REGULATION no. 5/2019

regarding the regulation of certain requirements regarding the provision of investment services and activities according to Law no. 126/2018 on financial instrument markets

Under the provisions of Art. 1 par. (2), art. 2 par. (1) letter a) and d), art. 3 par. (1) letter b), art. 6 par. (1) and (2), as well as art. 14 of Government Emergency Ordinance no. 93/2012 regarding the establishment, organization and functioning of the Financial Supervisory Authority, approved with amendments and completions by Law no. 113/2013, as amended and supplemented,

Considering the provisions of art. 8, art. 10, art. 14, art. 15, art. 17, art. 19, art. 28, art. 30-33, art. 60, art. 75, art. 76, art. 79, art. 82, art. 89, art. 126, art. 276, art. 277, art. 280 of Law no. 126/2018 on the markets for financial instruments,

following the deliberations of the meeting of the Financial Supervisory Authority Council dated 05.06.2019,

The Financial Supervisory Authority shall issue this Regulation.

TITLE I
General dispositions

Art. 1. - (1) This Regulation establishes applicable rules and procedures:

a) S.S.I.F. which provides investment services and activities on the basis of Law no. 126/2018 on the markets for financial instruments, hereinafter referred to as Law no. 126/2018;

b) persons referred to in art. 7 par. (1) of the Law no. 126/2018;

c) investment firms from other Member States providing investment services and activities on Romanian territory;

d) companies from third countries that provide investment services or carry out investment activities in Romania through the establishment of a branch.

(2) The Financial Supervisory Authority, hereinafter referred to as ASF, is the competent authority that applies the provisions of this Regulation, exercising the prerogatives established by the Government Emergency Ordinance no. 93/2012 on the establishment, organization and functioning of the Financial Supervisory Authority, approved with amendments and completions by Law no. 113/2013, as amended and supplemented.

Art. 2. - The terms, abbreviations and expressions used in this regulation have the meaning provided by Law no. 126/2018 and in Regulation (EU) No. 600/2014 of the European Parliament and of the Council of 15th of May 2014 regarding the markets of financial instruments and amending Regulation (EU) Regulation (EU) No 648/2012, hereinafter referred to as "Regulation (EU) 600/2014 as well as European regulations issued pursuant to Directive 2014/65 / EU of the European Parliament and of the Council of 15th of

May 2014 regarding the markets of financial instruments and amending Directive 2002/92 / EC and Directive 2011/61 / EU , hereinafter referred to as Directive 2014/65 / EU, and Regulation (EU) 600/2014, as well as the following meanings:

a) identification data:

(i) in the case of natural persons: the data provided under art. 11 par. (1) of the Regulation of the National Securities Commission no. 5/2008 on the introduction of measures to prevent and combat money laundering and terrorist financing through the capital market, approved by the Order of the National Securities Commission no. 83/2008, as subsequently amended, hereinafter referred to as C.N.V.M. no. 5/2008;

(ii) in the case of legal persons: the data provided in art. 12 par. (1) of the C.N.V.M Regulation. no. 5/2008;

b) identity document in the case of natural persons clients of S.S.I.F.:

(i) the identity document for resident Romanian citizens;

(ii) a passport issued by the Romanian authorities during the validity period, which certifies the status of a Romanian citizen domiciled abroad;

(iii) a national identity card or passport for citizens of the Member States of the European Union and the European Economic Area;

(iv) passport or identity card or similar document for third-country nationals;

c) order - the instruction to buy or sell a certain financial instrument;

d) S.S.I.F. staff:

(i) employees;

(ii) delegated agents;

e) placement of financial instruments without firm commitment - the investment service provided in Annex no. 1, Section A, point 7 of Law no. 126/2018 provided to an issuer by an S.S.I.F., an investment firm or credit institution who provides investment services and activities, through which it undertakes to distribute to the public, on behalf of the issuer, financial instruments which are the subject of a public offer;

f) placement of financial instruments with firm commitment - the investment service provided in Annex no. 1, Section A, point 6 of the Law no. 126/2018 to an issuer of an S.S.I.F, investment firm or credit institution providing investment services and activities by which it undertakes to distribute to the public, on behalf of the issuer, the financial instruments that are the subject of a public offer and undertakes to acquire on its own account the remaining undistributed financial instruments;

g) underwriting of financial instruments - the investment service provided in Annex no. 1, Section A, point 6 of the Law no. 126/2018 to an issuer of an S.S.I.F, an investment firm or a credit institution providing investment services and activities by which it undertakes to acquire on its own account the financial instruments which are the subject of a public offer and to place them / resells in its own name in the terms and period agreed with the issuer.

Art. 3. - (1). Decisions on the authorization or withdrawal of authorizations under this Regulation are issued by A.S.F. within 30 days of the registration of the applicant's full file, unless Law no. 126/2018 or the provisions of this Regulation establish another deadline.

(2) If an application is rejected, A.S.F. issue a reasoned decision, which may be challenged in accordance with the provisions of art. 270 of Law no. 126/2018.

Art. 4. - Any request from A.S.F. of additional information or modification of the documents submitted initially interrupts the deadline stipulated in art. 3 par. (1) which begins to run from the date of submission of such information or changes, which cannot be made later than 60 days from the date of A.S.F. request, subject to the refusal of the application.

Art. 5. - (1) The provisions of art. 36, 46 and 54-57 apply:

a) to branches established in Romania by investment firms from Member States;

b) to branches established in Romania by credit institutions from Member States that provide investment services and activities with financial instruments other than those provided under art. 2 par. (3) of the Law no. 126/2018.

(2) Credit institutions, Romanian legal persons, other than those provided under art. 2 par. (2) of the Law no. 126/2018, shall apply as appropriate the following provisions of Title II:

a) Art. 30 of Section 1 of Chapter III;

b) Section 2 of Chapter III, with the following exceptions:

(i) the obligation laid down in Art. 37 paragraph (1) to comply with the regulations issued by A.S.F. in application of the Law no. 656/2002;

(ii) art. 42;

c) Section 3 of Chapter III;

d) Section 4 of Chapter III, except Art. 50 par. (1) letter a), c) - f) and para. (2) letter (a) and (c) to (e) and Subsection 4.2;

e) Chapter IV, with the exception of Art. 53;

f) Chapter V, except Art. 58, art. 59 and art. 63;

g) Chapter VI;

h) Chapter VII, with the exception of art. 83.

(3) S.A.I. who have registered in their object of activity the activity stipulated in art. 5 par. (3) letter a) and letter b) point (i) of Government Emergency Ordinance no. 32/2012 on undertakings for collective investment in transferable securities and investment management companies, as well as for amending and completing the Law no. 297/2004 regarding the capital market, approved with amendments and completions by Law no. 10/2015, as amended and supplemented, hereafter referred to as O.U.G. no. 32/2012, have the obligation to comply with the provisions of art. 53 and applicable European regulations in the case of a S.S.I.F. who provide the investment services mentioned.

(4) S.A.I. which have included in the scope of activity the activities stipulated in art. 5 par. (3) from G.EO. no. 32/2012 has the obligation to comply with the provisions of art. 54 and applicable European regulations in the case of a S.I.F. who provide the services mentioned.

(5). External AIFM providing services under Art. 5 par. (5) of the Law no. 74/2015 regarding Alternative Investment Fund Managers, as subsequently amended and supplemented, hereinafter referred to as Law no. 74/2015, have the obligation to comply properly with the provisions of art. 54 and 55 and applicable European regulations in the case of a S.S.I.F. who provide the services mentioned.

(6) S.A.I. and external AIFM providing investment services as set out in Annex no. 1, Section A, points 4 and 5 of Law no. 126/2018 have the obligation to comply with the provisions of art. 56 and the European regulations applicable to a S.S.I.F. who provide the investment services mentioned.

(7) The entities referred to in paragraph (1) transmit A.S.F. a half-yearly report on the branch's activity, including information on how to comply with the legal provisions applicable to the branch, within 30 days from the end of each semester.

(8) The credit institutions referred to in paragraph (2) notifies A.S.F. the name of the person who performs the compliance function within 15 days from the date of commencement of office.

