Capital Market Law No. 297/28 June 2004

-Consolidated version-[1]

in force as of 29 July 2004

***consolidated as at 22 September 2016**, based on the publication in the Official Journal, Part I No. 571 of 29 June 2004, including the amendments made by the following acts: Law 208/2005; Government Ordinance 41/2005; Law 11/2012; Government Emergency Ordinance 32/2012; Law 167/2012; Law 187/2012; Government Emergency Ordinance 90/2014, Law 312/2015.*

Last amendment as at 14 December 2015

The Parliament of Romania hereby adopts this law.

TITLE I
GENERAL PROVISIONS

Art. 1

(1) This law regulates the establishment and operation of financial instruments markets, with the institutions and operations specific thereto, and of the undertakings for collective investment, in order to raise capital through investments in financial instruments.

(2) This law applies to the activities and operations referred to in Para (1), performed on the Romanian territory.

(3) The National Securities Commission, hereinafter referred to as NSC is the competent authority which applies the provisions hereof by exercising the prerogatives established in its Statute.

(3^1) In exercising the tasks laid down in its Statute, the Financial Supervisory Authority, hereinafter referred to as ASF, may be a training, vocational training and continuing professional development provider, assessor of work-related skills in the capital market. ASF shall also automatically recognise the diplomas, certifications and certificates issued by international bodies.

(4) The provisions hereof shall not apply to the money-market instruments, which are regulated by the National Bank of Romania, and to the government securities which are issued by the

Ministry of Public Finance, if the issuer chooses to trade such instruments on a market other than the regulated market, as defined according to Art. 125.

(5) The provisions hereof shall not apply in the case of public debt management where the National Bank of Romania, the central banks of the Member States and other national entities from the Member States with similar functions thereto, the Ministry of Public Finance, as well as other public entities, are involved.

Art. 2

(1) For the purposes of this Law, the terms and expressions below shall have the following meanings:

1. *significant shareholder* – any natural, legal person or group of persons acting in concert with and directly or indirectly holding an equity interest of at least 10% of the share capital of a trading company or of the voting rights therein, or an equity interest allowing for the exercise of a significant influence on the decisions made in the general meeting or in the board of administration, as the case may be;

1[1] *tied agent* – any natural or legal person that, under the full and unconditional responsibility of one investment firm on behalf of which it acts under a contract, promotes to clients or prospective clients investment services and/or non-core services, takes over and transmits the instructions or orders from clients regarding financial instruments or investment services, invests financial instruments and/or provides clients or prospective clients with advice regarding such instruments or services;

1[2] *professional client* – any client having the experience, knowledge and capacity to make the investment decision and to assess the risks therein; to be deemed a professional, the client shall classify into the categories set out in the regulations issued by NSC and meet the criteria provided in such regulations, in compliance with the European rules;

2. *netting* – the conversion into one net claim or one net obligation of claims and obligations resulting from transfer orders which a participant or participants either issue to, or receive from, one or more other participants with the result that only a net claim may be demanded or a net obligation be owed;

3. *joint investment business* – any investment business carried out for the account of two or more persons or over which two or more persons have rights that may be exercised by means of the signature of one or more of those persons;

[1] The text has not been republished in the Official Journal of Romania in its consolidated form; it is for information purposes only. ASF does not assume any liability for any legal consequences resulting from the use of this text

4. *issuer* – any entity with or without legal personality which issued, issues or intends to issue financial instruments;

5. *regulated entities* – any natural and legal persons , and the entities without legal personality, whose activity is regulated and/or supervised by NSC;

6. *subsidiary* – any trading company where there is an associate or a shareholder in any of the situations provided in Item 27;

6^1 *investment firm* – any legal person whose regular business is the provision of one or more investment services to third parties and/or the conduct of one or more investment activities on a professional basis, as set out in Art. 5(1), including the investment firms defined in Art. 6;

7. *investment fund* – any undertaking for collective investment without legal personality;

8. *open-end investment fund (common fund)* – any undertaking for collective investment in transferable securities, without legal personality, whose fund units are subject to continuous issuing and repurchasing;

9. *group* – any group of trading companies formed of a parent company, its subsidiaries and entities in which the parent company or its subsidiaries hold an equity participation, and the trading companies linked to each other through a relationship which requires the consolidation of the accounts and of the annual report;

9^1. *essential information* – any fundamental and appropriately structured information which must be provided to investors to allow them to understand the nature and the risks related to the issuer, guarantor and securities which are offered to them or which are admitted to trading on a regulated market and, without prejudice to Art. 184, (4), Letter b), to decide on the offers of securities to be taken into account. As regards the offer and the securities at issue, the essential information shall include the following elements:

(i) a short description of the risks associated with the issuer and prospective guarantors and of their main features, including assets, liabilities and financial standing;

(ii) a concise description of the associated risks and essential features of the investment in the securities at issue, including any rights related to such securities;

(iii) the general conditions of the offer, including the estimated expenses charged to the investor by the issuer or offeror;

(iv) the details regarding the admission to trading;

(v) the grounds of the offer and the intended destination of the income resulting from the offer;

10. *credit institution* – any entity defined in accordance with Art. 1 of Law No. 58/1998 on banking activity, as subsequently amended and supplemented;

11. *financial instruments* shall mean*:*

a) securities;

b) money-market instruments;

c) units of undertakings for collective investment;

d) options, futures contracts, swaps, forward interest-rate agreements, forward exchange rate, and any derivative contracts in connection with securities, currencies, interest rates or profitability or other derivatives, financial indices or financial ratios, which may be physically settled or in monetary funds;

e) options , futures contracts, swaps, forward interest-rate agreements (one rate) and any other derivative contracts in connection with commodities which must be settled in monetary funds, or may be settled in monetary funds, at the request of any party (other than in the case of default or other incident leading to termination);

f) options, futures contracts, swaps and any other derivative contracts in connection with commodities and which may be physically settled, provided that they are traded on a regulated market and/or within an alternative trading system;

g) options, futures contracts, swaps, forward contracts and any other derivative contracts in connection with commodities, which may be physically settled, not included in the category of those referred to in Letter f) and not having commercial purposes, having the features of other derivatives, taking into account, *inter alia*, whether they are compensated

and settled through recognized clearing houses or are regularly subject to margin calls;

h) derivative instruments for the transfer of credit risks;

i) financial contracts for difference;

j) options, futures contracts, swaps, forward interest-rate agreements, forward exchange rate any other derivative contracts in connection with climatic variables, freight, approvals for emissions of substances or inflation rates or other official economic ratios, which must be settled in monetary funds or may be thus settled at the request of any party (other than in the case of default or other incident leading to termination), and also any derivative contracts in connection with assets, rights, obligations, indices or ratios, not included in this definition, having the features of other derivative financial instruments taking into account, *inter alia*, whether they are traded on a regulated market or within alternative trading systems and are compensated and settled through recognized clearing houses or are regularly subject to margin calls;

k) other financial instruments qualified as such in accordance with the European legislation;

12. *derivative financial instruments* – the instruments defined under Item 11 Letters d)-j);

13. *money-market instruments* – any financial instruments which are normally traded on the monetary market;

14. *intermediaries* – any investment firms and services authorised by NSC, credit institutions authorised by the National Bank of Romania, in accordance with the applicable banking legislation, and entities similar thereto authorised in Member or non-Member States to supply investment services and activities similar to those provided in Art. 5;

15. *qualified investors* – any persons or entities that, according to NSC's regulations*:*

a) belong to the category of professional clients;

b) are treated, upon request, as professional clients or are recognized as eligible counterparties, unless they requested not to be treated as professional clients.

16. *close links* – any situation in which two or more natural or legal persons are linked by either:

a) participation, which means the ownership, direct or by way of control, of 20 % or more of the voting rights or capital of a trading company;

b) control, which means the relationship between a parent company and a subsidiary or a similar relationship between any natural or legal person and a trading company; any subsidiary of a subsidiary shall be deemed as a subsidiary of the parent company, which is in fact the entity controlling such subsidiaries; a close link means also any situation in which two or more natural or legal persons are permanently linked by the same person through a control relationship;

17. *offeror or person making an offer* – any legal or natural person which offers securities to the public or offers itself to purchase securities;

18. *offer of securities to the public* – means a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable the investor to decide to sell, purchase or subscribe to these securities. This definition shall also be applicable to the placing of securities through financial intermediaries.

19. *takeover bid* – any public purchase offer resulting, for the one making it, in the purchase of more than 33% of the voting rights over a trading company ;

19[1] *independent operator* – any intermediary which on an organised, frequent and systematic basis concludes transactions on its own account by executing the orders of its clients outside the regulated markets or alternative trading systems;

20. *undertakings for collective investment* – the organised entities, with or without legal personality, hereinafter referred to as UCI, which publicly or privately raise financial resources of natural and/or legal persons, to invest them in accordance with the provisions of this law and of the NSC's regulations;

20[1] *qualifying holding* – any direct or indirect holding in an investment firm (SSIF) of at least 10% of the share capital or of the voting rights or which makes it possible to exercise a significant influence over the management of an investment firm (SSIF) in which such holding subsists;

21. *person* – any natural or legal person;

22. *persons involved:*

a) persons controlling or under the control of an issuer or joint control;

b) persons directly or indirectly participating in the conclusion of certain agreements to obtain or exercise the voting rights jointly, if the shares, object of the contract, may grant a controlling position;

c) natural persons within the issuing company having management or control duties;

d) spouses, relatives and in-laws up to the second degree of the natural persons referred to in Letters a) to c);

e) persons which may appoint the majority of the members of the board of administration within an issuer;

23. *persons acting in concert* – two or more persons bound by an explicit or tacit agreement to carry out a common policy regarding an issuer. Until contrary evidence is produced, the following persons are presumed to act in concert:

a) the persons involved;

b) the parent company together with its subsidiaries, and any of the subsidiaries of the same parent company among themselves;

c) a trading company with the members of its board of administration and with the persons involved, and such persons among themselves;

d) a trading company with its pension funds and with the management company of such funds;

24. *repealed*;

25. *offering programme* – any plan which would permit the issuance of non-equity securities, within a certain period of time, in a continuous and repeated manner during a specified issuing period;

26. *alternative trading system* – a system that matches buyers and sellers of financial instruments, in a manner leading to the conclusion of contracts, also called multilateral trading system;

27. *parent company* – any legal person, shareholder or associate of a trading company, in any of the following situations:

a) directly or indirectly holds the majority voting rights in the company;

b) may appoint or revoke the majority of the members of the management or control bodies or other decision-makers in the company;

c) may exercise a significant influence over the entity in which it is a shareholder or associate, based on certain clauses included in the contracts concluded with such entity or based on certain provisions included in such entity's instruments of incorporation;

d) is a shareholder or an associate of an entity and:

1. appointed by itself, as a result of exercising its voting rights, the majority of the members of the management or control bodies or the majority of the directors of the subsidiary in the last two financial years, or

2. controls on its own, under a contract concluded with the other shareholders or associate, the majority of the voting rights;

28. *Member States* – the Member States of the European Union and the other states belonging to the European Economic Area;

29. *home Member State:*

a) the Member State where the registered headquarters of the investment firm or the management company is located; if, under its national law, the company does not have a registered headquarters, the home Member State is that where its head office is located;

b) the Member State where the registered headquarters of the company managing a trading system is located; if, under its national law, the company does not have a registered headquarters, the home Member State is that where its head office is located;

c) the Member State where the registered headquarters of the management company of an undertaking for collective investment in securities established as an open-end investment fund is located, and the Member State where the registered headquarters of the investment company is located, in the case of an undertaking for collective investment in securities established as an investment company;

30. *host Member State:*

a) the Member State where an investment firm or an investment management company has its branch or carries out its activity;

b) the Member State, other than the home Member State of such undertaking for collective investment in securities, where securities issued by it are traded;

31. *branch* – any organised structure, with no separate legal personality of a trading company, supplying one or all of the services for which the company was authorised, according to the mandate given by it. All headquarters established in Romania by a company with its registered headquarters or head office located in a Member State shall be treated as a single branch;

32. *units* – fund units or shares issued by the undertakings for collective investment according to their legal form;

33. *securities:*

a) shares issued by trading companies and other securities equivalent to shares in companies, negotiated on the capital market;

b) bonds and other forms of securitised debts, including government securities, negotiable on the capital market;

c) any other negotiable securities, which carry the right to acquire any such securities by subscription or exchange, resulting in a cash settlement, except for payment instruments;

34. *equity securities* – shares and other securities equivalent to shares, and any other type of securities, which carry the right to acquire the same following a conversion or the exercise of this right, to the extent that the securities from the second category are issued by the same issue or by an entity belonging to the group of such issuer;

35. *non-equity securities* – all securities which are not equity securities;

36. *securities issued in a continuous or repeated manner* – securities of a similar type and/or class issued continuously or at least two separate issues of securities over a period of 12 months;

37. *individual portfolio management* – managing portfolios in accordance with mandates given by clients on a discretionary client-by-client basis where such portfolios include one or more financial instruments;

(2) NSC may issue, *ex officio* or at the request of any party concerned, administrative acts including reasoned opinions on the qualification of any person, institution, situation, information, operation, legal act or negotiable instruments regarding their inclusion in or exclusion from the scope of the terms and expressions having the meaning laid down in Para (1).

(3) If any natural or legal person deems that its rights acknowledged by law were prejudiced through an administrative act or through the unjustified refusal of NSC to accommodate its request on a right acknowledged by law, then such natural or legal person may file a legal action to the Administrative Disputes Section of the Bucharest Court of Appeal.

(3^1) NSC's acts are enforceable.

(4) The failure to accommodate the petitioner's request within the terms provided by the legislation in force, from the registration date of such request, shall also be deemed as unjustified refusal to accommodate the request on a right acknowledged by law.

(4^1) ASF shall carry out supervisory, investigative and control tasks and, for that purpose, ASF may act in any of the following manners: directly, in cooperation with other market entities, or with other authorities through referral to the competent judicial bodies.

(5) To carry out its supervisory, investigative and control tasks, ASF may:

a) verify the manner of fulfilment of the legal and statutory duties and obligations of the administrators, directors, chief executive officers, and of other persons in connection with the activity of the regulated entities;

b) request the board of administration of the regulated entities referred to in Letter a) to call its members or the general meeting of shareholders, as the case may be, establishing the topics of the agenda;

c) request the competent court to order the call of the general meeting of shareholders if the provisions of Letter b) are not observed. The court shall settle such requests as a matter of urgency and with priority;

d) request information and/or examine any documents, obtain copies, excerpts and collect documents of the regulated entities, of the issuers or of other entities carrying out activities or operations in connection with the capital market and financial instruments;

e) conduct inspections and/or controls at the headquarters of the regulated entities and of those carrying out activities or operations in connection with the capital market and financial instruments and request, if required, assistance of the competent institutions/authorities/bodies to exercise such right;

f) hear any person and request information in connection with the activities carried out by such person on the capital market and/or in connection with requests for assistance made by authorities similar to ASF, on the basis of the international agreements to which ASF is a signatory;

g) seal any premises of entities carrying out activities or operations in connection with the capital market where documents or other records relating to their work are stored, during the investigation and to the extent that it is necessary to do so;

h) order the necessary measures so that entities carrying out activities or operations in connection with the capital market and financial instruments comply with the provisions of this law, of ASF's regulations and of the other legislative acts on the capital market;

i) require the cessation of any activity that is contrary to the provisions of this law, of ASF's regulations and of the other legislative acts on the capital market;

j) temporarily prohibit the pursuit of business;

k) request information from the auditors of the entities carrying out activities or operations in connection with the capital market and financial instruments;

l) suspend transactions in financial instruments and/or withdraw financial instruments from trading;

m) refer the matter to the competent judicial bodies;

n) request regulated entities and those carrying out activities or operations in connection with the capital market and financial instruments to allow verification by auditors or experts, at their reasoned request;

o) request and be entitled to receive from credit institutions authorised by the National Bank of Romania the information necessary for ASF's investigations and to respond to the requests for assistance received by ASF on the basis of the international agreements to which ASF is a signatory.

(6) The NSC Registry, kept in accordance with the provisions hereof, is public.

(7) The unauthorised supply of any activities falling under the provisions of this law, the unauthorised use of the terms *investment services and activities*, *investment firm*, *investment services and activities agent*, *investment management company*, *investment company*, *open-end investment fund*, *regulated market* and *stock exchange*, associated to any of the financial instruments defined under Para (2), Item 11, to commodities, or of any combination of such terms, in breach of the legal conditions shall incur liability according to law.

TITLE II
INTERMEDIARIES

CHAPTER I
General Provisions

Art. 3

(1) The investment services and activates referred to in Art. 5 underlying the financial instruments defined under Art. 2 (1) Item 11, may be supplied under a professional title exclusively by the intermediaries defined under Art. 2 (1) Item 14.

(2) The intermediaries supplying investment services and activities in Romania shall be registered in the NSC's Registry, as follows:

a) the investment firms and intermediaries in non-Member States, based on the authorisation granted by NSC;

b) the credit institutions, authorised by the National Bank of Romania;

c) the equivalent of credit institutions and of investment firms, authorised by the competent authorities of the Member States.

(3) The intermediary shall mention in all of the official documents, in addition to its identification data, the number and date of registration with the NSC's Registry.

(4) The rights granted by this title may not extend over the services supplied as counterparty of the State, of the National Bank of Romania or of other public institutions and authorities fulfilling similar duties in connection with the monetary policy, exchange rate, public debt and State reserves management.

(5) The provisions of Chapters V and IX, and of Art. 23, (4), Arts. 24, 25 and 42(1) and (2) shall apply to credit institutions accordingly, while NSC shall supervise the compliance therewith.

(6) The National Bank of Romania shall supervise the compliance with the authorisation conditions and with the capital adequacy requirements of credit institutions.

Art. 4

(1) Investment services and activities shall be carried out through natural persons, acting as investment services and activities agents. They shall perform their activity exclusively on behalf of their intermediary employer and may not supply investment services and activities on their own account.

(1^1) Investment firms (SSIFs) may delegate the following activities to tied agents:

a) promotion of investment services and/or non-core services;

b) reception and transmission of orders from clients or prospective clients;

c) provision of investment advice in connection with the financial instruments and investment services and/or non-core services provided by investment firms (SSIFs).

(2) No natural or legal person may supply investment services and activities without being registered in the NSC's Registry.

(3) NSC shall issue regulations on the authorisation and registration of investment services and activities agents and tied agents in the NSC's Registry, and on their incompatibility cases, according to law.

CHAPTER II
Investment Services and Activities

Art. 5

(1) The investment services and activities regulated by this law are the following:

a) the reception and transmission of orders for one or more financial instruments;

b) the execution of orders on behalf of clients;

c) dealing on own account;

d) portfolio management;

e) investment advice;

f) underwriting and/or placing financial instruments based on a firm commitment;

g) placing financial instruments without a firm commitment;

h) administration of an alternative trading system.

(1^1) The non-core services regulated by this law are the following:

a) safekeeping and administration of financial instruments for the account of clients, including custodianship and related services, such as cash/collateral management;

b) granting credits or loans to an investor, to allow him to carry out a transaction in one or more financial instruments, where the investment firm granting the credit or loan is involved in the transaction;

c) advice to entities on capital structure, industrial strategy and related matters, and advice and services relating to mergers and purchase of entities;

d) foreign exchange services in connection with the investment services rendered;

e) investment research and financial analysis or other forms of general recommendation on trading with financial instruments;

f) services related to underwriting of financial instruments based on a firm commitment;

g) the investment services and activities referred to in Para (1), and also the non-core services such as those provided in Letters a) to f) related to the underlying asset of the derivative instruments included in Art. 2, (1), Item 11, Letters e), f), g) and j), if such are in connection with the provisions regarding the investment services and activities and non-core services.

(2) NSC shall issue regulations regarding the services and activities supplied in accordance with Para (1).

CHAPTER III
Investment Firms

Art. 6

(1) Investment firms, hereinafter referred to as SSIFs, are Romanian legal persons, established as joint-stock companies, issuers of registered shares, according to Company Law No. 31/1990, republished, as subsequently amended and supplemented.

(2) Investment firms (SSIFs) operate only based on the NSC authorisation and render, under a professional title, according to the authorisation granted, the investment services and activities, and also the non-core services referred to in Art. 5 and other activities which, according to the regulations to be issued by NSC or according to the provisions of Art. 776 of Law No. 287/2009 regarding Civil Code, republished, as subsequently amended, may be rendered by investment firms (SSIFs).

(3) The activities that, according to the regulations to be issued by NSC or according to the provisions of Art. 776 of Law No. 287/2009, republished, as subsequently amended, are subject to authorizations, approvals or endorsements may be carried out by investment firms (SSIFs) only after obtaining such authorizations.

(4) NSC supervises investment firms (SSIFs) only with regard to the object of activity authorised by such.

Section 1
Initial Capital

Art. 7

(1) The initial capital of investment firms (SSIFs) shall be determined in compliance with the regulations of the European Union, and may consist of one or more of the elements referred to in Points a) to e) of Article 26(1) 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.

(2) SSIFs that do not deal on own account or do not subscribe as part of the issues of financial instruments on the basis of a firm commitment, but hold the money and/or the financial instruments of clients and provide one or more services as set out in Art. 5(1), Letters a), b) and d) shall have an initial capital equal to the RON equivalent of EUR 125,000.

(3) SSIFs that do not deal on own account or do not subscribe as part of the issues of financial instruments on the basis of a firm commitment, and do not hold the money and/or the financial instruments of clients, but provide one or more services as set out in Art. 5(1), Letters a), b) and d) shall have an initial capital equal to the RON equivalent of EUR 50,000.

(4) SSIFs that do not hold the money and/or the financial instruments of clients and which for that reason may not at any time place themselves in debt with those clients and provide one or more services as set out in Art. 5(1), Letters a), d) and e) shall have:

a) a level of the initial capital equal to the RON equivalent of EUR 50,000; or

b) a professional indemnity insurance covering the whole territory of the European Union or some other comparable guarantee against liability arising from professional negligence, representing at least EUR 1,000,000 applying to each claim and in aggregate EUR 1,500,000 per year for all claims; or

c) a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to in Letters (a) or (b).

(5) SSIFs, other than those referred to in Paras (2), (3) and (4), shall have an initial capital equal to the RON equivalent of EUR 730,000.

(6) By way of exception from the provisions of Paras (2) and (3), SSIFs authorised to carry out the activity set out in Art. 5(1), Letter b), may hold financial instruments for their own account if the following conditions are met:

a) such positions arise only as a result of the SSIF's failure to execute investors' orders precisely;

b) the total market value of all such positions is subject to a ceiling of 15 % of the SSIF's initial capital;

c) the SSIF meets the requirements laid down in Arts. 92 to 95 and in Part IV of Regulation (EU) 575/2013;

d) such positions are incidental and provisional in nature and strictly limited to the time required to carry out the transaction in question.

(7) The holding by a SSIF of non-trading-book positions in financial instruments in order to invest own funds shall not be considered as dealing on own account in relation to the provisions of Paras (2), (3) and (4).

(8) ASF is authorised to amend, by decision of ASF's Board, the level of the initial capital of a SSIF, in order to ensure compliance with the requirements provided by the EU law.

(9) The RON value of the initial capital of SSIFs, determined in EUR in accordance with this article, shall be established by conversion of the amounts in EUR, based on the exchange rate set on the first working day of October of the previous year, published in the Official Journal of the European Union.

Section 2
Authorization, Suspension and Withdrawal of Authorisation

Art. 8

(1) Investment firms (SSIFs) shall be authorised by NSC to supply investment services and activities, provided that they cumulatively fulfil the following conditions:

a) the firm is established in the legal form of a joint-stock trading company;

b) the registered headquarters and the head office, as the case may be, representing the main place of business where the activity is managed and controlled, are located in Romania;

c) its object of activity consists of the supply of investment services and activities, and also the supply of non-core services, as the case may be, provided in Art. 6, supplied by the firm;

d) the qualification, professional experience and integrity of administrators, directors, auditors and persons within the internal control compartment are in compliance with the provisions of the NSC's regulations;

e) evidence attesting to the existence of the minimum initial capital, subscribed and fully paid in cash, according to the investment services and activities which shall be supplied;

f) submission of the business plan, description of the organisational chart and of the internal regulations;

g) submission of the contract concluded with a financial auditor, member of the Romanian Chamber of Financial Auditors (CAFR) and which fulfils the common criteria established by NSC and the Romanian Chamber of Financial Auditors;

h) the shareholders holding a qualifying holding in investment firms (SSIFs) meet the criteria established by the NSC's regulations on the procedure, rules and criteria applicable to the prudential assessment of acquisitions and increase of the holdings in an investment firm;

i) other requirements provided in the NSC's regulations.

