

**RULE No. 3/2014**  
**on internal control, internal audit and risk management in the private pension system**

(Published in the Official Journal of Romania, Part. I No. 258 of 09.04.2014)

Having regard to the provisions of Art. 57 Para (1) letter l) and Art. 66 Para (1) of Law No. 411/2004 on the privately managed pension funds, republished, as subsequently amended and supplemented, of Art. 15 Para (1) letter m) and Art. 16 of Law No. 204/2006 on voluntary pensions, as subsequently amended and supplemented,

based on the provisions of Art. 24 letters a) and o) of 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,

based on the provisions of Art. 2 Para (1) letters c) and d), of Art. 3 Para (1) letter b), of Art. 5 letter c), Art. 6 Para (1) and (2) and of Art. 7 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,

further to the deliberations held in the meeting of the Financial Supervisory Authority's Board of 17 March 2014,

The Financial Supervisory Authority Board hereby issues this rule:

**CHAPTER I**  
**General provisions**

Art. 1. – This rule shall regulate the organization and conduct of internal control, internal audit and risk management in the private pension system.

Art. 2. – The provisions hereof shall be applicable to:

- a) managers of the privately managed pension funds and managers of voluntary pension funds, hereinafter referred to as managers;
- b) privately managed pension funds and voluntary pension funds, hereinafter referred to as private pension funds.

Art. 3. - (1) The terms and phrases used hereunder shall have the meanings provided by:

- a) Art. 2 of Law No. 411/2004 on the privately managed pension funds, republished, as subsequently amended and supplemented, hereinafter referred to as Law No. 411/2004;
- b) Art. 2 of Law No. 204/2006 on voluntary pensions, as subsequently amended and supplemented, hereinafter referred to as Law No. 204/2006;

c) Art. 2 Para (1) of Law No. 297/2004 on the capital market, as subsequently amended and supplemented;

d) Art. 2 Para (2) of Rule No. 11/2011 on the investment and evaluation of private pension fund assets, approved by Resolution of the Private Pension System Supervisory Commission No. 22/2011, as subsequently amended and supplemented, hereinafter referred to as Rule No. 11/2011;

e) Art. 3 Para (2) of Rule No. 10/2010 on reporting and transparency obligations in the privately managed pension system, approved by Resolution of the Private Pension System Supervisory Commission No. 20/2010, as subsequently amended and supplemented, hereinafter referred to as Rule No. 10/2010;

f) Art. 3 Para (2) of Rule No. 11/2010 on reporting and transparency obligations in the privately managed pension system, approved by Resolution of the Private Pension System Supervisory Commission No. 21/2010, as subsequently amended and supplemented, hereinafter referred to as Rule No. 11/2010;

g) Art. 3 Para (2) of Rule No. 12/2010 on the authorisation to set up a pension company and the license to manage privately managed pension funds, approved by Resolution of the Private Pension System Supervisory Commission No. 22/2010, as subsequently amended and supplemented, hereinafter referred to as Rule No. 12/2010;

h) Art. 3 Para (2) of Rule No. 13/2010 on the authorisation to set up a pension company and the license to manage privately managed pension funds, approved by Resolution of the Private Pension System Supervisory Commission No. 23/2010, as subsequently amended and supplemented, hereinafter referred to as Rule No. 13/2010;

i) Art. 3 of Rule No. 11/2007 on the financial auditor for privately managed pension funds and the managers thereof, approved by Resolution of the Private Pension System Supervisory Commission No. 32/2007, as subsequently amended and supplemented.

(2) Also, the terms and phrases herein below shall mean as follows:

a) internal audit – the objective examination of all the activities carried out by managers and private pension funds for the purpose of independently assessing risk management, control and management processes;

b) risk management – the process of identifying, assessing, mitigating, monitoring and reporting risks generated by internal or external factors that might have an adverse effect on the activity carried out by managers and/or private pension funds;

c) internal control – the continuous process of monitoring the fulfilment of the following objectives:

(i) performance, i.e., the efficacy and efficiency of the activities conducted;

(ii) information, i.e., reliability, integrity and timely supply of information;

(iii) compliance, i.e., compliance with applicable normative acts and internal procedures.

d) risk mitigation – the measures taken to reduce the likelihood of the risk and/or reduction of the impact on the activity carried out by managers and/or private pension funds, if the risk materializes;

e) risk exposure – the extent to which the activity carried out by managers and/or private pension funds may be adversely affected by the materialization of a potential risk, assessed based on the likelihood of occurrence and estimated impact thereof;

f) risk impact – the measurement or qualitative interpretation of the consequences that a potential materialization of the risk would have on managers and/or private pension funds;

g) risk probability – the likelihood that a risk will materialize, determined through appreciation or measurement, when the nature of the risk and the information available allow such assessment;

h) risk profile – the description of the types and effects of the risks to which managers and private pension funds are exposed;

i) actuarial risk – the risk that arises from using improper actuarial assessment methods and/or hypotheses;

j) concentration risk – the risk that the investment portfolio of managers and/or private pension funds will be excessively exposed to a certain asset, issuer, group of issuers, economic sector, geographic region, intermediary, counterparty, group of counterparties that are connected, as the case may be;