TITLE II
Financial investment services companies

CHAPTER I
Procedure for granting, suspending and withdrawing authorization

Art. 6. - S.S.I.F. ensures at the time of application for operating authorization and subsequently for the duration of the activity compliance with the following:

a) the requirements foreseen by the Delegated Regulation (EU) No. 2017/1943 of 14th of July 2016 supplementing the Directive 2014/65 / EU of the European Parliament and of the Council as regards the regulatory technical standards on information and requirements for the authorization of investment firms, hereinafter referred to as the Delegated Regulation (EU) 2017/1943;

b) the requirements foreseen by the Regulation of the Financial Supervisory Authority no. 2/2016 on the application of the principles of corporate governance by authorized entities, regulated and supervised by the Financial Supervisory Authority, hereinafter referred to as the A.S.F Regulation. no. 2/2016;

c) the requirements of the A.S.F. no. 3/2016 on the applicable criteria and the procedure for the prudential assessment of acquisitions and increases of participations in the entities regulated by the Financial Supervisory Authority, hereinafter referred to as the A.S.F. Regulation no. 3/2016, for shareholders holding qualifying holdings;

d) the members of the management body and the persons holding key positions must comply with the requirements of the Regulation of the Financial Supervisory Authority no. 1/2019 regarding the evaluation and approval of the members of the management structure and of the persons holding key positions within the entities regulated by the Financial Supervisory Authority, hereinafter referred to as A.S.F. Regulation no. 1/2019;

e) S.S.I.F. must have the minimum initial capital corresponding to the proposed object of activity, in accordance with the provisions of art. 47 of the Law no. 126/2018 and the provisions of art. 58 and 59 of this Regulation;

f) S.S.I.F. must have a space reserved for its registered office which must meet at least the following conditions:

1. to be in exclusive use of S.S.I.F.;

2. to be appropriate to the organizational structure, business plan, services and investment activities that are going to be authorized;

g) S.S.I.F. must have adequate technical equipment and personnel appropriate to the services and investment activities that are going to be authorized.

Art. 7. – (1). Depending on the nature, scale and complexity of the S.S.I.F. activity profile, S.S.I.F. shall at all times ensure the management and coordination of the S.S.I.F. activity corresponding to assigned attributions.

(2) To the members of the governing body in its supervisory function of a S.S.I.F. are forbidden to hold a qualifying holding, to hold a position or to be employees of another S.S.I.F. / investment firm / credit institution, Romanian legal person, which provides investment services and activities with financial instruments other than those provided for in art. 2 par. (2) letter d) and par. (3) of the Law no. 126/2018.

(3). Internal auditors and employees of a S.S.I.F. are forbidden to hold a qualifying holding, to hold any other function, including that of the internal auditor, or to be employees of another S.S.I.F. / investment firm / credit institution, Romanian legal person, which provides services and investment activities with financial instruments other than those referred to in art. 2 par. (2) letter d) and par. (3) of the Law no. 126/2018.

(4) Without prejudice to the provisions of Art. 24 paragraph (3) and (4) of Law no. 126/2018, respectively the provisions of the A.S.F. no. 1/2019, the directors, respectively the members of the directorate of a S.S.I.F. they are forbidden to hold a qualifying holding in another S.S.I.F / investment firm / credit institution, Romanian legal person, which provides investment services and activities with financial instruments other than those provided under art. 2 par. (2) letter d) and par. (3) of the Law no. 126/2018.

(5) By way of exception to the provisions of paragraph (2), the interdiction of the members of the governing body in its supervisory function of a S.S.I.F. to hold a position at another S.S.I.F. / investment firm / credit institution, Romanian legal person, which provides investment services and activities with financial instruments other than those provided under art. 2 par. (2) letter d) and par. (3) of the Law no. 126/2018, does not apply if S.S.I.F. and those entities are part of the same group.

(6) By way of exception from the provisions of paragraph (3), the interdiction of the internal auditors of a S.S.I.F. to be internal auditors of another S.S.I.F. / investment firms / credit institutions, Romanian legal persons, which provide investment services and activities with financial instruments other than those provided under art. 2 par. (2) letter d) and par. (3) of the Law no. 126/2018, does not apply if S.S.I.F. and those entities are part of the same group.

(7) By way of derogation from the provisions of art. 18 par. (1) of the A.S.F. Regulation no. 1/2019, S.S.I.F. which are not significant, do not have the obligation to have at least one independent member in the management body in its supervisory function of a S.S.I.F.

(8) They cannot be led by a single individual within the meaning of Art. 28 par. (2) of the Law no. 126/2018 S.S.I.F. which meet at least one of the following conditions:

a) are admitted to trading on a regulated market or at another trading venue;

b) are registered as an independent operator;

c) manages a multilateral trading system;

d) manages an organized trading system;

e) fall under the provisions of art. 7 of the Regulation of the Financial Supervisory Authority no. 3/2014 on some aspects related to the application of Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy and Regulation (EU) no. 575/2013 of the European Parliament and of the Council of 26th of June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, as subsequently amended and supplemented, hereinafter referred to as A.S.F. Regulation no. 3/2014.

Art. 8. - (1): Authorization granted to a S.S.I.F. shall be issued on the basis of a request drawn up in accordance with Annex I of Commission Implementing Regulation (EU) 2017/1945 of 19th of June 2017 laying down implementing technical standards for the notifications under Directive 2014/65 / EU of the European Parliament and of the Council by and to applicant investment firms and authorized investment firms, hereinafter referred to as Implementing Regulation (EU) 2017/1945, together with the information and documents provided in the Delegated Regulation (EU) 2017 / 1943 as well as by:

a) the documents provided by the A.S.F. Regulation no. 1/2019, for the members of the management structure and the persons holding key functions, the documents stipulated in the A.S.F. Regulation no. 3/2016 for shareholders, except those already required by the Delegated Regulation (EU) 2017/1943 and, as the case may be, the documents provided by the A.S.F./B.NR Regulation. no. 14/7/2018 regarding the provision of services and investment activities on behalf of financial investment services companies and credit institutions, hereinafter referred to as A.S.F./B.NR Regulation. no. 07/14/2018;

b) the organization and functioning regulation, which will also include the organizational chart of S.S.I.F.;

c) the list of signature specimens for the members of the management structure and for the person / persons designated in the compliance function who will represent the company in relation with A.S.F.;

d) a certified copy or a copy bearing the attorney attestation or legalization issued by the secretary of the mayor's offices where there are no notary offices to attest to the legal title of the space for the registered office that will fulfil the conditions stipulated in art. 6 lit. f);

e) affidavit of the legal representative of S.S.I.F. for the registered office, drawn up in accordance with Annex no. 1;

f) proof of having the minimum initial capital corresponding to the services to be authorized. At start-up, the initial capital is equal to the fully paid-up share capital;

g) in the case of S.S.I.F. driven by a single individual:

(i) the internal procedures which must include measures to ensure that the conditions set out in Art. 28 par. (2) letter a) of Law no. 126/2018, as well as the provisions of art. 8 par. (1) letter c) of the Delegated Regulation (EU) 2017/1943;

(ii) the documents referred to in art. 4 letter (a) (i), (iii) - (xiii) of the Delegated Regulation (EU) 2017/1943 for the person in charge with the management of S.S.I.F. and for the person empowered to replace immediately the natural person who manages the S.S.I.F. according to art. 8 par. (1) letter c) of the Delegated Regulation (EU) 2017/1943;

h) any other documents that A.S.F. may request them to check the insurance by S.S.I.F. of effective prudential management.

(2) The act provided in par. (1) letter (d) it must be valid for at least 12 months from the date of submission of the application for authorization. It will be renewed and submitted at A.S.F. within 15 days from the expiration date.

(3) For the purposes of art. 1 letter c) of the Delegated Regulation (EU) 2017/1943, the company documents and the evidence regarding the registration in the national register of companies in Romania are:

a) the article of association, in a legalized copy;

b) the conclusion of the delegate judge from the office of the trade register, establishing and registering the company;

c) the registration certificate at the Trade Register Office.

(4) A.S.F. Grants the authorization to S.S.I.F., subject to payment in the A.S.F. account of the corresponding tariff provided by the A.S.F. Regulation no. 16/2014 on the revenues of the Financial Supervisory Authority, as subsequently amended and supplemented, hereafter referred to as the A.S.F. Regulation no. 16/2014, within a maximum of 6 months from the date of submission of the complete documentation provided in paragraph (1) or, if the application is rejected, it will be issued a reasoned decision that can be challenged within 30 days from the date of communication.

(5) S.S.I.F. may provide the investment services and activities provided for in the Authorization Decision only after the date of acquiring membership in an accredited investor compensation scheme.

Art. 9. - (1) S.S.I.F. may request ASF for a maximum period of 24 months to suspend the operating authorization on the basis of an application, together with the following documents:

a) the decision of the statutory body of S.S.I.F, stating:

(i) the reasons for the decision to suspend;

(ii) the period for which authorization is requested;

b) proof of payment of debts to clients and A.S.F. and the transfer of securities to the issuer depositary or accounts indicated by the clients;

c) any other documents that A.S.F. considers them necessary for the settlement of the request.

