FINANCIAL SUPERVISORY AUTHORITY

R E G U L A T I O N NO. 3/ 2014

On Certain Issues Related to the Application of Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy and 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

Based on the provisions of Art. 1 Para (2), Art. 2 Para (1) Letters a) and d), Art. 3 Para (1) Letter b), Art. 6 Para (2) and Art. 14 of Government Emergency Ordinance No. 93/2012 on the establishment, organization and operation of the Financial Supervisory Authority, as subsequently amended and supplemented, approved by Law No. 113/2013, as subsequently amended and supplemented, and of Art. 4[1] and Arts. 278-283 of Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented,

In accordance with the deliberations of the Financial Supervisory Authority's Board of 20 February 2014,

The Financial Supervisory Authority issues this regulation:

TITLE I

General Provisions

CHAPTER I

Scope

Art. 1. – This regulation regulates:

a) certain issues related to the application 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) certain issues related to the administration of investment firms, hereinafter referred to as *SSIF*, the internal capital adequacy assessment process for risks, as well as risk management elements;

c) certain issues related to the own funds of investment firms (SSIF);

d) the requirements regarding capital buffers;

e) the consolidated supervision of investment firms (SSIF)

Art. 2. – This regulation applies to Romanian legal person investment firms (SSIF), individually and/or, as the case may be, at a consolidated or sub-consolidated level.

CHAPTER II

Definitions

Art. 3. – For the purpose of this regulation, the terms and expressions below shall have the following meanings:

1. *management body* -the administration and management body of an investment firm (SSIF) established under the constitutive documents, in compliance with the provisions of Companies' Law No. 31/1990, republished, as subsequently amended and supplemented, of Law No. 297/2004 on the capital market, as subsequently amended and supplemented, and of the regulations issued for its application, and of Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, which are empowered to set the investment firm's (SSIF's) strategy, objectives and overall direction, and which oversee and monitor management decision-making and that include the manager, in monistic administration systems, and the executive board, in dualistic administration systems, the persons who effectively direct the business of the investment firm (SSIF);

2. *management body in its supervisory function* -the management body acting in its role of overseeing and monitoring management decision-making and which is represented by the board of administration in monistic administration systems, and the supervisory board in dualistic administration systems;

3. *senior management* – means those natural persons who exercise executive functions within an investment firm (SSIF) and who are responsible, and accountable to the management body, for the day-to-day management of the investment firm (SSIF). The senior management is represented by the directors in monistic administration systems, and by the executive board in dualistic administration systems;

4. *risk profile* -the sum of exposures of an investment firm (SSIF) to real and potential risks;

5. *risk appetite* -the absolute level of risks that an investment firm (SSIF) is inherently prepared to assume;

6. *internal capital adequacy assessment process for risks* -the component of the administration framework of the investment firm's (SSIF's) activity, whereby the management body ensures the adequate identification, measuring, aggregation and monitoring of the investment firm's (SSIF's) risks, the holding of an internal capital adequate for the risk profile and the use and development of sound risk management systems;

7. *interest rate risk* **–** the current or future risk of adverse effects on the profits and capital further to adverse changes in the interest rates;

8. *Information technology (IT) risk* **–** subcategory of operational risk that refers to the current or future risk of adverse effects on the profits and capital due to the inadequacy of the IT strategy and policy, of the information technology and of information processing, with regard to its management capacity, integrity, controllability and continuity or to the inadequate use of the information technology;

9. *reputational risk* – current or future risk of adverse effects on the profits and capital due to the clients' counterparties', shareholders', investors' or supervisory authorities' unfavourable perception of the image of an investment firm (SSIF);

10. *strategic risk* – current or future risk of adverse effects on the profits and capital due to changes in the business environment or by unfavourable business decisions or lack of reaction to the changes in the business environment;

11. *significant risks* **–** risks having a significant impact on the material and/or reputational situation of the investment firm (SSIF);

12. *significant activities:*

    a) activities that are important enough that any difficulty or failure in carrying them out may have a significant adverse effect on the investment firm's (SSIF's) ability to observe its obligations provided by the applicable legislation and/or to continue its activity;

    b) any other activities requiring an authorisation from the competent authorities;

    c) any activities having a significant impact in terms of risk management; and

    d) the management of risks related to the activities provided under Letter a);

13. *discretionary pension benefits* **–** means the discretionary pension benefits as defined under Art. 4 Para (1) Item 73 of Regulation (EU) No 575/2013;

14. *trading book* – the meaning provided under Art. 4 Para (1) Item 86 of Regulation (EU) No 575/2013;

15. *market risk* **–** the risk of registering losses related to the on- and off-balance sheet positions due to unfavourable market fluctuations of the prices (such as, for example, the price of shares, interest rates, exchange rates);

16. *model risk* **–** a potential loss an investment firm (SSIF) may incur as a consequence of decisions that could be principally based on the output of internal models due to errors in the development, implementation or use of such models;

17. *originator* – the meaning provided under Art. 4 Para (1) Item 13 of Regulation (EU) No 575/2013;

18. *sponsor* – the meaning provided under Art. 4 Para (1) Item 14 of Regulation (EU) No 575/2013;

19. *central counterparty* – the meaning provided under Art. 4 Para (1) Item 34 of Regulation (EU) No 575/2013;

20. *operational risk* – the meaning provided under Art. 4 Para (1) Item 52 of Regulation (EU) No 575/2013;

21. *credit risk mitigation* – the meaning provided under Art. 4 Para (1) Item 57 of Regulation (EU) No 575/2013;

22. *securitisation* – the meaning provided under Art. 4 Para (1) Item 61 of Regulation (EU) No 575/2013;

23. *securitisation position* – the meaning provided under Art. 4 Para (1) Item 62 of Regulation (EU) No 575/2013;

24. *securitisation special purpose entity* – the meaning provided under Art. 4 Para (1) Item 66 of Regulation (EU) No 575/2013;

25. *credit risk* – current or future risk of adverse effects on the profits and capital due to the debtor's failure to fulfil its contractual obligations or its failure to meet the established requirements;

26. *transfer risk* **–** the risk that a debtor cannot convert the local currency in a foreign currency, thus being unable to make payments on account of the debt in such foreign currency. This risk normally results from currency restrictions imposed by the government in the debtor's country;

27. *liquidity risk* – current or future risk of adverse effects on the profits and capital due to the investment firm's (SSIF's) incapacity to fulfil its obligations on their due date;

28. *systemic risk* – a risk of disruption in the financial system with the potential to have serious negative consequences for the financial system and the real economy;

29. *systemically important institution* **–** a EU parent investment firm, a EU parent financial holding company, a EU parent mixed financial holding company or an investment firm whose bankruptcy or improper operation may lead to the occurrence of systemic risks;

30. *capital conservation buffer* **–** the own funds that an investment firm (SSIF) is obligated to hold in accordance with the provisions of Art. 66;

31. *countercyclical capital buffer specific to an investment firm (SSIF)* – the own funds that an investment firm (SSIF) is obligated to hold in accordance with the provisions of Art. 67;

32. *capital buffer related to global systemically important institutions (G-SII buffer)* – the own funds that an investment firm (SSIF) is obligated to hold in accordance with the provisions of Art. 81;

33. *capital buffer related to other systemically important institutions (O -SII buffer)* – the own funds that an investment firm (SSIF) is obligated to hold in accordance with the provisions of Art. 79 Para (1);

34. *systemic risk capital buffer* – the own funds that an investment firm (SSIF) is or may be obligated to hold in accordance with the provisions of Arts. 93-104;

35. *combined buffer requirement* **–** the total of the base tier 1 own funds necessary to meet the capital conservation buffer requirement, plus the requirements related to the following buffers, as applicable:

a) the countercyclical capital buffer specific to an investment firm (SSIF);

b) the G -SII buffer;

c) the O -SII buffer;

d) the systemic risk capital buffer;

36. *rate of countercyclical capital buffer* **–** the percentage rate that the investment firm (SSIF) must apply in order to calculate the countercyclical capital buffer specific to such investment firm (SSIF) and which is established in accordance with Arts. 68 and 69 or, as the case may be, by the competent authority in a third state;

37. *investment firm authorised at a national level* **–** an investment firm that was authorised in Romania and for which the Financial Supervisory Authority, hereinafter referred to as *ASF*, must impose the countercyclical capital buffer rate, in accordance with the recommendation of the cross-institution coordination structure in the field of macroprudential supervision of the national financial system;

38. *buffer reference* **–** the reference rate of the countercyclical capital buffer specific to an investment firm (SSIF), calculated in accordance with Art. 68 Paras (2) and (3).

CHAPTER III

Provisions related to the organisational structure of an investment firm (SSIF) and the internal capital adequacy assessment process for risks

SECTION 1

Provisions related to the organisational structure of an investment firm (SSIF) to ensure the enforcement of the provisions of Regulation (EU) No 575/2013

Art. 4. – The organisational structure of an investment firm (SSIF) shall be consistent with the provisions of Title III Chapter I of Regulation No. 32/2006 on the financial investment services, approved by Order No. 121/2006 of the National Securities Commission, as subsequently amended.

Art. 5. – (1) Within the organisational structure established in compliance with the provisions of Art. 4, the management body of an investment firm (SSIF) shall define, supervise and be liable for the implementation of an organisational structure of the investment firm's (SSIF's) activity that ensures the effective and prudent administration of the investment firm (SSIF), including the separation of responsibilities within the organisation and the prevention of conflicts of interest.

(2) For the purpose of Para (1), the organisational structure of an investment firm (SSIF) shall ensure the compliance with the following principles:

a) the management body shall be fully liable with regard to the investment firm (SSIF) and shall approve and supervise the implementation of the strategic objectives, of the risk management strategy and the organisation of the investment firm's (SSIF's) activity;

b) the management body shall ensure the integrity of the accounting and financial reporting systems, including the financial and operational inspections and the compliance with the applicable legislation and standards;

c) the management body shall supervise the information publication and communication process;

d) the management body shall be liable for ensuring the effective supervision of the senior management.

(3) The president of the management body, within its supervisory function of an investment firm (SSIF), shall not exercise simultaneously an executive position within the same investment firm (SSIF) unless this overlapping is justified by the investment firm (SSIF) and is authorised by ASF

(4) The management body of an investment firm (SSIF) shall approve and revise periodically the strategies and policies for assuming, administering, monitoring and mitigating the risks to which the investment firm (SSIF) is or may be exposed, including those resulting from the macroeconomic environment in which the investment firm (SSIF) carries out its activity and which are related to the economic cycle status.

Art. 6. – The management body shall monitor and evaluate periodically the efficiency of the organisational structure of the investment firm (SSIF) and shall take appropriate measures to remedy any deficiency.

Art. 7. – (1) Investment firms (SSIFs) that are significant from the standpoint of their size, internal organisation, nature, scale and complexity of their activities shall establish a risk management committee consisting of members of the management board who do not exercise an executive position within such investment firm (SSIF). The members of the risk management committee shall have the necessary knowledge, skills and expertise to fully understand and monitor the risk management strategy and the investment firm's (SSIF's) risk appetite.

(2) In the case of investment firms (SSIFs) whose initial capital is the lei equivalent of EUR 730,000, the establishment of a risk management committee is mandatory.

(3) The risk management committee shall advise the management body with regard to the risk appetite and the global management strategy of current and future risks of the investment firm (SSIF) and shall assist the management body in the supervision of the implementation of such strategy by the senior management. The general risk management responsibility shall continue to lie with the management body.

(4) The risk management committee shall verify whether the prices of the asset and liability products offered to clients are fully consistent with the business model in terms of the investment firm's (SSIF's) risk management strategy. If the prices do not reflect the risks accordingly in compliance with the business model and with the risk management strategy, the risk management committee shall submit to the management body a plan to remedy the situation. ASF may allow an investment firm (SSIF), which is not deemed significant in accordance with Para (1), to combine the risk management committee and the audit committee. The members of the combined committee shall possess the knowledge, skills and expertise necessary both for the risk management committee and for the audit committee.

(5) To support the establishment of sound remuneration policies and practices, the risk management committee shall verify, without affecting the duties of the remuneration committee, whether the incentives offered by the remuneration system account for the risks, capital, liquidity and likeliness and calendar of gains.

Art. 8. – (1) Investment firms (SSIFs) that are significant from the standpoint of their size, internal organisation, nature, scale and complexity of their activities shall establish a nomination committee consisting of members of the management body who do not exercise an executive position in such investment firm (SSIF).

(2) In the case of an investment firm (SSIF) whose initial capital represents the lei equivalent of EUR 730,000, the establishment of a nomination committee is mandatory.

(3) The nomination committee shall:

a) identify and recommend for the approval of the management body or the general assembly, candidates for the vacant positions within the management body, shall evaluate the balance of knowledge, skills, diversity and expertise within the management body, shall prepare a description of the roles and capabilities for appointment in a certain position and shall evaluate the expectations regarding the time allocated in this respect;

b) evaluate periodically, but at least once per year, the structure, size, membership and performance of the management body and recommend any modifications to the management body;

c) evaluate periodically, but at least once per year, the knowledge, skills and expertise of each member of the management body and of the management body as a whole and to report to the management body accordingly;

d) to revise periodically the management body's policy with regard to the selection and appointment of the members of the senior management and to make recommendations to the management body.

(4) For the purpose of Para (3) Letter a), the nomination committee shall also decide on a target regarding the representation of the underrepresented sex within the management body and shall prepare a policy regarding the modality to increase the number of members of the underrepresented sex within the management body in order to reach such target. The target, the policy and the implementation shall be disclosed in accordance with Art. 435 Para (2) Letter (c) of Regulation (EU) No 575/2013.

(5) In the fulfilment of its duties, the nomination committee shall take into consideration, to the extent possible and on a continuous basis, the need to ensure that the decision-making process of the management body is not dominated by any particular person or small group of persons in a way that affects the interests of the investment firm (SSIF) as a whole.

(6) The nomination committee may use any type of resources it deems appropriate, including external advice, and shall benefit from

financing in this respect.

Art. 9. – (1) The members of the management body shall have, at any time, a good enough reputation and sufficient knowledge, skills and experience to exercise their duties. All members of the management body shall cover a sufficiently wide range of experience. The members of the management body shall particularly meet the requirements provided under Paras (2) - (8).

(2) All members of the management body shall dedicate sufficient time to fulfil their duties within the investment firm (SSIF)

(3) The number of management positions that may be held simultaneously by a member of the management body shall be established depending on the specific circumstances and on the nature, scale and complexity of the investment firm's (SSIF's) activity. Unless they represent the Member State, the members of the management body of an investment firm (SSIF) that is significant from the standpoint of its size, internal organisation, object and complexity of its activities shall hold simultaneously, starting from 1 July 2014, only one of the following combinations of management positions:

a) executive management position and two non-executive management positions;

b) 4 non-executive management positions.

(4) For the purpose of the provisions of Para (3), the following shall be deemed as a single management position:

a) executive or non-executive management positions held within the same group;

b) executive or non-executive management positions held within:

(i) investment firms (SSIFs) that are members of the same institutional protection scheme, if the conditions provided under Art. 113 Para (7) of Regulation (EU) No 575/2013 are met; or

(ii) the enterprises, including non-financial entities, within which the investment firm (SSIF) holds a qualified participation.

(5) The management positions in organisations that do not pursue predominantly commercial objectives do not form the object of Para (3).

(6) ASF may authorise members of the management body to hold an additional non-executive position. The competent authorities shall inform periodically the European Banking Authority, hereinafter referred to as *EBA*, with regard to such authorisations.

(7) The management body possesses, overall, the adequate knowledge, skills and experience to understand the institution's activities, including the main risks.

(8) Each member of the management body shall act with honesty, integrity and independence to efficiently evaluate and challenge the decisions of the superior management when necessary and to effectively supervise and monitor the decision making process of the managerial team.

(9) Investment firms (SSIFs) shall allocate adequate human and financial resources for the integration and training of the members of the management body.

(10) Investment firms (SSIFs) and their respective nomination committees shall use a wide range of qualities and skills when recruiting members of the management body and, in this respect, they shall implement a diversity promotion policy within the management body.

(11) ASF shall collect the information published in accordance with Art. 435 Para (2) Letter (c) of Regulation (EU) No 575/2013 and shall use it to compare the practices in the field of diversity. ASF shall submit such information to EBA.

SECTION 2

Provisions regarding the internal capital adequacy assessment system for risks

Art. 10. – (1) The internal capital adequacy assessment process for risks of an investment firm (SSIF) shall represent a component of the management process of the investment firm (SSIF) and of its decision-making culture.

(2) Within the meaning of Para (1), the internal capital adequacy assessment process for risks of an investment firm (SSIF) shall ensure that the management body may continuously assess the risk profile of the investment firm (SSIF) and the internal adequacy degree of the capital by reference to it.