(1^1) The persons who are members of the board of administration/supervisory board of a SSIF may also be members of the board of administration/supervisory board of no more than two entities authorised by ASF.

(2) The authorisation granted by NSC to an investment firm (SSIF) shall expressly mention the investment services and activities that it may supply according to the provisions of Art. 5(1) Items 1 and 3 and may not include exclusively the non-core services mentioned in Art. 5(1) Item 2.

(3) If close links exist between the investment firm (SSIF) and another natural or legal person, NSC shall grant the authorisation to supply financial services and activities to such the investment firm (SSIF) only if such close links do not prevent the performance of the supervisory duties in compliance herewith.

(4) NSC shall grant the authorisation to the investment firm (SSIF) within maximum six (6) months from the delivery of the complete documentation provided by the regulations in force, or shall issue, if the request is rejected, a reasoned decision which may be challenged, within thirty (30) days from its communication date.

(5) The investment firm (SSIF) may start its activity as of the issuance date of the authorisation, provided that it acquires membership in the Investor Compensation Fund.

Art. 9

The investment firm (SSIF) shall observe the authorisation conditions, the prudential and capital adequacy requirements as provided herein and by the NSC's regulations throughout its activity, and shall notify or first submit for authorisation, as the case may be, any change in its organisation and operation manner, according to the provisions of the NSC's regulations.

Art. 10

NSC has the right not to grant the authorisation for the supply of investment services and activities to a trading company, if:

a) insolvency proceedings were initiated, according to law;

b) any of its significant shareholders, member of the board of administration or directors of the firm:

1. are incompatible as provided in the NSC's regulations, or holds a significant position in a trading company falling under the provisions of Letter a);

2. is incapacitated or was convicted for crimes against the patrimony by breach trust, crimes of corruption, embezzlement, crimes of forged documents, tax evasion, crimes provided by Law No. 656/2002 for the prevention and sanctioning of money laundering, and taking measures to prevent and combat terrorism financing, republished, or crimes provided herein;

3. was sanctioned by NSC, the National Bank of Romania, the Insurance Supervisory Commission or by any other financial market regulator by being

prohibited from carrying out any professional activity throughout the period such prohibition is applicable;

c) NSC acknowledges that the legal provisions, the regulations issued for their enforcement, or the administrative regulations of the non-Member State governing the status of the persons with close links with the investment firm (SSIF), or the difficulties in implementing such provisions, prevent the efficient prudential supervision, or that the supervision in the non-Member State of a foreign intermediary which requested the authorisation of a branch is insufficient;

d) NSC was not informed of the identity of the natural and/or legal person shareholders directly or indirectly holding significant positions in the investment firm (SSIF), or of the value of such shareholders' holdings;

e) NSC acknowledges that the natural or legal person shareholders directly or indirectly holding significant positions in the investment firm (SSIF) do not comply with the requirements of ensuring a sound and prudential management of the investment firm (SSIF) and an efficient prudential supervision in accordance herewith.

f) the applicant firm does not have the initial capital provided in the NSC's regulations;

g) although the requirements provided in Art. 8(1) are met, there is evidence that a sound and prudential management of the investment firm (SSIF) may not be ensured.

Art. 11

NSC has the right to suspend the investment firm's (SSIF) authorisation for a period comprised between five (5) and ninety (90) days if the provisions hereof or of the NSC's regulations are breached, provided that the conditions for the withdrawal of the authorisation or for other more serious punishments provided by law are not met. The suspension may be extended upon the expiry of the initial time limit, but no more than thirty (30) days over the maximum time limit referred to in this article.

Art. 12

(1) NSC has the right to withdraw the authorisation to supply investment services and activities to an investment firm (SSIF) provided that:

a) the investment firm (SSIF) did not start performing the investment services for which it was authorised, within twelve (12) months as of the receipt of the authorisation, or did not supply any of the services authorised by NSC, provided in Art. 5(1) item 1,

for a period longer than six (6) months, unless NSC suspended the authorisation for this period;

b) the investment firm (SSIF) no longer fulfils the conditions based on which the authorisation was issued;

c) the investment firm (SSIF) fails to observe the regulations regarding the capital adequacy, established by NSC;

d) the investment firm (SSIF) or its investment services and activities agents fail to observe the NSC's regulations and/or of the regulated markets;

e) if events subsequent to granting the authorisation result in an incompatibility in the supply of investment services and activities;

f) other cases provided by the NSC's regulations.

(2) At the express request of an investment firm (SSIF), and based on a renunciation, NSC shall withdraw the authorisation for the supply of investment services and activities, according to the regulations issued in this respect.

(3) NSC shall cancel the authorisation of an investment firm (SSIF) if such authorisation was obtained based on misrepresentations or false or misleading information.

(4) The investment firm (SSIF), which received the authorisation to supply only the investment services and activities mentioned in Art. 5 Para (1) Letters d) and e), may be authorised to operate UCITS as investment management companies, if they waive the authorisation obtained according to Art. 8.

Art. 13

(1) NSC shall request information and shall consult with the competent authorities of a Member State before authorising an investment firm (SSIF) which is:

a) a subsidiary of an intermediary authorised in that Member State;

b) a subsidiary of the parent company of an intermediary authorised in that state;

c) controlled by the same natural or legal persons that control an intermediary authorised in that Member State.

(2) The competent authorities of the Member States, responsible for supervising credit institutions or insurance undertakings shall be consulted before granting the authorisation to an investment firm (SSIF) which is:

a) a subsidiary of a credit institution or of an insurance undertaking authorised in a Member State;

b) the subsidiary of the parent company of a credit institution or of an insurance undertaking authorised in a Member State;

c) controlled by the same natural or legal persons that control a credit institution or an insurance undertaking authorised in a Member State;

Section 3

Directors, Administrators, Internal Control and Significant Shareholders

Art. 14

(1) The investment firm's (SSIF) management shall be ensured by at least two persons . The directors shall be employees of the investment firm (SSIF) under an individual employment contract and may be members of the board of administration.

(2) The directors shall be the persons who, according to the instruments of incorporation and/or to the decision of the investment firm's (SSIF) statutory bodies, are authorised to manage and coordinate its day-to-day activity and competent to incur the liability of the intermediary; this category shall not include the persons ensuring the direct management of the compartments within the investment firm (SSIF), of the branches and of other secondary headquarters. In the case of branches of the foreign legal person intermediaries supplying investment services and activities on the Romanian territory, the directors shall be the persons authorised by the foreign legal person intermediary to manage the activity of the branch and to legally bind the foreign legal person intermediary in Romania.

(3) The directors shall effectively ensure the current management of the investment firm's (SSIF) activity, exclusively exercise the position in which they were appointed and at least one of them shall attest its knowledge of the Romanian language. They shall be higher education graduates licensed in one of the following fields: economic, legal or in any other field included in financial activity, or post-university graduates of any of such fields, and shall have a minimum three-year experience in the financial-banking or capital market field.

Art. 15

The administration of an investment firm (SSIF) may be ensured exclusively by natural persons.

Art. 16

The investment firm (SSIF) shall organize an internal control compartment specialised in the supervision of the observance by the firm and its personnel of the legislation in force regarding the capital market and of the internal regulations.

Art. 17

The conditions regarding the authorisation of the personnel, the organisation and operation of the internal control compartment shall be provided by the NSC's Regulations.

Art. 18

(1) Any person directly or indirectly intending to purchase shares of an investment firm (SSIF), thereby obtaining a significant position, shall notify NSC in advance, indicating the size of the considered position.

(2) Any significant shareholder intending to increase its holding, so that it reaches or exceeds 20%, 33% or 50% of the share capital or of the total voting rights, or intending that the investment firm (SSIF) becomes one of its branches, shall notify NSC in advance.

(3) NSC shall issue a decision within ninety (90) days from the notification date and, if applicable, may prohibit by such decision that the position is obtained. In case of approval, NSC's decision shall also establish the maximum time limit within which the notified position must be obtained.

(4) Any person intending to decrease, directly or indirectly, its significant position within an investment firm (SSIF) shall notify NSC in advance of the size of the considered position.

(5) Any significant shareholder intending to decrease, directly or indirectly its holding, which represents less than 20%, 33% or 50% of the share capital or of the total voting rights, or having as a result the loss by the investment firm (SSIF) of its capacity as branch, shall notify NSC in advance.

(6) If the person referred to in Paras (1) and (2) is an investment firm (SSIF), a credit institution or an insurance undertaking authorised in a different state, the parent company of an investment firm (SSIF), of a credit institution or of an insurance undertaking authorised in a different state, a natural or legal person which controls an investment firm (SSIF), a credit institution or an insurance undertaking authorised in a different state and if, following that acquisition, the investment firm (SSIF) in which such person intends to purchase shares becomes its branch or is controlled by it, the intention to purchase the shares shall be subject to a prior consultation, as provided in Art. 13.

(7) The investment firm (SSIF) shall inform NSC as soon as it becomes aware of any purchase or alienation of its shares which would cause its holdings to exceed or fall below the levels referred to in Paras (1), (2), (4) and (5).

(8) Periodically, at least annually, the investment firm (SSIF) shall inform NSC of the identity of its significant shareholders and the dimension of their holdings and any other data and information regarding such persons, as required through the NSC's Regulations, as the case may be.

Art. 19

(1) NSC may prohibit a person to obtain a position as referred to in Art. 18(1) and (2) if, considering the necessity to guarantee the prudential administration of the firm, it considers that the person that would hold such position may prejudice the firm's operation under good conditions or an effective supervision thereof.

(2) To verify the integrity of a shareholder of an investment firm (SSIF) or of a person intending to purchase, directly or indirectly, shares of an investment firm (SSIF), NSC may request the supply of identification data of any natural and/or legal person shareholder, holding, directly or indirectly, a significant position.

Art. 20

(1) If the significant shareholders, members of the board of administration, the directors or the personnel of the internal control compartment fail to ensure the prudential administration of the investment firm (SSIF), NSC shall take any measures necessary to remedy the situation, which may refer, among others, to interdictions, punishments against the administrators and/or the management, and against the persons of the internal control compartment.

(2) Similar measures may also be applied to the persons failing to fulfil the obligations referred to in Art. 18(1) and (2).

(3) If a significant position was obtained or decreased without NSC's consent, the related voting rights shall be automatically invalid, and any votes already cast shall be annulled accordingly.

Art. 21

If the influence exercised by the persons referred to in Art. 18(1) and (2) and Art. 20 may prejudice the management of an investment firm (SSIF), NSC shall take measures to suspend the exercise of the voting rights related to the shares held by such shareholders.

CHAPTER IV
Prudential Rules

Art. 22

To protect investors, ensure stability, competitiveness and effective operation of markets, NSC shall issue regulations on prudential requirements and capital adequacy for the correct assessment of risks to prevent and mitigate their effects.

Art. 23

(1) The intermediaries authorised by NSC shall submit their financial statements and periodical reports.

(2) NSC shall issue regulations on the contents, form and time limits for the submission of the reports referred to in Para (1).

(3) NSC may verify the truthfulness of the data mentioned in the financial statements and periodical reports, through inspections.

(4) The intermediaries shall keep, for a period of at least five (5) years, the information and data regarding the investment services and activities supplied according to the provisions of Art. 5, regarding the financial instrument dealt, irrespective of whether such transactions were carried out on a market regulated or not.

Art. 24

(1) The intermediaries shall observe at any moment, throughout their activity, the prudential rules established by NSC. Such prudential rules shall refer, but shall not be limited, to the following:

a) appropriate administrative and accounting procedures, control and safety procedures for the electronic data processing, and adequate internal control mechanisms, including rules regarding the personal transactions of the employees;

b) appropriate procedures ensuring the separation between the financial instruments belonging to the investors and those of the intermediary, to protect their ownership rights, especially in the case of the intermediary's insolvency, and also against the use of such financial instruments by the intermediaries on their own account, unless expressly approved by investors;

c) appropriate procedures ensuring the separation among investors' funds to protect the ownership right, except for credit institutions, to prevent the use of such funds in the firm's interest;

d) maintenance of the records of the transactions carried out, to allow NSC to supervise the observance of the prudential rules, the rules of business conduct and of other legislative and regulatory requirements;

e) existence of an organisational structure which shall mitigate the risk of a conflict of interest between the investor and the intermediary, or among the investors of the same intermediary. If a branch is established, its organisational structure shall not contravene the rules of conduct to avoid the conflict of interest, established by the host Member State.

(2) The creditors of an intermediary may not use investors' assets in any manner whatsoever, including in the case of insolvency. An intermediary may not use the financial instruments of a client to carry out the transactions concluded on its own account or on the account of a different client, unless previously agreed by such client in writing. The funds of a client may be used to carry out the transactions concluded on its own account only by credit institutions.

(3) Investors' assets shall be exempted from the enforcement through garnishment if the enforcement was initiated against the intermediary.

Art. 25

Before supplying investment services and activities, the intermediaries shall inform the investors of the investor compensation funds or schemes.

CHAPTER V
Rules of Conduct

Art. 26

(1) The intermediaries and the investment services and activities agent shall observe the rules of conduct issued by NSC, and the rules issued by the regulated markets in which they trade.

(2) The implementation and supervision of the observance of the rules of conduct by all intermediaries supplying investment services and activities on the Romanian territory shall be ensured by NSC.

Art. 27

(1) NSC regulations shall implement principles, which shall take into consideration the capacity of the person for whom the service is supplied. According to such principles, the intermediary shall at least:

a) act honestly, impartially and with professional diligence to protect the interests of the investors and the market's integrity;

b) use all resources , to draft and efficiently use the internal procedures necessary for the supply of the investment services and activities;

c) request from the investors information regarding their financial situation, their investment experience and the objectives regarding the services requested;

d) send to the investors all relevant information regarding the transactions in which the intermediary is the counterparty;

e) try to avoid conflict of interest, and, if such cannot be avoided, ensure that investors are treated fairly ;

f) carry out its activity in accordance with NSC regulations applicable to the activity management, to protect investors' interests and the market's integrity.

(2) If an intermediary executes an order for the application of the rules referred to in Para (1), the professional nature of the investor shall be assessed, starting with the person who gave the order, irrespective of the fact whether such order was placed directly by the investor or indirectly by another intermediary.

Art. 28

(1) Investment services and activities on the account of the investors shall be supplied under a contract drafted in two originals, of which one shall be delivered to the client.

(2) NSC regulations shall stipulate the contents and the minimum clauses of the contracts concluded with the investors, including for distance contracts.

(3) Distance contract is any contract underlying investments services and activities, concluded between an intermediary, as offeror, and an investor, in its capacity as beneficiary of investment services and activities, within a system of sales or supply of investment services and activities at a distance, organised by the offeror who, for the performance of the contract, uses exclusively one or more distance communication means, starting with the conclusion of the contract, and until its expiry.

(4) The regulations referred to in Para (2) shall include the modalities by which investment services and activities may be supplied at distance, under a distance contract, expressly stipulating the distance communication means, including electronic communication, and the period for which it was concluded.

(5) The regulations referred to in Para (2) shall include, in addition, provisions on the obligation of the intermediary to inform the investor, and the latter's consent to conclude such contract, to allow the intermediary to supply investment services and activities at distance.

(6) Distance communication means represents any means that, without requiring the simultaneous physical presence of the offeror and beneficiary of investment services and activities, may be used to express the will of the parties and fulfil the object of the contract.

(7) The investor shall have a 14-day period, as of the conclusion of the contract, to unilaterally terminate the distance contract, with no penalty fees and without motivating its withdrawal decision. If the investor unilaterally terminates the contract, it may be compelled to pay for the services supplied in accordance with the clauses of the contract. The contract shall be performed only after the investor expressed its consent.

(8) The right to unilaterally terminate such contract shall not apply to investment services and activities whose price depends on the fluctuations of the financial markets that may occur during the period of withdrawal from the contract, and which are independent from the suppliers of investment services and activities, being connected to:

a) foreign exchange operations;

b) money-market instruments, including government securities with a maturity less than one year and depositary receipts;

c) securities;

d) units of undertakings for collective investment;

e) futures contracts, including equivalent cash-settled instruments (FRA);

f) forward interest-rate agreements (FRA);

g) interest rate, foreign exchange and equity swaps;

h) options on any financial instrument referred to in Letters b)-c), including equivalent cash-settled instruments; this category includes also foreign exchange and interest rate options.

(9) The regulations referred to in Paras (2), (4) and (5) may provide the preliminary complaint procedure and litigation advice procedures regarding investment services and activities and activities to create and develop an efficient and adequate system.

CHAPTER VI
Traders

Art. 29

Traders are legal persons trading exclusively in their name and on their own account in derivative financial instruments, such as futures contracts and options.

Art. 30

(1) Traders shall be authorised under the conditions provided in the NSC's Regulations and shall be registered with the NSC's Registry.

(2) Capital requirements for traders shall be established in the NSC's Regulations.

Art. 31

Traders may operate only with the consent of the market operator and in accordance with the regulations of the regulated market.

Art. 32

(1) The clearing and settlement of the transactions carried out by traders shall be performed only through intermediaries, acting within the same regulated market, as clearing members.

(2) The responsibility regarding the obligations resulting from the transactions carried out by traders shall be incumbent also upon the clearing members with whom they concluded clearing contracts.

Art. 33

Traders shall be prohibited to:

a) hold funds or financial instruments of other persons;

b) negotiate and conclude transactions in the name and on the account of other persons;

c) conclude with other persons explicit or tacit agreements to act in concert on the regulated markets;

d) have labour relationships with another intermediary or with a market operator.

Art. 34

The provisions of Art. 4(3), Art. 23, Art. 24(1) Letter d) and of Art. 26 shall be applied accordingly also to traders in accordance with the regulations issued by NSC.

CHAPTER VII
Investment Advisers and Rating Agencies

Art. 35

(1) The professional investment advice for financial instruments shall be provided by natural or legal person investment advisers registered with the NSC's Registry.

(2) Investment advice means the personal recommendation provided to a client in connection with one or more transactions with financial instruments.

(3) NSC shall issue regulations regarding:

a) the requirements for obtaining the authorisation to provide advice regarding financial instruments by natural or legal persons, other than intermediaries, including also the capital requirements for the performance of such activity;

b) the procedures regarding the requirements for the operation, supervision, reporting and verification of investment advisers;

c) suspension and withdrawal of the investment adviser's authorisation.

(4) The provision of investment advice excludes the reception or execution of investors' orders for the purchase or alienation of financial instruments, the management of investors' portfolios, and the settlement of transactions, including holding of available funds or financial instruments on account of the investors.

(5) Investment advisers are subject to the rules of conduct adopted by NSC, in accordance with the provisions of Art. 27.

Art. 36

(1) NSC shall issue regulations regarding the selection criteria for rating agencies which shall assess and rank the issuers admitted to trading and the financial instruments traded on the regulated markets.

(2) Rating agencies shall inform NSC of any rating obtained in connection with the entities and instruments indicated under Para (1).

CHAPTER VIII
Cross-Border Operations
Section 1
Branches of the Romanian Legal Person Investment Firms, and the Free Circulation of Services

Art. 37

The investment firm (SSIF) may supply investment services and activities:

a) in a Member State, in accordance with the provisions of Arts. 38 and 39;

b) in a non-Member State, based on the authorisation granted by NSC in accordance with the regulations issued therefor.

Art. 38

(1) Any Romanian legal person investment firm (SSIF), intending to open a branch in a Member State, shall notify NSC of its intention, together with the following information:

a) a business plan including the investment services and activities which shall be supplied by the branch and its organisational chart;

b) the identity of the persons appointed to manage the branch;

c) the address of the branch's headquarters;

d) the investors' compensation schemes, applicable for the protection of the branch's investors.

(2) Three (3) months after the receipt of the notification, NSC shall send the information requested to the competent authority of the host Member State, or, as the case may be, shall refuse to send such information, and shall inform the investment firm (SSIF) accordingly, together with the reasons for its refusal.

(3) NSC may issue a decision on the rejection of the application for approval of the establishment of a branch in a Member State by a Romanian legal person investment firm (SSIF), if, based on the information available to it and on the documentation submitted by the investment firm (SSIF), it acknowledges that:

a) the investment firm (SSIF) does not have an adequate administrative capacity or an appropriate financial standing by reference to the investment services and activities that shall be supplied by the branch;

b) the investment firm (SSIF) has a bad evolution as regards its financial standing.

(4) If any information referred to in Para (1) is changed, the investment firm (SSIF) shall inform NSC and the competent authority of the host Member State in writing of such change at least one month prior to the implementation of the change.

(5) NSC shall inform the competent authority of the host Member State of any change of the information previously provided, according to Para (2).

Art. 39

(1) Any investment firm (SSIF) intending to supply investment services and activities on the territory of a non-Member State for the first time, according to the free circulation of services, shall provide NSC with the following information:

a) the Member State in which it intends to operate;

b) a business plan mentioning, in particular, the investment service or services it intends to supply.

(2) Within one month from the receipt of the information referred to in Para (1), NSC shall send such information to the competent authorities of the host Member State. After the expiry of such time limit, the investment firm (SSIF) may start to supply such investment services and activities in the host Member State.

(3) If any information sent in accordance with Para (1) Letter b), the investment firm (SSIF) shall inform NSC and the host Member State of such change in writing, prior to its application, to send, if necessary, any change or supplementation to the communicated information.

Art. 39^1

(1) Any Romanian legal person investment firm (SSIF) may perform the activities provided in the authorisation granted by NSC on the territory of a non-Member State, only by establishing a

branch. For the purposes hereof, all headquarters established on the territory of a non-Member State shall be deemed a sole branch.

(2) The establishment of a branch in a non-Member State shall be subject to the prior approval of NSC, according to the regulations issued by it.

(3) NSC may reject the application for approval of the establishment of the branch if, based on the information available to it and on the documentation provided by the Romanian legal person investment firm (SSIF), it deems that:

a) the investment firm (SSIF) does not have adequate management or an appropriate financial standing, by reference to the activity intended to be carried out by the branch;

b) the legislative framework existing in the non-Member State and/or its manner of application prevents NSC from exercising its supervisory duties;

c) the evolution of the investment firm's (SSIF) financial prudential ratios is not appropriate, or the investment firm (SSIF) fails to fulfil other requirements established herein or by the regulations issued for its application.

(4) Any change to the elements taken into account upon the approval of establishment of the branch shall be subject to NSC's prior approval.

Art. 40

(1) The prudential supervision of the investment services and activities supplied by the investment firm (SSIF) in the Member States and non-Member States, either directly or through the establishment of branches, shall be ensured by NSC without prejudicing the duties of the competent authorities of the host states.

(2) To exercise its supervisory duties, NSC shall cooperate with the competent authorities of the Member States where the investment firm (SSIF) directly supplies investment services and activities or establishes branches.

(3) If it orders sanctions, restrictions or the withdrawal of the authorisation against an investment firm (SSIF), NSC shall immediately notify the competent authority of the Member State where such firm supplies investment services and activities.

(4) The special provisions of banking legislation regarding cross-border operations shall apply to credit institutions authorised in Romania and intending to supply core and non-core investment services and activities abroad, with the provisions regarding the supply of such

investment services in Romania by credit institutions of Member States or non-Member States.

Section 2
Intermediaries of Member States

Art. 41

(1) The intermediaries authorised and supervised by the competent authority of a Member State may supply in Romania, under the authorisation granted by the home Member State, investment services and activities, according to Art. 5(1), directly or by a branch, based on the principle of the free circulation of services, without being required to obtain any authorisation from NSC.

(2) The intermediaries referred to in Para (1) shall have their main office in the Member State which granted them the authorisation and where they carry out their activity.

(3) The intermediaries referred to in Para (1) may promote their services through all communication means available in Romania, in compliance with the advertising rules established by NSC.

(4) Within two (2) months after the receipt of the notification from the competent authority of the home Member State regarding the supply of services by a branch, including the information provided in Art. 38 Para (1), NSC shall inform such intermediary, if applicable, of the conditions and rules of conduct to protect the general interest, according to which the Romanian branch shall carry out its activity.

(5) The branch may begin its activity on the date of NSC notification or as of the expiry of the time limit referred to in Para (4).

(6) Any intention to change the information included in the notification received from NSC, according to Para (4), shall be notified by such intermediary at least one month prior to the date when such change is made.

(7) NSC shall issue regulations for the application of this section, in observance of the applicable Community legislation.

