

**RULE No. 12/2013**

**on the protection of participants in case of mergers of privately managed pension funds**

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Having regard to the provisions of Art. 41 Letter i) and Art. 81 Para (1) Letter e) of Law No. 411/2004 on the privately managed pension funds, republished, as subsequently amended and supplemented, based on the provisions of Art. 2 Para (1) Letter c), Art. 3 Para (1) Letter b) and Art. 6 Para (2) 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, based on the provisions of Art. 23 Letter f) Government Emergency Ordinance No. 50/2005 on the establishment, organization and operation of the Private Pension System Supervisory Commission, approved as amended and supplemented by Law No. 313/2005, as subsequently amended and supplemented,

The Financial Supervisory Authority, hereinafter referred to as the Authority, issues this rule.

**CHAPTER I**

**General Provisions**

Art. 1. – This rule sets out regulations regarding the protection of the participants in privately managed pension funds in case of merger of privately managed pension funds and the procedure to be followed in this case.

Art. 2. - (1) The terms and expressions used in this rule shall have the meanings provided under Art. 2 of Law No. 411/2004 on privately managed pension funds, republished, as subsequently amended and supplemented, hereinafter referred to as the Law.

(2) In addition, the terms below shall have the following meanings:

- a) absorbing pension fund – the privately managed pension fund taking over the assets of another privately managed pension fund;
- b) absorbed pension fund – the privately managed pension fund which, further to the merger with the absorbing pension fund, ceases to exist.

**CHAPTER II**

**Merger of Privately Managed Pension Funds**

**SECTION 1**

**General Provisions**

Art. 3. - (1) The merger between two privately managed pension funds may be performed further to the decision of the majority of participants of the pension fund to be absorbed or at the proposal of its administrator.

(2) If the merger is performed further to the decision of the majority of participants in the pension fund to be absorbed, the decision at issue shall be notified to its administrator and to the administrator of the pension fund that shall absorb it.

(3) The administrator of the pension fund to be absorbed has the obligation to carry out the decision of the majority of participants in accordance with the provisions of this rule.

(4) The administrator of the absorbing pension fund has the obligation to call the general assembly of shareholders within maximum 30 calendar days from the receipt of the resolution of the participants.

(5) If the administrator proposes the merger to the participants, further to the resolution taken by the general assembly of shareholders, it has the obligation to apply the procedure provided herein.

(6) The resolution regarding the merger adopted by the general assembly of shareholders of the absorbing pension fund administrator and the resolution of the general assembly of shareholders of the administrator of the pension fund to be absorbed, as applicable, shall be published on their own web page within 3 business days from the adoption.

## SECTION 2

### Documents Necessary to Obtain the Merger Authorisation for Privately Managed Pension Funds

Art. 4. - (1) The merger authorisation for privately managed pension funds includes two stages:

a) obtaining the prior authorisation decision for the merger of privately managed pension funds;

b) obtaining the final authorisation decision for the merger of privately managed pension funds.

(2) Obtaining the prior authorisation decision for the merger of privately managed pension funds does not guarantee obtaining the final authorisation decision for the merger.

(3) If the final authorisation decision for the merger of privately managed pension funds is not obtained, the prior authorisation of the merger shall no longer be valid.

Art. 5. – To obtain the prior authorisation for the merger of privately managed pension funds, the administrators of the pension funds involved in the merger shall submit to the Authority an application signed by them, prepared in accordance with the annexe and accompanied by the following documents:

a) resolution of the majority of participants in the pension fund to be absorbed, in original, as applicable;

b) resolution of the general assembly of shareholders of the administrator of the pension fund to be absorbed, in original, as applicable;

c) resolution of the general assembly of shareholders of the administrator of the absorbing pension fund approving the merger, in original;

d) documents attesting to the validity of the call and of the convening of the general assemblies provided under Letters b) and c), in original;

e) the draft public notification of the participants in the absorbed pension fund, signed by both administrators, which shall include at least the following information:

(i) the possibility and the conditions to transfer the participants from the absorbed pension fund, in the event of the merger, in compliance with the provisions of Arts. 9 and 13;

(ii) the main elements of the absorbing pension fund's prospectus, i.e. the investment policy of the new administrator, the management fees and the audit tax of the new administrator, the number of participants of the privately managed pension fund by the new administrator upon the submission of the application for prior authorisation;

(iii) the main stages of the transfer of assets and participants of the absorbed pension fund by the absorbing pension fund;

f) the situation regarding the technical provision, calculated by the administrator of the absorbed pension fund, as at the date of the resolution of the general assembly of shareholders provided under Letter b).

