

Rule No. 14/2013 on the investment of undertakings for collective investment in money market instruments such as promissory notes

In force as of 14 November 2013

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There are no amendments as at 25 January 2016.

Art. 1. – This rule lays down regulations which must be complied with where an undertaking for collective investment, hereinafter referred to as UCI, invests in money market instruments such as promissory notes.

Art. 2. - (1) An undertaking for collective investment in transferable securities, hereinafter referred to as UCITS, may invest in money market instruments, other than those referred to in Art. 82 of Government 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, hereinafter referred to as GEO No. 32/2012, such as promissory notes, which have a maturity of maximum 12 months from the date of acquisition by that UCITS and are obtained by endorsement, in compliance with the provisions of Law No. 58/1934 on bills of exchange and promissory notes, as subsequently amended and supplemented, and with the rules of the National Bank of Romania concerning the promissory notes, and within the limits imposed by Art. 83(1) Letter a) and Art. 9(2) Letter d) of GEO No. 32/2012.

(2) In order to ensure compliance with the investment limit set out in Art. 90(2) of GEO No. 32/2012, both at the time of the acquisition, and bi-annually, when such promissory note is held, the investment management company (SAI)/competent statutory body of the self-managed investment company (SI) requests and obtains from the issuer of promissory notes an account of the value of the promissory notes issued until that date.

Art. 3. - (1) The exposure of a UCITS by making direct and indirect investments [including by investments in units issued by other undertakings for collective investment, hereinafter referred to as NON-UCITS, which meet the cumulative conditions set out in Art. 82(1) Letter d) of GEO No. 32/2012] in money market instruments such as the promissory notes provided for in Art. 2 may not exceed the 15% limit of its assets.

(2) In order to ensure compliance with the investment limit referred to in Para (1), in the case of the investments in units issued by NON-UCITS, the SAI/competent statutory body of UCITS shall request the SAI managing that closed-end investment fund/self-managed closed-end SI to provide data and information on the value of the investments in the promissory notes of that NON-UCITS.

(3) The request referred to in Para (2) is justified only if the issuing prospectus of the UCITS provides for the express intention to invest in money market instruments such as promissory notes.

Art. 4. - (1) The promissory notes referred to in Art. 1 must be issued by legal persons and endorsed in their own name by the natural person directors of those legal persons. The issuers of promissory notes and the last endorser preceding UCITS, which must also be legal persons, must meet the conditions for eligibility (e.g. creditworthiness, liquidity, solvency, etc.) previously established by the SAI or by the competent statutory body of the self-managed SI, which shall be notified to the Financial Supervisory Authority, hereinafter referred to as ASF, and provided to investors at their written request. It is prohibited to invest in promissory notes issued or endorsed by persons registered in the Payment Incidents National File of the Payment Incidents Register of the National Bank of Romania.

(2) The issuer of the promissory notes must have at least 3 years of activity on the date that the UCITS invests in those promissory notes.

(3) Where the issuers of the promissory notes referred to in Para (1) have less than 3 years of activity prior to the investment in the promissory notes by the UCITS, the SAI or the competent statutory body of the self-managed SI shall request additional guarantees from the issuer or the last endorser, as appropriate.

(4) The provisions of Para (3) shall not apply where the UCITS invests in the promissory notes issued by newly established legal persons, in which case the promissory note shall be endorsed in its own name both by the issuer's director and by the SAI/members of the competent statutory body of the self-managed SI.

(5) The guarantees referred to in Para (3) shall meet the conditions set out in Arts. 3 and 4 of Executive Order No. 13/2012 of the National Securities Commission which are applicable to the guarantees for securities lending.

(6) The situation of the guarantees referred to in Para (3) shall be made available to ASF with the submission of the annual report as provided by Art. 174 of Regulation No. 15/2004 on the authorisation and operation of investment management companies, undertakings for collective investment and depositories, issued by the National Securities Commission, approved by Order No. 67/2004 of the President of the National Securities Commission, as subsequently amended, hereinafter referred to as NSC Regulation No. 15/2004.

Art. 5. - (1) In order to carry out its monitoring and control tasks of the UCITS' assets and reporting to ASF any breaches of the legal provisions and regulations in force concerning the settlement of operations, including these set out in Arts. 56 and 59(2) of NSC Regulation No. 15/2004, the depository shall verify compliance by the UCITS with the provisions of this rule for the investment in money market instruments such as promissory notes.

(2) For this purpose, the situation of the guarantees referred to in Art. 4(6) shall include, in addition to the signature of the persons responsible within the SAI/self-managed SI, the signature of the representative of the depository of that UCITS.

(3) These guarantees shall be assessed in line with the rules applicable to the valuation of the UCI's assets.