Art. 42

(1) The intermediaries authorised in the Member States may have access to a regulated market in Romania to supply services similar to those provided in Art. 5(1) Letters b) and c), and to the clearing-settlement systems underlying such markets, either:

a) directly, based on the free circulation of services or by the establishment of branches; or

b) indirectly, through the establishment of subsidiaries or purchase of an investment firm (SSIF) which is already a member of or has access to a regulated market or to a clearing-settlement system.

(2) Access to a regulated market or to a clearing-settlement system of the intermediaries referred to in Para (1) is conditional upon the observance of the regulations issued by the market operator and by the clearing-settlement systems approved by NSC, of the rules of conduct and of the professional standards imposed to the persons performing activities in the name of such intermediaries.

Section 3
Intermediaries of Non-Member States

Art. 43

(1) The establishment of branches on the Romanian territory by intermediaries of non-Member States shall be submitted to authorisation by NSC. The authorisation conditions are the following:

a) the compliance by the branch of the conditions provided in Art. 8;

b) the authorisation of the firm and the legal provisions of the home country, in connection with the investment services and activities that the investment firm intends to supply on the Romanian territory, by the branch;

c) the existence in the home country of legal provisions on the authorisation, supervision and organisational structure, similar to those in Romania;

d) the existence of a cooperation arrangement between NSC and the competent authority of the home country;

e) the fulfilment of the reciprocity requirements in the home country subject to the international agreement.

CHAPTER IX
Investor Compensation Fund

Art. 44

(1) The investor compensation fund, hereinafter referred to as the Fund, is a legal person established as a joint stock company, under its instrument of incorporation, approved in advance by NSC.

(2) The shareholders of the Fund are the intermediaries and the investment management companies whose object of activity includes the management of individual investment portfolios. The market operators, the central depositary and other entities regulated and supervised by NSC may be shareholders of the Fund.

(3) NSC shall establish, by regulations, the principles regarding the organisation and operation of the Fund, the compensation procedure, including the terms and transparency requirements.

Art. 45

(1) The intermediaries authorised to supply investment services and activities and the investment management companies, managing individual investment portfolios, shall be members of the Fund.

(2) The entities referred to in Para (1) shall establish *Fondul de compensare a investitorilor SA* and submit it for authorisation by NSC within one hundred and eighty (180) days as of the enforcement hereof.

Art. 46

(1) The purpose of the Fund is to compensate investors, according to the provisions hereof and of NSC regulations, if the members of the Fund fail to return the monetary funds and/or the financial instruments due or belonging to the investors, which were held on their behalf, when supplying investment services and activities or managing individual investment portfolios.

(2) For the purposes of this chapter, investor means any person which entrusted monetary funds or financial instruments to a member of the Fund to supply investment services and activities.

(3) The value of an investor's claim shall be calculated according to the legal and contractual provisions, taking into account the compensation and the mutual claims to be compensated, which are applicable to determine, upon the acknowledgment or resolution mentioned in

Art. 47(1), the sum of money or the value, established, if possible, at the market value of the investors' financial instruments, which the member of the Fund may not pay or reimburse, subject to the conditions provided in Art. 47(1) and (2).

(4) The Fund shall compensate equally and fairly the investors up to a ceiling established annually by order of the NSC President.

(5) The following categories of investors shall be exempt from compensation:

a) qualified investors;

b) administrators, including managers, directors, censors, financial auditors of the Fund members, their shareholders with holdings exceeding 5% of the share capital and the investors holding a similar position in other firms of the same group as the Fund members;

c) spouses, relatives and in-laws up to the first degree, and the persons acting on behalf of the investors mentioned in Letter b);

d) legal persons of the same group as the Fund members;

e) natural or legal person investors, which are directly responsible for deeds which aggravated the financial difficulties of the member or contributed to the deterioration of its financial standing.

(6) The Fund shall suspend any payment to the investors undergoing a criminal prosecution, in connection with a deed resulting from or in connection with money laundering, until the final ruling is issued by the competent court.

Art. 47

(1) The Fund shall compensate the investors in any of the following situations:

a) NSC acknowledged that, for the moment, from its point of view, an intermediary or a investment management company managing individual investment portfolios, for reasons directly related to their financial standing, is not able to fulfil its obligations resulting from the investors' claims and there is no possibility to fulfil such obligations in the near future;

b) the competent judicial authority, for reasons directly or indirectly related to the financial standing of a Fund member, issued a final decision resulting in the suspension of the investors' possibility to exercise their rights to enforce their claims against such companies.

(2) The compensation shall be granted for the rights resulting from the failure of a Fund member to:

a) reimburse the investors' monetary funds held in their name in connection with their investment activities;

b) return the investors any financial instrument belonging to them and which is held and managed in their name, in connection with their investment activities.

(3) If the intermediary is a credit institution, any situation similar to that referred to in Para (1) shall be communicated to NSC by the National Bank of Romania.

(4) If the compensation is granted by the Bank Deposit Guarantee Fund, no investor shall be entitled to double compensation.

Art. 48

(1) In the situations provided in Art. 47, the Fund shall publish on its own website, at the premises of all territorial units of the member unable to repay the investors' monetary funds and/or the financial instruments, and in at least two national newspapers, information regarding: the failure of the member to fulfil its obligations towards the investors, the place, manner and period during which the compensation claims may be registered and the date as of the compensation shall be paid to investors.

(2) The Fund shall subrogate *de jure* to the investors' rights for an amount equal to the payments made for the compensation of the monetary funds and/or financial instruments. The Fund shall be registered in the creditors' list for such amount, in case of judicial winding-up of its members.

Art. 49

(1) The Fund shall have the following financial resources:

a) the initial fee of its members, paid according to NSC regulations;

b) annual and/or special dues paid by its members;

c) income from the investment of the Fund's resources;

d) income from the recovery of the claims compensated by the Fund;

e) short-term loans exclusively covering temporary needs resulting from the granting of compensation;

f) other income established by NSC regulations.

(2) The expenses incurred with the management and operation of the Fund shall be covered by the income resulting from the investment of the Fund's resources, and from other income established by NSC regulations;

(3) The financial resources available to the Fund may be invested only in government securities or in other fixed income instruments, fully secured by the State prior to 31 December 2004. Subsequently, such investments shall be diversified in low risk assets, according to NSC regulations.

(4) The Fund does not distribute dividends and may not grant loans.

Art. 50

NSC shall establish annually, by order of its president, the ceilings of the amounts provided in Art. 46(3).

Art. 51

The fees paid by the Fund members shall not be reimbursed, including in case of judicial winding-up or dissolution of the Fund members.

Art. 52

The Fund shall submit to NSC an annual report of activity no later than 30 April.

TITLE III
UNDERTAKINGS FOR COLLECTIVE INVESTMENT

CHAPTER I
repealed

CHAPTER II
repealed

CHAPTER III
repealed

CHAPTER IV
repealed

CHAPTER V
repealed

CHAPTER VI
Undertakings for Collective Investment, NON-UCITS

Section 1
General Provisions

Art. 114

(1) The provisions of this chapter are applicable to NON-UCITS which publicly raise financial resources from natural and/or legal persons and which are established as:

a) contractual closed-end investment funds, which have the obligation to repurchase units at pre-established periods of time or on certain dates, according to their establishment documents;

b) corporate closed-end investment companies, which issue a limited number of shares and are traded on a market.

(2) The NON-UCITS referred to in Para (1) shall register themselves with NSC and observe the rules provided in this chapter.

(3) Repealed.

(4) Repealed.

(5) NON-UCITS shall be prohibited from making a public offering of units, unless the provisions of Para (2) are complied with.

Art. 115

(1) The NON-UCITS which privately raise financial resources and which are managed by an investment management company (SAI) shall be subject to the provisions of Art. 114(2).

(2) The NON-UCITS which privately raise financial resources and which are not managed by an investment management company (SAI) shall establish by their instruments of incorporation rules regarding their investment policy, business conduct and transparency.

(3) The documents issued by the NON-UCITS, referred to in Para (2), shall expressly include a notice mentioning that the provisions of this title are not applicable to such undertakings.

(4) The NON-UCITS referred to in Para (2), which are traded on a regulated market, are subject to the provisions of Title VI.

Art. 116

(1) NSC shall issue regulations specific to each type of NON-UCITS regarding:

a) the minimum contents of their instruments of incorporation;

b) the investments allowed and the limitations applicable to them;

c) the value of the issue or the nominal value of a unit, as the case may be, or/and the value of any investor's individual investment;

d) the unit trading rules;

e) the requirements on the qualification, professional experience and integrity of the members of the managing bodies of a self-managed NON-UCITS.

(2) NSC shall issue common regulations for the closed-end investment funds and the closed-end investment companies, regarding:

a) the transparency, information and reporting obligations;

b) the rules of conduct;

c) the rules of distribution on the Romanian territory of the units issued by the undertakings for collective investment not harmonized of Member States and non-Member States;

d) the modality of calculation of the net asset value;

Section 2
Closed-End Investment Funds

Art. 117

(1) The closed-end investment funds registered with NSC shall be managed by an investment management company (SAI).

(2) Repealed.

Section 3
Closed-End Investment Companies

Art. 118

A closed-end investment company registered with NSC shall be managed by an investment management company (SAI) or by a board of administration.

Art. 119

(1) Repealed.

(2) Closed-end investment companies may repurchase their own shares subject to the conditions provided by Law No. 31/1990 and in observance of the NSC's Regulations.

Section 4
Investment Companies

Art. 120

(1) The provisions of this chapter regarding closed-end investment companies registered with NSC shall apply accordingly also to investment companies established according to the provisions of Law No. 133/1996 on the transformation of the Private Property Funds in investment companies, hereinafter referred to as investment companies (SIF).

(2) NSC shall issue regulations regarding the minimum contents of the instruments of incorporation of investment companies (SIFs), which shall include at least the following:

a) the rules on the issuance, holding and sale of shares;

b) the modality of calculation of the net asset;

c) the prudential rules on the investment policy;

d) the requirements for the replacement of the depositary and rules for ensuring the protection of shareholders in such situations;

e) the rules on the remuneration of administrators and administrative costs, in the situation of investment companies (SIF) which are not self-managed;

f) the identity, requirements on the qualification, professional experience and integrity of the members of the managing bodies.

(3) The shares of investment companies (SIF) shall be traded on a regulated market.

(4) By way of derogation from the provisions of Art. 114(1) Letter b), regarding the issuance of a limited number of shares, the share capital of investment companies (SIF) shall be increased only through a public offering of shares based on a prospectus approved by NSC, according to the provisions of Title V of this law and of Law No. 31/1990.

CHAPTER VII
Protection of Unit Holders

Art. 121

Repealed.

Art. 122

(1) The provisions of Art. 21 shall apply accordingly to NON-UCITS, investment management companies (SAIs) and self-managed investment companies.

(2) NSC has the right to suspend an administrator if it finds that the influence exercised by such administrator may prejudice the management of NON-UCITS, investment management companies (SAIs) or of the investment company authorised by NSC.

Art. 123

NSC shall draft regulations regarding the merger and division of investment management companies (SAIs), UCITS and NON-UCITS.

TITLE IV
MARKETS REGULATED BY FINANCIAL INSTRUMENTS AND THE CENTRAL DEPOSITARY

CHAPTER I
Regulated Markets

Section I
General Provisions

Art. 124

(1) The markets regulated by financial instruments shall be organised and administered by a legal person, established as a joint stock company, issuer of registered shares, in accordance with Law 31/1990, authorised and supervised by NSC, hereinafter referred to a market operator.

(2) NSC shall publish in the Official Journal of Romania, Part I, any decision whereby the authorisation of a market operator is granted or withdrawn.

(3) The market operators authorised to operate in Romania shall be registered with the NSC's registry.

(4) The list of the authorised regulated markets shall be communicated to the Member States and to the European Commission, together with the regulations, instructions and procedures regarding the operations on such markets, and any subsequent amendments thereto.

(5) The company managing a regulated market shall have the capacity to sue and be sued for any rights and obligations, claims and complaints related to the activity of the markets managed.

Art. 125

Any regulated market is a system for trading financial instruments, as defined under Art. 2(1) Item 11, and greenhouse gas certificates, defined according to the provisions of Government Decision No. 780/2006 on the establishment of the trading scheme for greenhouse gas certificates, as subsequently amended and supplemented, and for the auctions of greenhouse gas certificates conducted in accordance with the European legislation in force, and which:

a) operates on a regular basis;

b) is characterised by the fact that the regulations issued and subject to NSC approval define the conditions for the operation, access to the market, admission to trading of a financial instrument and of greenhouse gas certificates;

c) meets the reporting and transparency requirements to ensure the protection of investors, established by this law and by the regulations issued by NSC in compliance with the European legislation.

Section 2
Authorization, Operation and Withdrawal of Market Operators' Authorization

Art. 126

(1) The conditions and the documentation which shall accompany the authorisation application, and the procedure for the authorisation of the market operator shall be established by NSC regulations and shall refer mainly to the following:

a) the minimum share capital of the joint-stock company and the financial resources required to carry out its business;

b) its exclusive object of activity, consisting of the management of regulated markets, and the activities related thereto;

c) its shareholding, the identity and integrity of the shareholders exercising a significant influence on the members of the board of administration and directors, or on the members of the supervisory board and of the executive board, as appropriate;

d) its business plan, organisational structure and internal regulations;

e) the requirements on the qualification, professional experience and repute to be met, and the cases of incompatibility and conflict of interest to be avoided by the members of the board of administration and directors, or by the members of the supervisory board and of the executive board, as appropriate, within the market operator;

f) the technical equipment and resources;

g) the contract concluded with a financial auditor, member of the Romanian Chamber of Financial Auditors and which meets the common requirements established by NSC and the Romanian Chamber of Financial Auditors.

(2) The conditions based on which the authorisation is granted shall be observed throughout the operation of the market operator. Any amendment thereof shall be subject to prior approval by NSC.

(3) The market operator may not limit the number of the persons with right of access to the regulated market managed.

Art. 127

The market operator's authorisation application shall be rejected, as the case may be, if:

a) the documentation submitted is not drafted according to the current regulations or the data provided are incomplete or incorrect;

b) the documentation submitted is insufficient to establish whether the market operator shall carry out its activity according to the regulations in force;

c) the administrators and the personnel holding managerial positions of the market operator do not have the qualification and professional experience appropriate to their position, according to NSC regulations;

d) the market is not transparent, transactions are not properly carried out and investors are not protected;

e) the provisions of this law or of NSC regulations are not observed.

Art. 128

NSC has the right to withdraw the authorisation of a market operator:

a) if the market operator no longer fulfils the conditions based on which the authorisation was granted;

b) if the market operator did not carry out the activity for which it was authorised for a period longer than six (6) months;

c) if the authorisation was obtained based on false or misleading statements or information;

d) if the market operator breached the provisions of this law or of the regulations issued by NSC;

e) in case of merger or division;

f) at the request of the market operator.

Art. 129

(1) No shareholder of a market operator may hold, directly or jointly with the persons acting in concert, more than 20% of the total voting rights.

(2) Any purchase of the shares of the market operator leading to a 20% holding of the total voting rights shall be notified to the market operator within the time limit established by ASF regulations and subject to prior approval by ASF.

(3) Any alienation of the shares of the market operator which shall result in the decrease below the 20% holding threshold shall be notified to the market operator and to ASF, within the time limit provided by ASF's regulations.

(4) If the requirements regarding the purchase of the shares corresponding to the threshold referred to in Para (2), as the same are established by ASF's regulations are not met or ASF's approval is not obtained, the voting right attached to the shares held in breach of the provisions of Paras (1) and (2) is suspended as of right, and the procedure established under Art. 283 shall be applied.

(5) Where the shares issued by the market operator are traded in a regulated market or in an alternative trading system, the obligation to notify the market operator of the alienation of its shares shall be for the central depositary, within the time limit and subject to the conditions laid down in ASF's regulations.

Art. 130

(1) The members of the market operator's board of administration or supervisory board, as appropriate, shall be individually validated by ASF before each of them starts its mandate.

(2) The personnel of the executive management, the spouse or their relatives, and in-laws up to the second degree inclusively, may not be shareholders, administrators, censors, employees, financial investment services agents, representatives of the internal control compartment of an intermediary or persons involved.

(3) The members of the market operator's board of administration and directors, or members of the supervisory board and of the executive board, as appropriate, shall notify it in writing of the nature and extent of their interest or of the material relations, if:

a) they are parties to a contract concluded with the market operator;

b) they are members of the board of administration or of the supervisory board, as appropriate, of a legal person which is party to a contract concluded with the market operator;

c) they have close links or a material relationship with a person that is party to a contract concluded with the market operator;

d) they may influence the adoption of the decision of the meetings of the board of administration or of the supervisory board, as appropriate.

(4) The conditions regarding the qualification, professional experience and repute to be met, and the cases of incompatibility and conflict of interest to be avoided by the members of the board of administration, directors, or by the members of the supervisory board and of the executive board, as appropriate, shall be established by ASF's regulations.

Art. 131

The market operator shall identify and prevent, by its own regulations, any conflict of interest between the market operator, its shareholders, administrators and the regulated market to ensure the good operation of such market.

Art. 132

NSC shall establish, by regulations, the general conditions for trading in financial instruments admitted to trading on the regulated markets in Romania, the procedures to carry out transactions and the terms within which the intermediaries involved shall report such transactions.

Art. 133

(1) Market operators shall ensure compliance with the rules regarding the transparency and protection of investors, according to the regulations issued by NSC.

(2) The regulations, quotations of the regulated markets and the trading volumes are public interest information and shall be made available to public, at least on the market operator's websites.

(3) So that investors may assess, at any moment, the terms of a transaction they intend to carry out and to verify thereafter the conditions in which such transaction was carried out, the market operator shall make available to them the information provided by NSC regulations which shall establish the means, form and time limit within which such information shall be provided, according to the nature, size and needs of the regulated market and of the investors operating on such market.

(4) The market operator shall meet NSC requirements regarding the prevention and identification of market abuse.

Section 3
Regulations Issued by the Market Operator

Art. 134

(1) The manner of organisation and operation of the regulated market is established by its own regulations issued by the market operator, adopted by the general meeting of shareholders and approved by NSC, according to the provisions of this law and of the applicable Community legislation.

(2) The regulations referred to in Para (1) shall establish at least the following:

a) the conditions and procedures for admission, exclusion and suspension of intermediaries to and from trading;

b) the conditions and procedures for admission, exclusion and suspension of financial instruments to and from trading;

c) the conditions, procedures of trading and the obligations of the intermediaries and issuers admitted to trading;

d) the professional standards imposed on the persons performing operations on the regulated market;

e) the procedures regarding the manner of calculation and publication of the prices and quotations;

f) the types of contracts and operations permitted;

g) the management and dissemination of information to the public;

h) the contractual standards and the clearing-settlement system used;

i) the security and control mechanisms of IT systems, to ensure the safekeeping of the stored data and information, of the files and databases, inclusively in the case of special events.

(3) The competence regarding the approval of the regulations established under Paras (1) and (2), Letters b) through g) may be delegated to the market operator's board of administration.

(4) The board of administration shall notify NSC of any breach of this law, of NSC regulations and of the market rules, and the measures adopted therefor.

(5) The amount of fees and tariffs charged by the market operator shall be approved by the general meeting of shareholders and notified to NSC.

(6) The market operator may establish an arbitration system for the settlement of disputes among the intermediaries and/or issuers whose financial instruments are admitted to trading on the markets managed by such operator.

Section 4
Supervision of Regulated Markets

Art. 135

(1) NSC shall supervise the regulated markets to ensure transparency, the appropriate performance of the trading activity and the protection of investors.

(2) NSC shall establish rules for recording and archiving data regarding the trading of financial instruments on the regulated markets, and the terms and conditions for keeping such information.

(3) To exercise its supervisory and control prerogatives of regulated markets, NSC may appoint an inspector whose main duties are:

a) to monitor compliance with relevant legal regulations;

b) to participate, with no voting right, in the general meeting of shareholders and in the meetings of the market operator's board of administration, having the possibility to make remarks and request that the same are included in the minutes of the meeting;

c) to have free access to all premises, documents, information and records of the market operator;

d) to inform and propose to NSC measures for any situation identified.

(4) The market operator shall ensure the means and conditions necessary for the fulfilment of the inspector's duties, referred to in Para (3).

Art. 136

(1) NSC may request the market operator to send data, information and documents, on a regular basis or in any other manner, establishing also the time limit within which they shall be sent.

(2) NSC may request the amendment of the regulations issued by the market operator.

(3) NSC may conduct inspections and adopt the necessary measures as regards the market operator.

Art. 137

(1) NSC may suspend part or all of the operations with financial instruments if it establishes that the legal provisions are not observed and/or it considers that it is impossible to maintain an organised market, and the investors' interests may be prejudiced.

(2) Any suspension decision made according to Para (1) and the reasons based on which such decision was made shall be immediately make public and shall be published in the NSC's Bulletin.

Art. 138

If the authorisation of a market operator is withdrawn, as of the date indicated in the decision, no operations with financial instruments shall be carried out on that market, and the transaction orders registered by intermediaries and not yet executed to that date become null as of right, resulting in the restitution of the securities and of the deposited amounts, and fees charged, while the operations carried out prior to such date shall be finalised when due, as their intermediaries shall comply with the clauses of the contracts concluded with their investors. The same measures shall be applied also in the situation provided in Art. 137(1).

CHAPTER II
Alternative Trading Systems

Art. 139

(1) The alternative trading system may be managed, by derogation from Art. 6, by the authorised intermediaries or by the market operator, hereinafter referred to as system operators.

(1^1) The provisions of Art. 130 shall also apply to the system operator.

(2) The securities which do not meet the requirements for admission to trading on a regulated market may be traded within an alternative trading system.

(3) The system operators shall submit for approval by NSC their intention to establish an alternative trading system and shall request its approval.

(4) The system management, the complete description of its features and the operation rules shall be submitted to NSC for approval.

(5) The operation rules of the alternative trading system shall include at least the following:

a) the trading procedures;

b) the procedures regarding the information made available to the participants and to the public, before and after the trading;

c) the type and number of participants, and the conditions to have access to the alternative trading system;

d) the financial instruments traded.

(6) NSC may request that he procedures issued by the operator of the alternative trading system be amended.

Art. 140

(1) The alternative trading system shall be structured so as:

a) to ensure the ordered and correct performance of the operations;

b) to ensure intermediaries fair access to the alternative trading system and equal treatment to participants;

c) to guarantee that the procedures applicable to the system are able to ensure the possibility to obtain the best price at a given moment;

d) to ensure sufficient information regarding the orders made and the transactions concluded, according to the minimum transparency standards;

e) to observe NSC requirements regarding the prevention and identification of market abuses, the prevention of money laundering and financing of terrorist acts;

(2) The participants in alternative trading systems shall be informed by the system operator of their obligations to clear-settle transactions within the system.

Art. 141

The system operator shall monitor compliance by the participants with the contracts concluded by them.

Art. 142

(1) NSC shall issue general rules regarding the establishment, supervision and operation of alternative trading systems.

(2) NSC may appoint an inspector for the delegation of the supervisory and control powers of alternative trading systems.

CHAPTER III
Clearing and Settlement of Transactions with Financial Instruments other than Derivatives

Art. 143

(1) The general conditions regarding the clearing and settlement operations, and the gross settlement operations for transactions with financial instruments, other than derivatives, which may take place within the clearing-settlement system, shall be established by NSC together with the National Bank of Romania and with other competent authorities, as the case may be.

(2) The provisions of this chapter shall not apply to clearing-settlement system of operations with money-market instruments or to those with government securities performed outside the regulated market defined by this law, and of those performed in the trading systems authorised by the National Bank of Romania.

Art. 144

(1) The authorisation and supervision of the system referred to in Art. 143 and of the company managing such system shall be performed by NSC together with the National Bank of Romania and with other competent authorities, as the case may be.

(2) For this purpose, NSC may request the administrators of the clearing-settlement system, the employees of the company managing the clearing-settlement system and the participants in the clearing -settlement system to provide the required information regarding the clearing and settlement of transactions.

(3) NSC may conduct inspections at the premises of the companies managing the clearing and settlement system of transactions.

Art. 145

(1) The ownership right over financial instruments, other than derivatives, shall be transferred, on the settlement date, within the clearing-settlement system, based on the principle delivery against payment.

(2) The purchased securities may be alienated starting from their purchase, according to the rules of the market on which such securities are traded and to the rules of the central depositary.

CHAPTER IV
Central Depositary

Section 1
General Provisions

Art. 146

(1) The central depositary is the legal person established as a joint stock company, issuer of registered shares, according to Law No. 31/1990, republished, as subsequently amended and supplemented, authorised and supervised by ASF, which performs the operations of deposit of financial instruments, other than derivatives, and any other operations related thereto.

