

## FINANCIAL SUPERVISORY AUTHORITY

### REGULATION NO. 8/ 2014

#### REGULATION

#### amending and supplementing Regulation No. 4/2013 on underlying shares for depositary receipts, approved by Resolution No. 44/2013 of the Financial Supervisory Authority's Board

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

further to the deliberations held in the meeting of the Financial Supervisory Authority's Board of 21 May 2014,

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

**Art. I.** - Regulation No. 4/2013 on underlying shares for depositary receipts, approved by Resolution No. 44/2013 of the Financial Supervisory Authority's Board, published in the Official Journal of Romania, Part I, No. 622 of 7 October 2013, is hereby amended and shall be supplemented as follows:

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

"Art. 1. - (1) This regulation establishes the rules applicable in all of the situations in which depositary receipts to be admitted to trading in a Member State are issued, based on:

- a) the shares issued by an undertaking headquartered in Romania, which shall be admitted for the first time to trading on a regulated market in Romania further to an initial public sale offering and which shall be deposited with a central depository; and/or
- b) the allotment rights which shall be admitted to trading on a regulated market in Romania and deposited with a central depository and which shall be issued attached to the shares subscribed within the initial public sale offering mentioned under Letter a).

(2) The depositary receipts shall be issued with the consent of the issuers of the underlying shares/underlying allotment rights, as the case may be."

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

"a) *underlying shares or shares* – the shares deposited with the central depository based on which the depositary receipts are issued;"

**3. Under Article 2 Paragraph (2), after Letter c), a new letter, Letter c<sup>1</sup>) is hereby inserted, and shall read as follows:**

"c<sup>1</sup>) *depositary receipts based on allotment rights* – the securities conferring their holder rights and obligations related to the underlying allotment rights based on which the same were issued, and also the right to obtain, through conversion, allotment rights or directly underlying shares, as the case may be;"

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

"d) *central depository* – the entity provided at Art. 146 Para (1) of Law No. 297/2004, carrying out deposit operations of shares and/or of the allotment rights, as the case may be, and also registry operations for the issuer defined at Letter e);"

**5. Under Article 2 Paragraph (2), after Letter d), a new letter, Letter d<sup>1</sup>), is hereby inserted, and shall read as follows:**

"d<sup>1</sup>) *underlying allotment rights or allotment rights* – the allotment rights defined in the acts of NSC/FSA, as the case may be, issued in the case of the public offerings mentioned at Art. 1 Para (1) Letter a), based on which depositary receipts are issued;"

**6. Under Article 2 Paragraph (2), Letters e), f) and g) are hereby amended and shall read as follows:**

"e) *issuer* – the issuer of the underlying shares and of the underlying allotment rights, as the case may be;

f) *issuer of the depositary receipts based on shares/allotment rights* – the entity which issued the depositary receipts based on shares/allotment rights;

g) *conversion rate* – the ratio mentioned in the issuing documents of the depositary receipts, which establishes the number of shares/allotment rights corresponding to a depositary receipt based on shares/allotment rights, and which is used for the calculation of the number of shares/allotment rights and of the number of depositary receipts based on shares/allotment rights which may be obtained further to the conversion of depositary receipts based on shares/allotment rights, and of shares/allotment rights, into depositary receipts based on shares/allotment rights."

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

“(3) The depositary receipts based on shares/allotment rights forming the object of this regulation shall not be those mentioned at Art. 28 Para (8) Letter b) of Law No. 297/2004.”

**8. Under Article 13, Paragraph (3) is hereby amended and shall read as follows:**

“(3) The issuer shall make public the reports provided at Chapter III of Title IV of Regulation No. 1/2006, and by the acts of NSC/FSA, as the case may be, regarding the issuer’s reporting obligations throughout the trading period on a regulated market of the allotment rights, in observance of the provisions of Art. 105 Para (3’) and Art. 122 Para (2) of such regulation.”

**9. After Section 5, a new section, Section 5<sup>1</sup>, including Art. 13<sup>1</sup>, is hereby inserted, and shall read as follows:**

“SECTION 5<sup>1</sup>-

***Special Provisions Applicable to Depositary Receipts based on Allotment Rights***

Art. 13<sup>1</sup>. - (1) The provisions of Arts. 3, 4, 16 regarding the suspension from trading, and of Art. 17, shall apply accordingly also in the case of the issuance of depositary receipts based on allotment rights. In such situation the expressions ‘shares’, and ‘depositary receipts’ shall be interpreted as reference to ‘allotment rights’, and to ‘depositary receipts based on allotment rights’.

(2) The issuer of the depositary receipts in whose name the allotment rights underlying the depositary receipts are registered shall not have the capacity as shareholder in the sense provided in Regulation No. 1/2006 and in Regulation No. 6/2009.

(3) Upon the registration with the central depository of the shares newly issued within the initial public offering, the number of underlying shares provided at Art. 3 Para (1) shall be equal to the number of underlying allotment rights based on which the depositary receipts were issued.

(4) As of the registration date of the newly issued shares with the central depository and as of the admission date of the same to trading on a regulated market, the depositary receipts based on allotment rights shall be converted into depositary receipts based on shares.

(5) Subsequent to the date mentioned under Para (4), any request for conversion of the depositary receipts shall lead to the receipt of the shares replacing such allotment rights.

(6) The conversion of depositary receipts into allotment rights, or of allotment rights into depositary receipts shall not be possible if such restriction is provided in the prospectus for depositary receipts.”

**10. Under Article 14, after Paragraph (3), a new paragraph, Para (4), is hereby inserted and shall read as follows:**

“(4) The provisions of Paras (1) to (3) shall apply accordingly also in the case of depositary receipts based on allotment rights, by reference to the total number of allotment rights issued for the shares forming the object of the initial public sale offering.”

**Art. II.** – This regulation shall be published in the Official Journal of Romania, Part I, in the Bulletin of the Financial Supervisory Authority, and on the website of FSA, and shall enter into force upon its publication in the Official Journal of Romania, Part I.

President of the Financial Supervisory Authority,  
**Mișu Negrițoiu**

Bucharest, 21 May 2014.  
No. 8.