k) credit risk – the loss risk arising from fluctuations of the creditworthiness of issuers of securities, counterparties and any debtors to which managers and private pension funds are exposed;

l) liquidity risk – the risk that managers and/or private pension funds may not turn the assets into cash in due time in order to settle their obligations;

m) operating risk – the loss risk related to improper or dysfunctional internal processes, personnel, systems, external processes and environment, including the risk related to IT technology and improper processing from the stand point of administration, integrity, infrastructure, controllability and continuity, and the risks related to the outsourcing of the activity;

n) market risk – the loss risk arising directly or indirectly from unfavourable fluctuations of interest rates, exchange rates or other market prices;

o) reputational risk – the loss risk arising from the participants', potential participants', counterparties', shareholders', investors', supervisory authorities' and similar entities' unfavourable perception of managers and/or private pension funds;

p) compliance risk – the risk that managers shall be sanctioned for the breach of normative acts, internal regulations and codes of conduct established by markets or the industry, applicable to their activity, which may cause financial losses or reputation damages to them and/or the private pension funds they manage;

q) inherent risk – the exposure to a certain risk, before implementing mitigating control mechanisms and techniques;

r) residual risk – the exposure to a certain risk, after implementing mitigating management mechanisms;

s) stress test – the risk management technique used to assess, by simulation, the potential effects of a certain event and/or of the change of a set of variables on the managers' and/or private pension funds' activity;

ş) risk tolerance – the margin that managers and/or private pension funds are willing to accept or to which they are exposed.

## **CHAPTER II** **Internal Control**

### **SECTION 1** ***Objectives of Internal Control***

Art. 4. - (1) Managers shall establish an internal control structure for which the following elements must be provided:

- a) role and responsibilities of the management structure in the relationship with the internal control structure;
- b) internal control activities and segregation of responsibilities;
- c) information and communication;
- d) monitoring and correction of deficiencies.

(2) The objectives of the internal control activity shall be as follows:

- a) the efficient conduct thereof;
- b) the supply of accurate, reliable, relevant, complete and adequate information for the decisions made by members of the board of administration/supervisory board or managers/executive board, as the case may be, and the external users of such information;
- c) the supervision of the manager's and personnel's compliance with applicable normative acts and internal regulations/norms/procedures/rules;
- d) mitigation of the risks of managers not complying with their obligations.

(3) The internal control structure shall be directly subordinated to the board of administration/supervisory board or managers/executive board, as the case may be.

(4) To fulfil the objectives provided under Para (2), managers shall:

a) establish, implement and maintain procedures to ensure:

(i) the security, integrity and confidentiality of information, given the nature thereof;

(ii) the continuity and consistency of rendering private pension fund management services;

(iii) the proper internal control mechanisms intended to comply with decisions and procedures at all hierarchical levels;

(iv) an internal reporting and communication system at all relevant hierarchical levels;

(v) the accounting policies, according to applicable normative acts.

b) the provision of qualified personnel having the skills, knowledge and experience to carry out the assigned duties;

c) that adequate and orderly records of the manager's activity are kept;

d) draw up other procedures, in accordance with applicable normative acts.

## **SECTION 2**

### ***Role and Responsibilities of the Board of Administration/Supervisory Board and Managers/Executive Board***

Art. 5. – The Board of Administration/Supervisory Board shall have at least the following duties:

a) establish adequate decision-making processes and accurately segregate positions;

b) approve the delegation of competences and responsibilities, so as to avoid excessive reliance on a single person for making decisions;

c) verify how the delegated competences and responsibilities are carried out;

d) verify whether the managers/executive board accurately implement(s) the internal control system, in accordance with the policies set out;

e) ensure that it is periodically informed of the efficacy of the internal control systems.

Art. 6. – The managers/executive board shall have at least the following duties:

a) properly assign duties at all organizational levels so as to avoid conflicts of interest;

- b) adopt, for their/its own personnel, rules of professional conduct, discipline and action in case of any conflicts of interest, which would also provide adequate corrective measures in case of breach thereof;
- c) avoid remuneration policies or practices that may lead to illegal activities, contrary to the interests of the manager or the private pension funds managed thereby, or that imply taking unjustified risks;
- d) set communication procedures securing a proper information flow at all levels, that would guarantee that its/their own personnel is aware of the policies and procedures relevant for its duties and responsibilities and that the relevant information is received in due time, enabling:
- (i) the information of the board of administration/supervisory board of the risks related to the activity of the manager and the private pension funds;
  - (ii) the dissemination of relevant information among the manager's territorial departments and structures.
- e) the design of information and communication technology procedures meant to ensure the existence and maintenance of an IT system adapted to the managers' needs, in line with the size, nature and complexity of their activity, i.e.:
- (i) procedures regarding the physical safety of hardware, software and database;
  - (ii) procedures regarding data safety, including the provision of security conditions for the areas where confidential information is accessed;
  - (iii) procedures for limiting the access of unauthorized persons from the operating environment, preventing the improper use of information by managers' personnel and recording all attempts of unauthorized access.
- f) debate on the proposals of reviewing and approving the internal control activity, at least annually, but no later than 31 May.