(2) The central depositary shall carry out clearing-settlement operations of the transactions in financial instruments, other than derivatives, according to the provisions of Art. 143.

(3) The provisions of this title shall not apply to the depositary of government securities.

(4) The issuers, for whom depositary operations are carried out, shall conclude contracts with the central depositary, which also performs registry operations for them, providing information according to the provisions of this article or at their request. The central depositary is competent to provide information to the competent authorities in connection with the shareholders of the issuers, in compliance with Law No. 677/2001 on the protection of individuals with regard to the processing of personal data and on the free movement of such data, as subsequently amended and supplemented.

(4^1) The shareholders or intermediaries, as appropriate, must send the central depositary the copy of the identity card for natural persons, copy of the registration certificate or of a

document attesting to the formation of the entity or a similar document under that shareholder's national law.

(5) The central depositary shall provide the issuers with the information necessary for the exercise of the rights underlying the deposited financial instruments, and may supply services for the fulfilment of the issuer's obligations to the holders of financial instruments.

(5^1) The issuers shall make a dividend payment and the payment of any other amounts owed to the securities' holders through the central depositary and participants in the clearing-settlement and registry system.

(6) To establish the shareholding of any issuer on a certain reference date, the intermediaries shall report to the central depositary the holders of the individualized sub-accounts held by them.

(7) The reporting referred to in Para (6) shall be performed as follows:

a) for a certain financial instrument, within three (3) working days as of the date of the central depositary's request;

b) for all financial instruments, within three (3) working days as of the dates of 30th day of June and 31st day of December.

Art. 147

All classes of financial instruments, other than derivatives, traded on a regulated market or within an alternative trading system shall be deposited with the authorised central depositary to carry out operations with financial instruments in a centralised manner and to ensure a unitary record of such operations.

Section 2
Establishment and Operation of the Central Depositary

Art. 148

(1) The conditions, the documentation which must accompany the authorisation application, and the authorisation procedure of the central depositary shall be established by regulations issued by NSC and shall refer at least to:

a) the minimum share capital of the joint stock company;

b) the core activity and non-core activities which may be carried out;

c) the requirements on the integrity, qualification and professional experience of the administrators and personnel holding managerial positions of the company;

d) the technical equipment and resources;

e) the capacity of shareholders;

f) the financial auditors of the company.

(2) The conditions based on which the authorisation is granted shall be complied with throughout the operation of the company. Any change to such conditions shall be submitted to prior approval by NSC.

(3) Until Romania joins the European Union, the central depositary shall not distribute dividends, and the profits earned shall be used mainly for the development of its own operation systems.

Art. 149

(1) The regulations regarding the organisation and operation of the central depositary shall be submitted to approval by NSC before they become effective.

(1^1) The requirements on the qualification, professional experience and repute to be met, and the cases of incompatibility and conflict of interest to be avoided by the members of the board of administration and directors, or by the members of the supervisory board and of the executive board, as appropriate, shall be established by ASF's regulations.

(2) The amount of the fees and tariffs charged by the central depositary shall be approved by its general meeting of shareholders and notified to NSC.

(3) The members of the central depositary's board of administration shall be individually validated by NSC before each of them starts its mandate.

Art. 150

(1) The central depositary's shareholders may not hold more than 5% of the voting rights, except for the market operators, which may hold up to 75% of the voting rights, with NSC's approval.

(2) Any purchase of the shares of the central depositary, which shall lead to a holding of 5% of the total voting rights, shall be submitted for prior approval by NSC.

(3) Any alienation of shares shall be notified to NSC within the time limit provided by NSC regulations.

(4) If the requirements regarding the shareholders' integrity are not met or NSC approval is not obtained, the voting rights attached to the shares held in breach of the specified requirements are suspended as of right, and the procedure established under Art. 283 shall be applied.

Art. 151

(1) The accounts of financial instruments opened with the central depositary by the intermediaries, shall be recorded so that they ensure the separation of the financial instruments held for own account from those held for the account of their clients.

(2) The participants in the clearing-settlement system shall keep individualized sub-accounts of financial instruments held for the account of their clients and record on a daily basis in its own register the holdings, for each client, and for each class of financial instruments.

(3) The central depositary shall be directly liable for the daily conformity between the quantity of financial instruments recorded in the accounts of financial instruments and the quantity of financial instruments issued.

(4) The financial guarantees and movable mortgages over the financial instruments, other than derivatives, shall be established and enforced according to the regulations issued by ASF, in compliance with the legal provisions in force.

(5) The forced execution of the financial guarantees over the financial instruments, other than derivatives, of movable mortgages over the financial instruments, other than derivatives, or, as the case may be, the forced execution initiated further to the establishment of the garnishment/seizure proceedings over the financial instruments, other than derivatives, shall be carried out according to the regulations issued by ASF, in compliance with the legal provisions in force.

(6) The financial instruments forming the object of a movable mortgage or garnishment/seizure may be acquired only if the claim was not recovered by the sale of the financial instruments through an intermediary, on a regulated market or within an alternative trading system.

Art. 152

NSC shall issue regulations regarding the operations performed by the central depositary and the entities for which it performs such operations.

Section 3
Supervision of the Central Depositary

Art. 153

(1) NSC shall supervise the activity of the central depositary to ensure transparency of the operations, the appropriate performance of the activity and protection of investors.

(2) NSC may request the amendment of the regulations issued by the central depositary.

Art. 154

NSC may request the central depositary to periodically send data, information and documents, may organize inspections at the premises of the central depositary and may request to be provided with all necessary documents, mentioning the procedures and the terms for their submission.

Art. 155

(1) The financial instruments kept in the accounts opened with the central depositary may not be deemed as part of the latter's assets and may not form the object of any claims made by the depositary's creditors.

(2) The provisions of Para (1) shall apply inclusively in the case of bankruptcy or administrative winding-up of the central depositary.

Art. 156

If the bankruptcy proceedings against the central depositary are initiated, the syndic judge shall appoint the liquidator with the NSC's approval.

CHAPTER V
Central Counterparty and Clearing House

Section 1
General Provisions

Art. 157

(1) The central counterparty is a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer. .

(2) ASF is the competent authority responsible for the fulfilment of the tasks resulting from Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, for the authorisation and supervision of central counterparties established in the territory of Romania.

(3) The clearing house is an entity responsible for the calculation of the net positions of the intermediaries, of a possible central counterparty and/or of a possible settlement agent.

(4) The clearing house for derivative financial instruments acts as central counterparty.

(5) The same entity may be authorised to act as a central counterparty, both for the derivative financial instruments, and for the financial instruments, other than derivatives.

Art. 158

NSC shall issue regulations regarding the Community legislation on the conditions that the clearing members must fulfil and on the procedure for holding and enforcing financial guarantees, hereinafter referred to as margins, the clearing and securing the positions held by the clearing members, including in their own name, and on the criteria to manage the monetary funds of the clearing house and of the central counterparty.

Section 2
Establishment and Operation of the Clearing House and of the Central Counterparty

Art. 159

(1) The clearing house and the central counterparty are legal persons established as joint stock companies, issuers of registered shares fully paid-in in cash, upon the submission of the authorisation application.

(2) ASF regulates the establishment and operation of the clearing house and of the central counterparty to guarantee the safety of transactions with derivative financial instruments and with financial instruments, other than derivatives, in accordance with the European rules.

(3) The provisions of Arts. 148 and 149 shall apply accordingly to the clearing house and to the central counterparty.

Art. 160

Repealed.

Art. 161

(1) The margins established on behalf of the clearing members may not be considered as part of the assets of the clearing house/central counterparty and may not form the object of the claim or payment of the clearing house/central counterparty' creditors.

(2) The provisions of Para (1) shall also apply in the case of bankruptcy or administrative winding-up of the clearing house/central counterparty.

Section 3

Regulations Regarding the Activity of the Clearing House and of the Central Counterparty

Art. 162

(1) The regulations of the central counterparty shall be submitted to ASF for approval and shall at least refer to the requirements for central counterparties under Regulation (EU) 648/2012, other relevant EU rules and regulations issued by ASF.

(2) The regulations of the central counterparty shall be submitted to ASF for approval, in accordance with the regulations issued by ASF.

(3) The central counterparty shall request the prior approval of NBR for the securities settlement system, and for any modification thereof.

Art. 163

(1) The clearing house and the central counterparty shall observe the principle of separate evidence of their records from those of the clearing members.

(2) The clearing house and the central counterparty shall fulfil the requirements of public interest, promote the objectives of the holders and users and allow a correct and open access, to facilitate the orderly exit from the system of the participants who no longer fulfil the public membership criteria.

(3) The clearing house and the central counterparty shall make available to the participants sufficient information to correctly identify and assess the risks and the costs associated with the services of the clearing house and of the central house.

Section 4
Supervision of the Clearing House and of the Central Counterparty

Art. 164

The clearing house and the central counterparty shall ensure the performance of the activity in order, the transparency of the operations and the periodical and correct reporting.

Art. 165

NSC shall supervise the activity of the clearing house and of the central counterparty and may request them to send data, information and documents, may organize inspections at their premises and may request to be provided with all necessary documents, specifying the procedures and terms for delivery thereof.

Art. 166

NSC may request the amendment of the regulations issued by the clearing house and by the central counterparty.

Art. 167

Where the bankruptcy proceedings are started against the central counterparty/clearing house, the syndic judge (receiver) shall appoint the liquidator in consultation with ASF.

CHAPTER VI
Finality of Transfers in the Clearing-Settlement System

Section 1
General Provisions

Art. 168

(1) For the purposes of this chapter:

a) institution is an entity participating in the clearing-settlement system and which has the obligation to execute the financial obligations resulting from the transfer orders issued within such system, defined under Art. 2 Para (1) Item 2 of Law No. 253/2004, as subsequently amended and supplemented;

b) participant is an institution, a central counterparty, a settlement agent, a clearing house or a clearing-settlement system operator. According to the system rules, the participant may act at the same time in all or only in some of such capacities;

c) indirect participant is an institution, a central counterparty, a settlement agent, a clearing house or a clearing-settlement system operator, that has a contractual relationship with a participant in the system executing transfer orders and based on which the indirect participant may send transfer orders to such system, provided that the indirect participant is known to the clearing-settlement system operator. To prevent the systemic risk, an indirect participant may be deemed a participant, without such limiting the participant's responsibility through which the indirect participant sends transfer orders to such clearing-settlement system;

d) clearing-settlement system operator is the entity or entities responsible from a legal standpoint for the operation of a clearing-settlement system. A clearing-settlement system operator may inclusively act as a settlement agent, central counterparty or clearing house;

e) interoperable clearing-settlement systems are two or more clearing-settlement systems whose system operators concluded arrangements based on which the execution of the transfer orders from one system to another is possible;

f) settlement agent is an entity providing the other participants in the clearing-settlement system with settlement accounts whereby the transfer orders in the system are settled and which may grant credits to such intermediaries and/or central counterparty, for settlement purposes;

g) insolvency proceedings are the proceedings provided in Art. 2 Para (1) item 10 of Law No. 253/2004, as subsequently amended and supplemented.

(2) The provisions of this chapter shall apply to the clearing-settlement system, defined under Para (3), to all participants in the clearing-settlement systems and to all financial guarantees established within the participation in a clearing-settlement system.

(3) The clearing-settlement system is a system defined under Art. 2 Para (2) item 1 of Law No. 253/2004, as subsequently amended and supplemented, authorised by NSC or by another competent authority of the Member States of the European Economic Area, as the case may be. An arrangement concluded among the operators of interoperable clearing-settlement systems does not constitute a system.

Section 2
Netting and Transfer Orders

Art. 169

(1) The time from which a transfer order is deemed entered in the clearing-settlement system must be clearly stated by the rules of the clearing-settlement system.

(1[1]) Any transfer order entered in the system may not be revoked by a participant in the clearing-settlement system or by a third party after the time limit set by the rules of that system.

(2) Transfer orders and the netting are valid, produce legal effects and are binding upon third parties even if insolvency proceedings are initiated against a participant, provided that such transfer orders were introduced in the system prior to the initiation of the insolvency proceedings. Such shall apply inclusively if the insolvency proceedings are initiated against a participant in the clearing-settlement system at issue or in an interoperable system or against the operator of an interoperable system which is not a participant, provided that such transfer orders were placed into the system prior to the initiation of the insolvency proceedings.

(3) By exception, if the transfer orders are introduced into the system after the initiation of the insolvency proceedings and are executed on the date of initiation of the insolvency proceedings, such transfer orders and the netting produce legal effects and are binding upon third parties, provided that the clearing-settlement system operator may evidence, after the netting, that it was not aware or should have been aware of the fact that the insolvency proceedings were initiated.

(4) No legal rule, regulation, provision or practice regarding the cancellation of certain contracts and transactions concluded before the initiation of the insolvency proceedings may lead to the cancellation of the transfer orders, or nettings, payments or subsequent transfers referred to in Paras (1) and (2).

(5) In the case of the interoperable clearing-settlement systems, each system shall establish, in its own system rules, the moment transfer order is introduced into the system, so that to ensure, to the extent possible, the coordination in this respect of the rules of all interoperable systems at issue. The rules of a clearing-settlement system regarding the moment when transfer orders are introduced into the system shall not be affected by the rules of the other clearing-settlement systems with which such is interoperable, except for the case in which the rules of all interoperable clearing-settlement systems include express provisions in this respect.

Section 3
Provisions regarding Insolvency Proceedings

Art. 170

(1) For the purposes hereof, the insolvency proceedings are deemed opened when the competent authority issues the decision to open such proceedings.

(2) The competent authority that issued the decision to open the insolvency proceedings shall immediately communicate its decision to NSC by fax or by electronic mail, with acknowledgement of receipt.

Art. 171

(1) Insolvency proceedings shall not apply retroactively to the participants' rights and obligations resulting from/or in connection with their participation in the clearing-settlement system, established before opening such proceedings. Such provision shall apply inclusively to the rights and obligations of a participant in or of an operator of an interoperable clearing-settlement system which is not a participant.

(2) After opening the insolvency proceedings against a participant in or an operator of an interoperable clearing-settlement system, the settlement agent, on behalf and for the account of the participant may use:

a) funds and financial instruments available in the participant's settlement account;

b) financial guarantees established to fulfil the obligations of the participant in connection with the participation in the system,

to fulfil the assumed obligations in connection with the participation in the system, concluded before opening the insolvency proceedings.

(3) The financial guarantees and the deposits established in the clearing-settlement system or in an interoperable clearing-settlement system by a participant in or operator of the clearing-settlement system against whom the insolvency proceedings were opened, shall not be affected by such proceedings. The assets of the participant in or operator of the clearing-settlement system remaining after the fulfilment of the assumed obligations in connection with the participation in the clearing-settlement system or in an interoperable clearing-settlement system, before opening the insolvency proceedings, may be used within such proceedings.

(4) If the insolvency proceedings are opened against a participant in or operator of the clearing-settlement system, the financial instruments and/or the monetary funds held on behalf and

for the account of its investors shall not be subject to any claims by or payments to the creditors of such participant in or operator of the clearing-settlement system.

Art. 172

The enforcement of the financial guarantee contracts concluded by the entities regulated by NSC, based on Government Ordinance No. 9/2004 on certain financial guarantee contracts, approved by Law No. 222/2004, shall be made in observance of the regulations issued by NSC.

TITLE V
MARKET OPERATIONS

CHAPTER I
Public Offers

Section 1
Common Provisions

Art. 173

(1) Any person intending to make a public offer shall submit to ASF a request for the approval of the prospectus, in the case of public sale offerings, or of the offer document, accompanied by a contract notice, in case of takeover bids, according to the regulations issued by ASF.

(2) Once approved, the prospectus/offer document shall be made available to the public, at the latest upon the beginning of the public offer.

Art. 174

(1) The public offer carried out without the approval of the prospectus/offer document or in breach of the conditions established through the approval decision shall be null as of right and shall result in the application of the sanctions as provided by law.

(2) The offeror shall have the obligation to repay to good-faith investors the payments and damages resulting from the null transactions concluded based on such offer.

Art. 175

(1) The public offer notice may be launched after the issuance of the decision approving the offer document by ASF and shall be published according to the regulations issued by ASF.

(2) The public offer notice shall include information regarding the modalities through which the offer document is available to the public.

(3) The prospectus/offer document shall be deemed available to the public in any of the following situations:

a) it is published in at least one printed or online newspaper, according to the applicable European regulations regarding the contents and publication of prospectuses, and dissemination of publicity-related releases;

b) it may be obtained by a prospective investor free of charge, in hard copy, at least at the premises of the offeror and intermediary of such offer, or at the premises of the operator of the regulated market where the securities are admitted to trading;

c) it is published in electronic form on the offeror's website or on the intermediary's website, as appropriate;

d) it is published in electronic form on the website of the operator of the market where admission of such securities to trading is sought;

e) it is published in electronic form on the NSC's website if it decided to offer such service.

(3^1) The offeror or the persons in charge with the prospectus, publishing the prospectus according to the modalities referred to in Para (3) Letter a) or b), shall also publish the prospectus in electronic form according to the modalities provided in Letter c).

(4) If the prospectus/offer document was made available to the public in electronic form, a hard copy shall be provided, at the request of any investor, free of charge, at the offeror's or intermediary's premises.

Art. 176

(1) The public purchase offer becomes mandatory when the notice and the offer document are published, and in the case of the public offer for the sale of securities, when the prospectus is published, according to the regulations issued by ASF.

(2) The prospectus or the offer document shall be available to the public after its approval by ASF, in the form and with the contents approved by NSC.

Art. 177

The offer period is that mentioned in the prospectus, for public offers for the sale of securities, or in the notice and in the offer document, for public offers for the purchase of securities, and it may not exceed the time limits established by ASF's regulations. After such period expires, the public offer is no longer in force.

Art. 178

(1) Any advertisement relating to an offer to the public of securities or to an admission to trading on a regulated market of securities must comply with the provisions of this article. Paras (2)-(5) shall not apply where the offer to the public of securities is not covered by the obligation to publish a prospectus. .

(2) Advertisements shall state that a prospectus/offer document has been or shall be published, and indicate the place and date from/on which the investors may collect such prospectus/offer document.

(3) Dissemination of advertisements prior to the issuance of the decision approving the offer document/prospectus is prohibited.

(4) The information contained in the advertisements must be true, complete and accurate. The information must also be consistent with that contained in the prospectus/offer document, where such prospectus/offer document has already been published, or with the information which must be incorporated therein, where such prospectus/offer document is subsequently published.

(5) Any information disclosed in an oral or written form, including electronic format, concerning the offer to the public or admission to trading on a regulated market, even if not for advertising purposes, shall be consistent with that contained in the prospectus/offer document.

(6) Any form of marketing intended to cause the acceptance of the public offer, made by presenting the offer as benefiting from advantages or other qualities resulting from ASF's decision approving the offer document/prospectus, shall be deemed deceit by abusive or misleading advertising, prejudicing the transactions proved to have been motivated by such presentation.

(7) Where the publication of the prospectus is not mandatory within the meaning of this law, the significant information provided by an issuer or offeror and addressed to qualified investors or special categories of investors, including that sent in the context of meetings relating to the offers of securities, shall be communicated to all qualified investors or special categories of investors to whom such offer is exclusively addressed. Where the publication

of the prospectus is mandatory, such information shall be stated in the prospectus or in a supplement to the prospectus, in accordance with the provisions of Art. 179.

(8) ASF is authorised to verify whether the advertising activities relating to the offer to the public or admission to trading on a regulated market of securities are in line with the provisions of Paras (2)-(5) and Para (7).

Art. 179

(1) Any new significant event or any clerical error or inaccuracy regarding the information included in the prospectus, which may influence the assessment of the securities and which occurs or is established between the approval of the prospectus and the closing of the public offer or, as the case may be, the beginning of trading on a regulated market, shall be mentioned in a supplement to the prospectus.

(2) Such supplement shall be approved by ASF within seven (7) working days in compliance with the procedure applicable if the prospectus is approved and shall be made public under the same conditions in which the prospectus was made public.

(3) The summary and any translation thereof shall be amended or supplemented, if necessary, to encompass the new information of the supplement.

Art. 180

If NSC is requested to approve a prospectus/offer document, then it may:

a) request the offeror to insert additional information in the prospectus/offer document necessary for the protection of investors;

b) request the offeror and the persons controlling it or controlled by it to provide information and documents;

c) request the auditors and the management of the offeror and intermediaries to provide the information and documents necessary for the protection of investors;

d) order the suspension of the offer, whenever it deems necessary, for a period of maximum ten (10) working days for each suspension, provided that there are grounded reasons that the provisions of this law and of the regulations issued by NSC were breached;

e) order the prohibition or suspension of the dissemination of advertisements for the public offer, whenever it deems necessary, for a period of maximum ten (10)

working days for each suspension, provided that there are grounded reasons that the provisions of this law and of the regulations issued by ASF were breached;

f) order the revocation of the approval decision, if it establishes that the public offer is carried out in breach of the provisions of this law, of the regulations issued by NSC and if:

1. it considers that the circumstances subsequent to the approval decision trigger fundamental amendments of the elements and data based on which it was grounded;

2. the offeror informs NSC that it withdraws the offer before making the offer notice;

g) order the cancellation of the approval decision, if it was obtained based on false or misleading information;

h) make public that an offeror failed to fulfil its obligations.

Art. 181

(1) The suspension of the public offer shall interrupt the period during which such is carried out. After the suspension is lifted or ceased, the performance of the public offer shall be resumed.

(2) The revocation of the approval decision of the document/prospectus during the period the public offer is carried out shall annul the effects of the subscriptions made prior to the time of revocation.

(3) The annulment of the approval decision of the document/prospectus shall annul the effects of the transactions made prior to the time of annulment, and shall result in the restitution of the securities, and of the funds received by offerors, voluntarily or based on a court decision.

Art. 182

(1) The following persons shall be liable for the failure to observe the legal provisions regarding the truthfulness, consistency and accuracy of the information included in the prospectus/offer document and in the notice, as the case may be:

a) the offeror;

b) the members of the board of administration of the offeror or the sole administrator;

c) the issuer;

d) the members of the issuer's board of administration;

e) the founders, in case of public subscription;

f) the financial auditor that certified the financial statements, whose information were inserted in the prospectus;

g) the offer's intermediaries;

h) any other entity which assumed in the prospectus liability for each information, study or assessment inserted or mentioned.

(2) The following persons shall be held jointly liable, irrespective of fault:

a) the offeror, if any of the entities referred to in Para (1) Letters b), g) and h) is responsible;

b) the issuer, if any of the entities referred to in Para (1), Letters d) through f) is responsible;

c) the lead manager, if a member of the underwriting syndicate is responsible.

(3) The right to claim damages shall be exercised within maximum six (6) months as of the date the inconsistency in the prospectus/document was acknowledged, but not later than one (1) year as of the closing of the public offer.

Section 2
Public Sale Offering

Art. 183

(1) No public sale offering may be made without the publication of a prospectus approved by NSC.

(2) The public sale offering shall be made through an intermediary authorised to provide investment services and activities.

(3) By way of derogation from the provisions of Para (1), the preparation and publication of a prospectus shall not be mandatory in the following cases:

a) for the following types of offers:

1. an offer of securities addressed exclusively to qualified investors; and/or

2. an offer of securities addressed to less than 150 natural or legal persons, other than qualified investors, per Member State; and/or

3. other offers of securities specified by NSC regulations, according to law;

b) for the following types of securities:

1. offered, allotted or which shall be allotted upon a merger or division, provided that a document is available including the information deemed by NSC as equivalent to that of the prospectus, taking into account the requirements of European legislation;

2. the dividends paid to the existing shareholders as shares of the same class as those giving rights to such dividends, provided that a document is available including information about the number and the nature of shares, and the reasons and characteristics of the offer;

c) in other cases as provided by the regulations issued by NSC, according to law.

(4) Any subsequent re-sale of the securities which previously formed the object of any of the types of offer referred to in Para (3) shall be deemed a distinct operation, and the provisions of Art. 2 Item 18 shall be applied to establish the extent to which such re-sale operation is a public offer.

(5) In the case of UCITS, the prospectus shall be drafted according to the provisions of Title I – Undertakings for collective investment in transferable securities and investment management companies of Government Emergency Ordinance No. 32/2012 on undertakings for collective investment in transferable securities and investment management companies, and amending and supplementing Capital Market Law No. 297/2004.

