LAW No. 74 of 14 April 2015

on managers of alternative investment funds

Published in Official Journal No. 274 of 23 April 2015

The Parliament of Romania hereby adopts this law.

CHAPTER I: General Provisions

Art. 1 (1) This law lays down the rules for the authorisation, ongoing operation and transparency of the managers of alternative investment funds (AIFMs) which manage and/or market units of alternative investment funds (AIFs).

(2) Subject to Para (5) and Art. 2, this law shall apply to:

a) legal persons established in Romania which manage one or more AIFs, regardless of whether AIF is of Romania or of another member state or third country;

b) AIFMs established in third countries for which Romania is designated a member state of reference in accordance with the provisions of Art. 39;

c) AIFMs established in other member states which market in Romania the units of one or more AIFs of other member states;

d) AIFMs established in other member states which manage one or more AIFs of Romania;

e) AIFMs established in other member states which market in Romania the units of one or more AIFs of third countries;

f) AIFMs established in third countries which market in Romania the units of one or more AIFs.

(3) For the purposes of Para (2), the following shall be of no significance:

a) whether the AIF belongs to the open-ended or closed-ended type;

b) whether the AIF is constituted under trust law, under statute, or has any other legal form;

c) the legal structure of the AIFM.

(4) The category of AIFs referred to in Para (3) shall comprise the collective investment undertakings, other than undertakings for collective investment in transferable securities (NON-UCITS), which must request registration with the Financial Supervisory Authority (ASF), in accordance with the provisions of Art. 114 Para (2) and Art. 115 Para (1) of Capital Market Law No. 297/2004, as subsequently amended and supplemented (Law No. 297/2004), and NON-UCITS which, in accordance with the provisions of Art. 115 Para (2) of the same law, do not have the obligation to request registration with ASF.

(5) This law shall not apply to the following entities:

a) holding companies, as defined in Art. 3 Point 27;

b) institutions for occupational retirement provision which are covered by Directive 2003/41/EC, of the European Parliament and of the Council of 3 June 2003 on the activities and supervision of institutions for occupational retirement provision, voluntary pension funds covered by Law No. 204/2006 on voluntary pensions, as subsequently amended and supplemented, privately managed pension funds covered by Law No. 411/2004 on privately managed pension funds, republished, as subsequently amended and supplemented , Lawyers Insurance House of Romania, established in accordance with Government Emergency Ordinance No. 221/2000 on pensions and other social security rights of lawyers, approved as amended and supplemented by Law No. 452/2001, other pension systems not integrated in the public system, and pension products the purpose of which is the provision of benefits upon the retirement age including, as appropriate, authorised entities responsible for the management of such institutions, funds or products and which act in their name, provided that they do not manage AIFs;

c) supranational institutions, such as the European Central Bank, the European Investment Bank, the European Investment Fund, European development financing institutions and bilateral development banks, the World Bank, the International Monetary Fund, and other supranational institutions and similar international organisations, in the event that such institutions or organisations manage AIFs and in so far as those AIFs act in the public interest;

d) National Bank of Romania (NBR);

e) national, regional and local governments and bodies or other institutions which manage funds supporting social security and pension systems;

f) employee participation schemes or employee savings schemes;

g) securitisation special purpose entities.

(6) ASF is the competent authority for the regulation, authorisation and supervision of the AIFMs established in Romania, which are covered by this law, by exercising the powers established by Government Emergency Ordinance No. 93/2012 on the establishment,

organisation and operation of the Financial Supervisory Authority, approved as amended and supplemented by Law No. 113/2013, as subsequently amended and supplemented.

(7) ASF shall establish appropriate methods to monitor that AIFMs comply with their obligations under this law where relevant on the basis of guidelines developed by the European Securities and Markets Authority (ESMA). If ASF deems it appropriate, it shall send ESMA its reasoned decision on the intention not to apply ESMA's guidelines and recommendations.

(8) Within 30 working days after the entry into force hereof, ASF shall notify ESMA and the European Commission of its capacity as competent authority in Romania to fulfil the duties referred to in Paras (6) and (7).

Art. 2 (1) This Law shall not apply to the AIFMs established in Romania in so far as they manage one or more AIFs whose only investors are the AIFMs, the parent undertakings or the subsidiaries of the AIFMs or other subsidiaries of those parent undertakings, provided that none of those investors is itself an AIF.

(2) Taking into account the provisions of Art. 50, only Paras (3) and (4) shall apply to the AIFMs referred to in Letters a) and b):

a) AIFMs established in Romania which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding established according to ASF's regulations, manage portfolios of AIFs whose assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of EUR 100,000,000; or

b) AIFMs established in Romania which either directly or indirectly, through a company with which the AIFM is linked by common management or control, or by a substantive direct or indirect holding established according to ASF's regulations, manage portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 500,000,000 when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.

(3) AIFMs referred to in Para (2):

a) are subject to registration with ASF;

b) identify themselves and the AIFs that they manage to ASF at the time of registration;

c) provide information on the investment strategies of the AIFs that they manage to ASF at the time of registration;

d) regularly provide ASF with information on the main instruments in which they are trading and on the principal exposures and most important concentrations of the AIFs that they manage established in accordance with Art. 5 Para (3), Art. 110 and Annex IV to

Commission Delegated Regulation (EU) No 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision (UE Regulation 231/2013) in order to enable ASF to monitor systemic risk effectively; and

e) notify ASF in the event that they no longer meet the conditions referred to in Para (2).

(4) Where the conditions set out in Para (2) are no longer met, the AIFM concerned applies to ASF for authorisation within 30 calendar days in accordance with the relevant procedures laid down by law.

(5) AIFMs referred to in Para (2) shall not benefit from any of the rights granted under this law, unless they choose to opt in under this law, in which case it shall no longer benefit from the exceptions referred to in Paras (3) and (4).

Art. 3 For the purposes of this Law, the terms and expressions below shall have the following meanings:

1. managing AIFs – means performing at least investment management functions referred to in Art. 5 Para (2), for one or more AIFs;

2. AIFMs – means legal persons whose regular business is managing one or more AIFs;

3. external AIFMs – means the legal person referred to in Point 2, responsible for managing AIFs, designated to that end by the shareholders/Board of Directors/Supervisory Board of AIFs established under an instrument of incorporation – investment company. In the case of AIFs established under articles of association – investment fund, the external AIFM is represented by the legal person referred to in Point 2 which had the initiative to establish such investment fund;

4. DAFIA – means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010;

5. competent authorities of the EU AIFMs– means the national authorities of other Member States of the European Union which supervise AIFMs established in those member states;

6. competent authorities in relation to a depositary means:

a) if the depositary is a credit institution authorised under Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, the competent authorities as defined in Art. 4 Para (1) Point 40 of Regulation (EU) No 575/2013

of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012;

b) if the depositary is an investment firm authorised under Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast), the competent authorities as defined in Art. 4 Para (1) Point 26 of such directive;

c) if the depositary falls within a category of institution referred to in point (c) of the first subparagraph of Article 21(3) of DAFIA, the national authorities of its home Member State which are empowered by law or regulation to supervise such categories of institution;

d) if the depositary is an entity referred to in the third subparagraph of Article 21(3) of DAFIA, the national authorities of the Member State in which that entity has its registered office and which are empowered by law or regulation to supervise such entity or the official body competent to register or supervise such entity pursuant to the rules of professional conduct applicable thereto;

e) if the depositary is appointed as depositary for a non-EU AIF in accordance with point (b) of Article 21(5) of DAFIA and does not fall within the scope of Letters a)-d), the relevant national authorities of the third country where the depositary has its registered office;

f) in the case of AIFs of Romania, ASF is the competent authority in connection with which the depositary meets the conditions referred to in Art. 20;

7. competent authorities of the EU AIF – means the national authorities of a Member State which are empowered by law or administrative regulation to supervise AIFs;

8. supervisory authorities in relation to non-EU AIFs – means the national authorities of a third country which are empowered by law or administrative regulation to supervise AIFs;

9. supervisory authorities in relation to non-EU AIFMs – means the national authorities of a third country which are empowered by law or administrative regulation to supervise AIFMs;

10. prime broker – means a credit institution, a regulated investment firm or another entity subject to prudential regulation and ongoing supervision, offering services to professional investors primarily to finance or execute transactions in financial instruments as counterparty and which may also provide other services such as clearing and settlement of trades, custodial services, securities lending, customised technology and operational support facilities;

11. initial capital – means funds as defined in Letters (a) – (e) of Article 26 of EU Regulation 575/2013;

12. carried interest – means a share in the profits of the AIF accrued to the AIFM as compensation for the management of the AIF and excluding any share in the profits of the AIF accrued to the AIFM as a return on any investment by the AIFM into the AIF;

13. conflicts of interest – means any or more of the situations referred to in Art. 30 of EU Regulation 231/2013, which may arise between the persons referred to in Art. 14 Para (1);

14. control – means the relationship between a parent undertaking and a subsidiary as described in Point 35;

15. marketing – means a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units of an AIF it manages to or with investors domiciled or with a registered office in a Member State;

16. leverage – means any method by which the AIFM increases the exposure of an AIF it manages whether through borrowing of cash or securities, or leverage embedded in derivative positions or by any other means;

17. issuer – means a legal entity governed by public or private law with its registered officer in the European Union whose shares are admitted to trading on a regulated market on the European Union within the meaning of point (21) of Article 4(1) of Directive 2014/65/EU. The issuer is, in the case of the depository receipts representing securities, the entity which issues the securities represented;

18. securitisation special purpose entities – means entities whose sole purpose is to carry on a securitisation or securitisations within the meaning of Article 1(2) of Regulation (EC) No 24/2009 of the European Central Bank of 19 December 2008 concerning statistics on the assets and liabilities of financial vehicle corporations engaged in securitisation transactions and other activities which are appropriate to accomplish that purpose;

19. ESRB – means the European Systemic Risk Board;

20. AIFs of Romania – means those NON-UCITS established in Romania which raise capital from at least two (2) investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors and which meet the conditions referred to in Art. 1 Para (3);

21. EU AIF – means:

a) an AIF which is authorised or registered in a EU Member State under the applicable national law of that Member State; or

b) an AIF which is not authorised or registered in a Member State, but has its registered office and/or head office in a Member State;

22. non-EU AIF – means an AIF which is not a EU AIF;

23. feeder AIF – means an AIF which:

a) invests at least 85% of its assets in units or shares of another AIF (the ‘master AIF’);

b) invests at least 85% of its assets in more than one master AIFs where those master AIFs have identical investment strategies; or

c) has otherwise an exposure of at least 85% of its assets to such a master AIF;

24. master AIF – means an AIF in which another AIF invests or has an exposure in accordance with Point 23;

25. subsidiary – means an undertaking controlled by the parent undertaking defined in Point 35, including any undertaking subordinated to the parent undertaking managing the group of undertakings concerned;

26. own funds – means own funds as referred to in Point 118 of Article 4 (1) of Regulation (EU) 575/2013, i.e. the sum of Tier 1 capital and Tier 2 capital;

27. holding company – means a company with shareholdings in one or more other companies, the commercial purpose of which is to carry out a business strategy or strategies through its subsidiaries, associated companies or participations in order to contribute to their long-term value, and which is either a company:

a) operating on its own account and whose shares are admitted to trading on a regulated market in the EU; or

b) not established for the main purpose of generating returns for its investors by means of divestment of its subsidiaries or associated companies, as evidenced in its annual report or other official documents;

28. financial instrument – means an instrument as defined in Art. 2, Para (1), Point 11 of Law No. 297/2004;

29. professional investor – means an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of the definitions provided by the regulations for financial investment services, issued for the implementation of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC;

30. retail investor – means an investor who is not a professional investor;

31. UCITS – means an undertaking for collective investment in transferable securities as defined by 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, approved as amended and supplemented by Law No. 10/2015 (Government Emergency Ordinance No. 32/2012);

32. qualifying holding – means a direct or indirect holding in an AIFM which represents 10% or more of the capital or of the voting rights, in accordance with Art. 228 of Law No. 297/2004, taking into account the conditions regarding aggregation of the holding laid down in the

regulations issued for the application of this law, or which makes it possible to exercise a significant influence over the management of the AIFM in which that holding subsists;

33. legal representative – means a natural person domiciled in the European Union or a legal person with its registered office in the European Union, and which, expressly designated by a non-EU AIFM, acts on behalf of such non-EU AIFM vis-à-vis the authorities, clients, bodies and counterparties to the AIFMs in Romania with regard to the non-EU AIFM's obligations under this law;

34. employees' representatives – means employees' representatives as defined in Law No. 467/2006 on establishing the general information and consultation framework of employees (Law No. 467/2006);

35. parent undertaking – means a parent undertaking in any of the following situations:

a) has a majority of the shareholders' or members' voting rights in another undertaking (a subsidiary undertaking); or

b) has the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking (a subsidiary undertaking) and is at the same time a shareholder in or member of that undertaking; or

c) has the right to exercise a dominant influence over an undertaking (a subsidiary undertaking) of which it is a shareholder or member, pursuant to a contract entered into with that undertaking or to a provision in its memorandum or articles of association, where the law governing that subsidiary undertaking permits its being subject to such contracts or provisions;

d) is a shareholder in or member of an undertaking, and:

(i) a majority of the members of the administrative, management or supervisory bodies of that undertaking (a subsidiary undertaking) who have held office during the financial year, during the preceding financial year and up to the time when the consolidated accounts are drawn up, have been appointed solely as a result of the exercise of its voting rights;

(ii) controls alone, pursuant to an agreement with other shareholders in or members of that undertaking (a subsidiary undertaking), a majority of shareholders' or members' voting rights in that undertaking. Point (i) shall not apply where another undertaking has the rights referred to in Letters a), b) or c) with regard to that subsidiary undertaking.

For the purposes of Letters a), b) and d), the voting rights and the rights of appointment and removal of any other subsidiary undertaking as well as those of any person acting in his own name but on behalf of the parent undertaking or of another subsidiary undertaking must be added to those of the parent undertaking.

For the purposes of Letters a), b) and d), the rights mentioned in the paragraph above must be reduced by the rights

1. attaching to shares held on behalf of a person who is neither the parent undertaking nor a subsidiary thereof; or

2. attaching to shares held by way of security, provided that the rights in question are exercised in accordance with the instructions received, or held in connection with the granting of loans as part of normal business activities, provided that the voting rights are exercised in the interests of the person providing the security.

For the purposes of Letters a) and d), the total of the shareholders' or members' voting rights in the subsidiary undertaking must be reduced by the voting rights attaching to the shares held by that undertaking itself by a subsidiary undertaking of that undertaking or by a person acting in his own name but on behalf of those undertakings;

36. non-listed company' – means a company which has its registered office in the Union and the shares of which are not admitted to trading on a regulated market within the meaning of Art. 125 of Law No. 297/2004;

37. established – means:

a) for AIFMs, 'having its registered office in';

b)for AIFs, 'being authorised or registered in', or, if the AIF is not authorised or registered, 'having its registered office in';

c) for depositaries, 'having its registered office or branch in';

d) for legal representatives that are legal persons, 'having its registered office or branch in';

e) for legal representatives that are natural persons, 'domiciled in'.

38. Member State – means a EU Member State. The states signatory of the Agreement on the European Economic Area (EEA) other than the Member States shall be regarded as EU Member States, within the limits defined in that Agreement and subsequent acts;

39. home Member State of the AIF means:

a) the Member State in which the AIF is authorised or registered under applicable national law, or in case of multiple authorisations or registrations, the Member State in which the AIF has been authorised or registered for the first time; or
b) if the AIF is neither authorised nor registered in a Member State, the Member State in which the AIF has its registered office and/or head office;

40. home Member State of the AIFM – means the Member State in which the AIFM has its registered office; for non-EU AIFMs, all references to 'home Member State of the AIFM' shall be

read as the 'Member State of reference', as provided for in Chapter VII;
41. host Member State of the AIFM – means any of the following:

a) a Member State, other than the home Member State, in which a EU AIFM manages EU AIFs;

b) a Member State, other than the home Member State, in which a EU AIFM markets units of a EU AIF;

c) a Member State, other than the home Member State, in which a EU AIFM markets units of a non-EU AIF;

d) a Member State, other than the Member State of reference, in which a non-EU AIFM manages EU AIFs;

e) a Member State, other than the Member State of reference, in which a non-EU AIFM markets units of a EU AIF; or

f) a Member State, other than the Member State of reference, in which a non-EU AIFM markets units or shares of a non-EU AIF;

g) a Member State, other than the home Member State, in which a EU AIFM supplies the services referred to in Art. 5 Para (5);

42. Member State of reference – means the Member State determined in accordance with Art. 39 Para (4);

43. non-EU state – means any state which is not a EU Member State or a signatory to EEA;

44. branch – means an organised structure as a place of business, which is not a legal entity distinct from AIFM or self-managed AIFM which provides part of or all the services for which the AIFM or self-managed AIFM has been authorised; all the places of business established in Romania by an AIFM or self-managed AIFM with its registered office in another Member State or in a third country shall be regarded as a single branch;

45. units of AIFs – shares or fund units issued by AIFs depending on the latter's legal form – either under an incorporation document or articles of association.

Art. 4 (1) Each AIF managed in accordance with this law shall be managed by one AIFM which must comply with the provisions of this law. The AIFM is:

a) either an external AIFM as defined in Art. 3 Point 3; or

b) if the AIF is established as a joint stock company, and AIF's managing body decides not to appoint an external AIFM, the AIF itself, which in this case is authorised as AIFM, in which case AIF shall be regarded as being internally managed or self-managed.

(2) In cases of failure of an AIFM to ensure compliance with this law of an AIF or another entity on its behalf, the AIFM concerned shall immediately inform ASF and, if appropriate, the competent authorities of the home Member State of the AIF. In this case, ASF should require the AIFM to take the necessary steps to remedy the situation, according to ASF's regulations.