(3) Within the internal capital adequacy assessment process for risks, the investment firm (SSIF) shall:

a) identify, measure, mitigate and report the risks to which the investment firm (SSIF) is or may be exposed, to calculate and continuously assess the internal capital requirements;

b) plan and maintain the sources of internal capital necessary to achieve the capital adequacy to the risk profile of the

Art. 11. – Investment firms (SSIFs) shall inform ASF with regard to: investment firm (SSIF).

a) the structure of its internal capital adequacy assessment process for risks;

b) the assumptions used to determine the risks by sectors and risk types;

c) the risk sensitivity and the trust levels used to quantify risks;

d) the modality to aggregate the risks to determine the internal capital requirements;

e) the assumptions used to determine the available internal capital, including the time horizons considered upon planning of the internal capital.

Art. 12. – (1) To assess the internal capital adequacy for risks, the investment firms (SSIFs) shall identify and assess all significant risks to which it is exposed, including:

a) the risks for which, according to Regulation (EU) No 575/2013, there are regulated capital requirements, including the significant differences between the regulated treatment of risks for the calculation of the minimum capital requirements and the treatment provided by the internal capital adequacy assessment process for risks;

b) the risks not entirely covered by the regulated capital requirements:

(i) risks resulting from the application of less sophisticated approaches -underestimation of the credit risk in the context of using the standard approach, underestimation of the operational risk in the context of using the basic approach or the standard approach;

(ii) underestimation for loss in case of default under stress conditions;

(iii) residual risk related to the credit risk mitigation techniques; and

c) risks such as: interest rate risk for non-trading book activities, concentration risk, liquidity risk, risk of excessive leverage, reputational risk and strategic risk. For the risks in this category, investment firms (SSIFs) may use qualitative assessment and mitigation methods;

d) external risks of investment firms (SSIFs), i.e. risks related to the regulatory, economic or business environment of the investment firm (SSIF) which does not fall under the situations provided under Letters a) to c).

(2) Investment firms (SSIF) shall establish the modality and the scale to which the significant risks are treated within the internal capital adequacy assessment process. In this respect, the investment firms (SSIFs) shall establish the risks for which they shall implement an internal capital requirement to cover them, and those for whose management and mitigation they shall use other methods.

Art. 13. – (1) Investment firms (SSIFs) are responsible for the internal capital adequacy assessment process for risks, and for establishing internal capital requirements that are consistent with their risk profile and with the environment in which they carry out their activity.

(2) The internal capital adequacy assessment process for risks shall be adapted to the investment firms' (SSIFs') requirements and shall use the input data and the definitions that the investment firms (SSIFs) are using internally.

(3) For the purpose of Para (2), an investment firm (SSIF) may use its own definitions for risks and for the degree of significance of a risk, subject to providing explanations to ASF, including with regard to the methods used, to covering with capital all significant risks and to the how the approach used by the investment firm (SSIF) interacts with the obligations imposed by Regulation (EU) No 575/2013 with regard to the calculation of the capital requirements.

(4) For the purpose of Para (2), an investment firm (SSIF) may use its own definitions for the internal capital and its components, subject to providing explanations to ASF, specifying the methodology used to determine the available internal capital of the investment firm (SSIF)

Art. 14. – Investment firms (SSIFs) shall establish clearly within the internal capital adequacy assessment process for risks the types of risks for which they are using a quantitative approach for assessing, managing and mitigating them and those for which it is using a qualitative approach of these aspects.

Art. 15. – (1) The internal capital adequacy assessment process for risks shall consider the strategic plans of the investment firm (SSIF) and their connection with the macroeconomic factors.

(2) For the purpose of Para (1), investment firms (SSIFs) shall develop a strategy for the maintenance of the capital levels, considering factors such as: the predictions regarding the credit growth rate, the sources and uses of future funds, the dividend policy and any variation within an economic cycle of the necessary own funds regulated according to Regulation (EU) No 575/2013.

(3) Investment firms (SSIFs) shall have an explicit plan regard the capital, approved by the management body, which shall include at least the following:

a) investment firms' (SSIFs') objectives and time horizon necessary to achieve such objectives;

b) a general description of the capital planning process and of the responsibilities related to it;

c) how investment firms (SSIFs) shall comply with the capital requirements;

d) any relevant capital limits;

e) a general plan for unforeseen situations for the treatment of divergences and unexpected situations, such as the possibility to increase the capital, the reduction of the activity or the use of risk mitigation techniques.

(4) Within the capital plan, investment firms (SSIFs) shall establish as their objective an internal level of the capital requirement, considering the risk profile, the economic environment in which they carry out their activity, the quality of the internal control and risk management processes, the strategic plans, the quality of the available internal capital etc.

(5) Investment firms (SSIFs) shall analyse the impact that the new regulatory framework, the competitors' behaviour or other factors may have on their performance, to determine the changes of the environment in which they carry out their activity that they can sustain.

Art. 16. – (1) Investment firms (SSIFs) may project the internal capital adequacy assessment process for risks so as to use approaches such as:

a) using the results of the regulated methodologies to calculate the capital requirements related to the risks provided by Regulation (EU) No 575/2013 and considering risks such as the concentration risk, the residual risk resulting from the use of credit risk mitigation techniques and from securitisation operations or the interest rate risk from non-trading book activities. In case of using this approach, investment firms (SSIFs) must prove that they analysed all risks not regulated by the abovementioned regulation and found that they are either absent or insignificant or they calculated a capital requirement in addition to that established based on the above mentioned regulation;

b) using different methodologies for different types of risks and calculating a sum of the resulting capital requirements. In this respect, for a certain type of risk, investment firms (SSIFs) may use other methodologies than those used to determine the minimum regulated capital requirements;

c) using complex methodologies.

(2) Investment firms (SSIFs) shall justify the situations where, within the methodology they consider the diversification and correlation effects.

(3) If, for certain categories of risks, there is insufficient information available, investment firms (SSIFs) may also use estimations in their methodologies.

(4) Investment firms (SSIFs) shall include in their internal capital adequacy assessment process for risks, estimations of the risks that cannot be measured, if they are significant. This requirement may be less strict if investment firms (SSIFs) prove to ASF that they have an adequate mitigation/management policy for these risks.

Art. 17. – (1) The internal capital adequacy assessment process for risks shall be based on adequate measurement and assessment processes.

(2) For the purpose of Para (1), investment firms (SSIFs) shall have in place appropriate policies and processes to assess significant risks, other than those provided under Art. 12.

Art. 18. – (1) The internal capital adequacy assessment process for risks of investment firms (SSIFs) shall be revised whenever deemed necessary, but at least one per year, so that the risks are adequately covered, and the capital cover reflects the current risk profile of the investment firm (SSIF)

(2) For the purpose of Para (1), investment firms (SSIFs) shall revise their internal capital adequacy assessment process for risks at least in the following situations: changes of investment firms' (SSIFs') strategy, of their business plan, of the environment in which they conduct their activity or of any other factors that may have a significant effect on the assumptions or methodologies used within such process.

(3) Any new risks appearing in investment firms' (SSIFs') activities shall be identified and included in their internal capital adequacy assessment process for risks.

Art. 19. – (1) Investment firms (SSIFs) shall plan in detail their internal capital adequacy assessment process for risks.

(2) The initiation and planning of the internal capital adequacy assessment process for risks are incumbent upon the management body of investment firms (SSIFs)

(3) For the purpose of Para (2), the management body of investment firms (SSIFs) shall approve the planning of the internal capital adequacy assessment process for risks at a conceptual level -at least the scope of application, the methodology and the general objectives, and the senior management of investment firms (SSIFs) shall be liable for approving the details related to the planning - the technical concepts.

(4) The management body of investment firms (SSIFs) shall be liable for the integration of the planning and administration of the capital in the culture and general approach of investment firms (SSIFs) regarding risk management.

(5) For the purpose of Para (4), the management body shall ensure that the process related to the capital planning, as well as the administration procedures of the process, are communicated and implemented at the level of the entire investment firm (SSIF) and they are supported by sufficient authority and resources.

(6) The internal capital adequacy assessment process for risks of investment firms (SSIFs) -the policies, methodologies, assumptions and procedures -shall be provided in a document, shall be revised and approved by the credit institution's management body.

(7) The results of the internal capital adequacy assessment process for risks of investment firms (SSIFs) shall be reported to its management body.

Art. 20. – (1) The internal capital adequacy assessment process for risks of an investment firm (SSIF) shall result in the determination and maintenance of the available internal capital of the credit institution at an adequate level by reference to the internal requirements related to its risk profile.

(2) For the purpose of Para (1), investment firms (SSIFs) shall report to ASF the level of the capital excess/deficit resulting further to the internal capital adequacy assessment process for risks. The reporting model and the frequency of submission shall be established by the Technical Implementation Standard issued for the application of Regulation (EU) No 575/2013.

(3) For the purpose of Para (1), investment firms (SSIFs) shall explain to ASF the similarities and differences between the result of the internal capital adequacy assessment process for risks and the capital requirements regulated by ASF.

Art. 21. – The results and conclusions of the internal capital adequacy assessment process for risks shall be considered upon preparing and revising the risk appetite strategy.

SECTION 3

Risk Management

Art. 22. – (1) The management body of investment firms (SSIFs) shall approve and examine periodically the strategies and policies for assuming, managing, monitoring and mitigating the risks to which the institution is or may be exposed, including the risks caused by the macroeconomic environment in which such investment firm (SSIF) carries out its activity, considering the status of the economic cycle.

(2) The management body of an investment firm (SSIF) shall dedicate sufficient time to the examination of the risk related issues.

(3) For the purpose of Para (2), the management body shall be actively involved and shall ensure the allocation of adequate resources to the management of all significant risks addressed in this regulation and in Regulation (EU) No 575/2013, and to assess the assets, the use of external ratings and the internal models related to such risks.

(4) Investment firms (SSIFs) shall set periodic and transparent reporting mechanisms, so that the management body and all organisational structures in an investment firm (SSIF) benefit from timely, precise, concise, intelligible and significant reports and so that these mechanisms may exchange relevant information on the identification, measuring or assessing and monitoring risks.

(5) For the purpose of Para (4), investment firms (SSIFs) shall establish reporting lines to the management body covering all significant risks, risk management policies and the amendments thereto.

(6) The management body, in its supervisory function, and the risk management committee, if such a committee was established, shall have adequate access to the information regarding the situation of the investment firm's (SSIF's) risks and, if required and appropriate, to the risk management function and specialised external advice.

Art. 23. – (1) The management body in its supervisory function, and the risk management committee, if such a committee was established, shall establish the nature, volume, format and frequency of the risk-related information it shall receive.

(2) Investment firms (SSIFs) shall have in place a risk management function independent from the operational functions, with sufficient authority, importance, resources and access to the management body in compliance with the provisions of Title III Chapter I Section 3 of Regulation No. 32/2006, approved by Order No. 121/2006 of the National Securities Commission, as subsequently amended and supplemented.

Art. 24. – (1) The risk management function shall verify that all significant risks are indentified, measured and reported accordingly.

(2) The risk management function shall be actively involved in the elaboration of the investment firm's (SSIF's) risk management strategy and in all decisions regarding the management of significant risks and it shall be able to provide a complete image of the entire range of risks to which the institution is exposed.

(3) If required, the risk management function may report directly to the management body, in its supervisory function, independently of the reporting to the senior management, may notify and may warn this body, when required, of the occurrence of specific developments of the risks affecting or that may affect the institution, without prejudice to the management body's responsibilities, in its supervisory and/or management function in accordance with the provisions of Government Emergency Ordinance No. 99/2006 on credit institutions and capital adequacy, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, of this regulation and of Regulation (EU) No 575/2013.

(4) The coordinator of the risk management function shall be an independent member of the senior management, with separate responsibilities regarding the risk management function. If the nature, scale and complexity of the investment firm's (SSIF's) activities do not justify the appointment of a distinct person, another person from among the members of the senior management of the

investment firm (SSIF) may fulfil such function, provided that there are not conflicts of interest.

(5) The coordinator of the risk management function may not be dismissed without the prior approval of the management body in its supervisory function and shall have direct access to the management body, in its supervisory function, when required.

SECTION 4

Significant Risk Management

SUBSECTION 4.1

Credit Risk

Art. 25. – With regard to the credit risk and the counterparty risk, investment firms (SSIFs) shall:

a) have internal methodologies that enable them to assess the credit risk of exposures to individual obligors, securities or securitisation positions and credit risk at the portfolio level. In particular, internal methodologies shall not rely solely or mechanically on external credit ratings. Where own funds requirements are based on a rating by an external credit assessment institution or based on the fact that an exposure is unrated, this shall not exempt investment firms (SSIFs) from additionally considering other relevant information for assessing their allocation of internal capital;

b) have in place systems for the ongoing administration and monitoring of the various credit risk-bearing portfolios and exposures of institutions, including for identifying and managing problem credits and for making adequate value adjustments and provisions;

c) ensure that credit-granting is based on sound and well-defined criteria and that the process for approving, amending, renewing, and re-financing credits is clearly established;

d) ensure that diversification of credit portfolios is adequate given an institution's target markets and overall credit strategy.

Art. 26. – Investment firms (SSIFs) shall have in place sound and well-defined criteria, policies and processes regarding the approval of the new exposures -including prudent standards for assuming the exposures, amending, renewing, and re-financing operations of the existing exposures and identifying the approval competence related to the size and complexity of the exposures.

SUBSECTION 4.2

Residual Risk

Art. 27. – Investment firms (SSIFs) shall have in place written policies and procedures to address and control the risk that the recognised credit risk mitigation techniques used are less effective than predicted.

SUBSECTION 4.3

Concentration Risk

Art. 28. – Investment firms (SSIFs) shall address and control, including by means of written policies and procedures, the concentration risk arising from exposures to each counterparty, including central counterparties, groups of connected counterparties, and counterparties in the same economic sector, geographic region or from the same activity or commodity, the application of credit risk mitigation techniques, and including in particular risks associated with large indirect credit exposures such as a single collateral issuer.

SUBSECTION 4.4

Securitisation Risk

Art. 29. – Investment firms (SSIFs) which are originators of revolving securitisation transactions involving early amortisation provisions, shall have in place liquidity plans to address the implications of both scheduled and early amortisation.

SUBSECTION 4.5

Market Risk

Art. 30. – Investment firms (SSIFs) shall implement policies and processes for the identification, measurement and management of all material sources and effects of market risks.

Art. 31. – (1) The internal capital shall be adequate for material market risks that are not subject to an own funds requirement.

(2) Investment firms (SSIFs) which have, in calculating own funds requirements for position risk in accordance with Part Three, Title IV, Chapter 2, of Regulation (EU) No 575/2013, netted off their positions in one or more of the equities constituting a stock-index against one or more positions in the stock-index future or other stock-index product shall have adequate internal capital to cover the basis risk of loss caused by the future's or other product's value not moving fully in line with that of its constituent equities.

(3) Investment firms (SSIFs) shall also have such adequate internal capital where they hold opposite positions in stock-index futures which are not identical in respect of either their maturity or their composition or both.

(4) Where using the treatment in Art. 345 of Regulation (EU) No 575/2013, investment firms (SSIFs) shall ensure that they hold sufficient internal capital against the risk of loss which exists between the time of the initial commitment and the following working day.

Art. 32. – If the short position becomes due before the long position, investment firm (SSIF) shall also take measures against the liquidity risk.

SUBSECTION 4.6

Interest risk arising from non-trading book activities

Art. 33. – Investment firms (SSIFs) shall implement systems to identify, evaluate and manage the risk arising from potential changes in interest rates that affect an investment firm's (SSIF's) non-trading book activities.

Art. 34. – (1) The management body of an investment firm (SSIF) shall approve and examine periodically the interest rate risk strategy and the policies and processes to identify, quantify, monitor and control interest rate risk.

(2) The management body of investment firms (SSIFs) shall ensure the elaboration and implementation of the interest rate risk strategy, policies and processes.

Art. 35. – Investment firms (SSIFs) shall allocate responsibilities along the interest rate management line to persons independent from the persons in charge of trading and/or of other risk-taking activities, who shall benefit from separate reporting lines.

Art. 36. – (1) In order to comply with the requirements provided under Art. 33, investment firms (SSIFs) shall have in place extensive and adequate interest risk quantification systems, and any models and assumptions used shall be validated regularly, at least once per year.

(2) The limits established by investment firms (SSIFs) shall reflect their risk strategy, shall be understood by the relevant personnel and communicated to it regularly.

(3) Any exception from the policies, processes and limits established shall be analysed promptly by the senior management and, where required, by the management body in its supervisory function.

Art. 37. – (1) Investment firms (SSIFs) shall be able to prove that the level of the internal capital held, established through the quantification system thereof, related to the investment firms (SSIFs), also covers the interest risk arising from non-trading book activities.

(2) For the purpose of Para (1), investment firms (SSIFs) shall have the necessary capacity to calculate the potential modifications of their economic value further to the change of the interest rate level, and the general level of the interest risk arising from non-trading book activities individually and at a consolidated level.

(3) Investment firms (SSIFs) shall elaborate and use their own methodologies to calculate the potential modifications of their economic value further to the changes in the interest rate, in accordance with the risk profile and the risk management policies related thereto. Where ASF deems that the internal methodology of an investment firm (SSIF) is inadequate or there is no such methodology, the investment firm (SSIF) shall apply the standard methodology described in the annexe forming an integral part of this regulation.