(2) From the date of submission to A.S.F. of the application for suspension of the authorization according to the provisions of par. (1) and related documents, S.S.I.F. is relieved of compliance with staffing and capital requirements.

(3) Resumption of S.S.I.F. activity assumes the prior fulfilment by S.S.I.F. all the conditions under which the authorization was based.

(4) 5 working days prior to resuming the activity, but not later than 5 days prior to the authorization suspension date, S.S.I.F. has the obligation to transmit A.S.F. the following documents:

a) the decision of the statutory body of S.S.I.F., specifying the deadline from which the activity will be resumed in case the resumption of the activity will take place before the expiry of the term stipulated in the decision to suspend the authorization;

b) declaration on the sole responsibility of the legal representative of S.S.I.F. regarding the fulfilment of the operating conditions by S.S.I.F. at the time of resuming the activity.

Art. 10. - (1) Withdrawal of authorization of a S.S.I.F. takes place in the situations stipulated in art. 17 of Law no. 126/2018 by decision to withdraw the authorization:

a) at the request of S.S.I.F., if S.S.I.F. makes evidence of the filing of all documents provided in art. 12;

b) at the initiative of A.S.F in the event of non-observance of the normative acts in force, considering the provisions of the title X of the Law no. 126/2018.

(2) From the date of submission to A.S.F. of the request for withdrawal of the authorization according to the provisions of par. (1) letter a) and of the documents referred to in art. 12, S.S.I.F. is relieved of compliance with staffing and capital requirements.

Art. 11. - (1) After the withdrawal of the authorization as a S.S.I.F, the company has the obligation to convene within maximum 30 days the general meeting of the shareholders that will consider the liquidation of the company or the modification of the object of activity and, as the case may be, the deletion of the name of the company " financial investment services "or" S.S.I.F "

(2) Failure to comply with paragraph (1) is subject to Art. 257 par. (1) letter h) and par. (2) of the Law no. 126/2018.

Art. 12. - (1) Withdrawal of authorization at the express request of S.S.I.F shall be made on the basis of the completed application according to Annexes no. 2 and 3, together with the following documents:

a) the decision of the statutory body of S.S.I.F;

b) certificates issued by the capital market entities to which S.S.I.F. is a member or participant in the system, mentioning, as the case may be, the conclusion of contractual relations, the fact that S.S.I.F. is not held by the payment of debts, the withdrawal of S.S.I.F. and its personnel from the operations carried out in the respective systems, respectively blocking / deactivating access codes and passwords;

c) proof of payment of debts to clients and A.S.F. and of the transfer of financial instruments to the issuer depositary or accounts indicated by the clients;

d) indication of the address of the archive and of the identification and contact details of the person responsible for managing the archive of the company;

e) the auditor's report / audit firm's report on the financial situation of the company at the date of termination of the activity, as well as on the way in which S.S.I.F. paid off debts to customers;

f) proof of payment to the A.S.F. the withdrawal fee for the authorization;

g) any other documents that A.S.F. considers them necessary for the settlement of the request.

(2) S.S.I.F. is required to transmit to A.S.F. the documents referred to in paragraph (1) letter b) -g) and if the withdrawal of the authorization is not carried out at the request of S.I.F.

(3) For customers who could not be contacted by S.S.I.F. in order to return their assets in custody, S.S.I.F. will proceed as follows:

a) it will transfer financial instruments to an individual account opened at the central depository on behalf of each client in the case of financial instruments for which the central depository is an issuer depositary and in the case of financial instruments for which the central depository is an investor depositary shall provide proof of the sale of the financial instruments, in accordance with the principle of obtaining the best result for the client, and will transfer the funds obtained through sale to the account referred to al letter b);

b) it will open to a credit institution on the territory of Romania an escrow account in favour of the clients, opened according to the regulations applicable to credit institutions and for which the payment of the related commissions was made by S.S.I.F. anticipated for a period of at least 3 years, in which it will transfer the funds belonging to them, which will have attached the list including:

(i) the funds owed to each client;

(ii) the identification data of each customer requested by the credit institution required to process the requests for withdrawal of funds owed to each customer;

c) it will publish on its website an announcement on how customers can get their money, an announcement that will be kept at least until the S.S.I.F. authorization is withdrawn, and if the company continues to exist, the ad will be kept for a period of at least 3 years.

CHAPTER II
Changes in organization and operation mode of S.S.I.F.

Art. 13. - (1) S.S.I.F. submits for approval to A.S.F, before the registration with the Trade Register Office, the following changes in the way of organization and functioning:

a) increase / decrease of the social capital;

b) extension / restriction of the object of activity;

c) the appointment of the members of the governing bodies of the S.S.I.F., according to the specific regulations;

d) change of registered office;
e) Establishing / dismantling of secondary offices;
f) changing the name.
(2) In the case of the approval of the modifications provided for in paragraph (1) letter a), b) and d) - f) according to the provisions of this Regulation, A.S.F. issues a decision to add and / or amend the operating license of S.S.I.F.
(3) Members of the governing bodies of S.S.I.F. shall exercise its mandate in relation to the specific activity of S.S.I.F. from the date of their authorization by A.S.F.
(4) After obtaining the authorization provided for in paragraph (2) within a maximum of 5 days from the date of registration at the Trade Register Office of the modifications in the organization and functioning of the S.S.I.F., but no later than 90 days from the date of the authorization issued by A.S.F., S.S.I.F. has the obligation to transmit A.S.F. the copy of the registration certificate, or the copy of the new registration certificate, if the modification required needs the issuance of a new certificate.
(5) The increase of the share capital of a S.S.I.F. cannot be made through in-kind contributions.
(6) In applying the provisions of art. 27 of the Law no. 126/2018, S.S.I.F. has the obligation to inform A.S.F. as follows:
a) in the case of the appointment of the members of the management bodies of S.S.I.F, prior to the application for authorization of the modification or, at the latest, at the time of requesting the authorization stipulated in par. (1) letter c);
b) in the case of termination of the mandate or the resignation or death of a member of the governing bodies of S.S.I.F, within maximum 5 working days after the occurrence of the event, by sending supporting documents.
Art. 14. - (1) In case of modification of the documents underlying the authorization, other than those stipulated in 13 par. (1), S.S.I.F. will notify A.S.F. these changes within 15 days of their production, enclosing copies of the supporting documents.
(2) A.S.F. is entitled to request the modification of the documents, if they are contrary to the legal provisions in force or may refuse to authorize the modifications provided in art. 13 if the requirements of the applicable legal provisions are not complied with.
Art. 15. - (1) The decision provided in art. 13 par. (2) may be issued by A.S.F. on the basis of a request drawn up in accordance with Annexes no. 4 and 5, completed and accompanied, where appropriate, by the following documents:
a) the decision of the statutory body of S.S.I.F.;
b) the addendum to the act of incorporation of S.S.I.F., as the case may be, in the original or in a legalized copy or in a copy bearing the attorney attestation or legalization issued by the secretary of the mayor's offices where there are no notary offices;
c) the proof of the full payment of the share capital in a special account opened for this purpose in a credit institution and the report on the compliance by S.S.I.F. of the legal provisions related to the increase / decrease of the share capital, prepared by a financial auditor / audit firm, for the modification provided for in art. 13 par. (1) letter a);
d) proof of holding the initial capital provided in art. 47 of the Law no. 126/2018 corresponding to the object of activity subject to authorization, for the change envisaged in the Art. 13 par. (1) letter b);
e) proof of the legal possession of the space required for its operation, in a certified copy or in a copy bearing the attorney's certificate or legalization issued by the secretary of the mayor's offices where there are no notary offices in compliance with the conditions stipulated