(3) If the non-compliance persists, ASF may decide that the AIF concerned should no longer be managed by the AIFM, in consideration of the provisions of Para (2). In this case, the units of that AIF are no longer marketed in the European Union. If it concerns a non-EU AIFM managing a non-EU AIF, the AIF shall no longer be marketed in Romania or another Member State. ASF, as competent authority of the home Member State of the AIFM shall immediately inform the competent authorities of the host Member States of the AIFM of the measure ordered.

CHAPTER II: Authorisation of AIFMs

Art. 5 (1) The legal persons referred to in Art. 1 Para (2) may manage AIFs provided that they are authorised under this law. AIFMs authorised in accordance with this law shall meet the conditions for authorisation at all times.

(2) The main activities which may be carried out by AIFMs when managing AIFs are as follows:

a) portfolio management;

b) risk management.

(3) AIFMs may additionally perform in the course of the collective management of an AIF other activities such as:

a) administration:

(i) legal and fund management accounting services;

(ii) customer inquiries;

(iii) valuation and pricing, including tax returns;

(iv) regulatory compliance monitoring;

(v) maintenance of unit-holder register;

(vi) distribution of income;

(vii) unit issues and redemptions;

(viii) contract settlements, including certificate dispatch;

(ix) record keeping;

b) marketing;

c) activities related to the assets of AIFs, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

(4) No external AIFM has the right to engage in activities other than those referred to in Paras (2) and (3). Subject to the authorisation as investment management company (SAI), in accordance with the provisions of Government Emergency Ordinance No. 32/2012, it may also carry out the additional management activity of one or more UCITS.

(5) An external AIFM may provide the following services in addition to the activities referred to in Para (3):

a) management of individual portfolios of investments, including those owned by pension funds, in accordance with mandates given by investors on a discretionary, client-by-client basis, if these portfolios include one or more financial instruments, defined in Art. 2, Para (1), Point 11 of Law No. 297/2004;

b) non-core services comprising:

(i) investment advice;

(ii) safe-keeping and administration in relation to units of collective investment undertakings;

(iii) reception and transmission of orders in relation to financial instruments.

Art. 6 (1) AIFs internally managed may not engage in activities other than their own management, in accordance with Art. 5 Paras (2) and (3).

(2) AIFMs shall not be authorised under this law to carry out and/or provide:

a) only the services referred to in Art. 5 Para (5);

b) non-core services referred to in Art. 5, Para (5), Letter b) without also being authorised to provide the services referred to in Para (5), Letter a);

c) the activities referred to in Art. 5, Para (3); or

d) the activities referred to in Art. 5, Para (2), Letter a) without also providing the services referred to in Art. 5, Para (2) Letter b) or vice-versa.

(3) The provision of the services referred to in Art. 5 Para (5) must be performed in accordance with Art. 3 Para (4), Art. 7 Para (6) and Art. 10 Letter f) of Law No. 297/2004, and in accordance

with the regulations on the rules of conduct applicable in the case of the provisions of services and investment activities.

(4) AIFMs established in Romania must provide ASF with the information it requires to monitor compliance with the conditions referred to in this law at all times.

(5) The intermediaries defined in Art. 2, Para (1), Point 14 of Law No. 297/2004 shall not be required to obtain an authorisation under this law in order to provide investment services such as individual portfolio management in respect of AIFs. However, the intermediaries shall, directly or indirectly, offer units of AIFs to, or place such units with, investors in the European Union, only to the extent the units can be marketed in accordance with this law.

Art. 7 (1) To carry out the management activity of AIFs, the AIFMs established in Romania shall apply for authorisation with ASF.

(2) To document the request referred to in Para (1), the AIFMs must provide the following information to ASF:

a) information on the persons effectively conducting the business of the AIFM;

b) information on the identities of the AIFM's shareholders or associates, whether direct or indirect, natural or legal persons, that have qualifying holdings and on the amounts of those holdings;

c) a programme of activity setting out the organisational structure of the AIFM, including information on how the AIFM intends to comply with its obligations under Chapters II, III, IV, and, where applicable, Chapters V, VI, VII and VIII;

d) information on the remuneration policies and practices pursuant to Art. 13;

e) information on arrangements made for the delegation and sub-delegation to third parties of functions as referred to in Art. 19;

f) information about the investment strategies including the types of underlying funds if the AIF is a fund of funds, and the AIFM's policy as regards the use of leverage, and the risk profiles and other characteristics of the AIFs it manages or intends to manage, including information about the Member States or third countries in which such AIFs are established or are expected to be established;

g) information on where the master AIF is established if the AIF is a feeder AIF;

h) the rules or instruments of incorporation of each AIF the AIFM intends to manage;

i) information on the arrangements made for the appointment of the depositary in accordance with Art. 20, for each AIF the AIFM intends to manage;

j) any additional information referred to in Art. 22, Para (1) for each AIF the AIFM intends to manage.

(3) Where the SAI is authorised pursuant to the provisions of Government Emergency Ordinance No. 32/2012 and applies for authorisation as an AIFM under this law, the SAI is no longer required to provide information or documents which it has already provided when applying for authorisation under Government Emergency Ordinance No. 32/2012, provided that such information or documents remain up-to-date.

(4) ASF shall, on a quarterly basis, inform ESMA of authorisations granted or withdrawn in accordance with this Chapter.

Art. 8 (1)ASF shall not grant authorisation to the AIFM established in Romania unless:

a) ASF satisfied that the AIFM will be able to meet the conditions of this law; the AIFM has sufficient initial capital and own funds in accordance with Art. 9;

b) the persons who effectively conduct the business of the AIFM are of sufficiently good repute and are sufficiently experienced in accordance with ASF's regulations, also in relation to the investment strategies pursued by the AIFs managed by the AIFM, the names of those persons and of every person succeeding them in office being communicated forthwith to ASF and the conduct of the business of the AIFM being decided by at least two persons meeting such conditions;

c) the shareholders or associates of the AIFM that have qualifying holdings are suitable taking into account the need to ensure the sound and prudent management of the AIFM; and

d) the head office and the registered office of the AIFM are located in Romania.

(2) The authorisation granted by ASF shall be valid for all Member States, those AIFMs being entered in ASF's Register.

(3) ASF shall consult the competent authorities of the other Member States before authorisation is granted to the following AIFMs:

a) a subsidiary of another AIFM, of a UCITS management company, of an investment firm, of a credit institution or of an insurance undertaking authorised in another Member State;

b) a subsidiary of the parent undertaking of another AIFM, of a UCITS management company, of an investment firm, of a credit institution or of an insurance undertaking authorised in another Member State; and

c) a company controlled by the same natural or legal persons as those that control another AIFM, a UCITS management company, an investment firm, a credit institution or an insurance undertaking authorised in another Member State.

(4) ASF shall refuse authorisation of the AIFMs, where the effective exercise of their supervisory functions is prevented by any of the following:

a) close links between the AIFM and other natural or legal persons;

b) the laws, regulations or administrative provisions of a third country governing natural or legal persons with which the AIFM has close links;

c) difficulties involved in the enforcement of those laws, regulations and administrative provisions.

(5) ASF may restrict the scope of the authorisation granted to AIFMs, in particular as regards the investment strategies of AIFs the AIFM is allowed to manage.

(6) ASF shall inform the applicant in writing within 3 months of the submission of a complete application, whether or not authorisation has been granted. ASF may prolong this period for up to three additional months, where ASF consider it necessary due to the specific circumstances of the case and after having notified the AIFM accordingly.

An application is deemed complete if the AIFM has at least submitted the information referred to in Art. 7, Para (2), Letters a)-d), f) and g). AIFMs may start managing AIFs in Romania with investment strategies described in the application for authorisation in accordance with Art. 7, Para (2), Letter f) as soon as the authorisation is granted, but not earlier than 30 days after having submitted any missing information referred to in Art. 7, Para (2) Letters e) and h)-j).

Art. 9 (1) An AIFM which is an internally managed AIF shall have an initial capital of at least the RON equivalent of EUR 300,000, calculated at the reference exchange rate communicated by the National Bank of Romania.

(2) Where an AIFM is appointed as external manager of AIFs, the AIFM shall have an initial capital of at least the RON equivalent of EUR 125,000, calculated at the reference exchange rate communicated by the National Bank of Romania.

(3) Where the value of the portfolios of AIFs managed by the AIFM exceeds the RON equivalent of EUR 250,000,000, the AIFM shall provide an additional amount of own funds. That additional amount of own funds shall be equal to 0.02% of the amount by which the value of the portfolios managed by it exceeds the RON equivalent of EUR 250,000,000 but the required total of the initial capital and the additional amount of own funds shall not, however, exceed EUR 10,000,000.

(4) For the purpose of Para (3), AIFs managed by the AIFM, including AIFs for which the AIFM has delegated functions in accordance with Art. 19, but excluding AIF portfolios that the AIFM is managing under delegation, shall be deemed to be the portfolios of the AIFM.

(5) In addition to the maximum value referred to in Para (3), the own funds of the AIFM shall never be less than the amount required under Article 97 of Regulation (EU) 575/2013.

(6) AIFMs are permitted not to provide up to 50% of the additional amount of own funds referred to in Para (3) if they benefit from a guarantee of the same amount given by a credit institution or an insurance undertaking which has its registered office in a Member State, or in a third country where it is subject to prudential rules considered by ASF as equivalent to those laid down in Union law.

(7) To cover potential professional liability risks resulting from activities AIFMs may carry out pursuant to this law, both internally managed AIFs and external AIFMs shall either:

a) have additional own funds which are appropriate to cover potential liability risks arising from professional negligence; or

b) hold a professional indemnity insurance against liability arising from professional negligence which is appropriate to the risks covered.

(8) Own funds, including any additional own funds as referred to in Para (7) Letter a), shall be invested in liquid assets or assets readily convertible to cash in the short term and shall not include speculative positions.

(9) Paras (7) and (8) and the measures and the delegated acts adopted by the European Commission shall be the only ones that shall apply to AIFMs which are also SAI managing UCITS.

Art. 10 (1) AIFMs shall submit for authorisation by ASF, before implementation, any changes to the material conditions for authorisation, referred to in Art. 7, Para (2) Letters a), b), e), f), h) and i). If the conditions referred to in Art. 7, Para (2) Letters c), d), g) and j) are modified, AIFMs shall notify ASF in this respect 7 days before such changes become effective.

(2) If ASF decides to impose restrictions or reject those changes, it shall, within 30 days of receipt of the request for authorisation, inform the AIFM. ASF may prolong that period for up to 30 days where it considers this to be necessary because of the specific circumstances of the case and after having notified the AIFM accordingly. The changes shall be implemented if ASF issues a decision for authorisation or does not oppose the changes within the relevant assessment period.

Art. 11 ASF may withdraw the authorisation issued to an AIFM where that AIFM:

a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has ceased the activity covered by this law for the preceding 6 months;

b) obtained the authorisation by making false statements or by any other irregular means;

c) no longer meets the conditions under which authorisation was granted;

d) no longer complies with Directive 2013/36/EU and with Regulation (EU) No. 575/2013, if its authorisation also covers the discretionary portfolio management service referred to Art. 5 Para (5) Letter a);

e) has seriously or systematically infringed the provisions adopted pursuant to this law; or

f) falls within any of the cases where national law, in respect of matters outside the scope of this law, provides for withdrawal.

CHAPTER III: Operating Conditions for AIFMs

Art. 12 (1) AIFMs established in Romania must comply at all times throughout the conduct of their business with the following prudential rules:

a) act honestly, with due skill, care and diligence and fairly in conducting their activities;

b) act in the best interests of the AIFs or the investors of the AIFs they manage and the integrity of the market;

c) have and employ effectively the resources and procedures that are necessary for the proper performance of their business activities;

d) take all reasonable steps referred to in Articles 16-29 of Regulation (EU) 231/2013, to avoid conflicts of interest and, when they cannot be avoided, to identify, manage and monitor and, where applicable, disclose, those conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors and to ensure that the AIFs they manage are fairly treated;

e) comply with all regulatory requirements applicable to the conduct of their business activities so as to promote the best interests of the AIFs or the investors of the AIFs they manage and the integrity of the market;

f) treat all AIF investors fairly.

No investor in an AIF shall obtain preferential treatment, unless such preferential treatment is disclosed in the relevant AIF's rules or instruments of incorporation.

(2) Each AIFM the authorisation of which also covers the discretionary portfolio management service referred to in Art. 5, Para (5) Letter a):

a) shall not be permitted to invest all or part of the client's portfolio in units of the AIFs it manages, unless it receives prior general approval from the client;

b) may start their activity provided that they obtain the membership of the Investors' Compensation Fund established in accordance with the provisions of Title II, Chapter IX of Law No. 297/2004.

Art. 13 (1) AIFMs shall have remuneration policies and practices for those categories of staff, including senior management, risk takers, control functions, and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFs they manage, that are consistent with and promote sound and effective risk management and do not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage.

(2) The AIFMs shall determine the remuneration policies and practices in accordance with Annexe No. 1.

Art. 14 (1) AIFMs shall take all reasonable steps referred to in Articles 30-37 of Regulation (EU) 231/2013, to identify conflicts of interest that arise in the course of managing AIFs between:

a) the AIFM, including its managers, employees or any person directly or indirectly linked to the AIFM by control, and the AIF managed by the AIFM or the investors in that AIF;

b) the AIF or the investors in that AIF, and another AIF or the investors in that AIF;

c) the AIF or the investors in that AIF, and another client of the AIFM;

d) the AIF or the investors in that AIF, and a UCITS managed by the AIFM or the investors in that UCITS; or

e) two clients of the AIFM.

(2) shall maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps referred to in Articles 30-37 of Regulation (EU) 231/2013 designed to identify, prevent, manage and monitor conflicts of interest in order to prevent them from adversely affecting the interests of the AIFs and their investors.

(3) AIFMs shall segregate, within their own operating environment, tasks and responsibilities which may be regarded as incompatible with each other or which may potentially generate systematic conflicts of interest. AIFMs shall assess whether their operating conditions may involve any other material conflicts of interest and disclose them to the investors of the AIFs.

(4) Where organisational arrangements made by the AIFM to identify, prevent, manage and monitor conflicts of interest are not sufficient to ensure, with reasonable confidence, that risks of damage to investors' interests will be prevented in accordance with Articles 30-37 of Regulation (EU) 231/2013, the AIFM shall clearly disclose the general nature or sources of conflicts of interest to the investors before undertaking business on their behalf, and develop appropriate policies and procedures.

(5) Where the AIFM on behalf of an AIF uses the services of a prime broker, the terms shall be set out in a written contract. In particular, any possibility of transfer and reuse of AIF assets shall be provided for in that contract and shall comply with the AIF rules or instruments of incorporation. The contract shall provide that the depositary be informed of the contract.

AIFMs shall exercise due skill, care and diligence in the selection and appointment of prime brokers with whom a contract is to be concluded.

Art. 15 (1) AIFMs shall functionally and hierarchically separate the functions of risk management from the operating units, including from the functions of portfolio management.

The functional and hierarchical separation of the functions of risk management shall be reviewed by ASF in accordance with the principle of proportionality, on the understanding that the AIFM shall, in any event, be able to demonstrate that specific safeguards against conflicts of interest allow for the independent performance of risk management activities and that the risk management process satisfies the requirements of this law and is consistently effective.

(2) AIFMs shall implement adequate risk management systems in order to identify, measure, manage and monitor appropriately all risks relevant to each AIF investment strategy and to which each AIF is or may be exposed, in accordance with Articles 30-37 of Regulation (EU) 231/2013. In this respect, AIFMs should not be based exclusively or mechanically on credit ratings issued by rating agencies as defined under Letter b) of Article 3 (1) of Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, to assess the creditworthiness of the assets of AIFs.

AIFMs shall review the risk management systems with appropriate frequency at least once a year and adapt them whenever necessary, in accordance with Regulation (EU) 231/2013.

(3) Each AIFM shall at least:

a) implement an appropriate, documented and regularly updated due diligence process when investing on behalf of the AIF, according to the investment strategy, the objectives and risk profile of the AIF;

b) ensure that the risks associated with each investment position of the AIF and their overall effect on the AIF's portfolio can be properly identified, measured, managed and monitored on an ongoing basis, including through the use of appropriate stress testing procedures;

c) ensure that the risk profile of the AIF shall correspond to the size, portfolio structure and investment strategies and objectives of the AIF as laid down in the AIF rules or instruments of incorporation, prospectus and offering documents.

(4) ASF shall monitor the appropriateness of AIFMs' processes of assessing credit ratings, measure the use of references to credit ratings, as referred to in Para (2). AIFMs' investment

policies about AIFs and, where appropriate, shall encourage mitigating the impact of those references in order to reduce the exclusive dependence on the credit ratings.

(5) AIFMs shall set a maximum level of leverage which they may employ on behalf of each AIF they manage as well as the extent of the right to reuse collateral or guarantee that could be granted under the leveraging arrangement, taking into account, inter alia:

a) the type of the AIF;

b) the investment strategy of the AIF;

c) the sources of leverage of the AIF;

d) any other interlinkage or relevant relationships with other financial services institutions, which could pose systemic risk;

e) the need to limit the exposure to any single counterparty;

f) the extent to which the leverage is collateralised;

g) the asset-liability ratio;

h) the scale, nature and extent of the activity of the AIFM on the markets concerned.

Art. 16 (1) AIFMs shall, for each AIF that they manage which is not an unleveraged closed-ended AIF, employ an appropriate liquidity management system and adopt procedures which enable them to monitor the liquidity risk of the AIF and to ensure that the liquidity profile of the investments of the AIF complies with its underlying obligations.

AIFMs shall regularly conduct stress tests, under normal and exceptional liquidity conditions, which enable them to assess the liquidity risk of the AIFs and monitor the liquidity risk of the AIFs accordingly.

(2) AIFMs shall ensure that, for each AIF that they manage, the investment strategy, the liquidity profile and the redemption policy are consistent.

Art. 17 (1) AIFMs shall use, at all times, adequate and appropriate human and technical resources that are necessary for the proper management of AIFs.