## SECTION 3

### The Procedure for the Prior Authorisation for Merger of Privately Managed Pension Funds

Art. 6. - (1) The Authority shall decide on the application for prior authorisation of the merger of privately managed pension funds within 30 calendar days from the registration of the last document related to the application sent by the applicants.

(2) Any request of the Authority for additional information or to amend the documents initially submitted shall suspend the term provided under Para (1), and a new term shall start running starting from the submission of the documents containing the requested information or amendments, submission which shall not occur later than 30 calendar days from the Authority's request, on penalty of rejecting the application.

(3) If the documents submitted are incomplete, illegible or were submitted in an inadequate form, and in the case of missing documents, the Authority shall request the applicant to replace or supplement them.

(4) Failure to fulfil or improper fulfilment of any of the conditions provided herein shall incur the rejection of the application for prior authorisation for the merger of privately managed pension funds.

(5) The prior authorisation decision or the rejection decision, written and reasoned, shall be communicated to the applicants within 5 business days from the adoption date.

(6) Within 30 calendar days from the communication date, the rejection decision may be contested in accordance with administrative dispute legislation.

Art. 7. – The authority may reject the application provided under Art. 5 in any of the following situations:

a) the request is not in the interest of the participants;

b) the documents submitted do not comply with the form or substance requirements provided under Art. 5;

c) by the merger, the absorbing pension fund would hold net assets in excess of 20% of the net assets held by all privately managed pension funds.

#### SECTION 4

##### Informing the Participants of the Merger of Privately Managed Pension Funds

Art. 8. - (1) Within 5 business days from the communication of the Authority's decision to issue the prior authorisation for the merger of the pension funds, the managers of the merging pension funds shall proceed to inform the participants, as follows:

a) by publishing a notice regarding the merger of the pension funds in at least two national circulation newspapers, for at least 3 consecutive days;

b) by publishing the notice regarding the merger of the pension funds on the web page of the administrators, notice which shall be kept online at least until the completion of the merger of the pension funds;

c) by the transmission, by the administrator of the absorbed pension fund, by post, at the last postal addresses communicated to it, to all participants in the fund, of the new conditions of the absorbing pension fund's prospectus, and of the possibilities to transfer, within 90 calendar days, without any transfer penalties, if they do not agree with the merger of the pension funds.

(2) The notices regarding the merger of the pension funds shall be prepared in accordance with the draft public notification of the participants provided under Art. 5 Letter e), and shall include, on a mandatory basis, the phrase: "Within 90 calendar days from the publication date of this notice, any participants who do not agree to the merger of the pension funds may transfer from the absorbed pension fund, without having the obligation to pay transfer penalties."

(3) Also, the Authority shall publish the prior authorisation decision for the merger of the pension funds on its own web page and shall keep it online until the completion of the merger.

(4) Starting from the communication date of the prior authorisation decision for the merger of the pension funds, the administrator is prohibited from concluding new individual adhesion acts to the absorbed pension fund.

#### SECTION 5

##### Transfer of Participants from the Absorbed Pension Fund to Other Privately Managed Pension Funds

Art. 9. - (1) Within 90 calendar days from the date of the first publication of the merger notice in accordance with Art. 8 Para (1) Letter a), the participants who do not wish to participate in the absorbing pension fund shall submit an application for transfer to another privately managed pension fund.

(2) The transfer of the participants and of their funds shall be performed in compliance with the transfer procedure provided by No. 12/2009 on the transfer of participants among privately managed pension funds, approved by Resolution No. 16/2009 of the Private Pension System Supervisory Commission.

## SECTION 6

### The Procedure for the Final Authorisation for Merger of Privately Managed Pension Funds

Art. 10. - (1) Within 5 business days from the last transfer of funds, after the record-keeping institution communicates the update of the Registry of Participants, the administrators of the pension funds involved in the merger shall submit to the Authority an application for final authorisation of the merger.