in art. 6 letter f) and art. 8 par. (2) and Art. 17 par. (2) letter a) or par. (3), as appropriate, and paragraph (5) letter a), for the modifications provided in art. 13 par. (1) letter d) and e);
f) the organization and functioning regulations, which will include the organization chart of the secondary headquarters and special procedures for keeping records and controlling the activity carried out at the secondary offices in relation to the duties and the responsibility of the staff and the delegated agents working at the respective headquarters, the archiving of documents, the transmission of the situation and / or documents at the registered office, for the modifications provided in art. 13 par. (1) letter e);
g) Explanatory note on the situation of the archive, the delegated agents and, where applicable, the persons providing the investment service referred to in point 5 of Section A of Annex no. 1 to the Law no. 126/2018 and the persons fulfilling the compliance function who have performed their activity at the secondary offices, in the case of requesting the withdrawal of the authorization of the respective secondary offices, drawn up according to Annex no. 1, as well as proof of payment in the account of A.S.F. the withdrawal fee for the authorization;
h) declaration on own responsibility by the legal representative of S.S.I.F. drawn up in accordance with Annex no. 1, for the modifications provided in art. 13 par. (1) letters d) and e);
i) proof of payment to the A.S.F. of the fee for amending / completing the authorization.
(2) The act certifying the holding of the secondary office space will be renewed and submitted to A.S.F. within 15 days of the expiration date.
Art. 16. - (1) If the increase or decrease in the share capital occurs as a result of the merger / division operations, the application made according to Annexes no. 6 and 7 shall be accompanied by the following documents:
a) the declaration, under handwritten signature of a member of the senior management of S.S.I.F. regarding the cessation of the activity of the absorbed company, accompanied by:
1. certificates issued by the capital market entities to which S.S.I.F. is a member or participant in the system, mentioning, as the case may be, the conclusion of contractual relations, the fact that S.S.I.F. is not held by the payment of debts, the withdrawal of S.S.I.F. and its staff from the operations carried out in the respective systems, respectively blocking / deactivating access codes and passwords;
2. proof of payment of debts to clients and A.S.F. and the transfer of securities to the issuer depositary or accounts indicated by the clients;
b) the decisions of the extraordinary general meetings of the shareholders of the participating companies;
c) the merger / division project;
d) the amending addendum of the articles of association of participating S.S.I.F., or, as the case may be, the resulted article of association of S.S.I.F.;
e) the merger / division accounting balance sheets of the participating companies;
f) the report of the directors and auditors / audit firms on the merger / division;
g) any other information that A.S.F. can ask them to review the documentation;
h) proof of payment in the account of A.S.F. of the authorization fee.
(2) In the event that S.S.I.F. merges with a company with a different object of activity than the one allowed by the S.S.I.F., in addition to the documents stipulated in par. (1), the application shall be accompanied by a signed, handwritten signature, of the legal representative of the company with a different object of activity regarding the cessation of the activity and the termination of the previously assumed contractual obligations.

3. In the case of an absorption merger, the acquiring company cannot provide investment services and activities without the authorization of A.S.F.
(4) The resulted S.S.I.F. of a merger by fusion or as a result of division will require A.S.F, as the case may be:
a) withdrawal of the operating license of S.S.I.F. participating in the merger, in accordance with the provisions of art. 10 and 12;
b) authorization of the operation, according to the provisions of art. 8.

Art. 17. - (1) S.S.I.F. may set up secondary offices, in compliance with, as the case may be, the operational requirements provided for in paragraph (2) - (6).
(2) The Branch must have an organizational structure allowing the provision of services and investment activities authorized by A.S.F. for the S.S.I.F., as follows:
a) to have a space to ensure the smooth running of the activity, subject to the following conditions:
(i) be in the exclusive use of the branch;
(ii) be appropriate to the organizational structure, business plan, licensed investment services and activities;
(iii) to be partitioned so as to ensure effective separation of the activities to be carried out;
b) to provide adequate technical endowment for the activity within the branch;
(c) to have a sufficient number of persons employed in relation to the investment services and activities provided by that head office and at least one person performing specific functions of compliance function;
d) have a proper organization and functioning regulation, approved by the statutory body of SSIF, referring to subordinate secondary offices, respectively, to the records and control of their activity;
e) have a record and management system for trading orders.
(3) In the event that S.S.I.F. shall provide all the investment services and activities authorized by A.S.F. from the branch office, the space for the branch office shall meet the requirements of this Regulation for the registered office.
(4) In other secondary offices than branches may be provided only services referred to in points 1, 4 and 5 of Section A and points 3 and 5 of Section B of Annex no. 1 of the Law no. 126/2018. Transaction orders received from customers will also be transmitted via electronic means / internal applications for execution to the S.S.I.F. branch to which the secondary office belongs or to the registered office.
(5) The secondary office, other than the branch, shall be organized so that:
a) to have a space reserved exclusively for the secondary headquarters to ensure the smooth running of the activity;
b) to have the necessary technical equipment to allow access to the information system of the branch or registered office;
c) to have a sufficient number of persons corresponding to the investment services and activities provided by the respective headquarters.
(6) The person carrying out activities specific to the compliance function within the branch or, as the case may be, the person authorized by A.S.F. in order to perform the function of compliance at the headquarters also ensures the supervision of the activities carried out by the secondary offices of S.S.I.F. from subordination.
(7) The centralizing situation of the operations carried out within the branches and the subordinated secondary offices, where applicable, as well as the verification balances

related to the activity of the branches, shall be sent monthly to the head office in order to prepare the general financial statement of S.S.I.F.
(8) On a monthly basis, all documents related to the taking over of the orders received at the secondary office other than the branch shall be transmitted, originally, for archiving, to the registered office, on the basis of a minute and a copy to branch.
(9) S.S.I.F. is obliged to maintain the conditions imposed on the authorization of the secondary offices during their entire lifetime, notifying A.S.F. any change within 15 days of its occurrence, enclosing copies of the supporting documents.

Art. 18. - Establishment by a S.S.I.F. of a branch in the territory of another Member State shall is done duly resecting the compliance with the operational requirements laid down in Art. 17 par. (2) - (6).

CHAPTER III
Organizational requirements and rules of conduct
1st SECTION
Organizational requirements

Subsection 1.1
General dispositions

Art. 19. - . S.S.I.F. is required to comply with the organizational requirements set out in Commission Delegated Regulation (EU) 2017/565 of 25th of April 2016 supplementing Directive 2014/65 / EU of the European Parliament and of the Council as regards organizational requirements and operating conditions for investment firms and the terms defined within the meaning of that Directive, hereinafter referred to as the Delegated Regulation (EU) 2017/565.

Art. 20. - (1) The internal organization of S.S.I.F. it must be designed to meet the following minimum requirements:
(a) the specialized departments and staff involved maintain the confidentiality of any information they become aware of in the course of their business, in particular information which has not yet been made public and which could influence the market price on the market;
(b) any of the information referred to in letter a) not to be used in transactions performed by S.S.I.F. in their own account, in the account of relevant persons or on the account of third parties or interested clients;
(c) security and control mechanisms of IT systems to ensure the confidentiality and safe storage of stored data and information, files and databases and compliance with legal requirements on personal data;
d) allocation of non-transferable personal access codes and / or passwords to each category of employees and to management personnel.
(2) In situations where conflicts of interest cannot be avoided or managed under independent domestic policies, S.S.I.F. must not provide investment services as a client's counterparty or on behalf of the client to which it is directly or indirectly in a conflict of interest, also taking into account interests deriving from transactions within the group from which is a part, unless it has previously revealed to the client the nature and extent of his interest, in accordance with the provisions of art. 80 of Law no. 126/2018 and only if the customer has

agreed to enter into a transaction under the conditions presented. Customer agreement must be registered by S.S.I.F. on a durable medium.

Art. 21. - (1) S.S.I.F. is required to show distinctly in the accounts the sums received from customers and to open and use separately bank accounts for their own account and bank accounts on behalf of clients separately. Also, clients' financial instruments will be highlighted in separate accounts from those of S.S.I.F.
(2) S.S.I.F. does not have to act in such a way as to endanger, be considered to endanger or induce a situation that may damage the clients' funds and / or financial instruments or the trading venue they are trading on and must ensure that its personnel do not behave in this way.
(3) S.S.I.F. must, in all circumstances, comply with the following obligations:
a) ensure the safe keeping of the financial instruments it holds in custody;
b) not to use any of the financial instruments it holds in custody or the rights deriving from them and not to transfer these financial instruments without the express consent of the holders;
c) to return to customers, at their request, the financial instruments and funds entrusted to them.
(4). The S.S.I.F. authorized to provide the auxiliary service referred to in point 1 of Section B of Annex no. 1 of the Law no. 126/2018 is responsible for payments and settlements relating to financial instruments held in custody.

Art. 22. - S.S.I.F. must act in such a way as to ensure full equality of treatment towards its clients.

Subsection 1.2
Compliance function

Art. 23. - S.S.I.F. has the obligation to establish and maintain a compliance function, in compliance with the provisions of the Delegated Regulation (EU) 2017/565, of the A.S.F Regulation no. 1/2019 and this Regulation.

Art. 24. (1) The person fulfilling the compliance function shall be subject to the authorization of A.S.F. according to the provisions of art. 25 and the A.S.F. no. 1/2019.
(2) If the performance of the functions assigned to the compliance function is carried out within a separate organizational structure, S.S.I.F. requires only the approval of the person who manages the structure according to art. 25 and the A.S.F. Regulation no. 1/2019.
(3) The persons who carry out activity within a separate organizational structure of S.S.I.F., referred to in par. (2) and who does not ensure the management of that structure are referred to as persons having compliance duties and are not subject to authorization requirements.

