holders.
- (7) Where the feeder UCITS requests repurchase of its units in the master UCITS, it shall receive one of the following:
 - a) the repurchase proceeds in cash;

- b) some or all of the repurchase proceeds as a transfer in kind where the feeder UCITS so wishes and where the agreement between the feeder UCITS and the master UCITS provides for it.
- (8) Where the provisions of Para (7) Letter b) apply, the feeder UCITS may realise any part of the transferred assets for cash at any time.
- (9) NSC shall grant approval on the condition that any cash held or received in accordance with Para (7) may be re-invested only for the purpose of efficient cash management before the date on which the feeder UCITS is to start to invest either in the new master UCITS or in accordance with its new investment objectives and policy.

SUBSECTION 5

Depositaries and auditors

Art. 135

- (1) If the master and the feeder UCITS have different depositaries, those depositaries shall enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both depositaries.
- (2) The feeder UCITS shall not invest in units of the master UCITS until the agreement referred to in Para (1) has become effective.
- (3) Where they comply with the requirements laid down in this Chapter, neither the depositary of the master UCITS nor that of the feeder UCITS shall be found to be in breach of any rules that restrict the disclosure of information or relate to data protection where such rules are provided for in a contract or in the legal provisions in force.
- (4) The feeder UCITS or, when applicable, the investment management company (SAI) of the feeder UCITS shall be in charge of communicating to the depositary of the feeder UCITS any information about the master UCITS which is required for the completion of the duties of the depositary of the feeder UCITS.
- (5) The depositary of the master UCITS shall immediately inform the competent authorities of the master UCITS home Member State, the feeder UCITS or, where applicable, the investment management company (SAI) of the feeder UCITS about any irregularities it detects with regard to the master UCITS which are deemed to have a negative impact on the feeder UCITS.

Art. 136

The information-sharing agreement between the depositary of the master UCITS and the depositary of the feeder UCITS referred to in Art. 135 Para (1) shall include the following:

- a) the identification of the documents and categories of information which are to be routinely shared between both depositaries, and whether such information or

documents are provided by one depositary to the other or made available on request;

- b) the manner and timing, including any applicable deadlines, of the transmission of information by the depositary of the master UCITS to the depositary of the feeder UCITS;
- c) the coordination of the involvement of both depositaries in relation to operational matters, including:
 - (i) the procedure for calculating the net asset value of each UCITS, including any measures appropriate to protect against the activities of market timing in accordance with Art. 127 Para (5);
 - (ii) the processing of instructions by the feeder UCITS to subscribe or repurchase units in the master UCITS, and the settlement of such transactions, including any arrangement to transfer assets in kind;
- d) the coordination of accounting year-end procedures;
- e) what details of breaches by the master UCITS of the fund rules or instrument of incorporation of the investment company the depositary of the master UCITS shall provide to the depositary of the feeder UCITS and the manner and timing of their provision;
- f) the procedure for handling the requests for assistance from one depositary to the other;
- g) identification of particular events which ought to be notified by one depositary to the other, and the manner and timing in which this will be done.

Art. 137

- (1) Where the feeder UCITS and the master UCITS have concluded an agreement in accordance with Art. 127 Para (2), the agreement between the depositaries of the master UCITS and the feeder UCITS shall provide that the law of the Member State applying to that agreement in accordance with Art. 129 shall also apply to the information-sharing agreement between both depositaries and that both depositaries agree to the exclusive jurisdiction of the courts of law, in accordance with the provisions of Law No. 105/1992 on the regulation of the private international law relationships, as subsequently amended and supplemented.
- (2) Where the agreement between the feeder UCITS and the master UCITS has been replaced by internal conduct of business rules in accordance with Art. 127 Para (4), the agreement between the depositaries of the master UCITS and the feeder UCITS provides that the law applying to the information-sharing agreement between both depositaries shall be either that of the Member State in which the feeder UCITS is established or, where different, that of the Member State in which the master UCITS is established, and that both depositaries

agree to the exclusive jurisdiction of the courts of the Member State whose law is applicable to the information-sharing agreement.

Art. 138

The irregularities referred to in Art. 135 Para (5) which the depositary of the master UCITS detects in the course of carrying out its function under the national law and which may have a negative impact on the feeder UCITS shall include, but are not limited to:

- a) errors in the net asset value calculation of the master UCITS;
- b) errors in transactions for or settlement of the subscription or repurchase of units in the master UCITS undertaken by the feeder UCITS;
- c) errors in the payment or capitalisation of income arising from the master UCITS, or in the calculation of any related withholding tax;
- d) breaches of the investment objectives, policy or strategy of the master UCITS, as described in its fund rules or instrument of incorporation of the investment company, prospectus or key investor information;
- e) breaches of investment and borrowing limits set out in national law or in the fund rules, deed of constitution of the investment company, prospectus or key investor information.

Art. 139

- (1) If the master and the feeder UCITS have different auditors, those auditors shall enter into an information-sharing agreement in order to ensure the fulfilment of the duties of both auditors.
- (2) The feeder UCITS shall not invest in units of the master UCITS until such agreement has become effective.
- (3) In its audit report, the auditor of the feeder UCITS shall take into account the audit report of the master UCITS. If the feeder and the master UCITS have different accounting years, the auditor of the master UCITS shall make a report on the closing date of the feeder UCITS.
- (4) The auditor of the feeder UCITS shall, in particular, report on any irregularities revealed in the audit report of the master UCITS and on their impact on the feeder UCITS.
- (5) The provisions of Art. 135 Para (3) shall apply accordingly both to the master UCITS auditor and to the feeder UCITS auditor.

Art. 140

- (1) The information-sharing agreement between the auditor of the master UCITS and the auditor of the feeder UCITS referred to in Art. 139 Para (1) shall include the following:

- a) the identification of the documents and categories of information which are to be routinely shared between both auditors;
 - b) whether the information or documents referred to in Letter a) are to be provided by one auditor to the other or made available on request;
 - c) the manner and timing, including any applicable deadlines, of the transmission of information by the auditor of the master UCITS to the auditor of the feeder UCITS;
 - d) the coordination of the involvement of each auditor in the accounting year-end procedures for the respective UCITS;
 - e) identification of matters that shall be treated as irregularities disclosed in the audit report of the auditor of the master UCITS for the purposes of Art. 139 Para (4);
 - f) the manner and deadlines for handling the requests for assistance from one auditor to the other, including a request for further information on irregularities disclosed in the audit report of the auditor of the master UCITS.
- (2) The agreement referred to in Para (1) shall include provisions on the preparation of the audit reports referred to in Art. 139 Para (3) and Art. 94 and the manner and timing for the provision of the audit report for the master UCITS and drafts of it to the auditor of the feeder UCITS.
- (3) Where the feeder UCITS and the master UCITS have different accounting year-end dates, the agreement referred to in Para (1) shall include the manner and timing by which the auditor of the master UCITS is to make the report required by Art. 139 Para (3) and to provide it and drafts of it to the auditor of the feeder UCITS.

Art. 141

The provisions of Art. 137 shall also apply accordingly in the case of conclusion of the agreement between the master UCITS auditor with and the feeder UCITS auditor.

SUBSECTION 6

Compulsory information and marketing communications by the feeder UCITS

Art. 142

- (1) In addition to the information provided for in the NSC regulations, the prospectus of the feeder UCITS shall contain the following information:
- a) a declaration that the feeder UCITS is a feeder of a particular master UCITS and as such permanently invests 85% or more of its assets in units of that master UCITS;
 - b) the investment objective and policy, including the risk profile and whether the performance of the feeder and the master UCITS are identical, or to what extent and

for which reasons they differ, including a description of investment made in accordance with Art. 125 Paras (1) and (2);

- c) a brief description of the master UCITS, its organisation, its investment objective and policy, including the risk profile, and an indication of how the prospectus of the master UCITS may be obtained;
 - d) a summary of the agreement entered into between the feeder UCITS and the master UCITS or of the internal conduct of business rules pursuant to Art. 127 Para (4);
 - e) how the unit-holders may obtain further information on the master UCITS and the agreement entered into between the feeder UCITS and the master UCITS pursuant to Art. 127 Para (3);
 - f) a description of all remuneration or reimbursement of costs payable by the feeder UCITS by virtue of its investment in units of the master UCITS, as well as of the aggregate charges of the feeder UCITS and the master UCITS; and
 - g) a description of the tax implications of the investment into the master UCITS for the feeder UCITS.
- (2) In addition to the information provided for in the NSC regulations, the annual report of the feeder UCITS shall include a statement on the aggregate charges of the feeder UCITS and the master UCITS. The annual and the half-yearly reports of the feeder UCITS shall indicate how the annual and the half-yearly report of the master UCITS can be obtained.
- (3) If NSC is the competent authority of the home Member State of the feeder UCITS, it shall also submit to NSC the key investor information and any amendment thereto, as well as the annual and half-yearly reports of the master UCITS.
- (4) A feeder UCITS shall disclose in any relevant marketing communications that it invests 85% or more of its assets in units of such master UCITS.
- (5) A paper copy of the prospectus, and the annual and half-yearly reports of the master UCITS shall be delivered by the feeder UCITS to investors on request and free of charge.

SUBSECTION 7
Conversion of existing UCITS into feeder UCITS
and change of master UCITS

Art. 143

- (1) If a feeder UCITS already pursues activities as a UCITS, including those of a feeder UCITS of a different master UCITS, it shall provide the following information to its unit-holders:
- a) a statement that NSC, as competent authority of the feeder UCITS home Member State approved the investment of the feeder UCITS in units of such master UCITS;

- b) the key investor information referred to in Art. 98 concerning the feeder and the master UCITS;
 - c) the date when the feeder UCITS is to start to invest in the master UCITS or, if it has already invested therein, the date when its investment will exceed the limit applicable under Art. 88 Para (1); and
 - d) a statement that the unit-holders have the right to request within thirty (30) days the repurchase of their units without any charges other than those retained by the UCITS to cover disinvestment costs; that right shall become effective from the moment the feeder UCITS has provided the information referred to in this paragraph.
- (2) The information referred to in Para (1) shall be provided at least thirty (30) days before the date referred to Para (1) Letter c).
 - (3) In the event that the feeder UCITS has notified the distribution of its units in another Member State, the information referred to in Para (1) shall be provided in the official language, or one of the official languages, of the feeder UCITS host Member State or in a language approved by its competent authorities. The feeder UCITS shall be responsible for producing the translation. That translation shall faithfully reflect the content of the original.
 - (4) The feeder UCITS shall not invest in the units of the given master UCITS in excess of the limit applicable under Art. 88 Para (1), before the period of thirty (30) days referred to in Para (2) has elapsed.

Art. 144

The feeder UCITS shall supply to the unit-holders the information provided under Art. 143, in accordance with Art. 119.

SUBSECTION 8 **Obligations and competent authorities**

Art. 145

- (1) The feeder UCITS shall monitor effectively the activity of the master UCITS.
- (2) In performing the obligation provided under Para (1), the feeder UCITS may rely on information and documents received from the master UCITS or, where applicable, its investment management company (SAI), depositary and auditor, unless there is reason to doubt their accuracy.
- (3) Where, in connection with an investment in the units of the master UCITS, a distribution fee, commission or other monetary benefit is received by the feeder UCITS, its investment management company (SAI) or any person acting on behalf of either the feeder UCITS or the

investment management company (SAI) of the feeder UCITS, the fee, commission or other monetary benefit shall be paid into the assets of the feeder UCITS.

Art. 146

- (1) If NSC is the competent authority of the master UCITS, the master UCITS shall inform NSC without delay on the identity of each feeder UCITS which invests in its units.
- (2) If the master UCITS is established in Romania and the feeder UCITS in another Member State, NSC shall immediately inform the competent authorities of the home Member State with regard to the investment referred to in Para (1).
- (3) The master UCITS shall not charge subscription or repurchase fees from the feeder UCITS for the purchase or sale of units in the master UCITS.
- (4) The master UCITS shall ensure the timely availability of all information that is required in accordance with the legal provisions in force, the fund rules or the deed of constitution of the investment company to the feeder UCITS or, where applicable, its investment management company (SAI) and to the competent authorities, the depositary and the auditor of the feeder UCITS.

Art. 147

- (1) If the master UCITS and the feeder UCITS are established in Romania, NSC shall immediately inform the feeder UCITS of any decision, measure, observation of non-compliance with the conditions of this Chapter related to the master UCITS or, where applicable, to its investment management company (SAI), depositary or auditor.
- (2) If the master UCITS is established in Romania and the feeder UCITS in another Member State, NSC shall immediately inform the competent authorities of the feeder UCITS home Member State of any decision, measure, observation of non-compliance with the conditions of this Chapter related to the master UCITS or, where applicable, to its investment management company (SAI), depositary or auditor.
- (3) If the feeder UCITS is established in Romania and the master UCITS in another Member State, and NSC receives information according to Para (2), it shall immediately inform the feeder UCITS in this respect.

CHAPTER V
Cross-border operations

SECTION 1
NSC – the competent authority of the home Member State

SUBSECTION 1
Freedom of Establishment and Freedom to provide services by investment management companies (SAI) authorised by NSC

Art. 148

- (1) Investment management companies (SAI), Romanian legal persons, may pursue the activities and services for which they were authorised by NSC, in another Member State, either by the establishment of a branch or directly under the freedom to provide services, without any additional requirements such as a minimum level for the capital, obtaining an authorisation or equivalent measures imposed by the competent authority of the host Member State.
- (2) Where investment management companies (SAI) so authorised propose, without establishing a branch in the Member State, only to market in another Member State the units of the UCITS it manages, without proposing to pursue any other activities or services, only the requirements of Section 2 “Special provisions applicable to UCITS authorised by NSC which market their units in another Member State” shall apply.

Art. 149

- (1) Investment management companies (SAI) wishing to establish a branch within the territory of another Member State shall notify NSC accordingly and provide the following information and documents:
 - a) application for authorisation by NSC of a branch within the territory of another Member State;
 - b) the Member State within the territory of which it plans to establish a branch;
 - c) a programme of operations setting out:
 - (i) the activities and services according to Arts. 5 and 6 envisaged;
 - (ii) the organisational structure of the branch;
 - (iii) a description of the risk management process put in place by the investment management companies (SAI);
 - (iv) a description of the procedures and arrangements taken in accordance with Art. 35 Paras (1) and (2);

- d) the address of the host Member State from which documents may be obtained;
 - e) the names of those responsible for the management of the branch;
 - f) the investors' compensation scheme to which the investment management company (SAI) is member, in the case of the activities or services falling within the scope of the rules on investors' compensation;
 - g) a description of the scope of the authorisation issued by NSC and details of any restriction on the types of UCITS that the investment management company (SAI) is authorised to manage, where the investment management company (SAI) wishes to pursue the activity of collective portfolio management referred to in Art. 6;
 - h) proof of payment of the fee for the authorisation of the branch.
- (2) The documents referred to in Para (1) Letters c) and g) shall be sent NSC in the Romanian and English languages.
- (3) Within two (2) months of receiving the information referred to in Para (1), NSC shall order the authorisation of the branch and the notification of the competent authority of the host Member State, and shall inform the investment management company (SAI) accordingly.
- (4) Where the investment management company (SAI) wishes to pursue the activity of collective portfolio management referred to in Art. 6, the notification sent to the competent authority of the host Member State referred to in Para. (3) shall be accompanied by an attestation whereby NSC shall certify that the investment management company (SAI) was authorised in accordance with this emergency ordinance, and also a description of the scope of the authorisation of the investment management company (SAI) and details of any restriction on the types of UCITS that the investment management company (SAI) is authorised to manage.
- (5) By way of exception to Para (3), where, based on the information held and documents provided by the investment management company (SAI), NSC ascertains that the investment management company (SAI) does not have a corresponding administrative capacity or financial standing, by reference to the activities it wishes to pursue within the territory of another Member State, NSC may issue within the time limit referred to in Para (3), a decision refusing the application for authorisation of a branch in the Member State and may refuse notifying the authority of the host Member State, notifying the reasons for refusal to the investment management company (SAI).
- (6) NSC shall inform ESMA și and the European Commission of the number and cases in which it refused authorisation to establish a branch of an investment management company (SAI) in another Member State.