(2) The application, prepared in accordance with the annex, shall be accompanied by the following documents:

- a) the net asset value of each of the two pension funds;
- b) the net asset value per share of each of the two pension funds;
- c) the asset value of the absorbed pension fund administrator covering the technical provision for the absorbed pension fund;
- d) proof of fulfilling the obligations to inform the participants incumbent upon the administrators, according to Art. 8.

(3) The documents specified under Para (2) shall be prepared based on the information valid on the submission date of the application provided under Para (1).

(4) Within 5 business days from the adoption, the Authority shall communicate its final authorisation decision regarding the merger of the pension funds to the applicants, the record-keeping institution and the depositories of the pension funds involved.

(5) The Authority shall specify in the final merger authorisation decision, in addition to the pension funds involved and their administrators, the terms and conditions of the merger of the pension funds and shall determine the date of the asset and participants transfer among the pension funds.

(6) If the administrators failed to duly fulfil their obligations to inform the participants provided under Art. 8, and in case of failure to observe the provisions of Paras (2) and (3), the Authority shall reject the application for final authorisation of the merger.

Art. 11. - (1) After obtaining the final merger authorisation decision, the administrators involved shall proceed to:

- a) transferring from the absorbed pension fund to the absorbing pension fund of the participants who did not transfer to other privately managed pension funds;
- b) transferring from the absorbed pension fund to the absorbing pension fund the assets remaining after the transfer of the participants to other privately managed pension funds.

(2) Upon the completion of the merger of the pension funds, all contracts related to the absorbed pension fund and all contracts of the administrator related to the management activity of the absorbed pension fund shall be terminated.

## SECTION 7

### Transfer of the Participants from the Absorbed Pension Fund to the Absorbing Pension Fund

Art. 12. - (1) In the period comprised between the communication date of the prior authorisation decision of the merger and the date when the assets and participants are transferred from the absorbed pension fund to the absorbing pension fund, the administrator of the absorbed pension fund shall ensure the

management of such pension fund in accordance with the prospectus of the private pension scheme, and the transfer of the personal assets of the participants who requested to be transfer to another pension fund, in accordance with the prior authorisation issued by the Authority.

(2) Based on the final authorisation decision, the record-keeping institution shall modify and update the Registry of Participants by entering the participants transferred from the absorbed pension fund to the absorbing pension fund.

## SECTION 8

### Transfer of the Absorbed Pension Fund's Assets from the Absorbing Pension Fund

Art. 13. – Upon the transfer of the absorbed pension fund's assets, based on the financial statements in their possession, the administrators of the pension funds that merged shall prepare financial statements that shall reflect:

- a) the net asset value of each pension fund involved in the merger;
- b) the net asset value per share of each pension fund involved in the merger;
- c) the value of the technical provision allocated in accordance with Art. 15 Para (2), for the absorbed pension fund.

Art. 14. - (1) The net asset value of the absorbed pension fund shall be at least equal to the amount of the contributions of all participants, minus the legal commissions.

(2) If the value of the personal asset of each participant to be transferred is less than the value guaranteed by the Law, the difference shall be covered from the technical provision established by the administrator of the absorbed pension fund.

Art. 15. - (1) A new number of fund shares shall be calculated for each of the participants in the absorbed pension fund.

(2) In the situation provided under Para (1), the value of the personal net asset of a transferred participant also includes the value of the related technical provision, as applicable.

(3) The number of fund shares related to each transferred participant shall be calculated according to the following formula:

Number of fund shares per transferred participant	=	the value of the net personal asset held in the absorbed pension fund	/	the net asset per share of the absorbing pension fund
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(4) The total number of fund shares related to the new asset of the absorbing pension fund, resulting further to the merger, is the result of the sum of:

- a) the fund shares registered upon the transfer of assets, for the absorbing pension fund;
- b) the fund shares related to each transferred participant.

(5) At the end of the day established as the date for the transfer of assets and participants, mentioned under Art. 10 Para (5), the depository of the absorbed pension fund shall perform the following operations:

- a) transfer the assets to the depository of the absorbing pension fund;
- b) transfer, based on delivery-receipt report, all of the documents related to the depository activity for the assets of the absorbed pension fund.

Art. 16. - (1) Within 10 business days from the completion of the asset transfer, the administrator of the absorbed pension fund shall submit to the Authority for approval:

- a) the report on the performance of the merger and its results, including the situation of the transfer of assets and participants from the absorbed pension fund to the absorbing pension fund, audited;
- b) the financial audit report for the current year of the financial statements of the absorbed pension fund existing at a certain date prior to the transfer of assets.