SUBSECTION 4.7

Liquidity Risk

Art. 38. – (1) Investment firms (SSIFs) shall maintain adequate levels of the liquidity reserves.

(2) For the purpose of Para (1), investment firms (SSIFs) shall have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of liquidity risk over an appropriate set of time horizons, including intra-day.

(3) The strategies, policies, processes and systems provided under Para (2) shall be tailored to business lines, currencies, branches and legal entities and shall include adequate allocation mechanisms of liquidity costs, benefits and risks.

(4) The strategies, policies, processes and systems referred to in Para (2) shall be proportionate to the complexity, risk profile, scope of operation of the investment firms (SSIFs) and risk tolerance set by the management body and reflect the investment firm's (SSIF's) importance in each Member State in which it carries out business. Investment firms (SSIFs) shall communicate risk tolerance to all relevant business lines.

(5) The liquidity risk management policies and processes shall consider how other risks, such as credit risk, market risk, operational risk and reputational risk may affect the general liquidity strategy of an investment firm (SSIF).

(6) Investment firms (SSIFs) shall have liquidity risk profiles that are consistent with and, not in excess of, those required for a well-functioning and robust system.

(7) For the compliance with the provisions of Para (6), investment firms (SSIFs) shall take into account the nature, scale and complexity of their activities.

Art. 39. – (1) Investment firms (SSIFs) develop methodologies for the identification, measurement, management and monitoring of funding positions.

(2) The methodologies provided under Para (1) shall include the current and projected material cash-flows in and arising from assets, liabilities, off-balance-sheet items, including contingent liabilities and the possible impact of reputational risk.

Art. 40. – (1) Investment firms (SSIFs) shall distinguish between pledged and unencumbered assets that are available at all times, in particular during emergency situations.

(2) Investment firms (SSIFs) shall take into account the legal entity in which assets reside, the country where assets are legally recorded either in a register or in an account and their eligibility and shall monitor how assets can be mobilised in a timely manner.

(3) Investment firms (SSIFs) shall have regard to existing legal, regulatory and operational limitations to potential transfers of liquidity and unencumbered assets amongst entities, both within and outside the European Economic Area.

Art. 41. – Investment firms (SSIFs) shall consider different liquidity risk mitigation tools, including a system of limits and liquidity buffers in order to be able to withstand a range of different stress events and an adequately diversified funding structure and access to funding sources. Those arrangements shall be reviewed regularly.

Art. 42. – (1) Investment firms (SSIFs) shall consider alternative scenarios on liquidity positions and on risk mitigation and review the assumptions underlying decisions concerning the funding position at least annually.

(2) The alternative scenarios provided under Para (1) shall address, in particular, off-balance-sheet items and other contingent liabilities, including those of securitisation special purpose entities or other special purpose entities, as referred to in Regulation (EU) No 575/2013, in relation to which the investment firm (SSIF) acts as sponsor or provides material liquidity support.

(3) Investment firms (SSIFs) shall consider the potential impact of investment firm (SSIF)-specific, market-wide and combined alternative scenarios.

(4) For the purpose of Para (3), investment firms (SSIFs) shall consider different time periods and varying degrees of stress conditions.

Art. 43. – Investment firms (SSIFs) shall adjust their strategies, internal policies and limits on liquidity risk and develop effective contingency plans, taking into account the outcome of the alternative scenarios referred to in Art. 42.

Art. 44. – (1) Investment firms (SSIFs) shall have in place liquidity recovery plans setting out adequate strategies and proper implementation measures in order to address possible liquidity shortfalls, including in relation to branches established in another Member State.

(2) The plans provided under Para (1) are tested by investment firms (SSIFs) at least annually, updated on the basis of the outcome of the alternative scenarios set out in Art. 42, reported to and approved by senior management, so that internal policies and processes can be adjusted accordingly.

(3) Investment firms (SSIFs) shall take the necessary operational steps in advance to ensure that liquidity recovery plans can be implemented immediately.

(4) The operational steps provided under Para (3) shall include holding collateral immediately available for funding.

(5) For the purpose of Para (4), holding collateral includes holding collateral where necessary in the currency of another Member State, or the currency of a third country to which the investment firm (SSIF) has exposures, and where operationally necessary within the territory of a host Member State or of a third country to whose currency it is exposed.

SUBSECTION 4.8

Operational Risk

Art. 45. – (1) Investment firms (SSIFs) shall implement policies and processes to evaluate and manage the exposure to operational risk, including model risk, and to cover low-frequency high-severity events.

(2) Investment firms (SSIFs) shall articulate what constitutes operational risk for the purposes of the policies and procedures referred to in Para (1).

(3) Investment firms (SSIFs) shall have in place contingency and business continuity plans to ensure their ability to operate on an ongoing basis and limit losses in the event of severe business disruption.

SUBSECTION 4.9

Risk of excessive leverage

Art. 46. – (1) Investment firms (SSIFs) shall have policies and processes in place for the identification, management and monitoring of the risk of excessive leverage. Indicators for the risk of excessive leverage shall include the leverage ratio determined in accordance with Article 429 of Regulation (EU) No 575/2013 and mismatches between assets and obligations.

(2) Investment firms (SSIFs) shall address the risk of excessive leverage in a precautionary manner by taking due account of

potential increases in the risk of excessive leverage caused by reductions of the investment firm's (SSIF's) own funds through expected or realised losses. For this purpose, investment firms (SSIFs) shall be able to withstand a range of different stress events with respect to the risk of excessive leverage.

SECTION 5

Internal Approaches for calculating own funds requirements

Art. 47. – (1) For the application of the provisions of Art. 166[4] and Art. 278 Para (1) Letter e) of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, without prejudice to the fulfilment of criteria laid down in Part Three, Title I, Chapter 3, Section 1 of Regulation (EU) No 575/2013, investment firms (SSIFs) that are significant in terms of their size, internal organisation and the nature, scale and complexity of their activities, shall pay particular attention to developing internal credit risk assessment capacity and to increasing their use of the internal ratings based approach for calculating own funds requirements for credit risk where their exposures are material in absolute terms and where they have at the same time a large number of material counterparties.

(2) ASF shall, taking into account the nature, scale and complexity of investment firms' (SSIFs'), activities, monitor that they do not solely or mechanically rely on external credit ratings for assessing the creditworthiness of an entity or financial instrument.

(3) For the application of the provisions of Art. 166[4] and Art. 278 Para (1) Letter e) of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, without prejudice to the fulfilment of criteria laid down in Part Three, Title IV, Chapter 5, Sections 1 to 5, of Regulation (EU) No 575/2013, investment firms (SSIFs) that are significant in terms of their size, internal organisation and the nature, scale and complexity of their activities, shall pay particular attention to developing internal credit risk assessment capacity and to increasing their use of the internal ratings based approach for calculating own funds requirements for specific risk of debt instruments in the trading book, together with internal models to calculate own funds requirements for default and migration risk where their exposures to specific risk are material in absolute terms and where they have a large number of material positions in debt instruments of different issuers.

Art. 48. – (1) Investment firms (SSIFs) permitted by ASF to use internal approaches for the calculation of risk weighted exposure amounts or own fund requirements except for operational risk, shall report to ASF and EBA the results of the calculations of their internal approaches for their exposures or positions that are included in the benchmark portfolios, together with an explanation of the methodologies used to produce such results.

(2) Investment firms (SSIFs) shall submit the information referred to in Para (1) at an appropriate frequency, and at least annually.

(3) Investment firms (SSIFs) shall develop specific portfolios in consultation with EBA and shall ensure that investment firms (SSIFs) report the results of the calculations separately from the results of the calculations for EBA portfolios.

(4) Investment firms (SSIFs) shall submit the information referred to in Para (1) using the form provided in this respect by EBA.

(5) Investment firms (SSIFs) shall report the results of the calculations provided under Para (1), having as their object the specific portfolios developed by ASF, separately from the results of the calculations having as their object the portfolios developed by EBA.

SECTION 6

Supervisory review and evaluation process

SUBSECTION 6.1

Technical criteria for the supervisory review and evaluation

Art. 49. – (1) In addition to credit, market and operational risks, the review and evaluation performed by investment firms (SSIFs) for the purpose of the provisions of Art. 166 and Art. 278 Para (1) Letter e) of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, shall include at least:

a) the results of the stress test carried out in accordance with Article 177 of Regulation (EU) No 575/2013 by investment firms (SSIFs) applying an internal ratings based approach;

b) the exposure to and management of concentration risk by investment firms (SSIFs), including their compliance with the requirements set out in Part Four of Regulation (EU) No 575/2013 and Art. 28 of this regulation;

c) the robustness, suitability and manner of application of the policies and procedures implemented by investment firms (SSIFs) for the management of the residual risk associated with the use of recognised credit risk mitigation techniques;

d) the extent to which the own funds held by an institution in respect of assets which it has securitised are adequate having regard to the economic substance of the transaction, including the degree of risk transfer achieved;

e) the exposure to, measurement and management of liquidity risk by institutions, including the development of alternative scenario analyses, the management of risk mitigation (in particular the level, composition and quality of liquidity buffers) and effective contingency plans;

f) the impact of diversification effects and how such effects are factored into the risk measurement system;

g) the results of stress tests carried out by investment firms (SSIFs) using an internal model to calculate market risk own funds requirements under Part Three, Title IV, Chapter 5 of Regulation (EU) No 575/2013;

h) the geographical location of investment firms' (SSIF's) exposures;

i) the business model of the investment firm (SSIF);

j) the assessment of systemic risk, in accordance with the criteria set out in Art. 166 of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented.

(2) For the purpose of Para (1) Letter e), ASF shall regularly carry out a comprehensive assessment of the overall liquidity risk management by investment firms (SSIFs) and promote the development of sound internal methodologies. While conducting those reviews, ASF shall have regard to the role played by investment firms (SSIFs) in the financial markets. ASF shall duly consider the potential impact of their decisions on the stability of the financial system in all other Member States concerned.

(3) ASF shall monitor whether an investment firm (SSIF) has provided implicit support to a securitisation. If an investment firm (SSIF) is found to have provided implicit support on more than one occasion, ASF shall take appropriate measures reflective of the increased expectation that said investment firm (SSIF) will provide future support to its securitisation thus failing to achieve a significant transfer of risk.

(4) For the purposes of the determination to be made under Art. 166 Para (2) of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, ASF shall consider whether the valuation adjustments taken for positions or portfolios in the trading book, as set out in Article 105 of Regulation (EU) No 575/2013, enable the institution to sell or hedge out its positions within a short period without incurring material losses under normal market conditions.

(5) In the review and evaluation process, ASF shall include the exposure of investment firms (SSIFs) to the interest rate risk arising from non-trading activities. ASF shall take measures at least in the case of investment firms (SSIFs) whose economic value declines by more than 20% of their own funds as a result of a sudden and unexpected change in interest rates of 200 basis points or such change as defined in the EBA guidelines.

(6) The review and evaluation performed by ASF shall include the exposure of investment firms (SSIFs) to the risk of excessive leverage as reflected by indicators of excessive leverage, including the leverage ratio determined in accordance with Article 429 of Regulation (EU) No 575/2013. In determining the adequacy of the leverage ratio of investment firms (SSIFs) and of the organisational structures, strategies, processes and mechanisms implemented by investment firms (SSIFs) to manage the risk of excessive leverage, ASF shall take into account the business model of those investment firms (SSIFs).

(7) The review and evaluation conducted by ASF shall include governance arrangements of institutions, their corporate culture and values, and the ability of members of the management body to perform their duties. In conducting that review and evaluation, ASF shall, at least, have access to agendas and supporting documents for meetings of the management body and its committees, and the results of the internal or external evaluation of performance of the management body.

SUBSECTION 6.2

Supervisory examination programme

Art. 50. – (1) The supervisory examination programme, adopted by ASF for the investment firms (SSIFs) it supervises, shall take into account the supervisory review and evaluation process under Art. 166 of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented. This programme shall contain the following:

a) an indication of how ASF intends to carry out its tasks and allocate its resources;

b) an identification of which investment firms (SSIFs) are intended to be subject to enhanced supervision and the measures taken for such supervision as set out in Art. 169[1] Para (2) of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented;

c) a plan for inspections at the premises used by an investment firm (SSIF), including its branches and subsidiaries established in other Member States in accordance with Art. 174, Art. 179, Art. 180, Art. 194, Art. 195 and Art. 211 of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented.

(2) Supervisory examination programmes shall include the following investment firms (SSIFs):

a) investment firms (SSIFs) for which the results of the stress tests referred to in Art. 49 Para (1) Letter a) and g) of this regulation and in Art. 166 Para (4) of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, or the outcome of the supervisory review and evaluation process under Art. 166 of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, indicate significant risks to their ongoing financial soundness or indicate breaches of the provisions of the abovementioned emergency ordinance, of this regulation and of Regulation (EU) No

575/2013;

b) investment firms (SSIFs) that pose systemic risk to the financial system;

c) any other investment firm (SSIF) for which ASF deems it to be necessary.

SECTION 7

Ongoing review of the permission to use internal approaches

Art. 51. – (1) For the purposes provided under Art. 166[1] Para (1) of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, in the ongoing review of the permission to use internal approaches, ASF shall have particular regard to changes in an investment firm's (SSIF's) business and to the implementation of those approaches to new products.

(2) ASF shall analyse and review particularly the extent to which, for the purpose of such approaches, investment firms (SSIFs) use well developed and up-to-date techniques and practices.

(3) If, for an internal market risk model numerous over-shootings referred to in Article 366 of Regulation (EU) No 575/2013 indicate that the model is not or is no longer sufficiently accurate, ASF shall revoke the permission for using the internal model or impose appropriate measures to ensure that the model is improved promptly.

CHAPTER IV

Remuneration policies and practices

SECTION 1

Remuneration policies

Art. 52. – The management body in its supervisory function shall ensure that the remuneration policies and practices of the investment firms' (SSIFs') personnel, including the members of the management body in its supervisory function and the members of senior management, correspond to the objectives and long term strategy of the investment firms (SSIFs)

Art. 53. – (1) The principles laid down in this article and in Arts. 54 to 56 shall be applied by investment firms (SSIFs) at group, parent company and subsidiary levels, including those established in offshore financial centres.

(2) When establishing and applying the total remuneration policies, inclusive of salaries and discretionary pension benefits, for categories of staff including senior management, risk takers, staff engaged in 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, investment firms (SSIFs) shall comply with the following principles in a manner 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 that exceeds the level of tolerated risk of the investment firm (SSIF);

b) the remuneration policy is in line with the business strategy, objectives, values and long-term interests of the investment firm (SSIF) and incorporates measures to avoid conflicts of interest;

c) the management body in its supervisory function adopts and periodically reviews the general principles of the remuneration policy and is responsible for overseeing 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 remuneration of the senior officers in the risk management and compliance functions is directly overseen by the remuneration committee, if any;

f) the remuneration policy, taking into account national criteria on wage setting, makes a clear distinction between criteria for setting:

(i) basic fixed remuneration, which should primarily reflect relevant professional experience and organisational responsibility as set out in an employee's job description as part of the terms of employment; and

(ii) variable remuneration which should reflect a sustainable and risk adjusted performance as well as performance in excess of that required to fulfil the employee's job description as part of the terms of employment.