On receipt of a communication from the competent authorities of the host Member State or on the expiry of the period of two (2) months as of the date of the notification sent by NSC in accordance with Art. 149, without receipt of any communication from those authorities, the branch authorised by NSC may start business in the host Member State.

Art. 151

- (1) Where the information communicated in accordance with Art. 149 Para (1) Letters c), d) and e) is amended, the investment management company (SAI) shall give written notice of that change to the competent authorities of the host Member State at least one month before implementing the change, so that NSC may take a decision on that change and inform the competent authority of the host Member State accordingly.
- (2) NSC shall update the information contained in the attestation referred to in Art. 149 Para (4) and inform the competent authority of the investment management company's (SAI) host Member State where there is a change the scope of the investment management company's (SAI) authorisation and in the details of any restriction on the types of UCITS that the investment management company is authorised to manage.

Art. 152

- (1) The activities pursued by the branch established within the territory of another Member State shall comply with the rules of conduct approved by the competent authority of the investment management company's (SAI) host Member State.
- (2) Compliance with the rules of conduct in the branch of the investment management company (SAI), referred to in Para (1), shall be monitored in accordance with the rules established by the competent authority of the investment management company's (SAI) host Member State.

Art. 153

- (1) Any investment management company (SAI) wishing to pursue the activities for which it has been authorised within the territory of another Member State for the first time under the freedom to provide services shall communicate the following information and documents to NSC:
 - a) the Member State within the territory of which the investment management company (SAI) intends to operate; and
 - b) a programme of operations stating the activities and services referred to in Arts. 5 and 6 envisaged which shall include a description of the risk management process put in place by the investment management company (SAI), and also a description of the procedures and arrangements taken in accordance with Art. 35 Paras (1) and (2);
 - c) a description of the scope of the authorisation issued by NSC and details of any restriction on the types of UCITS that the investment management company (SAI) is

authorised to manage, where the investment management company (SAI) wishes to pursue the activity of collective portfolio management.

- (2) The documents referred to in Para (1) Letters b) and n) shall be sent to NSC in the Romanian and English languages.
- (3) NSC shall inform the competent authority of the host Member State of the information referred to in Para (1) and of the compensation scheme intended to protect investors to which the investment management company (SAI) is a member, within one (1) month of sending the same by the investment management company (SAI).
- (4) Where the investment management company (SAI) informs NSC of its intention to pursue in another Member State the activity of collective portfolio management referred to in Art. 6, NSC shall enclose with the notification referred to in Para (3) an attestation that the investment management company (SAI) has been authorised pursuant to the provisions of this emergency ordinance, a description of the scope of the investment management company's authorisation and details of any restriction on the types of UCITS that the investment management company (SAI) is authorised to manage.
- (5) Subject to the provisions regarding the establishment of UCITS in another Member State and/or to those regarding the marketing of units in another Member State, the investment management company (SAI) may start business after the notification is sent by NSC to the competent authority of the host Member State.
- (6) The investment management company (SAI) which pursues activities under the freedom to provide services in another Member State shall comply with the rules of conduct drawn up by NSC in accordance with this emergency ordinance.
- (7) Where the information communicated in accordance with Para (1) Letter b) is amended, the investment management company (SAI) shall give notice of the amendment in writing to NSC and to the competent authority of the host Member State before implementing the change.
- (8) NSC shall update the information contained in the attestation referred to in Para (4) and inform the competent authority of the investment management company's (SAI) host Member State where there is a change the scope of the investment management company's (SAI) authorisation and in the details of any restriction on the types of UCITS that the investment management company is authorised to manage.

Art. 154

- (1) Investment management companies (SAI) authorised by NSC which pursue the activity of collective portfolio management on a cross-border basis by establishing a branch or under the freedom to provide services shall be supervised by NSC for compliance with this emergency ordinance and NSC's regulations issued for the application thereof, which relate to the:

- a) organisation of the investment management company (SAI), including delegation arrangements;
 - b) risk-management procedures;
 - c) prudential rules and supervision;
 - d) procedures referred to in Art. 15;
 - e) investment management company's (SAI) reporting requirements.
- (2) The investment management companies (SAI) referred to in Para (1) which shall manage UCITS authorised in another Member State shall comply with the rules of the UCITS home Member State which relate to the constitution and functioning, similar to those referred to in Art. 167 Para (1) Letters a)-o).
- (3) The investment management companies (SAI) referred to in Para (1) shall comply with the obligations set out in the fund rules or in the deed of constitution of the investment companies, and the obligations set out in the prospectus, which shall be consistent with the applicable law as referred to in Paras (1) and (2).
- (4) Compliance with the obligations referred to in Paras (2) and (3) shall be supervised in accordance with the rules established by the competent authorities of UCITS home Member State.
- (5) The investment management companies (SAI) shall decide and be responsible for adopting and implementing all decisions regarding the structure and organisation of the company, so that it is in a position to comply with the rules which relate to the constitution and functioning of all UCITS, and the obligations set out in the fund rules or in the deed of constitution, and the obligations set out in the prospectus.
- (6) NSC shall monitor the structure and organisation of any investment management company (SAI) to ensure that such company complies with the obligations and rules which relate to the constitution and functioning of all the UCITS it manages.

Art. 155

- (1) The investment management companies (SAI) wishing to manage UCITS authorised in another Member State shall send to the competent authority of UCITS home Member State an application together with the documentation provided for in the legislation of that State, similar to the documentation referred to in Art. 168 Paras (1) and (2).
- (2) NSC shall provide, within ten (10) working days as of receiving the initial application, its opinion if the competent authority of UCITS home Member State asks for clarification and information regarding the documentation sent by the investment management company (SAI) in accordance with Para (1) and, based on the attestation referred to in Art. 149 Para (4) and Art. 153 Para (4), clarification and information as to whether the type of UCITS for

which authorisation is requested falls within the scope of the management company's authorisation.

Art. 156

If notified by the competent authority of the investment management company's (SAI) host Member State of the company's refusal to provide such authority with the requested information or fails to take the necessary steps to put an end to the breach detected by such authority, according to its responsibilities, NSC shall, at the earliest opportunity, take all appropriate measures to ensure that the investment management company (SAI) fulfils its obligations, and shall inform the competent authority of the host Member State accordingly.

SUBSECTION 2

Special provisions applicable to UCITS authorised by NSC which market their units in another Member State

Art. 157

The provisions of this section shall include also the investment compartments of UCITS.

Art. 158

- (1) If a UCITS authorised by NSC proposes to market its units in another Member State, it shall first submit a notification letter to NSC. The notification letter shall include information on arrangements made for marketing units of the UCITS in that Member State, including, where relevant, in respect of share classes/units. In the context of Art. 148 Para (1), the notification letter shall include an indication that the UCITS is marketed in that Member State by the investment management company (SAI) that manages the UCITS.
- (2) The notification letter referred to in Para (1) shall enclose the latest version, in Romanian and the translation in accordance with Letters a) and b), of the following documents:
 - a) the fund rules and the deed of constitution of the investment company, the prospectus and, where appropriate, the latest annual report and any subsequent half-yearly report translated in accordance with the provisions of Art. 159 Para (2) Letters c) and d); and
 - b) the key investor information referred to in Art. 98, translated in accordance with Art. 159 Para (2) Letters b) and d);
 - c) the proof of payment into NSC's account of the fee for the issuance of the attestation referred to in Para (3).
- (3) NSC shall verify whether the documentation is complete in accordance with Paras (1) and (2). NSC shall transmit the complete documentation to the competent authority of the Member State in which the UCITS proposes to market its units, no later than 10 working

days of the date of receipt thereof. NSC shall enclose with the documentation an attestation that the UCITS fulfils the conditions imposed by the national legislation transposing the provisions of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).

- (4) Upon the transmission of the documentation as referred to in Para (3) NSC shall immediately notify the UCITS which may market its units within the territory of the host Member State as from the date of that notification.
- (5) The UCITS which markets units in another Member State shall, in accordance with the regulations in force in the host Member State, ensure that facilities are available for making payments to unit-holders, repurchasing units and making available the information which UCITS are required to provide.
- (6) The notification procedure shall comply with the provisions of Chapter 1 of Commission Regulation (EU) No. 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities.
- (7) The notification letter and attestation referred to in Para (3) shall be sent to the competent authority of the host Member State in a language customary in the sphere of international business.
- (8) The documents referred to in Para (2) shall be sent and stored electronically.
- (9) UCITS shall ensure that the competent authorities of the host Member State have access, by electronic means, to the documents referred to in Para (2) Letters a) and b) and, if applicable, to any translations thereof. UCITS shall ensure that the UCITS keeps those documents and translations up to date. The UCITS shall notify any amendments to the competent authority of the host Member State and shall indicate where those documents can be obtained electronically.
- (10) The electronic version of the documents referred to in Para (2) Letters a) and b) shall be made available to the competent authority of the host Member State on the UCITS website, on the website of the investment management company (SAI) managing the UCITS or on any other website indicated by UCITS in the notification letter or in its updates. The documents made available on the website shall be provided in a form which allows for the view, reproduction and storage of documents at the level of current technologies.
- (11) In the event of a change in the information regarding the arrangements made for marketing communicated in the notification letter in accordance with Para (1), or a change regarding share classes/units to be marketed, the UCITS shall give written notice thereof to the competent authority of the host Member State before implementing the change.

Art. 159

- (1) Where a UCITS authorised by NSC markets its units in a host Member State, it shall provide the investors within the territory of such Member State with all information and documents which UCITS provides to investors in Romania pursuant to the provisions of Chapter IV Section V “Transparency and Marketing Rules”.
- (2) The information and documents referred to in Para (1) shall be provided to investors in compliance with the following provisions:
 - a) without prejudice to the provisions of Chapter IV Section 5 “Transparency and Marketing Rules”, such information and/or documents shall be provided to investors in the way prescribed by the laws and administrative provisions of the UCITS host Member State;
 - b) key investor information referred to in Art. 98 shall be translated into the official language, or one of the official languages, of the UCITS host Member State or into a language approved by the competent authorities of that Member State;
 - c) information or documents other than key investor information referred to in Art. 98 shall be translated, at the choice of the UCITS, into the official language, or one of the official languages, of the UCITS host Member State, into a language approved by the competent authorities of that Member State or into a language customary in the sphere of international business; and
 - d) translations of information under Letters b) and c) shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.
- (3) The requirements set out in Para (2) shall also be applicable to any changes to the information and documents referred in this article.

Art. 160

For the purpose of pursuing its activities, a UCITS may use the same reference to its legal form – “investment company” or “common fund” – in its designation in a UCITS host Member State as it uses in Romania.

SECTION 2

NSC – the competent authority of the host Member State

SUBSECTION 1

Freedom of establishment and freedom to provide services by investment management companies (SAI) authorised in another Member State

Art. 161

- (1) Investment management companies (SAI), authorised by competent authorities of other Member States may pursue in Romania, under the authorisation granted by the competent authority of the home Member State, the activities and services provided by this emergency ordinance, either by the establishment of a branch or directly under the freedom to provide services, without NSC imposing a minimum level for the capital, obtaining an authorisation or equivalent measures.
- (2) Where investment management companies (SAI), without establishing a branch within the territory of Romania, decide only to market in Romania the units of the UCITS it manages, whose home Member State is other than Romania, without proposing to pursue any other activities or services, only the requirements of Section 2 “Special provisions applicable to UCITS of other Member States which market their units in Romania” shall apply.
- (3) In application of Para. (1), investment management companies (SAI) of other Member States and branches thereof shall be registered with NSC’s Registry.
- (4) Investment management companies (SAI) and branches thereof shall be registered with NSC’s Registry based on the attestation whereby NSC, as competent authority of the investment management company’s (SAI) host Member State, takes act of the notifications sent by the competent authorities of the home Member State.
- (5) In the case of branches, the registration with NSC’s Registry shall be conditional upon obtaining the certificate for registration of the said branch with the National Office of the Trade Registry and paying the fee due to NSC.

Art. 162

If a branch of an investment management company (SAI) of another Member State is established in Romania, the notification sent to NSC by the competent authority of the home Member State shall enclose the following:

- a) the branch’s programme of operations setting out:
 - (v) the activities and services according to Arts. 5 and 6 envisaged;
 - (vi) the organisational structure of the branch;
 - (vii) a description of the risk management process put in place by the investment management companies (SAI);
 - (i) a description of the procedures and arrangements taken in accordance with Art. 35 Paras (3) and (4);
- i) the address of the host Member State from which documents may be obtained;
- j) the names of those responsible for the management of the branch;

- b) the investors' compensation scheme to which the investment management company (SAI) is member, in the case of the activities or services falling within the scope of the rules on investors' compensation;
- c) the attestation from the competent authority of the home Member State certifying that the investment management company (SAI) was authorised in accordance with Directive 2009/65/EC, and also a description of the scope of the authorisation of the investment management company (SAI) and details of any restriction on the types of UCITS, if the investment management company (SAI) wishes to pursue the activity of the collective portfolio management referred to in Art. 6.

Art. 163

- (1) Before the branch of an investment management company (SAI) of another Member State starts business, NSC shall, within two months as of the notification sent by the competent authority of the home Member State as referred to in Art. 162, prepare for supervising the compliance of the investment management company with the rules under the responsibility of NSC.
- (2) On receipt of a communication from NSC or on the expiry of the period provided for in Para (1) without receipt of any communication from NSC, the branch may start business.

Art. 164

- (1) The investment management company (SAI) of another Member State which pursues activities by a branch established within the territory of Romania shall comply with the rules of conduct drawn up by NSC.
- (2) NSC shall supervise compliance with the provisions of Para (1).

Art. 165

Where the information communicated in accordance with Art. 162 Para (1) Letters a), b) and c) is amended, the investment management company (SAI) shall give notice of the amendment in writing to the competent authority of the home Member State and to NSC at least one month before implementing the change so that:

- a) the competent authority of the home member State may take a decision on the change and inform NSC accordingly;
- b) NSC may do so under Art. 163 Para (1).

Art. 166

- (1) In the event any investment management company (SAI) of another Member State wishes to pursue the activities for which it has been authorised within the territory of Romania for the first time under the freedom to provide services shall communicate, the notification communicated to NSC by the competent authority of the home Member State shall enclose the following:
 - a) the programme of operations of the investment management company (SAI) stating the activities and services referred to in Arts. 5 and 6 envisaged for Romania, which shall include a description of the risk management process put in place by the investment management company (SAI), and also a description of the procedures and arrangements taken in accordance with Art. 35 Paras (3) and (4);
 - b) the details of any applicable compensation scheme intended to protect investors to which the investment management company (SAI) is member.
- (2) Where the notification referred to in Para (1) states the intention of the investment management company (SAI) to pursue in Romania the activity of collective portfolio management referred to in Art. 6, the notification shall be accompanied by an attestation that the investment management company (SAI) was authorised in accordance with the national legislation of the investment management company's (SAI) home State transposing the provisions of Directive 2009/65/EC, and also a description of the scope of the authorisation of the investment management company (SAI) and details of any restriction on the types of UCITS that the investment management company (SAI) is authorised to manage.
- (3) Subject to the provisions regarding the establishment of UCITS in Romania and/or to those regarding the marketing of units in Romania, the investment management company (SAI) may start business after the notification sent by the competent authority of the home Member State.
- (4) Where the information communicated in accordance with Para (1) Letter a) is amended, the investment management company (SAI) shall give notice of the amendment in writing to NSC and to the competent authority of the home Member State before implementing the change.