### **SECTION 3**

#### ***Conflict of Interest Management***

Art. 7. - (1) Managers shall take all the necessary measures to ensure that the conflict of interest between them, including leaders, personnel, parent company, the group they belong to or any affiliate or person directly or indirectly controlling them, and the private pension fund, and also between combinations of the cases above, is identified and managed so as not to affect the interests of the private pension fund.

(2) To identify the types of conflict of interest that may arise during the management of the portfolio of the private pension fund and/or the related services, whose existence could prejudice their interests, managers shall consider, based on minimum criteria established within the undertaking, whether a relevant person or a person directly or indirectly connected therewith is in any of the following cases:

- a) the manager or the person at issue might obtain financial gains or could avoid a financial loss on the fund's account;
- b) the manager or the person at issue might enjoy a financial or another incentive to benefit an undertaking, on the fund's account.

Art. 8. – Managers shall order the necessary measures and procedures to ensure that the following are complied with:

- a) the personnel of the investment directorate conducting analysis activities and other relevant persons are not involved in personal transactions, nor influence or cause other persons to conclude transactions with the financial instruments under analysis or with any related financial instruments, before the results of the analysis are used by the pension fund;
- b) the personal transactions of the managers of the private pension fund are recorded in a register that includes all the approvals or prohibitions related thereto;
- c) the provisions of Chapter V of Rule No. 11/2011.

Art. 9. – The procedures drawn up to enforce Art. 8 letter b) shall be designed so as to distinctly provide as follows:

- a) each relevant person shall have knowledge of the restrictions regarding personal transactions, and the measures ordered by managers related thereto and related to the disclosure of information;
- b) managers shall be immediately informed of any personal transaction involving a relevant person, either based on a notification on such transaction, or through other procedures enabling them to identify such transactions.

Art. 10. – Managers, the personnel in charge of financial analyses and the relevant persons involved in analysing investments shall be prohibited from accepting any material or other advantages from persons who have a material interest related to the object thereof.

#### **SECTION 4** ***Organization and Conduct of Internal Control***

Art. 11. - (1) Internal control is conducted independently of the activities monitored and controlled by managers, so as to:

- a) continuously assess the efficacy and proper implementation of managers' measures and procedures, and the measures ordered to solve any cases of breach of the obligations thereof;
- b) monitor the management of the private pension fund in an efficient manner.

(2) Internal control shall be exercised based on the procedures approved by the board of administration/supervisory board or managers/executive board, as the case may be.

(3) To allow the persons managing the internal control structure to carry out their responsibilities in a proper and independent manner, managers shall ensure that:

a) they have the necessary authority, resources and experience, and access to all relevant information;

b) they have duties specific to internal control and methods of remuneration that prevent the impairment of their objectivity, or occurrence of such possibility;

c) they are not involved in the conduct of the activities they monitor;

d) they participate, as invitees, in the meeting of the board of administration/supervisory board at least once a year, when the activity report of the internal control structure is subject to debate on the agenda.

Art. 12. - (1) The internal control activity shall comprise at least the following:

a) operative analyses of managers' structures;

b) ensuring that controls are conducted on how managers handle access to operations related to the assets of the private pension fund and participants' accounts;

c) ensuring that the competent management level verifies operations that exceed certain limits;

d) ensuring that independent verifications are made, including regarding segregation of duties, cross-checking, assets' double control, double signature and others alike;

e) ensuring that verifications are made regarding the transactions conducted by managers and private pension funds;

f) ensuring that the competent persons verify, at least bi-annually, operations regarding:

(i) the participants' membership and record-keeping;

(ii) the record of individual membership documents;

(iii) charges and conversion of contributions;

(iv) the assessment of the financial asset portfolio and calculation of the net assets of the private pension fund;

(v) the transfers of the participants' individual contributions to the private pension funds;

(vi) the settlement of financial instrument transactions;



- (vii) the transfer of the participants' assets among private pension funds;
  - (viii) the payment of the counter value of the net personal asset of participants to a private pension fund in case of invalidity, death and initiation of their right to pension;
  - (ix) the settlement of the managers' and the private pension funds' obligations;
  - (x) the delegation and monitoring of the private pension fund's marketing agents;
  - (xi) the preparation, presentation, submission, publication and transmission of the reports/communications provided by applicable normative acts to the Financial Supervisory Authority, hereinafter referred to the Authority, and the participants.
- g) ensuring that the accuracy of data and the reports of the manager and the private pension funds are verified;
- h) ensuring that all the documents sent by the manager to the Authority are verified and signed.

(2) Internal control shall be implemented for each of the manager's organizational levels and shall be exercised taking into account the size, nature and complexity thereof.

(3) Internal control shall be an integral part of the manager's daily activity.

(4) The manager may not outsource the internal control activity.

#### **SECTION 5**

##### ***Activity of the Head of the Internal Control Structure***

Art. 13. – The head of the internal control structure shall be individually authorized by the Authority, before commencing to exercise his/her duties, in accordance with the provisions of Rule No. 12/2010 and Rule No. 13/2010.