(2) having regard also to the nature of the AIFs managed by the AIFM, the AIFM has sound administrative and accounting procedures, control and safeguard arrangements for electronic data processing and adequate internal control mechanisms including, in particular, rules for personal transactions by its employees or for the holding or management of investments in order to invest on its own account and ensuring, at least, that each transaction involving the AIFs may be reconstructed according to its origin, the parties to it, its nature, and the time and place at which it was effected and that the assets of the AIFs managed by the AIFM are invested

in accordance with the AIF rules or instruments of incorporation and the legal provisions in force.

Art. 18 (1) AIFMs shall ensure that, for each AIF that they manage, appropriate and consistent procedures are established so that a proper and independent valuation of the assets of the AIF can be performed in accordance with this law, the applicable national law and the AIF rules or instruments of incorporation.

(2) The rules applicable to the valuation of assets and the calculation of the net asset value per unit or share of the AIF shall be laid down in the law of the country where the AIF is established and/or in the AIF rules or instruments of incorporation.

(3) AIFMs shall also ensure that the net asset value per unit or share of AIFs is calculated and disclosed to the investors in accordance with this law, the applicable national law and the AIF rules or instruments of incorporation.

(4) The valuation procedures used shall ensure that the assets are valued and the net asset value per unit or share is calculated at least once a year.

(5) If the AIF is of the open-ended type, in the sense that it issues units subject to issuance and redemptions at regular intervals in accordance with the regulations issued by ASF, such valuations and calculations shall also be carried out at a frequency which is both appropriate to the assets held by the AIF and its issuance and redemption frequency, in accordance with the provisions of Articles 67-74 of Regulation (EU) 231/2013.

(6) If the AIF is of the closed-ended type, in the sense that it issues units not subject to issuance and redemptions at regular intervals in accordance with the regulations issued by ASF, such valuations and calculations shall also be carried out in case of an increase or decrease of the capital by the relevant AIF.

(7) The investors of AIFs indicated under Paras (5) and (6) shall be informed of the valuations and calculations as set out in the relevant AIF rules or instruments of incorporation.

(8) AIFMs shall ensure that the valuation function is performed by either:

a) an external valuer, being a legal or natural person independent from the AIF, the AIFM and any other persons with close links to the AIF or the AIFM; or

b) the AIFM itself, provided that the valuation task is functionally independent from the portfolio management and the remuneration policy and other measures ensure that conflicts of interest are mitigated and that undue influence upon the employees is prevented.

The depositary appointed for an AIF shall not be appointed as external valuer of that AIF, unless it has functionally and hierarchically separated the performance of its depositary functions from

its tasks as external valuer and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

(9) Where an external valuer performs the valuation function, the AIFM shall demonstrate that:

a) the external valuer is:

(i) a legal person, corporate member of the National Association of Authorised Romanian Valuers (ANEVAR), whose business comprises the supply of services in the financial and accounting and/or business and management consultancy field and appoints, as its representative to carry out the valuations in accordance with the capital market requirements, a member authorised by ANEVAR (specialisation Evaluation of undertakings) or member of certain valuation professional organisations affiliated to the European Group of Valuers' Association (TEGoVA) or to other international organisations approved by ANEVAR;

(ii) a natural person, authorised member of ANEVAR (specialisation Evaluation of undertakings) or member of certain valuation professional organisations affiliated to the European Group of Valuers' Association (TEGoVA) or to other international organisations approved by ANEVAR;

b) the external valuer can provide sufficient professional guarantees to be able to perform effectively the relevant valuation function in accordance with Paras (1)-(3); and

c) the appointment of the external valuer shall comply with the requirements of Art. 19 Paras (1)-(3), and the delegated acts adopted by the European Commission in this field.

(10) The appointed external valuer shall not delegate the valuation function to a third party.

(11) AIFMs shall notify the appointment of the external valuer to ASF, which may require that another external valuer be appointed instead, where the conditions laid down in Para (9) are not met or no longer met.

(12) The valuation shall be performed impartially and with all due skill, care and diligence.

(13) Where the valuation function is not performed by an independent external valuer, ASF may require the AIFM to have its valuation procedures and/or valuations verified by an external valuer or, where appropriate, by an auditor.

(14) AIFMs are responsible for the proper valuation of AIF assets, the calculation of the net asset value and the publication of that net asset value. The AIFM's liability towards the AIF and its investors shall, therefore, not be affected by the fact that the AIFM has appointed an external valuer.

(15) Having regard to the provisions of Para (14), the external valuer shall be liable to the AIFM for any losses suffered by the AIFM as a result of the external valuer's negligence or intentional failure to perform its tasks.

Art. 19 (1) AIFMs may delegate to third parties, subject to ASF's prior approval and under a written contract, the task of carrying put the activities referred to in Art. 5, Para (2), in accordance with ASF's regulations issued for the application of this law. Regarding the activities referred to in Art. 5, Para (3), the same shall be delegated subject to notification of ASF, under a written contract and in accordance with ASF's regulations issued for the application of this law.

(2) The delegation of the activities referred to in Para (1) shall be made in compliance with the following conditions:

a) the AIFM must be able to justify its entire delegation structure on objective reasons;

b) the delegate must dispose of sufficient resources to perform the respective tasks and the persons who effectively conduct the business of the delegate must be of sufficiently good repute and sufficiently experienced as provided by ASF's regulations;

c) where the delegation concerns portfolio management or risk management, it must be conferred only on undertakings which are authorised or registered in a Member State for the purpose of asset management and subject to supervision of the competent authorities of the Member States concerned or, where that condition cannot be met, only subject to prior approval by ASF;

d) where the delegation concerns portfolio management or risk management and is conferred on a third-country undertaking, in addition to the requirements in Letter (c), cooperation between ASF and the supervisory authority of the undertaking must be ensured;

e) the delegation must not prevent the effectiveness of supervision of the AIFM, and, in particular, must not prevent the AIFM from acting, or the AIF from being managed, in the best interests of its investors;

f) the AIFM must be able to demonstrate that the delegate is qualified and capable of undertaking the functions in question, that it was selected with all due care and that the AIFM is in a position to monitor effectively at any time the delegated activity, to give at any time further instructions to the delegate and to withdraw the delegation with immediate effect when this is in the interest of investors. The AIFM shall review the services provided by each delegate on an ongoing basis.

(3) No delegation of portfolio management or risk management shall be conferred on:

a) the depositary or a delegate of the depositary; or

b) any other entity whose interests may conflict with those of the AIFM or the investors of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially

conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

(4) The AIFM's liability towards the AIF and its investors shall not be affected by the fact that the AIFM has delegated functions to a third party, or by any further sub-delegation, nor shall the AIFM delegate its functions to the extent that, in essence, it can no longer be considered to be the manager of the AIF and to the extent that it becomes a letter-box entity, as defined under Article 82 of Regulation (EU) 231/2013.

(5) The third party may sub-delegate any of the functions delegated to it by AIFMs provided that the following conditions are met:

a) the AIFM consented prior to the sub-delegation;

b) the AIFM notified ASF before the sub-delegation arrangements become effective;

c) the conditions set out in Para (2), on the understanding that all references to the 'delegate' are read as references to the 'sub-delegate'.

(6) No sub-delegation of portfolio management or risk management shall be conferred on:

a) the depositary or a delegate of the depositary; or

b) any other entity whose interests may conflict with those of the AIFM or the investors of the AIF, unless such entity has functionally and hierarchically separated the performance of its portfolio management or risk management tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF.

The relevant delegate shall review the services provided by each sub-delegate on an ongoing basis.

(7) Where the sub-delegate further delegates any of the functions delegated to it, the conditions set out in Para (5) shall apply *mutatis mutandis*.

Art. 20 (1) For each AIF it manages, the AIFM shall ensure that a single depositary is appointed.

(2) The appointment of the depositary shall be evidenced by written contract. The contract shall, *inter alia*, regulate the flow of information deemed necessary to allow the depositary to perform its functions for the AIF for which it has been appointed as depositary, as set out in this law.

(3) The depositary shall be:

a) for AIFs established in Romania:

(i) a credit institution of Romania, authorised by NBR, in accordance with the legislation applicable to credit institutions, or a branch in Romania of a credit

institution authorised in another Member State, licensed by ASF for the depositary activity of UCI units and entered in the ASF's Register meeting the conditions provided herein and by ASF's regulations issued for the application hereof;

(ii) an investment firm (SSIF) authorised by ASF or the branch of an investment firm authorised in another Member State entered in ASF's Register, whose business comprises the ancillary service of safe-keeping and administration of financial instruments for the account of clients, including custody and services in connection therewith, such as the management of funds or guarantees, as referred to in Art. 5, Para (11), Letter a) of Law No. 297/2004, subject to capital adequacy requirements, including capital requirements for operational risks, and which shall in any case have own funds not less than the amount of initial capital in accordance with Directive 2013/36/EU and Regulation (EU) 575/2013;

b) For non-EU AIFs, the depositary may be:

(i) a credit institution with its registered office in the European Union and authorised in accordance with Directive 2013/36/EU;

(ii) an investment firm with its registered office in the European Union, which meets the capital adequacy requirements, including capital requirements for operational risks, and authorised under Directive 2004/39/EC, carrying out also ancillary services of safe-keeping and administration of financial instruments for the account of clients in accordance with Section B Point 1 of Annex I to Directive 2004/39/CE; such investment firms shall in any case have own funds not less than the amount of initial capital in accordance with Directive 2013/36/EU and Regulation (EU) 575/2013; or

(iii) another category of institution that is subject to prudential regulation and ongoing supervision and which, on 21 July 2011, falls within the categories of institutions determined by Member States to be eligible to be a depositary under Article 23(3) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS);

c) For non-EU AIFs, and without prejudice to Letter b) of Para (5), the depositary may also be a credit institution or any other entity of the same nature as the entities referred to in Letters a) and b) provided that the conditions in Letter b) of Para (6) are met.

(4) In order to avoid conflicts of interest between the depositary, the AIFM and/or the AIF and/or its investors:

a) an AIFM shall not act as depositary;

b) a prime broker acting as counterparty to an AIF shall not act as depositary for that AIF, unless it has functionally and hierarchically separated the performance of its depositary

functions from its tasks as prime broker and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF. Delegation by the depositary to such prime broker of its custody tasks in accordance with Para (11) is allowed if the relevant conditions are met;

c) AIFMs must be a legal person independent from the depositary and may not have close links with it.

(5) The depositary shall be established in one of the following locations:

a) for EU AIFs, in the home Member State of the AIF; for AIFs of România, the depositary is established in Romania;

b) for non-EU AIFs, in the third country where the AIF is established or in the home Member State of the AIFM managing the AIF or in the Member State of reference of the AIFM managing the AIF.

(6) Without prejudice to the requirements set out in Para (3), the appointment of a depositary established in a third country shall be subject to the following conditions:

a) the competent authorities of the Member States in which the units of the non-EU AIF and ASF are intended to be marketed, in so far as the home Member State of the AIFM is Romania, have signed cooperation and exchange of information arrangements with the competent authorities of the depositary;

b) the depositary is subject to effective prudential regulation, including minimum capital requirements, and supervision which have the same effect as Union law and are effectively enforced;

c) the third country where the depositary is established is not listed as a Non-Cooperative Country and Territory by FATF;

d) the Member States in which the units of the non-EU AIF are intended to be marketed, and, in so far as different, the home Member State of the AIFM, have signed an agreement with the third country where the depositary is established which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements;

e) the depositary shall by contract be liable to the AIF or to the investors of the AIF, consistently with Paras (12) and (13) and shall expressly agree to comply with Para (11).

Where, as competent authority of a Member State in which the units of the non-EU AIF are intended to be marketed, ASF disagrees with the assessment made on the application of the provisions Letters a), c) or e) of the first paragraph by the competent authorities of the home Member State of the AIFM, it may refer the matter to the ESMA which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010 of the

European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC.

(7) The depositary shall in general ensure that the AIF's cash flows are properly monitored, and shall in particular ensure that all payments made by or on behalf of investors upon the subscription of units or shares of an AIF have been received and that all cash of the AIF has been booked in cash accounts opened in the name of the AIF or in the name of the AIFM acting on behalf of the AIF or in the name of the depositary acting on behalf of the AIF at a central bank, credit institution authorised under the Community laws or bank authorised in a non-EU state or another entity of the same nature, in the relevant market where cash accounts are required, provided that such entity is subject to effective prudential regulation and supervision which have the same effect as Union law and are effectively enforced and in accordance with the principles on the safe-keeping of funds for clients set out in the regulations issued for the application of Law No. 297/2004 and Government Emergency Ordinance No. 32/2012. Where the cash accounts are opened in the name of the depositary acting on behalf of the AIF, no cash of the entity referred to in the first paragraph and none of the depositary's own cash shall be booked on such accounts.

(8) The assets of the AIF or the AIFM acting on behalf of the AIF shall be entrusted to the depositary for safe-keeping, as follows:

a) for financial instruments that can be held in custody:

(i) the depositary shall hold in custody all financial instruments that can be registered in a financial instruments account opened in the depositary's books and all financial instruments that can be physically delivered to the depositary;

(ii) for that purpose, the depositary shall ensure that all those financial instruments that can be registered in a financial instruments account opened in the depositary's books are registered in the depositary's books within segregated accounts in accordance with the principles on the safe-keeping of financial instruments of clients set out in the regulations issued for the application of Law No. 297/2004 and Government Emergency Ordinance No. 32/2012, opened in the name of the AIF or the AIFM acting on behalf of the AIF, so that they can be clearly identified as belonging to the AIF in accordance with the applicable law at all times;

b) for other assets:

(i) the depositary shall verify the ownership of the AIF or the AIFM acting on behalf of the AIF of such assets and shall maintain a record of those assets for which it is satisfied that the AIF or the AIFM acting on behalf of the AIF holds the ownership of such assets;

(ii) the assessment whether the AIF or the AIFM acting on behalf of the AIF holds the ownership shall be based on information or documents provided by the AIF or the AIFM and, where available, on external evidence;

(iii) the depositary shall keep its record up-to-date.

(9) In addition to the tasks referred to in Paras (7) and (8|), the depositary shall:

a) ensure that the sale, issue, re-purchase, redemption and cancellation of units of the AIF are carried out in accordance with the applicable national law and the AIF rules or instruments of incorporation;

b) ensure that the value of the units of AIFs is calculated in accordance with the applicable national law, the AIF rules or instruments of incorporation and the procedures laid down in Art. 19;

c) carry out the instructions of the AIFM, unless they conflict with the applicable national law or the AIF rules or instruments of incorporation;

d) ensure that in transactions involving the AIF's assets any consideration is remitted to the AIF within the usual time limits;

e) ensure that an AIF's income is applied in accordance with the applicable national law and the AIF rules or instruments of incorporation.

(10) In the context of their respective roles, the AIFM and the depositary shall act honestly, fairly, professionally, independently and in the interest of the AIF and the investors of the AIF.

A depositary shall not carry out activities with regard to the AIF or the AIFM on behalf of the AIF that may create conflicts of interest between the AIF, the investors in the AIF, the AIFM and itself, unless the depositary has functionally and hierarchically separated the performance of its depositary tasks from its other potentially conflicting tasks, and the potential conflicts of interest are properly identified, managed, monitored and disclosed to the investors of the AIF; the assets referred to in Para (7) shall not be reused by the depositary without the prior consent of the AIF or the AIFM acting on behalf of the AIF.

(11) The depositary shall not delegate to third parties its functions, save for those referred to in Para (8).

The depositary may delegate to third parties the functions referred to in Para (8) subject to the following conditions:

a) the tasks are not delegated with the intention of avoiding the requirements of this law;

b) the depositary can demonstrate that there is an objective reason for the delegation;

c) the depositary has exercised all due skill, care and diligence in the selection and the appointment of any third party to whom it wants to delegate parts of its tasks, and keeps exercising all due skill, care and diligence in the periodic review and ongoing monitoring of

any third party to whom it has delegated parts of its tasks and of the arrangements of the third party in respect of the matters delegated to it; and

d) the depositary ensures that the third party meets the following conditions at all times during the performance of the tasks delegated to it:

(i) the third party has the structures and the expertise that are adequate and proportionate to the nature and complexity of the assets of the AIF or the AIFM acting on behalf of the AIF which have been entrusted to it;

(ii) for custody tasks referred to in Letter a) of Para (8), the third party is subject to effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned and the third party is subject to an external periodic audit to ensure that the financial instruments are in its possession;

(iii) the third party segregates the assets of the depositary's clients from its own assets and from the assets of the depositary in such a way that they can at any time be clearly identified as belonging to clients of a particular depositary;

(iv) the third party does not make use of the assets without the prior consent of the AIF or the AIFM acting on behalf of the AIF and prior notification to the depositary; and

(v) the third party complies with the general obligations and prohibitions set out in Paras (8) and (10).

(12) Taking into account Para (11), Letter d), Point (ii), where the law of a third country requires that certain financial instruments be held in custody by a local entity and no local entities satisfy the delegation requirements laid down in that point, the depositary may delegate its functions to such a local entity only to the extent required by the law of the third country and only for as long as there are no local entities that satisfy the delegation requirements, subject to the following requirements:

a) the investors of the relevant AIF must be duly informed that such delegation is required due to legal constraints in the law of the third country and of the circumstances justifying the delegation, prior to their investment; and

b) the AIF, or the AIFM on behalf of the AIF, must instruct the depositary to delegate the custody of such financial instruments to such local entity.

The third party may, in turn, sub-delegate those functions, subject to the same requirements. In such a case, Para (14) shall apply *mutatis mutandis* to the relevant parties. The provision of services as specified by securities settlement systems provided by Law No. 253/2004 on settlement finality in payment and securities settlement systems, as subsequently amended and supplemented, or the provision of similar services by third-country securities settlement systems shall not be considered a delegation of its custody functions.