(2) Based on the reports provided under Para (1) and of the report provided under Art. 21, the Authority shall issue decisions regarding:

- a) the withdrawal of the authorisation of the absorbed pension fund, after the completion of the asset transfer procedure and its deregistration from the Registry of private pension funds and of the administrators;
- b) the withdrawal of the authorisation of the administrator of the absorbed pension fund, after the completion of the asset transfer procedure and its deregistration from the Registry of private pension funds and of the administrators;
- c) the withdrawal of the authorisation issued by the Authority for the prospectus of the private pension scheme of the absorbed pension fund.

Art. 17. - (1) Within 10 business days from the completion of the transfer of assets and participants, the administrator of the absorbing pension fund shall submit to the Authority for approval the report on the transfer of assets and participants, certified by the depository of the absorbing pension fund.

(2) The report provided under Para (1) shall be published on the web page of the absorbing pension fund's administrator.

Art. 18. - (1) The transfer of financial instruments admitted to trading on a regulated market between the two pension funds shall be considered a direct transfer within the meaning of the capital market legislation.

(2) The administrator of the absorbing pension fund shall carry out all necessary proceedings to record the new holder of financial instruments, depending on the nature of the assets held.

Art. 19. - (1) The administrator of the absorbing pension fund shall send to the new participants, in hard copy, the situation of the personal asset transferred, which shall include at least:

- a) the history of the operations performed for each participant until the merger date;
- b) the number of fund shares at the date of the merger;
- c) the value of the fund share at the merger date;
- d) the value of the personal asset transferred;
- e) the value of the related technical provision, as applicable, and a report on the situation of their new personal asset, resulting from the merger.

(2) As applicable, the administrator of the absorbing pension fund shall request the approval of the amendment of the private pension scheme prospectus of the absorbing pension fund, in accordance with Rule No. 7/2007 on the prospectus of the private pension scheme, approved by Resolution No. 26/2007 of the Private Pension System Supervisory Commission, as subsequently amended and supplemented.

## SECTION 9

### Transfer of Documents Related to the Absorbed Pension Fund to the Administrator of the Absorbing Pension Fund

Art. 20. - (1) Once the transfer of assets from the absorbed pension fund is performed, the managers involved shall start the transfer operations of all data and documents held by the administrator of the absorbed pension fund to the administrator of the absorbing pension fund.

(2) The documents related to the absorbed pension fund shall be delivered in original to the administrator of the absorbing pension fund, and those in electronic format shall be delivered at the same time, under extended electronic signature.

(3) The documents related to the administrator, but which are relevant for the management of the absorbed pension fund, shall be delivered in copy bearing the "true to the original" certification on each page, and those in electronic format shall be delivered at the same time, under extended electronic signature.

Art. 21. - (1) The transfer mentioned under Art. 20 Para (1) shall be completed by preparing a delivery-receipt report which shall include the following:

- a) a record of the documents based on which the initial authorisation of the absorbed pension fund was issued, and any amendments thereto;

- b) a record of the number of participants in the absorbed pension fund, specifying the identification data and contact details thereof;
  - c) a record of the number of fund shares allocated to each participant from the beginning until the date;
  - d) a record of the existence of all documents representing the archive of the absorbed pension fund, including the individual adhesion acts of the participants, accompanied by all related documents;
  - e) a record of the transfers of participants throughout the activity of the absorbed pension fund;
  - f) a record of the contributions collected;
  - g) a record of the payment of the net asset in special cases, provided in the rules and decisions issued in this respect by the Authority;
  - h) a record of the management commissions collected by the administrator of the absorbed pension fund;
  - i) a record of the calculation of the net asset value and of the net asset value per share throughout the activity of the absorbed pension fund;
  - j) a record of the assets and liabilities of the absorbed pension fund;
  - k) records related to the financial statements of the absorbed pension fund;
  - l) records of the calculation of the profitability ratio;
  - m) a record of the calculation of the technical provision for the absorbed pension fund;
  - n) records of the preparation and submission of reports, in accordance with the legal provisions, with the Authority;
  - o) the information existing in the database, in electronic format;
  - p) records of the transfer of any documents based on which the absorbed pension fund operated, in accordance with the legal provisions in force.
- (2) The records provided under Para (1) shall include:
- a) the type/name of the document transferred;
  - b) the condition of the document – integrity, completeness;
  - c) the number of pages of each document or type of document transferred.
- (3) If any documents are found to be missing, this fact shall be mentioned in the report, specifying the missing document.
- (4) Within 5 business days from the date a document is found to be missing, the administrator of the absorbed pension fund has the obligation to reconstitute it and within 5 business days from reconstituting it, to submit it to the administrator of the absorbing pension fund based on a delivery-receipt report. The reconstituted documents shall bear, on a mandatory basis and visibly placed, on the first page the specification "Reconstituted".
- (5) In exceptional cases where the reconstitution of a document is not possible, the administrator of the absorbed pension fund shall give a statement with regard to the content of the document and the reasons for which it could not be reconstituted.