SECTION 2

Variable elements of remuneration

Art. 54. – (1) For variable elements of remuneration, the following principles shall apply in addition to, and under the same conditions as, those set out in Art. 53:

a) 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 concerned and of the overall results of the investment firm (SSIF), and when assessing individual performance, financial and non-financial criteria are taken into account, such as: accrued knowledge/qualifications obtained, personal development, compliance with the investment firm's (SSIF's) systems and controls, involvement in the business strategies and significant policies of the investment firm (SSIF) and contribution to the team's performance;

b) the assessment of the performance is set in a multi-year framework 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 underlying business cycle of the investment firm (SSIF) and its business risks;

c) the total variable remuneration does not limit the ability of the investment firm (SSIF) to strengthen its capital base;

d) guaranteed variable remuneration is not consistent with sound risk management or the pay-for-performance principle and shall not be a part of prospective remuneration plans;

e) guaranteed variable remuneration is exceptional, occurs only when hiring new staff and where the investment firm (SSIF) has a sound and strong capital base and is limited to the first year of employment;

f) 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;

g) investment firm (SSIF) shall set the appropriate ratios between the fixed and the variable component of the total remuneration, applying the principle according to which the variable component shall not exceed 100% of the fixed component of the total remuneration for each individual;

h) payments relating to the early termination of a contract reflect performance achieved over time and do not reward failure or misconduct;

i) remuneration packages relating to compensation or buy out from contracts in previous employment must align with the long-term interests of the investment firm (SSIF), including retention, deferral, performance and clawback arrangements;

j) the measurement of performance used to calculate variable remuneration components or pools of variable remuneration components includes an adjustment for all types of current and future risks and takes into account the cost of the capital and the liquidity required;

k) the allocation of the variable remuneration components within the investment firm (SSIF) shall also take into account all types of current and future risks;

l) a substantial portion, and in any event at least 50%, of any variable remuneration shall consist of a balance of the following:

(i) shares or equivalent ownership interests, subject to the legal structure of the investment firm (SSIF) concerned or share-linked instruments or equivalent non-cash instruments, in the case of a non-listed investment firm (SSIF); and

(ii) where possible, other instruments within the meaning of Article 52 or 63 of Regulation (EU) No 575/2013 or other instruments which can be fully converted to common equity tier 1 instruments or written down, that in each case adequately reflect the credit quality of the investment firm (SSIF) as a going concern and are appropriate to be used for the purposes of variable remuneration;

m) a substantial portion, and in any event at least 40%, of the variable remuneration component is deferred over a period which is not less than three to five years and is correctly aligned with the nature of the business, its risks and the activities of the member of staff in question. Remuneration payable under deferral arrangements shall vest 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 shall be deferred. The length of the deferral period shall be established in accordance with the business cycle, the nature of the business, its risks and the activities of the member of staff in question;

n) the variable remuneration, including the deferred portion, is paid or vests only if it is sustainable according to the financial situation of the investment firm (SSIF) as a whole, and justified on the basis of the performance of the investment firm (SSIF), the business unit and the individual concerned;

o) the pension policy is in line with the business strategy, objectives, values and long-term interests of the investment firm (SSIF). If the employee leaves the investment firm (SSIF) before retirement, discretionary pension benefits shall be held by the investment firm (SSIF) for a period of five years in the form of instruments referred to in Letter l). Where an employee reaches retirement, discretionary pension benefits shall be paid to the employee in the form of instruments referred to in Letter l), subject to a five-year retention period;

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

q) variable remuneration is not paid through vehicles or methods that facilitate non-compliance with the provisions of Government

Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, of the regulations issued for its implementation and of Regulation (EU) No 575/2013.

(2) The instruments provided under Para (1) Letter l) shall be subject to an appropriate retention policy designed to align incentives with the longer-term interests of the investment firm (SSIF). ASF may place restrictions on the types and designs of those instruments or prohibit certain instruments as appropriate. The provisions of Para (1) Letter l) shall be applied to both the portion of the variable remuneration component deferred in accordance with point Para (1) Letter m), and the portion of the variable remuneration component not deferred.

(3) For the purpose of Para (1) Letter n), without prejudice to the general principles of national contract and labour law, the total variable remuneration shall generally be considerably contracted where subdued or negative financial performance of the investment firm (SSIF) occurs, taking into account both current remuneration and reductions in pay-outs of amounts previously earned, including through malus or clawback arrangements.

(4) For the purpose of Para (3), up to 100% of the total variable remuneration shall be subject to malus or clawback arrangements. Investment firms (SSIFs) shall set specific criteria for the application of malus and clawback. Such criteria shall in particular cover situations where the staff member:

a) participated in or was responsible for conduct which resulted in significant losses to the investment firm (SSIF);

b) failed to meet appropriate standards of reputation and experience, particularly those referring to adequate skills and conduct.

SECTION 3

Investment firms (SSIFs) that benefit from government intervention

Art. 55. – In case of investment firms (SSIF) that benefit from exceptional government intervention, the following principles shall apply in addition to those set out in Art. 54 Para (1):

a) variable remuneration is strictly limited as a percentage of net revenue where it is inconsistent with the maintenance of a sound capital base and timely exit from government support;

b) ASF requires investment firms (SSIFs) to restructure remuneration in a manner aligned with sound risk management and long-term growth, including, where appropriate, establishing limits to the remuneration of the members of the management body;

c) no variable remuneration is paid to members of the management body of the investment firm (SSIF) unless justified.

SECTION 4

Remuneration Committee

Art. 56. – (1) Investment firms (SSIFs) that are significant in terms of their size, internal organisation and the nature, the scope and the complexity of their activities shall establish a remuneration committee.

(2) The remuneration committee shall be constituted in such a way as to enable it to exercise competent and independent judgment on remuneration policies and practices and the incentives created for managing risk, capital and liquidity.

(3) 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 investment firm (SSIF) concerned and which are to be taken by the management body. The Chair and the members of the remuneration committee shall be members of the management body who do not perform any executive function in the investment firm (SSIF) concerned. When preparing such decisions, the remuneration committee shall take into account the long-term interests of shareholders, investors and other stakeholders in the institution and the public interest.

TITLE II

Own Funds

CHAPTER I

Individual own funds

SECTION 1

Common Equity Tier 1 and Additional Tier 1 Capital

Art. 57. – The eligibility criteria and the calculation methodology for common equity tier 1 and additional tier 1 capital are established by the provisions of Articles 25 to 61 of Regulation (EU) No 575/2013.

SECTION 2

Common Equity Tier 2 capital

Art. 58. – The eligibility criteria and the calculation methodology for common equity tier 2 capital are established by the provisions of Articles 62 to 71 of Regulation (EU) No 575/2013.

SECTION 3

Prior approval for qualifying capital instruments and/or subordinated loans as additional tier 1 capital and tier 2 capital

Art. 59. – The elements provided under Art. 51 Letter a) and Art. 62 Letter a) of Regulation (EU) No 575/2013 may be qualified as additional tier 1/tier 2 capital only if, in ASF's opinion, the conditions provided under Article 52 and, respectively, Article 63 of the same regulation.

SECTION 4

Requirements on the minimum initial capital

Art. 60. – The initial capital of the investment firm (SSIF) consists of one or more of the elements mentioned under Article 26 Para (1) Letters a) to e) of Regulation (EU) No 575/2013.

SECTION 5

Conditions for reducing own funds

Art. 61. – The reduction, redemption or repurchase of common equity tier 1, additional tier 1 or tier 2 instruments shall be performed in observance of the provisions of Articles77 and 78 of Regulation (EU) No 575/2013.

CHAPTER II

Consolidated Own Funds

Art. 62. – Romanian legal entity investment firms (SSIFs) that are subject to consolidated supervision by ASF, in accordance with Title IV have the obligation to determine the consolidated own funds.

Art. 63. – To determine the consolidated own funds, the provisions of Articles 76 to 83 of Regulation (EU) No 575/2013 shall be considered.

CHAPTER III

Capital Buffers

Art. 64. – This Chapter shall not apply to investment firms (SSIFs) that are not authorised to provide the investment services listed in Art. 5 Para (1) Letters c) and f) of Law No. 297/2004, as subsequently amended and supplemented.

Art. 65. – For the application of the provisions of Art. 126^1 of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, and of the provisions of this chapter, ASF may establish, by decisions, measures for the application of this chapter regarding the level of capital buffers.

SECTION 1

Capital conservation buffer

Art. 66. – (1) Investment firms (SSIFs) shall maintain, as applicable, on an individual or consolidated basis, in accordance with the provisions of Part One Title II of Regulation (EU) No 575/2013, in addition to the common equity tier 1 capital required by Article 92 of Regulation (EU) No 575/2013, a capital conservation buffer of common equity tier 1 capital equal to 2.5% of their total risk exposure amount calculated in accordance with Article 92 paragraph (3) of Regulation (EU) No 575/2013.

(2) By way of derogation from Para (1), ASF, as competent authority, may exempt small and medium-sized investment firms (SSIFs) from the requirements set out in Para (1), if such an exemption does not threaten the stability of the national financial system.

(3) The decision whereby ASF applies the exemption referred to in Para (2) shall include an explanation as to why the exemption does not threaten the stability of the financial system and shall contain the exact definition of the small and medium-sized investment firms (SSIFs) which are exempt.

(4) If ASF applies the exemption referred to in Para (2), ASF shall notify the European Commission, the European Systemic Risk Board, EBA and the competent authorities of the Member States concerned accordingly.

(5) For the purpose of Para (2), investment firms (SSIFs) shall be categorised as small- or medium-sized in accordance with Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro-, small- and medium-sized enterprises.

(6) Investment firms (SSIFs) shall not use common equity tier 1 to meet the requirement provided under Para (1) to comply with any of the requirements provided in Art. 226 Paras (3), (4) and (5) of Government Emergency Ordinance No. 99/2006 approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented.

(7) When an investment firm (SSIF) fails to meet the requirement provided under Para (1), it shall be subject to the restrictions on distributions set out in Art. 106.

TITLE III

CHAPTER I

Countercyclical capital buffer

SECTION 1

Requirement to maintain a countercyclical capital buffer specific to investment firms (SSIFs)

Art. 67. – (1) Investment firms (SSIFs) shall maintain a specific countercyclical capital buffer equivalent to their total risk exposure amount calculated in accordance with Article 92 paragraph (3) of Regulation (EU) No 575/2013 on an individual and consolidated basis, as applicable in accordance with Part One, Title II of Regulation (EU) No 575/2013, and the weighted average of the countercyclical buffer rates calculated in accordance with Arts. 71 to 73 of this regulation.

(2) Investment firms (SSIFs) shall establish the buffer provided under Para (1) from common equity tier 1. Moreover, investment firms (SSIFs) shall maintain such buffer in addition to their common equity tier 1 provided under Article 92 of Regulation (EU) No 575/2013, the conservation buffer provided under Art. 66 of this regulation, and to any other requirement imposed by Art. 226 Paras (3), (4) and (5) of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented.

(3) Where an investment firm (SSIF) fails to meet the requirement under Para (1), it shall be subject to the restrictions on distributions set out in Art. 106.

SECTION 2

Setting and calculating countercyclical capital buffers

Art. 68. – (1) ASF shall establish, by decisions published in ASF's Bulletin and on its website, the obligation for investment firms (SSIFs) to establish the countercyclical capital buffer at the level recommended by the cross-institution coordinating structure in the field of macroprudential supervision of the national financial system.

(2) For the purposes of Para (1), the cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall calculate, on a quarterly basis, a buffer guide for the countercyclical capital to guide it in setting the countercyclical buffer rate in accordance with Para (4).

(3) For the purpose of Para (2), the buffer guide shall reflect, in a meaningful way, the credit cycle and the risks due to excess credit growth in Romania, and shall duly take into account specificities of the national economy. It shall be based on the deviation of the ratio of credit-to-GDP from its long-term trend, taking into account, inter alia:

a) an indicator of growth of levels of credit in Romania and, in particular, an indicator reflective of the changes in the ratio of credit granted in Romania to the gross domestic product;

b) any current guidance maintained by the European Systemic Risk Board, issued in accordance with Article 135 paragraph (1) Letter b) of 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.

(4) The cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall assess and set the appropriate countercyclical buffer rate, on a quarterly basis and in so doing shall take into account:

a) the buffer guide calculated in accordance with Para (2);

b) any current guidance maintained by the European Systemic Risk Board, issued in accordance with Article 135 paragraph (1) Letters a), c) and d) of Directive No 36/2013/EU, and any recommendations issued by the European Systemic Risk Board on the setting of a buffer rate;

c) other variables that the cross-institution coordination structure in the field of macroprudential supervision of the national financial system considers relevant for addressing cyclical systemic risk.

(5) The countercyclical buffer rate, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92 paragraph (3) of Regulation (EU) No 575/2013, of investment firms (SSIFs) that have credit exposures in Romania, shall be between 0% and 2.5%, calibrated in steps of 0.25 percentage points or multiples of 0.25 percentage points.

(6) Where justified on the basis of the considerations set out in Para (4), a cross-institution coordination structure in the field of macroprudential supervision of the national financial system may set a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Article 92 paragraph (3) of Regulation (EU) No 575/2013.

(7) Where a cross-institution coordination structure in the field of macroprudential supervision of the national financial system recommends the establishment for the first time of a countercyclical capital buffer or if the cross-institution coordination structure in the field of macroprudential supervision of the national financial system recommends increases the prevailing countercyclical buffer rate setting, it shall also recommend to ASF the date from which the investment firms (SSIFs) must apply that increased buffer for the purposes of calculating their specific countercyclical capital buffer. That date shall be no later than 12 months after the date when the increased buffer setting is announced in accordance with Paras (9) and (11). If the date is less than 12 months after the

increased buffer setting is announced, the cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall justify the recommended shorter deadline on the basis of exceptional circumstances.

(8) Where a cross-institution coordination structure in the field of macroprudential supervision of the national financial system recommends the reduction of the existing countercyclical buffer rate, it shall also decide an indicative period during which no increase in the buffer is expected. The indicative period shall not be binding upon the cross-institution coordination structure in the field of macroprudential supervision or upon ASF

(9) ASF shall announce the quarterly setting of the countercyclical buffer rate by publication on its website. The announcement shall include at least the following information:

a) the applicable countercyclical buffer rate;

b) the relevant credit-to-GDP-ratio and its deviation from the long-term trend;

c) the countercyclical capital buffer guide calculated in accordance with Para (3);

d) a justification for that countercyclical capital buffer rate;

e) where the buffer rate is increased, the date from which investment firms (SSIFs) must apply that increased buffer rate for the purposes of calculating their specific countercyclical capital buffer;

f) where the date referred to in Letter e) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application;

g) where the buffer rate is decreased, the indicative period during which no increase in the buffer rate is expected, together with a justification for that period.

(10) For the purpose of publishing the announcement, the cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall send to ASF its recommendation on the countercyclical capital buffer rate and the information specified in Para (9) Letters b) to g).

(11) The cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall submit, on a quarterly basis, to the European Systemic Risk Board a notification regarding the countercyclical capital buffer rate. In such notification, the cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall also include the information provided under Para (9). The European Systemic Risk Board shall publish such rate and the information transmitted to it on its website.

SECTION 3

Recognition of countercyclical buffer rates in excess of 2.5%

Art. 69. – (1) Where the competent authority in another Member State or the competent authority in a third country sets, similarly to the provisions of Art. 68 Paras (5) and (6) of this regulation, a countercyclical buffer rate in excess of 2.5% of the total risk exposure amount calculated in accordance with Article 92 Para (3) of Regulation (EU) No 575/2013, the cross-institution coordination structure in the field of macroprudential supervision of the national financial system may recommend to ASF to recognise that buffer rate for the purposes of the calculation by domestically authorised investment firms (SSIFs), of their specific countercyclical capital buffers.

(2) In the case provided under Para (1), ASF shall announce that recognition by publication on its website. The announcement shall include at least the following information:

a) the applicable countercyclical buffer rate;

b) the Member State or third countries to which it applies;

c) where the buffer rate is increased, the date from which the investment firms (SSIFs) authorised domestically must apply that increased buffer rate for the purposes of calculating their specific countercyclical capital buffer;

d) where the date referred to in Letter c) is less than 12 months after the date of the announcement under this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

(3) For the purpose of publishing the announcement, the cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall send to ASF its recommendation on the countercyclical capital buffer rate and the information specified in Para (2) Letters b) to d).

SECTION 4

Decision on third country countercyclical capital buffer rates

Art. 70. – (1) The provisions of this article shall apply regardless of whether or not there is a recommendation on the countercyclical capital buffer rates for third country exposures, issued by European Systemic Risk Board to the cross-institution coordination structure in the field of macroprudential supervision of the national financial system, in accordance with Article 138 of Directive No 36/2013/EU.

(2) Where the competent authority in a third country did not set and did not publish a countercyclical capital buffer for such state, and one or more Romanian legal entity investment firms (SSIFs) hold credit exposures located therein, the cross-institution coordination structure in the field of macroprudential supervision of the national financial system may recommend to ASF the countercyclical capital buffer rate that Romanian legal entity investment firms (SSIFs) must apply for the purpose of calculating their specific countercyclical capital buffer.

(3) Where the competent authority in a third country sets and publishes a countercyclical capital buffer for such state, the cross-institution coordination structure in the field of macroprudential supervision of the national financial system may recommend to ASF to apply a different rate for such state for the Romanian legal entity investment firms (SSIFs) to calculate their specific countercyclical capital buffer if the cross-institution coordination structure in the field of macroprudential supervision of the national financial system has reasons to consider that the buffer rate set by the relevant third-country authority is not sufficient to protect those investment firms (SSIFs) appropriately from the risks of excessive credit growth in that country.

(4) Without prejudice to the provisions of Para (3), the cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall not set a countercyclical buffer rate below the level set by the relevant third-country authority unless that buffer rate exceeds 2.5%, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92 paragraph (3) of Regulation (EU) No 575/2013, of investment firms (SSIFs) that have credit exposures in that third country.

(5) If the cross-institution coordination structure in the field of macroprudential supervision of the national financial system recommends the application of a countercyclical buffer rate for a third country in accordance with Paras (2) to (4), higher than the existing one, the cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall recommend to ASF the date from which the domestically authorised investment firm (SSIF) must apply that buffer rate for the purposes of calculating their specific countercyclical capital buffer. That date shall be no later than 12 months from the date when the buffer rate is announced in accordance with Para (6). If that date is less than 12 months after the setting is announced, that shorter deadline for application shall be justified by the cross-institution coordination structure in the field of macroprudential supervision of the national financial system on the basis of exceptional circumstances.