(13) The depositary shall be liable to the AIF or to the investors of the AIF, for the loss by the depositary or a third party to whom the custody of financial instruments held in custody in accordance with Letter a) of Para (8) has been delegated. In the case of such a loss of a financial instrument held in custody, the depositary shall return a financial instrument of identical type or the corresponding amount to the AIF or the AIFM acting on behalf of the AIF without undue delay. The depositary shall not be liable if it can prove that the loss has arisen as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary, in accordance with Articles 100 and 101 of Regulation (EU) 231/2013. The depositary shall also be liable to the AIF, or to the investors of the AIF, for all other losses suffered by them as a result of the depositary's negligent or intentional failure to properly fulfil its obligations pursuant to this law.

(14) The depositary's liability shall not be affected by any delegation referred to in Para (11).

In case of a loss of financial instruments held in custody by a third party pursuant to Para (11), the depositary may discharge itself of liability if it can prove that:

a) all requirements for the delegation of its custody tasks set out in the second paragraph of Para (11) are met;

b) a written contract between the depositary and the third party expressly transfers the liability of the depositary to that third party and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against the third party in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf; and

c) a written contract between the depositary and the AIF or the AIFM acting on behalf of the AIF, expressly allows a discharge of the depositary's liability and establishes the objective reason to contract such a discharge.

(15) Where the law of a third country requires that certain financial instruments be held in custody by a local entity and there are no local entities that satisfy the delegation requirements laid down in point (d)(ii) of paragraph 11, the depositary can discharge itself of liability provided that the following conditions are met:

a) the rules or instruments of incorporation of the AIF concerned expressly allow for such a discharge under the conditions set out in this law;

b) the investors of the relevant AIF have been duly informed of that discharge and of the circumstances justifying the discharge prior to their investment;

c) the AIF or the AIFM on behalf of the AIF instructed the depositary to delegate the custody of such financial instruments to a local entity;

d) there is a written contract between the depositary and the AIF or the AIFM acting on behalf of the AIF, which expressly allows such a discharge; and

e) there is a written contract between the depositary and the third party that expressly transfers the liability of the depositary to that local entity and makes it possible for the AIF or the AIFM acting on behalf of the AIF to make a claim against that local entity in respect of the loss of financial instruments or for the depositary to make such a claim on their behalf.

(16) Liability to the investors of the AIF may be invoked directly or indirectly through the AIFM, depending on the legal nature of the relationship between the depositary, the AIFM and the investors.

(17) If the depositary is established in Romania, then it shall make available to ASF, on request, all information which it has obtained while performing its duties and that may be necessary for the competent authorities of the AIF/AIFM. If ASF is not the authority competent to monitor the AIF or AIFM concerned, then the information received shall be shared without delay with the component authorities in that respect.

CHAPTER IV: Transparency Requirements

Art. 21 (1) AIFMs established in Romania shall, for each of the EU AIFs it manages and for each of the AIFs it markets in the Union, make available an annual report for each financial year no later than 6 months following the end of the financial year. The annual report shall be provided to investors on request, free of charge. The annual report shall be made available to ASF and, where applicable, to the competent authorities of the home Member State of the AIF.

Where the AIF is required to make public an annual financial report in accordance with Law No. 297/2004, and with the regulations concerning the reports drawn up by the issuers whose securities are admitted to trading on a regulated market, only such additional information referred to in paragraph 2 needs to be provided to investors on request, either separately or as an additional part of the annual financial report. In the latter case the annual financial report shall be made public no later than 4 months following the end of the financial year.

(2) The annual report shall at least contain the following:

a) a balance-sheet or a statement of assets and liabilities;

b) an income and expenditure account for the financial year;

c) a report on the activities of the financial year;

d) any material changes in the information listed in Art. 22 during the financial year covered by the report, established in accordance with Art. 106 of Regulation (EU) 231/2013;

e) the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the AIFM to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the AIF;

f) the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the AIF.

(3) The accounting information given in the annual report shall be prepared in accordance with the accounting standards of Romania, if Romania is a home Member State of the AIF, or in accordance with the accounting standards of the home Member State of the AIF established in other member states, or in accordance with the accounting standards of the third country where the AIF is established and with the accounting rules laid down in the AIF rules or instruments of incorporation. The accounting information given in the annual report shall be audited by one or more persons empowered by law to audit accounts in accordance with Government Emergency Ordinance No. 90/2008 on statutory audits of annual accounts and consolidated accounts and supervision for public interest of the accounting profession, approved as amended by Law No. 278/2008, as subsequently amended and supplemented. The auditor's report, including any qualifications, shall be reproduced in full in the annual report.

Art. 22 (1) AIFMs shall for each of the EU AIFs that they manage and for each of the AIFs that they market in the European Union make available to investors, in accordance with the AIF rules or instruments of incorporation, the following information before they invest in the AIF, as well as any changes which may influence investors' decision to invest or maintain the investment, or not, in undertakings for collective investment:

a) a description of the investment strategy and objectives of the AIF, information on where any master AIF is established and where the underlying funds are established if the AIF is a fund of funds, a description of the types of assets in which the AIF may invest, the techniques it may employ and all associated risks, any applicable investment restrictions, the circumstances in which the AIF may use leverage, the types and sources of leverage permitted and the associated risks, any restrictions on the use of leverage and any collateral and asset reuse arrangements, and the maximum level of leverage which the AIFM are entitled to employ on behalf of the AIF;

b) a description of the procedures by which the AIF may change its investment strategy or investment policy, or both;

c) a description of the main legal implications of the contractual relationship entered into for the purpose of investment, including information on jurisdiction, on the applicable law and on the existence or not of any legal instruments providing for the recognition and enforcement of judgments in the territory where the AIF is established;

d) the identity of the AIFM, the AIF's depositary, auditor and any other service providers and a description of their duties and the investors' rights;

e) a description of how the AIFM is complying with the requirements of Article 9(7);

f) a description of any delegated management function as referred to in Annex I by the AIFM and of any safe-keeping function delegated by the depositary, the identification of the delegate and any conflicts of interest that may arise from such delegations;

g) a description of the AIF's valuation procedure and of the pricing methodology for valuing assets, including the methods used in valuing hard-to-value assets in accordance with Art. 18;

h) a description of the AIF's liquidity risk management, including the redemption rights both in normal and in exceptional circumstances, and the existing redemption arrangements with investors;

i) a description of all fees, charges and expenses and of the maximum amounts thereof which are directly or indirectly borne by investors;

j) a description of how the AIFM ensures a fair treatment of investors and, whenever an investor obtains preferential treatment or the right to obtain preferential treatment, a description of that preferential treatment, the type of investors who obtain such preferential treatment and, where relevant, their legal or economic links with the AIF or AIFM;

k) the latest annual report referred to in Art. 21;

l) the procedure and conditions for the issue and sale of units;

m) the latest net asset value of the AIF or the latest market price of the unit or share of the AIF, in accordance with Art. 18;

n) where available, the historical performance of the AIF;

o) the identity of the prime broker and a description of any material arrangements of the AIF with its prime brokers and the way the conflicts of interest in relation thereto are managed and the provision in the contract with the depositary on the possibility of transfer and reuse of AIF assets, and information about any transfer of liability to the prime broker that may exist;

p) a description of how and when the information required under Paras (4) and (5) will be disclosed.

(2) The AIFM shall inform the investors before they invest in the AIF of any arrangement made by the depositary to contractually discharge itself of liability in accordance with Art. 20 Para (14).

The AIFM shall also inform investors of any changes with respect to depositary liability without delay.

(3) Where the AIF is required to publish a prospectus in accordance with Law No. 297/2004 and with the regulations issued for the application thereof, only such information referred to in Paras (1) and (2) which is in addition to that contained in the prospectus needs to be disclosed separately or as additional information in the prospectus.

(4) AIFMs shall, for each of the EU AIFs that they manage and for each of the AIFs that they market in the European Union, periodically disclose to investors:

a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;

b) any new arrangements for managing the liquidity of the AIF;

c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage those risks.

(5) AIFMs managing EU AIFs employing leverage or marketing in the Union AIFs employing leverage shall, for each such AIF disclose, on a regular basis:

a) any changes to the maximum level of leverage which the AIFM may employ on behalf of the AIF as well as any right of the reuse of collateral or any guarantee granted under the leveraging arrangement;

b) the total amount of leverage employed by that AIF.

Art. 23 (1) An AIFM shall regularly report to ASF on the principal markets and instruments in which it trades on behalf of the AIFs it manages.

It shall provide information on the 5 main instruments in which it is trading, on the 5 main markets of which it is a member or where it actively trades, and on the 10 principal exposures and 5 most important concentrations of each of the AIFs it manages, established in accordance with Regulation (EU) 231/2013.

(2) An AIFM shall, for each of the EU AIFs it manages and for each of the AIFs it markets in the Union, provide the following the information to ASF:

a) the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;

b) any new arrangements for managing the liquidity of the AIF;

c) the current risk profile of the AIF and the risk management systems employed by the AIFM to manage the market risk, liquidity risk, counterparty risk and other risks including operational risk;

d) information on the main categories of assets in which the AIF invested; and

e) the results of the stress tests performed in accordance with Letter (b) of Article 15(3) and the second subparagraph of Article 16(1).

(3) The AIFM shall, on request, provide the following documents to ASF:

a) an annual report of each EU AIF managed by the AIFM and of each AIF marketed by it in the European Union, for each financial year, in accordance with Art. 21 (1);

b) for the end of each quarter a detailed list of all AIFs which the AIFM manages.

(4) An AIFM managing AIFs employing leverage on a substantial basis shall make available information about the overall level of leverage employed by each AIF it manages, a break-down between leverage arising from borrowing of cash or securities and leverage embedded in financial derivatives and the extent to which the AIF's assets have been reused under leveraging arrangements to ASF.

That information shall include the identity of the 5 largest sources of borrowed cash or securities for each of the AIFs managed by the AIFM, and the amounts of leverage received from each of those sources for each of those AIFs.

For non-EU AIFMs, the reporting obligations are limited to EU AIFs managed by them and non-EU AIFs marketed by them in Romania.

(5) Where necessary for the effective monitoring of systemic risk, ASF may require additional information on a periodic as well as on an *ad-hoc* basis. ASF shall inform ESMA about AIFM's obligation to provide additional information. ESMA may request ASF to impose additional reporting requirements.

CHAPTER V: AIFMs managing specific types of AIF

Art. 24 (1) ASF shall use the information to be gathered under Art. 23 for the purposes of identifying the extent to which the use of leverage contributes to the build-up of systemic risk in the financial system, risks of disorderly markets or risks to the long-term growth of the economy.

(2) ASF shall ensure that all information gathered under Art. 23 in respect of all AIFMs that they supervise and the information gathered under Art. 7 is made available to competent authorities of other relevant Member States, ESMA and the ESRB by means of the procedures set out in Art. 58 on supervisory cooperation. They shall, without delay, also provide information by means of those procedures, and bilaterally to the competent authorities of other Member States directly concerned, if an AIFM established in Romania, or AIF managed by that AIFM

could potentially constitute an important source of counterparty risk to a credit institution or other systemically relevant institutions in other Member States.

(3) The AIFM shall demonstrate that the leverage limits set by it for each AIF it manages are reasonable and that it complies with those limits at all times in consideration of Article 112 of Regulation (EU) 231/2013. ASF shall assess the risks that the use of leverage by an AIFM with respect to the AIFs it manages could entail, and, where deemed necessary in order to ensure the stability and integrity of the financial system, after having notified ESMA, the ESRB and the competent authorities of the relevant AIF, shall impose limits to the level of leverage that an AIFM are entitled to employ or other restrictions on the management of the AIF with respect to the AIFs under its management to limit the extent to which the use of leverage contributes to the build-up of systemic risk in the financial system or risks of disorderly markets. ASF shall duly inform ESMA, the ESRB and the competent authorities of the AIF, of actions taken in this respect, through the procedures set out in Art. 58.

(4) The notification referred to in Para (3) shall be made not less than 10 working days before the proposed measure is intended to take effect or to be renewed. The notification shall include details of the proposed measure, the reasons for the measure and when the measure is intended to take effect. In exceptional circumstances, ASF may decide that the proposed measure takes effect within the period referred to in the first sentence.

(5) If ASF proposes to take action contrary to ESMA's advice on the collective measures to be imposed on AIFMs, it shall inform ESMA, stating its reasons.

Art. 25 (1) The provisions of Paras (5) and (6) and Arts. 26-29 shall apply to:

a) AIFMs managing one or more AIFs which either individually or jointly on the basis of an agreement aimed at acquiring control, acquire control of a non-listed company in accordance with Para (5);

b) AIFMs cooperating with one or more other AIFMs on the basis of an agreement pursuant to which the AIFs managed by those AIFMs jointly, acquire control of a non-listed company in accordance with Para. (5).

(2) The provisions of Paras (5) and (6) and Arts. 26-29 shall not apply where the non-listed companies concerned are:

a) small and medium-sized enterprises within the meaning of Art. 3 of Law No. 346/2004 on encouraging the start-up and development of small and medium-sized enterprises, as subsequently amended and supplemented; or

b) special purpose vehicles with the purpose of purchasing, holding or administrating real estate.

(3) In compliance with Paras (1) and (2), Art. 26 Para (1) shall also apply to AIFMs managing AIFs that acquire a non-controlling participation in a non-listed company.

(4) Art. 27 Paras (1)-(3) and Art. 29 shall apply also to AIFMs managing AIFs that acquire control over issuers. For the purposes of those Articles, Paras (1) and (2) of this Article shall apply *mutatis mutandis*.

(5) For non-listed companies, having regard to the provisions of Art. 26-29, control shall mean more than 50% of the voting rights of the companies. When calculating the percentage of voting rights held by the relevant AIF, in addition to the voting rights held directly by the relevant AIF, the voting rights of the following shall be taken into account, subject to control as referred to in the first subparagraph being established:

a) an undertaking controlled by the AIF; and

b) a natural or legal person acting in its own name but on behalf of the AIF or on behalf of an undertaking controlled by the AIF.

(6) The percentage of voting rights shall be calculated on the basis of all the shares to which voting rights are attached even if the exercise thereof is suspended. In compliance with Art. 3 Point 17, within the meaning of Art. 28 Paras (1)-(3) and Art. 30, in regard to issuers, control shall be determined in accordance with Art. 203 Para (1) of Law No. 297/2004 and regulations issued for the application thereof.

(7) The provisions of Paras (1)-(6) and Art. 26-29 shall apply subject to the relevant conditions and restrictions set out in Law No. 467/2006 and having regard to any stricter rules set out in Law No. 297/2004 and Company Law No. 31/1990, republished, as subsequently amended and supplemented (Law No. 31/1990), with respect to the acquisition of holdings in issuers and non-listed companies in their territories.

Art. 26 (1) Where an AIF acquires, disposes of or holds shares of a non-listed company, the AIFM managing such an AIF notify ASF of the proportion of voting rights of the non-listed company held by the AIF any time when that proportion reaches, exceeds or falls below the thresholds of 10%, 20%, 30%, 50% and 75%.

(2 when an AIF acquires, individually or jointly, control over a non-listed company pursuant to Art. 25 Para (1) in conjunction with Para. (5), the AIFM managing such an AIF notify ASF of the acquisition of control by the AIF and of:

a) the non-listed company;

b) the shareholders of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access.

(3) The notification required under Para (2) shall contain the following additional information:

a) the resulting situation in terms of voting rights;

b) the conditions subject to which control was acquired, including information about the identity of the different shareholders involved, any natural person or legal entity entitled to exercise voting rights on their behalf and, if applicable, the chain of undertakings through which voting rights are effectively held;

c) the date on which control was acquired.

(4) In its notification to the non-listed company, the AIFM shall request the board of directors of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the acquisition of control by the AIF managed by the AIFM and of the information referred to in Para (3). The AIFM shall use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the board of directors.

(5) The notifications referred to in Paras (1) and (2) shall be made as soon as possible, but no later than 10 working days after the date on which the AIF has reached, exceeded or fallen below the relevant threshold or has acquired control over the non-listed company.

Art. 27 (1) When an AIF acquires, individually or jointly, control of a non-listed company or an issuer pursuant to Art. 25 Para (1) in conjunction with Para (5), the AIFM managing such AIF shall make the information referred to in Para (2) available to:

a) the company concerned;

b) the shareholders of the company of which the identities and addresses are available to the AIFM or can be made available by the company or through a register to which the AIFM has or can obtain access;

c) ASF.

(2) The communication referred to in Para (1) shall comprise the following information:

a) the identity of the AIFMs which either individually or in agreement with other AIFMs manage the AIFs that have acquired control;

b) the policy for preventing and managing conflicts of interest, in particular between the AIFM, the AIF and the company, including information about the specific safeguards established to ensure that any agreement between the AIFM and/or the AIF and the company is concluded at arm's length; and

c) the policy for external and internal communication relating to the company in particular as regards employees.

(3) In its notification to the company pursuant to Letter (a) of Para 1, the AIFM shall request the board of directors of the company to inform the employees' representatives or, where there are none, the employees themselves, without undue delay of the information referred to in Para (1). The AIFM shall use its best efforts to ensure that the employees' representatives or, where there are none, the employees themselves, are duly informed by the board of directors.

(4) When an AIF acquires, individually or jointly, control of a non-listed company pursuant to Art. 25 (1) on conjunction with Para (5), he AIFM managing such AIF ensure that the AIF, or the AIFM acting on behalf of the AIF, disclose its intentions with regard to the future business of the non-listed company and the likely repercussions on employment, including any material change in the conditions of employment, to:

a) the non-listed company; and

b) the shareholders of the non-listed company of which the identities and addresses are available to the AIFM or can be made available by the non-listed company or through a register to which the AIFM has or can obtain access.

(5) the AIFM managing the relevant AIF shall request and use its best efforts to ensure that the board of directors of the non-listed company makes available the information set out in the first paragraph to the employees' representatives or, where there are none, the employees themselves, of the non-listed company.