Art. 184

(1) The offer prospectus shall include the information which, according to the particulars of the issuer and of the securities offered to the public, is required by investors to perform an assessment in full awareness of the situation regarding: the statement of assets and liabilities, the financial statements, the profit or loss, the perspectives of the issuer and of the entity guaranteeing the fulfilment of the obligations assumed by the issuer, if applicable, and of the rights related to such securities.

(2) The offer prospectus shall be valid twelve (12) days after its approval by NSC, and it may be used for several securities issues within this period, provided that such is updated according to Art. 179.

(3) The prospectus shall also include a summary. The summary shall, briefly and in a non-technical language, provide essential information in the language in which the prospectus was initially drafted. The form and contents of the summary of the prospectus shall provide, together with the prospectus, appropriate information regarding the essential elements of the securities to help investors decide whether to invest in such securities or not.

(4) The summary shall be drafted in a standard form so as to facilitate the comparison with the summaries related to similar securities and shall include essential information regarding such securities to help investors decide whether to invest in such securities or not. The summary shall also include a warning of the prospective investors regarding the fact that:

a) it should be read as an introduction to the prospectus;

b) any decision to invest should be based on the information included in the prospectus, taken as a whole;

c) prior to the initiation of judicial proceedings regarding the information included in a prospectus, the plaintiff shall incur the costs related to the translation of the prospectus into the Romanian language;

d) civil liability, if the summary is misleading, inconsistent or inaccurate, or contradictory when read with other parts of the prospectus, shall be incumbent upon the persons who drafted the summary, including those making the translation, and the persons notifying in connection with cross-border public offers.

(5) Where the prospectus refers to the admission to trading on a regulated market of certain non-equity securities, whose nominal value represents at least the RON equivalent of EUR 100,000, the provision of a summary is not mandatory except where a Member State so requests, under the applicable law of that Member State. Where admission is made on a regulated market of Romania, a summary in the Romanian language shall be drawn up.

Art. 185

(1) The prospectus may be drafted as a single document or having several parts, namely:

a) the issuer's presentation sheet, including the information regarding the issuer;

b) the note regarding the features of the securities offered or proposed to be admitted to trading on a regulated market;

c) the summary of the prospectus.

(2) The issuer's presentation sheet, approved by NSC, shall be valid for maximum twelve (12) months. The presentation sheet, updated according to Art. 179 or Art. 185 Para (4), together with the note regarding the securities and the summary, shall be deemed a valid prospectus.

(3) An issuer whose presentation sheet is already approved by ASF may draft and submit for approval only the documents referred to in Para (1) Letters b) and c), if it intends to launch an offer to the public or admission to trading securities on a regulated market of those.

(4) In the situation referred to in Para (3), the note regarding the features of the securities offered or proposed to be admitted to trading on a regulated market shall include also the information which should be included in the issuer's presentation sheet, if a significant change or a new event occurs which might affect the assessment of investors subsequent to the approval of the latest updated version of the presentation sheet, except for the case in which such information is provided in a supplement according to Art. 179. The note regarding the features of the securities and the summary shall be submitted to NSC for approval separately.

Art. 186

(1) The prospectus may include information by reference to one or more documents published prior to or simultaneously and approved by NSC or submitted to NSC according to Title V, Chapter I, Sections 1 and 2 and Title VI, Chapters II and V. Such information shall be the latest information available to the issuer.

(2) If information is included in the prospectus as provided in Para (1), a cross-reference table shall be drafted to give the investors the possibility to identify such information.

(3) The summary of the prospectus may not include information by reference to other documents according to the provisions of Para (1).

Art. 187

The prospectus shall include information regarding the issuer and the securities which are offered to public or admitted to trading on a regulated market. The minimum contents of the information to be included in the prospectus, their presentation form, according to the type of securities forming the object of the offer and the documents which must accompany the prospectus, shall be established through the applicable European regulations regarding the contents and publication of prospectuses, and dissemination of publicity-related releases or, as the case may be, through NSC regulations.

Art. 188

(1) NSC shall decide on the approval of the offer prospectus within ten (10) working days from the registration of the request.

(2) The time limit referred to in Para (1) may be extended to twenty (20) working days, if the securities are issued by an issuer requesting for the first time the admission to trading on a regulated market or which did not make a public offer of securities.

(3) Any request for additional information or for the modification of the information initially presented in the prospectus, by NSC or by the offeror, shall interrupt such terms, which shall start running again as of the date such information or modification is provided.

Art. 189

(1) If the final offer price and the number of securities offered to the public may not be included in the prospectus upon its approval, the prospectus shall include:

a) the criteria and/or the conditions based on which the final offer price and the number of securities offered to the public shall be determined, or, in the case of the price, the maximum value thereof, or

b) the possibility to withdraw the subscriptions made within at least two (2) working days from the date when the final price and the number of the offered securities were registered with ASF and made public according to Art. 175(3).

(2) If the prospectus refers to a public offer of securities, the investors who expressed their will to underwrite securities prior to the publication of a supplement to the offer prospectus, shall have the right to withdraw the subscriptions made within two (2) working days from the publication of such supplement, provided that the new factor, error or inaccuracy referred to in Art. 179 occurred prior to the closing of the public offer and transfer of the securities. Such period may be extended by the issuer or offeror, according to NSC regulations. The time limit of the exercise of the withdrawal right shall be mentioned in the supplement.

(3) The investors' right to withdraw their subscriptions shall be exercised subject to the conditions and limits stated in the prospectus, and the offeror shall have the possibility to establish that subscriptions may be withdrawn only in the situations referred to in Para (1) and/or (2), as appropriate.

Art. 190

Repealed.

Art. 191

Request for investment intent shall be permitted to assess the success of a future offer, under the conditions established by NSC.

Art. 192

(1) The legal provisions regarding public sale offerings shall not be mandatory in the case of the units issued by UCITS, and also in other situations established by NSC's regulations.

(2) NSC shall issue regulations regarding the cross-border public offers, according to the applicable European legislation.

Section 3
Takeover Bids

Art. 193

(1) The public purchase offer represents the offer of any person to purchase securities, addressed to all their holders, circulated through mass media or communicated by other means, provided that the possibility to receive it is equal for the holders of such securities.

(2) The public purchase offer shall be made through an intermediary authorised to supply investment services and activities.

(3) The price offered within the public purchase offer shall be established according to NSC's regulations.

Art. 194

(1) NSC shall decide on the approval of the offer document within ten (10) working days from the registration of the request.

(2) Any request for additional information or for the modification of the information initially presented in the offer document, by NSC or by the offeror, shall interrupt such time limit, which shall start running again as of the date such information or modification is provided.

Art. 195

(1) The public purchase offer shall be made so as to ensure a fair treatment for all investors.

(2) The minimum contents of information which shall be included in the offer document shall be established through NSC's regulations.

Section 4
Voluntary Takeover Bid

Art. 196

(1) The voluntary takeover bid is the public purchase offer, addressed to all of the shareholders, for all their holdings, launched by a person who does not have this obligation, to acquire more than 33% of the voting rights.

(2) The person intending to make a voluntary takeover bid shall send to NSC a preliminary notice for approval. The minimum contents of information to be included in the preliminary notice shall be established through NSC's regulations.

(3) Once approved by NSC, the preliminary notice shall be sent to the company subject of the takeover, to the regulated market on which such securities shall be traded and shall be published in at least one (1) central and one (1) local newspaper within the administrative and territorial area of the issuer.

Art. 197

(1) The board of administration of the company subject to takeover shall send to NSC, the offeror and the regulated market on which such securities shall be traded its position regarding the opportunity of the takeover, within five (5) days after the receipt of the preliminary offer notice.

(2) The board of administration may call the extraordinary general meeting to inform the shareholders of the position of the board of administration as regards such bid. If the request for the call is made by a significant shareholder, the call of the general meeting is mandatory, and the call shall be published within maximum five (5) days as of the registration of the request. By derogation from the provisions of Law No. 31/1990, the general meeting shall be held within five (5) days as of the publication of the call in a national newspaper.

(3) From the receipt of the preliminary notice and until the closing of the offer, the company's board of administration subject to takeover shall inform NSC and the regulated market of all operations performed by the members of the board of administration and of the executive management regarding such securities.

Art. 198

(1) After the receipt of the preliminary notice, the board of administration of the company subject to takeover may no longer conclude any act or take any measures which may affect its assets or the objectives of the takeover, except for the current administrative acts.

(2) For the purposes of this section, the operations affecting the company's assets include, without limitation, the following: share capital increases or securities issues granting the right to subscribe or convert into shares, encumbrance or transfer of certain assets representing at least one third of the net asset according to the company's latest annual balance sheet.

(3) By derogation from the provisions of Para (1), those operations deriving from obligations assumed prior to the publication of the takeover notice, and those operations expressly approved by the extraordinary general meeting called for that purpose after the preliminary notice, may be performed.

(4) The offeror shall be liable for all damages caused to the company subject to the takeover bid if proved that it was made exclusively to put the company in the situation of not taking some of the measures referred to in Para (2) or performing those operations expressly approved by the extraordinary general meeting, called particularly for that purpose after the notice.

Art. 199

(1) The publication of the preliminary notice binds the offeror to submit to NSC, within maximum thirty (30) days, the documentation related to the takeover bid, subject to terms at least as favourable as those indicated in the preliminary notice.

(2) NSC shall decide on the approval of the offer document, within the time limit provided in Art. 194.

(3) The price offered within the voluntary takeover bids shall be established according to NSC's regulations.

Art. 200

The offeror or the persons acting in concert with the offeror may not launch one (1) year from the closing of the previous takeover bid another takeover bid for the same issuer.

Section 5
Competing Public Offers

Art. 201

(1) Any person may launch a counter-offer having as its object the same securities, under the following conditions:

a) it addresses at least the same quantity of securities or aims at reaching at least the same share capital holding;

b) it offers a price that is at least 5% higher than that of the first offer.

(2) The counter-offer shall be made by submitting to NSC the required documentation, within maximum ten (10) working days from the date when the first offer became public.

(3) NSC shall decide on such offers, according to the provisions of Art. 194(1).

(4) Through the decision for the authorisation of counter-offers, NSC shall establish the same closing deadline for all offers and a deadline prior to which the supplements regarding the price increase may be submitted for approval within competing offers.

(5) The single closing deadline of competing offers may not exceed sixty (60) working days from the date the first offer was made.

Section 6
Mandatory Takeover Bids

Art. 202

The provisions of this section shall apply to trading companies whose shares are traded on a regulated market.

Art. 203

(1) Any person who, as a result of its purchases or of the persons acting in concert with such person, holds more than 33% of the voting rights in a trading company shall launch a public offer addressed to all holders of securities and having for all their holdings as soon as possible, but no later than two (2) months from reaching such holding position.

(2) Until the public offer referred to in Para (1) is made, the rights related to the securities exceeding the 33% ceiling of the voting rights over the issuer are suspended, and the

shareholder and the persons acting in concert with the shareholder may no longer purchase, among other operations, shares of the same issuer.

(3) The provisions of Para (1) shall not apply to the persons who, prior to the entry into force hereof, acquired the position of holder of over 33% of the voting tights, in observance of the legal provisions applicable upon the acquisition.

(4) The persons referred to in Para (3) shall make a mandatory takeover bid, according to the provisions of Para (1), only provided that, subsequent to the entry into force hereof, they increase their holdings so that they reach or exceed 50% of the voting rights of such issuer. Until the public offer is made, the rights attached to the shares purchased exceeding 50% shall be suspended, and the shareholder and the persons acting in concert with the shareholder may no longer purchase, among other operations, shares of the same issuer.

Art. 204

(1) The price of the mandatory takeover bid shall be at least equal to the highest price paid by the offeror or by the persons acting in concert with the offeror over the twelve-month period prior to the submission of the offer documentation to NSC.

(2) The provisions of Para (1) shall not apply if the offeror or the persons acting in concert with the offeror did not acquire shares of the company which is the subject of the mandatory takeover bid over the twelve-month period prior to the submission of the offer documentation to NSC, or if NSC, *ex officio* or further to a notification in this respect, determined on grounded reasons that the operations whereby shares were acquired may influence the accuracy of the manner in which the price was established.

(3) Subject to the conditions of Para (2) and if the terms provided in Art. 203, and Art. 205 regarding the submission of the offer documentation to NSC, are complied with, the price offered within the takeover bid shall be at least equal to the highest price of the following values determined by an authorised evaluator, according to law, and appointed by the offeror:

a) the weighted average trading price related to the last twelve (12) months prior to the submission of the offer documentation to NSC;

b) the value of the company's net assets divided by the number of shares outstanding, according to the latest audited financial statements;

c) the value of the shares resulting from an expert evaluation carried out according to international evaluation standards.

(4) If the terms provided in Art. 203 or, as the case may be, Art. 205, are not observed and the offeror or the persons acting in concert with the offeror did not acquire shares of the company which is subject of the mandatory takeover bid over the twelve-month period prior to the submission of the offer documentation to NSC, or if NSC, *ex officio* or further to a notification in this respect, determined on grounded reasons that the operations whereby shares were acquired may influence the accuracy of the manner in which the price was established, the price offered within the mandatory takeover bid shall be at least equal to the highest price of the following values determined by an authorised evaluator, according to law, and appointed by the offeror as follows:

a) the weighted average trading price related to the last twelve (12) months prior to the submission of the offer documentation to NSC;

b) the weighted average trading price related to the last twelve (12) months prior to the date when the position exceeding 33% of the voting rights was reached;

c) the highest price paid by the offeror or the persons acting in concert with the offeror in the last twelve (12) months prior to the date when the position exceeding 33% of the voting rights was reached;

d) the value of the company's net assets divided by the number of shares outstanding, according to the latest audited financial statements prior to the submission date of the offer documentation to NSC;

e) the value of the company's net assets divided by the number of shares outstanding, according to the latest audited financial statements prior to the date when the position exceeding 33% of the voting rights was reached;

f) the value of the shares resulting from an expert evaluation carried out according to international evaluation standards.

(5) If the provisions of Para (2) are not applicable and the terms provided in Art. 203 or, as the case may be, Art. 205 are not complied with, the price offered within the mandatory takeover bid shall be at least equal to the highest price of the following values:

a) the highest price paid by the offeror or the persons acting in concert with the offeror in the last twelve (12) months prior to the submission date of the offer documentation to NSC;

b) the highest price paid by the offeror or the persons acting in concert with the offeror in the last twelve (12) months prior to the date when the position exceeding 33% of the voting rights was reached;

c) the weighted average trading price, related to the past twelve (12) months prior to the submission date of the offer documentation to NSC;

d) the weighted average trading price related to the last twelve (12) months prior to the date when the position exceeding 33% of the voting rights was reached.

(6) If NSC, *ex officio* or further to a notification in this respect, determines on grounded reasons that the price established by an authorised evaluator, according to law, in any of the situations referred to in Para(4), may not lead to a fair price within the mandatory takeover bid, NSC may request a re-evaluation.

(7) The evaluation report whereby the price is determined within the mandatory takeover bid shall be made available to the shareholders of the issuing company, subject to the same conditions as the offer document.

Art. 205

(1) The provisions of Art. 203 shall not apply if the position exceeding 33% of the voting rights over the issuer was acquired as a result of an exempt transaction.

(2) For the purposes hereof, exempt transaction means that such position was acquired:

a) within the privatisation process;

b) by purchase of shares from the Ministry of Public Finance or from other entities legally authorised, within the budget claims collection procedure;

c) following the transfer of shares between the parent company and its branches or among the branches of the same parent company;

d) following a voluntary takeover bid addressed to all holders of the securities and for all their holdings.

(3) If the position exceeding 33% of the voting rights over the issuer is acquired unintentionally, the holder of such position shall have one of the following alternative obligations:

a) to make a public offer, subject to the conditions and at the price provided in Arts. 203 and 204;

b) to alienate a number of shares, corresponding to the loss of the position acquired without intention.

(4) Any of the obligations referred to in Para (3) shall be fulfilled within three (3) months from acquiring such position.

(5) The position exceeding 33% of the voting rights over the issuer shall be deemed unintentionally acquired provided that it was reached as a result of operations such as:

a) the reduction of the capital through the redemption by the company of its own shares, followed by their annulment;

b) exceeding the ceiling, as a result of the exercise of the pre-emptive right, subscription or conversion of the initially allotted rights, and conversion of preferred shares into common shares;

c) merger/division or succession.

Art. 205[1].

Provisions of art. 203 shall not apply in case of using the tools, competences and mechanisms for resolution under the legislation on recovery and resolution of credit institutions and investment companies.

Section 7
Withdrawal of Shareholders from a Trading Company

Art. 206

(1) After a public purchase offer is made and addressed to all shareholders and for all their holdings, the offeror shall have the right to request the shareholders who did not to subscribe within the offer, to sell it such shares, at a fair price, provided that it is in any of the following situations:

a) it holds shares representing at least 95% of the total number of shares of the share capital granting voting rights and at least 95% of the voting rights which may be actually exercised;

b) it purchased, within the public purchase offer addressed to all shareholders and for all their holdings, shares representing at least 90% of the total number of shares of the share capital granting voting rights and at least 90% of the voting rights referred to in the offer.

(1[1]) The offeror may exercise its right referred to in Para (1) within three (3) months from the closing date of the bid.

(2) If the company issued more classes of shares, the provisions of Para (1) shall apply separately for each class.

(3) The price offered within a voluntary takeover bid/public purchase offer whereby the offeror purchased, through the subscriptions within the offer, shares representing at least 90% of the total number of shares of the share capital granting voting rights referred to in the offer, shall be deemed a fair price. In the case of a mandatory takeover bid, the price offered within the offer shall be deemed a fair price.

(4) If the provisions of Para (3) are not applicable, the price shall be determined by an authorised evaluator, according to law, according to international evaluation standards.

(4^1) If NSC, *ex officio* or further to a notification in this respect, determines on grounded reasons that the price established by an authorised evaluator, according to law, in accordance with the provisions of Para (4), may not lead to a fair price, NSC may request a re-evaluation.

(5) The price established according to the provisions of Paras (3) or (4) shall be made public through the market where transactions are carried out, by publication in the Bulletin of NSC, on NSC's website and in two national financial newspapers, within five (5) days from the drafting of the report.

(6) The issuing company shall withdraw from trading as a result of the finalization of the procedure for exercising the right referred to in Para (1).

Art. 207

(1) As a result of a public purchase offer addressed to all holders and for all their holdings, a minority shareholder shall have the right to request the offeror in any of the situations referred to in Art. 206 Para (1) to purchase its shares at a fair price, according to Art. 206 Paras (3) and (4).

(2) If the company issued more classes of shares, the provisions of Para (1) shall apply separately for each class.

(3) The price shall be determined according to the provisions of Art. 206 Para (3). If the appointment of an independent expert is required, the related costs shall be incurred by the minority shareholder.

Art. 208

NSC shall issue regulations regarding the application of the provisions of this section.

TITLE VI
ISSUERS

CHAPTER I
General Provisions

Art. 209

Issuers of securities shall ensure a fair treatment for all holders of securities of the same type and class, and shall provide them with all necessary information so that they may exercise their rights.

Art. 210

(1) The abusive use of the position held by the shareholders or of the capacity as administrator or employee of the company, by means of disloyal and fraudulent acts, which are meant to damage the rights regarding securities and other financial instruments held, and to prejudice their holders, or have as their effect the damage or prejudice thereof, shall be prohibited.

(2) The holders of securities shall exercise their rights in good faith, in observance of the legitimate rights and interests of the other holders and of the priority interest of the trading company, or otherwise they shall be held liable for the damages caused.

CHAPTER II
The Prospectus for Admission to Trading

Art. 211

(1) Securities shall be admitted to trading on a regulated market subsequent to the publication of a prospectus approved by NSC.

(2) NSC shall issue regulations regarding:

a) repealed;

b) the exceptions from the obligation to publish a prospectus or to include certain information;

c) the admission to trading on a regulated market in Romania of certain securities issued by non-residents, according to the applicable Community legislation.

(3) The provisions of Title V, Chapter I, Sections 1 and 2 shall apply accordingly in the case of the prospectus drafted for the admission to trading.

Art. 211[1]

(1) Once the application for approval of the prospectus for admission to trading is submitted to ASF, the person requesting the admission to trading shall also submit the prospectus to the regulated market operator, together with the provisional application for admission to trading and all other documents requested by the regulations issued by the regulated market operator.

(2) The final application for admission to trading shall be submitted to the regulated market operator after the issuance of the decision approving the prospectus for admission to trading by ASF.

Art. 212

The securities of an issuer shall not be admitted to trading on a regulated market if, subsequent to the analysis of such issuer's situation, investors' interests are considered to be prejudiced.

CHAPTER III
Specific Conditions for Admission to Trading of Shares on a Regulated Market

Section 1
Conditions regarding the Issuer

Art. 213

(1) For the shares of a trading company to be admitted to trading on a regulated market, the trading company shall meet the following requirements:

a) the company must be established and carry out its activity in compliance with the legal provisions in force;

b) the company must have a foreseeable capitalisation of at least the RON equivalent of EUR 1,000,000 or, to the extent that the value of the capitalisation may not be foreseen, must have its capital and reserves, including the profit or loss of the last financial year, of at least the RON equivalent of EUR 1,000,000, calculated according to the reference rate communicated by the National Bank of Romania on the date of the request for admission to trading;

c) the company must have conducted its business during the last three (3) years prior to the request for admission to trading and must have drafted and communicated its financial statements for such period according to the legal provisions.

(2) The condition referred to in Para (1) Letter b) shall not apply if additional issues of shares of the same class as those already admitted are admitted to trading.

Art. 214

Subject to the NSC's approval, companies that do not fulfil the conditions provided in Art. 213(1) Letters b) and c) may be admitted to trading on a regulated market, provided that:

a) there shall be an adequate market for such shares;

b) the issuer is able to fulfil the continuous and periodical information requirements deriving from the admission to trading, and the investors have the information necessary to make an informed evaluation of the company and shares for which the admission to trading is intended.

Section 2
Conditions regarding Shares

Art. 215

The shares which are subject of the admission to trading shall be freely negotiable and fully paid.

Art. 216

In the case of a public issue of shares preceding the admission to trading, admission may be made only after the subscription period expired.

Art. 217

(1) For the shares of a company to be admitted to trading on a regulated market, a sufficient number of shares shall be distributed to the public.

(2) A sufficient number of shares shall be deemed to have been distributed to the public, in the following situations:

a) the shares whose admission to trading was requested, are distributed to the public in a proportion of at least 25% of the subscribed capital represented by this class of shares;

b) the market must operate as normal, with a percentage of shares smaller than that provided in Letter a), due to the large number of shares outstanding and to their distribution to the public.

(3) The condition referred to in Para (1) shall not apply if the shares are distributed to the public through the transactions carried out on such regulated market. In this case, the admission to trading shall be made if NSC considers that a sufficient number of shares shall be distributed to the public, through such regulated market, within a short period of time.

Art. 218

If admission is intended for an additional stock of the same class as those already admitted, NSC may assess if a sufficient number of shares is distributed to the public, by reference to all of the shares issued and not only by reference to such additional stock.

Art. 219

The request for admission to trading on a regulated market shall cover all of the shares of the same class as those already issued.

CHAPTER IV
Specific Conditions for Admission to Trading on a Regulated Market of the Bonds Issued by Trading Companies, Public Authorities and International Bodies

Art. 220

(1) For the bonds issued by trading companies, public authorities and international bodies to be admitted to trading on a regulated market, the issuer must have established and carry out its activity in compliance with the legal provisions in force.

(2) The bonds which are subject of the admission to trading shall be freely negotiable and fully paid.

(3) In the case of a public issue of bonds preceding the admission to trading, admission may be made only after the subscription period expired.

(4) The provisions of Para (3) shall not apply in the case of continuous issues of bonds, when the expiry date of the subscription period is not set.

Art. 221

The request for admission to trading on a regulated market shall cover all bonds of the same class already issued.

Art. 222

(1) The minimum value of the loan may not be smaller than the RON equivalent of EUR 200,000. This provision shall not apply in the case of continuous issues, if the amount of the loan is not determined.

(2) Subject to the NSC's approval, the bonds in the case of which the condition referred to in Para (1) is not fulfilled may be admitted on a regulated market if an orderly market for such bonds is ensured.

Art. 223

(1) Convertible bonds may be admitted to trading on a regulated market provided that the securities in which they may be converted are listed on their turn on a regulated market.

(2) By exception, convertible bonds may be admitted to trading on a regulated market without fulfilling the condition referred to in Para (1) if NSC considers that the investors have all the information necessary to form an opinion regarding the value of the shares subject to conversion.