Art. 167

- (1) The investment management companies (SAI) authorised in other Member States managing in Romania UCITS authorised by NSC shall comply with the provisions of this emergency ordinance and of the regulations issued for the application hereof which relate to the constitution and functioning of UCITS, namely the rules applicable to:
 - a) the setting up and authorisation of the UCITS;
 - b) the issuance and repurchase of units;
 - c) the investment policies and limits, including the calculation of total exposure and leverage;

- d) the restrictions in borrowings, lending and uncovered sales;
 - e) the valuation of assets and accounting of UCITS;
 - f) the calculation of the issue or repurchase price, and errors in the calculation of the net asset value and related investor compensation;
 - g) the distribution or reinvestment of the income;
 - h) the disclosure and reporting requirements of the UCITS, including the prospectus, key investor information and periodic reports;
 - i) the arrangements made for marketing
 - j) the relationship with unit-holders;
 - k) the merging and restructuring of the UCITS;
 - l) the winding-up and liquidation of the UCITS;
 - m) where applicable, the content of the unit-holder register;
 - o) the licensing and supervision fees regarding the UCITS; and
 - p) the exercise of unit-holders' voting rights and other unit-holders' rights in relation to Letters a) to m).
- (2) The investment management companies (SAI) referred to in Para (1) shall comply with the obligations set out in the fund rules or in the deed of constitution, and the obligations set out in the prospectus, which shall be consistent with the applicable law as referred to in Para (1).
- (3) NSC shall be responsible for supervising compliance with Paras (1) and (2).
- (4) Without being subject to other requirements than those expressly provided herein, in the case of managing UCITS in Romania, the investment management company (SAI) shall decide and be responsible for adopting and implementing all decisions regarding the structure and organisation of the company, so that it is in a position to comply with the rules which relate to the constitution and functioning of all UCITS, and the obligations set out in the fund rules or in the deed of constitution, and the obligations set out in the prospectus.

Art. 168

- (1) The investment management company (SAI) authorised in another Member State which applies to manage a UCITS authorised in Romania shall provide NSC with an application enclosing the following documentation:

- a) the written agreement with the depositary referred to in Art. 53 Para (2); and
 - b) the information on delegation arrangements regarding functions of collective portfolio management referred to in Art. 6 Letters a) and b).
- (2) If the investment management company (SAI) already manages other UCITS of the same type in Romania, reference to the documentation already provided shall be sufficient.
- (3) NSC may ask the competent authority of the investment management company's (SAI) home Member State for clarification and information regarding the documentation referred to in Para (1) and, based on the attestation referred to in Art. 162 Letter e) and Art. 166 Para (2), as to whether the type of UCITS for which authorisation is requested falls within the scope of the investment management company's (SAI) authorisation.
- (4) NSC may, after consulting the competent authority of the investment management company's (SAI) home Member State, refuse the application of the investment management company (SAI) to manage a UCITS headquartered in Romania only if:
- a) the investment management company (SAI) does not comply with the rules falling under NSC's responsibility pursuant to Art. 167;
 - b) the investment management company (SAI) is not authorised by the competent authorities of its home Member State to manage the type of UCITS for which authorisation is requested; or
 - c) the investment management company (SAI) has not provided the documentation referred to in Para (1).
- (5) Any subsequent modification of the documentation referred to in Para (1) shall be notified by the investment management company (SAI) to NSC.

Art. 169

- (1) NSC may, for statistical purposes, require the investment management company (SAI) with its registered office in other Member States with branches within the territory of Romania to report periodically on their activities pursued in Romania.
- (2) The investment management company (SAI) with its registered office in other Member States pursuing business in Romania, through the establishment of a branch or under the freedom to provide services, shall provide NSC with the information necessary for the monitoring of their compliance with the rules in force under the responsibility of NSC that apply to them.
- (3) In application of Para (2), the investment management company (SAI) of another Member State shall provide NSC with the data, reports and information which the regulations

stipulate to be sent by investment management companies (SAI), Romanian legal persons, for the monitoring of their compliance with the same standards.

- (4) The investment management companies (SAI) referred to in Para (2) shall ensure that the procedures and arrangements which shall be implemented pursuant to Art. 35 Paras (3) and (4) enable NSC to obtain the information directly from the investment management companies (SAI).

Art. 170

- (1) Where NSC ascertains that the investment management company (SAI) that has a branch or provides services within the territory of Romania is in breach of one of the rules under NSC's supervisory responsibility, NSC shall require the investment management company (SAI) to put an end to that breach and inform the competent authority of the investment management company's (SAI) home Member State thereof.
- (2) If the investment management company (SAI) referred to in Para (1) refuses to provide NSC with the requested information or fails to take the necessary steps to put an end to the ascertained breach, NSC shall inform the competent authority of the investment management company's (SAI) home Member State accordingly.
- (3) If, despite the measures taken by the competent authority of the investment management company's (SAI) home Member State or because such measures prove to be inadequate or are not available in Romania, the investment management company (SAI) continues to refuse to provide the information requested by NSC, or persists in breaching the rules in force in Romania, NSC may, after informing the competent authority of the home Member State:
 - a) take appropriate measures in accordance with the legislation in force, including under Arts. 179 and 195, to prevent or penalise further irregularities and, in so far as necessary,
 - b) impose restrictions on the investment management company (SAI) regarding any further transaction within the territory of Romania;
 - c) where the service provided in Romania is the management of a UCITS, to require the investment management company (SAI) to cease managing that UCITS;
 - d) to inform ESMA, if it considers that the competent authority of the investment management company's (SAI) home Member State did not act appropriately.
- (4) Any measure adopted pursuant to Para (2) or (3) involving measures or penalties shall be properly justified by ordinance of NSC, and communicated in writing to the investment management company (SAI) concerned. Every such measure shall be subject to the right to apply to the competent courts in Romania.

- (5) Before following the procedure laid down in Para (1), (2) or (3), NSC may, in emergencies, take any precautionary measures necessary to protect the interests of investors and others for whom services are provided. The European Commission, ESMA and the competent authorities of the other Member States concerned shall be informed of such measures at the earliest opportunity.
- (6) At the reasoned request of the European Commission, NSC shall amend or abolish those measures ordered pursuant to Para (5).

Art. 171

If, after consulting NSC, the competent authority of the investment management company's (SAI) home Member State, decides to withdraw the authorisation of the investment management company (SAI) managing a UCITS in Romania, NSC shall take appropriate measures to safeguard investors' interests, inclusively to prevent the investment management company (SAI) concerned from initiating any further transactions within the territory of Romania.

Art. 172

NSC shall inform ESMA and the European Commission of the number and cases in which it refuses authorisation of investment management companies (SAI) of another Member State to manage a UCITS in Romania, and of any measures taken in accordance with Art. 170 Para (3).

SUBSECTION 2

Special provisions applicable to UCITS of other Member States which market their units in Romania

Art. 173

- (1) UCITS authorised in another Member State may market their units in Romania subject to the notification procedure provided by this emergency ordinance.
- (2) The provisions of this section shall include also the investment compartments of UCITS.
- (3) NSC shall not impose any additional requirements or administrative procedures on UCITS authorised in another Member State and which market their units within the territory of Romania in respect of the field governed by this emergency ordinance.
- (4) UCITS authorised in other Member States and which market their units within the territory of Romania shall be registered with NSC's Registry.

Art. 174

- (1) If the UCITS established in another Member State decides to market its units in Romania, the attestation communicated to NSC by the competent authority of that UCITS home Member State attesting that the UCITS meets the requirements of Directive 2009/65/EC shall enclose the complete documentation consisting of:
 - a) the notification letter of UCITS which shall include information on arrangements made for the marketing of the units in Romania, including, where relevant, in respect of share classes/units. In the context of Art. 161 Para (1), the notification letter shall include an indication that the UCITS is marketed by the investment management company (SAI) that manages the UCITS;
 - b) the latest version of the following:
 - (i) the fund rules and the deed of constitution of the investment company, the prospectus and, where appropriate, the latest annual report and any subsequent half-yearly report translated in accordance with the provisions of Art. 176 Para (2) Letters c) and d); and
 - (ii) the key investor information referred to in Art. 98, translated in accordance with Art. 176 Para (2) Letters c) and d).
- (2) The UCITS which markets units in Romania shall, in accordance with the regulations in force, ensure that facilities are available for making payments to unit-holders, repurchasing units and making available the information which UCITS are required to provide.
- (3) The notification procedure shall comply with the provisions of Chapter 1 of Commission Regulation (EU) No. 584/2010.
- (4) The UCITS may market its units in Romania, without any other additional documents or information other than those provided for in Para (1), after the competent authority of the home Member State informs it that the documentation was communicated to NSC.
- (5) The notification letter and attestation referred to in Para (1) shall be sent to NSC in English or Romanian.
- (6) The documents referred to in Para (1) shall be sent and stored electronically.
- (7) UCITS shall ensure that NSC have access, by electronic means, to the documents referred to in Para (1) Letters a) and b) and, if applicable, to any translations thereof. UCITS shall ensure that the UCITS keeps those documents and translations up to date. The UCITS shall notify any amendments to NSC and shall indicate where those documents can be obtained electronically.
- (8) NSC shall indicate an email address to receive notifications regarding the updates or amendments of the documents referred to in Para (1), in accordance with Para. (7).

- (9) UCITS may send NSC the updates or amendments of the documents referred to in Para (1), in accordance with Para (7), by email sent to the address indicated as provided in Para (8). The documents sent by email shall be provided in a form which allows for the viewing, reproduction and storage of documents at the level of current technologies and describes the update or amendment made or contains a new version of the document attached to the message.
- (10) The electronic version of the documents referred to in Para (1) Letters a) and b) shall be made available to NSC on the UCITS website, on the website of the investment management company (SAI) managing the UCITS or on any other website indicated by UCITS in the notification letter or in its updates. The documents made available on the website shall be provided in a form which allows for the viewing, reproduction and storage of documents at the level of current technologies.
- (11) In the event of a change in the information regarding the arrangements made for marketing communicated in the notification letter in accordance with Para (1), or a change regarding share classes/units to be marketed, the UCITS shall give written notice thereof to NSC before implementing the change.

Art. 175

- (1) The information relevant for marketing in Romania the units of UCITS established in other Member States shall be published and updated in the English language on the website of NSC.
- (2) In application of Para (1), the following categories of information shall be published in the form of a description or a description enclosing references to links to source documents:
- a) the definition of the wording “marketing of units of UCITS” or the equivalent legal term provided for in the national legislation or used in practice;
 - b) the requirements of the contents, format and presentation of the marketing communications, including all mandatory warnings and restrictions on the use of certain words or wording;
 - c) without prejudice to Section 5 “Transparency and Marketing Rules”, the details on any further information which must be provided to investors;
 - d) the details regarding the exemption of certain UCITS, UCITS shares classes/units or certain categories of investors, from the application of the rules or requirements governing the methods of marketing applicable in Romania;
 - e) the requirements for reporting and transmitting information to NSC, and the procedure for submission of the updated versions of the necessary documents;

- f) the requirements of fees or any amounts payable to NSC or any other statutory body in Romania, either at the beginning of the marketing or periodically, after that moment;
- g) the requirements regarding the measures which must be made available to unit-holders pursuant to Art. 174 Para (2);
- h) the conditions to stop marketing UCITS units in Romania by UCITS in another Member State;
- i) the detailed content of the information which NSC decides to include in part B of the notification letter regulated by Article 1 of Regulation (EU) No 584/2010;
- j) the email address designated for the purposes of Art. 174 Para (8).

Art. 176

- (1) Where a UCITS authorised in another Member State markets its units in Romania, it shall provide the investors in Romania with all information and documents which UCITS must provide to investors in its home Member state pursuant to the similar provisions of Chapter IV Section 5 “Transparency and Marketing Rules”.
- (2) The information and documents referred to in Para (1) shall be provided to investors in compliance with the following provisions:
 - a) without prejudice to the provisions of the home Member State similar to the provisions of Chapter IV Section 5 “Transparency and Marketing Rules”, such information and/or documents shall be provided to investors in the way prescribed by the laws and administrative provisions of Romania;
 - b) key investor information referred to in Art. 98 shall be translated into Romanian;
 - c) information or documents other than key investor information referred to in Art. 98 shall be translated, at the choice of the UCITS, into Romanian or English;
 - d) translation of information under Letters b) and c) shall be produced under the responsibility of the UCITS and shall faithfully reflect the content of the original information.
- (3) The requirements set out in Para (2) shall also be applicable to any changes to the information and documents referred in this article.
- (4) The frequency of the publication of the issue, sale, re-purchase price of units of UCITS of another Member State shall be subject to the laws and administrative provisions of the UCITS home Member State.

Art. 177

For the purpose of pursuing its activities, a UCITS may use in Romania the same reference to its legal form – “investment company” or “common fund” – in its designation as it uses in its home Member State.

SECTION 3 Relations with Third Countries

Art. 178

- (1) Where investment management companies (SAI) of third countries establish branches within the territory of Romania, the same shall be subject to authorisation by NSC. The authorisation requirements shall be:
 - a) fulfilment by the branch of the requirements provided for in Art. 9;
 - b) authorisation of the company and legal provisions of the home state, in connection with the activities that the investment management company (SAI) wishes to pursue within the territory of Romania through the branch;
 - c) existence in the home country of certain legal provisions for authorisation, supervision, and also organisational structure similar to those in Romania;
 - d) existence of a cooperation arrangement between NSC and the competent authority in the home country;
 - e) fulfilment of the reciprocity conditions in the home country.
- (2) The branches of investment management companies (SAI) of third countries pursuing activities in Romania regulated by this emergency ordinance shall not receive a more favourable treatment than that accorded to branches of investment management companies (SAI) of Member States.
- (3) NSC shall inform ESMA and the European Commission of any difficulties which UCITS encounter in marketing their units in any third country.
- (4) NSC shall issue regulations for the application of this chapter.

CHAPTER VI Cooperation between NSC and the competent authorities of other Member States

Art. 179

- (1) NSC shall cooperate with the competent authorities of other Member States for the purpose of carrying out their duties under Directive 2009/65/EC and of exercising their powers under Directive 2009/65/EC or under national law.

- (2) The purpose of the cooperation with the authorities of other Member States referred to in Para (1) is the supply of assistance and exchange of information both when provisions of the regulations in force in each Member State are breached, and in cases where the conduct under investigation does not constitute an infringement of any regulation.
- (3) NSC shall immediately provide the competent authorities of the Member States with the information required for the purposes of carrying out its duties under Directive 2009/65/EC.
- (4) NSC shall cooperate with ESMA and shall provide without delay all information required to carry out ESMA duties, pursuant to Article 35 of Regulation (EU) No 1.095/2010.
- (5) Where NSC has proof that acts contrary to Directive 2009/65/EC are being or have been carried out by entities not subject to NSC supervision on the territory of another Member State, NSC shall immediately notify the competent authority of that Member State accordingly.
- (6) If NSC receives a notification from a competent authority of another Member State as provided for in Para (5), NSC shall take the appropriate action and inform such authority of the outcome of that action and, if applicable, of the interim developments.