(6) When an AIF acquires control of a non-listed company pursuant to Art. 25 (1) in conjunction with (5), the AIFM managing such an AIF provide ASF and the AIF's investors with information on the financing of the acquisition.

Art. 28 (1) When an AIF acquires, individually or jointly, control of a non-listed company pursuant to Art. 25 (1) in conjunction with Para (5), the AIFM managing such an AIF shall either:

a) request and use its best efforts to ensure that the annual report of the non-listed company drawn up in accordance with (2), is made available by the board of directors of the company to the employees' representatives or, where there are none, to the employees themselves within the period such annual report has to be drawn up in accordance with the national applicable law; or

b) for each such AIF include in the annual report provided for in Art. 21 the information referred to in Para (2) relating to the relevant non-listed company.

(2) The additional information to be included in the annual report of the company or the AIF, in accordance with Para (1), shall include at least a fair review of the development of the company's business representing the situation at the end of the period covered by the annual report. The report shall also give an indication of:

a) any important events that have occurred since the end of the financial year;

b) the company's likely future development; and

c) the information concerning acquisitions of own shares prescribed by Art. 1051 of Law No. 31/1990.

(3) The AIFM managing the relevant AIF shall either:

a) request and use its best efforts to ensure that the board of directors of the non-listed company makes available the information referred to in Para (2) relating to the company concerned to the employees' representatives of the company concerned or, where there are none, to the employees themselves within the period referred to in Art. 21 (1); or

b) make available the information referred to in Para (2) to the investors of the AIF, in so far as already available, within the period referred to in Art. 21(1) and, in any event, no later than the date on which the annual report of the non-listed company is drawn up in accordance with the national applicable law.

Art. 29 (1) When an AIF, individually or jointly, acquires control of a non-listed company or an issuer pursuant to Art. 25 (1) in conjunction with Para (5), the AIFM managing such an AIF shall for a period of 24 months following the acquisition of control of the company by the AIF:

a) not be allowed to facilitate, support or instruct any distribution, capital reduction, share redemption and/or acquisition of own shares by the company as described in Para (2);

b) in so far as the AIFM is authorised to vote on behalf of the AIF at the meetings of the governing bodies of the company, not vote in favour of a distribution, capital reduction, share redemption and/or acquisition of own shares by the company as described in Para (2); and

c) in any event use its best efforts to prevent distributions, capital reductions, share redemptions and/or the acquisition of own shares by the company as described in Para (2).

(2) The obligations imposed on AIFMs pursuant to Para (1) shall relate to the following:

a) any distribution to shareholders made when on the closing date of the last financial year the net assets as set out in the company's annual accounts are, or following such a distribution would become, lower than the amount of the subscribed capital plus those reserves which may be not distributed under the law or the statutes, on the understanding that where the uncalled part of the subscribed capital is not included in the assets shown in the balance sheet, this amount shall be deducted from the amount of subscribed capital;

b) any distribution to shareholders the amount of which would exceed the amount of the profits at the end of the last financial year plus any profits brought forward and sums

drawn from reserves available for this purpose, less any losses brought forward and sums placed to reserve in accordance with the law or the statutes;

c) to the extent that acquisitions of own shares are permitted, the acquisitions by the company, including shares previously acquired by the company and held by it, and shares acquired by a person acting in his own name but on the company's behalf, that would have the effect of reducing the net assets below the amount mentioned in Letter a).

(3) For the purposes of Para (2):

a) the term "distribution" referred to in Letters (a) and (b) of Para 2 shall include, in particular, the payment of dividends and of interest relating to shares;

b) the provisions on capital reductions shall not apply on a reduction in the subscribed capital, the purpose of which is to offset losses incurred or to include sums of money in a non-distributable reserve provided that, following that operation, the amount of such reserve is not more than 10% of the reduced subscribed capital; and;

c) the restriction set out in Letter c) of Para (2) shall be subject to Art. 104 of Law No. 31/1990.

CHAPTER VI: Conditions for marketing and managing by the EU AIFM of EU AIF in the European Union

Art. 30 (1) An AIFM established in Romania authorised under this law may market units of any EU AIF that it manages to professional investors in Romania as soon as the conditions laid down in this law are met. Where the EU AIF is a feeder AIF the right to market referred to in the first paragraph is subject to the condition that the master AIF is also a EU AIF which is managed by an authorised EU AIFM.

(2) The AIFM shall submit a notification to ASF in respect of each EU AIF that it intends to market in Romania. That notification shall comprise the documentation and information set out in Annexe No. 2.

(3) Within 20 working days following receipt of a complete notification, ASF shall inform the AIFM whether it may start marketing the AIF identified in the notification. ASF may prevent the marketing of the AIF only if the AIFM's management of the AIF does not comply with this law or the AIFM otherwise does not comply with this law. In the case of a positive decision of ASF, the AIFM may start marketing the shares or units of the AIF in Romania from the date of the notification by the competent authorities to that effect.

(4) In the event of a material change established by ASF's regulations of any of the particulars communicated in accordance with Para (2), the AIFM shall give written notice of that change to

ASF, at least 30 days before implementing the change as regards any changes planned by the AIFM, or immediately after an unplanned change has occurred. If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this law or the AIFM would otherwise no longer comply with this law, ASF shall inform the AIFM without undue delay that it shall not implement the change.

(5) If a planned change is implemented notwithstanding the first and second subparagraphs or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with this law or the AIFM otherwise no longer complies with this law, ASF shall take all due measures in accordance with Art. 50, including, if necessary, the express prohibition of marketing of the AIF.

(6) In compliance with Art. 47 (1), AIFs managed by AIFMs established in Romania authorised under this law may be marketed only to professional investors.

Art. 31 (1) An AIFM established in Romania authorised under this law may market units of a EU AIF that it manages to professional investors in another Member State as soon as the conditions laid down in Paras (2)-(8) are met. Where the EU AIF is a feeder, AIF the right to market referred to in the first paragraph is subject to the condition that the master AIF is also a EU AIF and is managed by an authorised EU AIFM.

(2) The AIFM shall submit a notification to the competent authorities of its home Member State in respect of each EU AIF that it intends to market. That notification shall comprise the documentation and information set out in Annexe No. 3.

(3) ASF shall, no later than 20 working days after the date of receipt of the complete notification file, transmit the complete notification file to the competent authorities of the Member States where it is intended that the AIF be marketed, including a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy. Such transmission shall occur only if the AIFM's management of the AIF complies with this law and if the AIFM otherwise complies with this law.

(4) ASF shall, without delay, notify the AIFM about the transmission. The AIFM may start marketing the AIF in the host Member State of the AIFM as of the date of that notification. In so far as they are different, ASF shall also inform the competent authorities of the AIF that the AIFM may start marketing the units or shares of the AIF in the host Member State of the AIFM.

(5) Arrangements referred to in Letter (h) of Annexe No. 3 shall be subject to the laws and supervision of the host Member State of the AIFM.

(6) The notification letter by the AIFM referred to in Para (2) and the statement referred to in Para (3) are provided in a language customary in the sphere of international finance, including by electronic means.

(7) In the event of a material change established by ASF's regulations to any of the particulars communicated in accordance with Para (2), the AIFM shall give written notice of that change to ASF at least 30 days before implementing a planned change, or immediately after an unplanned change has occurred. If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this law or the AIFM would otherwise no longer comply with this law, ASF shall inform the AIFM without undue delay that it shall not implement the change.

(8) If a planned change is implemented notwithstanding the first and second paragraphs or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with this law or the AIFM otherwise would no longer comply with this law, ASF shall take all due measures in accordance with Art. 50, including, if necessary, the express prohibition of marketing of the AIF.

If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this law or the compliance by the AIFM with this law otherwise ASF shall, without delay, inform the competent authorities of the host Member State of the AIFM of those changes.

(9) Without prejudice to Art. 47 (1), AIFs managed and marketed by the AIFM referred to in Para (1) may be marketed only to professional investors.

Art. 32 (1) Where an AIFM established in another Member State intends to market the units of a EU AIF managed by it to professional investors in Romania, the competent authority of the home Member State of the AIFM must send ASF a notification, as described in Art. 31 (3), and the statement, in accordance with ASF's regulations.

(2) The AIFM may start to market the units of the AIFs in Romania as of the date of that notification.

(3) Without prejudice to Art. 47 Para (1), AIFs managed and marketed by the AIFM referred to in Para (1) may be marketed only to professional investors.

Art. 33 (1) An AIFM established in Romania authorised under this law may, either directly or via the establishment of a branch:

a) manage the EU AIFs established in another Member State, provided that the AIFM be authorised to manage that type of AIFs;

b) provide in other Member States the services referred to in Art. 5 Para (5) for which it was authorised.

(2) Any AIFM intending to carry out/provide for the first time the activities and services referred to in Para (1) shall communicate the following information to ASF:

a) the Member State in which it intends to manage AIFs directly or establish a branch or provide the services referred to in Art. 5 (5);

b) a programme of operations stating in particular the services which it intends to perform and identifying the AIFs it intends to manage.

(3) If the AIFM intends to establish a branch, it shall provide, in addition to the information requested in Para (2), the following information:

a) the organisational structure of the branch;

b) the address in the home Member State of the AIF from which documents may be obtained;

c) the names and contact details of persons responsible for the management of the branch.

(4) ASF shall, within 30 days of receiving the complete documentation in accordance with Para (2) or within 60 days of receiving the complete documentation in accordance with Para (3), transmit that documentation to the competent authorities of the host Member States of the AIFM. Such transmission shall occur only if the AIFM's management of the AIF complies with this law and the AIFM otherwise complies with this law. The documentation shall also enclose a statement of ASF to the effect that the AIFM concerned is authorised in Romania. ASF shall immediately notify the AIFM about the transmission. Upon receipt of the notification from ASF, the AIFM may start to provide its services in the host Member States of the AIFM.

(5) In the event of a change to any of the information communicated in accordance with Para (2) and, if relevant, Para (3), an AIFM shall give written notice of that change to ASF at least 30 days before implementing a planned change, or immediately after an unplanned change has occurred; if, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this law or the AIFM would otherwise no longer comply with this law, ASF shall inform the AIFM without undue delay that it shall not implement the change.

(6) If a planned change is implemented notwithstanding Para (5) or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with this law or the AIFM otherwise no longer complies with this law, ASF shall take all due measures in accordance with Art. 50.

(7) If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this law or the compliance by the AIFM with this law, ASF shall without undue delay inform the competent authorities of the host Member States of the AIFM of those changes.

Art. 34 (1) If ASF receives a notification under Art. 33 (2) and (3), together with a statement as that referred to in Art. 33 (4), from a competent authority of another Member State in respect

of the intention of an AIFM established in that Member State to manage an AIF of Romania, either directly or via the establishment of a branch, or to provide the services referred to in Art. 5 (5), ASF shall not impose any additional requirements on the AIFM concerned in respect of the matters covered by this law.

(2) The AIFM may start managing the AIF in Romania as of the date of that notification.

CHAPTER VII: Specific rules in relation to third countries

Art. 35 An AIFM established in Romania authorised under this law may manage non-EU AIFs which are not marketed in the European Union provided that:

a) the AIFM complies with all the requirements established in this law, except for Arts. 21 and 22; and

b) appropriate cooperation arrangements are in place between ASF and the supervisory authorities of the third country where the non-EU AIF is established in order to ensure at least an efficient exchange of information that allows ASF to carry out its duties in accordance with this law.

Art. 36 (1) An AIFM established in Romania authorised under this law may market to professional investors in Romania or from another Member State the units of non-EU AIFs it manages and of EU feeder AIFs that do not fulfil the requirements referred to in Art. 30, Para (1), as soon as the conditions laid down in this law are met.

(2) AIFMs shall comply with all the requirements established in this law, with the exception of Chapter VI. In addition the following conditions shall be met:

a) appropriate cooperation arrangements must be in place between ASF and the supervisory authorities of the third country where the non-EU AIF is established in order to ensure at least an efficient exchange of information, taking into account Art. 58(3), that allows ASF to carry out its duties in accordance with this law;

b) the third country where the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF;

c) the third country where the non-EU AIF is established has signed an agreement with Romania and with each other Member State in which the units of the non-EU AIF are intended to be marketed, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements.

(3) If an AIFM established in Romania authorised under this law intends to market units of non-EU AIFs in Romania, the AIFM shall submit a notification to ASF in respect of each non-EU AIF that it intends to market. That notification shall comprise the documentation and information set out in Annex No. 2.

(4) No later than 20 working days after receipt of a complete notification pursuant to Para (3), ASF shall inform the AIFM whether it may start marketing the AIF identified in the notification referred to in Para (3) in Romania. ASF shall prevent the marketing of the AIF only if the AIFM's management of the AIF does not comply with this law or the AIFM otherwise does not comply with this law. In the case of a positive decision, the AIFM may start marketing the AIF in Romania as of the date of the notification by ASF to that effect. ASF shall also inform ESMA that the AIFM may start marketing the units of the AIF in Romania.

(5) If an AIFM intends to market units of non-EU AIFs in a Member State other than Romania, the AIFM shall submit a notification to ASF in respect of each non-EU AIF that it intends to market. That notification shall comprise the documentation and information set out in Annexe No. 3.

(6) ASF shall, no later than 20 working days after the date of receipt of the complete notification file, transmit that complete notification file to the competent authorities of the Member State where the AIF is intended to be marketed. Such transmission will occur only if the AIFM's management of the AIF complies with this law and that the AIFM otherwise complies with this law. ASF shall enclose a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.

(7) Upon transmission of the notification file, ASF shall, without delay, notify the AIFM about the transmission. The AIFM may start marketing the AIF in the relevant host Member States of the AIFM as of the date of that notification by ASF. ASF shall also inform ESMA that the AIFM may start marketing the units of the AIF in the host Member States of the AIFM.

(8) Arrangements referred to in Letter h) of Annexe No. 3 shall be subject to the laws and supervision of the host Member States of the AIFM.

(9) The notification letter of the AIFM referred to in Para (5) and the statement referred to in Para (6) are provided in a language customary in the sphere of international finance. Transmission and filing of the documents referred to in Para (6) may also be made electronically.

(10) In the event of a material change established by ASF's regulations to any of the particulars communicated in accordance with Para (3) or (5), the AIFM shall give written notice of that change to ASF, at least 30 days before implementing a planned change, or immediately after an unplanned change has occurred. If pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this law or the AIFM would no longer comply with this law, ASF shall inform the AIFM without undue delay that it shall not implement the change. If the

changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this law, or the compliance by the AIFM with this law otherwise, ASF shall, without delay, inform ESMA in so far as the changes concern the termination of the marketing of certain AIFs or additional AIFs marketed and, if applicable, the competent authorities of the host Member States of the AIFM of those changes.

(11) Without prejudice to Art. 47 (1), in the event that units are marketed in another Member State, AIFs which are managed and whose units are marketed by the AIFM referred to in Paras (1)-(10) may only be marketed to professional investors.

Art. 37 (1) In the event that an AIFM established in another Member State intends to market to the professional investors in Romania the units of a non-EU AIF managed by ut, ASF must receive from the competent authority of the home Member State of the AIFMs a notification as provided by Art. 36 (6). ASF shall enclose a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.

(2) Where ASF, as competent authority of a Member State other than the home Member State of the AIFM, disagrees with the assessment made on the application of Art. 36 (2), Letters a) and b) by the competent authorities of the home Member State of the AIFM, ASF may refer the matter to the ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

(3) The AIFM may start marketing the AIF in Romania as of the date of that notification.

(4) Without prejudice to Art. 47 (1), the AIF which are managed and marketed by AIFMs as mentioned at Paras (1)-(3) may only be marketed to professional investors.

Art. 38 (1) Without prejudice to Art. 36, an AIFM established in Romania or in another Member State may market to professional investors, in Romania only, units of non-EU AIFs it manages and of EU feeder AIFs that do not fulfil the requirements referred to in Art. 30 (1), provided that:

a) the AIFM complies with all the requirements established in this law, with the exception of Art. 20. That AIFM shall however ensure that one or more entities are appointed to carry out the duties referred to in Art. 20 Paras (9)-(11) if the AIFM does not perform those functions. The AIFM shall provide its supervisory authorities with information about the identity of those entities responsible for carrying out the duties referred to in Art. 20 Paras (9)-(11);

b) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between ASF, or the home Member State of the AIFM established in another Member State, and the supervisory authorities of the third country where the AIF is established, in order to at least ensure an efficient exchange

of information that allows ASF, or the competent authorities of the other Member States, to carry out its/their duties in accordance with this law;

c) the third country where the non-EU AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.

(2) ASF shall issue regulations for the application of Para (1).

Art. 39 (1) A non-EU AIFMs intending to manage EU AIFs and/or to market AIFs managed by them in the European Union in accordance with Arts. 40 and 41 or with Arts. 42 and 43 must acquire prior authorisation by ASF in accordance with this law, and if Romania is defined as Member State of reference of the AIFM, in accordance with Para (4).

(2) A non-EU AIFM intending to obtain prior authorisation as referred to in Para (1), shall comply with this law, with the exception of Chapter VI. If and to the extent that compliance with a provision of this law is incompatible with compliance with the law to which the non-EU AIFM and/or the non-EU AIF marketed in the European Union is subject, there shall be no obligation on the AIFM to comply with that provision of this law if it can demonstrate that:

a) it is impossible to combine such compliance with compliance with a mandatory provision in the law to which the non-EU AIFM and/or the non-EU AIF marketed in the European Union is subject;

b) the law to which the non-EU AIFM and/or the non-EU AIF is subject provides for an equivalent rule having the same regulatory purpose and offering the same level of protection to the investors of the relevant AIF; and

c) the non-EU AIFM and/or the non-EU AIF complies with the equivalent rule.

(3) A non-EU AIFM intending to obtain prior authorisation as referred to in Para (1) shall have a legal representative established in Romania. The legal representative shall be the contact point of the AIFM in the Union and any official correspondence between the competent authorities and the AIFM and between the EU investors of the relevant AIF and the AIFM as set out in this law shall take place through that legal representative. The legal representative shall perform the compliance function relating to the management and marketing activities performed by the AIFM under this law together with the AIFM.