Art. 25. - To be authorized by A.S.F. as a person fulfilling the compliance function, the individual must meet the following conditions:
a) to be employed with an individual labour contract;
b) to have attributions of conformity only within that S.S.I.F.;
c) have participated in the training sessions and have passed the test of knowledge of the legislation in force organized by the training bodies accredited by A.S.F.;
d) meet the requirements of the A.S.F. no. 1/2019.

Art. 26. - The person who performs the compliance function and those who have compliance duties will carry out their work on the basis of written surveillance and control procedures, designed to ensure compliance by the S.S.I.F. and its staff of laws, regulations, instructions and procedures relevant to the capital market, as well as internal rules and procedures of the company.

Art. 27. – In the application of the responsibilities stipulated in art. 22 of the Delegated Regulation (EU) 565/2017, the person fulfilling the compliance function shall have the following duties:
a) to keep track of the irregularities discovered during the monitoring activity provided in art. 22 par. (2) letter a) of the Delegated Regulation (EU) 565/2017;
b) ensure that the company and its personnel are informed of the legal regime applicable to the capital market;
c) to endorse the documents sent by S.S.I.F. to A.S.F. in order to obtain the individual acts provided by the regulations in force, as well as the reports submitted to A.S.F. and capital market entities;
d) Prevent and propose remedies for any violation of applicable laws and regulations, capital market incidents or internal procedures of the company by S.S.I.F. or by its staff;
e) to analyse and approve the informative / advertising materials of S.S.I.F.;
f) to supervise the activity of S.S.I.F. so as to ensure the exclusive personal use of each employee, including by delegated agents who do not work under an individual employment contract, of the access codes and passwords allocated to that person.

Art. 28. - In the exercise of the duties provided in art. 27, the person performing the compliance function shall keep a register showing the investigations carried out, the details of the operations to be verified, the duration of such investigations, the period to which they relate, the outcome of the investigations, the proposals submitted in writing to the governing body and the decisions taken by the persons empowered to take settlement measures and the status of implementation of the proposals / recommendations formulated.

Art. 29. - (1) If the person fulfilling the compliance function becomes aware during the course of his business either as a result of his own investigations or as a result of a notification received from him, of any breaches of the legal regime applicable to the capital market, including the internal procedures of the company has the obligation to inform the management body and the internal auditors of the S.S.I.F.
(2) In the event of violations of the applicable legislation that may fall within the category of offenses or criminal deeds provided by the legislation in force, the governing body and internal auditors of S.S.I.F. notifies A.S.F. and the capital market entities involved:
(a) the situation ascertained by the person performing the compliance function by the end of the next working day following the date of the notification at the latest;
b) the measures adopted by the management body, within a maximum of 7 days from the informing of the management body by the person performing the function of compliance.

Art. 30. – (1) Annually, by 31st of January of the year following the reporting period, the person performing the compliance function shall send to the board of directors of S.S.I.F. a report covering the work carried out, the investigations carried out, the deviations found, the

program / plan of investigations proposed for the year following the reporting period, the sanctions applied, the measures taken and the stage of their implementation.
(2). The activity report provided in paragraph (1) containing all the findings of the investigation during the reporting period, the approved proposals and the investigation plan approved by the governing body in its supervisory function shall be submitted to A.S.F. not later than 31st of March of the year following the reporting period.

Art. 31. - The person who performs the compliance function must carry out his activity at the S.S.I.F. throughout its working hours.

Art. 32. - (1) If the person fulfilling the function of compliance is absent or in the situation where the compliance function is vacant, S.S.I.F. temporarily designates, through internal procedures, a person from S.S.I.F. which would fulfil those tasks during this period.
(2) The period during which the functions of the compliance function are fulfilled according to the provisions of par. (1) may not be more than 120 days in a calendar year.
(3) The person who performs the functions of the compliance function, according to par. (1) must have at least 1-year experience in the capital market.

Subsection 1.3
Risk assessment and management

Art. 33. - (1) If the risk management function is not exercised independently and S.S.I.F. does not fall into the S.S.I.F category. significant in accordance with the provisions of art. 7 of the A.S.F. no. 3/2014, the risk management function can be exercised by an employee of S.S.I.F. which does not perform an operational function.
(2) For the purposes of paragraph (1) and art. 23 par. (2) of Regulation no. 3/2014, in the category of operational functions are included: the persons stipulated in art. 11 of Law no. 126/2018, the Delegated Agent, the Financial Analyst, the Portfolio Manager, as well as the persons with managerial and supervisory functions.
(3) If the person performing the risk management function is absent or where the risk management function is vacant, the S.S.I.F., by internal procedures or by internal decision, shall determine the provisional assumption of such duties by the member of the management senior management that has the role of coordinating the risk management department.
(4) The period during which the attributions of the risk management function are fulfilled according to par. (3) may not be more than 120 days in a calendar year.

Art. 34. - (1) The person who manages the risk management function is subject to the authorization of A.S.F.
(2) To be authorized by A.S.F. as a person who carries out the risk management function, the individual must meet the following conditions:
a) be employed with an individual labour contract;
b) to have risk management tasks only within that SSIF;
c) to prove the completion of a specialization course organized by specialized institutions of national or international professional training bodies, which attests acquiring knowledge in the field of risk management and enabling him / her to fulfil the responsibilities related to the occupied position.

(3) In addition to the requirements of par. (2), the authorization of the person in charge of the risk management function shall be carried out in accordance with the provisions of the A.S.F. no. 1/2019.
(4) In the event that S.S.I.F. outsources the risk management function, outsourcing must be done to an individual who does not perform this function or the compliance function for another investment firm / S.S.I.F. or a credit institution, Romanian legal person, which provides investment services and activities with financial instruments other than those provided under art. 2 par. (2) letter d) and par. (3) of the Law no. 126/2018.
(5) If outsourcing is made to a legal person, the prohibitions provided in paragraph (4) refers to the individual who will actually carry out those duties.
(6) If the risk management function is outsourced, the conditions set out in paragraph (2) letter c) must be fulfilled by the individual who will actually carry out the respective duties.

Subsection 1.4
Internal audit

Art. 35. - The person who performs the internal audit function shall be notified to A.S.F. in accordance with the provisions of the A.S.F. no. 1/2019.

2nd SUBSECTION
Documents, information and reporting in relation to customers and potential clients
Subsection 2.1
General dispositions

Art. 36. - S.S.I.F. has the obligation to comply with the provisions of Chapter III of the Delegated Regulation (EU) 565/2017 and to inform its clients, through a durable medium regarding any corporate event, as defined in Art. 2 par. (2) letter m) of the A.S.F. no. 5/2018 on Issuers and Transactions in Securities, hereinafter referred to as "A.S.F. no. 5/2018, in relation to the financial instruments held in the portfolio by them.

Art. 37. - (1) Prior to the opening of an account on behalf of a natural or legal person or an entity without legal personality, S.S.I.F. verifies its identity and applies customer knowledge measures in accordance with the provisions of Law no. 656/2002 on the prevention and sanctioning of money laundering, as well as for the introduction of measures for the prevention and combating of terrorist financing, as subsequently amended and supplemented, and the regulations issued by A.S.F. in its application.
(2) The financial instruments account shall specify at least the identification data of the person on whose behalf it is open, of the beneficial owner and, where applicable, of his / her empowered person / representatives.
Art. 38. - (1) In applying the provisions of art. 60 par. (1) and art. 89 par. (1) of the Law no. 126/2018, S.S.I.F. provides investment services and ancillary services in the name and on behalf of clients customers on a written contract, on paper or on another durable medium, that will contain the rights and obligations of S.S.I.F. and of the client and which will refer to at least the following:
(a) Customer identification data, whether natural or legal, as the case may be;
b) the elements provided in art. 58 of the Delegated Regulation (EU) no. 565/2017;