Art. 14. - The head of the internal control structure shall have the following duties:

- a) prepare the annual internal control plan, to be approved by the board of administration/supervisory board or the managers/executive board, as the case may be;
- b) regularly monitor and verify the proper enforcement of the normative acts specific to the management of private pension funds and internal procedures, keeping a record of identified irregularities;
- c) take all steps to prevent any cases of breach of applicable normative acts or internal procedures of the manager and file proposed measures to remedy any non-compliance;
- d) report to the board of administration/supervisory board or the managers/executive board, as the case may be, the breaches of applicable normative acts or internal procedures;

e) ensure that the IT system's compliance with the provisions of applicable normative acts and the manager's internal procedures is verified;

f) ensure that all the complaints received by the manager are recorded and solved, through the Complaint Registry, which shall contain at least the following information:

(i) number and date of the complaint in the incoming/outgoing register;

(ii) claimant's identification details;

(iii) the activity to which the complaint makes reference;

(iv) the identification details of the persons against which the complaint was filed, if applicable;

(v) the claimed deeds;

(vi) the claimed prejudice;

(vii) the number and date of registration in the incoming/outgoing register of the answer to the complaint and how the complaint was solved.

g) ensure that the reporting obligations are fulfilled according to applicable normative acts;

h) approve the compliance of advertising materials with applicable normative acts;

i) monitor that the manager complies with the requests filed by the persons empowered by the Authority to control the activity of the manager and/or the private pension funds and the measures ordered by the Authority.

Art. 15. – Within the shortest time possible, but no later than 30 calendar days from identifying the deficiencies, depending on the size, nature and complexity thereof, the board of administration/supervisory board or the managers/executive board, as the case may be, shall order the design and implementation of a remedial plan.

Art. 16. – The head of the internal control structure shall be prohibited from using the information he/she has access to in any way contrary to the legal provisions or to the detriment of the objectives of the manager and the private pension funds or in order to seek personal advantages.

Art. 17. - (1) In exercising the duties provided under Art. 14, the head of the internal control structure shall prepare an internal control report on a bi-annual basis.

(2) The report provided under Para (1) shall comprise at least the following elements:

a) the list of all the activities that are carried out by the manager in its own name and/or on behalf of the private pension funds, and that are subject to control;

b) the duration of each activity and period to which it relates;

c) the description of the internal control activities carried out, description of the internal control procedure enforced, the persons who designed the procedures and verified the documents, and the compliance of the activities carried out by the manager in its own name and/or on behalf of the private pension funds with the provisions of the applicable normative acts;

d) the deficiencies identified and measures recommended for the remedy thereof;

e) the decisions adopted by the persons authorized to take remedial measures;

f) the status of the implementation of the measures taken to remedy the identified deficiencies, presented separately for current deficiencies and for those identified in previous internal control reports;

g) the implementation terms of the measures.

(3) The report provided under Para (1) shall be approved by the board of administration/supervisory board or the managers/executive board, as the case may be, and shall be sent to the Authority, in accordance with the provisions of Rule No. 10/2010 and Rule No. 11/2010.

Art. 18. - (1) In exercising his/her duties, the head of the internal control structure shall prepare and manage:

a) the internal control register;

b) the personal transactions register;

c) the conflict of interest register.

(2) The registers mentioned under Para (1) shall be kept in hard copy or in electronic form.

Art. 19. - (1) The internal control register shall comprise at least information on:

a) the verifications and investigations made;

b) the persons who made the verifications and investigations;

c) the duration of the verifications and investigations, and the period to which they relate;

d) the outcome of the verifications and investigations;

e) the proposals submitted in writing to the board of administration/supervisory board or the managers/executive board, as the case may be, and the date when they were filed;

f) the remedial measures and completion terms assumed by the authorized persons.

(2) The head of the internal control structure shall list all the investigations conducted in the register provided under Para (1), in chronological order.

Art. 20. - (1) The personal transaction register shall comprise all the transactions of the relevant persons.

(2) The register provided under Para (1) shall comprise at least the following information:

- a) surname and first name of the relevant person;
- b) date and hour of the transaction;
- c) nature of the transaction, i.e., sale or purchase, as the case may be;
- d) the financial instrument traded;
- e) the intermediary;
- f) any approval or interdiction of the transaction, as the case may be.

(3) When analysing personal transactions, the head of the internal control structure shall verify the compliance with the provisions of Arts. 7-10.

Art. 21. - (1) The conflict of interest register shall comprise at least the following information

- a) filling-out date;
- b) the activity identified/suspected as/of having led/potentially leading to a conflict of interest;
- c) persons involved;
- d) potential effects;
- e) proposals sent in writing to the board of administration/supervisory board or the managers/executive board, as the case may be;
- f) how the conflict of interest was managed.

(2) When analysing potential conflicts of interest, the head of the internal control structure shall pay particular attention to transactions involving relevant persons, affiliated persons or persons engaged in concerted actions.

Art. 22. – The head of the internal control structure shall be directly subordinated to the board of administration/supervisory board or the managers/executive board, as the case may be.

### **CHAPTER III** **Internal Audit**

#### **SECTION 1** **Objectives of Internal Audit**

Art. 23. - (1) The manager shall establish an internal audit structure.

(2) The internal audit activity shall be organized in accordance with the provisions of Government Emergency Ordinance No. 75/1999 on the financial audit activity, republished, as subsequently amended and supplemented, hereinafter referred to as Government Emergency Ordinance No. 75/1999.