Art. 180

- (1) NSC may request the cooperation of the competent authorities of another Member State in a supervisory activity or for an on-the-spot verification or in an investigation on the territory of the latter within the framework of their powers pursuant to this emergency ordinance.
- (2) Where NSC receives from a competent authority of another Member State a request with respect to an on-the-spot verification or investigation, within the limits of its duties, it shall:
 - a) carry out the verification or investigation itself;
 - b) allow the requesting authority to carry out the verification or investigation; or
 - c) allow auditors or experts to carry out the verification or investigation, in compliance with the legal provisions.
- (3) If NSC requests the cooperation of the competent authorities of one Member State pursuant to Para (1), and the verification or investigation is carried out on the territory of another Member State by the competent authorities of that Member State, NSC may request that its own officials accompany the officials carrying out the verification and investigation.
- (4) If the verification or investigation is carried out on the territory of Romania by a competent authority of another Member State, NSC may request that its own officials accompany the officials carrying out the verification or investigation.

- (5) NSC may refuse to exchange information as provided for in Art. 179 Para (3) or to act on a request for cooperation in carrying out an investigation or on-the-spot verification, only where:
- a) such an investigation, on-the-spot verification or exchange of information might adversely affect the sovereignty, security or public policy of Romania;
 - b) judicial proceedings have already been initiated in respect of the same persons and the same actions before the authorities of Romania;
 - c) final judgment in respect of the same persons and the same actions has already been delivered in Romania.
- (6) NSC shall notify the requesting competent authorities of any decision taken under Para (5), and the motives of its decision.
- (7) NSC may bring to the attention of ESMA situations where a request:
- a) to exchange information has been rejected or has not been acted upon within a reasonable time;
 - b) to carry out an investigation or on-the-spot verification has been rejected or has not been acted upon within a reasonable time; or
 - c) for authorisation for its officials to accompany those of the competent authority of the other Member State has been rejected or has not been acted upon within a reasonable time.

Art. 181

- (1) Without prejudice to cases covered by criminal law, the obligation to observe the professional secrecy provided for in Art. 11 of the Statute of the National Securities Commission, approved by Government Emergency Ordinance No. 25/2002, approved as subsequently amended and supplemented by Law No. 514/2002, as subsequently amended and supplemented, implies that no confidential information which those persons receive in the course of their duties shall be divulged to any person or authority whatsoever, save in summary or aggregate form such that UCITS, investment management companies (SAI) and depositaries cannot be individually identified.
- (2) The obligation to observe the professional secrecy referred to in Para (1) shall not be effective towards the criminal prosecution bodies or courts of law.

Art. 182

- (1) The provisions of Art. 181 shall not prevent NSC from exchanging information with competent authorities of other Member State under Directive 2009/65/EC or other European Union law applicable to UCITS, investment management companies (SAI) or

depositories or from transmitting such information to ESMA under Regulation (EU) No 1.095/2010 or to the European Systemic Risk Board.

- (2) The information referred to in Para (1) shall be subject to the conditions of professional secrecy referred to in Art. 181.
- (3) NSC exchanging information with other competent authorities under this emergency ordinance shall indicate at the time of communication that such information must not be disclosed without its express consent, in which case such information may be exchanged solely for the purposes for which NSC gave its consent.

Art. 183

- (1) NSC may conclude cooperation agreements providing for exchange of information with the competent authorities of third countries only if the information disclosed is subject to guarantees of professional secrecy. Such exchange of information shall be intended for the performance of the tasks of those competent authorities.
- (2) Where the information which shall be provided by NSC originates from authorities of another Member State, it shall not be disclosed without the express consent of the competent authorities which have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their consent.

Art. 184

- (1) NSC may use the confidential information only in the course of its duties in compliance with the legal provisions in force for the purposes of:
 - a) verifying that the conditions governing the authorisation of UCITS, investment management companies (SAI) or of depositories are met and facilitating the monitoring of the conduct of that business, administrative and accounting procedures and internal-control mechanisms;
 - b) imposing penalties;
 - c) conducting administrative appeals against decisions by NSC; and
 - d) pursuing court proceedings.
- (2) The provisions of Arts. 181 and 184 Para (1) shall not preclude the performance by NSC of its supervisory function or the disclosure to bodies which administer compensations schemes of information necessary for the performance of their functions.

Art. 185

- (1) Notwithstanding Arts. 181-183 and Art. 184 Para (1), NSC may, with the aim of strengthening the stability, including the integrity, of the financial system, authorise the exchange of information with:

- a) the authorities responsible for overseeing bodies involved in the liquidation and bankruptcy of UCITS, investment management companies (SAI) or depositaries or in similar procedures;
 - b) the authorities responsible for overseeing persons responsible for carrying out statutory audits of the accounts of insurance undertakings, credit institutions, investment firms and other financial institutions;
 - c) the authorities responsible for overseeing credit institutions, insurance undertakings, other financial institutions and financial markets;
 - d) the bodies involved in the liquidation and bankruptcy of UCITS, investment management companies (SAI) or depositaries or in similar procedures;
 - e) the persons responsible for carrying out statutory audits of the accounts of insurance undertakings, credit institutions and other financial institutions;
 - f) the authorities or bodies responsible under the law for the detection and investigation of breaches of company law;
 - g) ESMA, the European Supervisory Authority (European Banking Authority) established by Regulation (EU) No 1.093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC, European Supervisory Authority (European Insurance and Occupational Pensions Authority) established by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC and European Systemic Risk Board.
- (2) The exchange of information referred to in Para (1) may be performed only if at least the following conditions are met:
- a) the information is used for the purpose of performing the task referred to in Para (1) Letters a) and b);
 - b) the information is used for the purpose of performing the task referred to in Para (1) Letter f);
 - c) the information supplied is subject to the conditions of professional secrecy provided for in Art. 181; and
 - d) where the information to be supplied by NSC originates in another Member State, it is not disclosed without the express consent of the competent authorities which

have disclosed it and, where appropriate, solely for the purposes for which those authorities gave their consent.

Art. 186

- (1) NSC shall communicate to ESMA, the European Commission and to the other Member States the identity of the authorities and bodies referred to in Art. 185 Para (1) Letters a), b) and f) which may receive information pursuant to Art. 185 Para (1).
- (2) In application of Art. 185 Para (2) Letter d), the authorities or bodies provided for in Art. 185 Para (1) Letter f) shall communicate to NSC the names and responsibilities of the persons to whom the information is to be sent.
- (3) Where the authorities or bodies referred to in Art. 185 Para (1) Letter f) perform their task of detection or investigation with the aid, in view of their specific competence, of persons appointed for that purpose and not employed in the public sector the possibility of exchanging information may be extended to such persons under the conditions stipulated in Art. 185 Para (2) and Para (2) of this Article.

Art. 187

- (1) The provisions of Arts. 181-186 shall not prevent NSC from transmitting to central banks, European System of Central Banks and European Central Bank, in their capacity as monetary authorities, confidential information intended for the performance of their tasks. Similarly, NSC may request such authorities to provide the information required for the purposes of carrying out its duties under this emergency ordinance.
- (2) Information received pursuant to Para (1) shall be subject to the conditions of professional secrecy imposed in Art. 181.

Art. 188

- (1) The provisions of Arts. 181-186 shall not prevent NSC from communicating the information referred to in Arts. 181-183 and Art. 184 Para (1) to a clearing house or other similar body recognised under national law for the provision of clearing or settlement services, if NSC decides to communicate the information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by market participants.
- (2) Information received pursuant to Para (1) shall be subject to the conditions of professional secrecy imposed in Art. 181.
- (3) Information received pursuant to Art. 182 may not be disclosed in the circumstances referred to in Para (1) without the express consent of the competent authorities which disclosed it.

Art. 189

- (1) If the request for authorisation is refused, NSC shall issue a reasoned decision, which may be challenged with NSC within maximum thirty (30) days after communication thereof.
- (2) Any decision of NSC prejudicing the rights of a natural or legal person recognised by this emergency ordinance, or the unjustified refusal of NSC to act on the request regarding a right recognised by this emergency ordinance, may be challenged through administrative legal proceedings with the competent court.

Art. 190

- (1) Only if UCITS is authorised by NSC, NSC shall have the power to take action against that UCITS if it infringes the provisions of this emergency ordinance and NSC's regulations issued for the application hereof, the fund rules or the deed of constitution of the investment company.
- (2) If Romania is the host Member State of UCITS, NSC may take action against that UCITS, if it infringes the laws and administrative provisions that fall outside the scope of Directive 2009/65/EC or the requirements referred to in Art. 174 Para (2) and Art. 176.
- (3) Any decision to withdraw authorisation, or any other measure taken against a UCITS, or any suspension of the issue, repurchase of its units imposed upon it, shall be communicated without delay by NSC to the competent authorities of the UCITS home Member State and, if the investment management company (SAI) of a UCITS is established in another Member State, to the competent authorities of the investment management company's (SAI) home Member State.

Art. 191

- (1) NSC may take action against the investment management company (SAI) with its registered office in Romania or in another Member State managing UCITS within the territory of Romania, if it infringes rules under their respective responsibility.
- (2) In the event that a UCITS of another Member State markets its units within the territory of Romania, and NSC has proof to believe that such UCITS is in breach of the obligations arising from the provisions adopted pursuant to Directive 2009/65/EC, which do not confer powers on NSC, it shall refer those findings to the competent authorities of the UCITS home Member State.
- (3) If, despite the measures taken by the competent authorities of the UCITS home Member State or because such measures prove to be inadequate, or because the UCITS home Member State fails to act within a reasonable timeframe, the UCITS persists in acting in a manner that is clearly prejudicial to the interests of the investors of Romania, NSC, may, as a consequence, take either of the following actions:
 - a) after informing the competent authorities of the UCITS home Member State, prevent the UCITS concerned from carrying out any further marketing of its units within the territory of Romania; or

- b) bring the matter to the attention of ESMA.
- (4) NSC shall inform without delay the European Commission and ESMA of any measure taken pursuant to Para (3) Letter a).

Art. 192

- (1) Where the investment management company (SAI) with its registered office in Romania operates in one or more host Member States, through the provision of services or by the establishment of branches, NSC shall collaborate with the competent authorities of all of the Member States concerned.
- (2) NSC shall provide the competent authorities of the Member States referred to in Para (1), on request, with all the information concerning the management and ownership of investment management companies (SAI) that is likely to facilitate their supervision and all information likely to facilitate the monitoring of such investment management companies (SAI). In particular, NSC shall cooperate to ensure that the authorities of the investment management companies' (SAI) host Member State collect the particulars referred to in Art. 169.
- (3) In so far as it is necessary for the purpose of exercising the powers of supervision of the investment management company's (SAI) home Member State, NSC shall inform the competent authorities of the investment management company's (SAI) home Member State of any measures taken by it pursuant to Art. 170 Para (3) which involve measures or penalties imposed on an investment management company (SAI) or restrictions on an investment management company's (SAI) activities.
- (4) In the event NSC is the competent authority of the investment management company's (SAI) home Member State which manages a UCITS established in another Member State, NSC shall, without delay, notify the competent authorities of the UCITS home Member State of any problem identified at the level of the investment management company (SAI) which may materially affect its ability to perform its duties with respect to UCITS and of any breach of the requirements under Chapter II.
- (5) In the event NSC is the competent authority of the UCITS home Member State, NSC shall, without delay, notify the competent authorities of the investment management company's (SAI) home Member State of any problem identified at the level of the UCITS which may materially affect the ability of the investment management company (SAI) to perform its duties or to meet any of the requirements referred to in this emergency ordinance.

Art. 193

- (1) NSC shall ensure that, where the investment management company (SAI) authorised in another Member State pursues business within the territory of Romania through a branch, the competent authorities of the investment management company's (SAI) home Member

State may, after informing NSC, themselves or through the intermediary they instruct for the purpose, carry out on-the-spot verification of the information referred to in Art. 192.

- (2) The provisions of Para (1) shall not affect the right of NSC, in discharging their responsibilities under this emergency ordinance, to carry out on-the-spot verifications of branches established within the territory of Romania.

CHAPTER VII LIABILITIES AND SANCTIONS

Art. 194

The breach of the provisions hereof and of the regulations adopted in the application hereof shall incur the liability according to law.

Art. 195

The following deeds perpetrated by investment management companies (SAI), self-managed investment companies or depositary and/or members of the board of administration or supervisory board, directors or members of the executive board, representatives of the internal control compartment of investment management companies (SAI) or self-managed investment companies, and by natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this emergency ordinance, as the case may be:

- a) breaching the conditions based on which the authorisation/license was granted and the operating conditions provided in Art. 4 Para (3), Arts. 5, 6, 7, Art. 8 Paras (1), (2), (4), (5) and (6), Art. 9 Para (1), Paras (6) and (7), Arts. 12, 13, Art. 14 Para (1), Art. 63 Para (1), Art. 64 Para (4), Art. 65, Art. 67 Paras (1) and (3), Art. 68, Art. 69 Paras (1) and (2), Art. 70, Art. 71 Para (1), Arts. 72, 73, Art. 74 Paras (1) and (2), Art. 75 Para (1), Arts. 76, 77, Art. 78 Para (2), Arts. 79, 80, Art. 84 Para (4), Art. 86 Para (2), Art. 91 Para (2), Art. 103, Art. 104 Paras (1) and (4), Arts. 105-107, Art. 134 Para (9), art. 178 Para (1), Art. 201 Paras (1) and (4) and Art. 202;
- b) breaching the prudential rules provided in Arts. 15-28;
- c) breaching the provisions of Arts. 29-32 on conflict of interest, for the purposes of this emergency ordinance;
- d) breaching the provisions of Arts. 33 on delegation of the activity of collective portfolio management;
- e) breaching the rules of conduct provided in Arts. 34-43;
- f) breaching the provisions of Arts. 44-50 and Art. 51 Para (1) on risk management;

- g) breaching the provisions of Arts. 52-62 on depositaries and the agreement between depositaries and management companies (SAI);
- h) breaching the provisions of Arts. 81-83, Art. 84 Paras (1), (2), (5)-(8), (10), Art. 85 Paras (1)-(7), (9)-(12), Art. 86 Para (1), Art. 87, Art. 88 Paras (1) and (2), Arts. 89, 90, Art. 91 Paras (1), (3) and (4) on UCITS investment policy;
- i) breaching the transparency and reporting requirements provided in Art. 92, Art. 93 Paras (1), (3) and (4) and Art. 94-102;
- j) breaching the provisions of Arts. 114-120 Para (1), Arts. 122-124 on UCITS mergers;
- k) breaching the provisions of Arts. 125-131, Art. 132 Paras (2)-(5), Art. 133, Art. 134 Paras (1)-(8), Art. 135-146 on master UCITS and feeder UCITS;
- l) breaching the provisions of Art. 150, Art. 151 Para (1), Art. 152 Para (1), Art. 153 Paras (5), (6) and (7), Art. 154 Pars (2), (3) and (5), Art. 158 Paras (9), (10) and (11), Art. 174 Para (2) and Art. 176 on cross-border operations;
- m) breaching the provisions of the internal regulations of investment management companies (SAI)/self-managed investment companies, fund rules/deed of constitution of the investment company and/or issue prospectus of UCITS;
- n) breaching the measures established by the authorisation, supervisory, regulatory and control acts or as a result thereof;
- o) using without authorisation the terms “investment management company”, “investment company”, “open-end investment fund”, associated with any of the financial instruments defined under Art. 2 Para (1) Item 11 of Law No. 297/2004, or of any combination thereof;
- p) preventing without right the exercise of the rights granted by law to NSC, and any person’s unjustified refusal to comply with NSC’s requests in the exercise of its prerogatives according to law.