c) the type of financial instruments to be traded;
d) the duration of the contract, how the contract can be renewed, modified and / or terminated;
e) the rights and obligations of the parties as well as other terms in which the company will provide the customer with investment services and ancillary services;
f) a contractual clause on the way of return by S.S.I.F. of funds held on behalf of the client if the client cannot be contacted / notified at the address indicated in the broker's agreement / additional acts of the brokerage contract within a predetermined period by the parties, including the possibility of terminating the relations contract;
g) a contractual clause on the way of return by S.S.I.F. of the financial instruments held on behalf of the client if the client cannot be contacted / notified at the address indicated in the broker's agreement / additional acts of the brokerage contract within a predetermined period by the parties, including the possibility of terminating the relations contractual and transfer of financial instruments to an individual account opened with the central depository on behalf of the client in the case of financial instruments for which the central depository is the depositary and the sale of financial instruments in the case of financial instruments for which the central depository is an investor depositary;
h) the express consent of the customer for the registration and storage by S.S.I.F. its instructions / confirmations sent by phone and any telephone conversations with clients related to the investment services that S.S.I.F. deploy or could deploy for that client or prospective customer, as appropriate. If the customer does not agree with the registration and storage, the orders will not be picked up by phone;
i) the customer's statement stating that he / she understands the obligation to update his identification and contact details wherever appropriate and assumes the effects of the breach;
j) customer profile information, which will refer to:
(i) qualifying the customer as a retail client, professional client or eligible counterparty;
(ii) professional training;
(iii) an estimate of the value of the investment and the purpose of the investment, where appropriate, depending on the type of investment service provided;
(iv) the level of risk he / she wants to undertake (high, medium, low);
(v) the information provided, as appropriate, in Art. 87 par. (3), art. 88 par. (1), (3) and (4) of Law no. 126/2018;
k) any other clauses regarding the provision of investment services and ancillary services agreed by the parties;
l) the stipulations in art. 47 par. (1) letters (b), (c) and (f) of Regulation (EU) No. 565/2017, art. 82 par. (3) the first sentence of Law no. 126/2018 and, as the case may be, to art. 47 par. (3) letters (b), (d) and (e) of Delegated Regulation (EU) No. 565/2017;
m) if the client's instructions / confirmations are sent by e-mail, his/her express consent to the transmission of the instructions / confirmations by e-mail;
n) if the client entrusts S.S.I.F. to request and obtain the statements of account and, where appropriate, the confidential codes relating to the holdings evidenced in the individual accounts of the central depository system, its express consent to the mandate granted to S.S.I.F. to request and obtain the statements of account and, where appropriate, the confidential codes relating to those financial instruments;
o) the interest rate on the amounts deposited by customers in current accounts;
p) the exchange rate and the conditions under which the client may refuse this exchange rate;

q) the possibility for the client to unilaterally revoke the mandate given to S.S.I.F. on the basis of a portfolio management contract or to withdraw, in whole or in part, the free of charge funds at any time without incurring compensation. The client has the obligation to cover possible losses resulting from transactions made in his / her account;

(r) information on the registration, storage and use of personal data in accordance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th of April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of personal data the circulation of these data and repealing Directive 95/46 / EC (General Data Protection Regulation), hereinafter referred to as Regulation (EU) 2016/679;

s) power of attorney for the person transmitting orders if he/she is not the legal representative of the legal person customer, as the case may be;

t) the name and function of the employee / delegate agent with whom the customer will keep in touch or the contact details from where the customer can obtain the information;

u) the signature of the client and the designated person from S.S.I.F.; in the case of distance contracts, to the extent that S.S.I.F. use computer systems to identify the customer, these signatures are not required;

(v) Annex: copy of the identity document of the customer or of the person empowered to send orders on behalf of the customer or of the registration certificate to the trade registry office or to the home institution, as the case may be.

(2) For the purpose of classifying professional clients or not, upon request, according to Section B of Annex no. 2 of the Law no. 126/2018, according to the provisions of para. (1) letter j) point (i), the following shall be taken into account:

a) S.S.I.F cannot rely solely on the client's statement of the client in the process of assessing clients as professional clients. S.S.I.F. has the obligation to apply adequate internal policies and procedures, recorded in writing, which allow classification in the category of professional clients in compliance with the provisions of art. 3 of Annex no. 2, Section B of Law no. 126/2018 and the European regulations issued pursuant to Directive 2014/65 / EU;

b) S.S.I.F. must individually examine each individual situation in order to assess whether that client's competence, experience and knowledge will enable him / her to understand the risks involved in the transactions / products concerned in order to make informed investment decisions. The responsibility for carrying out the assessment is the responsibility of the SSI following a case-by-case analysis based on its own procedures and considering the nature of the transactions or services envisaged;

c) S.S.I.F. must refrain from implementing any form of practice that seeks to stimulate, determine or persuade a retail investor to seek to be treated as a professional client;

d) for the evaluation of the criterion mentioned in art. 3 par. (5) letter a) and art. 3 of Annex no. 2 of the Law no. 126/2018, S.S.I.F. determines whether a transaction is of significant magnitude, taking into account criteria relating to the size of the customer's transactions reported on the relevant market of that financial instrument, whether the transactions were sufficiently large at the individual level to give the customer significant exposure on the relevant market that the notional value of transactions in leveraged or financial instruments for which a margin is lodged may be proportionally higher than in the case of non-leveraged products;

e) S.S.I.F. is responsible for the possible establishment of value thresholds for the value regarding the value of transactions that will be considered significant subject to at least the criteria referred to letter d), and their achievement / overcome should not have the meaning of automatic reclassification of that client in the category of professional clients;

f) in assessing the criterion mentioned in art. 3 par. (5) letter b) and art. 3 of Annex no. 2 of the Law no. 126/2018, if the portfolio includes positions on financial instruments that have a leverage effect or financial instruments for which a margin requirement is requested, S.S.I.F. takes into account the net value of those positions (for example, the margin or payment made for the financial instrument plus the profit or loss generated by the changes in the underlying asset value) and not the notional value of that financial instrument;
g) in the evaluation of the criterion mentioned in art. 3 par. (5) letter c) and art. 3 of Annex no. 2 of the Law no. 126/2018, respectively, in assessing whether a client activates for at least one year or has been active for at least one year in the financial sector in a professional position requiring knowledge of the transactions or services concerned, that the position occupied by the client in the financial sector is / have been of a professional character and has been exercised in an area which has enabled the client to acquire knowledge of the transactions or services in question.
(3) The provisions of paragraph (1) letters (i), (l), (s), (t) and (v) may be included in an annex to the contract or in a separate document, entitled "Request for Account Opening" or other documents according to internal procedures of the company.
(4) By way of exception from the provisions of paragraph (1), eligible counterparties may establish other clauses for contracts concluded between them.

Art. 39. - (1) The subscription form used for the distribution of the fund units shall be assimilated to the contract provided in art. 60 par. (1) of the Law no. 126/2018 if the following conditions are met:
a) S.S.I.F. does not provide other investment or ancillary services to that investor and there is no contractual relationship between them at the time of the subscription;
b) the subscription form contains:
(i) in a standardized form, the elements provided in art. 38 para. (1);
(ii) an indication by which the investor becomes aware that by signing it he/she enters into a brokerage agreement with that S.S.I.F.
(2) The redemption demand used for the distribution of fund units shall be assimilated to the contract provided for in art. 60 par. (1) of the Law no. 126/2018 if the following conditions are met:
A.S.I.F. does not provide other investment or ancillary services to the investor and there is no contractual relationship between them at the time of signing the document;
B. the redemption request contains:
(i) in a standardized form, the following elements:
a) identification data of the investor, natural or legal person, as the case may be;
b) the duration of the contract;
c) the rights and obligations of the parties as well as other terms in which the company will provide the investor with the investment service referred to in point 1 of Section A of Annex no. 1 of the Law no. 126/2018 in relation to the fund units for which the redemption form is completed;
d) the express consent of the investor for the registration and storage by S.S.I.F. of its instructions / confirmations of the redemption request sent by telephone, as the case may be. If the investor does not agree with the registration and storage, the order for the redemption request will not be taken over by phone;
e) the information provided in art. 88 par. (1), (3) and (4) of Law no. 126/2018, in the case of the fund units of the structured OPCVM referred to in art. 36 par. (1), second subparagraph, of Regulation (EU) No. 583/2010 of Commission Implementing Regulation

(EU) No 583/2010 of 1st of July 2010 implementing Directive 2009/65 / EC of the European Parliament and of the Council in terms of key information for investors and conditions to be met for the provision of key information for investors or prospectus on a durable medium other than paper or via a website published in the Official Journal of the European Union, L series, no. 176/1 of 10th of July 2010;
f) if the redemption request is sent by e-mail, his/her consent to e-mail transmission;
g) information on the registration, storage and use of personal data in accordance with the provisions of Regulation (EU) 2016/679;
h) the signature of the investor and the person designated by S.S.I.F.;
i) Annexes:
1. copy of the identity document of the investor or the person empowered to complete and sign the redemption request on behalf of the investor or of the registration certificate at the trade register office or to the similar institution in the State of origin, as the case may be;
2. empowering the person who completes and signs the redemption request if he / she is not the legal representative of the legal person investor, as the case may be;
(ii) an indication by which the investor becomes aware that by signing it he/she enters into a brokerage agreement with that S.S.I.F.
(3) If between S.S.I.F. and the investor already has a contractual relationship, it is not necessary to fill in the boxes of the form and the request provided in par. (1) and (2) which are covered by the previously concluded contract.
(4) Investors holding fund units within the term stipulated in art. 274 par. (1) of the Law no. 126/2018, who do not have a contractual relationship with S.S.I.F. or have not subscribed units under the conditions provided for in paragraph (1) and do not wish to conclude a contractual relationship with S.S.I.F., they are allowed to complete and sign partial or total redemption requests, which do not contain the elements stipulated in par. (2) lit. B. on the basis of a statement, but no longer have the right to acquire fund units without completing a subscription form that meets the conditions set out in paragraph (1).