(3) The objectives of internal audit shall be:

a) to ensure that the manager's policies and procedures are observed in all activities and structures;

b) to revise control policies, procedures, processes and mechanisms, so that they are sufficient and adequate for the activity conducted.

(4) The internal audit structure shall be directly subordinated to the board of administration/supervisory board.

(5) Persons who are spouses, relatives or affines up to the fourth degree, inclusively, of members of the manager's management bodies may not be internal auditors.

(6) To avoid any conflict of interest, internal auditors:

a) may not audit activities or positions conducted/held unless after the passage of at least one year from the exercise thereof;

b) may not be involved in operations of managers/private pension funds or in the design or implementation of any control procedures applicable to managers/private pension funds.

Art. 24. - (1) Internal audit shall cover all of the activities conducted by managers in their own name and on behalf of the private pension fund(s) they manage.

(2) To fulfil its objectives, the internal audit activity shall include at least the following:

a) assessment of the efficiency and degree of adequacy of the internal control, risk management, investment management and marketing activities;

b) analysis of the relevance and integrity of the data supplied by the IT systems;

c) assessment of the accuracy and reliability of the accounting records and financial statements;

d) assessment of how the balance sheet and off-balance sheet items of patrimony are protected and how methods to prevent fraud and any kind of losses are identified.

(3) The internal audit activity shall be objective and independent of the audited activities.

## **SECTION 2**

### ***Role and Responsibilities of the Board of Administration/Supervisory Board***

Art. 25. - (1) The Board of Administration/Supervisory Board shall be responsible for ensuring a proper internal audit activity according to the size and nature of the operations carried out.

(2) The Board of Administration/Supervisory Board shall have at least the following responsibilities:

- a) to approve the internal procedures applicable to the audit committee and the internal audit structure;
- b) to approve the annual audit plan;
- c) to be informed of the action plan resulting from the recommendations made by the internal audit structure;
- d) to be periodically informed of the status of implementation of the action plan and, if applicable, to order additional measures when required.

### ***SECTION 3 Organisation and Conduct of Internal Audit***

Art. 26. - (1) The internal audit activity shall comprise at least the following stages:

- a) planning the internal audit activity;
- b) examining and evaluating the information available;
- c) communicating the internal audit report, the action plan and the status of implementation thereof to the board of administration/supervisory board and/or the audit committee, as the case may be;
- d) monitoring the implementation of the recommendations ordered by the board of administration/supervisory board, as the case may be.

(2) The manager may not outsource the internal audit activity.

Art. 27. – The manager shall draw up internal procedures, which shall comprise at least the following:

- a) the objectives and scope of the internal audit activity;
- b) the competences and responsibilities of the internal audit structure within the undertaking;
- c) the duties and responsibilities of the head of the internal audit structure;
- d) the terms and conditions in which internal auditors may provide consulting services or may fulfil other special tasks;

e) the modality of analysis and review.

**SECTION 4**  
***Activity of the Head of the Internal Audit Structure***

Art. 28. - (1) Managers shall appoint the head of the internal audit structure.

(2) The person provided under Para (1) shall observe the provisions of Government Emergency Ordinance No. 75/1999.

(3) Before the person provided under Para (1) starts fulfilling his/her duties, the manager shall communicate his/her name to the Authority.

Art. 29. – Internal auditors shall be cautious in using the information gathered in the conduct of their activity and shall ensure the protection of such information.

Art. 30. – The personnel involved in the internal audit activity shall not be entrusted with operative responsibilities.

Art. 31. - (1) Internal auditors shall not:

a) use the information gathered in any way contrary to the legal provisions or to the detriment of the objectives of the manager and the private pension funds or in order to seek personal advantages;

b) assess operations they have been in charge of prior to exercising internal audit activities.

(2) Managers shall take measures to ensure the proper auditing of the operations provided under Para (1) letter b).

Art. 32. - (1) The head of the internal audit structure shall have the following duties:

a) design, implement and maintain an annual internal audit plan ensuring the assessment and determining the efficacy and adequacy of the risk management, internal control, investment management and marketing activities, of manager's mechanisms and procedures, and the necessary resources for such activity;

b) issue recommendations based on the outcome of the activity conducted according to letter a);

c) report the deficiencies found as a result of the internal audit activity to the board of administration/supervisory board;

d) analyse the manager's procedures and test the efficacy of the internal control systems and risk management systems in relation to the processes audited further to the missions undertaken;

e) ensure compliance with the legal provisions, according to the applicable normative acts, in relation to the processes audited further to the missions undertaken.

(2) The internal audit plan provided under Para (1) letter a) shall meet the following conditions:

a) to define the objectives, terms and frequency of the internal audit missions and information regarding all the activities to be conducted, the human resources and materials required;

b) to include all the operations, activities and processes, taking into account the risks and the organization of the manager's various activities.

(3) The internal audit plan shall be subject to the approval of the board of administration/supervisory board, in accordance with the applicable normative acts.

(4) Each internal audit plan mission shall be conducted based on the audit specific documents detailing the activities carried out, techniques and working methods, and the stages of the mission.

(5) For the application of the provisions of Para (4), the documents shall permit the review of the audit mission carried out, the deficiencies identified and the conclusions.