Art. 6. – At the time of the investment in money market instruments such as promissory notes, and throughout the investment, the SAI and the competent statutory body of the self-managed SI shall take all necessary measures to avoid any conflict of interest and comply with the rules of conduct, in accordance with the provisions of GEO No. 32/2012 and NSC Regulation No. 15/2004.

Art. 7. - (1) The provisions of Arts. 2-6 shall also apply to NON-UCITS which invest in money market instruments such as promissory notes, except for those concerning the compliance with the 15% limit of the assets set out in Art. 3 and with the maturity of the promissory notes set out in Art. 2, which, in this case, cannot exceed 2 years.

(2) In the case of NON-UCITS, the situation of the guarantees referred to in Art. 4(6) shall be made available to ASF with the submission of the annual report as provided by Art. 204 of NSC Regulation No. 15/2004.

Art. 8. - A NON-UCITS may invest no more than 35% of its assets in money market instruments such as promissory notes, in line with its investment policy and within the limits set out in Art. 9.

Art. 9. – The exposure obtained by a NON-UCITS by making direct and indirect investments in money market instruments such as promissory notes shall not exceed:

- a)** 20% of its assets in the case of NON-UCITS with a diversified investment policy;
- b)** 35% of its assets in the case of NON-UCITS with a permissive investment policy;
- c)** 15% of its assets in the case of NON-UCITS specialised in investing in bonds, and money market instruments;
- d)** 25% of its assets for the other non-specialised NON-UCITS.

Art. 10. - (1) In the case of investments in money market instruments such as the promissory notes made by UCI, all of the amounts relating to those investments must be collected within maximum 10 working days as from the maturity date thereof.

(2) In the exceptional cases provided for in the documents of the UCI, the deadline set out in Art. 2, or in Art. 7, as appropriate, may be extended by maximum 6 months for UCITS, or 12 months for NON-UCITS. Such extension shall be notified to ASF within 5 days from the resolution of the statutory body of the SAI/UCI, and the period of 10 days referred to in Para (1) shall start running from the expiry date of the 6 or 12 additional months.

(3) The assessment in the UCI's assets of the promissory notes in respect of which payment was not made when due as provided by the deadlines referred to in Para (1) or (2), as appropriate, shall be made at 0 value or at the value of the guarantee enforced, deposited as provided for in Art. 4(3), as appropriate, being prohibited to make additional investments in money market instruments such as the promissory notes issued or endorsed by the same issuer, or by the same last endorser.

(4) Where the amounts relating to UCI's investment in promissory notes are collected within 10 days after the expiry of the maximum deadlines of 6 or 12 months subsequent to the initial maturity referred to in Para (2), the SAI, or the directors or members of the executive board of the self-managed SI, shall take and inform ASF of the legal actions for the recovery of the receivable.

(5) The actions referred to in Para (4) shall be taken and notified to ASF on the day immediately following the 10th day after the expiry of the maximum deadlines set out in the same paragraph.

(6) Where the SAI, or the directors or members of the executive board of the self-managed SI, fail to fulfil its obligations concerning the enforcement/recovery of the receivable arising from the holding of the promissory note, they shall complement from their own funds/sources the UCI's assets with the counter value of the amounts not collected.

(7) The receivable arising from the holding by a UCI of a money market instrument such as the promissory note may be assigned only by the endorsement operation with "no guarantee" clause and provided that the counter value of the promissory note is paid by the assignor to the assigning UCI at the time of the transaction by cash or bank transfer/payment order.

Art. 11. - (1) The UCIs whose holdings in promissory notes exceed at the time of the entry into force of this rule the limits set out in Arts. 3 and 9 shall not be subject to the exemption referred to in Art. 10(2), and they must collect the promissory notes within 10 days after the maturity date, being subject to the provisions of Art. 10(3) and (5).

(2) The SAI, or the directors or members of the executive board of the self-managed SI, shall ensure that as the promissory notes already in the portfolio of the UCI at the time of the entry into force of this rule fall due, the new investments in such money market instruments are made in so far as the aggregate exposure of the UCI does not exceed the investment limits set out in Arts. 3 and 9.

Art. 12. – Failure to comply with the provisions of this rule shall be punished as provided by Art. 195 Letter n) of GEO No. 32/2012 and Art. 272(2) Letter a) of Capital Market Law No. 297/2004, as subsequently amended and supplemented.

Art. 13. - (1) This rule shall enter into force on the date of its publication and of the resolution approving the same in the Official Journal of Romania, Part I, and shall be published in the Bulletin and website of the Financial Supervisory Authority (www.cnvmr.ro).

(2) Within 30 days after the entry into force of this rule, the SAs and self-managed SIs shall inform ASF of the modification of the UCI's documents to comply with this rule, attaching the resolution of their statutory body for that purpose.

on behalf of the President of the Financial Supervisory Authority

Daniel Dăianu

First Vice-President