Art. 196

- (1) The perpetration of the contraventions provided in Art. 195 shall be punished as follows:
 - a) in the case of the contraventions provided in Art. 195 Letters a)-m) and Letter p), by:
 - (i) warning or fine from RON 1,000 to RON 50,000 for natural persons;
 - (ii) warning or fine from 0.1% up to 5% of the total turnover achieved in the financial year prior to sanctioning, depending on the seriousness of the perpetrated deed, for legal persons;

- b) in the case of the contraventions provided in Art. 195 Letters n) and o), by:
 - (i) fine from RON 10,000 to RON 100,000 for natural persons;
 - (ii) fine from 0.1% up to 10% of the total turnover achieved in the financial year prior to sanctioning, depending on the seriousness of the perpetrated deed, for legal persons.
- (2) If the turnover achieved in the financial year prior to sanctioning is not available upon sanctioning, the turnover related to the financial year in which the legal person obtained the turnover, which year is immediately prior to the reference year, shall be taken into account. Reference year means the year prior to sanctioning.
- (3) By exception from the provisions of Art. 8 of Government Ordinance No. 2/2001 on the legal regime of contraventions, approved as subsequently amended and supplemented by Law No. 180/2002, as subsequently amended and supplemented, hereinafter referred to as GO No. 2/2001, in the case of the newly-established legal person which did not obtain turnover in the year prior to sanctioning, such person shall be punished by:
 - a) fine from RON 10,000 to RON 1,000,000, in the case of the contraventions referred to in Para (1) Letter a);
 - a) fine from RON 15,000 to RON 2,500,000, in the case of the contraventions referred to in Para (1) Letter b).
- (4) NSC may order also the application of any of the following complementary sanctions:
 - 1. suspension of the authorisation;
 - 2. withdrawal of the authorisation;
 - 3. prohibition for a period comprised between ninety (90) days and five (5) years of the right to hold a position, to pursue an activity or to supply a service for which the authorisation is required subject to the conditions of this emergency ordinance.
- (5) NSC may make public any measure or sanction imposed for failure to observe the provisions hereof and of the regulations adopted for the application hereof.

Art. 197

The performance without authorisation of any activities or operations for which this emergency ordinance requires authorisation shall be deemed a crime and shall be punished according to law.

Art. 198

- (1) The perpetration of the contraventions provided in Art. 195 shall be acknowledged by NSC.

- (2) NSC may delegate agents, authorised to fulfil supervisory, investigative and control duties of the compliance with the legal provisions and with regulations applicable to the capital market, to acknowledge the perpetration of contraventions.
- (3) Upon receipt of the verification acts resulting further to the authorisation, supervisory or control activity, based on which the perpetration of any of the contraventions referred to in Art. 195 is acknowledged, NSC shall order the application of the sanctions provided in Art. 196. Also, by individual acts, NSC may order that investigations be extended, precautionary measures be taken and/or the persons referred to in the verification act be heard.

Art. 199

Upon the individualization of the sanction, the personal and real circumstances of the perpetration of the deed and of the perpetrator's behaviour shall be taken into consideration.

Art. 200

- (1) By derogation from the provisions of Art. 13 of GO No. 2/2001, the limitation period for the application and enforcement of the sanction for contraventions shall be three (3) years from the perpetration of the deed.
- (2) For continued contraventions, the three-year limitation period shall start running from the date the deed was acknowledged.

CHAPTER VIII **Transitional and Final Provisions**

Art. 201

- (1) UCITS shall replace their simplified prospectus drawn up in accordance with the provisions of Law No. 297/2004 with key investor information provided in Art. 98, within six (6) months from the entry into force of this emergency ordinance.
- (2) NSC shall continue to accept the simplified prospectus for UCITS authorised on the territory of other Member States marketing their units within the territory of Romania until 1 July 2012.
- (3) Investment management companies (SAI), UCITS, depositaries and branches of investment management companies (SAI) of third countries which, upon the entry into force of this emergency ordinance, are authorised/licensed by NSC and pursue their business in Romania, shall be deemed to have been authorised/licensed in accordance with the provisions of this emergency ordinance.

- (4) Investment management companies (SAI), UCITS and depositaries shall adapt their deed of constitution and operation to the provisions of this emergency ordinance within twelve (12) months after the entry into force hereof.
- (5) The review procedure of the requests for authorisation/license of UCITS, investment management companies (SAI) or depositary by NSC, for which no decision has been issued until the entry into force of this emergency ordinance shall automatically be terminated.

Art. 202

- (1) NON-UCITS registered with NSC shall entrust the assets to a depositary for safe-keeping, in accordance with the provisions of Chapter III.
- (2) The provisions of Arts. 15, 34, Art. 52 Para (2) Letters b)-d), Arts. 54, 56 and Art. 105 Para (2) shall be applied to NON-UCITS accordingly.
- (3) Units issued by closed-end investment funds referred to in Art. 117 Para (1) of Law No. 297/2004 shall be of one type, registered, dematerialised and shall confer upon their holders equal rights. Units shall be paid in full upon the date of subscription.
- (4) The provisions of Art. 69 Para (2) and Art. 70 shall apply accordingly to closed-end investment funds, and the provisions of Art. 72 Paras (1) and (3), Art. 79 Para (1) and Art. 80 shall apply accordingly to closed-end investment companies.

TITLE II

AMENDMENT AND SUPPLEMENTATION OF CAPITAL MARKET LAW NO. 297/2004

Art. 203

Capital Market Law No. 297/2004, published in the Official Journal of Romania, Part I, No. 571 of 29 June 2004, as subsequently amended and supplemented, is hereby amended and shall read as follows:

1. Under Article 2, Paragraph (1), after Item 1, two new items are hereby inserted, Items 1¹ and 1², and shall read as follows:

“1¹ *tied agent* – any natural or legal person that, under the full and unconditional responsibility of one investment firm on behalf of which it acts under a contract, promotes to clients or prospective clients investment services and/or non-core services, takes over and transmits the instructions or orders from clients regarding financial instruments or investment services, invests financial instruments and/or provides clients or prospective clients with advice regarding such instruments or services;

1² *professional client* – any client having the experience, knowledge and capacity to make the investment decision and to assess the risks therein; to be deemed a professional, the client shall classify into the categories set out

in the regulations issued by NSC and meet the criteria provided in such regulations, in compliance with the European rules;”

2. Under Article 2, Paragraph (1), after Item 9, a new item is hereby inserted, Items 9¹, and shall read as follows:

“9¹. *essential information* – any fundamental and appropriately structured information which must be provided to investors to allow them to understand the nature and the risks related to the issuer, guarantor and securities which are offered to them or which are admitted to trading on a regulated market and, without prejudice to Art. 184, Para (4), Letter b), to decide on the offers of securities to be taken into account. As regards the offer and the securities at issue, the essential information shall include the following elements:

- (i) a short description of the risks associated with the issuer and prospective guarantors and of their main features, including assets, liabilities and financial standing;
- (ii) a concise description of the associated risks and essential features of the investment in the securities at issue, including any rights related to such securities;
- (iii) the general conditions of the offer, including the estimated expenses charged to the investor by the issuer or offeror;
- (iv) the details regarding the admission to trading;
- (v) the grounds of the offer and the intended destination of the income resulting from the offer;”

3. Under Article 2, Paragraph (1), Items 11, 12 and 15 are hereby amended, and shall read as follows:

“11. *financial instruments* shall mean:

- a) securities;
- b) money market instruments;
- c) units of undertakings for collective investment;
- d) options, futures contracts, swaps, forward interest-rate agreements, forward exchange rate, and any derivative contracts in connection with securities, currencies, interest rates or profitability or other

derivatives, financial indices or financial ratios, which may be physically settled or in monetary funds;

- e) options , futures contracts, swaps, forward interest-rate agreements (one rate) and any other derivative contracts in connection with commodities which must be settled in monetary funds, or may be settled in monetary funds, at the request of any party (other than in the case of default or other incident leading to termination);
- f) options, futures contracts, swaps and any other derivative contracts in connection with commodities and which may be physically settled, provided that they are traded on a regulated market and/or within an alternative trading system;
- g) options, futures contracts, swaps, forward contracts and any other derivative contracts in connection with commodities, which may be physically settled, not included in the category of those referred to in Letter f) and not having commercial purposes, having the features of other derivatives, taking into account, *inter alia*, whether they are compensated and settled through recognized clearing houses or are regularly subject to margin calls;
- h) derivative instruments for the transfer of credit risks;
- i) financial contracts for difference;
- j) options, futures contracts, swaps, forward interest-rate agreements, forward exchange rate any other derivative contracts in connection with climatic variables, freight, approvals for emissions of substances or inflation rates or other official economic ratios, which must be settled in monetary funds or may be thus settled at the request of any party (other than in the case of default or other incident leading to termination), and also any derivative contracts in connection with assets, rights, obligations, indices or ratios, not included in this definition, having the features of other derivative financial instruments taking into account, *inter alia*, whether they are traded on a regulated market or within alternative trading systems and are compensated and settled through recognized clearing houses or are regularly subject to margin calls;
- k) other financial instruments qualified as such in accordance with the European legislation;

12. *derivative financial instruments* – the instruments defined under Item 11 Letters d)-j);

15. *qualified investors* – any persons or entities that, according to NSC’s regulations:
 - a) belong to the category of professional clients;
 - b) are treated, upon request, as professional clients or are recognized as eligible counterparties, unless they requested not to be treated as professional clients;”

4. Under Article 2, Paragraph (1), after Item 19, a new item is hereby inserted, Item 19¹, and shall read as follows:

“19¹ *independent operator* – any intermediary which on an organised, frequent and systematic basis concludes transactions on its own account by executing the orders of its clients outside the regulated markets or alternative trading systems;”

5. Under Article 2, Paragraph (1), after Item 20, a new item is hereby inserted, Item 20¹, and shall read as follows:

“20¹ *qualifying holding* – any direct or indirect holding in an investment firm (SSIF) of at least 10% of the share capital or of the voting rights or which makes it possible to exercise a significant influence over the management of an investment firm (SSIF) in which such holding subsists;”

6. Under Article 2, Paragraph (1), Item 24 is hereby abrogated.

7. Under Article 2, after Paragraph (3), a new paragraph is hereby inserted, Paragraph (3¹), and shall read as follows:

“(3¹) NSC’s acts are enforceable.”

8. Under Article 2, Paragraph (5), Letter c) is hereby amended, and shall read as follows:

“c) request the competent court to order the call of the general meeting of shareholders if the provisions of Letter b) are not observed. The court shall settle such requests as a matter of urgency and with priority;”

9. Under Article 4, after Paragraph (1), a new paragraph is hereby inserted, Paragraph (1¹), and shall read as follows:

“(1¹) Investment firms (SSIFs) may delegate the following activities to tied agents:
 - a) promotion of investment services and/or non-core services;

- b) reception and transmission of orders from clients or prospective clients;
- c) provision of investment advice in connection with the financial instruments and investment services and/or non-core services provided by investment firms (SSIFs)."

10. Under Article 4, Paragraph (3) is hereby amended, and shall read as follows:

"(3) NSC shall issue regulations on the authorisation and registration of investment services and activities agents and tied agents in the NSC's Registry, and on their incompatibility cases, according to law."

11. Under Article 5, Paragraph (1) is hereby amended, and shall read as follows:

"Art. 5

(1) The investment services and activities regulated by this law are the following:

- a) the reception and transmission of orders for one or more financial instruments;
- b) the execution of orders on behalf of clients;
- c) dealing on own account;
- d) portfolio management;
- e) investment advice;
- f) underwriting and/or placing financial instruments based on a firm commitment;
- g) placing financial instruments without a firm commitment;
- h) administration of an alternative trading system."

12. Under Article 5, after Paragraph (1), a new paragraph is hereby inserted, Paragraph (1¹), and shall read as follows:

"(1¹) The non-core services regulated by this law are the following:

- a) safekeeping and administration of financial instruments for the account of clients, including custodianship and related services, such as cash/collateral management;

- b) granting credits or loans to an investor, to allow him to carry out a transaction in one or more financial instruments, where the investment firm granting the credit or loan is involved in the transaction;
- c) advice to entities on capital structure, industrial strategy and related matters, and advice and services relating to mergers and purchase of entities;
- d) foreign exchange services in connection with the investment services rendered;
- e) investment research and financial analysis or other forms of general recommendation on trading with financial instruments;
- f) services related to underwriting of financial instruments based on a firm commitment;
- g) the investment services and activities referred to in Para (1), and also the non-core services such as those provided in Letters a) to f) related to the underlying asset of the derivative instruments included in Art. 2, Para (1), Item 11, Letters e), f), g) and j), if such are in connection with the provisions regarding the investment services and activities and non-core services.”

13. Under Article 5, Paragraph (2) is hereby amended, and shall read as follows:

“(2) NSC shall issue regulations regarding the services and activities supplied in accordance with Para (1).”

14. Under Article 8, Paragraph (1), Letters c) and h) are hereby amended, and shall read as follows:

“c) its object of activity consists of the supply of investment services and activities, and also the supply of non-core services, as the case may be, provided in Art. 6, supplied by the firm;”

h) the shareholders holding a qualifying holding in investment firms (SSIFs) meet the criteria established by the NSC’s regulations on the procedure, rules and criteria applicable to the prudential assessment of acquisitions and increase of the holdings in an investment firm;”

15. Under Article 12, after Paragraph (3), a new paragraph is hereby inserted, Paragraph (4), and shall read as follows:

“(4) The investment firm (SSIF), which received the authorisation to supply only the investment services and activities mentioned in Art. 5 Para (1) Letters d)

and e), may be authorised to operate UCITS as investment management companies, if they waive the authorisation obtained according to Art. 8.”

16. Under Article 24, Paragraph (2) is hereby amended, and shall read as follows:

“(2) The creditors of an intermediary may not use investors’ assets in any manner whatsoever, including in the case of insolvency. An intermediary may not use the financial instruments of a client to carry out the transactions concluded on its own account or on the account of a different client, unless previously agreed by such client in writing. The funds of a client may be used to carry out the transactions concluded on its own account only by credit institutions.”

17. Under Article 24, after Paragraph (2), a new paragraph is hereby inserted, Paragraph (3), and shall read as follows:

“(3) Investors’ assets shall be exempted from the enforcement through garnishment if the enforcement was initiated against the intermediary.”

18. Under Article 37, Letter a) is hereby amended, and shall read as follows:

“a) in a Member State, in accordance with the provisions of Arts. 38 and 39;”

19. After Article 39, a new article is hereby inserted, Art. 39¹, and shall read as follows:

“Art. 39¹

(1) Any Romanian legal person investment firm (SSIF) may perform the activities provided in the authorisation granted by NSC on the territory of a non-Member State, only by establishing a branch. For the purposes hereof, all headquarters established on the territory of a non-Member State shall be deemed a sole branch.

(2) The establishment of a branch in a non-Member State shall be subject to the prior approval of NSC, according to the regulations issued by it.