(6) The documents provided under Para (4) shall be kept for a period of 10 years and shall be made available to external auditors and the audit committee.

(7) The internal audit plan provided under Para (1) letter a) shall be sent to the Authority in accordance with the provisions of Rule No. 10/2010 and Rule No. 11/2010.

Art. 33. - (1) Each internal audit mission shall form the object of an internal audit report presented to the board of administration/supervisory board.

(2) The report provided under Para (1) shall be objective, clear and concise, and shall contain recommendations to remedy the deficiencies identified throughout the audited period.

(3) The report provided under Para (1) shall comprise at least the following elements:

a) the period subject to internal audit;

b) the list of activities conducted by the internal audit structure in the audited period;

c) the description of the main activities conducted;

d) the persons in charge of conducting such activities;

e) the deficiencies identified and the recommendations of the internal audit structure for the remedy thereof;

f) the status of the measures plan designed to remedy the identified deficiencies, presented separately for current deficiencies and for those identified in previous internal audit reports, if the latter had not been properly solved.

(4) The report provided under Para (1) shall also be sent to the audit committee.



Art. 34. – The head of the internal audit structure shall draw up a report on the internal audit missions undertaken, which shall be sent to the Authority in accordance with the provisions of Rule No. 10/2010 and Rule No. 11/2010.

Art. 35. – Internal auditors shall have access to any data or records, and to relevant documents and information necessary in the conduct of their duties.

Art. 36. – In fulfilling their duties, the heads of the internal audit structure shall monitor how the recommendations made in the internal audit report are implemented and shall report in this respect, at least bi-annually, to the board of administration/supervisory board and audit committee, as the case may be.

## **CHAPTER IV Risk Management**

### **SECTION 1 *Objectives of Risk Management***

Art. 37. - (1) Managers shall establish a risk management structure.

(2) The objectives of risk management shall be to identify, analyse, assess, mitigate, monitor and report the risks to which private pension funds and managers are exposed, given both internal and external factors.

(3) The risk management structure shall be directly subordinated to the board of administration/supervisory board or the managers/executive board, as the case may be.

(4) The risk management activity shall take into account the following:

a) internal factors, such as the complexity of the organizational structure, the nature and size of the activities conducted, the quality of the personnel, its fluctuation and other similar factors;

b) external factors, such as economic conditions, legislative changes and other similar factors.

(5) in the risk management process, the following shall be identified:

a) controllable risks, in which case managers shall decide whether they shall fully assume or the extent to which they wish to mitigate them;

b) uncontrollable risks, in which case managers shall decide whether they shall accept or they shall eliminate or reduce the activities affected by such risks, as the case may be.

(6) Risks shall be assessed both under normal conditions and under alternative scenarios, including for cases of crisis.

(7) Managers shall conduct quantitative and/or qualitative analyses of the risks identified, using stress tests, if applicable.

(8) Managers shall determine the risks that shall be subject to proper and proportionate stress tests, taking into account an analysis of the nature and structure of the portfolios, and of the environment where managers and private pension funds carry out their activity.

(9) The stress tests shall be periodically designed and updated according to the nature, size and complexity of the activity of managing private pension funds, and the frequency thereof shall be specific to the type of risk, development of the managers' activity and market context.

(10) The results of the stress tests shall be communicated to the board of administration/supervisory board or the managers/executive board, as the case may be, as the basis for reviewing and improving the risk management policy and the set exposure limits, and for adopting adequate measures if the tests' results indicate significant vulnerability.

## **SECTION 2**

### ***Role and Responsibilities of the Board of Administration/Supervisory Board and the Managers/Executive Board***

Art. 38. – The Board of Administration/Supervisory Board shall have at least the following responsibilities:

- a) approve the risk management policy to which private pension funds and managers are exposed;
- b) approve the risk profile of private pension funds and managers and ensure the periodic review and update thereof;
- c) verify that the managers/executive board take the necessary measures to identify, assess, mitigate, monitor and report risks;
- d) be aware of the content of the risk report and approve the measures provided under letter c), if the implementation thereof exceeds the competence of managers/executive board.

Art. 39. – The managers/executive board shall have at least the following responsibilities:

- a) implement the risk management policy to which private pension funds are exposed and review it at least annually or anytime required;
- b) ensure and allocate the resources necessary for the fulfilment of the duties of the risk management structure, including personnel with proper experience and qualification, data systems, and access to internal and external information;
- c) clearly set the duties and responsibilities of the risk management structure and reporting lines, so as to observe the principle of segregation of incompatible duties and implement transparent mechanisms to solve conflicts of interest;

- d) adopt procedures for the authorisation of operations subject to assumed risks, if applicable;
- e) ensure the implementation of systems that establish and monitor the limits of risk exposure, and the levels of the decision-making competence;
- f) ensure the implementation of a risk exposure reporting system to the corresponding management levels;
- g) ensure the periodic assessment, monitoring and review of the measures adopted to remedy the deficiencies occurred throughout the risk management process;
- h) ensure that critical operating processes are identified which demand the swift resumption of the activity, including those processes that depend on external suppliers or third parties.

**SECTION 3**  
***Organization and Conduct of Risk Management***

Art. 40. - (1) Risk management shall be independent of the other activities conducted by managers.