(6) ASF shall publish on its website any setting of a countercyclical buffer rate for a third country pursuant to Paras (2) to (4). In addition, ASF shall include in the announcement the following information:

a) the countercyclical buffer rate and the third country to which it applies;

b) a justification for that buffer rate;

c) where the buffer rate is set above zero for the first time or is increased, the date from which the investment firms (SSIFs) must apply that increased buffer rate for the purposes of calculating their specific countercyclical capital buffer;

d) where the date referred to in Letter c) is less than 12 months after the date of the publication of the announcement provided in this paragraph, a reference to the exceptional circumstances that justify that shorter deadline for application.

(7) For the purpose of publishing the announcement, the cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall send to the investment firm (SSIF) its recommendation on the countercyclical capital buffer rate and the third country to which it applies together with the information specified in Para (6) Letters b) to d).

SECTION 5

Calculation of countercyclical capital buffer rates specific to investment firms (SSIFs)

Art. 71. – (1) The countercyclical capital buffer rate specific to investment firms (SSIFs) shall consist of the weighted average of the countercyclical buffer rates that apply in the jurisdictions where the relevant credit exposures of the investment firm (SSIF) are located or are applied for the purposes of this article by virtue of Art. 70 Para (2) or Paras (3) and (4).

(2) in order to calculate the weighted average referred to in Para (1), investment firms (SSIFs) shall apply to each countercyclical buffer rate applicable in a jurisdiction its total own funds requirements for credit risk, determined in accordance with Part Three, Titles II and IV of Regulation (EU) No 575/2013, that relates to the relevant credit exposures in the territory in question, divided by its total own funds requirements for credit risk that relates to all of its relevant credit exposures.

Art. 72. – (1) If, in accordance with Art. 68 Paras (5) and (6), ASF sets, at the recommendation of the cross-institution coordination structure in the field of macroprudential supervision of the national financial system, a countercyclical buffer rate in excess of 2.5% of total risk exposure amount calculated in accordance with Article 92 paragraph (3) of Regulation (EU) No 575/2013, the following buffer rates shall apply to relevant credit exposures located in Romania for the purposes of the calculation required under Art. 71, including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the investment firm (SSIF) in question:

a) domestically authorised investment firms (SSIFs) shall apply that buffer rate in excess of 2.5% of total risk exposure amount for the exposures located in Romania;

b) domestically authorised investment firms (SSIFs) shall apply, for exposures located in other Member States, a countercyclical buffer rate of 2.5% of total risk exposure amount if ASF, at the recommendation of the cross-institution coordination structure in

the field of macroprudential supervision of the national financial system, has not recognised the buffer rate in excess of 2.5% in accordance with Art. 69 Para (1);

c) domestically authorised investment firms (SSIFs) shall apply, for exposures located in another Member State, the rate imposed by the competent authority in that Member State, if ASF, at the recommendation of the cross-institution coordination structure in the field of macroprudential supervision of the national financial system, has recognised the buffer rate in accordance with Art. 69.

(2) If the countercyclical buffer rate set by the relevant third-country authority for a third country exceeds 2.5% of total risk exposure amount calculated in accordance with Article 92 paragraph (3) of Regulation (EU) No 575/2013, the following buffer rates shall apply to relevant credit exposures located in that third country for the purposes of the calculation required under Art. 71, including, where relevant, for the purposes of the calculation of the element of consolidated capital that relates to the investment firm (SSIF) in question:

a) domestically authorised investment firms (SSIFs) shall apply a countercyclical buffer rate of 2.5% of total risk exposure amount if ASF, at the recommendation of the cross-institution coordination structure in the field of macroprudential supervision of the national financial system, has not recognised the buffer rate in excess of 2.5% in accordance with Art. 69 Para (1);

b) domestically authorised investment firms (SSIFs) shall apply the rate imposed by the competent authority in that Member State, if ASF, at the recommendation of the cross-institution coordination structure in the field of macroprudential supervision of the national financial system, has recognised the buffer rate in accordance with Art. 69.

Art. 73. – (1) For the purpose of Art. 71 Para (2), investment firms (SSIFs) shall include in the relevant credit exposures all exposure classes other than those referred to in Article 112 Letters a) to f) of Regulation (EU) No 575/2013, that are subject to:

a) the own funds requirements for credit risk under Part Three, Title II of Regulation (EU) No 575/2013;

b) where the exposure is held in the trading book, own funds requirements for specific risk under Part Three, Title IV, Chapter 2 of Regulation (EU) No 575/2013, or incremental default and migration risk under Part Three, Title IV, Chapter 5 of the same regulation;

c) where the exposure is a securitisation, the own funds requirements under Part Three, Title II, Chapter 5 of Regulation (EU) No 575/2013.

(2) Investment firms (SSIFs) shall identify the geographical location of a relevant credit exposure in accordance with regulatory technical standards adopted by EBA in this respect.

(3) For the purposes of the calculation required under Art. 71 Para (1):

a) a countercyclical buffer rate shall apply from the date specified in the information published in accordance with Art. 68 Para (9) Letter e) or with Art. 69 Para (2) Letter c), if the effect of that decision is to increase the buffer rate;

b) subject to Letter c), a countercyclical buffer rate for a third country shall apply 12 months after the date on which a change in the buffer rate was announced by the relevant third-country authority, irrespective of whether that authority requires investment firms (SSIFs) incorporated in that third country to apply the change within a shorter period, if the effect of that decision is to increase the buffer rate. In this respect, a modification of the rate for a third country shall be deemed announced on the date of its publication by the competent authority in the third country in accordance with the relevant national legal framework;

c) where ASF, at the recommendation of the cross-institution coordination structure in the field of macroprudential supervision of the national financial system, sets the countercyclical buffer rate for a third country pursuant to Art. 70 Para (2) or Art. 70 Para (3) and (4) or recognises the countercyclical buffer rate for a third country pursuant to Art. 69, that buffer rate shall apply from the date specified in the information published in accordance with Art. 70 Para (6) Letter c) or Art. 69 Para (2) Letter c), if the effect of that decision is to increase the buffer rate;

d) a countercyclical buffer rate shall apply immediately if the effect of that decision is to reduce the buffer rate.

SECTION 6

G-SII and O-SII

Art. 74. – (1) At the recommendation of the cross-institution coordination structure in the field of macroprudential supervision of the national financial system, ASF shall identify, on a consolidated basis, global systemically important institutions, hereinafter referred to as *G-SII*, which have been authorised domestically.

(2) For the purpose of Para (1), a G-SII shall be an EU parent investment firm, an EU parent financial holding company, an EU parent mixed financial holding company or an investment firm (SSIF). An investment firm (SSIF) that is a subsidiary of an EU parent investment firm, of an EU parent financial holding company or of an EU parent mixed financial holding company shall not be classified as G-SII.

Art. 75. – (1) For the purposes of Art. 74 Para (1), in the G-SII identification process, ASF shall use a methodology based on the following categories of indicators:

a) size of the group;

b) interconnectedness of the group with the financial system;

c) substitutability of the services or of the financial infrastructure provided by the group;

d) complexity of the group;

e) cross-border activity of the group, including cross border activity between Member States and between a Member State and a third country.

(2) Each category provided under Para (1) shall consist of equally weighted quantifiable indicators. By applying such methodology, ASF shall produce an overall score for each entity as referred to in Art. 74, assessed, which allows G-SIIs to be identified and allocated into a sub-category as described in Arts. 80 and 81.

Art. 76. – Each G-SII shall maintain, on a consolidated basis, a capital buffer corresponding to the subcategory in which it is allocated. Such buffer shall consist of and shall be additional to the other requirements regarding common equity tier 1 capital.

Art. 77. – (1) ASF shall identify, as applicable, on an individual, sub-consolidated or consolidated basis, other systemically important institutions, hereinafter referred to as *O-SII*, which have been authorised domestically.

(2) For the purpose of Para (1), a O-SII shall be an EU parent investment firm, an EU parent financial holding company, an EU parent mixed financial holding company or an investment firm (SSIF).

Art. 78. – In order to assess O-SIIs, ASF shall use a methodology based on at least one of the following categories of criteria:

a) size;

b) importance for the economy of the Union or of the relevant Member State;

c) significance of cross-border activities;

d) interconnectedness of the investment firm (SSIF) or group with the financial system.

Art. 79. – (1) Based on the O-SIIs identification criteria, ASF may require each O-SII, on a consolidated or sub-consolidated or individual basis, as applicable, to maintain a buffer of up to 2% of the total risk exposure amount calculated in accordance with Article 92 paragraph (3) of Regulation (EU) No 575/2013. That buffer shall consist of and shall be supplementary to Common Equity Tier 1 capital.

(2) For the purposes provided under Para (1), ASF shall consider the following:

a) the O-SII buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the functioning of the internal market;

b) the O-SII buffer must be reviewed ASF at least annually.

(3) For the purpose of Para (1), before setting or resetting an O-SII buffer, ASF shall notify the European Commission, the European Systemic Risk Board, EBA and the Member States concerned one month before the publication of the decision referred to in Para (1). That notification shall describe in detail:

a) the justification for why the O-SII buffer is considered likely to be effective and adequate to mitigate the risk;

b) an assessment of the likely positive or negative impact of the O-SII buffer on the internal market, based on information which is available to ASF;

c) the O-SII buffer rate that ASF wishes to set.

(4) Without prejudice to Para (1) and the provisions of Arts. 88 to 104, where an O-SII is a subsidiary of either a G-SII or an O-SII which is an EU parent investment firm and subject to an O-SII buffer on a consolidated basis, the buffer that applies at individual or sub-consolidated level for the O-SII shall not exceed the higher of:

a) 1% of the total risk exposure amount calculated in accordance with Article 92 paragraph (3) of Regulation (EU) No 575/2013; and

b) the G-SII or O-SII buffer rate applicable to the group at consolidated level.

Art. 80. – (1) Within the assessment process provided under Art. 75, ASF shall allocate G-SIIs in at least five subcategories. The lowest boundary and the boundaries between each subcategory shall be determined by the scores under the identification methodology referred to in Art. 75 Para (2).

(2) For the purposes of Para (1), the cut-off scores between adjacent sub-categories shall be defined clearly and shall adhere to the principle that there is a constant linear increase of systemic significance, between each sub-category resulting in a linear increase in the requirement of additional common equity tier 1 capital, with the exception of the highest sub-category.

(3) For the purposes of Para (1), systemic significance is the expected impact exerted by the G-SII's distress on the global financial

market.

Art. 81. – For the purposes of Art. 80, the lowest sub-category G-SIIs shall be assigned a G-SII buffer of 1% of the total risk exposure amount calculated in accordance with Article 92 paragraph (3) of Regulation (EU) No 575/2013, and the buffer assigned to each sub-category shall increase in gradients of 0,5% of the total risk exposure amount calculated in accordance with Article 92 Para (3) of Regulation (EU) No 575/2013, up to and including the fourth sub-category. The highest sub-category of the G-SII buffer shall be subject to a buffer of 3.5% of the total risk exposure amount calculated in accordance with Article 92 paragraph (3) of Regulation (EU) No 575/2013.

Art. 82. – Without prejudice to Arts. 74, 80 and 81, ASF may, in the exercise of sound supervisory judgment:

a) re-allocate a G-SII from a lower sub-category to a higher sub-category;

b) allocate an entity as referred to in Art. 74, that has an overall score that is lower than the cut-off score of the lowest sub-category to that sub-category or to a higher sub-category, thereby designating it as a G-SII.

Art. 83. – Where ASF takes a decision in accordance with Art. 82 Letter b), at the recommendation of the cross-institution coordination structure in the field of macroprudential supervision of the national financial system, it shall notify EBA accordingly, providing reasons.

Art. 84. – The cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall notify the names of the investment firms (SSIFs) identified as G-SIIs and the respective sub-category to which each G-SII is allocated, to the European Commission, the European Systemic Risk Board and EBA.

Art. 85. – The cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall disclose to the public the sub-category to which each investment firm (SSIF) identified as G-SII is allocated.

Art. 86. – The cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall review annually the identification of G-SIIs and O-SIIs and the G-SII allocation into the respective sub-categories and report the result to the investment firm (SSIF) concerned, to the European Commission, the European Systemic Risk Board and EBA. The cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall disclose the updated list of identified systemically important institutions to the public and shall disclose to the public the sub-category into which each identified G-SII is allocated.

Art. 87. – Systemically important institutions shall not use Common Equity Tier 1 capital that is maintained to cover the G-SII and O-SII buffers provided under Art. 76 and Art. 79 Para (1), to meet any requirements imposed under Article 92 of Regulation (EU) No 575/2013, under Arts. 66 and 67 of this regulation, and any other requirements imposed under Art. 226 of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented.

Art. 88. – Where a group, on a consolidated basis, is subject to the following, the higher buffer shall apply in each case:

a) a G-SII buffer and an O-SII buffer;

b) a G-SII buffer, an O-SII buffer and, in accordance with Arts. 93 to 104, a systemic risk buffer.

Art. 89. – Where an investment firm (SSIF), on an individual or sub-consolidated basis is subject to an O-SII buffer and a systemic risk buffer in accordance with Arts. 93 to 104, the higher of the two shall apply.

Art. 90. – Notwithstanding Arts. 88 and 89, where the systemic risk buffer applies to all exposures located in Romania, but does not apply to exposures outside it, that systemic risk buffer shall be cumulative with the O-SII or G-SII buffer that is applied in accordance with Arts. 74 to 92.

Art. 91. – Where the provisions of Arts. 88 and 89 apply and an investment firm (SSIF) is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that that investment firm (SSIF) is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer, and the higher of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.

Art. 92. – Where the provisions of Art. 90 apply and an investment firm (SSIF) is part of a group or a sub-group to which a G-SII or an O-SII belongs, this shall never imply that that investment firm (SSIF) is, on an individual basis, subject to a combined buffer requirement that is lower than the sum of the capital conservation buffer, the countercyclical capital buffer, and the sum of the O-SII buffer and systemic risk buffer applicable to it on an individual basis.

CHAPTER II

Systemic risk buffer

SECTION 1

Setting of the Systemic Risk Buffer

Art. 93. -In order to prevent and mitigate long term non-cyclical systemic or macroprudential risks not covered by Regulation (EU) No

575/2013, in the meaning of a risk of disruption in the financial system with the potential to have serious negative consequences to the financial system and the real economy, at the recommendation of the cross-institution coordination structure in the field of macroprudential supervision of the national financial system, ASF may introduce a systemic risk buffer of Common Equity Tier 1 capital for the financial sector or one or more subsets of that sector.

Art. 94. – Investment firms (SSIFs) shall apply the systemic risk buffer to the exposures located in Romania, in third countries and in other Member States in accordance with the provisions of Arts. 98 and 100.

Art. 95. – For the purpose of Art. 93, ASF may require investment firms (SSIFs) to maintain the systemic risk buffer in gradual or accelerated steps of adjustment of 0.5 percentage point. ASF may also impose different systemic risk buffer rates for different subsets of the sector.

Art. 96. – When requiring a systemic risk buffer to be maintained, ASF shall consider the following:

a) the systemic risk buffer must not entail disproportionate adverse effects on the whole or parts of the financial system of other Member States or of the Union as a whole forming or creating an obstacle to the functioning of the internal market;

b) ASF shall review the systemic risk buffer requirement at least every second year.

Art. 97. – (1) Before setting or resetting a systemic risk buffer rate of up to 3%, the cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall notify the European Commission, EBA, the European Systemic Risk Board and the competent authorities of the other Member States concerned one month before the publication of the decision referred to in Art. 102.

(2) If the systemic risk buffer requirement applies to exposures located in third countries, the cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall also notify the competent authorities of those third-countries.

(3) The notification referred to in Para (2) shall include a detailed description of the following elements:

a) the systemic or macroprudential risk at a national level;

b) the reasons why the dimension of the systemic or macroprudential risks threatens the stability of the financial system at national level;

c) the justification for why the proposed measures are considered effective and adequate to mitigate the risk;

d) an assessment of the likely positive or negative impact of the systemic risk buffer on the single market, based on available information;

e) the justification for why none of the existing measures in Regulation (EU) No 575/2013, except for Articles 458 and 459 of the mentioned regulation, in Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, and herein, alone or in combination, will be sufficient to address the identified macroprudential or systemic risk taking into account the relative effectiveness of those measures;

f) the systemic risk buffer rate that ASF wishes to require at the recommendation of the cross-institution coordination structure in the field of macroprudential supervision of the national financial system.

Art. 98. – Further to the notification provided under Art. 97 Para (1), ASF may require investment firms to maintain the systemic risk buffer for all exposure. Where ASF decides to set the buffer rate up to 3% for exposures located in other Member States, then the exposures located within the European Union shall be subject to the same buffer rate.

Art. 99. – (1) Before setting or resetting a systemic risk buffer rate of above 3% the cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall notify the European Commission, EBA, the European Systemic Risk Board and the competent authorities of the Member State concerned. If the systemic risk buffer requirement applies to exposures located in third-countries, the cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall also notify the competent authorities of those third countries.