(4) The Member State of reference of a non-EU AIFM shall be determined as follows:

a) if the non-EU AIFM intends to manage only one EU AIF, or several EU AIFs established in the same Member State, and does not intend to market any AIF in accordance with Arts. 40 and 41 or Arts. 42 and 43 in the European Union, the home Member State of that or those AIFs is deemed to be the Member State of reference and the competent authorities of this Member State will be competent for the authorisation procedure and for the supervision of the AIFM;

b) if the non-EU AIFM intends to manage several EU AIFs established in different Member States and does not intend to market any AIF in accordance with Arts. 40 and 41 or Arts. 42 and 43, in the European Union, the Member State of reference is either:

(i) the Member State where most of the AIFs are established; or

(ii) the Member State where the largest amount of assets is being managed;

c) if the non-EU AIFM intends to market only one EU AIF in only one EU Member State, then the Member State of reference is determined as follows:

(i) if the AIF is authorised or registered in a Member State, the home Member State of the AIF or the Member State where the AIFM intends to market the AIF;

(ii) if the AIF is not authorised or registered in a Member State, the Member State where the AIFM intends to market the AIF;

d) if the non-EU AIFM intends to market only one non-EU AIF in only one Member State, the Member State of reference is that Member State;

e) if the non-EU AIFM intends to market only one EU AIF, but in different Member States, the Member State of reference is determined as follows:

(i) if the AIF is authorised or registered in a Member State, the home Member State of the AIF or one of the Member States where the AIFM intends to develop effective marketing; or

(ii) if the AIF is not authorised or registered in a Member State, one of the Member States where the AIFM intends to develop effective marketing;

f) if the non-EU AIFM intends to market only one non-EU AIF, but in different Member States, the Member State of reference is one of those Member States;

g) if the non-EU AIFM intends to market several EU AIFs in the European Union, the Member State of reference is determined as follows:

(i) in so far as those AIFs are all registered or authorised in the same Member State, the home Member State of those AIFs or the Member State where the AIFM intends to develop effective marketing for most of those AIFs;

(ii) in so far as those AIFs are not all registered or authorised in the same Member State, the Member State where the AIFM intends to develop effective marketing for most of those AIFs;

h) if the non-EU AIFM intends to market several EU and non-EU AIFs, or several non-EU AIFs in the Union, the Member State of reference is the Member State where it intends to develop effective marketing for most of those AIFs.

(5) In accordance with the criteria set out in Para (4) Letter b), Letter c) Point (i), Letters e), f) and g) Point (i), more than one Member State of reference is possible. In such cases, Member States shall require that the non-EU AIFM intending to manage EU AIFs without marketing them and/or market AIFs managed by it in the Union in accordance with Arts. 40 and 41 or Arts. 42 and 43 submit a request to the competent authorities of all of the Member States that are possible Member States of reference in accordance with the criteria set out in Para (4) and indicated above to determine its Member State of reference from among them; Those competent authorities shall jointly decide the Member State of reference for the non-EU AIFM, within 30 days of receipt of such request. The competent authorities of the Member State that is appointed as Member State of reference shall, without undue delay, inform the non-EU AIFM of that appointment. If the non-EU AIFM is not duly informed of the decision made by the relevant competent authorities within 7 days of the decision or if the relevant competent authorities have not made a decision within the 30-day period, the non-EU AIFM may itself choose its Member State of reference. The AIFM shall be able to prove its intention to develop effective marketing in a particular Member State by disclosure of its marketing strategy to the competent authorities of the Member State indicated by it.

(6) A non-EU AIFM intending to manage EU AIFs without marketing them and/or to market AIFs managed by it in the European Union in accordance with Arts. 40 and 41 or Arts. 42 and 43 shall submit a request for authorisation to ASF if Romania is a Member State of reference.

(7) After receiving the application for authorisation, ASF shall assess whether the determination by the AIFM of Romania as regards its Member State of reference complies with the criteria laid down in Para (4). If ASF considers that this is not the case, they shall refuse the authorisation request of the non-EU AIFM explaining the reasons for their refusal. If ASF considers that the criteria of Para (4) have been complied with, it shall notify ESMA, requesting advice on its assessment. In its notification to ESMA, ASF shall provide ESMA with the justification by the AIFM of its assessment regarding the Member State of reference and with information on the marketing strategy of the AIFM; the term referred to in Art. 8 (6) shall be suspended during ESMA's deliberation.

(8) If ASF proposes to grant authorisation contrary to ESMA's advice, it shall inform ESMA, stating its reasons. If ASF proposes to grant authorisation contrary to ESMA's advice and the AIFM intends to market units of AIFs managed by it in Member States other than Romania, then ASF shall also inform the competent authorities of those Member States thereof, stating its reasons. In so far as applicable, ASF shall also inform the competent authorities of the home Member States of the AIFs managed by the AIFM thereof, stating its reasons.

(9) Without prejudice to Para (11), ASF shall not grant the authorisation, unless the following additional conditions are met:

a) Romania is indicated by the AIFM as Member State of reference in accordance with the criteria set out in Para (4) and AIFM's decision is supported by the disclosure of the marketing strategy, and the procedure set out in Para (5) has been followed;

b) the AIFM has appointed a legal representative established in Romania;

c) the legal representative shall, together with the AIFM, be the contact person of the non-EU AIFM for the investors of the relevant AIFs, for ESMA and for the competent authorities as regards the activities for which the AIFM is authorised in the European Union and shall at least be sufficiently equipped to perform the compliance function pursuant to this law;

d) appropriate cooperation arrangements are in place between ASF, the competent authorities of the home Member State of the EU AIFs concerned and the supervisory authorities of the third country where the AIFM is established in order to ensure at least an efficient exchange of information that allows the competent authorities to carry out their duties;

e) the third country where the non-EU AIFM is established is not listed as a Non-Cooperative Country and Territory by FATF;

f) the third country where the AIFM is established has signed an agreement with Romania, which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements;

g) the effective exercise by ASF of its supervisory functions under this law is neither prevented by the laws, regulations or administrative provisions of a third country governing the AIFM, nor by limitations in the supervisory and investigatory powers of that third country's supervisory authorities.

(10) Where a competent authority of a EU AIF does not enter into the required cooperation arrangements as set out in Para. (9), Letter d) within a reasonable period of time, ASF, as competent authority of the Member State of reference, may refer the matter to the ESMA.

(11) ASF shall give the authorisation in accordance with Chapter II which shall apply *mutatis mutandis* subject to the following criteria:

a) the information referred to in Art. 7(2) shall be supplemented by:

(i) a justification by the AIFM of its assessment regarding the Member State of reference in accordance with the criteria set out in Para (4) with information on the marketing strategy;

(ii) a list of the provisions of this law for which compliance by the AIFM is impossible as compliance by the AIFM with those provisions is, in accordance with Para (2),

incompatible with compliance with a mandatory provision in the law to which the non-EU AIFM and/or the non-EU AIF marketed in the European Union is subject;

(iii) written evidence based on the regulatory technical standards developed by ESMA that the relevant third country law provides for a rule equivalent to the provisions for which compliance is impossible, which has the same regulatory purpose and offers the same level of protection to the investors of the relevant AIFs and that the AIFM complies with that equivalent rule; such written evidence being supported by a legal opinion on the existence of the relevant incompatible mandatory provision in the law of the third country and including a description of the regulatory purpose and the nature of the investor protection pursued by it; and

(iv) the name of the legal representative of the AIFM and the place where it is established;

b) the information referred to in Art. 7(3) may be limited to the EU AIFs the AIFM intends to manage and to those AIFs managed by the AIFM that it intends to market in the European Union with a passport;

c) the provisions of Art. 8 (1) Letter a) shall be without prejudice to Para. (2);

d) the provisions of Art. 8 (1) Letter d) shall not apply;

e) "the information referred to in Art. 7 (2) Letters a)-d), f) and g)" of Art. 8 (6) shall be read "the information referred to in Para (7) Letter a)".

(12) If ASF considers that the AIFM may rely on Para (2) to be exempted from compliance with certain provisions of this law, it shall, without undue delay, notify ESMA thereof. It shall support this assessment by the information provided by the AIFM in accordance with Para (11), Letter a), Points (ii) and (iii). The term referred to in Art. 8 (6) shall be suspended during the ESMA review; if ASF proposes to grant authorisation contrary to ESMA's advice, it shall inform ESMA, stating its reasons; if ASF proposes to grant authorisation contrary to ESMA's advice, and the AIFM intends to market units or shares of AIFs managed by it in Member States other than Romania, then ASF shall also inform the competent authorities of those Member States thereof, stating its reasons.

(13) ASF, as competent authority of Member State of reference, shall, without undue delay, inform ESMA of the outcome of the initial authorisation process, about any changes in the authorisation of the AIFM and any withdrawal of authorisation. ASF shall inform ESMA about the applications for authorisation that it has rejected, providing data about the AIFM having asked for authorisation and the reasons for the rejection.

(14) Where the non-EU AIFM referred to in Para (1) changes its marketing strategy within 2 years of its initial authorisation, and that change would have affected the determination of the Member State of reference if the modified marketing strategy had been the initial marketing strategy, then the AIFM shall notify ASF, as competent authority of the original Member State of

reference, of the change before implementing it and indicate its Member State of reference in accordance with the criteria set out in Para (4) and based on the new strategy. The AIFM shall justify its assessment by disclosing its new marketing strategy to its original Member State of reference. At the same time the AIFM shall provide information on its legal representative, including its name and the place where it is established.

(15) ASF shall assess whether the determination of the AIFM in accordance with the first paragraph is correct and shall notify ESMA thereof. In its notification to ESMA, ASF include shall provide the AIFM's justification of its assessment regarding the Member State of reference and information on the AIFM's new marketing strategy. After receipt of ESMA's advice, ASF shall inform the non-EU AIFM, its legal representative and ESMA of its decision.

(16) If ASF agrees with the assessment made by the AIFM, it shall also inform the competent authorities of the new Member State of reference of the change. ASF shall, without undue delay, transfer a copy of the authorisation and the supervision file relating to the AIFM to the new Member State of reference. From the date of transmission of the authorisation and supervision file, the competent authorities of the new Member State of reference shall be competent for authorising and supervising the AIFM .

(17) The procedure referred to in Paras (14)-(16) shall also apply if ASF becomes the competent authority of the new member state of reference. Where ASF's final assessment is contrary to ESMA's advice:

a) ASF shall inform ESMA thereof, stating reasons;

b) where the AIFM markets units or shares of AIFs managed by it in Member States other than Romania, then it shall inform the competent authorities of those other Member States thereof, stating reasons. Where applicable, ASF shall also inform the competent authorities of the home Member States of the AIFs managed by the AIFM thereof, stating reasons.

(18) Where it appears from the actual course of the business development of the AIFM in the Union within 2 years after its authorisation that the marketing strategy as presented by the AIFM at the time of its authorisation was not followed, the AIFM made false statements in relation thereto or the AIFM has failed to comply with Paras. (14)-(17) when changing its marketing strategy, then ASF, as competent authority of the original Member State of reference, shall request that the AIFM indicate the Member State of reference based on its actual marketing strategy. The procedure set out in Paras. (14)-(17) shall apply *mutatis mutandis*. If the AIFM does not comply with ASF's regulation, then ASF may withdraw its authorisation.

(19) Where the AIFM changes its marketing strategy after the period referred to in Para. (14) and intends to change its Member State of reference on the basis of its new marketing strategy,

AIFM may submit a request to change its Member State of reference to ASF. The procedure referred to in Paras (14)-(16) shall apply *mutatis mutandis*.

(20) Any disputes arising between AIFM and ASF, as competent authority of the Member State of reference of the AIFM, shall be settled in accordance with the law of and subject to the jurisdiction of Romania, being under the jurisdiction of the Romanian courts of law. Any disputes between the AIFM or the AIF and EU investors of the relevant AIF shall be settled in accordance with the law of and subject to the jurisdiction of a Member State.

(21) ASF, if not the Member State of reference of a non-EU AIFM, may inform ESMA if it disagrees with:

a) establishing another Member State of reference by the AIFM;

b) assessing the application of the conditions referred to in Paras (7), (8) and (9) Letters a)-e) and g) by the competent authority of the Member State of reference of the AIFM;

c) the authorisation given by the competent authority of the Member State of reference of the AIFM;

d) the assessment applicable to the provisions of Para (12);

e) the assessment made on the determination of a certain Member State of reference in accordance with Paras. (14)-(17).

(22) In case a competent authority of another Member State rejects ASF's request to exchange information in accordance with the technical standards adopted by the European Commission, ASF may refer the matter to ESMA, which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

Art. 40 (1) A duly authorised non-EU AIFM intending to market the units of a EU AIF it manages and to which Romania was designated Member State of reference to professional investors in the European Union with a passport must meet the conditions laid down in Paras (2)-(11).

(2) In case the AIFM intends to market units of the EU AIF in Romania, the AIFM shall submit a notification to ASF in respect of each EU AIF that it intends to market. That notification shall comprise the documentation and information set out in Annexe No. 2.

(3) No later than 20 working days after receipt of a complete notification pursuant to Para (2), ASF shall inform the AIFM whether it may start marketing the AIF identified in the notification referred to in Para (2) in its territory. ASF may prevent the marketing of the AIF only if the AIFM's management of the AIF does not comply with this law or if the AIFM otherwise does not comply with this law. In the case of a positive decision, the AIFM may start marketing the AIF in the European Union as of the date of the notification by ASF to that effect; ASF shall also inform

ESMA and the competent authorities of the AIF that the AIFM may start marketing units of the AIF in Romania.

(4) In case the AIFM intends to market units of the EU AIF in Member States other Romania, the AIFM shall submit a notification to ASF in respect of each EU AIF that it intends to market. That notification shall comprise the documentation and information set out in Annexe No. 3.

(5) ASF shall, no later than 20 working days after the date of receipt of the complete notification file, transmit the complete notification file to the competent authorities of the Member States where the units of the AIF are intended to be marketed. Such transmission shall be effected only if the AIFM's management of the AIF complies with this law and if the AIFM otherwise complies with this law. ASF shall enclose a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.

(6) Upon transmission of the notification file, ASF shall, without delay, notify the AIFM about the transmission. The AIFM may start marketing the AIF in the relevant host Member States as of the date of that notification. ASF shall also inform ESMA and the competent authorities of the AIF that the AIFM may start marketing the units of the AIF in the host Member States of the AIFM.

(7) The arrangements referred to in Letter h) of Annexe No. 3 shall be subject to the laws and supervision of the host Member States of the AIFM.

(8) Member States shall ensure that the notification letter by the AIFM referred to in Para (4) and the statement referred to in Para (5) are provided in a language customary in the sphere of international finance. Transmission and filing of the documents related to the notification documentation may also be made electronically.

(9) In the event of a material change to any of the particulars communicated in accordance with Para (2) and/or Para (4), the AIFM shall give written notice of that change to ASF at least 30 days before implementing a planned change, or immediately after an unplanned change has occurred. If, pursuant to a planned change, the AIFM's management of the AIF would no longer comply with this or the AIFM would otherwise no longer comply with this law, ASF shall inform the AIFM, without undue delay, that it shall not implement the change.

(10) If a planned change is implemented notwithstanding the first and second paragraphs or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with this law or the AIFM otherwise no longer complies with this law, ASF shall take all due measures in accordance with Art. 50, including, if necessary, the express prohibition of marketing of the AIF.

(11) If the changes are acceptable because they do not affect compliance of the AIFM's management of the AIF with this law, or compliance by the AIFM with this law otherwise, ASF shall, without delay, inform ESMA in so far as the changes concern the termination of the

marketing of certain AIFs or additional AIFs being marketed and, in so far as applicable, the competent authorities of the host Member States of those changes.

(12) Without prejudice to Art. 47, if the units are marketed in Romania or other Member States, the AIFs managed and marketed by the AIFM referred to in Paras (1)-(11) may be marketed only to professional investors.

Art. 41 (1) If a duly authorised non-EU AIFM intends to market the units of EU AIF it manages to professional investors in the European Union with a passport, the competent authorities of the Member State of reference of the AIFM shall send ASF a complete documentation including a statement as referred to in Art. 40 Para (5).

(2) The non-EU AIFM may start marketing the units of the AIF in Romania from the date of notification of ASF by the competent authorities of the Member State of reference of the AIFM.

(3) Without prejudice to Art. 47 (1), AIFs managed and marketed by the AIFM referred to in Paras (1) and (2) may be marketed only to professional investors.

Art. 42 (1) A duly authorised non-EU AIFM intending to market the units of a non-EU AIF managed by it to professional investors of the European Union with a passport, and for which Romania has been designated Member State of reference of the AIFM, must meet the conditions set out in Paras. (2)-(11).

(2) In addition to the requirements in this law in relation to EU-AIFMs, for non-EU AIFMs the following conditions shall be met:

a) appropriate cooperation arrangements are in place between ASF and the supervisory authority of the third country where the AIF is established in order to ensure at least an efficient exchange of information that allows the competent authorities to carry out their duties in accordance with this law;

b) the third country where the AIF is established is not listed as a Non-Cooperative Country and Territory by FATF;

c) the third country where the AIF is established has signed an agreement with Romania and with each other Member State in which the units of the non-EU AIF are intended to be marketed which fully complies with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters including any multilateral tax agreements.

(3) Where the AIFM intends to market in Romania, as Member State of reference of the AIFM, the units of a non-EU AIF, it shall send ASF a notification in respect of each non-EU AIF that it

intends to market in Romania. That notification shall comprise the documentation and information set out in Annexe No. 2.

(4) No later than 20 working days after receipt of a complete notification pursuant to Para (3), ASF shall inform the AIFM whether it may start marketing the AIF identified in the notification referred to in Para (3) in Romania. ASF may prevent the marketing of the AIF only if the AIFM's management of the AIF does not comply with this law or the AIFM otherwise does not comply with this law. In the case of a positive decision, the AIFM may start marketing the AIF in Romania from the date of the notification by ASF to that effect. ASF shall also inform ESMA that the AIFM may start marketing units of the AIF in Romania.