(2) Persons who conduct risk management activities shall have the necessary experience in identifying, assessing, mitigating, monitoring and reporting risks, and they shall also prepare and monitor risk assessment models and scenario assessment models for stress tests.

Art. 41. - (1) The risk management activity shall include at least designing, implementing and updating proper policies, procedures, processes, techniques and measures to identify, analyse, assess, mitigate, monitor and report risks to which the private pension funds and managers are exposed.

(2) The manager may not outsource the risk management activity.

Art. 42. - (1) Managers shall design, implement and update a proper and documented risk management policy identifying, assessing, mitigating, monitoring and reporting the risks to which managers and private pension funds are or might be exposed, according to the applicable normative acts.

(2) The risk management policy shall form the object of a separate document, or shall be included in the managers' internal procedures if it allows a clear identification of duties, responsibilities and operations thereof.

(3) The policy provided under Para (1) shall ensure at least the following:

- a) the techniques, tools and methods allowing managers to fulfil their obligations according to applicable normative acts;
- b) the proper allocation of the responsibilities related to risk management;
- c) the persons in charge and level of accountability;

d) a system for reporting risk exposures, and other risk related matters;

e) determining the interaction between the risk management structure and the investment management structure, each maintaining their independence, including the level from which the decisions regarding the investment/disinvestment must be accompanied by the opinion/recommendation filed by the risk management structure;

f) the conditions, content, frequency and recipient of the reports of the risk management structure.

(4) The policy provided under Para (1) shall:

a) contain information of the identification, analysis, assessment, mitigation, monitoring and reporting of at least the following risks:

(i) actuarial risk;

(ii) market/investment risk;

(iii) credit risk;

(iv) concentration risk;

(v) liquidity risk;

(vi) operating risk, including the risk generated by the use of IT systems;

(vii) reputational risk;

(viii) compliance risk.

b) measure the impact and probability of risk, if possible, and assess the exposure to such risk;

c) to quantitatively assess or qualitatively interpret the inherent risk, mitigation measures and then to determine the residual risk;

d) establish risk tolerance and monitor the classification within the limits thereof;

e) determine whether the limits may not in any circumstance be exceeded or, under clearly specified conditions, they may be exceeded for a certain period of time;

f) include compliance risk assessment methodologies by using indicators, without being limited to, the number of complaints from participants, how quickly the found deficiencies are solved and atypical activities regarding trading or the payments made.

Art. 43. - (1) Managers shall have plans to resume the activity in case of unpredicted situations, which shall take into account various types of likely scenarios to which they may be exposed, according to the size, nature and complexity of the activity conducted.

(2) The plans provided under Para (1) shall:

- a) allow managers to operate based on the going concern principle and to minimize losses in case the activity is interrupted;
- b) be tested at least annually in order for managers to apply them in case the activity is affected.

(3) The plans provided under Para (1) may be designed separately or as part of the risk management policy.

Art. 44. - (1) Managers shall adopt measures and implement proper and efficient processes and techniques to manage at any time the risks to which private pension funds and managers are or might be exposed.

(2) The processes and techniques provided under Para (1) shall be proportionate to the size, nature and complexity of the activity of managers, the private pension funds they manage and to the risk profile of each of them.

(3) The processes and techniques provided under Para (1) shall make reference to managers and each private pension fund they manage and shall take into account the impact on the private pension fund and the managers.

(4) For the application of the provisions of Para (1) and (2), for each private pension fund, managers shall:

- a) ensure that the risks related to positions and their contribution to the aggregate risk profile are accurately measured;
- b) periodically examine the validity of the risk measurement methods, which include model based forecasts and estimates;
- c) conduct stress tests and periodic analyses of scenarios in order to approach the risks arising from potential changes of market conditions which may adversely affect private pension funds and managers;
- d) use proper, adequately documented and representative data;
- e) ensure the adaptation of IT systems in accordance with the applicable normative acts and the requirements of the corresponding risk category, and hold IT resources that support the complexity of the techniques used to conduct stress tests;
- f) verify, at least once a year, whether the stress tests are still adequate, and in particular whether the hypotheses regarding the risk profile and the environment where they conduct their activity remain valid in time;

g) design, implement and maintain a documented system of internal limits regarding the measures used to manage and control risks for each private pension fund, consistent with the risk profile thereof;

h) ensure that the current level of risks existing on the reassessment date is in line with the system of limits provided under letter g) for each private pension fund;

i) design, implement and maintain proper procedures which, in case of a real or anticipated breach of the system of risk limits of each private pension fund, shall allow swift remedy measures in the participants'/beneficiaries' interest.

#### **SECTION 4**

##### ***Duties of the Head of the Risk Management Structure***

Art. 45. - (1) The head of the risk management structure shall be authorized individually by the Authority before commencing to exercise his/her duties, in accordance with the provisions of Rule No. 12/2010 and Rule No. 13/2010.

(2) Persons that are in charge of risk management may not have work duties within the manager's investment department.