CHAPTER V
Transparency of Issuers

Section 1
Obligations of Trading Companies whose Shares are Admitted to Trading on a Regulated Market

Art. 224

(1) The companies admitted to trading on a regulated market shall register themselves with NSC and meet the reporting requirements established through NSC's regulations and of the regulated markets on which the securities issued by them are traded.

(2) The trading company shall ensure equal treatment to all shareholders holding shares of the same class.

(3) The trading company shall ensure all the facilities and information necessary to allow the shareholders to exercise their rights, in particular:

a) to inform the shareholders of the call of general meetings and to allow them to exercise their voting rights;

b) to inform the public of the allocation and payment of dividends, issue of new shares, including the allotment, subscription, renunciation and conversion operations;

c) to appoint as payment agent a financial institution through which shareholders may exercise their financial rights, except for the case when the issuer provides itself such services.

(4) If the company intends to amend its instruments of incorporation, it shall communicate the amending draft to NSC and to the regulated market, until the call of the general meeting which shall decide on the amendment.

(5) The company shall immediately inform the public, within maximum forty-eight (48) hours, of any new events in its activity which were not made public and which may, by virtue of their effect on its assets and liabilities or financial standing or on the ordinary course of business of the issuer, lead to changes in the price of shares.

(6) NSC may request the company admitted to trading to provide all the information that it deems necessary to protect the investors and to ensure an orderly market.

(7) NSC may request an issuer to publish the information referred to in Para (6) and shall establish the form and period of such request. If the issuer fails to publish the requested information, NSC may publish such information after hearing the issuer.

(8) Any issuer whose securities are admitted to trading on a regulated market in Romania and on one or more regulated markets in the Member States shall provide equivalent information to the markets.

Art. 225

(1) The administrators of the companies admitted to trading shall immediately report any legal document concluded by the company with the administrators, employees, controlling shareholders, and with the persons related to them, whose cumulated value represents at least the RON equivalent of EUR 50,000.

(2) If the company concludes legal documents with the persons referred to in Para (1), its interests shall be respected by reference to the same type of offers existing on the market.

(3) The reports referred to in Para (1) shall include, in a special chapter, the legal documents concluded and the amendments thereto and shall specify the following elements: the parties concluding the legal document, the date of conclusion and the nature of the document, the description of its object, the total value of the legal document, the mutual claims, the guarantees established, the payment terms and modalities.

(4) The reports shall also mention any other information necessary to establish the effects of such legal documents over the company's financial standing.

Art. 226

(1) Any trading company shall inform the public and NSC, without delay, of the inside information referring directly to it.

(2) NSC shall issue regulations regarding the modalities of information to the public, in accordance with the Community legislation.

(3) Any issuer may, on its own responsibility, postpone the public disclosure of the inside information referred to in Para (1) so as not to prejudice its own interests, provided that such postponement does not mislead the public and the issuer may ensure the confidentiality of such information.

(4) The issuer shall inform, without delay, NSC of the decision for postponement of the disclosure to the public of such inside information. NSC may order the issuer to disclose the information to ensure the transparency and integrity of the market.

(5) If an issuer or a person acting on behalf or on the account of the issuer discloses any inside information to a third party during the ordinary course of business, as provided in Art. 246, Letter a) it shall make such information public simultaneously in the case of an intentional disclosure and without delay in the case of an unintentional disclosure.

(6) The provisions of Para (5) shall not apply if the person receiving the information has the obligation to maintain its confidential nature, irrespective of whether such obligation is grounded on a law, regulation, instruments of incorporation or contract.

(7) The issuers or the persons acting on behalf or on the account of the issuers shall draft a list of the persons working for them under an employment contract or otherwise, who have access to the inside information. The issuers and the persons acting on their behalf or account shall update such list on a regular basis and shall send it to NSC whenever requested.

(8) The provisions of Paras (1) – (7) shall not apply to the issuers who did not request or did not receive the approval that their financial instruments be traded on a regulated market in Romania or in a Member State.

Art. 227

(1) The companies admitted to trading on a regulated market shall draft, make available to the public and send to NSC and to the market operator quarterly, bi-annual and annual reports.

The reports shall be made available to the public in writing or in any other manner approved by NSC. The company shall publish a press release in a national newspaper whereby investors shall be informed of the availability of such reports. The reports shall be sent for publication within maximum five (5) days from the approval date.

(2) The reports shall include any significant information so that the investors may make a grounded evaluation on the company's activity, profit or loss, and indicate any special factor which influenced such activities. The financial standing shall be presented by reference to the financial standing existing in the same period of the previous financial year. NSC shall issue regulations regarding the contents of such reports.

(3) If the company admitted to trading on a regulated market drafts both individual and consolidated financial statements, they shall be made available to the public. NSC may allow the trading company to make available to the public either the individual financial statements or the consolidated financial statements, only provided that the other financial statements do not include significant additional information.

(4) The company admitted to trading on a regulated market shall make available to the public, within maximum four (4) months from the closing of the financial year, the annual financial statements, together with the annual report, approved by the general meeting of shareholders. The annual report shall include also the report of the financial auditor appointed in accordance with Art. 258, and the latter's remarks.

(5) The bi-annual report shall be made available to the public within maximum two (2) months from the closing of the reporting period. If the bi-annual financial statements were audited, the bi-annual report shall include the financial auditor's report.

Art. 228

(1) If, as a result of the purchase or sale of the securities issued by a company admitted to trading on a regulated market, the voting rights held by a person reach, exceed or fall below any of the ceilings of 5%, 10%, 20%, 33%, 50%, 75% or 90% of the total voting rights, such person shall inform at the same time, within maximum three (3) working days from the acknowledgment of such operation, the company and NSC and the regulated market where such securities are traded.

(2) When the ceilings referred to in Para (1) are reached or exceeded by a branch of a parent company, such entity shall be exempt from the obligation to inform, if the information was provided by the parent company.

(3) The company admitted to trading on a regulated market, which received information according to Para (1), should bring to the public's knowledge such operation within maximum three (3) working days.

(4) NSC shall issue regulations regarding the modality of establishing the voting rights, for the application of the provisions of Para (1).

Section 2
Obligations of Trading Companies whose Bonds are Admitted to Trading on a Regulated Market

Art. 229

(1) The trading company shall ensure equal treatment to all bond holders related to the same loan for all rights attached thereto. Any issuer whose bonds are admitted to trading on a regulated market in Romania and on one or more regulated markets in the Member States shall provide equivalent information to the markets.

(2) The company shall ensure all the facilities and information necessary to allow the bond holders to exercise their rights, in particular:

a) to publish notifications of the call of the meetings of bond holders, the payment of interest, exercise of prospective rights of conversion, exchange, subscription or repayment of the loan;

b) to appoint as payment agent a financial institution through which bond holders may exercise their financial rights, except for the case when the issuer provides itself such services.

Art. 230

If the company intends to amend its instruments of incorporation affecting the rights of the bond holders, it shall communicate the amending draft to NSC and to the regulated market, prior to the call of the general meeting, which shall decide on the amendment.

Art. 231

(1) The company admitted to trading on a regulated market shall make available to the public, within maximum four (4) months from the closing of the financial year, the audited annual financial statements, together with the annual report.

(2) If the trading company admitted to trading on a regulated market drafts both individual and consolidated financial statements, they shall be made available to the public. NSC may authorise the company to make available to the public either the individual or consolidated financial statements only provided that the other financial statements do not include significant additional information.

Art. 232

The company shall inform the public without delay of the following:

a) any new major modification of its activity which was not made public and which may significantly affect the capacity of the company to fulfil its commitments. NSC may exempt the company from such obligation at its request if the disclosure of certain information would prejudice the company's legitimate interests;

b) new loans and the guarantees established to obtain such loans;

c) any change in the bond holders' right which would result particularly from the modification of the terms of the loans or of the interest rate;

d) any change in the rights attached to the shares, if the bonds are convertible into shares.

Section 3
Obligations of Public Authorities and International Bodies Issuers of Bonds

Art. 233

(1) The central and local public administration bodies and the international bodies shall ensure equal treatment to investors regarding the rights attaching to such securities. Any issuer whose bonds are admitted to trading on a regulated market in Romania and on one or more regulated markets in the Member States shall provide equivalent information to the markets.

(2) The central and local public administration bodies and the international bodies shall ensure all the conditions and information necessary to the investors to exercise their rights. Such authorities shall:

a) publish information regarding the call of the general meetings of the bond holders, the payment of interest and the repayment of the loan;

b) appoint a payment agent through which bond holders may exercise their financial rights.

CHAPTER VI
Special Provisions regarding the Companies Admitted to Trading

Art. 234

For the securities admitted to trading on a regulated market, NSC may:

a) request the issuer to provide all the information which may affect the evaluation of the securities, to protect investors or maintain an orderly market;

b) suspend or request the market operator to suspend the securities from trading, if it considers that the issuer's situation may cause the transaction to be detrimental to investors;

c) take all measures to ensure the correct information of the public;

d) decide that the securities admitted to trading on a regulated market be withdrawn from trading, if it considers that, due to certain special circumstances, an orderly market may not be maintained for such securities.

Art. 235

(1) The members of the board of administration of the companies admitted to trading on a regulated market may be elected by cumulative vote. At the request of any significant shareholder, the election based on such method shall be mandatory.

(1^1) If the election through the cumulative vote is not applied further to a request by a significant shareholder, such shareholder shall have the right to request in court the immediate call of a general meeting of shareholders.

(2) Any company where the cumulative vote method is applied shall be managed by a board of administration consisting of at least five (5) members.

(2^1) The provisions of Paras (1), (1^1) and (2) shall also apply accordingly in the case of election of the members of the supervisory board, if the company admitted to trading on a regulated market is managed by dual system.

(3) The regulations regarding the application of the cumulative vote method shall be established by NSC.

Art. 236

(1) Any increase in the share capital shall be decided by the extraordinary general meeting of shareholders.

(2) The instruments of incorporation or the extraordinary general meeting may authorize the increase in the share capital up to a maximum level. Within the limits of the indicated level, the administrators may decide, following the delegation of duties, the increase in the share capital. Such competence shall be granted to administrators for maximum one (1) year and may be renewed by the general meeting for a period which may not exceed one (1) year for each renewal.

(3) The resolutions adopted by the board of administration of a company admitted to trading in the exercise of the duties delegated by the extraordinary general meeting of shareholders shall have the same regime as the resolutions of the general meeting of shareholders as regards their publicity and the possibility to be challenged in court.

(4) The fees charged to the shareholders requesting copies of the documents issued for the application of Para (3) shall not exceed the costs necessary for duplication.

Art. 237

(1) The financial statements, including the consolidated financial statements of the companies admitted to trading shall be drafted according to the applicable accounting regulations and audited by financial auditors according to the regulations regarding financial auditing.

(2) The companies' legal representatives shall provide to NSC, the company's auditors and/or the experts appointed by the court the documents necessary for the exercise of their duties.

(3) The administrator, director and/or the executive director shall present to the shareholders accurate financial statements and true information regarding the economic company's financial standing.

Art. 238

(1) By derogation from the provisions of Company Law No. 31/1990, republished, as subsequently amended and supplemented, the date of identification of the shareholders which shall benefit from dividends or other rights and which are affected by the resolutions of the general meeting of shareholders shall be established by the latter. Such date shall be at least ten (10) working days subsequent to the date of the general meeting of shareholders.

(2) After the establishment of the dividends, the general meeting of shareholders shall also establish the time limit within which they shall be paid to the shareholders. Such time limit shall not exceed six (6) months from the date of the general meeting of shareholders establishing the dividends.

(3) If the general meeting of shareholders does not establish the date for the payment of dividends, in accordance with the provisions of Para (2), such shall be paid within maximum thirty (30) days from the date of publication of the resolution of the general meeting of shareholders establishing the dividends in the Official Journal of Romania, Part IV. After such date, the company shall be deemed in delay as of right.

Art. 239

The resolution of the general meeting establishing the dividends shall be submitted within fifteen (15) days to the office of the registry of commerce for registration and published in the Official Journal of Romania, Part IV. The resolution is an enforceable title, based on which the shareholders may initiate forced execution against the company according to law.

Art. 240

(1) If the share capital is increased, the annulment of the shareholders' pre-emptive right to subscribe new shares shall be decided in the extraordinary general meeting of shareholders attended by shareholders representing at least 85% of the share capital subscribed, and with the vote of the shareholders holding at least ¾ of the voting rights. After the annulment of the shareholders' pre-emptive right to subscribe new shares, the same shall be offered for subscription by the public, in compliance with the provisions on public sale offers in Title V and regulations issued for their application.

(2) The share capital increases by in kind contribution shall be approved by the extraordinary general meeting of shareholders attended by shareholders representing at least 85% of the share capital subscribed and with the vote of the shareholders representing at least ¾ of the voting rights. The in kind contributions may consist only of new and efficient assets required to conduct the issuing company's activity.

(3) The in kind contribution shall be evaluated by independent experts, in accordance with Law No. 31/1990, Art. 210.

(4) The number of shares allotted as a result of the in kind contribution shall be determined as a ratio between the value of the contribution, established according to Para (3), and the highest value of the market price of a share, the value per share calculated based on the net asset book value or the face value of the share.

(5) If the pre-emptive right is annulled, according to the provisions of Para (1), the number of shares shall be established according to the criterion referred to in Para (4).

(6) NSC shall issue regulations for the application of the provisions of this article.

Art. 240[1]

(1) The resolutions of the general meeting, contrary to law or to the instruments of incorporation, resulting in the modification of the share capital of the companies admitted to trading on a regulated market or in an alternative trading system may be challenged in court, within fifteen (15) days from the publication date in the Official Journal of Romania, Part IV, by any of the shareholders that did not attend the general meeting or voted against and requested that such be mentioned in the minutes of the meeting.

(2) The actions for cancellation referred to in Para (1) shall be settled as a matter of urgency and with priority by tribunals, in the court chamber, within maximum thirty (30) days from the date the legal action was filed.

(3) The resolutions issued by the tribunal may be challenged by appeal within maximum fifteen (15) days from the communication date.

(4) The appeal shall be settled as a matter of urgency by the courts of appeal within thirty (30) days from the registration date of the file on the dockets of the court.

Art. 241

(1) Any acts acquiring, alienating, exchanging or establishing as guarantee certain assets included in the category of company's non-current assets, whose value exceeds, individually or cumulatively, during a fiscal year, 20% of the total value of non-current assets, except for claims, shall be concluded by the administrators or directors of the company only subject to the prior approval by the extraordinary general meeting of shareholders.

(2) Any leases of tangible assets for a period exceeding one (1) year whose individual or cumulated value in connection with the same co-contractor or persons involved or acting in concert exceeds 20% of the total value of non-current assets, less the claims on the conclusion date of the legal document, and any associations for a period longer than one (1) year, exceeding the same value, shall be previously approved by the extraordinary general meeting of shareholders.

(3) If the provisions of Paras (1) and (2) are not complied with, any shareholder may request the court to annul the legal document concluded and to prosecute the administrators for the recovery of the prejudice caused to the company.

Art. 242

The shareholders of a company admitted to trading who do not agree to the resolutions of the general meeting on mergers or divisions, involving the allotment of shares which are not admitted to trading on a regulated market shall have the right to withdraw from the company and to obtain from it the counter value of their shares according to Law No. 31/1990, Art. 133.

Art. 243

(1) The board of administration or executive board, as the case may be, shall call the general meeting within the time limit provided in Art. 117 Para (2) of Law No. 31/1990, republished, as subsequently amended and supplemented.

(2) The time limit referred to in Para (1) shall not apply for the second or any further call of the general meeting caused by the fact that the quorum necessary for the meeting called for the first time was not formed, provided that:

a) this article was complied with at the first call;

b) no new item was added to the agenda; and

c) at least ten (10) days lapsed between the final call and the date of the general meeting.

(3) The access of the shareholders entitled to participate, on the reference date, in the general meeting of the shareholders is allowed by simply proving their identity in the case of natural person shareholders by their identity document, or, in the case of legal persons and natural person shareholders represented, by the power of attorney granted to the natural person representing them, in observance of the applicable legal provisions.

(4) The reference date shall be established by the issuer and may not be more than thirty (30) days prior to the date of the general meeting to which it applies.

(5) If a shareholder who meets the legal requirements is prevented from participating in the general meeting of shareholders, any person concerned has the right to request the court to annul the resolution of the general meeting of shareholders.

(6) The shareholders in the general meeting of shareholders of companies whose shares are admitted to trading may be represented also by persons other than the shareholders, based on a limited or general proxy.

(6^1) The limited proxy may be granted to any person for representation purposes in one general meeting and shall contain specific voting instructions from the issuing shareholder. In this case, the provisions of Art. 125 Para (5) of Law No. 31/1990, republished, as subsequently amended and supplemented, shall not apply.

(6^2) The shareholder may grant a valid proxy for a period which shall not exceed 3 years, allowing its proxy holder to vote in all aspects debated in the general meetings of shareholders of one or more companies identified in the proxy, including in connection with acts of disposition, provided that the proxy is given by the shareholder, as client, to an intermediary defined in accordance with Art. 2(1) Item 14, or to an attorney-at-law.

(6^3) Proxies, before being used for the first time, shall be submitted to the company 48 hours prior to the general meeting or within the time limit laid down in the company's instruments of incorporation, as copy, certified as true to the original by the signature of the representative. Certified copies of the proxies shall be retained by the company, and the minutes of the general meeting shall mention such fact.

(6^4) The shareholders may not be represented in the general meeting of shareholders based on a proxy as set out in Para (6^2) by a person who is in a situation of conflict of interest which may arise in particular in any of the following cases:

a) such person is a majority shareholder of the company, or another entity, controlled by that shareholder;

b) such person is a member of an administrative, management or supervisory body of the company, of a significant shareholder or controlled entity, in accordance with Letter a);

c) such person is an employee or auditor of the company or of a significant shareholder or of a controlled entity, in accordance with Letter a);

d) such person is the spouse, relative or affine up to and including the fourth degree of any of the natural persons referred to in Letters a)-c).

(6^5) The proxy holder may not be substituted by another person. Where the proxy holder is a legal person, then it may exercise its mandate through any person belonging to its administrative or management body, or its employees.

(7) Trading companies may allow their shareholders to participate in the general meeting in any form through electronic means of data transmission.

(8) The shareholders may appoint and revoke their representative through electronic means of data transmission.

(9) Companies shall prepare procedures which shall give the shareholders the possibility to vote by correspondence, prior to the general meeting. If resolutions requiring a secret ballot are on the agenda of the general meeting of shareholders, the vote by correspondence shall be cast through means which allow its disclosure only to the members of the secretariat in charge with counting the secret ballots cast and only when the other secret ballots cast by the attending shareholders or by the representatives of the shareholders participating in the meeting are also known.

(9^1) Where the shareholder casting its vote by correspondence participates personally or by proxy in the general meeting, the vote cast by correspondence for that general meeting shall be cancelled. In this case, only the vote cast personally or by proxy shall be taken into consideration.

(9^2) Where the person representing the shareholder by personal participation in the general meeting is different from that casting the vote by correspondence, then for its vote to be valid, it shall present in the meeting a written revocation of the vote by correspondence signed by the shareholder or by the proxy holder who cast the vote by correspondence. It shall not be required to do so if the shareholder or its legal representative is present at the general meeting.

(10) At least thirty (30) days prior to the general meeting of shareholders, the company shall provide the shareholders with the documents or information regarding the issues included on the agenda on its own website.

(11) The board of administration and the executive board shall call the general meeting at the request of the shareholders mentioned in Art. 119 Para (1) of Law No. 31/1990, republished, as subsequently amended and supplemented, if the request includes provisions falling under the duties of the meeting so that the meeting is held at the first or second call, within maximum sixty (60) days from the date of the request.

(12) This article and A.S.F. regulations issued for its implementation shall not apply in case of using the tools, competences and mechanisms for resolution under the legislation on recovery and resolution of credit institutions and investment companies.

Art. 243^1.

(1) For the purposes of legislation on recovery and resolution of credit institutions and investment companies, the general meeting may, by a two-thirds majority of the votes cast validly, decide or change the statute to provide that convening a general meeting to decide on a capital increase is done in a shorter period than provided for in art. 243 paragraph (1), provided that between the date of the convocation and the general meeting to be at least

ten calendar days, in order to fulfill the conditions related to early intervention measures and the appointment of the temporary administrator provided for by the legislation on recovery and resolution of credit institutions and investment companies, and the capital increase to be necessary to avoid conditions triggering the resolution procedure provided for by the legislation on recovery and resolution of credit institutions and investment companies.

(2) For the purposes of paragraph (1), the obligation to establish a single time limit for exercising the rights of shareholders to add items on the agenda of the general meeting or to submit draft resolutions for items included or to be included on the agenda of the general meeting, as provided in A.S.F. regulations, the obligation to ensure the timely availability of a revised agenda as set out in the A.S.F. regulations and the obligation that all issuers establish a one-time reference to A.S.F. regulations shall not apply.

TITLE VII
MARKET ABUSE

Art. 244

(1) "Inside information" shall mean information of a precise nature which has not been made public, relating, directly or indirectly, to one or more issuers of financial instruments or to one or more financial instruments and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

(2) In relation to derivatives on commodities, "inside information" shall mean information of a precise nature which has not been made public, relating, directly or indirectly, to one or more such derivatives and which users of markets on which such derivatives are traded would expect to receive in accordance with accepted market practices on those markets.

(3) Accepted market practices shall mean practices that are reasonably expected in one or more financial markets and are accepted by NSC in accordance with Community procedures.

(4) For persons charged with the execution of orders concerning financial instruments, "inside information" shall also mean information conveyed by a client and related to the client's pending orders, which is of a precise nature, which relates directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments, and which, if it were made public, would be likely to have a significant effect on the prices of those financial instruments or on the price of related derivative financial instruments.

(5) "Market manipulation" shall mean:

a) transactions or orders to trade:

1. which give, or are likely to give, false or misleading signals as to the supply of, demand for or price of financial instruments, or

2. which secure, by a person, or persons acting in collaboration, the price of one or several financial instruments at an abnormal or artificial level;

b) transactions or orders to trade which employ fictitious devices or any other form of deception;

c) dissemination of information through the media, including the Internet, or by any other means, which gives, or is likely to give, false or misleading signals as to financial instruments, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading. In respect of journalists when they act in their professional capacity such dissemination of information is to be assessed taking into account the rules governing their profession, unless those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question.

(6) The persons who carry out transactions or issue orders to trade and prove that their reasons are legitimate and, at the same time, such transactions or orders to trade are according to the accepted market practices on the regulated market concerned shall be exempt from the provisions of Para (5) Letter a).

(7) For the purposes of Para (5), the following instances are derived from the core definition of market manipulation, without limitation:

a) conduct by a person, or persons acting in collaboration, to secure a dominant position over the demand for a financial instrument which has the effect of fixing, directly or indirectly, purchase or sale prices or creating other unfair trading conditions;

b) the buying or selling of financial instruments at the close of the market with the effect of misleading investors acting on the basis of closing prices;

c) taking advantage of occasional or regular access to the traditional or electronic media by voicing an opinion about a financial instrument, or indirectly about its issuer, while having previously taken positions on that financial instrument and profiting subsequently from the impact of the opinions voiced on the price of that instrument, without having simultaneously disclosed that conflict of interest to the public in a proper and effective way.

Art. 245

(1) Any person who possesses inside information shall be prohibited from using that information by acquiring or disposing of, or by trying to acquire or dispose of, for his own account or for the account of a third party, either directly or indirectly, financial instruments to which that information relates.

(2) The provisions of Para (1) shall apply to any person who possesses that information:

a) by virtue of his membership in the administrative, management or supervisory bodies of the issuer;

b) by virtue of his holding in the capital of the issuer;

c) by virtue of his having access to the information through the exercise of his employment, profession or duties;

d) by virtue of his criminal activities.

(3) Where the person referred to in Para (1) is a legal person, the prohibition laid down in that paragraph shall also apply to the natural persons who take part in the decision to carry out the transaction for the account of the legal person concerned.

(4) The provisions of Paras (1) through (3) shall not apply to transactions conducted in the discharge of an obligation that has become due to acquire or dispose of financial instruments where that obligation results from an agreement concluded before the person concerned possessed inside information.

Art. 246

Any person subject to the prohibition laid down in Art. 245 shall be prohibited from:

a) disclosing inside information to any other person unless such disclosure is made in the normal course of the exercise of his employment, profession or duties;

b) recommending another person, on the basis of inside information, to acquire or dispose of financial instruments to which that information relates.

Art. 247

The provisions of Arts. 245 and 246 shall also apply to any other person who possesses inside information while that person knows, or ought to have known, that it is inside information.