(3) NSC may reject the application for approval of the establishment of the branch if, based on the information available to it and on the documentation provided by the Romanian legal person investment firm (SSIF), it deems that:

a) the investment firm (SSIF) does not have adequate management or an appropriate financial standing, by reference to the activity intended to be carried out by the branch;

- b) the legislative framework existing in the non-Member State and/or its manner of application prevents NSC from exercising its supervisory duties;
 - c) the evolution of the investment firm's (SSIF) financial prudential ratios is not appropriate, or the investment firm (SSIF) fails to fulfil other requirements established herein or by the regulations issued for its application.
- (4) Any change to the elements taken into account upon the approval of establishment of the branch shall be subject to NSC's prior approval."
- 20. Articles 53-113 are hereby abrogated.
- 21. Under Article 114, Paragraphs (3) and (4) are hereby abrogated.
- 22. Under Article 117, Paragraph (2) is hereby abrogated.
- 23. Under Article 119, Paragraph (1) is hereby abrogated.
- 24. Article 121 is hereby abrogated.
- 25. Under Article 129, Paragraph (4) is hereby amended and shall read as follows:
 - "(4) If the requirements regarding the shareholders' integrity are not met or NSC approval is not obtained, the voting right attached to the shares held in breach of the provisions of Paras (1) and (2) is suspended as of right, and the procedure established under Art. 283 shall be applied."
- 26. Article 145 is hereby amended and shall read as follows:
 - "Art. 145
 - (1) The ownership right over financial instruments, other than derivatives, shall be transferred, on the settlement date, within the clearing-settlement system, based on the principle delivery against payment.
 - (2) The purchased securities may be alienated starting from their purchase, according to the rules of the market on which such securities are traded and to the rules of the central depository."
- 27. Under Article 151, Paragraphs (4), (5) and (6) are hereby amended, and shall read as follows:
 - "(4) The financial guarantees and movable mortgages over the securities shall be established and enforced according to the legal regulations in force.

- (5) The forced execution of the financial guarantees over the securities, of movable mortgages over the securities or, as the case may be, the forced execution initiated further to the establishment of the garnishment/seizure proceedings over the securities shall be carried out according to the regulations issued by NSC, in observance of the legal provisions in force.
- (6) The securities forming the object of a movable mortgage or garnishment/seizure may be acquired only if the claim was not recovered by the sale of such securities through an intermediary, on a regulated market or within an alternative trading system.”

28. Article 168 is hereby amended and shall read as follows:

“Art. 168

- (1) For the purposes of this chapter:
 - a) *institution* is an entity participating in the clearing-settlement system and which has the obligation to execute the financial obligations resulting from the transfer orders issued within such system, defined under Art. 2 Para (1) Item 2 of Law No. 253/2004, as subsequently amended and supplemented;
 - b) *participant* is an institution, a central counterparty, a settlement agent, a clearing house or a clearing-settlement system operator. According to the system rules, the participant may act at the same time in all or only in some of such capacities;
 - c) *indirect participant* is an institution, a central counterparty, a settlement agent, a clearing house or a clearing-settlement system operator, that has a contractual relationship with a participant in the system executing transfer orders and based on which the indirect participant may send transfer orders to such system, provided that the indirect participant is known to the clearing-settlement system operator. To prevent the systemic risk, an indirect participant may be deemed a participant, without such limiting the participant’s responsibility through which the indirect participant sends transfer orders to such clearing-settlement system;
 - d) *clearing-settlement system operator* is the entity or entities responsible from a legal standpoint for the operation of a clearing-settlement system. A clearing-settlement system operator may inclusively act as a settlement agent, central counterparty or clearing house;

- e) *interoperable clearing-settlement systems* are two or more clearing-settlement systems whose system operators concluded arrangements based on which the execution of the transfer orders from one system to another is possible;
 - f) *settlement agent* is an entity providing the other participants in the clearing-settlement system with settlement accounts whereby the transfer orders in the system are settled and which may grant credits to such intermediaries and/or central counterparty, for settlement purposes;
 - g) *insolvency proceedings* are the proceedings provided in Art. 2 Para (1) item 10 of Law No. 253/2004, as subsequently amended and supplemented.
- (2) The provisions of this chapter shall apply to the clearing-settlement system, defined under Para (3), to all participants in the clearing-settlement systems and to all financial guarantees established within the participation in a clearing-settlement system.
- (3) The clearing-settlement system is a system defined under Art. 2 Para (2) item 1 of Law No. 253/2004, as subsequently amended and supplemented, authorised by NSC or by another competent authority of the Member States of the European Economic Area, as the case may be. An arrangement concluded among the operators of interoperable clearing-settlement systems does not constitute a system.”
29. Under Article 169, Paragraphs (2), (3) and (4) are hereby amended, and shall read as follows:
- “(2) Transfer orders and the netting are valid, produce legal effects and are binding upon third parties even if insolvency proceedings are initiated against a participant, provided that such transfer orders were introduced in the system prior to the initiation of the insolvency proceedings. Such shall apply inclusively if the insolvency proceedings are initiated against a participant in the clearing-settlement system at issue or in an interoperable system or against the operator of an interoperable system which is not a participant, provided that such transfer orders were placed into the system prior to the initiation of the insolvency proceedings.
- (3) By exception, if the transfer orders are introduced into the system after the initiation of the insolvency proceedings and are executed on the date of initiation of the insolvency proceedings, such transfer orders and the netting produce legal effects and are binding upon third parties, provided that the clearing-settlement system operator may evidence, after the netting, that it was not aware or should have been aware of the fact that the insolvency proceedings were initiated.

- (4) No legal rule, regulation, provision or practice regarding the cancellation of certain contracts and transactions concluded before the initiation of the insolvency proceedings may lead to the cancellation of the transfer orders, or nettings, payments or subsequent transfers referred to in Paras (1) and (2).”
30. Under Article 169, after Paragraph (4), a new paragraph is hereby inserted, Paragraph (5), and shall read as follows:
- “(5) In the case of the interoperable clearing-settlement systems, each system shall establish, in its own system rules, the moment transfer order is introduced into the system, so that to ensure, to the extent possible, the coordination in this respect of the rules of all interoperable systems at issue. The rules of a clearing-settlement system regarding the moment when transfer orders are introduced into the system shall not be affected by the rules of the other clearing-settlement systems with which such is interoperable, except for the case in which the rules of all interoperable clearing-settlement systems include express provisions in this respect.”
31. Article 171 is hereby amended and shall read as follows:
- “Art. 171
- (1) Insolvency proceedings shall not apply retroactively to the participants’ rights and obligations resulting from/or in connection with their participation in the clearing-settlement system, established before opening such proceedings. Such provision shall apply inclusively to the rights and obligations of a participant in or of an operator of an interoperable clearing-settlement system which is not a participant.
- (2) After opening the insolvency proceedings against a participant in or an operator of an interoperable clearing-settlement system, the settlement agent, on behalf and for the account of the participant may use:
- a) funds and financial instruments available in the participant’s settlement account;
- b) financial guarantees established to fulfil the obligations of the participant in connection with the participation in the system,
- to fulfil the assumed obligations in connection with the participation in the system, concluded before opening the insolvency proceedings.
- (3) The financial guarantees and the deposits established in the clearing-settlement system or in an interoperable clearing-settlement system by a participant in or operator of the clearing-settlement system against whom

the insolvency proceedings were opened, shall not be affected by such proceedings. The assets of the participant in or operator of the clearing-settlement system remaining after the fulfilment of the assumed obligations in connection with the participation in the clearing-settlement system or in an interoperable clearing-settlement system, before opening the insolvency proceedings, may be used within such proceedings.

- (4) If the insolvency proceedings are opened against a participant in or operator of the clearing-settlement system, the financial instruments and/or the monetary funds held on behalf and for the account of its investors shall not be subject to any claims by or payments to the creditors of such participant in or operator of the clearing-settlement system.”

32. Under Article 175, Paragraph (1) is hereby amended and shall read as follows:

“Art. 175

The public offer notice may be launched subsequent to the issuance of the decision approving the prospectus/offer document by NSC and shall be published according to the applicable European regulations regarding the contents and publication of prospectuses, and dissemination of publicity-related releases.”

33. Under Article 175, Paragraph (3), Letter a) is hereby amended and shall read as follows:

“a) it is published in at least one printed or online newspaper, according to the applicable European regulations regarding the contents and publication of prospectuses, and dissemination of publicity-related releases;”

34. Under Article 175, after Paragraph (3), a new paragraph is hereby inserted, Paragraph (3¹), and shall read as follows:

“(3¹) The offeror or the persons in charge with the prospectus, publishing the prospectus according to the modalities referred to in Para (3) Letter a) or b), shall also publish the prospectus in electronic form according to the modalities provided in Letter c).”

35. Article 176 is hereby amended and shall read as follows:

“Art. 176

- (1) The offer becomes mandatory when the notice or the prospectus/offer document is published, as the case may be, if the latter is published prior to the notice, according to the applicable regulations.

- (2) The prospectus or the offer document shall be available to the public subsequent to its approval by NSC, in the form and with the contents approved by NSC.”

36. Article 179 is hereby amended and shall read as follows:

“Art. 179

- (1) Any new significant event or any clerical error or inaccuracy regarding the information included in the prospectus, which may influence the assessment of the securities and which occurs or is established between the approval of the prospectus and the closing of the public offer or, as the case may be, the beginning of trading on a regulated market, shall be mentioned in a supplement to the prospectus.
- (2) Such supplement shall be approved by NSC within maximum seven (7) working days and shall be made public at least under the same conditions as the initial prospectus, inclusively by the publication of a notice, subject to the conditions provided in Art. 175 Para (1).
- (3) The summary and any translation thereof shall be amended or supplemented, if necessary, to encompass the new information of the supplement.”

37. Under Article 183, Paragraph (3) is hereby amended and shall read as follows:

“(3) By way of derogation from the provisions of Para (1), the preparation and publication of a prospectus shall not be mandatory in the following cases:

a) for the following types of offers:

1. an offer of securities addressed exclusively to qualified investors; and/or
2. an offer of securities addressed to less than 150 natural or legal persons, other than qualified investors, per Member State; and/or
3. other offers of securities specified by NSC regulations, according to law;

b) for the following types of securities:

1. offered, allotted or which shall be allotted upon a merger or division, provided that a document is available including the information deemed by NSC as equivalent to that of the

prospectus, taking into account the requirements of European legislation;

2. the dividends paid to the existing shareholders as shares of the same class as those giving rights to such dividends, provided that a document is available including information about the number and the nature of shares, and the reasons and characteristics of the offer;

c) in other cases as provided by the regulations issued by NSC, according to law.”

38. Under Article 184, Paragraphs (2) and (3) are hereby amended and shall read as follows:

“(2) The offer prospectus shall be valid twelve (12) days after its approval by NSC, and it may be used for several securities issues within this period, provided that such is updated according to Art. 179.

(3) The prospectus shall also include a summary. The summary shall, briefly and in a non-technical language, provide essential information in the language in which the prospectus was initially drafted. The form and contents of the summary of the prospectus shall provide, together with the prospectus, appropriate information regarding the essential elements of the securities to help investors decide whether to invest in such securities or not.”

39. Under Article 184, the introductory part of Para (4) is hereby amended and shall read as follows:

“The summary shall be drafted in a standard form so as to facilitate the comparison with the summaries related to similar securities and shall include essential information regarding such securities to help investors decide whether to invest in such securities or not. The summary shall also include a warning of the prospective investors regarding the fact that:”

40. Under Article 185, Paragraphs (2) and (4) are hereby amended and shall read as follows:

“(2) The issuer’s presentation sheet, approved by NSC, shall be valid for maximum twelve (12) months. The presentation sheet, updated according to Art. 179 or Art. 185 Para (4), together with the note regarding the securities and the summary, shall be deemed a valid prospectus.

(4) In the situation referred to in Para (3), the note regarding the features of the securities offered or proposed to be admitted to trading on a regulated market shall include also the information which should be included in the issuer’s presentation sheet, if a significant change or a new event occurs

which might affect the assessment of investors subsequent to the approval of the latest updated version of the presentation sheet, except for the case in which such information is provided in a supplement according to Art. 179. The note regarding the features of the securities and the summary shall be submitted to NSC for approval separately.”

41. Article 186 is hereby amended and shall read as follows:

“Art. 186

- (1) The prospectus may include information by reference to one or more documents published prior to or simultaneously and approved by NSC or submitted to NSC according to Title V, Chapter I, Sections 1 and 2 and Title VI, Chapters II and V. Such information shall be the latest information available to the issuer.
- (2) If information is included in the prospectus as provided in Para (1), a cross-reference table shall be drafted to give the investors the possibility to identify such information.
- (3) The summary of the prospectus may not include information by reference to other documents according to the provisions of Para (1).”

42. Article 187 is hereby amended and shall read as follows:

“Art. 187

The prospectus shall include information regarding the issuer and the securities which are offered to public or admitted to trading on a regulated market. The minimum contents of the information to be included in the prospectus, their presentation form, according to the type of securities forming the object of the offer and the documents which must accompany the prospectus, shall be established through the applicable European regulations regarding the contents and publication of prospectuses, and dissemination of publicity-related releases or, as the case may be, through NSC regulations.”

43. Under Article 189, Paragraph (2) is hereby amended and shall read as follows:

- “(2) If the prospectus refers to a public offer of securities, the investors who expressed their will to underwrite securities prior to the publication of a supplement to the offer prospectus, shall have the right to withdraw the subscriptions made within two (2) working days from the publication of such supplement, provided that the new factor, error or inaccuracy referred to in Art. 179 occurred prior to the closing of the public offer and transfer of the securities. Such period may be extended by the issuer or offeror, according

to NSC regulations. The time limit of the exercise of the withdrawal right shall be mentioned in the supplement.”

44. Article 192 is hereby amended and shall read as follows:

“Art. 192

- (1) The legal provisions regarding public sale offerings shall not be mandatory in the case of the units issued by UCITS, and also in other situations established by NSC’s regulations.
- (2) NSC shall issue regulations regarding the cross-border public offers, according to the applicable European legislation.”

45. Article 204 is hereby amended and shall read as follows:

“Art. 204

- (1) The price of the mandatory takeover bid shall be at least equal to the highest price paid by the offeror or by the persons acting in concert with the offeror over the twelve-month period prior to the submission of the offer documentation to NSC.
- (2) The provisions of Para (1) shall not apply if the offeror or the persons acting in concert with the offeror did not acquire shares of the company which is the subject of the mandatory takeover bid over the twelve-month period prior to the submission of the offer documentation to NSC, or if NSC, *ex officio* or further to a notification in this respect, determined on grounded reasons that the operations whereby shares were acquired may influence the accuracy of the manner in which the price was established.
- (3) Subject to the conditions of Para (2) and if the terms provided in Art. 203, and Art. 205 regarding the submission of the offer documentation to NSC, are complied with, the price offered within the takeover bid shall be at least equal to the highest price of the following values determined by an authorised evaluator, according to law, and appointed by the offeror:
 - a) the weighted average trading price related to the last twelve (12) months prior to the submission of the offer documentation to NSC;
 - b) the value of the company’s net assets divided by the number of shares outstanding, according to the latest audited financial statements;
 - c) the value of the shares resulting from an expert evaluation carried out according to international evaluation standards.