(2) The notification referred to in Para (1) shall include de detailed description of the following elements:

a) the systemic or macroprudential risk at national level;

b) the reasons why the dimension of the systemic or macroprudential risks threatens the stability of the financial system at national level justifying the systemic risk buffer rate;

c) the justification for why the proposed measures are considered effective and adequate to mitigate the risk;

d) an assessment of the likely positive or negative impact of the systemic risk buffer on the single market, based on available information;

e) the justification for why none of the existing measures in Regulation (EU) No 575/2013, except for Articles 458 and 459 of the mentioned regulation, in Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, and herein, alone or in combination, will be sufficient to address the

identified macroprudential or systemic risk taking into account the relative effectiveness of those measures;

f) the systemic risk buffer rate that ASF wishes to require at the recommendation of the cross-institution coordination structure in the field of macroprudential supervision of the national financial system.

Art. 100. – ASF shall adopt the proposed measure based on the delegated authorisation act, adopted by the European Commission, in accordance with the provisions of Article 133 paragraph (15) of Directive No 36/2013/EU.

Art. 101. – (1) For the exposures located in Romania, and for those located in third countries, depending on the rate recommended by the cross-institution coordination structure in the field of macroprudential supervision of the national financial system, ASF may set or reset:

a) a systemic risk buffer rate of up to 5%, subject to the provisions of Art. 97;

b) a buffer rate above 5%, subject to the provisions of Art. 99;

c) a buffer rate between 3% and 5%, subject to notifying the European Commission on this measure and awaiting the opinion of the Commission before adopting the measure. Where the opinion of the Commission is negative, ASF shall comply with that opinion or give reasons for not so doing.

(2) Where one subset of the financial sector in Romania is a subsidiary whose parent is established in another Member State, the cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall notify the competent authorities of that Member State, as well as the European Commission and the European Systemic Risk Board. Within one month of the notification, the European Commission and the European Systemic Risk Board shall issue a recommendation on the measures taken in accordance with this paragraph. Where the cross-institution coordination structure in the field of macroprudential supervision of the national financial system and the competent authority in the Member State concerned disagree and in the case of a negative recommendation of both the Commission and the European Systemic Risk Board, the cross-institution coordination structure in the field of macroprudential supervision of the national financial system may refer the matter to EBA and request a mandatory mediation in accordance with Article 19 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC. ASF's decision to set the systemic risk buffer at the level recommended by the cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall be suspended for those exposures until EBA has taken a decision.

Art. 102. – (1) Depending on the level recommended by the cross-institution coordination structure in the field of macroprudential supervision of the national financial system, ASF shall announce the setting of the systemic risk buffer by publication on its website. The announcement shall include at least the following information:

a) the systemic risk buffer rate;

b) investment firms (SSIFs) that are subject to the requirement to maintain the buffer;

c) a justification for the systemic risk buffer;

d) the date from which the investment firm (SSIF) must apply the setting or resetting of the systemic risk buffer; and

e) the names of the countries where exposures located in those countries are recognised in the systemic risk buffer.

(2) Without prejudice to Para (1), ASF shall not include in the announcement the information required under Para (1) Letter c) if the justification could jeopardise the stability of the financial system.

Art. 103. – (1) If ASF acts in accordance with Art. 93, investment firms (SSIFs) shall maintain, on an individual, consolidated and sub-consolidated basis, in addition to the own funds provided under Article 92 paragraph (3) of Regulation (EU) No 575/2013, a systemic risk buffer, consisting of common equity tier 1 capital of at least 1%, based on the exposures subject to such buffer, in compliance with Art. 94 of this regulation.

(2) Investment firms (SSIFs) shall not use common equity tier 1 capital maintained in compliance with the requirement provided under Para (1), to meet any of the requirements of Article 92 of Regulation (EU) No 575/2013, of Art. 66 and 67 of this regulation, or any of the requirements under Art. 226 of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented.

Art. 104. – If investment firms (SSIFs) fail to meet the systemic risk buffer requirement, they shall be subject to the restrictions set out in Art. 106. If further to such restrictions, an acceptable improvement of the common equity tier 1 capital used for the establishment of the systemic risk buffer is not noted, ASF may take additional measures in accordance with Art. 225 Para (1) and (2) of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented.

SECTION 2

Recognition of a systemic risk buffer rate

Art. 105. – (1) ASF may recognise the systemic risk buffer rate set similarly to the provisions of Arts. 93 to 104, by the designated

authorities/competent authorities in other Member States, and may apply that buffer rate to Romanian legal person investment firms (SSIFs) for their exposures located in those Member States.

(2) If it acts in accordance with Para (1), the cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall notify the European Commission, EBA, the European Systemic Risk Board and the competent authorities/designated authorities in those Member States.

(3) When deciding whether to recognise a systemic risk buffer rate, the cross-institution coordination structure in the field of macroprudential supervision of the national financial system shall take into consideration the information presented by competent/designated authorities in those Member States, similarly to the provisions of Arts. 97, 99 or Art. 101 Para (1) Letters a) and b) and Art. 156 Para (2) Letter a).

(4) The cross-institution coordination structure in the field of macroprudential supervision of the national financial system may ask the European Systemic Risk Board to issue a recommendation as referred to in Article 16 of Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, to one or more Member States which may recognise the systemic risk buffer rate set in accordance with the provisions of Arts. 93 to 101, for the application by the investment firm (SSIF) authorised in such Member States for the exposures located in Romania.

CHAPTER III

Capital conservation measures

SECTION 1

Restrictions on distributions

Art. 106. – (1) Investment firms (SSIFs) that meet the combined buffer requirement shall not make a distribution in connection with common equity tier 1 capital to an extent that would decrease its common equity tier 1 capital to a level where the combined buffer requirement is no longer met.

(2) For the purposes of Para (1), distributions in connection with common equity tier 1 capital shall include the following:

a) a payment of cash dividends;

b) a distribution of fully or partly paid bonus shares or other capital instruments referred to in Article 26 paragraph (1) Letter a) of Regulation (EU) No 575/2013;

c) a redemption or purchase by an investment firm (SSIF) of its own shares or other capital instruments referred to in Article 26 paragraph (1) Letter a) of Regulation (EU) No 575/2013;

d) a repayment of amounts paid up in connection with capital instruments referred to in Article 26 paragraph (1) Letter a) of Regulation (EU) No 575/2013;

e) a distribution of items referred to in Article 26 paragraph (1) Letters b) to e) of Regulation (EU) No 575/2013.

SECTION 2

Calculation of the Maximum Distributable Amount

Art. 107. – (1) Investment firms (SSIFs) that fail to meet the combined buffer requirement shall calculate the Maximum Distributable Amount in accordance with Art. 108.

(2) Prior to calculating the maximum distributable amount, the investment firms (SSIFs) referred to in Para (1) shall not undertake any of the following actions:

a) make a distribution in connection with common equity tier 1 capital;

b) create an obligation to pay variable remuneration or discretionary pension benefits or pay variable remuneration if the obligation to pay was created at a time when the investment firm (SSIF) failed to meet the combined buffer requirements;

c) make payments on additional tier 1 instruments.

(3) While an investment firm (SSIF) fails to meet or exceed its combined buffer requirement shall be prohibited from making distributions, by any of the actions provided under Para (2), in excess of the maximum distributable amount.

Art. 108. – (1) For the purposes of Art. 107, investment firms (SSIFs) shall calculate the maximum distributable amount by multiplying the result obtained in accordance with Para (3) and the factor calculated in accordance with Para (4).

(2) Investment firms (SSIFs) shall reduce the maximum distributable amount by any of the actions referred to in Art. 107 Para (2) Letter a), b) or c).

(3) For the purpose of Para (1), the result shall be obtained as follows:

a) summing of the following elements:

(i) – interim profits not included in Common Equity Tier 1 capital pursuant to Article 26 paragraph (2) of Regulation (EU) No 575/2013, that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in Art. 107 Para (2) Letter a), b) or c);

(ii) – year-end profits not included in Common Equity Tier 1 capital pursuant to Article 26 paragraph (2) of Regulation (EU) No 575/2013, that have been generated since the most recent decision on the distribution of profits or any of the actions referred to in Art. 107 Para (2) Letter a), b) or c);

b) deduction from the amount obtained under Letter a) amounts which would be payable by tax if such items were to be retained.

(4) The factor provided under Para (1) shall be determined as follows:

a) where the common equity tier 1 capital maintained by the investment firm (SSIF) which is not used to meet the own funds requirement under Article 92 paragraph (1) Letter c) of Regulation (EU) No 575/2013, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92 paragraph (3) of that Regulation, is within the first (that is, the lowest) quartile of the combined buffer requirement, the factor shall be 0;

b) where the common equity tier 1 capital maintained by the investment firm (SSIF) which is not used to meet the own funds requirement under Article 92 paragraph (1) Letter c) of Regulation (EU) No 575/2013, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92 paragraph (3) of that Regulation, is within the second quartile of the combined buffer requirement, the factor shall be 0.2;

c) where the common equity tier 1 capital maintained by the investment firm (SSIF) which is not used to meet the own funds requirement under Article 92 paragraph (1) Letter c) of Regulation (EU) No 575/2013, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92 paragraph (3) of that Regulation, is within the third quartile of the combined buffer requirement, the factor shall be 0.4;

d) where the common equity tier 1 capital maintained by the investment firm (SSIF) which is not used to meet the own funds requirement under Article 92 paragraph (1) Letter c) of Regulation (EU) No 575/2013, expressed as a percentage of the total risk exposure amount calculated in accordance with Article 92 paragraph (3) of that Regulation, is within the fourth (that is, the highest) quartile of the combined buffer requirement, the factor shall be 0.6.

(5) For the purposes of Para (4), the lower and upper bounds of each quartile of the combined buffer requirement shall be calculated as follows:

Lower bound of the quartile

$$\text{Lower bound of quartile} = \frac{\textit{Combined buffer requirement}}{4} \times (Q_n - 1)$$

Upper bound of the quartile,

$$\text{Upper bound of quartile} = \frac{\textit{Combined buffer requirement}}{4} \times Q_n$$

where:

Q n indicates the ordinal number of the quartile concerned.

Art. 109. – The restrictions imposed by Arts. 106 to 108 and 110 shall only apply to payments that result in a reduction of Common Equity Tier 1 capital or in a reduction of profits, and where a suspension of payment or failure to pay does not constitute an event of default or a condition for the commencement of proceedings under the insolvency regime applicable to the investment firm (SSIF).

Art. 110. – (1) Investment firms (SSIFs) shall notify ASF if they fail to meet the combined buffer requirement and intend to distribute any of its distributable profits or undertake an action referred to in Art. 107 Para (2) Letter a), b) or c).

(2) For the purposed of Para (1), the investment firm (SSIF) shall include in the notification the following information:

a) the amount of the own funds maintained;

b) the amount of its interim and year-end profits;

c) the maximum distributable amount, calculated in accordance with Art. 108;

d) the amount of distributable profits.

(3) For the purposes of Para (2) Letter a), the amount of the own funds shall be broken down as follows:

a) common equity tier 1 capital;

b) additional tier 1 instruments;

c) tier 2 instruments.

(4) For the purposes of Para (2) Letter d), the destinations to which the distributable profits shall be allocated are:

a) dividend payments;

b) share buybacks;

c) payments on Additional Tier 1 instruments;

d) the payment of variable remuneration or discretionary pension benefits, whether by creation of a new obligation to pay, or payment pursuant to an obligation to pay created at a time when the investment firm (SSIF) failed to meet its combined buffer requirements.

(5) Investment firms (SSIFs) shall ensure, through proper formalities, the accurate calculation of the amount of distributable profits and of the maximum distributable amount.

(6) At ASF's request, investment firms (SSIFs) and shall be able to demonstrate the accuracy of the calculations provided under Para (5).

SECTION 3

Capital Conservation Plan

Art. 111. – (1) Investment firms (SSIFs) that fail to meet their combined buffer requirement shall prepare a capital conservation plan and submit it to ASF for approval no later than five working days after it identified that it was failing to meet that requirement, unless ASF authorises a longer delay up to 10 day.

(2) ASF shall grant the authorisations provided under Para (1) only on the basis of the individual situation of an investment firm (SSIF) and taking into account the scale and complexity of the investment firm's (SSIF's) activity.

(3) In the capital conservation plan provided under Para (1), investment firms (SSIFs) shall include the following:

a) estimates of income and expenditure and a forecast balance sheet;

b) measures to increase the capital adequacy ratios of the institution;

c) a plan and timeframe for the increase of own funds with the objective of meeting fully the combined buffer requirement;

d) any other information required by ASF to carry out the assessment required by Para (4).

(4) ASF shall assess the capital conservation plan prepared by the investment firm (SSIF) and shall approve the plan only if it considers that the plan, if implemented, would be reasonably likely to conserve or raise sufficient capital to enable the investment firm (SSIF) to meet its combined buffer requirements within a period which ASF considers appropriate.

(5) If ASF does not approve the capital conservation plan in accordance with Para (4), it may impose one or both of the following:

a) require the investment firm (SSIF) to increase own funds to specified levels within a given timeframe;

b) exercise its powers under Art. 226 Paras (1) and (2) of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, to impose more stringent restrictions on distributions than those required by Arts. 106 to 110 hereof.

TITLE IV

Supervision on a consolidated basis

CHAPTER I

General Provisions

Art. 112. – The following investment firms (SSIFs) are subject to ASF's supervision on a consolidated basis:

a) a Romanian or EU parent investment firm (SSIF), authorised by ASF;

b) an investment firm (SSIF) authorised by ASF, whose parent financial company is a Romanian parent holding company or a Romanian parent mixed financial holding company or a parent holding company or parent mixed financial holding company from another Member State or a EU parent holding company or a EU parent mixed financial holding company, provided that, in the last four situations, the parent company has no other investment firms (SSIFs) as subsidiaries in Member States;

c) an investment firm (SSIF) authorised by ASF, whose Romanian parent company is a Romanian parent holding company or a Romanian parent mixed financial holding company or a EU parent holding company or a EU parent mixed financial holding company and which is a parent company for at least another investment firm authorised in another Member State;

d) an investment firm (SSIF) authorised by ASF which, together with investment firms authorised in two or more Member States, have as their parent the same financial holding company or mixed financial holding company with head offices in different Member States, and there is a subsidiary investment firm in each of these states, and from among these subsidiaries, the Romanian legal entity investment firm (SSIF) has the largest balance sheet total;

e) an investment firm (SSIF) authorised by ASF, whose parent company is a financial holding company or a mixed financial holding company that is a parent company for at least another investment firm authorised in any other Member State, none of these investment firms being authorised in the Member State where the financial holding company or mixed financial holding company is registered, and from among these subsidiaries, the Romanian legal entity investment firm (SSIF) has the largest balance sheet total; the investment firm (SSIF) shall be deemed, for the purpose of supervision on a consolidated basis, an investment firm (SSIF) controlled by a EU parent financial holding company or by a EU parent mixed financial holding company.

Art. 113. – Romanian subsidiary investment firms shall be subject to ASF's supervision on a sub-consolidated basis, if they or their parent companies, if they are financial holding companies or mixed financial holding companies, have in a third country an institution, financial institution or asset management company or hold a participation in such entities and the supervision on a consolidated basis is exercised by ASF, in accordance with the provisions of Art. 279 of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented.

CHAPTER II

Enforcement of Prudential Rules for the Exercise of Supervision on Consolidated Basis

SECTION 1

Prudential Rules Applicable on Consolidated Basis to Parent Investment Firms (SSIFs) in Romania, or Investment Firms (SSIFs), Romanian Legal Persons, Controlled by a Parent Financial Holding Company from Romania or Another Member State or by a Parent Mixed Financial Holding Company

in Romania or Another Member State and Which Are Supervised on Consolidated Basis by ASF

Art. 114. – Notwithstanding the obligations to comply with the prudential requirements on an individual basis, in accordance with the provisions of Art. 121 hereunder, the parent investment firm (SSIF) in Romania must fulfil, to the extent and in the manner indicated in Part One, Title II, Chapter 2, Sections 2 and 3 of EU Regulation No. 575/2013, on consolidated basis, in addition to the requirements provided under Article 11 Paragraph (1) of the same regulation, the obligations regarding the internal process of risk based capital adequacy, provided under Arts. 148 and 149 of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented.

Art. 115. – (1) Notwithstanding the obligations to comply with the prudential requirements on an individual basis, in accordance with the provisions of Art. 121 hereunder, Romanian legal person investment firms (SSIFs) controlled by a parent financial holding company in Romania or a parent mixed financial holding company in Romania must fulfil, to the extent and in the manner indicated in Part One, Title II, Chapter 2, Sections 2 and 3 of EU Regulation No. 575/2013, on the basis of the consolidated situation of that financial holding company or mixed financial holding company, in addition to the requirements provided under Article 11 Paragraph (2) of the same regulation, the obligations regarding the internal process of assessment of risk based capital adequacy, provided under Arts. 148 and 149 of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented.

(2) If several investment firms, legal persons from Romania and other Member States, are controlled by a parent financial holding company from a Member State or a mixed parent financial holding company from a Member State, then the provisions of Para (1) shall only apply to the investment firm supervised on a consolidated basis by ASF, in accordance with the provisions of Art. 112.