Art. 248

Any natural or legal person shall be prohibited from engaging in market manipulation.

Art. 249

Market operators shall adopt structural provisions aimed at preventing and detecting market manipulation practices.

Art. 250

(1) Persons discharging managerial responsibilities within an issuer of financial instruments and, where applicable, persons closely associated with them, shall notify to NSC the existence of transactions conducted on their own account relating to shares of the said issuer, or to derivatives or other financial instruments linked to them.

(2) Persons who produce or disseminate research concerning financial instruments or issuers of financial instruments and persons who produce or disseminate other information recommending or suggesting investment strategy, intended for distribution channels or for the public, shall take reasonable care to ensure that such information is fairly presented and disclose their interests or indicate conflicts of interest concerning the financial instruments to which that information relates.

(3) Any person professionally arranging transactions in financial instruments who reasonably suspects that a transaction might constitute insider dealing or market manipulation shall notify NSC without delay.

(4) Public institutions disseminating statistics liable to have a significant effect on financial markets shall disseminate them in a fair and transparent way.

Art. 251

The prohibitions provided for in this title shall not apply to transactions carried out in pursuit of monetary, exchange-rate or public debt-management policy by the competent bodies in Romania, in the Member States, by the European Central Bank, or by any person acting on their behalf.

Art. 252

The prohibitions provided for in this title shall not apply to trading in own shares in “buy-back” programmes or to the stabilisation of a financial instrument provided such trading is carried out in accordance with the European regulations applicable to buy-back programmes and stabilisation of financial instruments.

Art. 253

(1) The provisions of this title shall apply to any financial instrument and greenhouse gas emission allowances admitted to trading on a regulated market in Romania or in a Member State or for which a request for admission to trading has been made, irrespective of whether or not the transaction itself actually takes place on that market, and also to bids of greenhouse gas emission allowances conducted in accordance with the European legislation in force.

(2) The provisions of Arts. 245 through 247 shall also apply to any other financial instrument not admitted to trading on a regulated market in Romania or in a Member State but whose value depends on a financial instrument as referred to in Para (1).

(3) The prohibitions and provisions of this title shall apply to:

a) actions carried out in Romania or abroad concerning financial instruments and greenhouse gas emission allowances that are admitted to trading on a regulated market situated or operating in Romania or for which a request for admission to trading on such market has been made;

b) actions carried out in Romania concerning financial instruments and greenhouse gas emission allowances that are admitted to trading on a regulated market in Romania or in a Member State or for which a request for admission to trading on such market has been made.

Art. 254

(1) NSC is the only authority competent to ensure the application of the provisions of this title.

(2) NSC shall be given all supervisory, investigative and control powers:

a) directly, for the duties provided in Art. 255 Letters a), c), d) and h);

b) in collaboration with other entities of the market, for the duties provided in Art. 255, Letter f);

c) in collaboration with other authorised bodies, such as: the Prosecutor's Office attached to the High Court of Cassation and Justice, the office of the registry of commerce, the Police, for the duties provided in Art. 255, Letters b), e) and g).

(3) The provisions of Paras (1) and (2) are subject to professional secrecy.

Art. 255

In exercising its duties, NSC shall have at least the right to:

a) have access to any document in any form whatsoever, and to receive a copy of it;

b) demand information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and hear any such person;

c) carry out on-site inspections;

d) require existing telephone and existing data traffic records;

e) require the cessation of any practice that is contrary to the provisions hereof;

f) suspend trading of the financial instruments concerned;

g) request the competent judicial authorities to take preventative measures against the assets of the persons breaching the provisions hereof;

h) request temporary prohibition of professional activity.

Art. 256

(1) NSC may take appropriate measures and may impose administrative sanctions against the persons responsible where the provisions of this title and the provisions adopted in the implementation of this title have not been complied with.

(2) NSC shall issue instructions in accordance with the Community procedures concerning the technical conditions for the enforcement of the provisions of Art. 226(1), (3), (4), (5) and (7) and of Art. 250(1) – (3).

Art. 257

NSC may impose sanctions against any natural or legal persons for failure to cooperate, in accordance with Art. 254(2) and Art. 255.

TITLE VIII
FINANCIAL AUDIT

Art. 258

(1) Financial and accounting statements and those regarding the operations of any entity subject to authorisation, supervision and control of NSC in accordance with the provisions hereof, shall be drawn up according to the specific requirements established by the Ministry of Public Finance and by NSC's regulations, and shall be audited by natural or legal persons, active persons, members of the Chamber of Financial Auditors of Romania.

(2) The way the provisions of this title shall be applied, shall be established based on a protocol concluded between NSC and the Chamber of Financial Auditors of Romania.

Art. 259

(1) The financial auditor:

a) shall draw up a financial audit report in compliance with the auditing standards issued by the Chamber of Financial Auditors of Romania;

b) shall draw up, within thirty (30) days, based on the information submitted by the administrators, additional reports in compliance with the financial auditing standards and the reporting framework defined by the international accounting standards and NSC's regulations on the operations required by the shareholders representing at least 5% of the total voting rights. The administrators shall provide the auditors with all requested information. The additional report shall be made public on NSC's website;

c) shall provide additional services in compliance with the principle of independence.

(2) If the administrators and auditors referred to in Para (1), Letter b) fail to comply with the request within the indicated time limit or if the report published does not contain the information included in the reporting framework, the shareholders may appeal to the court within whose territorial area the company's headquarters are located to appoint another financial auditor or expert for the purpose of resuming the procedure of drawing up and submitting an additional report, which shall be subsequently filed with the court and communicated to the parties, and the opinion of the financial auditor or the expert shall be published in the Bulletin of NSC.

Art. 260

(1) Financial auditors shall report, without breaching the provisions of the Code of Ethical and Professional Conduct and the Financial Auditing Standards, within ten (10) days, any fact or act concerning the activity of regulated entities which they acknowledged when fulfilling their specific duties and which:

a) represents a serious breach of legislation regulating the conditions for the authorisation and operation of the audited regulated entity;

b) is likely to affect the continuity of the audited regulated entity's activity;

c) may lead to a qualified audit opinion, to the impossibility to voice an opinion or to a contrary opinion.

(2) Financial auditors shall immediately report to NSC any fact or act as those referred to in Para (1) which they acknowledged during the audit process in connection with an entity controlled by the audited entity as defined in Art. 2, Item 16, Letter b).

(3) At the NCS's written request, financial auditors shall:

a) submit to NCS any report or document notified to the audited entity;

b) submit to NCS a statement indicating the reasons for the cessation of the audit contract, irrespective of the nature thereof;

c) submit to NCS any report or document containing the remarks notified to the management of the audited entity.

(4) The fulfilment in good faith by the financial auditor of the obligation to inform NCS pursuant to Paras (1) and (2) shall not constitute a breach of the obligation to keep the professional secrecy which is incumbent upon it according to law/the code of ethics or contractual clauses and may not incur the liability of such financial auditor.

Art. 261

NCS shall ensure the confidentiality of the information received as provided by Art. 260, except for that of a criminal nature.

Art. 262

NCS may request, in writing, the financial auditors of the companies admitted to trading on a regulated market or to the companies which offer securities to the public or which seek

admission to trading to provide all necessary information.

Art. 263

If significant inconsistencies are identified in the professional activity of a financial auditor in connection with the entities subject to authorisation, control and supervision of NSC, it shall notify the Chamber of Financial Auditors of Romania (CFAR) and shall request that appropriate measures be taken in accordance with the regulations in force.

TITLE IX
SPECIAL ADMINISTRATION AND ADMINISTRATIVE WINDING-UP MEASURES

CHAPTER I
General Provisions

Art. 264

(1) NSC shall take special administration measures if it ascertains that an authorised entity may become insolvent or if any of its administrators, executive directors or auditors are guilty of:

a) breaching the provisions hereof or the regulations issued by NSC which caused or may cause significant damage or which may jeopardise the orderly functioning of the capital market;

b) breaching any condition or prohibition provided in the operation authorisation;

c) inappropriately managing the financial instruments and the funds belonging to investors.

(2) If major inconsistencies are identified, NSC may request the dissolution of the authorised entities' board of administration.

CHAPTER II
Special Administration of the Entities Authorised by NSC

Art. 265

(1) Special administration shall be ensured by a specialised natural or legal person appointed by NSC.

(2) The decision regarding the establishment of the special administration shall be published in the Bulletin of NSC and in two (2) national newspapers.

Art. 266

(1) The special administrator shall be entrusted with all of the duties of the board of administration of the authorised entity subject of the special administration.

(2) The special administrator shall establish measures for the preservation of assets and collection of claims in the investors' and other creditors' interest.

(3) The shareholders' voting rights related to the appointment and revocation of administrators, to dividends, to the activity of the board of administration and of internal auditors, and their right to be remunerated shall be suspended throughout the special administration.

Art. 267

(1) Within maximum sixty (60) days from his appointment, the special administrator shall submit to NSC a written report on the financial standing of the authorised entity and shall attach documents on the evaluation of the entity's assets and liabilities, collection of claims, costs of asset maintenance and the situation of the debt liquidation.

(2) Within fifteen (15) days from the receipt of the special administrator's report, NSC shall decide, if applicable, to extend the special administrator's activity for a limited period of time.

(3) If the activity is extended, the special administrator shall submit, on a monthly basis, to NSC the evaluation of the authorised entity's financial standing.

Art. 268

(1) If NSC establishes, based on the special administrator's report, that the authorised entities recovered from the financial point of view and meet the prudential supervisory requirements in accordance with NSC's regulations, the special administration measures shall cease.

(2) The decision regarding the cessation of the special administration activity shall be published according to Art. 265(2).

Art. 269

(1) If the requirements provided in Art. 268 are not met and if NSC does not decide to extend the special administrator's activity, the regulated entity's operation authorisation shall be withdrawn, while NSC shall either open the administrative winding-up procedure, or notify the competent court in order to open the judicial reorganisation and bankruptcy proceedings. If the judicial reorganisation and bankruptcy proceedings are opened, it is not

mandatory to fulfil the conditions provided by Law No. 64/1995 on the judicial reorganisation and bankruptcy proceedings, as subsequently amended and supplemented.

(2) The court competent to settle the request filed by NSC to open the judicial reorganisation and bankruptcy proceedings against the authorised entities shall be the tribunal within whose territorial area such entities' headquarters are located.

(3) The provisions of Government Ordinance No. 10/2004 on credit institutions' judicial reorganisation and bankruptcy proceedings, to the extent of their applicability, shall also apply to the authorised entities subject of special administration and whose authorisation was withdrawn by NSC. The phrase "debtor credit institution" in the law mentioned above refers to entities authorised by NSC, and that regarding the National Bank of Romania refers to NSC.

(4) For the purposes of this chapter, insolvency means the condition of the authorised entity which is in any of the following situations:

a) inability to pay the due debts from its own funds;

b) withdrawal of the regulated entity's authorisation in accordance with this law and NSC's regulations, as a result of the inability of the authorised entity subject to special administration to recover financially.

(5) The liquidator shall be appointed by the tribunal with the NSC's consent.

(6) When exercising their duties, which involve the application of certain regulations issued by NSC, the tribunal, the receiver and the liquidator may also request the opinion of NSC, in its capacity as the authority in charge with the regulation and supervision of the capital market.

(7) The bankruptcy proceedings shall be closed after the receiver approved the final report, after all of the funds or assets of the authorised entity undergoing bankruptcy were distributed and the funds not claimed were deposited with the State Treasury. Further to a request by the receiver, the tribunal shall decide on closing the judicial reorganisation and bankruptcy proceedings. The decision shall be communicated in writing, and/or in the press, in at least two (2) national newspapers, to all the debtors' creditors, to the office of the registry of commerce, to NSC and to the liquidator. Any outstanding amounts shall be transferred to the State budget, after five (5) years.

Chapter III
Administrative Winding-up

Art. 270

(1) If NSC decides on the administrative winding-up, such winding-up shall be carried out according to the procedure established by the legislation applicable to the dissolution and winding-up of trading companies and by NSC's regulations.

(2) The liquidator for the administrative winding-up procedure shall be appointed by NSC.

TITLE X
LIABILITIES AND SANCTIONS

Art. 271

The breach of the provisions hereof and of the regulations adopted in the application hereof shall incur the liability according to law.

Art. 272

(1) The following deeds perpetrated by the following persons shall be deemed contravention:

a) investment firms (SSIFs) and/or by the members of the board of administration or supervisory board, directors or members of the executive board, representatives of the internal control compartment, financial investment services agents of investment firms (SSIFs) and tied agents, natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law, and by the person or persons acting in concert and who decided to acquire a qualifying holding in a SSIF, or are the shareholders of a SSIF, as the case may be, in connection with:

1. breaching the conditions based on which the license was granted and the operating conditions provided in Art. 3(2) and (3), Art. 4(1) and (2), Art. 6, Art. 8(5), Arts. 9, 14, 15, 16, Art. 18(1), (2), (4), (5), (7) and (8) and Art. 20(3);

2. breaching the prudential rules provided in Art. 23(1) and (4), Arts. 24 and 25;

3. breaching the rules of conduct provided in Art. 26(1), Art. 27 and Art. 28(1) and (7);

4. breaching the provisions of Art. 37, Art. 38(1) and (4), Arts. 39 and 39^{1} regarding cross-border operations of investment firms (SSIFs);

5. breaching the provisions of their own regulations and/or of the market/system operator/central depositary/clearing house approved by ASF;

6. failure to comply with the regulations and measures issued by ASF in connection with the financial investment services;

7. carrying out activities and services as set out in Art. 5(1) not covered by the scope authorised by ASF;

b) credit institutions and/or by the directors of the organizational structures related to the operations on the capital market, representatives of the internal control compartment and financial investment services agents and tied agents of credit institutions, and also by natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law, as the case may be, in connection with:

1. breaching the requirement for registration in the ASF's Registry and the operating conditions provided in Art. 3(2) and (3), Art. 4(1) and (2) and Art. 16;

2. breaching the prudential rules provided in Art. 23(1) and (4), Arts. 24 and 25;

3. breaching the rules of conduct provided in Art. 26(1), Art. 27 and Art. 28(1) and (7);

4. breaching the provisions of the regulations of the market/system operator/central depositary/clearing house approved by ASF;

5. failure to comply with the regulations and measures issued by ASF in connection with the financial investment services;

6. carrying out activities and services as set out in Art. 5(1) not covered by the scope authorised by the National Bank of Romania;

c) intermediaries from other Member States, and also by natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law, as the case may be, in connection with:

1. breaching the requirement for registration in the ASF's Registry provided in Art. 3 Para (2) for carrying out financial investment services and activities in Romania;

2. breaching the provisions of Art. 41(1)-(3), (5) and (6) and Art. 42(2) regarding intermediaries from other Member States;

3. breaching the provisions of the regulations of the market/system operator/central depositary/clearing house approved by ASF;

4. failure to comply with the regulations and measures issued by ASF in connection with the financial investment services;

d) intermediaries from non-Member States, and also by natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law, as the case may be, in connection with:

1. breaching the requirement for registration in the ASF's Registry provided in Art. 3 Para (2) for carrying out financial investment services and activities in Romania;

2. breaching the provisions of Art. 43 regarding intermediaries from non-Member States;

3. breaching the provisions of the regulations of the market/system operator/central depositary/clearing house approved by ASF;

4. failure to comply with the regulations and measures issued by ASF in connection with the financial investment services;

e) traders, and also by natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law, as the case may be, in connection with:

1. breaching the requirement for registration in the ASF's Registry provided in Art. 30 Para (1);

2. breaching the provisions of Art. 31 regarding the market operator's consent and observance of the regulations of such regulated market;

3. breaching the provisions of Art. 32 regarding the clearing and settlement of transactions carried out by traders;

4. breaching the provisions of Art. 33 regarding the prohibitions established for traders;

5. breaching the prudential rules and the rules of conduct provided in Art. 23(1) and (4), Art. 24 Para (1) Letter d) and Art. 26 Para (1);

6. breaching the provisions of the regulations of the market/system operator approved by ASF;

7. failure to comply with the regulations and measures issued by ASF in connection with the financial investment services;

f) investment advisers, and also by natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law, as the case may be, in connection with:

1. breaching the prohibitions referred to in Art. 35(4);

2. breaching the rules of conduct referred to in Art. 35 Para (5);

3. failure to comply with the regulations and measures issued by ASF in connection with the financial investment services;

g) entities authorised, regulated and supervised by ASF, issuers of securities and/or by the members of the board of administration or of the supervisory board, directors or members of the executive board of the authorised, regulated and supervised entity or issuers of securities, natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law or in connection with the activity of the entities authorised, regulated and supervised by ASF and/or issuers of securities, and the entities which are subject to an information obligation if the holding thresholds referred to in Art. 228(1) are exceeded, as the case may be, in connection with:

1. breaching the provisions regarding public offers and operations of withdrawal of shareholders from a company provided in Art. 173 Para (2), Art. 174 Para (2), Art. 175(1), (3^1) and (4), Arts. 176, 177, Art. 178(1)-(3), Art. 179, Art. 183(1) and (2), Art. 184, Art. 185 Para (2) and (4), Art. 186 Para (1), Art. 187, Arts. 190-192, Art. 193(2) and (3), Art. 195 Para (1), Art. 196(2) and (3), Art. 197, Art. 198(1), Art. 199(1), Art. 200, Art. 204(7), Art. 206(5) and Art. 208;

2. breaching the provisions regarding admission to trading of the securities provided in Art. 211 Para (1), Arts. 212, 215, 216, Art. 217 Para (1), Art. 219, Art. 220(1)-(3), Arts. 221, 222 and Art. 223(1);

3. breaching the obligations for reporting, performance of the operations and observance of conduct and conditions provided in Arts. 209, 210, Art. 224(1)-(5) and (8), Art. 225, Art. 226(1)-(5) and (7), Art. 227, Art. 228(1), (3) and (4), Arts. 229-233, Arts. 236, 237, 239, Art. 240 Para (3), Art. 241(1) and (2), Art. 242 and Art. 243(1), (4) and (9)-(11);

4. making a public offer without ASF's approval of the prospectus/offer document, and also carrying out without ASF's approval any activities or operations for which this law or the ASF's regulations require such approval;

5. breaching the conditions established by ASF's decision for approval of the prospectus/offer document, supplements thereto, and the notice/preliminary notice or marketing materials related to a public offer;

6. breaching the obligation provided in Art. 146 Para (4) regarding the conclusion of contracts with the central depositary;

7. failure to comply with the regulations and measures issued by ASF in connection with issuers and market operations;

h) market/system operators, administrators or members of the supervisory board, directors or members of the executive board, market/system operators, natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law, and persons acquiring shares resulting in a direct holding or together with persons acting in concert higher or equal to 20% of the voting rights, regulated by this law, as the case may be, in connection with:

1. breaching the conditions based on which the license was granted and the operating conditions of market operators provided in Art. 126(2) and (3), Arts. 129, 130, 131 and 133;

2. breaching the provisions regarding the regulations issued by market operators provided in Art. 134(1) and (2), Arts. 141 and 249;

3. breaching the provisions of the regulations of market/system operators approved by ASF;

4. breaching the provisions regarding the supervision of the regulated markets provided in Art. 135 Para (2);

5. breaching the obligations stipulated in Art. 136(1) and (2) regarding supply of data, information and documents, and amendment of their own regulations;

6. breaching the provisions regarding alternative trading systems provided in Art. 140;

7. refusing without justification to give access to the intermediaries from Member States according to Art. 42 Para (1);

8. failure to comply with the regulations issued by ASF in connection with regulated markets and alternative trading systems;

i) investment management companies (SAIs), self-managed NON-UCITS or depositary and/or by the members of the board of administration or supervisory board, directors or members of the executive board and the representatives of the internal control compartment of self-managed investment management companies (SAIs) or NON-UCITS, and also by natural persons exercising *de jure* or *de facto* managerial positions or under a professional title activities regulated by this law, as the case may be, in connection with:

1. breaching the conditions for establishment, registration with NSC and operation of NON-UCITS provided in Art. 115(1) and (4), Art. 117(1), Art. 118, Art. 119(2), Art. 120(1), (3) and (4) and Art. 286(1)-(3);

2. breaching the provisions of the internal regulations of the self-managed closed-end investment companies, rules of the fund/instruments of incorporation of the closed-end investment companies and/or issue prospectuses of NON-UCITS;

3. failure to comply with the regulations and measures issued by ASF in connection with the activity of the investment management companies, undertakings for collective investment authorised/licensed by ASF and their depositaries;

j) central depositaries, clearing houses, central counterparties, intermediaries and/or by the members of the board of administration or supervisory board, directors or members of the executive board, and also by natural persons exercising *de jure* or *de facto* managerial positions in the entities previously mentioned or by other responsible persons, as the case may be, in connection with:

1. breaching the conditions based on which the license was granted and the operating conditions referred to in Art. 148(1) and (2) and Art. 159(2) and (3);

2. refusing to provide ASF with the requested information, according to Art. 144 Para (2), regarding the clearing and settlement of transactions;

3. refusing to provide the issuers with the information necessary for exercising the rights related to the securities deposited according to Art. 146(4) and (5);

4. refusing to report to the central depositaries the holders of the individualized sub-accounts held by intermediaries according to Art. 146 Para (6);

5. breaching by the intermediaries of the reporting obligations within the terms provided in Art. 146 Para (7);

6. breaching the obligations regarding the recording of the securities and the encumbrances upon such provided in Art. 151;

7. refusing to fulfil ASF's requests provided in Art. 153 Para (2) and Art. 154;

8. breaching by the responsible persons of the obligations regarding the acquisition, possession and alienation of the shares of the central depositary according to Art. 150;

9. breaching by the responsible persons of the obligations regarding the acquisition, possession and alienation of the shares of the clearing house/central counterparty in accordance with the EU rules and regulation issued by ASF;

10. using the margins for a purpose other than that specified in the regulations referred to in Art. 158;

11. breaching by the clearing house and/or central counterparty of the obligations provided in Arts. 163 and 164;

12. refusing to fulfil ASF's requests provided in Art. 153 Para (2) and Arts. 165 and 166;

13. breaching the provisions regarding the establishment and enforcement of financial guarantees and movable mortgages provided in Art. 151(4)-(6);

14. breaching the provisions of the regulations of the market/system operator approved by ASF;

15. breaching the provisions of the regulations of the central depositary/clearing house approved by ASF;

16. refusing, without justification, to give access to the intermediaries from Member States according to Art. 42 Para (1);

17. failure to comply with the regulations and measures issued by ASF in connection with the central depositary, clearing houses and central counterparties;

k) responsible persons from the Investor Compensation Fund in connection with:

1. breaching the obligations of making compensatory payments according to Art. 47 and of publishing the information provided in Art. 48;

2. breaching the regulations of the Investor Compensation Fund approved by ASF;

3. failure to comply with the regulations and measures issued by ASF in connection with the Investor Compensation Fund.

(2) The following deeds shall be deemed contravention:

a) breaching the measures established through the authorisation, supervisory, regulatory and control acts or further acts;

b) breaching the provisions regarding the manner of drafting the financial and accounting statements and their auditing, provided in Art. 258 Para (1);

c) breaching the provisions of Arts. 245-248 regarding market abuse;

d) breaching the reporting and conduct obligations provided in Art. 250;

e) using without authorisation the terms *investment services and activities*, *investment firm*, *financial investment services agent*, *regulated market* and *stock exchange*, associated with any of the financial instruments defined under Art. 2 Para (1) Item 11, or of any combination thereof;

f) breaching the obligations provided in Art. 286^{1};

g) preventing without right the exercise of the rights granted by law to ASF, and any person's unjustified refusal to comply with ASF's requests in the exercise of its tasks according to law;

h) failure to comply with the regulations and measures issued by ASF in the field of anti-money laundering and combating of financing of terrorism through the capital market;

i) not enforcing the international sanctions on the capital market;

j) failure to comply with the regulations and measures issued by ASF in connection with the training, vocational training and continuing professional development, and automatic recognition of diplomas, certifications and certificates issued by international bodies;

k) the competent statutory body's failure to comply with the obligations laid down in Art. 238(1);

l) failure to comply with the provisions of Title II of Regulation (EU) No 648/2012.