- (4) If the terms provided in Art. 203 or, as the case may be, Art. 205, are not observed and the offeror or the persons acting in concert with the offeror did not acquire shares of the company which is subject of the mandatory takeover bid over the twelve-month period prior to the submission of the offer documentation to NSC, or if NSC, *ex officio* or further to a notification in this respect, determined on grounded reasons that the operations whereby shares were acquired may influence the accuracy of the manner in which the price was established, the price offered within the mandatory takeover bid shall be at least equal to the highest price of the following values determined by an authorised evaluator, according to law, and appointed by the offeror as follows:
- a) the weighted average trading price related to the last twelve (12) months prior to the submission of the offer documentation to NSC;
 - b) the weighted average trading price related to the last twelve (12) months prior to the date when the position exceeding 33% of the voting rights was reached;
 - c) the highest price paid by the offeror or the persons acting in concert with the offeror in the last twelve (12) months prior to the date when the position exceeding 33% of the voting rights was reached;
 - d) the value of the company's net assets divided by the number of shares outstanding, according to the latest audited financial statements prior to the submission date of the offer documentation to NSC;
 - e) the value of the company's net assets divided by the number of shares outstanding, according to the latest audited financial statements prior to the date when the position exceeding 33% of the voting rights was reached;
 - f) the value of the shares resulting from an expert evaluation carried out according to international evaluation standards.
- (5) If the provisions of Para (2) are not applicable and the terms provided in Art. 203 or, as the case may be, Art. 205 are not complied with, the price offered within the mandatory takeover bid shall be at least equal to the highest price of the following values:
- a) the highest price paid by the offeror or the persons acting in concert with the offeror in the last twelve (12) months prior to the submission date of the offer documentation to NSC;

- b) the highest price paid by the offeror or the persons acting in concert with the offeror in the last twelve (12) months prior to the date when the position exceeding 33% of the voting rights was reached;
 - c) the weighted average trading price, related to the past twelve (12) months prior to the submission date of the offer documentation to NSC;
 - d) the weighted average trading price related to the last twelve (12) months prior to the date when the position exceeding 33% of the voting rights was reached.
- (6) If NSC, *ex officio* or further to a notification in this respect, determines on grounded reasons that the price established by an authorised evaluator, according to law, in any of the situations referred to in Para(4), may not lead to a fair price within the mandatory takeover bid, NSC may request a re-evaluation.
- (7) The evaluation report whereby the price is determined within the mandatory takeover bid shall be made available to the shareholders of the issuing company, subject to the same conditions as the offer document.”

46. Under Article 206, Paragraph (1) is hereby amended and shall read as follows:

“Art. 206

- (1) After a public purchase offer is made and addressed to all shareholders and for all their holdings, the offeror shall have the right to request the shareholders who did not to subscribe within the offer, to sell it such shares, at a fair price, provided that it is in any of the following situations:
- a) it holds shares representing at least 95% of the total number of shares of the share capital granting voting rights and at least 95% of the voting rights which may be actually exercised;
 - b) it purchased, within the public purchase offer addressed to all shareholders and for all their holdings, shares representing at least 90% of the total number of shares of the share capital granting voting rights and at least 90% of the voting rights referred to in the offer.”

47. Under Article 206, after Paragraph (1), a new paragraph is hereby inserted, Para (1¹), and shall read as follows:

“(1¹) The offeror may exercise its right referred to in Para (1) within three (3) months from the closing date of the bid.”

48. Under Article 206, Paragraphs (3) and (4) are hereby amended and shall read as follows:
- “(3) The price offered within a voluntary takeover bid/public purchase offer whereby the offeror purchased, through the subscriptions within the offer, shares representing at least 90% of the total number of shares of the share capital granting voting rights referred to in the offer, shall be deemed a fair price. In the case of a mandatory takeover bid, the price offered within the offer shall be deemed a fair price.
- (4) If the provisions of Para (3) are not applicable, the price shall be determined by an authorised evaluator, according to law, according to international evaluation standards.”
49. Under Article 206, after Paragraph (4), a new paragraph is hereby inserted, Paragraph (4¹), and shall read as follows:
- “(4¹) If NSC, *ex officio* or further to a notification in this respect, determines on grounded reasons that the price established by an authorised evaluator, according to law, in accordance with the provisions of Para (4), may not lead to a fair price, NSC may request a re-evaluation.”
50. Under Article 206, Paragraph (5) is hereby amended and shall read as follows:
- “(5) The price established according to the provisions of Paras (3) or (4) shall be made public through the market where transactions are carried out, by publication in the Bulletin of NSC, on NSC’s website and in two national financial newspapers, within five (5) days from the drafting of the report.”
51. Under Article 206, after Paragraph (5), a new paragraph is hereby inserted, Para (6), and shall read as follows:
- “(6) The issuing company shall withdraw from trading as a result of the finalization of the procedure for exercising the right referred to in Para (1).”
52. Under Article 207, Paragraph (1) is hereby amended and shall read as follows:
- “Art. 207
- (1) As a result of a public purchase offer addressed to all holders and for all their holdings, a minority shareholder shall have the right to request the offeror in any of the situations referred to in Art. 206 Para (1) to purchase its shares at a fair price, according to Art. 206 Paras (3) and (4).”
53. Under Article 211, Paragraph (2), Letter a) is hereby abrogated.

54. Under Article 235, after Paragraph (1), a new paragraph is hereby inserted, Paragraph (1¹), and shall read as follows:

“(1¹) If the election through the cumulative vote is not applied further to a request by a significant shareholder, such shareholder shall have the right to request in court the immediate call of a general meeting of shareholders.”

55. Under Article 235, after Paragraph (2), a new paragraph is hereby inserted, Paragraph (2¹), and shall read as follows:

“(2¹) The provisions of Paras (1), (1¹) and (2) shall also apply accordingly in the case of election of the members of the supervisory board, if the company admitted to trading on a regulated market is managed by dual system.”

56. After Article 240, Article 240¹ is hereby inserted and shall read as follows:

“Art. 240¹

- (1) The resolutions of the general meeting, contrary to law or to the deed of constitution, resulting in the modification of the share capital of the companies admitted to trading on a regulated market or in an alternative trading system may be challenged in court, within fifteen (15) days from the publication date in the Official Journal of Romania, Part IV, by any of the shareholders that did not attend the general meeting or voted against and requested that such be mentioned in the minutes of the meeting.
- (2) The actions for cancellation referred to in Para (1) shall be settled as a matter of urgency and with priority by tribunals, in the court chamber, within maximum thirty (30) days from the date the legal action was filed.
- (3) The resolutions issued by the tribunal may be challenged by appeal within maximum fifteen (15) days from the communication date.
- (4) The appeal shall be settled as a matter of urgency by the courts of appeal within thirty (30) days from the registration date of the file on the dockets of the court.”

57. Article 243 is hereby amended and shall read as follows:

“Art. 243

- (1) The board of administration or executive board, as the case may be, shall call the general meeting within the term provided in Art. 117 Para (2) of Law No. 31/1990, republished, as subsequently amended and supplemented.

- (2) The term referred to in Para (1) shall not apply for the second or any further call of the general meeting caused by the fact that the quorum necessary for the meeting called for the first time was not formed, provided that:
 - a) this article was complied with at the first call;
 - b) no new item was added to the agenda; and
 - c) at least ten (10) days lapsed between the final call and the date of the general meeting.
- (3) The access of the shareholders entitled to participate, on the reference date, in the general meeting of the shareholders is allowed by simply proving their identity in the case of natural person shareholders by their identity document, or, in the case of legal persons and natural person shareholders represented, by the power of attorney granted to the natural person representing them, in observance of the applicable legal provisions.
- (4) The reference date shall be established by the issuer and may not be more than thirty (30) days prior to the date of the general meeting to which it applies.
- (5) If a shareholder who meets the legal requirements is prevented from participating in the general meeting of shareholders, any person concerned has the right to request the court to annul the resolution of the general meeting of shareholders.
- (6) The shareholders in the general meeting of shareholders may be represented also by persons other than the shareholders, based on a limited power of attorney. The provisions of Art. 125 Para (5) of Law No. 31/1990, republished, as subsequently amended and supplemented, shall not apply to the companies whose shares are admitted to trading on a regulated market.
- (7) Trading companies may allow their shareholders to participate in the general meeting in any form through electronic means of data transmission.
- (8) The shareholders may appoint and revoke their representative through electronic means of data transmission.
- (9) Trading companies shall prepare procedures which shall give the shareholders the possibility to vote by correspondence, prior to the general meeting. If resolutions requiring a secret ballot are on the agenda of the general meeting of shareholders, the vote by correspondence shall be cast through means which allow its disclosure only to the members of the secretariat in charge with counting the secret ballots cast and only when the other secret ballots cast by the attending shareholders or by the

representatives of the shareholders participating in the meeting are also known. NSC shall issue regulations regarding such procedure.

- (10) At least thirty (30) days prior to the general meeting of shareholders, the company shall provide the shareholders with the documents or information regarding the issues included on the agenda on its own website.
- (11) The board of administration and the executive board shall call the general meeting at the request of the shareholders mentioned in Art. 119 Para (1) of Law No. 31/1990, republished, as subsequently amended and supplemented, if the request includes provisions falling under the duties of the meeting so that the meeting is held at the first or second call, within maximum sixty (60) days from the date of the request.”

58. Article 252 is hereby amended and shall read as follows:

“Art. 252

The prohibitions provided for in this title shall not apply to trading in own shares in “buy-back” programmes or to the stabilisation of a financial instrument provided such trading is carried out in accordance with the European regulations applicable to buy-back programmes and stabilisation of financial instruments.”

59. Article 271 is hereby amended and shall read as follows:

“Art. 271

The breach of the provisions hereof and of the regulations adopted in the application hereof shall incur the liability according to law.”

60. Article 272 is hereby amended and shall read as follows:

“Art. 272

- (1) The following deeds perpetrated by the following persons shall be deemed contravention:
 - a) investment firms (SSIF) and/or by the members of the board of administration or supervisory board, directors or members of the executive board, representatives of the internal control compartment, financial investment services agents of investment firms (SSIFs) and tied agents, and by natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law, as the case may be, in connection with:

1. breaching the conditions based on which the license was granted and the operating conditions provided in Art. 3 Paras (2) and (3), Art. 4 Paras (1) and (2), Art. 6, Art. 8 Para (5), Arts. 9, 14, 15, 16, Art. 18 Paras (1), (2), (4), (5), (7) and (8) and Art. 20 Para (3);
 2. breaching the prudential rules provided in Art. 23 Paras (1) and (4), Arts. 24 and 25;
 3. breaching the rules of conduct provided in Art. 26 Para (1), Art. 27 and Art. 28 Paras (1) and (7);
 4. breaching the provisions of Art. 37, Art. 38 Paras (1) and (4), Arts. 39 and 39¹ regarding cross-border operations of investment firms (SSIFs);
 5. breaching the provisions of their own regulations and/or of the market/system operator/central depository/clearing house approved by NSC;
- b) credit institutions and/or by the directors of the organizational structures related to the operations on the capital market, representatives of the internal control compartment and financial investment services agents and tied agents of credit institutions, and also by natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law, as the case may be, in connection with:
1. breaching the requirement for registration in the NSC's Registry and the operating conditions provided in Art. 3 Paras (2) and (3), Art. 4 Paras (1) and (2) and Art. 16;
 2. breaching the prudential rules provided in Art. 23 Paras (1) and (4), Arts. 24 and 25;
 3. breaching the rules of conduct provided in Art. 26 Para (1), Art. 27 and Art. 28 Paras (1) and (7);
 4. breaching the provisions of the regulations of the market/system operator/central depository/clearing house approved by NSC;
- c) intermediaries from other Member States, and also by natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law, as the case may be, in connection with:

1. breaching the requirement for registration in the NSC's Registry provided in Art. 3 Para (2) for carrying out financial investment services and activities in Romania;
 2. breaching the provisions of Art. 41 Paras (1)-(3), Paras (5) and (6) and Art. 42 Para (2) regarding intermediaries from other Member States;
 3. breaching the provisions of the regulations of the market/system operator/central depository/clearing house approved by NSC;
- d) intermediaries from non-Member States, and also by natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law, as the case may be, in connection with:
1. breaching the requirement for registration in the NSC's Registry provided in Art. 3 Para (2) for carrying out financial investment services and activities in Romania;
 2. breaching the provisions of Art. 43 regarding intermediaries from non-Member States;
 3. breaching the provisions of the regulations of the market/system operator/central depository/clearing house approved by NSC;
- e) traders, and also by natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law, as the case may be, in connection with:
1. breaching the requirement for registration in the NSC's Registry provided in Art. 30 Para (1);
 2. breaching the provisions of Art. 31 regarding the market operator's consent and observance of the regulations of such regulated market;
 3. breaching the provisions of Art. 32 regarding the clearing and settlement of transactions carried out by traders;
 4. breaching the provisions of Art. 33 regarding the prohibitions established for traders;

5. breaching the prudential rules and the rules of conduct provided in Art. 23 Paras (1) and (4), Art. 24 Para (1) Letter d) and Art. 26 Para (1);
 6. breaching the provisions of the regulations of the market/system operator approved by NSC;
- f) investment advisers, and also by natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law, as the case may be, in connection with:
1. breaching the prohibitions referred to in Art. 35, Para (4);
 2. breaching the rules of conduct referred to in Art. 35 Para (5);
- g) entities authorised, regulated and supervised by NSC, issuers of securities and/or by the members of the board of administration or of the supervisory board, directors or members of the executive board of the authorised, regulated and supervised entity or issuers of securities, and also by natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law or in connection with the activity of the entities authorised, regulated and supervised by NSC and/or issuers of securities, as the case may be, in connection with:
1. breaching the provisions regarding public offers and operations of withdrawal of shareholders from a trading company provided in Art. 173 Para (2), Art. 174 Para (2), Art. 175 Paras (1), (3¹) and (4), Arts. 176, 177, Art. 178 Paras (1)-(3), Art. 179, Art. 183 Paras (1) and (2), Art. 184, Art. 185 Para (2) and (4), Art. 186 Para (1), Art. 187, Arts. 190-192, Art. 193 Paras (2) and (3), Art. 195 Para (1), Art. 196 Paras (2) and (3), Art. 197, Art. 198 Para (1), Art. 199 Para (1), Art. 200, Art. 204 Para (7), Art. 206 Para (5) and Art. 208;
 2. breaching the provisions regarding admission to trading of the securities provided in Art. 211 Para (1), Arts. 212, 215, 216, Art. 217 Para (1), Art. 219, Art. 220 Paras (1)-(3), Arts. 221, 222 and Art. 223 Para (1);
 3. breaching the obligations for reporting, performance of the operations and observance of conduct and conditions provided in Arts. 209, 210, Art. 224 Paras (1)-(5) and (8), Art. 225, Art. 226 Paras (1)-(5) and (7), Art. 227, Art. 228 Paras (1), (3) and (4), Arts. 229-233, Arts. 236, 237, 239, Art. 240

Para (3), Art. 241 Paras (1) and (2), Art. 242 and Art. 243
Paras (1), (4) and (9)-(11);

4. making a public offer without NSC's approval of the prospectus/offer document, and also carrying out without NSC's approval any activities or operations for which this law or the NSC's regulations require such approval;
 5. breaching the conditions established by the NSC's decision for approval of the prospectus/offer document, supplements thereto, and the notice/preliminary notice or marketing materials related to a public offer;
 6. breaching the obligation provided in Art. 146 Para (4) regarding the conclusion of contracts with the central depository;
- h) market/system operators, administrators and persons holding managerial positions of market/system operators, and also by natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law, as the case may be, in connection with:
1. breaching the conditions based on which the license was granted and the operating conditions of market operators provided in Art. 126 Paras (2) and (3), Arts. 129, 130, 131 and 133;
 2. breaching the provisions regarding the regulations issued by market operators provided in Art. 134 Paras (4) and (5), Arts. 141 and 249;
 3. breaching the provisions of the regulations of market/system operators approved by NSC;
 4. breaching the provisions regarding the supervision of the regulated markets provided in Art. 135 Para (2);
 5. breaching the obligations stipulated in Art. 136 Paras (1) and (2) regarding supply of data, information and documents, and amendment of their own regulations;
 6. breaching the provisions regarding alternative trading systems provided in Art. 141;