### CHAPTER III Final Provisions

Art. 22. - (1) If an administrator of a privately managed pension fund intends to merge with another administrator of a privately managed pension fund, the legal provisions related to the reorganization of legal persons by merger shall apply.

(2) The merger of the administrators may be performed only with the Authority's prior authorisation, in accordance with the applicable legal provisions.

Art. 23. – Any contributions related to the absorbed pension fund and not paid to it shall be transferred by the record-keeping institution into the absorbing pension fund's account, in accordance with Rule No. 11/2008 on the collection of the individual contributions of the participants in the privately managed pension funds, approved by Resolution No. 23/2008 of the Private Pension System Supervisory Commission, as subsequently amended and supplemented.

Art. 24. – The terms provided herein that expire on a legal holiday or on a non-business day shall be extended until the end of the following business day.

Art. 25. – Failure to observe the provisions of Art. 8 *et seqq.* shall be sanctioned in accordance with the provisions of the legislation in force, i.e. Art. 16, Art. 81 Para (1) Letter c), Art. 140 Para (1), Art. 141 Para (1) Letter g), Art. 141 Para (2) - (11) and Art. 142 of the Law.

Art. 26. – The Annexe is an integral part of this rule.

Art. 27. – Upon the entry into force hereof, Rule No. 14/2008 on the protection of participants in case of merger of privately managed pension funds, approved by Resolution No. 27/2008 of the Private Pension System Supervisory Commission, published in the Official Journal of Romania, Part I, No. 452 of 17 June 2008, as subsequently amended, and any other provisions contrary to this rule, are hereby abrogated.

President of the Financial Supervisory Authority,  
Dan Radu Ruşanu

Bucharest, 18 September 2013

No. 12

#### ANNEXE Rule 12

##### APPLICATION

for prior/final authorisation of the merger of privately managed pension funds

Identification date of the merging privately managed pension funds

The undersigned .....  
..... (name and surname), in my/our capacity as  
representative(s) of  
privately managed pension fund .....

.....  
(name of the absorbed pension fund), managed by .....

..... - S.A. (name  
of the undertaking), having:  
registered headquarters: .....

.....  
(locality), .....

..... (street and  
number), .....

..... (county), .....

.....  
(postal code), secondary headquarters: .....

..... (locality), .....

.....  
(street and number), .....

..... (county), .....

.....  
(postal code), form of organization: .....

.....



.....  
..... (subsidiary,  
branch, representative office, agency, work point), telephone number: ....., fax  
number: .....

....., e-mail address: ....., hereby request the  
prior/final authorisation of the merger of the abovementioned privately managed pension fund with  
privately managed pension fund .....

.....  
.....  
..... (name of the absorbing pension fund), managed by. .  
.....

..... - S.A. (name of the undertaking), having: registered headquarters: .....

..... (locality), .....

..... (street and number), .....

..... (county), .....

..... (postal code), secondary headquarters: .....

..... (locality), .....

..... (street and number), .....

..... (county), .....

..... (postal code), form of organization: .....

..... (subsidiary branch, representative office, agency, work point), telephone number:  
.....

....., fax number: ....., e-mail address: .....

.....  
This application is accompanied by ..... documents, having a total of .....

..... pages.

Signatures of the representatives:

..... (absorbed  
pension fund)

..... (absorbing  
pension fund)

Date .....

Any false statements or intentional omissions to declare certain facts may be a breach of the criminal law.