(5) If the AIFM intends to market the units of a non-EU AIF also in Member States other than Romania, the AIFM shall submit a notification to ASF in respect of each non-EU AIF that it intends to market. That notification shall comprise the documentation and information set out in Annexe No. 3.

(6) ASF shall, no later than 20 working days after the date of receipt of the complete notification file, transmit the complete notification file to the competent authorities of the Member States where the units of the AIF are intended to be marketed. Such transmission shall occur only if the AIFM's management of the AIF complies with this law and that in general the AIFM complies with this law. ASF shall enclose a statement to the effect that the AIFM concerned is authorised to manage AIFs with a particular investment strategy.

(7) Upon transmission of the notification file, ASF shall, without delay, notify the AIFM of the transmission. The AIFM may start marketing the AIF in the relevant host Member States of the AIFM as of the date of that notification. ASF shall also inform ESMA that the AIFM may start marketing the units of the AIF in the host Member States of the AIFM.

(8) Arrangements referred to in Letter (h) of Annex IV shall be subject to the laws and supervision of the host Member States of the AIFM.

(9) The notification letter sent by the AIFM in accordance with Para (5) and the statement referred to in Para (6) are provided in a language customary in the sphere of international finance. Transmission and filing of the documents referred to in Para (6) may also be made electronically.

(10) In the event of a material change to any of the particulars communicated in accordance with Para (3) or (5), the AIFM shall give written notice of that change to ASF at least 30 days before implementing a planned change, or immediately after an unplanned change has occurred. If, pursuant to a planned change, the AIFM's management of the AIF does no longer comply with this law, or the AIFM otherwise does not comply with this law, ASF shall inform the AIFM, without undue delay, that it shall not implement the change.

(11) If the planned change is implemented notwithstanding the first and second paragraphs, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF

no longer complies with this law or the AIFM otherwise no longer complies with this law, ASF shall take all due measures in accordance with Art. 50, including, if necessary, the express prohibition of marketing of the AIF. If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this law or the compliance by the AIFM with this law otherwise, ASF shall, without delay, inform ESMA in so far as the changes concern the termination of the marketing of certain AIFs or additional AIFs being marketed and, in so far as applicable, the competent authorities of the host Member States of the AIFM of those changes.

(12) Without prejudice to Art. 47(1), if the units are marketed in Romania or other Member States, the AIFs managed and marketed by the AIFM referred to in Paras (2)-(11) may be marketed only to professional investors.

Art. 43 (1) If a non-EU AIFM authorised in another Member State intends to market the units of non-EU AIF it manages to professional investors in Romania with a passport, the competent authorities of the Member State of reference of the AIFM shall send ASF a complete documentation including a statement as referred to in Art. 42 Para (6).

(2) Where ASF, as competent authority of another Member State than the reference state of the AIFM, disagrees with the assessment made on the application of the conditions of Art. 42 (2) Letters a) and b) by the competent authorities of the Member State of reference of the AIFM, then ASF may refer the matter to the ESMA which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

(3) The non-EU AIFM may start marketing the units of the AIF in Romania from the date of notification of ASF by the competent authorities of the Member State of reference of the AIFM.

(4) Without prejudice to Art. 47(1), AIFs that are managed and marketed by the AIFM referred to in Paras (1)-(3) may be marketed only to professional investors.

Art. 44 (1) A non-EU AIFM authorised by ASF may manage EU AIFs established in a Member State other than Romania, as Member State of reference, either directly or via the establishment of a branch, provided that the AIFM is authorised to manage that type of AIF.

(2) Any non-EU AIFM intending to manage EU AIFs established in another Member State than Romania for the first time shall communicate the following information to ASF:

a) the Member State in which it intends to manage AIFs directly or establish a branch;

b) a programme of operations stating in particular the services which it intends to perform and identifying the AIFs it intends to manage.

(3) If the non-EU AIFM intends to establish a branch, it shall provide, in addition to the information requested in Para (2), the following information:

a) the organisational structure of the branch;

b) the address in the home Member State of the AIF from which documents may be obtained;

c) the names and contact details of persons responsible for the management of the branch.

(4) ASF shall, within 30 days of receiving the complete documentation in accordance with de Para (2) or within 60 days of receiving the complete documentation in accordance with Para (3), transmit that documentation to the competent authorities of the host Member States of the AIFM. Such transmission shall occur only if the AIFM's management of the AIF complies with this law and the AIFM otherwise complies with this law.

(5) ASF shall enclose a statement to the effect that the AIFM concerned is authorised in Romania. ASF shall immediately notify the AIFM about the transmission. Upon receipt of the transmission notification the AIFM may start to provide its services in the host Member States of the AIFM. ASF shall also inform ESMA that the AIFM may start managing the AIF in the host Member States of the AIFM.

(6) In the event of a change to any of the information communicated in accordance with Para (2) and, if relevant, Para (3), an AIFM shall give written notice of that change to ASF at least 30 days before implementing a planned change, or immediately after an unplanned change has occurred. If, pursuant to a planned change, the AIFM's management of the AIF does no longer comply with this law or the AIFM otherwise no longer complies with this law, ASF shall inform the AIFM without undue delay that it shall not implement the change.

(7) If a planned change is implemented notwithstanding the first and second paragraphs or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF no longer complies with this law or the AIFM otherwise no longer complies with this law, ASF shall take all due measures in accordance with Art. 50, including, if necessary, the express prohibition of marketing of the AIF. If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with this law or the compliance by the AIFM with this law otherwise, ASF shall without undue delay inform the competent authorities of the host Member States of the AIFM of those changes.

Art. 45 (1) A non-EU AIFM may manage a EU AIF established in Romania, either directly or via the establishment of a branch, provided that the competent authorities of the Member State of reference of the AIFM send ASF the documentation and information set out in Art. 44 Paras (2) and (3).

(2) The non-EU AIFM may start marketing the units of the AIF to professional investors in Romania from the date of notification of ASF by the competent authorities of the Member State of reference of the AIFM.

Art. 46 (1) Without prejudice to Arts. 39-40, a non-EU AIFMs may market to professional investors, in Romania, units of AIFs they manage subject at least to the following conditions:

a) the non-EU AIFM complies with Arts. 21-23 in respect of each AIF marketed by it and with Art. 25-29 where an AIF marketed by it falls within the scope of Art. 25(1);

b) appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards are in place between the competent authorities of the Member States where the AIFs are marketed, in so far as applicable, the competent authorities of the EU AIFs concerned and the supervisory authorities of the third country where the non-EU AIFM is established and, in so far as applicable, the supervisory authorities of the third country where the non-EU AIF is established in order to ensure an efficient exchange of information that allows competent authorities to carry out their duties in accordance with this law;

c) the third country where the AIFM or AIF is established is not listed as a Non-Cooperative Country and Territory by FATF.

(2) ASF may refer the matter to ESMA if, as authority of the Member State of reference where the AIF is intended to be marketed, ASF finds that the competent authority of a EU AIF does not enter into the required cooperation arrangements as set out in Para (1) Letter b) within a reasonable period of time.

(3) ASF may impose stricter rules on the non-EU AIFM in respect of the marketing of units of AIFs to investors in Romania.

CHAPTER VIII: Marketing to Retail Investors

Art. 47 (1) AIFMs established in Romania, in another Member State or in a third country may market to retail investors in Romania units of AIFs they manage in accordance with this law and with ASF's regulations, irrespective of whether such AIFs are marketed on a domestic or cross-border basis or whether they are EU or non-EU AIFs.

(2) ASF shall establish by regulations:

a) the types of AIF which the AIFMs referred to in Para (1) may market to retail investors in Romania;

b) any additional requirements imposed for the marketing of AIFs to retail investors in Romania.

(3) The European Commission and ESMA shall be informed in accordance with Art. 1 (8) and shall include information on the regulations set out in Para (2) and any subsequent changes thereto.

CHAPTER IX: Competent authorities

Art. 48 (1) The prudential supervision of the AIFMs established in Romania shall be the responsibility of ASF, irrespective whether the AIFM manages and/or markets AIFs in another Member State or not, without prejudice of the provisions of this law.

(2) If an AIFM established in Romania and authorised under this law which markets and manages units of AIFs in the territory of another Member State, directly or via a branch, refuses to provide the competent authorities of its host Member State with information falling under their responsibility, or fails to take the necessary steps to put an end to the breach of relevant regulations, the competent authorities of the host Member State shall inform ASF thereof. ASF shall, at the earliest opportunity:

a) take all appropriate measures to ensure that the AIFM concerned provides the information requested by the competent authorities of its host Member State or puts an end to the breaches notified;

b) request the necessary information from the relevant supervisory authorities in third countries, if it is the Member State of reference of that AIFM;

c) inform the competent authority of the host Member State of the nature of the measures adopted.

(3) Where a competent authority of the host Member State of the AIFM has grounded reasons for believing that the AIFM is in breach of the obligations arising from rules in relation to which it has no responsibility and informs ASF, as competent authority of the home Member State, thereof, ASF shall adopt necessary measures and, where appropriate, request additional information from the competent supervisory authority of the third country.

(4) Where ASF disagrees on any of the measures taken pursuant to Art. 49 Paras (3)-(8) by the host Member State of the AIFM in Romania, ASF may bring the matter to the attention of ESMA, which may act in accordance with the powers conferred to it under Art. 19 of Regulation (EU) 1.095/2010.

Art. 49 (1) Where the AIFM in another Member State manages and/or markets units of AIFs via a branch in Romania, ASF, as competent authority of the host Member State of the AIFM, shall be responsible for the supervision of the AIFM's compliance of Arts. 12 and 14.

(2) The AIFM in another Member State managing or marketing AIFs in Romania, either directly or via a branch, must provide ASF with the information necessary for the supervision of the AIFM's compliance with the applicable rules for which ASF is responsible. Those requirements shall not be more stringent than those which ASF imposes on AIFMs for which it is the home Member State for the monitoring of their compliance with the same rules.

(3) Where ASF ascertains that an AIFM, for which it is a host Member State, managing and/or marketing AIFs in Romania, whether directly or via branch, is in breach of one of the rules in relation to which it has responsibility for supervising compliance, then ASF shall require the AIFM concerned to put an end to that breach and inform the competent authorities of the home Member State thereof, in accordance with ASF's regulations.

(4) If the AIFM referred to in Para (3) refuses to provide ASF with information falling under its responsibility or fails to take the necessary steps to put an end to the breach referred to in Para (3), then ASF shall inform the competent authorities of the home Member State of that AIFM accordingly. ASF shall be then informed of the nature of the measures taken by the competent authorities of the home Member State of that AIFM.

(5) If, despite the measures taken by the competent authorities of the home Member State of the AIFM pursuant to Para (4) or because such measures did not have the desired effects in the Member State in question, the AIFM continues to refuse to provide the information requested by ASF pursuant to Para (2), or persists in breaching the legal or regulatory provisions, referred to in Para (3), in force in Romania, ASF may, after informing the competent authorities of the home Member State of the AIFM, take additional measures, in accordance with it legal powers, including those laid down in Arts. 50 and 51, to penalise the breach of those legal or regulatory provisions and to prevent that AIFM from initiating any further transactions in Romania. Where the function carried out in Romania is the management of AIFs, ASF may require the AIFM to cease managing those AIFs.

(6) Where ASF, as competent authority of the host Member State, has grounded reasons for believing that the AIFM is in breach of the obligations arising from rules in relation to which it has no responsibility for supervising compliance, ASF shall refer those findings to the competent authorities of the home Member State of the AIFM.

(7) If, despite the measures taken by the competent authorities of the home Member State of the AIFM or because such measures prove to be inadequate, or because the home Member State of the AIFM fails to act within a reasonable timeframe, the AIFM persists in acting in a manner that is clearly prejudicial to the interests of the investors of the relevant AIF, the financial stability or the integrity of the market in Romania, ASF may, after informing the competent authorities of the home Member State of the AIFM, take all appropriate measures

needed in order to protect the investors of the relevant AIF, the financial stability and the integrity of the market in the host Member State, including the possibility of preventing the AIFM concerned to further market the units or shares of the relevant AIF in Romania.

(8) The procedure laid down in Paras (6) and (7) shall also apply in the event that ASF rightfully considers that it disagrees with the authorisation of a non-EU AIFM by the Member State of reference.

Art. 50 (1) ASF shall be given all supervisory and investigatory powers that are necessary for the exercise of its functions. Such powers shall be exercised in any of the following ways:

a) directly;

b) in collaboration with other authorities;

c) under their responsibility by delegation to entities to which tasks have been delegated;

d) by application to the competent judicial authorities.

(2) ASF shall have the power to:

a) have access to any document in the possession of natural or legal persons covered by this law in any form and to receive a copy of it;

b) require information from any natural or legal person to whom the AIFM outsourced certain operational functions or activities or related to the activities of the AIFM or the AIF and if necessary to obtain written or oral explanations from those persons;

c) carry out inspections at the headquarters of the legal persons subject of this law with or without prior announcements;

d) require from the AIFM the existing telephone and existing data traffic records in connection with those acts considered by ASF contrary to this law or likely to be classified as such;

e) require the AIFM or the natural or legal person to whom the AIFM outsourced certain operational function or activities to cease any practice that is contrary to the provisions adopted under this law;

f) order, through the issuance of individual acts set out in Art. 6 (3) of Government Emergency Ordinance No. 93/2012, approved as amended and supplemented by Law No. 113/2013, as subsequently amended and supplemented , the temporary prohibition of the exercise of the professional activity by the AIFMs, AIFs, depositaries AIFs, natural persons involved in the activity of the AIFM referred to in Art. 51 (2), natural or legal persons to whom the AIFMs outsourced certain operational functions or activities;

g) adopt, within its legal powers, measure to ensure that AIFMs or depositaries AIFs comply with this law;

h) require the AIFMs or the AIFs internally managed to suspend the issue or redemption of the units of the AIFs in the interest of the unit-holders or of the public;

i) withdraw, subject to Arts. 11 and 52, the authorisation given to an AIFM or the licence given to an AIF depositary, both as principal penalty, if those entities no longer meet the requirements at the time of authorisation /licensing, and as supplementary penalty;

j) refer matters for criminal prosecution;

k) prohibit the marketing in the European Union of units of the AIFs managed by non-EU AIFMs or of non-EU AIFs managed by EU-AIFMs without the authorisation required in Art. 39 or notification required in Art. 36 (3), Art. 40 (2) and Art. 42 (3) or if the requirements set out in Art. 46 are not met;

l) impose restrictions on non-EU AIFMs relating to the management of an AIF in case of excessive concentration of risk in a specific market on a cross-border basis.

(3) Where ASF, competent authority of the Member State of reference considers that an unauthorised non-EU AIFM is in breach of its obligations under this law, it shall notify ESMA, setting out full reasons as soon as possible.

(4) ASF may use its powers to take all measures required in order to ensure the orderly functioning of markets in those cases where the activity of one or more AIFs in the market for a financial instrument could jeopardise the orderly functioning of that market.

Art. 51 (1) The breach of the provisions of this law and of the regulations adopted in its implementation shall incur non-criminal and criminal responsibility, under the law.

(2) The following deeds perpetrated by AIFMs, self-managed AIFs, depositaries of AIFs and/or by the members of the board of directors or supervisory board of AIFMs or self-managed AIFs, directors or members of the directorship of AIFMs or self-managed AIFs and representatives of the internal control compartment of AIFMs or self-managed AIFs, and by the natural persons holding managerial positions or pursuing professional activities covered by this law, depending on their job duties, shall be deemed petty offences under this law:

a) breach of the requirements based on which the authorisation/license was given and of the operating conditions set out in Arts. 2, 4 and 6-10;

b) breach of the prudential rules referred to in Art. 12;

c) breach of the provisions referred to in Art. 13 on remuneration policies;

d) breach of the provisions of Art. 14 on the identification, prevention, management and oversight of the situations referred to in Articles 30-37 of Regulation (EU) 231/2013 giving rise to conflicts of interest;

e) breach of the provisions of Art. 15 Paras (1)-(3) and (5) on risk management and of Art. 16 on liquidity management;

f) breach of the provisions of Art. 18 Paras (1), (3)-(9), (11) and (12) on the valuation of the assets of AIFs;

g) breach of the provisions of Art. 19 on the delegation of the collective portfolio management or risk management;

h) breach of the provisions of Art. 20 Paras (1)-(11) on depositaries and agreement between the depositaries and SAI;

i) breach of the transparency and reporting obligations referred to in Arts. 21 and 23, and of the transparency obligations referred to in Art. 22;

j) breach of the obligations of the AIFM further to acquiring control of non-listed companies and issuers referred to in Arts. 25-29;

k) breach of the conditions on cross-border operations referred to in Art. 30 Paras (2) and (4)-(6), Art. 31 Paras (2) and (6)-(9), Art. 32 Paras (2) and (3), Art. 33 Paras (2), (3) and (5)-(7), Art. 34 Para (2), Art. 35 Letter a), Art. 36 Paras (2), (3), (5) and (9)-(11), Art. 37 Paras (3) and (4), Art. 38 Para (1) Letter a), Art. 39 Paras (1), (2), (6)-(8) and (14)-(18), Art. 40 Para (2), (4) and (8)-(12), Art. 41 Paras (2) and (3), Art. 42 Paras (3), (5), (9)-(12), Art. 43 Paras (3) and (4), Art. 44 Paras (2), (3), (6) and (7), Art. 45 Para (2), Art. 46 Para (1) Letter a) and Art. 47 Para (2);

l) unlawful obstacle to the exercise of the rights conferred by law to ASF, such as the unjustified refusal to comply with the requests of ASF in the exercise of its powers.