7. refusing without justification to give access to the intermediaries from Member States according to Art. 42 Para (1);
- i)
- investment management companies (SAIs), self-managed NON-UCITS or depositary and/or by the members of the board of administration or supervisory board, directors or members of the executive board and the representatives of the internal control compartment of a self-managed investment management companies (SAIs) or NON-UCITS, and also by natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law, as the case may be, in connection with:
1. breaching the conditions for establishment, registration with NSC and operation of NON-UCITS provided in Art. 115 Paras (1) and (4), Art. 117 Para (1), Art. 118, Art. 119 Para (2), Art. 120 Paras (1), (3) and (4) and Art. 286 Para (1)-(3);
 2. breaching the provisions of the internal regulations of the self-managed closed-end investment companies, rules of the fund/deed of constitution of the closed-end investment companies and/or issue prospectuses of NON-UCITS;
- j)
- central depositories, clearing houses, central counterparties, intermediaries and/or by the members of the board of administration or supervisory board, directors or members of the executive board, and also by natural persons exercising *de jure* or *de facto* managerial positions in the entities previously mentioned or by other responsible persons, as the case may be, in connection with:
1. breaching the conditions based on which the license was granted and the operating conditions referred to in Art. 148 Paras (1) and (2) and Art. 159 Paras (2) and (3);
 2. refusing to provide NSC with the requested information, according to Art. 144 Para (2), regarding the clearing and settlement of transactions;
 3. refusing to provide the issuers with the information necessary for exercising the rights related to the securities deposited according to Art. 146 Paras (4) and (5);
 4. refusing to report to the central depositories the holders of the individualized sub-accounts held by intermediaries according to Art. 146 Para (6);

5. breaching by the intermediaries the reporting obligations within the terms provided in Art. 146 Para (7);
6. breaching the obligations regarding the recording of the securities and the encumbrances upon such provided in Art. 151;
7. refusing to fulfil NSC's requests provided in Art. 153 Para (2) and Art. 154;
8. breaching by the responsible persons the obligations regarding the acquisition, possession and alienation of the shares of the central depository according to Art. 150;
9. breaching by the responsible persons the obligations regarding the acquisition, possession and alienation of the shares of the clearing house/central counterparty according to Art. 160;
10. using the margins for a purpose other than that specified in the regulations referred to in Art. 158;
11. breaching by the clearing house and/or central counterparty the obligations provided in Arts. 163 and 164;
12. refusing to fulfil NSC's requests provided in Art. 153 Para (2) and Arts. 165 and 166;
13. breaching the provisions regarding the establishment and enforcement of financial guarantees and movable mortgages provided in Art. 151 Paras (4)-(6);
14. breaching the provisions of the regulations of the market/system operator approved by NSC;
15. breaching the provisions of the regulations of the central depository/clearing house approved by NSC;
16. refusing, without justification, to give access to the intermediaries from Member States according to Art. 42 Para (1);

k) responsible persons from the Investor Compensation Fund in connection with:

1. breaching the obligations regarding the compensatory payments according to Art. 47 and publication of the information provided in Art. 48;
2. breaching the regulations of the Investor Compensation Fund approved by NSC.

(2) The following deeds shall be deemed contravention:

- a) breaching the measures established through the authorisation, supervisory, regulatory and control acts or further acts;
- b) breaching the provisions regarding the manner of drafting the financial and accounting statements and their auditing, provided in Art. 258 Para (1);
- c) breaching the provisions of Arts. 245-248 regarding market abuse;
- d) breaching the reporting and conduct obligations provided in Art. 250;
- e) using without authorisation the terms *investment services and activities, investment firm, financial investment services agent, regulated market* and *stock exchange*, associated with any of the financial instruments defined under Art. 2 Para (1) Item 11, or of any combination thereof;
- f) breaching the obligations provided in Art. 286¹;
- g) preventing without right the exercise of the rights granted by law to NSC, and any person's unjustified refusal to comply with NSC's requests in the exercise of its prerogatives according to law."

61. Article 273 is hereby amended and shall read as follows:

"Art. 273

- (1) The perpetration of the contravention provided in Art. 272 shall be punished as follows:
 - a) in the case of the contravention provided in Art. 272 Para (1) Letters a)-f), Letters g) Items 4 and 5, Letters h), i), Letter j) Items 1-9 and 11-13 and Para (2) Letter e), by:
 - (i) warning or fine from RON 1,000 to RON 50,000 for natural persons;

- (ii) warning or fine from 0.1% up to 5% of the total turnover achieved in the financial year prior to sanctioning, depending on the seriousness of the perpetrated deed, for legal persons;
 - b) in the case of the contravention provided in Art. 272 Para (1) Letter g) Items 1, 2, 3 and 6, Letter j) Item 10), Letter k), Para (2) Letters a), b), d), f) and g), by:
 - (i) fine from RON 10,000 to RON 100,000 for natural persons;
 - (ii) fine from 0.1% up to 10% of the total turnover achieved in the financial year prior to sanctioning, depending on the seriousness of the perpetrated deed, for legal persons;
 - c) in the case of the contravention provided in Art. 272 Para (2) Letter c), by derogation from Art. 8 of Government Ordinance No. 2/2001 on the legal regime of contravention, approved as amended and supplemented by Law No. 180/2002, as subsequently amended and supplemented, hereinafter referred to as Government Ordinance No. 2/2001:
 - (i) between half of and total value of the transaction made;
 - (ii) by fine from RON 10,000 to RON 100,000, if no transaction was made.
- (2) If the turnover achieved in the financial year prior to sanctioning is not available upon sanctioning, the turnover related to the financial year in which the legal person obtained the turnover, which year is immediately prior to the reference year, shall be taken into account. Reference year means the year prior to sanctioning.
- (3) By exception from the provisions of Art. 8 of Government Ordinance No. 2/2001, in the case of the newly-established legal person which did not obtain turnover in the year prior to sanctioning or in the case of the legal person whose turnover is not accessible to NSC, such person shall be punished by:
 - a) fine from RON 10,000 to RON 1,000,000, in the case of the contraventions referred to in Para (1) Letter a);
 - b) fine from RON 15,000 to RON 2,500,000, in the case of the contraventions referred to in Para (1) Letter b).
- (4) NSC may apply the following complementary sanctions, applied as the case may be:

1. suspension of the authorisation;
2. withdrawal of the authorisation;
3. prohibition for a period comprised between ninety (90) days and five (5) years of the right to hold a position, to carry out an activity or to supply a service for which the authorisation is required.”

62. After Article 273, two new articles are inserted, Articles 273¹ and 273², and shall read as follows:

“Art. 273¹

The performance without authorisation of any activities or operations for which this law requires authorisation shall be deemed a crime and shall be punished according to law.

Art. 273²

- (1) Failure to observe the obligations provided by Art. 203 to make, within the time limit provided by law, a mandatory takeover bid shall be deemed a contravention and shall be punished as follows:
 - (i) for natural persons:
 - a) warning or fine from RON 1,000 to RON 25,000, if the legal time limit to launch the bid was exceeded by maximum thirty (30) days;
 - b) fine from RON 25,001 to RON 50,000, if the legal time limit was exceeded by maximum sixty (60) days;
 - c) by exception from the provisions of Art. 8 of Government Ordinance No. 2/2001, fine from RON 50,001 to RON 500,000, if the legal time limit was exceeded by more than sixty (60) days;
 - (ii) for legal persons :
 - a) warning or fine from 0.1% up to 1% of the total turnover achieved in the financial year prior to sanctioning, if the legal time limit was exceeded by maximum thirty (30) days;
 - b) fine from 0.1% up to 5% of the total turnover achieved in the financial year prior to sanctioning, if the legal time limit was exceeded by maximum sixty (60) days;

- c) fine from 0.1% up to 10% of the total turnover achieved in the financial year prior to sanctioning, if the legal time limit was exceeded by more than sixty (60) days.
- (2) Failure to observe the prohibition to acquire shares as provided in Art. 203 Paras (2) and (4) shall be deemed a contravention and shall be punished as follows:
 - (i) for natural persons, warning or fine from RON 10,000 to RON 500,000;
 - (ii) for legal persons, warning or fine from 0.1% up to 10% of the total turnover achieved in the financial year prior to sanctioning.
- (3) If the turnover achieved in the financial year prior to sanctioning is not available upon sanctioning, the turnover related to the financial year in which the legal person obtained the turnover, which year is immediately prior to the reference year, shall be taken into account. Reference year means the year prior to sanctioning.
- (4) By exception from the provisions of Art. 8 of Government Ordinance No. 2/2001, in the case of the newly-established legal person which did not obtain turnover in the year prior to sanctioning or in the case of the legal person whose turnover is not accessible to NSC and which breached the obligations referred to in Para (1), such person shall be punished by:
 - a) fine from RON 5,000 to RON 500,000, if the legal time limit was exceeded by maximum thirty (30) days;
 - b) fine from RON 10,000 to RON 1,000,000, if the legal time limit was exceeded by maximum sixty (60) days;
 - c) fine from RON 15,000 to RON 2,500,000 if the legal time limit was exceeded by more than sixty (60) days.
- (5) By exception from the provisions of Art. 8 of Government Ordinance No. 2/2001, in the case of the newly-established legal person which did not obtain turnover in the year prior to sanctioning or in the case of the legal person whose turnover is not accessible to NSC and which breached the obligations referred to in Para (2), such person shall be punished by fine from RON 5,000 to RON 2,500,000.
- (6) The provisions of Paras (1), (3) and (4) shall also apply accordingly in the case of failure to fulfil the obligations provided by Art. 205 Paras (3)-(5)."

63. Article 274 is hereby amended and shall read as follows:

“Art. 274

- (1) The perpetration of the contravention provided in Arts. 272 and 273² shall be acknowledged by NSC.
- (2) NSC may delegate agents, authorised to fulfil supervisory, investigative and control duties of the compliance with the legal provisions and with regulations applicable to the capital market, to acknowledge the perpetration of contraventions.
- (3) Upon receipt of the verification acts resulting further to the authorisation, supervisory or control activity, if the perpetration of a contravention is acknowledged, NSC shall order the application of the sanctions provided in Arts. 273 or 273². Also, by individual acts, NSC may order that investigations be extended, precautionary measures be taken and/or the persons referred to in the verification act be heard.
- (4) NSC may make public any measure or sanction imposed for failure to observe the provisions hereof and of the regulations adopted for the application hereof.”

64. Under Article 275, Paragraph (2) is hereby abrogated.

65. Articles 276 and 277 are hereby abrogated.

66. Article 278 is hereby amended and shall read as follows:

“Art. 278

- (1) By derogation from the provisions of Art. 13 of Government Ordinance No. 2/2001, the limitation period for the application and enforcement of the sanction for contraventions shall be three (3) years from the perpetration of the deed.
- (2) For continued contraventions, the three-year limitation period shall start running from the date the deed was acknowledged.”

67. Article 279 is hereby amended and shall read as follows:

“Art. 279

- (1) The perpetration with intention of the deeds provided in Art. 237 Para (3) and Art. 245-248 shall be deemed a crime and shall be punished by imprisonment between 6 months to 5 years or by fine.

- (2) The intentional accessing of electronic trading, storage or clearing – settlement systems by unauthorised persons shall be deemed a crime and shall be punished by imprisonment between 6 months to 5 years or by fine.”

68. Article 280 is hereby abrogated.

69. Under Article 288, after Paragraph (4), a new paragraph is hereby inserted, Paragraph (4¹) and shall read as follows”

“(4¹) NSC shall cooperate with the European Securities and Markets Authority and The European Systemic Risk Board and shall provide them without delay with all information necessary for the fulfilment of their duties.”

TITLE III TRANSITIONAL AND FINAL PROVISIONS

Art. 204

- (1) Art. 175 Para (31), Art. 179, Art. 184 Paras (2), (3) and (4), Art. 185 Paras (2) and (4), Art. 186, Art. 189 Para (2) and Art. 204 of Capital Market Law No. 297/2004, as subsequently amended and supplemented, as amended and supplemented by this emergency ordinance, shall apply to public offers whose prospect/offer document is approved after the entry into force of this emergency ordinance.
- (2) Art. 183 Para (3) of Law No. 297/2004, as subsequently amended and supplemented, as amended and supplemented by this emergency ordinance, shall apply to public offers made after the entry into force of this emergency ordinance.

Art. 205

Throughout Law No. 297/2004, as subsequently amended and supplemented, the wording “*servicii de investiții financiare* [financial investment services]” is hereby replaced with the wording “*servicii și activități de investiții* [investment services and activities]”, and the term “*insolvabilitate* [accounting insolvency]” is hereby replaced with the term “*insolvență* [insolvency]”.

Art. 206

The provisions on contraventions are hereby supplemented with the provisions of Government Ordinance No. 2/2001 on the legal regime of contraventions, approved as subsequently amended and supplemented by Law No. 180/2002, as subsequently amended and supplemented, insofar they are not contrary to this emergency ordinance.

Art. 207

This emergency ordinance shall enter into force within ten (10) days following its publication in the Official Journal of Romania, Part I.

*

This emergency ordinance transposes:

1. Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), published in the Official Journal of the European Union L 302 of 17 November 2009;
2. Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company, published in the Official Journal of the European Union L 176 of 10 July 2010;
3. Directive 2010/44/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure, published in the Official Journal of the European Union L 176 of 10 July 2010;
4. the provisions of Article 15 Paragraph (4) and Article 16 Paragraph (3) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, published in the Official Journal of the European Union L 142 of 30 April 2004;
5. the provisions of Article 4 Paragraph (1) Items 2, 3, 7, 17, 25 and 27, Article 13 Paragraph 7, Article 23 Paragraph 1 and Paragraph 3 Subparagraph (1), Article 50 and Annexe I of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, published in the Official Journal of the European Union L 145 of 30 April 2004;
6. the provisions of Article 5 Paragraph (1) the first and third paragraph and Paragraph (4) introductory part, Article 7 Paragraph (3) third sentence, Article 8 Paragraph (1) introductory part, Article 10 Paragraph (1), Article 11 Paragraph (1) first sentence and Paragraph (3), Article 12 first sentence and Article 15 second Paragraph of Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, published in the Official Journal of the European Union L 184 of 14 July 2007;
7. the provisions of Article 3 Paragraph 1 of Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of

holdings in the financial sector, published in the Official Journal of the European Union L 247 of 21 September 2007;

8. the provisions of Article 1 Item 2 Letter a), Item 3 Letter a) Item (i), Item 4 Letter a) Item (i), Item 5 Letter a) Item (i), Item 9, Item 11 Letter a), Item 12, Item 14 Letter a) and Item 16 of Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, published in the Official Journal of the European Union L 327 of 11 December 2010;
9. the provisions of Article 6 Paragraph (8) and Article 11 of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), published in the Official Journal of European Union L 331 of 15 December 2010.

PRIME MINISTER
VICTOR-VIOREL PONTA

Countersigns:

Vice Prime Minister, Minister of Public Finance,
Florin Georgescu

President of the National Securities Commission,
Gabriela Victoria Anghelache

Ministry for European Affairs,
Leonard Orban

Bucharest, 27 June 2012.

No. 32.