Art. 40. - (1) In the application of the provisions of art. 276 of the Law no. 126/2018, for the holdings of the Mass Privatization Program and evidenced in Section 1 of the Central Depository S.A., in the case where the transaction concerns exclusively and entirely these holdings and S.S.I.F. does not provide any other investment service for that holder and the holder is in the retail clients category and does not have a contractual relationship with another SSIF / credit institution, Romanian legal person, which provides investment services and activities with other financial instruments than those provided by art. 2 par. (2) letter d) and par. (3) of the Law no. 126/2018, in order to fully sell the prevented holdings of the Mass Privatization Program, the relationship between the holder and S.S.I.F. is based on a written contract on paper, in written form, or other durable medium containing the rights and obligations of S.S.I.F. and of the client and which relate to at least the following:
a) identification data of the individual customer;
(b) the provision of the investment services referred to in points 1 and 2 of Section A of the Annex
no. 1 of the Law no. 126/2018 solely for the purpose of selling through a single transaction of the investor's holdings from the Mass Privatization Program;
c) the duration of the contract and how the contract can be terminated;
d) the rights and obligations of the parties, as well as other terms in which S.S.I.F. provide the client with the investment services referred to letter b);

e) the stipulations in art. 47 par. (1) letters c), d) and f) - h) of the Delegated Regulation (EU) No. 565/2017;
f) the express consent of the customer for registration and storage by S.S.I.F. of instructions / confirmations sent by telephone, as the case may be. If the customer does not agree with the registration and storage, the orders will not be picked up by phone;
g) if the client's instructions / confirmations are sent by e-mail, his express consent to the transmission of the instructions / confirmations by e-mail;
h) if the client mandates S.S.I.F. to request and obtain the account statements related to the holdings evidenced in the individual accounts of the central depository system managed by the central depository, its express consent to the mandate granted to the S.S.I.F. to request and obtain the statements of account and, where appropriate, the confidential codes relating to the investor's holdings from the Mass Privatization Program and evidenced in the Central Depository System;
i) the name and function of the employee / agent delegated with whom the customer will keep in touch or the contact details from where the customer can obtain the information;
j) the signature of the client and the designated person from S.S.I.F.;
k) annex: copy of customer identity document.
(2) The provisions of paragraph (1) shall also apply if the holdings of the Mass Privatization Program represent inheritances.
(3) The provisions of paragraph (1) and (2) shall also apply to shares received free of charge on the basis of the initial holdings of the Privatization Program.
(4) Holdings from the Mass Privatization Program to financial investment companies for the purpose of sale under the provisions of this Article are considered to be non-complex financial instruments.

Art. 41. - (1) In order to acquire discretionary authority over a client's financial instruments portfolio, S.S.I.F. has the obligation to obtain the written agreement and his statement that he/she understands the risk assumed by the discretionary administration of his/her account.
(2) In order to allow customers to evaluate at any time the terms of a transaction they intend to carry out and to verify, subsequently, the conditions under which this transaction was executed, S.S.I.F. make available to customers at their request the information displayed in the system to which they have access regarding the prices and trading volume related to the underlying financial instrument of the transaction.

Subsection 2.2
Advertising rules

Art. 42. - (1) The S.S.I.F. web page shall include at least the following information:
(a) the registered office and secondary offices address, including contact details (phone, fax, e-mail) for each of them;
b) the share capital;
c) investment services and activities, as well as ancillary services, which S.S.I.F. is authorized by A.S.F. to provide them;
(d) the contact details of the person performing the compliance function and the person responsible for examining complaints;
e) information on the investor compensation fund.
(2) S.S.I.F. must ensure the correctness and completeness of all the information that is displayed on the website.

Art. 43. - (1) Advertising of S.S.I.F. must be notified in advance by the person who performs the compliance function.
(2) A.S.F. or the market operator may oblige S.S.I.F. to modify the information contained on the website or prohibit S.S.I.F. the dissemination of an advertising material, if it is contrary to the law, the A.S.F. regulations, European regulations issued pursuant to the Directive 2014/65 / EU or the regulations of the trading venues.
(3) S.S.I.F. must keep copies of all advertising materials and of the content of the website for a period of 2 years from the moment of appearance or display and make them available to A.S.F. or to the market operator at their request.
(4) To the extent that in S.S.I.F. uses quotes, quotations, tables, maps, charts, statistics, or other similar material, the source of that information must always be clearly indicated.

Article 44. - Obligation to comply with the advertising rules of S.S.I.F. falls to S.S.I.F. and / or its representatives, including where S.S.I.F. employs another entity to handle any kind of advertising in its own interest.

Art. 45. - (1) On the territory of Romania, the advertising of an investment firm from another Member State made by a S.S.I.F. is done in compliance with the incidental provisions of Law no. 126/2018, and subject to the provisions of this section.
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(2) S.S.I.F. who advertises for an investment firm in another Member State has the obligation to inform the investment firm about the application of the incidental provisions of Law no. 126/2018 and in this section.
(3) Advertising and promotion of services and / or activities of an investment firm from another Member State to Romanian clients may be made after notification in accordance with the procedure described in Law no. 126/2018.
(4) The responsibility of complying with the advertising rules requirements lies with the investment firm, including when it engages another entity, including a S.S.I.F., to handle any kind of advertising in its own interest.

3rd SECTION
Managing client orders

Art. 46. - (1) In the event that S.S.I.F. simultaneously receives multiple orders at the same price level for the same financial instrument, which can be executed under market conditions, S.S.I.F. must enter them into the trading system in the following order:
a) orders received from retail customers;
b) orders received from professional clients;
c) orders received from the relevant persons;
d) orders to be executed in their own name by S.S.I.F.
(2) The refusal to execute an order shall be immediately communicated to the client together with the justification of the refusal.

Art. 47. - Delegated agents may not enter orders directly into the trading system of a trading venue, may not be involved in the settlement operations and to issue account statements and may not perform cash and payment operations from or for S.S.I.F. customers.

4TH SECTION
Transparency and Integrity Requirements for Financial Instruments Operations
Subsection 4.1

Obligations to ensure market integrity, transaction reporting and record keeping

Art. 48. - (1) In addition to the obligations of S.S.I.F. of the delegated acts and implementing acts, as the case may be, adopted by the European Commission and issued pursuant to Directive 2014/65 / EU, S.S.I.F. must clearly distinguish, draw up and keep up to date at least the following:

a) records of margin calls and notes on other debts / credits of clients;

b) the customer accounts, the accounts of the relevant persons and their own account;

c) records of transactions relating to transactions in financial instruments, cash inflows / outflows and other customer advances or debits, as well as the primary documents underlying them. The records will reflect the account in which the transaction was made, the name of the account, the traded financial instrument, the quantity, the unit price and the total sale or purchase price and the transaction date;

d) records of customer holdings reflecting in each client's cash account all sales / purchases, receipts / deliveries of financial instruments, updated at least on a daily basis;

e) asset and liability statements, income, expense and equity accounts, updated at least monthly;

f) documents reflecting, separately for each financial instrument, on the date of the clearing, all positions that the S.S.I.F. holds them in their personal accounts and that of customers, as well as their location;

g) records of the financial instruments under transfer, dividends and interest received, loans granted or received, as well as financial instruments not received or not delivered, updated at least on a daily basis;

h) the records of the S.S.I.F. staff, mentioning the attributions and, if appropriate, sanctions and indictments related to the mediation activity, for the period when they had a contractual relationship with S.S.I.F.

(2) All documents stipulated in par. (1) must be available on request in no more than two business days.

(3) At the request of A.S.F., S.S.I.F. has the obligation to provide at any time copies of the requested documents or any other data about the activity of S.S.I.F.