Art. 116. – (1) Parent investment firms (SSIFs) in Romania and investment firms, Romanian legal persons, which are subsidiaries of parent financial holding companies in Romania or another Member State or of mixed parent financial holding companies in Romania or another Member State and which are subject to supervision on a consolidated basis by ASF, must fulfil, on a consolidated basis, in addition to the requirements provided by Article 14 of EU Regulation No. 575/2013, the obligations regarding the management framework, the processes to identify, manage, monitor and report risks, the internal control mechanisms, and the remuneration policies and practices provided by Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, and by this regulation, in order to verify that their systems, processes and mechanisms are consistent and integrated at group level and that any data and information relevant to the objectives of the supervision may be provided.

(2) The investment firms provided under Para (1) must also implement the systems, processes and mechanisms provided under such paragraph in the subsidiaries not governed by the requirements of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, EU Regulation No. 575/2013 and this regulation. In this case too, the systems, processes and mechanisms must be consistent and integrated at group level and those subsidiaries must be able to provide any data and information relevant to the objectives of the supervision.

(3) The requirements provided under Para (2) regarding subsidiaries not subject to the requirements of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, EU Regulation No. 575/2013 and this regulation shall not apply if the EU parent investment firm or the investment

firm controlled by an EU parent financial holding company or an EU mixed parent financial holding company proves to ASF that the application of such requirements is contrary to the legal provisions applicable in the third country where the subsidiary is registered.

Art. 117. – If the parent investment firms (SSIFs) in Romania or the investment firms, Romanian legal persons, which are subsidiaries of the parent financial holding companies in Romania or another Member State and which are subject to the consolidated supervision exercised by ASF, are subsidiaries such as those provided under Article 13 of EU Regulation No. 575/2013, then they must publish, on a consolidated basis in Romania, the information provided under Article 13 of the above mentioned regulation.

SECTION 2

Prudential Rules Applicable on Consolidated Basis to Romanian Legal Person Investment Firms (SSIFs) Which Are EU Parent Companies, or Controlled by an EU Parent Financial Holding Company or by an EU Parent Mixed Financial Holding Company

and Which are Supervised on Consolidated Basis by ASF

Art. 118. – (1) Notwithstanding the obligations to comply with the prudential requirements on an individual basis, in accordance with the provisions of Art. 121 hereunder, Romanian legal person EU parent investment firms must fulfil, to the extent and in the manner indicated in Part One, Title II, Chapter 2, Sections 2 and 3 of EU Regulation No. 575/2013, on consolidated basis, in addition to the requirements provided under Article 11 paragraphs (1) and (3) of the same regulation, the obligations regarding the internal process of assessment of risk based capital adequacy, provided under Arts. 148 and 149 of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented.

(2) Notwithstanding the obligations to comply with the prudential requirements on an individual basis, in accordance with the provisions of Art. 121 hereunder, Romanian legal person investment firms controlled by an EU parent financial holding company or an EU parent mixed financial holding company must fulfil, to the extent and in the manner indicated in Part One, Title II, Chapter 2, Sections 2 and 3 of EU Regulation No. 575/2013, on the basis of the consolidated situation of that financial holding company or mixed financial holding company, in addition to the requirements provided under Article 11 paragraphs (2) and (3) and Article 13 of the same regulation, the obligations regarding the internal process of assessment of risk based capital adequacy, provided under Arts. 148 and 149 of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented.

Art. 119. – (1) Parent investment firms (SSIFs) in Romania and investment firms, Romanian legal persons, which are subsidiaries of parent financial holding companies in Romania or another Member State or of mixed parent financial holding companies in Romania or another Member State and which are subject to supervision on a consolidated basis by ASF, must fulfil, on a consolidated basis, in addition to the requirements provided by Article 14 of EU Regulation No. 575/2013, the obligations regarding the management framework, the processes to identify, manage, monitor and report risks, the internal control mechanisms, and the remuneration policies and practices provided by Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, and by this regulation, in order to verify that their systems, processes and mechanisms are consistent and integrated at group level and that any data and information relevant to the objectives of the supervision may be provided.

(2) The investment firms provided under Para (1) must also implement the systems, processes and mechanisms provided under such paragraph in the subsidiaries not governed by the requirements of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, EU Regulation No. 575/2013 and this regulation. In this case too, the systems, processes and mechanisms must be consistent and integrated at group level and those subsidiaries must be able to provide any data and information relevant to the objectives of the supervision.

(3) The requirements provided under Para (2) regarding subsidiaries not subject to the requirements of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, EU Regulation No. 575/2013 and this regulation shall not apply if the EU parent investment firm or the investment firm controlled by an EU parent financial holding company or an EU mixed parent financial holding company proves to ASF that the application of such requirements is contrary to the legal provisions applicable in the third country where the subsidiary is registered.

SECTION 3

Prudential Requirements Applicable to Romanian Groups Which Are Not Sub-Groups of European Groups

Art. 120. – In addition to the provisions of Section 1 of this chapter, parent investment firms in Romania which are not subsidiaries of an investment firm or holding financial company, EU parent company, and whose subsidiaries and participations in institutions, financial institutions, asset management companies and ancillary services undertakings are exclusively Romanian legal persons must fulfil, to the extent and in the manner indicated in Part One, Title II, Chapter 2, Sections 2 and 3 of EU Regulation No. 575/2013, on a consolidated basis, the disclosure requirements prescribed in Part Eight of that regulation. The same requirements shall apply in the case of Romanian legal person investment firms, supervised on a consolidated basis by ASF and controlled by a holding financial company in Romania or another Member State, which is not a subsidiary of an investment firm or a holding financial company, EU parent company, and whose subsidiaries and participations in institutions, financial institutions, asset management companies and ancillary services undertakings are exclusively Romanian legal persons.

SECTION 4

Prudential Requirements Applicable for Supervision on Sub-Consolidated Basis Exercised by ASF

Art. 121. – (1) Romanian subsidiary investment firms which are subject to supervision on sub-consolidated basis by ASF, in accordance with the provisions of Art. 113 hereunder, must fulfil, at sub-consolidated level, in addition to the requirements provided under Article 22 of EU Regulation No. 575/2013, the obligations regarding the internal process of assessment of risk based capital adequacy, provided under Arts. 148 and 149 of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented.

(2) Romanian subsidiary investment firms which are subject to supervision on sub-consolidated basis by ASF, in accordance with the provisions of Art. 113 hereunder, must fulfil, at sub-consolidated level, in addition to the requirements provided by Article 14 of EU Regulation No. 575/2013, the obligations regarding the management framework, the processes to identify, manage, monitor and report risks, the internal control mechanisms, and the remuneration policies and practices provided by Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, and by this regulation, in order to verify that their systems, processes and mechanisms are consistent and integrated at group level and that any data and information relevant to the objectives of the supervision may be provided.

(3) The investment firms provided under Para (2) must also implement the systems, processes and mechanisms provided under such paragraph in the subsidiaries not governed by the requirements of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, EU Regulation No. 575/2013 and this regulation. In this case too, the systems, processes and mechanisms must be consistent and integrated at group level and those subsidiaries must be able to provide any data and information relevant to the objectives of the supervision.

(4) The requirements provided under Para (3) regarding subsidiaries not subject to the requirements of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, EU Regulation No. 575/2013 and this regulation shall not apply if the EU parent investment firm or the investment firm controlled by an EU parent financial holding company or an EU mixed parent financial holding company proves to ASF that the application of such requirements is contrary to the legal provisions applicable in the third country where the subsidiary is registered.

SECTION 5

Prudential Requirements Enforceable on Individual Basis for the Exercise of Supervision on Consolidated Basis

Art. 122. – Each Romanian legal person investment firm, Romanian or EU parent company, and each Romanian legal person investment firm, controlled by a Romanian or EU parent financial holding company or by a Romanian or EU mixed parent financial holding company, if the supervision on consolidated basis is exercised by ASF, must fulfil, on individual basis, in addition to the requirements provided under Article 6 of EU Regulation No. 575/2013, with the exceptions provided in that article, the obligations regarding the management framework, the processes to identify, manage, monitor and report risks, the internal control mechanisms, and the remuneration policies and practices provided by Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, and by this regulation.

Art. 123. – (1) Each Romanian legal person investment firm other than that provided under Art. 121, must fulfil, on individual basis, in addition to the requirements provided under Article 6 of EU Regulation No. 575/2013, with the exceptions provided in that article, the obligations regarding the management framework, the processes to identify, manage, monitor and report risks, the internal control mechanisms, and the remuneration policies and practices provided by Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, and by this regulation.

(2) Each investment firm, which is not either a Romanian subsidiary, or parent company, and any investment firm that does not fall under the scope of prudential consolidation in accordance with Article 19 of EU Regulation No. 575/2013, must fulfil, on an individual basis, the obligations mentioned under Arts. 148 and 149 of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented, regarding the internal process of assessment of risk based capital adequacy.

Art. 124. – If Romanian legal person investment firms are subsidiaries such as those provided under Article 13 of EU Regulation No. 575/2013, but are not subject to supervision at consolidated level by ASF, then they must publish the information provided under Article 13 of the above mentioned regulation at individual level.

SECTION 6

Prudential Requirements Applicable at Individual Level to Romanian Legal Person Investment Firms Whose Parent Company Is an Investment Firm

Art. 125. – Romanian legal person investment firms, subsidiaries of parent investment firms in Romania, in another Member State or the EU must comply at individual level with the prudential requirements provided under Arts. 122 and 123, which shall apply accordingly.

CHAPTER III

Scope of Prudential Consolidation

Art. 126. – The consolidated situation of the parent company, prepared for prudential purposes, underlying the calculation of the elements required in order to comply with the prudential requirements on a consolidated or sub-consolidated basis, provided in Chapter II, includes, according to the consolidation methods provided in Article 18 of EU Regulation No. 575/2013, subsidiaries and participations in institutions, financial institutions, asset management companies and ancillary services undertakings, Romanian or foreign legal persons.

CHAPTER IV

Intragroup Transactions with Mixed Activity Holding Companies

Art. 127. – (1) Romanian legal person investment firms, subsidiaries of a mixed activity holding company, must have adequate risk management processes and internal control mechanisms, rigorous accounting and reporting procedures inclusively, in order to adequately identify, measure, monitor and control their transactions with the mixed activity holding company and its subsidiaries.

(2) Investment firms must report to ASF on a quarterly basis, within ten (10) days from the conclusion of the period for which the reporting is prepared, any significant transaction with the entities provided under Para (1), other than the transaction reported as large exposure in accordance with Article 394 of EU Regulation No. 575/2013. Significant transaction shall mean any transaction exceeding 5% of the institution's own funds.

(3) The procedures provided under Para (1) and significant transactions shall be subject to supervision by ASF.

CHAPTER V

Specific Disclosure Requirements

Art. 128. – ASF may require an investment firm (SSIF), parent company from Romania or the EU, to publish annually, either in full or by way of references to equivalent information, a description of its legal structure and governance and organisational structure of the group of institutions, including information on closely linked entities, and on the formal management framework of the activity.

TITLE V

Miscellaneous

CHAPTER I

Disclosure Requirements for ASF

Art. 129. – For the purposes of Part Five of EU Regulation No. 575/2013, ASF shall publish the following information:

a) the general criteria and methodologies adopted to review compliance with the provisions of Articles 405 to 409 of EU Regulation No. 575/2013;

b) a brief description of the outcome of the supervision process and a presentation of the measures required in the cases of non-compliance with the provisions of Articles 405 to 409 of the said regulation, identified annually, notwithstanding the provisions of Title VII, Chapter 1, Section II of EU Regulation No. 575/2013.

Art. 130. – If ASF exercises the option prescribed in Article 7 Paragraph (3) of EU Regulation No. 575/2013, then it shall publish the following information:

a) the criteria applied to determine that there is no current or foreseen material practical or legal impediment to the prompt transfer of own funds or swift repayment of liabilities;

b) the number of parent investment firms (SSIFs) benefitting from the exercise of the option provided under Article 7 Paragraph (3) of EU Regulation No. 575/2013, and the number of such parent investment firms that have subsidiaries in a third country;

c) on aggregate basis, in Romania:

(i) the amount held in subsidiaries from third countries out of the own funds, on consolidated basis, of the parent investment firm (SSIF) in Romania, benefitting from the exercise of the option provided under Article 7 Paragraph (3) of EU Regulation No. 575/2013;

(ii) the percentage represented by the own funds held in subsidiaries from third countries out of the own funds on consolidated basis, of the parent investment firm (SSIF) in Romania, benefitting from the exercise of the option provided under Article 7 Paragraph (3) of EU Regulation No. 575/2013;

(iii) the percentage represented by the own funds held in subsidiaries from third countries out of the total own funds required pursuant to Article 92 of EU Regulation No. 575/2013, based on the consolidated situation of the parent investment firm (SSIF) in Romania, benefitting from the exercise of the option provided under Article 7 Paragraph (3) of the regulation mentioned.

Art. 131. – If ASF exercises the option provided under Article 9 Paragraph (1) of EU Regulation No. 575/2013, then it shall publish the information provided under Art. 130 hereunder, which shall apply accordingly.

CHAPTER II

Qualified Holdings Outside the Financial Sector

Art. 132. – For qualified holdings in entities outside the financial sector, which exceed the limits provided by Article 89 Paragraphs (1) and (2) of EU Regulation No. 575/2013, the treatment provided under Article 89 Paragraph (3) point a) of that regulation shall apply.

CHAPTER III

Reporting for Each Separate Country

Art. 133. – (1) Each investment firm (SSIF) must publish annually, as of 1 January 2015, the following consolidated information for the financial year, apportioned for each Member State and for each third country where that investment firm (SSIF) has been established:

a) the name, nature of activities and geographical location;

b) the turnover;

c) the number of employees with full-time equivalent employment;

d) profit or loss before taxation;

e) income tax or loss;

f) public subsidies granted.

(2) Notwithstanding the provisions of Para (1), each investment firm (SSIF) must publish the information provided under Para (1) Letters a), b) and c) for the first time on 1 July 2014.

(3) If they are identified at international level as global systemically important institutions, the investment firms (SSIFs) authorised in Romania shall send the information provided under Para (1) Letters d), e) and f) to the European Commission, on a confidential basis, until 1 July 2014.

(4) The information provided under Para (1) must be audited in accordance with Government Emergency Ordinance No. 90/2008 on the statutory audit of annual financial statements and consolidated annual financial statements and public oversight of accounting profession, approved as amended by Law No. 278/2008, as subsequently amended and supplemented, and must be published, if possible, as annexe to the annual financial statements or, where applicable, consolidated annual financial statements of the investment firms (SSIFs) in question.

CHAPTER IV

Public Disclosure of Return on Assets

Art. 134. – Investment firms (SSIFs) shall disclose in their annual reports among the key indicators their return on assets, calculated as their net profit divided by their total balance sheet.

CHAPTER V

Provisions for the Purposes of EU Regulation No. 575/2013

SECTION 1

Calculation of Capital Requirements for Credit Risk under the Standard Approach

Art. 135. – For the purposes of Article 124 Paragraph (2), the first, 2nd and 4th Paragraph of EU Regulation No. 575/2013, the exposure or part of the exposure fully secured by mortgages on commercial residential property provided under Article 126 Paragraph (1) points a) and b) of the same regulation, located in Romania, shall be assigned a risk weight of 100%.

TITLE VI

Transitional and Final Provisions

CHAPTER I

Transitional Provisions

SECTION 1

Own Funds

SUB-SECTION 1.1

Own Fund Minimum Requirements

Art. 136. – In accordance with Article 465 of EU Regulation No. 575/2013, in 2014, the following own fund requirements shall be applied:

a) a Common Equity Tier 1 capital ratio of 4.5%;

b) a Tier 1 capital ratio of 6%.

SUB-SECTION 1.2

Unrealised Gains and Losses Measured at Fair Value

Art. 137. – Unrealised losses measured at fair value, provided under Article 467 Paragraph (1) of EU Regulation No. 575/2013 shall be 100% included in the calculation of the Common Equity Tier 1 items, in accordance with Article 467 Paragraphs (2) and (3) of the same regulation, during the period from 1 January 2015 to 31 December 2017, provided by such article.

Art. 138. – Unrealised gains measured at fair value, provided under Article 468 Paragraph (1) EU Regulation No. 575/2013, shall be excluded in the calculation of the Common Equity Tier 1 items, in accordance with Article 468 Paragraphs (2) and (3) of the same regulation, in the following percentages:

a) 60% during the period from 1 January 2015 to 31 December 2015;

b) 40% during the period from 1 January 2016 to 31 December 2016;

c) 20% for the period from 1 January 2017 to 31 December 2017.

SUB-SECTION 1.3

Application of Deductible Items provided by EU Regulation No. 575/2013

Art. 139. – In accordance with Article 478 Paragraph (1) and Paragraph (3) points a), b), c) and d) of EU Regulation No. 575/2013, the following applicable percentages shall be included in the calculation provided under Article 478 Paragraph (1) of such regulation:

a) 20% for the period from 1 January 2014 to 31 December 2014;

b) 40% for the period from 1 January 2015 to 31 December 2015;

c) 60% for the period from 1 January 2016 to 31 December 2016;

d) 80% for the period from 1 January 2017 to 31 December 2017.