Art. 273

(1) The perpetration of the contravention provided in Art. 272 shall be punished as follows:

a) in the case of the contraventions provided in Art. 272 Para (1) Letters a)-f), Letters g) Items 4, 5 and 7, Letters h), i), Letter j) Items 1-9 and 11-17, Letter k), Items 2 and 3 and Para (2), Letters e), h), i) and k) by:

(i) warning or fine from RON 1,000 to RON 50,000, for natural persons;

(ii) warning or fine from 0.1% up to 5% of the net turnover achieved in the financial year prior to sanctioning, depending on the seriousness of the perpetrated deed, for legal persons;

b) in the case of the contraventions provided in Art. 272 Para (1) Letter g) Items 1, 2, 3 and 6, Letter j) Item 10), Letter k), Item 1, Para (2) Letters a), b), d), f), g) and i), by:

(i) warning or fine from RON 1,000 to RON 100,000 for natural persons;

(ii) fine from 0.1% up to 10% of the net turnover achieved in the financial year prior to sanctioning, depending on the seriousness of the perpetrated deed, for legal persons;

c) in the case of the contravention provided in Art. 272 Para (2) Letter c), by derogation from Art. 8 of Government Ordinance No. 2/2001 on the legal regime of contravention, approved as amended and supplemented by Law No. 180/2002, as

subsequently amended and supplemented, hereinafter referred to as Government Ordinance No. 2/2001:

(i) between half of and total value of the transaction made;

(ii) by fine from RON 10,000 to RON 100,000, if no transaction was made.

(2) If the turnover achieved in the financial year prior to sanctioning is not available upon sanctioning, the turnover related to the financial year in which the legal person obtained the turnover, which year is immediately prior to the reference year, shall be taken into account. Reference year means the year prior to sanctioning.

(3) By exception from the provisions of Art. 8 of Government Ordinance No. 2/2001, in the case of the legal person whose turnover is smaller than RON 15 million or which did not obtain turnover in the year prior to sanctioning, and also in the case of the legal person whose turnover is not accessible to ASF, such person shall be punished by:

a) fine from RON 10,000 to RON 1,000,000, in the case of the contraventions referred to in Para (1) Letter a);

b) fine from RON 15,000 to RON 2,500,000, in the case of the contraventions referred to in Para (1) Letter b).

(4) NSC may apply the following complementary sanctions, applied as the case may be:

1. suspension of the authorisation;

2. withdrawal of the authorisation;

3. prohibition for a period comprised between ninety (90) days and five (5) years of the right to hold a position, to carry out an activity or to supply a service for which the authorisation is required.

(5) In the case of credit institution intermediaries, the amount of the fines referred to in Para (1) Letter a) Item (ii) and Letter b) Item (ii) shall be determined through the application of the corresponding percentages to the net turnover achieved from the activity carried out only on the capital market, in the financial year preceding the sanctioning, having regard to the provisions of Para (3).

(6) In the case of the credit institutions carrying out the depositary activity for the undertakings for collective investment authorised/licensed by ASF, the amount of the fines referred to in Para (1) Letter a) Item (ii) shall be determined through the application of the corresponding

percentages to the net turnover achieved from the depositary activity, having regard to the provisions of Para (3).

Art. 273[1]

The performance without authorisation of any activities or operations for which this law requires authorisation shall be deemed a crime and shall be punished according to the criminal law, except for the investment activities and services referred to in Art. 5(1) carried out by SSIFs and credit institutions, and, in this case, the provisions of Art. 273(1), Letter a) shall apply.

Art. 273[2]

(1) Failure to observe the obligations provided by Art. 203 to make, within the time limit provided by law, a mandatory takeover bid shall be deemed a contravention and shall be punished as follows:

(i) for natural persons:

a) warning or fine from RON 1,000 to RON 25,000, if the legal time limit to launch the bid was exceeded by maximum thirty (30) days;

b) fine from RON 25,001 to RON 50,000, if the legal time limit was exceeded by maximum sixty (60) days;

c) by exception from the provisions of Art. 8 of Government Ordinance No. 2/2001, fine from RON 50,001 to RON 500,000, if the legal time limit was exceeded by more than sixty (60) days;

(ii) for legal persons :

a) warning or fine from 0.1% up to 1% of the net turnover achieved in the financial year prior to sanctioning, if the legal time limit was exceeded by maximum thirty (30) days, but not less than RON 10,000;

b) fine from 0.1% up to 5% of the net turnover achieved in the financial year prior to sanctioning, if the legal time limit was exceeded by maximum sixty (60) days, but not less than RON 25,000;

c) fine from 0.1% up to 10% of the net turnover achieved in the financial year prior to sanctioning, if the legal time limit was exceeded by more than sixty (60) days, but not less than RON 50,000.

(2) Failure to observe the prohibition to acquire shares as provided in Art. 203(2) and (4) shall be deemed a contravention and shall be punished as follows:

(i) for natural persons, warning or fine from RON 10,000 to RON 500,000;

(ii) for legal persons, warning or fine from 0.1% up to 10% of the net turnover achieved in the financial year prior to sanctioning.

(3) If the turnover achieved in the financial year prior to sanctioning is not available upon sanctioning, the turnover related to the financial year in which the legal person obtained the turnover, which year is immediately prior to the reference year, shall be taken into account. Reference year means the year prior to sanctioning.

(4) By exception from the provisions of Art. 8 of Government Ordinance No. 2/2001, in the case of the newly-established legal person which did not obtain turnover in the year prior to sanctioning or in the case of the legal person whose turnover is not accessible to ASF and which breached the obligations referred to in Para (1), such person shall be punished by:

a) fine from RON 5,000 to RON 500,000, if the legal time limit was exceeded by maximum thirty (30) days;

b) fine from RON 10,000 to RON 1,000,000, if the legal time limit was exceeded by maximum sixty (60) days;

c) fine from RON 15,000 to RON 2,500,000 if the legal time limit was exceeded by more than sixty (60) days.

(5) By exception from the provisions of Art. 8 of Government Ordinance No. 2/2001, in the case of the newly-established legal person which did not obtain turnover in the year prior to sanctioning or in the case of the legal person whose turnover is not accessible to ASF and which breached the obligations referred to in Para (2), such person shall be punished by fine from RON 5,000 to RON 2,500,000.

(6) The provisions of Paras (1), (3) and (4) shall also apply accordingly in the case of failure to fulfil the obligations provided by Art. 205(3)-(5).

Art. 274

(1) The perpetration of the contravention provided in Arts. 272 and 273^2 shall be acknowledged by NSC.

(2) NSC may delegate agents, authorised to fulfil supervisory, investigative and control duties of the compliance with the legal provisions and with regulations applicable to the capital market, to acknowledge the perpetration of contraventions.

(3) Upon receipt of the verification acts resulting further to the authorisation, supervisory or control activity, if the perpetration of contravention is acknowledged, NSC shall order the application of the sanctions provided in Arts. 273 or 273^2. Also, by individual acts, NSC may order that investigations be extended, precautionary measures be taken and/or the persons referred to in the verification act be heard.

(4) NSC may make public any measure or sanction imposed for failure to observe the provisions hereof and of the regulations adopted for the application hereof.

Art. 275

(1) Upon the individualization of the sanction, the personal and real circumstances of the perpetration of the deed and of the perpetrator's behaviour shall be taken into consideration.

(2) Repealed.

(3) If the perpetration of two or more contraventions is acknowledged, the highest penalty, increased by up to 50%, as the case may be, shall be applied.

Art. 276

Repealed.

Art. 277

Repealed.

Art. 278

(1) As regards the procedure whereby contraventions are found and acknowledged, and for the enforcement of sanctions, the provisions of this law shall apply by way of derogation from the provisions of Government Ordinance No. 2/2001.

(2) By derogation from the provisions of Art. 13 of Government Ordinance No. 2/2001, the limitation period for the acknowledgement, application and enforcement of the sanction for contraventions shall be three (3) years from the perpetration of the deed.

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

Art. 279

The following deeds shall be deemed crimes and shall be punished by imprisonment from six (6) months to five (5) years and forfeiture of certain rights:

(a) the intentional submission by the company's administrator, director or executive director of inaccurate financial statements or false information regarding the company's financial standing;

(b) the perpetration of the deeds provided under Arts. 245 to 248;

(c) the intentional accessing of electronic trading, storage or clearing – settlement systems by unauthorised persons.

Art. 279[1]

The theft of financial instruments of clients and/or of the money belonging to them shall be deemed a criminal offence and shall be punished in accordance with the Criminal Code.

Art. 280

Repealed.

TITLE XI
TRANSITORY AND FINAL PROVISIONS

Art. 281

(1) NSC shall establish, by regulation, the period during which the entity regulated by it must become compliant with the provisions hereof. Such period shall not exceed eighteen (18) months from the entry into force hereof.

(2) The authorisations issued to the regulated entities prior to the entry into force hereof shall remain valid. The regulated entities shall submit modifications and/or supplementations to the documents based on which the authorisations were granted prior to the expiry of the time limit referred to in Para (1), to comply with the provisions hereof and register such authorisations with the NSC's Registry.

Art. 282

(1) The pending authorisation applications and which do not comply with the provisions hereof shall be withdrawn or supplemented within thirty (30) days from the entry into force hereof.

(2) The failure to comply with the provisions of Para (1) shall entail the rejection of the application.

Art. 283

(1) If the share capital holding in a regulated entity is acquired or increased by breaching the legal provisions and the regulations issued for the application hereof, the voting rights attached to such holding shall be suspended as of right.

Such shares shall be taken into consideration when constituting the quorum necessary to the general meeting of shareholders.

(2) NSC shall request such shareholders to sell, within three (3) months, the shares attached to the holding in connection with which NSC did not give its consent. After the expiry of such time limit, if the shares were not sold, NSC shall request the regulated entity to annul such shares, issue new shares bearing the same number and sell the same. The sale price shall be deposited at the initial acquirer's disposal, after deducting the expenses incurred with the sale.

(3) The board of administration of the regulated entity shall be responsible for the fulfilment of the measures required to annul the shares, pursuant to Para (2) and for the sale of the newly issued shares.

(4) If, for lack of purchasers, the sale did not take place or only a partial sale of the newly issued shares was made, the regulated entity shall proceed, as soon as possible, to the reduction of its share capital by the difference between the registered share capital and the share capital held by the shareholders with voting rights.

Art. 284

(1) The central depositary shall be established within the time limit provided in Art. 281(1).

(2) The entities supplying registry services shall provide the central depositary with the registries of the companies traded on the regulated markets or alternative trading systems. The terms and procedures shall be established by the regulations issued by NSC.

(3) By derogation from the provisions of Arts. 124, 143, 146 and 157, prior to the expiry of the time limit referred to in Para (1), the Bucharest Stock Exchange may carry out clearing,

settlement, depositary and registry activities, and any other ancillary activities regarding securities and financial instruments through specialised departments independent of the trading activity.

Art. 285

(1) By derogation from the provisions of Title II, Chapters 1 and 3 of Law No. 31/1990, starting with the date of the general meeting of the Bucharest Stock Exchange Association which decides the transformation of the Bucharest Stock Exchange into a joint stock company, the assets of the Bucharest Stock Exchange shall become the patrimony of Bursa de Valori Bucuresti SA.

(2) Prior to the date of the General Meeting of the Bucharest Stock Exchange Association, referred to in Para (1), the Bucharest Stock Exchange shall proceed to the inventory and re-valuation of its assets. Based on the resolution taken by the general meeting, part of the re-valued assets of the Bucharest Stock Exchange shall be transformed into the share capital of Bursa de Valori Bucuresti SA. The established share capital shall be equally distributed under a free title and without fiscal encumbrances to the members of the Bucharest Stock Exchange Association registered on the date of the general meeting referred to in Para (1) and shall be deemed as subscribed and paid-in in full on the date of such general meeting.

(3) Bursa de Valori Bucuresti SA shall be the legal assignee and successor to the rights and obligations of the Bucharest Stock Exchange, bearing the same name.

(4) On the date of the general meeting of the Bucharest Stock Exchange Association referred to in Para (1), the committee of the Bucharest Stock Exchange shall become the Board of Bursa de Valori Bucuresti SA, having the same membership; the members of the committee of the Bucharest Stock Exchange shall become members of the Board of Bucharest Stock Exchange until the expiry of their mandate or until the next general meeting of shareholders, if the validity of their mandate expired.

(5) The Committee of the Bucharest Stock Exchange shall appoint a person authorised to carry out the formalities for registration and incorporation of Bursa de Valori Bucuresti SA, prior to the date of the general meeting of the Bucharest Stock Exchange Association, referred to in Para (1).

(6) Upon the registration of Bursa de Valori Bucuresti SA with the office of the registry of commerce, the Bucharest Stock Exchange Association shall be dissolved as of right.

Art. 286

(1) By derogation from Law No. 31/1990, as regards the shares of the investment company (SIF) issued according to Law No. 133/1996, Art. 4, owned by their initial holders, the time limit

established by the provisions of Law No. 31/1990, Art. 103, may only be exceeded by the decision of the investment management company (SAI) or of the board of administration, with the approval of NSC and according to the regulations issued by it.

(2) The shares acquired in accordance with Para (1) may be used, based on the decision of the board, with the approval of NSC, to reduce the share capital and to stabilise the quotations of its own shares on the capital market.

(3) By derogation from Law No. 31/1990, the amendments that shall be made to the instruments of incorporation of investment companies (SIFs) to comply with the provisions hereof, shall be registered with the office of the registry of commerce based on the decision of the Board or of the investment management company (SAI), as the case may be, after obtaining the authorisation previously issued by NSC.

(4) Investment companies (SIFs) shall comply with the provisions of this law within maximum eighteen (18) months from the entry into force hereof.

(5) Independent registries shall assign series and a number to shares issued by Investment companies (SIFs) within thirty (30) days from the entry into force hereof.

(6) According to the provisions of Law No. 31/1990 and Para (5) of this article, the Boards of investment companies (SIFs) shall call the extraordinary general meeting of shareholders to amend the instruments of incorporation according to the provisions hereof within sixty (60) days from the entry into force hereof.

Art. 286^{1}

(1) Any person may acquire under any title or may hold, alone or together with the persons acting in concert with such person, shares issued by the investment companies resulting from the transformation of the private property funds, but not more than 5% of the share capital of the investment companies.

(2) The exercise of the voting rights shall be suspended for the shares held by the shareholders exceeding the limits referred to in Para (1).

(3) The persons referred to in Para (1) shall inform, upon reaching the threshold of 5%, within maximum three (3) working days the investment company, NSC and the regulated market where such shares are traded.

(4) Within three (3) months from exceeding the threshold of 5% of the share capital of the investment companies, the shareholders in such situation shall sell the shares exceeding the holding threshold.

(5) NSC shall issue regulations for the application of this article.

Art. 286[2]

Repealed.

Art. 286[3]

(1) The quorum and voting majority requirements for the call of the general meeting of the shareholders of SIFs and for the adoption of resolutions shall be those laid down in Art. 115(1) and (2) of Law No. 31/1990, republished, as subsequently amended and supplemented.

(2) By way of derogation from the provisions of Law No. 31/1990, republished, as subsequently amended and supplemented, any amendment which shall be made to the instruments of incorporation of any SIF, exclusively for their compliance with the provisions of Para (1), shall be registered with the trade register office, based on the resolution of the board of administration/supervisory board of the SIF or SAI managing the SIF, as appropriate, after obtaining the authorisation from ASF.

Art. 286[4]

The quorum and voting majority requirements for the call of the extraordinary general meeting of the shareholders of a market operator and for the adoption of resolutions shall be those laid down in Art. 115(1) and (2) of Law No. 31/1990, republished, as subsequently amended and supplemented.

Art. 287

Bursa Monetar-Financiara si de Marfuri SA Sibiu, Bursa Romana de Marfuri SA and the brokerage companies of the members who are shareholders of the two stock exchanges shall comply with the provisions hereof within maximum eighteen (18) months from the entry into force hereof.

Art. 288

(1) The provisions of the following articles shall enter into force when Romania joins the European Union:

a) Arts. 37 Art. 43;

b) Arts. 111, 112 and 113 Para (1);

c) Art. 124 Para (4);

d) Art. 192.

(2) Prior to date when Romania joins the European Union, the entities headquartered in the Member States may carry out activities regulated by this law, without the issuance of an authorisation under reciprocity conditions, based on the cooperation arrangements concluded by NSC with the competent authorities of the home Member States. Such entities shall be supervised under the conditions provided in such arrangements.

(3) NSC shall inform the European Commission:

a) of the authorisation of each company which is the subsidiary of a parent company, according to Art. 2 Para (1) Items 6 and 27, under the jurisdiction of a Member State and of the structure of the group of which such parent company is part;

b) whenever the parent company mentioned in Letter a) acquires a position within a company authorised by NSC which would thus become the subsidiary of such parent company;

c) of any difficulties incurred by the companies authorised by NSC, which intend to establish their headquarters or to supply services in a Member State;

(4) NSC shall send to the European Commission, at the latter's request, information regarding:

a) any authorisation application of any company which is the subsidiary of a parent company according to Art. 2 Para (1) Items 6 and 27, which are under the jurisdiction of the Member State indicated;

b) any notification whereby NSC is informed, according to Art. 18 Para (2) and Art. 61 that the parent company mentioned in Letter a) intends to acquire a position within a company authorised by NSC, so that it becomes the subsidiary of such parent company.

(4^1) NSC shall cooperate with the European Securities and Markets Authority and The European Systemic Risk Board and shall provide them without delay with all information necessary for the fulfilment of their duties.

(5) The entities in the non-Member States carrying out in Romania activities regulated hereby shall not benefit from a more favourable treatment as compared to the treatment applied to the entities in the Member States.

Art. 289

(1) The Annexe to Government Emergency Ordinance No. 25/2002 on the approval of the Statute of the National Securities' Commission, published in the Official Journal of Romania, Part I, No. 226 of 4 April 2002, approved as amended and supplemented through Law No. 514/2002 is amended and supplemented as follows:

1. Para (3) under Article 1 shall read as follows:

"(3) Upon request, NSC shall report to the Commissions for Budget, Finance and Banks of the Senate and Chamber of Deputies, to the Economic Commission of the Senate and to the Commission for Economic Policy, Reform and Privatization of the Chamber of Deputies, the performed activity, in observance of the legal provisions regarding the confidential and the classified information."

2. Art. 6 shall read as follows:

"Art. 6

(1) NSC may take part in the activity of the specialised international organizations and may become member of such organizations.

(2) NSC shall cooperate with the competent authorities in the Member States and, on the basis of reciprocity, with the competent authorities in the non-Member States whenever necessary, to fulfil the obligations incumbent on it, using the powers granted to it by law.

(3) NSC shall provide assistance to the competent authority in the Member States, especially as regards the exchange of information and the cooperation in the investigation activities. Such type of assistance includes, without limitation:

a) the supply of public information or not subject to publicity about or in connection with a natural or legal person, subject of the regulation, supervision or control by NSC;

b) the supply of copies of the records kept by the regulated entities;

c) the collaborations with the persons holding information about the object of an investigation.

(4) NSC shall issue regulations regarding the cooperation with the competent authorities of the Member States in accordance with the Community legislation in force."

3. Under Art. 7, after Paragraph (2), Paragraphs (2^1) and (2^2) are inserted and shall read as follows:

"(2^1) The obligation to keep the professional secrecy may not be enforceable against NSC when fulfilling its duties as provided by law.

(2^2) The professional secrecy information received by NSC when fulfilling its duties may be used only in the following situations:

a) to verify the compliance with the conditions imposed to grant the authorisation to the regulated entities, to facilitate the supervision, on consolidated or unconsolidated basis of the performance of the activity of the regulated entity, especially the capital adequacy requirements, the accounting and administrative procedures and the mechanisms ensuring the internal control;

b) to impose sanctions;

c) administrative complaints and actions filed against the individual acts issued by NSC."

4. Under Art. 7 Para (15) shall read as follows:

"(15) The regulations and instructions issued by NSC shall be approved by order of the president of NSC. The order for approval shall be published in the Official Journal of Romania, Part I. The full text of the approved regulations and instructions shall be published, for enforceability, in the Bulletin of NSC."

5. Under Art. 11 Para (1) shall read as follows:

"Art. 11

(1) The members and employees who work or worked for NSC, and the representatives and employees of the entities to which NSC delegated one or more of the prerogatives with which it was vested by law shall observe, as regards the information obtained during or following the performance of their duties and which did not become public, the legal regime applicable to professional secrecy. For the purposes hereof, the transmission of

information within the framework provided in Art. 6(2) and (3) does not represent a breach of such obligation."

6. Under Art. 13, after Para (3), Paras (4) and (5) are inserted and shall read as follows:

"(4) The quota referred to in Para (2) Letters a) and e) shall also apply to alternative trading systems.

(5) The quota referred to in Para (2) Letter b) shall also apply to other undertakings for collective investment, NON-UCITS"

7. Under Art. 14, after Para (3), Para (3^1) is inserted and shall read as follows:

"(3^1) If necessary, the expenses related to the organisation and operation of the National Securities' Commission shall be financed, partially or totally, from the State budget or from the special funds of the Government."

Art. 290

(1) This law shall enter into force within thirty (30) days from its publication in the Official Journal of Romania, Part I.

(2) NSC shall issue regulations for the application hereof within maximum twelve (12) months from the entry into force hereof.

(3) The regulations issued by NSC prior to the entry into force hereof shall remain in force until the adoption of the new regulations issued based on it, except for contrary provisions.

(4) The legal provisions on trading companies shall be applicable to the entities regulated by this law, as far as they do not contradict this law.

Art. 291

(1) Upon the entry into force hereof, the following shall be repealed:

a) Government Emergency Ordinance No. 26/2002 on undertakings for collective investment in securities, published in the Official Journal of Romania, Part I, No. 229 of 5 April 2002, approved as amended and supplemented by Law No. 513/2002;

b) Government Emergency Ordinance No. 27/2002 regarding commodities and derivative financial instruments regulated markets published in the Official Journal of Romania, Part I, No. 232 of 8 April 2002, approved as amended and supplemented by Law No. 512/2002;

c) Government Emergency Ordinance No. 28/2002 regarding securities, financial investment services and regulated markets, published in the Official Journal of Romania, Part I, No. 238 of 9 April 2002, approved as amended and supplemented by Law No. 525/2002, as subsequently amended and supplemented;

d) Art. 2(4) and Art. 7 of Law No. 133/1996, for the transformation of the Private Property Funds into investment companies, published in the Official Journal of Romania, Part I, No. 273 of 1 November 1996, and Art. 4 Para (3) of Government Emergency Ordinance No. 54/1998 for the completion of the privatisation process under a free title, published in the Official Journal of Romania, Part I, No. 503 of 28 December 1998, approved as amended by Law No. 164/1999;

e) Government Ordinance No. 20/1998 regarding the establishment and operation of venture capital funds, published in the Official Journal of Romania, Part I, No. 41 of 30 January 1998;

f) Art. 162(1) of Law No. 31/1990 regarding trading companies, republished in the Official Journal of Romania, Part I, No. 33 of 29 January 1998, as subsequently amended and supplemented;

g) Government Ordinance No. 24/1993 regarding the regulation of the establishment and operation of open-end investment funds and of the investment firms as financial intermediaries, published in the Official Journal of Romania, Part I, No. 210 of 30 August 1993, approved by Law No. 83/1994;

h) any other contrary provisions.

(2) This law transposes the following directives of the European Union:

a) Directive 93/22/EEC on investment services in the securities field, as amended, published in the Official Journal of the European Communities 141/11 June 1993;

b) Directive 97/9/EEC on investor-compensation schemes, published in the Official Journal of the European Communities 84/26 March 1997;

c) Directive No. 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), published in the Official Journal of the European Communities 375/31 December 1985, as subsequently amended;

d) Directive 98/26/EC of the European Parliament and of the Council on settlement finality in payment and securities settlement systems, published in the Official Journal of the European Communities 166/11 June 1998;

e) Directive 2003/71/EEC on the prospectus to be published when securities are offered to the public or admitted to trading, and amending Directive 2001/34/EC published in the Official Journal of the European Communities 345/31 December 2003;

f) Directive 2001/34/EEC on the admission of securities to official stock exchange listing and on information to be published on those securities, published in the Official Journal of the European Communities 184/6 July 2001;

g) Directive 2003/6/EEC on insider dealing and market manipulation (market abuse), published in the Official Journal of the European Communities 96/12 April 2003;

h) Directive 2002/65/EEC concerning the distance marketing of consumer financial services, published in the Official Journal of the European Communities 271/9 October 2002;

i) Directive 1993/6/EEC on the adequacy of investment firms and credit institutions, published in the Official Journal of the European Communities 141/11 June 1993.

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This law was adopted by the Parliament of Romania in compliance with the provisions of Arts. 75 and 76(1) of the Constitution of Romania, as republished.

President of the Chamber of Deputies
Valer Dorneanu

President of the Senate
Nicolae Vacaroiu

Bucharest, 28 June 2004
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