Art. 46. – The head of the risk management structure shall have the following coordination duties:

a) design proper policies and procedures to identify, assess, measure, control and manage risks, and submit for the board of administration's/supervisory board's approval the related limits regarding risk exposure including for crisis conditions, according to the size, complexity and financial status of the private pension fund and the procedures required to approve exceptions from such limits;

b) design proper processes, techniques and models to assess risks and limit risk exposures;

c) monitor the classification of private pension funds and managers in the system of risk limits;

d) inform the board of administration/supervisory board or the managers/executive board, as the case may be, of the exposures of the private pension fund to risks anytime significant changes occur, but at least quarterly. The communications shall be sufficiently detailed to as to enable the board of administration/supervisory board or the managers/executive board, as the case may be, to know and assess the performance in risk monitoring and controls, according to the approved policies;

e) inform the board of administration/supervisory board or the managers/executive board, as the case may be, of significant issues and developments that might influence the risk profile of the private pension fund they manage;

f) analyse how the manager's alternative plans correspond to the unpredicted situations they might face;

g) design the manager's reporting systems regarding risk related matters;

h) manage risks associated to the manager and/or the private pension funds, such as the collection and assessment of risk data from a quantitative and/or qualitative stand point, by adopting proper methodologies/tools of measuring/managing risk exposures, according to the nature, size and complexity of such risks;

i) analyse risks related to investment/disinvestment decisions;

j) design and update scenarios regarding stress tests and propose remedial measures, if applicable;

k) submit proposals regarding the selection of stress tests and methods of verification and validation thereof.

Art. 47. - (1) Bi-annually, the head of the risk management structure shall prepare a risk report.

(2) The report mentioned under Para (1) shall comprise at least the following elements:

a) the development, detailed analysis and interpretation of all risk indicators or limits monitored according to the internal procedures, per each risk class;

b) the results of the stress tests, their interpretation and proposals for remedial measures, if applicable;

c) the summary of the breaches identified and of the remedial measures implemented;

d) the detailed description of the significant breaches from the period under analysis.

(3) The report provided under Para (1) approved by the board of administration/supervisory board shall be sent to the Authority, in accordance with the provisions of Rule No. 10/2010 and Rule No. 11/2010.

## **CHAPTER V** **Legal Liability**

Art. 48. - (1) The following deeds, if committed such as to be deemed crimes according to criminal law, shall be deemed minor offences:

a) failure to fulfil or improper fulfilment of the manager's obligations related to internal control, internal audit and risk management;

b) the manager's failure to observe the provisions of Arts. 4-6, Art. 11 Para (1) and Art. 15;

c) the manager's failure to observe the provisions of Arts. 7-10 regarding the management of conflicts of interest;

d) the failure of the head of the internal control structure to observe the provisions of Arts. 14, 17 and Art. 18 Para (1);

e) the manager's failure to observe the provisions of Arts. 23-26, Art. 28 Para (1), Arts. 30 and 35 regarding internal audit;

f) the failure of the head of the internal audit structure to observe the provisions of Art. 32 Para (1), Arts. 33 and 34;

g) the manager's failure to observe the provisions of Arts. 37-40 and Arts. 42-45 regarding risk management;

h) the failure of the head of the risk management structure to observe the provisions of Arts. 46 and 47;

i) the manager's failure to observe the provisions of Art. 49.

(2) The perpetration of any of the deeds provided under Para (1) shall be sanctioned according to the provisions of Art. 140 Para (1), Art. 141 Para (1) letter g), Art. 141 Para (2)-(11) and Art. 142 of Law No. 411/2004 and Art. 120 Para (1), Art. 121 Para (1) letter k) and Para (2)-(11) and Art. 122 of Law No. 204/2006.

(3) If the deed is ascribable to more persons, then they shall be jointly liable to repair the prejudice caused.

## **CHAPTER VI**

### **Transitional and Final Provisions**

Art. 49. - (1) Within 6 months from the entry into force of this rule, the manager shall prepare or review, as the case may be, the documents regarding the risk management policy and/or the internal procedures regarding internal control, internal audit and risk management, in accordance with the provisions hereof, and shall communicate them to the Authority.

(2) The documents provided under Para (1) shall be prepared in the Romanian language and shall be approved by the board of administration/supervisory board or managers/executive board, as the case may be.

(3) Any subsequent amendment of the documents mentioned under Para (1) shall be notified to the Authority within 30 calendar days from the approval thereof by the board of administration/supervisory board or managers/executive board, as the case may be.

Art. 50. – The terms provided hereunder that expire on a legal holiday or non-business day shall be extended until the end of the following business day.

Art. 51. – For the application of Art. 44 Para (4) letter e), to adapt the IT systems, the classification in the risk category shall be periodically assessed by the Authority and shall be set individually for each private pension fund manager.

Art. 52. – This rule shall enter into force upon its publication in the Official Journal of Romania, Part I.

Art. 53. – Upon the entry into force hereof, Arts. 7-9 and Art. 23 of Rule No. 11/2011 on the investment and evaluation of private pension fund assets, approved by Resolution of the Private



Pension System Supervisory Commission No. 22/2011, published in the Official Journal of Romania, Part I, No. 8 of 5 January 2012, as subsequently amended and supplemented, and any contrary provisions, shall be abrogated.

First Vice President of the Financial Supervisory Authority,  
**Daniel Dăianu**

Bucharest, 17 March 2014.

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