Art. 140. – In accordance with Article 478 Paragraphs (2) and (3) of EU Regulation No. 575/2013, the following applicable percentages shall be included in the calculation provided under Article 478 Paragraph (2) of such regulation:

a) 0% for the period from 1 January 2014 to 31 December 2014;

b) 10% for the period from 1 January 2015 to 31 December 2015;

c) 20% for the period from 1 January 2016 to 31 December 2016;

d) 30% for the period from 1 January 2017 to 31 December 2017;

e) 40% for the period from 1 January 2018 to 31 December 2018;

f) 50% for the period from 1 January 2019 to 31 December 2019;

g) 60% for the period from 1 January 2020 to 31 December 2020;

h) 70% for the period from 1 January 2021 to 31 December 2021;

i) 80% for the period from 1 January 2022 to 31 December 2022;

j) 90% for the period from 1 January 2023 to 31 December 2023.

SUB-SECTION 1.4

Treatment of Minority Interest and Additional Tier 1 and Tier 2 Instruments Issued by Subsidiaries

1. **Recognition in consolidated Common Equity Tier 1 capital of instruments and items that do not qualify as minority interests**

Art. 141. – The elements provided under Article 479 Paragraph (1) of EU Regulation No. 575/2013 shall be included in the calculation of the consolidated common equity, in accordance with Article 479 Paragraphs (3) and (4) of the same regulation, in the following percentages:

a) 80% for the period from 1 January 2014 to 31 December 2014;

b) 60% for the period from 1 January 2015 to 31 December 2015;

c) 40% for the period from 1 January 2016 to 31 December 2016;

d) 20% for the period from 1 January 2017 to 31 December 2017.

2. **Recognition in consolidated own funds of minority interests and qualifying Additional Tier 1 and Tier 2 capital**

Art. 142. – For the purposes of Article 480 Paragraph (1) of EU Regulation No. 575/2013, based on Article 480 Paragraphs (2) and (3) of the same regulation, the following factor shall apply:

a) 0.2 for the period from 1 January 2014 to 31 December 2014;

b) 0.4 for the period from 1 January 2015 to 31 December 2015;

c) 0.6 for the period from 1 January 2016 to 31 December 2016;

d) 0.8 for the period from 1 January 2017 to 31 December 2017.

Art. 143. – During 2014, for the purposes of Article 481 Paragraph (1) of EU Regulation No. 575/2013, based on Article 481 Paragraphs (3) and (5) of the same regulation, unrealised gains measured at fair value, removed 100% from Common Equity Tier 1 items in accordance with the provisions of Article 468 Paragraph (2) of the above mentioned regulation, shall be included in Tier 2 items at 45% of their fair value net of related tax obligations foreseeable as at the reporting date.

Art. 144. – For the purposes of Article 481 Paragraph (1) of EU Regulation No. 575/2013, based on Article 481 Paragraphs (3) and (5) of the same regulation, for the period from 1 January 2014 to 31 December 2017, when calculating total own funds, additional own funds resulting from the application of the alternative modality for determining own funds shall be 0% included.

SUB-SECTION 1.5

Inclusion of Elements/Instruments Not Eligible under EU Regulation No.

575/2013 in the Calculation of Own Funds

Art. 145. – The elements provided under Article 484 of EU Regulation No. 575/2013 shall be included in the calculation of items within Common Equity Tier 1, Additional Tier 1 and Tier 2 items, where applicable, based on Article 486 Paragraphs (5) and (6) of the same regulation in the following percentages, having regard to the provisions of Article 486 Paragraphs (2) to (4) of the above mentioned regulation:

a) 80% for the period from 1 January 2014 to 31 December 2014;

b) 70% for the period from 1 January 2015 to 31 December 2015;

c) 60% for the period from 1 January 2016 to 31 December 2016;

d) 50% for the period from 1 January 2017 to 31 December 2017;

e) 40% for the period from 1 January 2018 to 31 December 2018;

f) 30% for the period from 1 January 2019 to 31 December 2019;

g) 20% for the period from 1 January 2020 to 31 December 2020;

h) 10% for the period from 1 January 2021 to 31 December 2021.

SECTION 2

Treatment of Equity Exposures under the IRB Approach

Art. 146. – For the purposes of Article 495 of EU Regulation No. 575/2013, by way of derogation from the provisions of Part Three, Title II, Chapter 3 of EU Regulation No. 575/2013, until 31 December 2017, certain categories of equity exposures held by investment firms, including Romanian subsidiaries of investment firms authorized in other Member States, as at 31 December 2007 shall be exempt from the IRB treatment.

SECTION 3

Large Exposures

Art. 147. – For the purposes of Article 493 Paragraph (3) of EU Regulation No. 575/2013, for each of the following exposures the share calculated as difference between the value of such exposure and the result of its multiplication by the related weight shall be exempt from the application of Article 395 Paragraph (1) of the same regulation:

a) 0%:

(i) asset items constituting claims on central banks in the form of required minimum reserves held at those central banks which are denominated in their national currencies;

(ii) asset items constituting claims on central governments in the form of statutory liquidity requirements held in government securities which are denominated and funded in their national currencies provided that, at the discretion of the competent authority, the credit assessment of those central governments assigned by a nominated external credit assessment institution is investment grade;

b) 10%, for covered bonds falling within Article 129 Paragraphs (1), (3) and (6) of EU Regulation No. 575/2013, qualifying for the 10% risk weight in accordance with Article 129 Paragraph (4) of the said regulation, and covered bonds in accordance with Article 129 Paragraph (5) point (a) of the same regulation;

c) 20%:

(i) covered bonds falling within Article 129 Paragraphs (1), (3) and (6) of EU Regulation No. 575/2013, qualifying for the 20% risk weight in accordance with Article 129 Paragraph (4) of the said regulation, and covered bonds that fulfil the conditions of Article 129 Paragraph (5) point (b) of the same regulation;

(ii) asset items constituting claims on regional governments or local authorities of Member States where those claims would be assigned a 20% risk weight under Part Three, Title II, Chapter 2 of EU Regulation No. 575/2013 and other exposures to or guaranteed by those regional governments or local authorities, claims on which would be assigned a 20% risk weight under the same provisions;

(iii) asset items constituting claims on and other exposures to investment firms (SSIFs) incurred by investment firms (SSIFs), one of which operates on a non-competitive basis and provides or guarantees loans under legislative programmes or its statutes, to promote specified sectors of the economy under some form of government oversight and restrictions on the use of the loans, provided that the respective exposures arise from such loans that are passed on to the beneficiaries via investment firms (SSIFs) or from the guarantees of these loans;

(iv) asset items constituting claims on and other exposures to institutions, provided that those exposures do not constitute such institutions' own funds, do not last longer than the following business day and are not denominated in a major trading currency;

d) 50%:

(i) covered bonds falling within Article 129 Paragraphs (1), (3) and (6) of EU Regulation No. 575/2013, qualifying for the 50% risk weight in accordance with Article 129 Paragraph (4) of the said regulation, and covered bonds that fulfil the conditions of Article 129 Paragraph (5) point (c) of the same regulation;

(ii) assets items constituting claims on and other exposures to recognised exchanges;

(iii) 50% of medium/low risk off-balance sheet documentary credits and of medium/low risk off-balance sheet undrawn credit facilities referred to in Annexe I to EU Regulation No. 575/2013 and subject to the National Bank of Romania's agreement, 80% of guarantees other than loan guarantees which have a legal or regulatory basis and are given for their members by mutual guarantee schemes possessing the status of investment firm (SSIF).

SECTION 4

Leverage

Art. 148. – For the purposes of Article 499 Paragraph (3) of EU Regulation No. 575/2013, by way of derogation from Article 429 Paragraph (2) of the same regulation, during the period from 1 January 2014 to 31 December 2017, investment firms (SSIFs) may calculate the end-of-quarter leverage ratio where they do not have data of sufficiently good quality to calculate a leverage ratio that is an arithmetic mean of the monthly leverage ratios over a quarter.

SECTION 5

Capital Buffers

Art. 149. – By way of exception from the provisions of Art. 66, the capital conservation buffer may be established as follows:

a) at a level equal to 0.625% of the total value of the risk weighted exposures of the investment firm (SSIF), calculated in accordance with Article 92 Paragraph (3) of EU Regulation No. 575/2013, for the period from 1 January 2016 to 31 December 2016;

b) at a level equal to 1.25% of the total value of the risk weighted exposures of the investment firm (SSIF), calculated in accordance with Article 92 Paragraph (3) of EU Regulation No. 575/2013, for the period from 1 January 2017 to 31 December 2017;

c) at a level equal to 1.875% of the total value of the risk weighted exposures of the investment firm (SSIF), calculated in accordance with Article 92 Paragraph (3) of EU Regulation No. 575/2013, for the period from 1 January 2018 to 31 December 2018.

Art. 150. – By way of exception from the provisions of Art. 67, the countercyclical capital buffer specific to investment firms (SSIFs) may be established as follows:

a) at maximum 0.625% of the total value of the risk weighted exposures of the investment firm (SSIF), calculated in accordance with Article 92 Paragraph (3) of EU Regulation No. 575/2013, for the period from 1 January 2016 to 31 December 2016;

b) at maximum 1.25% of the total value of the risk weighted exposures of the investment firm (SSIF), calculated in accordance with Article 92 Paragraph (3) of EU Regulation No. 575/2013, for the period from 1 January 2017 to 31 December 2017;

c) at maximum 1.875% of the total value of the risk weighted exposures of the investment firm (SSIF), calculated in accordance with Article 92 Paragraph (3) of EU Regulation No. 575/2013, for the period from 1 January 2018 to 31 December 2018.

Art. 151. – (1) During the transition period from 1 January 2016 to 31 December 2018, the application of the requirement regarding the capital conservation plan and the distribution restrictions provided under Arts. 106 to 111 related to investment firms (SSIFs) that do not fulfil the combined buffer requirement shall take into account the requirements under Arts. 149 and 150.

(2) At the recommendation of the cross-institution coordination structure in the field of macroprudential supervision of the national financial system, ASF may order a shorter transition period than the one provided under Art. 149 and Art. 150 and may, therefore, order the activation of the capital conservation buffer and countercyclical capital buffer as of the entry into force of this regulation.

(3) ASF shall publish the decision made according to Para (1) on its own website.

(4) If ASF acts in accordance with Para (2), then it shall inform the relevant parties, including the European Commission, the European Systemic Risk Board, EBA and the relevant college of supervisors, accordingly.

(5) ASF may recognize a decision adopted by a competent authority/designated authority from another Member State similarly to that provided under Para (2).

(6) If ASF acts in accordance with Para (5), then it shall communicate its decision accordingly, to the European Commission, the European Systemic Risk Board, EBA and the college of supervisors.

(7) If ASF implements a shorter transition period for the countercyclical capital buffer, then such shorter period shall only apply for calculating the countercyclical capital buffer specific for investment firms (SSIFs) by investment firms (SSIFs) authorised in Romania.

Art. 152. – (1) The provisions of Arts. 74 to 92 shall apply from 1 January 2016, as follows:

a) 25% of the G-SII buffer, established in accordance with Art. 76, in 2016;

b) 50% of the G-SII buffer, established in accordance with Art. 76, in 2017;

c) 75% of the G-SII buffer, established in accordance with Art. 76, in 2018; and

d) 100% of the G-SII buffer, established in accordance with Art. 76, in 2019.

(2) Investment firms (SSIFs) must draw up an annual report on the measures taken in the field of management of material risks to which they are exposed at individual level and, where applicable, consolidated level.

CHAPTER II

Final Provisions

Art. 153. – Investment firms (SSIFs) shall finalise the steps to comply with the provisions hereof, including as regards the obligation to change their organisational structure and implement/adapt their internal procedures, within 6 months from the date of publication hereof in the Official Journal of Romania, Part I.

Art. 154. – Failure to comply with the provisions hereof shall entail the enforcement of measures and/or sanctions in accordance with the provisions of Art. 284 of Government Emergency Ordinance No. 99/2006, approved as amended and supplemented by Law No. 227/2007, as subsequently amended and supplemented.

Art. 155. – The investment firm (SSIF) which, by virtue of its activity, considers that it does not fall under certain provisions hereof, shall send to ASF the information supporting such opinion.

Art. 156. – (1) This regulation shall enter into force upon its publication in the Official Journal of Romania, Part I.

(2) By way of exception from the provisions of Para (1):

a) Art. 101 Para (1) Letters a) and b) shall enter into force on 1 January 2015;

b) Arts. 66 to 92 and Arts. 106 to 111 shall enter into force on 1 January 2016.

for the President of the Financial Supervisory Authority,

Daniel Dăianu

Bucharest, 20 February 2014

No. 3

ANNEXE

S T A N D A R D I S E D M E T H O D O L O G Y

to Calculate the Potential Change of Economic Value of an Investment Firm (SSIF) further to Changes in Interest Rate Levels

1. To calculate the potential change of economic value of an investment firm (*SSIF*) further to changes in interest rate levels, the following principles must be observed:

a) all non-trading book assets and liabilities and all non-trading book off-balance sheet items which are sensitive to changes in interest rates -including all interest rate derivative instruments -, less off-balance sheet assets, liabilities and items which the investment firm (SSIF) has decided to exclude according to its internal policies referred to under Art. 34 of the regulation shall be assigned to the maturity bands stipulated in the table. The assignment to maturity bands shall be made separately for each currency in which more than 5% of the non-trading book assets or liabilities are expressed;

b) balance sheet items shall be treated at the value at which they are recorded in accounting;

c) fixed-rate interest instruments shall be assigned according to the residual period up to maturity, and floating-rate interest instruments according to the residual period up to the following re-pricing date;

d) exposures that pose practical processing issues as a result of their large number and relatively low individual value, such as mortgage loans or instalment loans, may be assigned based on statistically supported estimation methods;

e) *core deposits* shall be assigned according to an estimated maturity of maximum 5 years;

f) derivative instruments shall be converted to positions on the relevant underlying instrument shall be converted to positions on the relevant underlying instrument. The values taken into account shall be either the underlying value, or the notional principal amount;

g) futures and forward contracts, including forward rate agreements – FRA, shall be treated as a combination between a long and a short position. The maturity of a futures contract of an FRA shall mean the period until delivery or execution of the contract, to which, where applicable, the useful life of the underlying instrument shall be added;

h) swaps shall be treated as two notional positions with relevant maturities. Thus, an interest rate swap where an investment firm (SSIF) receives a floating-rate interest and pays a fixed-rate interest shall be treated as a long position in the floating-rate interest whose maturity shall be equivalent to the period up to the following date of establishment of the interest rate, and as a short position in fixed-rate interest whose maturity shall be equivalent to the residual life of the swap. The distinct segments of a cross currency swap shall be assigned to the relevant maturity bands for the corresponding currencies;

i) options shall be taken into account according to the delta equivalent corresponding to the underlying instrument or its notional.

2. The calculation process consists of 5 steps:

a) the first step shall be to offset the long and short positions in each maturity band, resulting in a single short or long position in each maturity band;

b) the second step shall be to weight these resulting long and short positions by the weighting factors indicated in the table, which reflect the sensitivity of the positions in the different maturity bands to an assumed change in interest rates;

c) the third step shall be to sum the resulting weighted positions, offsetting short and long positions, leading to the net, short or long, weighted non-trading book position in a given currency;

d) the fourth step shall be to calculate the weighted position for the entire book, exclusive of the trading book, by summing the net, short or long, weighted positions for the different currencies;

e) the fifth step shall be to relate the weighted position for the entire book, exclusive of the trading book, to the own funds of the investment firm (SSIF).

Table

Maturity band	Middle of maturity band	Approximation of changed period	Assumed change in yield	Weighting factor
1	**2**	**3**	**4**	**5=3*4**
Up to one month, inclusively	0.5 months	0.04 years	200 basis points	0.08%
Between 1 and 3 months, inclusively	2 months	0.16 years	200 basis points	0.32%
Between 3 and 6 months, inclusively	4.5 months	0.36 years	200 basis points	0.72%
Between 6 and 12 months, inclusively	9 months	0.71 years	200 basis points	1.43%
Between 1 and 2 years, inclusively	1.5 years	1.38 years	200 basis points	2.77%
Between 2 and 3 years, inclusively	2.5 years	2.25 years	200 basis points	4.49%
Between 3 and 4 years, inclusively	3.5 years	3.07 years	200 basis points	6.14%
Between 4 and 5 years, inclusively	4.5 years	3.85 years	200 basis points	7.71%
Between 5 and 7 years, inclusively	6 years	5.08 years	200 basis points	10.15%
Between 7 and 10 years, inclusively	8.5 years	6.63 years	200 basis points	13.26%
Between 10 and 15 years, inclusively	12.5 years	8.92 years	200 basis points	17.84%
Between 15 and 20 years, inclusively	17.5 years	11.21 years	200 basis points	22.43%
More than 20 years	22.5 years	13.01 years	200 basis points	26.03%