Art. 52 (1) By way of derogation from the provisions of Art. 8 (2) of Government Ordinance No. 2/2001 on the legal regime of petty offences, approved as amended and supplemented by Law No. 180/2002, as subsequently amended and supplemented, the perpetration of the petty offences referred to Art. 51 is punishable as follows:

a) by warning or fine ranging between RON 1,000 and RON 50,000, for natural persons;

b) by warning or fine ranging between 0.1% and 5% of the net turnover obtained in the financial year prior to sanctioning, depending on the seriousness of the perpetrated deed, for legal persons.

(2) If the turnover achieved in the financial year prior to sanctioning is not available upon sanctioning, the net turnover related to the financial year in which the legal person obtained the

turnover, which year is immediately prior to the reference year, shall be taken into account. Reference year means the year prior to sanctioning.

(3) By way of derogation from the provisions of Art. 8 (2) of Government Ordinance No. 2/2001, approved as amended and supplemented by Law No. 180/2002, as subsequently amended and supplemented, the newly-established legal person which did not obtain turnover in the year prior to sanctioning shall be punished by fine ranging between RON 10,000 and RON 1,000,000.

(4) In the case of the petty offences referred to in Art. 51 (2), together with the principal penalty, ASF may also apply any of the following supplementary penalties:

a) suspension of the authorisation;

b) withdrawal of the authorisation;

c) prohibition for a period comprised between 90 days and 5 years of the right to hold a position, to carry out an activity or to supply a service for which the authorisation is required under this law.

(5) ASF shall disclose to the public any measure or penalty that will be imposed for infringement of the provisions of this law and regulations adopted in its implementation, unless such disclosure would seriously jeopardise the financial markets, be detrimental to the interests of the investors or cause disproportionate damage to the parties involved.

Art. 53 Pursuing without an authorisation any business or operation for which this law requires an authorisation shall be deemed a crime and shall be punished pursuant to Art. 348 of the Criminal Code.

Art. 54 (1) The perpetration of the petty offences referred to in Art. 51 (2) is acknowledged by ASF through its specialised staff authorised to exercise supervisory, investigative and control duties of compliance with the legal provisions and regulations applicable to the capital market.

(2) Upon receipt of the verification acts resulting from the authorisation, supervisory or control activity, and acknowledging the perpetration of any of the petty offences referred to in Art. 51 (2), ASF shall order, through the issuance of individual acts, the application of the penalties referred to in Art. 52. ASF may also, by individual acts, order that the scope of the investigations be extended, precautionary measures be taken and/or the persons subject of the verification acts be heard.

Art. 55 The provisions of Art. 5 Paras (5) and (6) and Art. 21 (3) of Government Ordinance No. 2/2001, approved as amended and supplemented by Law No. 180/2002, as subsequently

amended and supplemented, shall be taken into consideration upon the individualisation of the penalty.

Art. 56 (1) By way of derogation from the provisions of Arts. 13 and 14 of Government Ordinance No. 2/2001, approved as amended and supplemented by Law No. 180/2002, as subsequently amended and supplemented, the limitation period for the application and enforcement of the penalty for petty offences shall be 3 years after the perpetration of the deed.

(2) For continued petty offences, the three-year limitation period shall start running from the date the deed was acknowledged.

Art. 57 (1) The provisions on petty offences shall be supplemented by the provisions of Government Ordinance No. 2/2001, approved as amended and supplemented by Law No. 180/2002, as subsequently amended and supplemented, in so far as the same are not contrary to this law.

(2) The acts issued by ASF whereby penalties are imposed may be challenged at the Bucharest Court of Appeal, as provided by Law No. 554/2004 on administrative disputes, as subsequently amended and supplemented.

(3) If ASF has not addressed the application for authorisation of the AIFM within 6 months after submission by the latter of the complete documentation set out in this law and in the regulations issued in its implementation, that AIFM may refer the matter through administrative legal proceedings to the Bucharest Court of Appeal.

Art. 58 (1) ASF shall use its powers for the purpose of cooperation with the competent authorities of the other Member States, and also with ESMA and ESRB, whenever necessary for the purpose of carrying out its duties under this law or of exercising its powers under this law.

(2) ASF shall cooperate with the other Member States, even in cases where the conduct under investigation does not constitute an infringement of any regulation in force in Romania.

(3) ASF shall forward to the competent authorities of the other Member States and to ESMA information necessary to carry out its duties under this law. ASF, as competent authority of the home Member State, shall forward a copy of the relevant cooperation arrangements entered into by it in accordance with Arts. 35 and 36, Art. 39 and/or Arts. 42 and 43 to the host Member States of the AIFM concerned, and the information received from third-country supervisory authorities in accordance with cooperation arrangements with such supervisory authorities in respect of an AIFM, or, where relevant, pursuant to Art. 48 (3) or Art. 49 (5), or Art. 49 (6), to the competent authorities of host Member State of the AIFM concerned.

If ASF, as competent authority of a host Member State considers that the contents of the cooperation arrangement entered into by the home Member State of the AIFM concerned in accordance with Arts. 35 and 36, Art. 39 and/or Arts. 42 and 43, does not comply with what is required pursuant to the applicable regulatory technical standards, ASF may refer the matter to the ESMA which may act in accordance with the powers conferred on it under Article 19 of Regulation (EU) No 1095/2010.

(4) Where ASF has clear and demonstrable grounds to suspect that acts contrary to this law are being or have been carried out by an AIFM not subject to supervision of ASF, it shall notify ESMA and the competent authorities of the home and host Member States of the AIFM concerned thereof in as specific a manner as possible.

(5) If ASF receives information pursuant to Para (4) from the competent authorities of a Member State, it shall take appropriate action, shall inform ESMA and the notifying competent authorities of the outcome of that action and, to the extent possible, of significant interim developments. This paragraph shall be without prejudice to the competences of the notifying competent authorities.

Art. 59 (1) With regard to transfer of personal data between ASF and the competent authorities of other Member States or third countries, ASF is deemed a data operator in accordance with Law No. 677/2001 for the protection of individuals with regard to the personal data processing and the free movement thereof, as subsequently amended and supplemented, and shall be subject to the conditions set out in that legislation.

(2) Personal data shall be retained by ASF for a maximum period of 5 years. After the expiry of such period, those data shall be archived in accordance with the legal provisions in force.

Art. 60 (1) ASF may transfer to a third country data and the analysis of data on a case-by-case basis where the conditions laid down in Law No. 677/2001, as subsequently amended and supplemented are met, and where ASF is satisfied that the transfer is necessary for the purpose of this law. The third country shall not transfer the data to another third country without the express written authorisation of ASF.

(2) ASF shall only disclose information received from a competent authority of another Member State to a supervisory authority of a third country where the competent authority of the Member State concerned has obtained express agreement of the competent authority which transmitted the information and, where applicable, the information is disclosed solely for the purposes for which that competent authority gave its agreement.

Art. 61 (1) ASF shall communicate information to the competent authorities of other Member States, ESMA and ESRB, where this is relevant for monitoring and responding to the potential implications of the activities of individual AIFMs or AIFMs collectively for the stability of systemically relevant financial institutions and the orderly functioning of markets on which AIFMs are active.

(2) Subject to the conditions laid down in Article 35 of Regulation (EU) No 1095/2010, aggregated information relating to the activities of AIFMs under its responsibility shall be communicated by ASF to ESMA and the ESRB.

Art. 62 (1) The competent authorities of one Member State may request the cooperation of ASF in a supervisory activity or for an on-the-spot verification or in an investigation in the territory of the latter within the framework of their powers pursuant to this law. Where ASF receives a request with respect to an on-the-spot verification or an investigation, it shall perform one of the following:

a) carry out the verification or investigation itself;

b) allow the requesting authority to carry out the verification or investigation;

c) allow auditors or experts to carry out the verification or investigation.

(2) In the case referred to in Letter a) of Para. (1), the competent authority of the Member State which has requested cooperation may ask that members of its own personnel assist the personnel carrying out the verification or investigation from ASF. The verification or investigation shall, however, be the subject of the overall control of ASF. In the case referred to in Letter b) of Para (1), ASF may request that members of its own personnel assist the personnel carrying out the verification or investigation.

(3) ASF may refuse to exchange information or to act on a request for cooperation in carrying out an investigation or on-the-spot verification only in the following cases:

a) the investigation, on-the-spot verification or exchange of information might adversely affect the sovereignty, security or public order of Romania;

b) judicial proceedings have already been initiated in respect of the same actions and the same persons before the authorities of Romania;

c) final judgment has already been delivered in Romania in respect of the same persons and the same actions. ASF shall inform the requesting competent authorities of any decision taken under the first paragraph, stating the reasons therefor.

CHAPTER X: Transitional and Final Provisions

Art. 63 (1) The managers of NON-UCITS in Romania referred to in Art. 114 (1) and Art. 115 Paras (1) and (2) of Law No. 297/2004, pursuing business prior to the entry into force of this law, shall take all necessary measures to comply with this law. Within maximum 12 months after the entry into force of this law, they must:

a) request ASF, depending on the value of the managed portfolios and having regard to the provisions of Art. 2 (2), either to authorise or register them as AIFMs; or, where applicable,

b) ensure that the supervisory authority of the Member State of the home Member State shall send ASF a notification in accordance with the procedure referred to in Art. 34.

(2) The obligation of registration with ASF referred to in Para (1) shall lie with the managers of venture capital funds, and managers of social entrepreneurship funds, intending to market units in EEA under the titles EuVECA or EuSEF, the activity of which is regulated as of 22 July 2013 by the provisions of Regulation (EU) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European venture capital funds, and Regulation (EU) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European social entrepreneurship funds.

(3) Arts. 30-32 shall not apply to marketing units of AIFs which are subject to a current sale offer to the public under a prospectus that has been drawn up and published in accordance with the provisions of Law No. 297/2004 and regulations issued in its implementation, for the duration of the validity of that prospectus.

(4) AIFMs in so far as they manage AIFs of the closed-ended type before the entry into force of this law which do not make any additional investments after that date, may however continue to manage such AIFs without authorisation under this law.

(5) AIFMs in so far as they manage AIFs of the closed-ended type whose subscription period for investors has closed prior to the entry into force of this law and are constituted for a period of time which expires at the latest 3 years after 22 July 2013, may, however, continue to manage such AIFs without needing to comply with this law except for Art. 21 and Arts. 25-29, or to submit an application for authorisation under this law.

(6) ASF shall issue regulations in the implementation of this law, having regard to the technical standards adopted by the European Commission and ESMA guidelines on the establishment and operation of AIFMs, including in respect of the treatment applicable to non-UCITS the units of which are admitted to trading on a regulated market or in an alternative trading system, within 60 days after the entry into force of this law.

Art. 64 This law shall enter into force 30 days following its publication in the Official Journal of Romania, Part I.

Art. 65 Annexes Nos. 1-3 are an integral part hereof.

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This law transposes:

1. Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, published in the Official Journal of the European Union, Series L, No. 174 of 1 July 2011;

2. the provisions of Article 3 of Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013 amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on Alternative Investment Funds Managers in respect of over-reliance on credit ratings, published in the *Official Journal* of the European Union, Series L, No. 145 of 31 May 2013;

3. the provisions of Article 92 of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, published in the *Official Journal* of the European Union, Series L, No. 173 of 12 June 2014.

This law was adopted by the Parliament of Romania, in compliance with Art. 75 and Art. 76 (2) of the Constitution of Romania, republished.

PRESIDENT OF THE CHAMBER OF DEPUTIES

VALERIU-ŞTEFAN ZGONEA

PRESIDENT OF THE SENATE

CĂLIN-CONSTANTIN-ANTON POPESCU-TĂRICEANU

Annexe No. 1:

Remuneration policies and practices

1. When establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on the risk profiles of the AIFMs or of AIFs they manage, AIFMs shall comply with the following principles in a way and to the extent that is appropriate to their size, internal organisation and the nature, scope and complexity of their activities:

a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking which is inconsistent with the risk profiles, rules or instruments of incorporation of the AIFs they manage;

b) the remuneration policy is in line with the business strategy, objectives, values and interests of the AIFM and the AIFs it manages or the investors of such AIFs, and includes measures to avoid conflicts of interest;

c) the management body of the AIFM, in its supervisory function, adopts and periodically reviews the general principles of the remuneration policy and is responsible for its implementation;

d) the implementation of the remuneration policy is, at least annually, subject to central and independent internal review for compliance with policies and procedures for remuneration adopted by the management body in its supervisory function;

e) the staff engaged in control functions are compensated in accordance with the achievement of the objectives linked to their functions, independent of the performance of the business areas they control;

f) the remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee;

g) where remuneration is performance related, the total amount of remuneration is based on a combination of the assessment of the performance of the individual and of the business unit or AIF concerned and of the overall results of the AIFM, and when assessing individual performance, financial as well as non-financial criteria are taken into account;

h) the assessment of performance is set in a multi-year framework appropriate to the life-cycle of the AIFs managed by the AIFM in order to ensure that the assessment process is based on longer term performance and that the actual payment of performance-based components of remuneration is spread over a period which takes account of the redemption policy of the AIFs it manages and their investment risks;

i) the guaranteed variable remuneration is exceptional, occurs only in the context of hiring new staff and is limited to the first year;

j) the fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently high proportion of the total remuneration to allow the operation of a fully flexible policy, on variable remuneration components, including the possibility to pay no variable remuneration component;

k) the payments related to the early termination of a contract reflect performance achieved over time and are designed in a way that does not reward failure;

l) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes a comprehensive adjustment mechanism to integrate all relevant types of current and future risks;

m) subject to the legal structure of the AIF and its rules or instruments of incorporation, a substantial portion, and in any event at least 50% of any variable remuneration consists of units or shares of the AIF concerned, or equivalent ownership interests, or share-linked instruments or equivalent non-cash instruments, unless the management of AIFs accounts for less than 50% of the total portfolio managed by the AIFM, in which case the minimum of 50% does not apply.

The instruments referred to in this point shall be subject to an appropriate retention policy designed to align incentives with the interests of the AIFM and the AIFs it manages and the investors of such AIFs. Member States or their competent authorities may place restrictions on the types and designs of those instruments or ban certain instruments as appropriate. This point shall be applied to both the portion of the variable remuneration component deferred in line with Letter n) and the portion of the variable remuneration component not deferred;

n) a substantial portion, and in any event at least 40%, of the variable remuneration component, is deferred over a period which is appropriate in view of the life cycle and redemption policy of the AIF concerned and is correctly aligned with the nature of the risks of the AIF in question.

The period referred to in this letter shall be at least 3 to 5 years unless the life cycle of the AIF concerned is shorter; remuneration payable under deferral arrangements vests no faster than on a pro-rata basis; in the case of a variable remuneration component of a particularly high amount, at least 60% of the amount is deferred;

o) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the AIFM as a whole, and justified according to the performance of the business unit, the AIF and the individual concerned.

The total variable remuneration shall generally be considerably reduced where subdued or negative financial performance of the AIFM or of the AIF concerned occurs, taking into account both current compensation and reductions in pay-outs of amounts previously earned, including through *malus* or *clawback* arrangements;

p) the pension policy is in line with the business strategy, objectives, values and long-term interests of the AIFM and the AIFs it manages.

If the employee leaves the AIFM before retirement, discretionary pension benefits shall be held by the AIFM for a period of 5 years in the form of instruments defined in Letter m). In the case of an employee reaching retirement, discretionary pension benefits shall be paid to the employee in the form of instruments defined in Letter m), subject to a 5 year retention period;

q) staff are required to undertake not to use personal hedging strategies or remuneration and liability-related insurance to undermine the risk alignment effects embedded in their remuneration arrangements;

r) variable remuneration is not paid through vehicles or methods that facilitate the avoidance of the requirements of this law.

2. The principles set out in Point 1 shall apply to remuneration of any type paid by the AIFM, to any amount paid directly by the AIF itself, including carried interest, and to any transfer of units of the AIF, made to the benefits of those categories of staff, including senior management, risk takers, control functions and any employee receiving total remuneration that takes them into the same remuneration bracket as senior management and risk takers, whose professional activities have a material impact on their risk profile or the risk profiles of the AIF that they manage.

3. AIFMs that are significant in terms of their size or the size of the AIFs they manage, their internal organisation and the nature, the scope and the complexity of their activities shall establish a remuneration committee. The remuneration committee shall be constituted in a way that enables it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk.

The remuneration committee shall be responsible for the preparation of decisions regarding remuneration, including those which have implications for the risk and risk management of the AIFM or the AIF concerned and which are to be taken by the management body in its supervisory function. The remuneration committee shall be chaired by a member of the management body who does not perform any executive functions in the AIFM concerned. The members of the remuneration committee shall be members of the management body who do not perform any executive functions in the AIFM concerned.

Annexe No. 2: Documentation and information to be provided in case of intended marketing in Romania

a) A notification letter, including a programme of operations identifying the AIFs the AIFM intends to market and information on where the AIFs are established;

b) the AIF rules or instruments of incorporation;

c) identification of the depositary of the AIF;

d) a description of, or any information on, the AIF available to investors;

e) information on where the master AIF is established if the AIF is a feeder AIF;

f) any additional information referred to in Art. 22(1) of the law for each AIF the AIFM intends to market;

g) where relevant, information on the arrangements established to prevent units of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.

Annexe No. 3: Documentation and information to be provided in the case of intended marketing in member states other than Romania

a) A notification letter, including a programme of operations identifying the AIFs the AIFM intends to market and information on where the AIFs are established;

b) the AIF rules or instruments of incorporation;

c) identification of the depositary of the AIF;

d) a description of, or any information on, the AIF available to investors;

e) information on where the master AIF is established if the AIF is a feeder AIF;

f) any additional information referred to in Art. 22(1) for each AIF the AIFM intends to market;

g) the indication of the Member State in which it intends to market the units of the AIF to professional investors;

h) information about arrangements made for the marketing of AIFs and, where relevant, information on the arrangements established to prevent units of the AIF from being marketed to retail investors, including in the case where the AIFM relies on activities of independent entities to provide investment services in respect of the AIF.