Art. 49. - (1) S.S.I.F. and credit institutions providing investment services and activities have the obligation to carry out on a daily basis in the IT system the reconciliation of the holdings of funds and financial instruments recorded on the account of each client and on their own account by checking the compliance between the obligations and the holdings of funds and / or financial instruments recorded in those accounts.

(2) S.S.I.F. and credit institutions providing investment services and activities have the obligation to highlight accounts balances for each individual client in computer systems, including for the settlement date.

Art. 50. - (1) For the purpose of supervision by A.S.F. of the activity carried out by S.S.I.F., it shall submit to A.S.F. the following situations and documents:

a) Monthly, quarterly or half-yearly financial statements, as the case may be, drafted and transmitted to A.S.F. in accordance with the provisions of the regulations issued in the application of Government Emergency Ordinance no. 99/2006 on credit institutions and capital adequacy, approved with amendments and completions by Law no. 227/2007, as subsequently amended and supplemented, hereafter referred to as GEO no. 99/2006, including the verification balance related to the reporting date;
b) the report on the bookkeeping of the loan operations, the margin purchases and assets in the form of margin for operations requiring guarantees in the margin account, per client, drafted in accordance with Annex no. 8 within a maximum of 10 days from the end of the reporting month or within 24 hours of ASF's request;
c) the half-yearly report, within the legal term established by the ASF regulations, which will comprise the half-yearly accounting reports composed of the statement of assets, liabilities and equity, profit and loss account, informative data;
d) the annual report, within the legal term established by the ASF regulations, which will contain the annual financial statements prepared in accordance with the International Financial Reporting Standards and having the components provided by these standards;
e) the report of the internal auditors, which shall be submitted together with the report provided for al letter d);
f) report on the source of S.S.I.F. (detailed on category of investment services) and the destination of expenditure, as well as a report on the source of income (detailed on category of investment services) and the destination of the expenditure, on each secondary office, to be transmitted together with the report referred to in letter e);
g) the monthly situation of its own portfolio within 15 days from the closing of the reporting month; in the case of credit institutions, the situation concerns financial instruments other than those under art. 2 par. (2) letter d) and (3) of the Law no. 126/2018;
h) the quarterly situation of the assets in custody within 30 days from the end of the reporting period; in the case of credit institutions, the situation concerns financial instruments other than those under art. 2 par. (2) letter d) and (3) of the Law no. 126/2018.
(2) Annually S.S.I.F. will send ASF no later than 31 January updated information in the form of Annex no. 9, as well as the following:
(a) the list of authorized secondary offices including those providing investment services and activities, including, where appropriate, the delegated agents and, where appropriate, the persons performing the compliance function operating at those secondary offices;
b) the report on the structure of the individual client portfolios under management, including the names of the clients, the value of the cash assets and the financial instruments held at the reporting date, the profit / loss related to the portfolio at the end of the year; in the case of credit institutions, the situation concerns financial instruments other than those under art. 2 par. (2) letter d) and (3) of the Law no. 126/2018;
c) report on the disciplinary measures applied by S.S.I.F. to senior management to persons providing investment services and activities, delegated agents and the persons performing the compliance function and the reason for their sanction;
d) list of contracts concluded with other S.S.I.F. or credit institutions, including other States, providing investment services and activities, in force at the reporting date, their object of activity and the compensation scheme in which the entity participates with which S.S.I.F. from Romania has signed a contract.
e) the report on services and investment activities and ancillary services that have been outsourced.

(3) S.S.I.F. has the obligation to notify A.S.F. regarding the conclusion of a contract with another S.S.I.F./ investment firm or credit institution, including from other states, within 5 working days after its termination / conclusion, S.S.I.F. having the obligation to transmit the copy of this contract only at the request of A.S.F. In the case of credit institutions, the notification obligation concerns contracts relating to the provision of investment services and activities and ancillary services.

Subsection 4.2
The obligations of a S.S.I.F. acting as an independent operator

Art. 51. - S.S.I.F. who intends to act as an independent operator must notify A.S.F. with respect to the fulfilment of the criteria for the independent operator status assessed according to art. 17 of the Delegated Regulation (EU) 2017/565 and to apply for registration in the A.S.F. Register.

Art. 52. - (1) S.S.I.F. who holds the status of independent operator notifies A.S.F. within 48 hours of termination of this quality.
(2) Within maximum 15 days from the date of the notification provided for in paragraph (1), A.S.F. radiates the independent operator from the A.S.F. Register.

CHAPTER IV
Applicable guidelines issued by the European Securities and Markets Authority (ESMA)
Art. 53. - (1) A.S.F. shall apply the Guidelines on certain aspects of the MiFID requirements for the compliance function referred to in this article as Guidelines contained in Annex no. 10 in carrying out its activity of supervision and control of compliance with the legal provisions transposing the provisions of the EC Directives no. 39/2004 and no. 73/2006, with the following entries:
(a) the reference to Directive 2004/39 / EC or Directive 2006/73 / EC is interpreted as references to Directive 2014/65 / EU or Regulation (EU) 600/2014 or Delegated Regulation (EU) 565/2017;
b) the compliance function and internal auditing function cannot be held by the same person;
c) the notion of leader in the Guidelines corresponds to the upper management notion of Law no. 126/2018;
d) S.S.I.F. cannot externalize the compliance function.
(2) S.S.I.F. and S.A.I. which carries out the activities stipulated in art. 5 par. (3) lit. (a) and (b) (i) of O.U.G. no. 32/2012 have the obligation to take all measures for the application of the provisions of the Guidelines referred to in para. (1).
Art. 54. - (1) In its supervision activity, A.S.F. apply the ESMA Guidelines on Cross-selling practices, as set out in Annex. 11.
(2) The guideline applies to cross-selling practices in the meaning of Art. 3 par. (1) point 61 of the Law no. 126/2018.
(3) The following entities are required to take all measures to enforce the guidance provided in paragraph (1):
a) S.S.I.F.;
b) credit institutions providing investment services and activities with financial instruments other than those provided under art. 2 par. (3) of the Law no. 126/2018;
c) investment management companies providing services under art. 5 par. (3) from G.E.O no. 32/2012;

d) external AFIA providing services under art. 5 par. (5) of the Law no. 74/2015.

Art. 55. - (1) In its supervision activity, A.S.F. apply the ESMA Guideline on Debt Securities and Complex Structured Products, as set out in Annex. 12.
(2) The guideline provided in paragraph (1) shall be applied in connection with the provisions of art. 88 par. (5) and (6) of Law no. 126/2018.
(3) The following entities are required to take all measures to enforce the guidance provided in paragraph (1):
a) S.S.I.F.;
b) credit institutions providing investment services and activities with financial instruments other than those provided under art. 2 par. (3) of the Law no. 126/2018;
c) external AFIA when providing ancillary services under art. 5 par. (5) of the Law no. 74/2015.

Art. 56. - (1) In its supervision activity, A.S.F. apply the ESMA Guideline on certain aspects of the MiFID II adequacy requirements set out in Annex. 13.
(2) The following entities are required to take all measures to apply the provisions of the guideline provided for in paragraph (1) in connection with the provision of investment services set out in Annex I, Section A, points 4 and 5 of Law no. 126/2018:
a) S.S.I.F.;
b) credit institutions providing the investment services mentioned with financial instruments other than those stipulated in art. 2 par. (3) of the Law no. 126/2018;
c) S.A.I.;
d) external AFIA.
Article 57. - Throughout the guidelines and procedures referred to in this chapter, the phrase "should" is read "must".

CHAPTER V
Provision of certain services and investment activities and ancillary services

Art. 58. - (1) For the purpose of the provisions of art. 47 par. (2) of the Law no. 126/2018, a S.S.I.F. which provides financial placement without firm commitment, has a level of initial capital equal to the equivalent in lei of the amount of EUR 125,000.
(2) a S.S.I.F. which provides financial instrumentation with firm commitment has a level of initial capital equal to the RON equivalent of EUR 730,000.

Art. 59. - The ancillary services provided in Annex no. 1 Section B, points 1-7 of the Law no. 126/2018 may be provided by S.S.I.F., regardless of the level of the initial capital available to it, except for the ancillary service provided in Annex no. 1 section B point 1 of the Law no. 126/2018, which cannot be provided by S.S.I.F. which has a level of initial capital equal to the equivalent in lei of 50,000 euros.

Art. 60. - (1) S.S.I.F. can feed the customer's own account with its own sums necessary to complete the settlement transactions only if, though not later than the date of the order S.S.I.F. assessed and found the customer's ability to hold the funds and financial instruments required at the settlement date, for exceptional reasons, the amounts required are not available at the settlement date.

(2) The exceptional situations provided in paragraph (1) shall be documented in writing by the person who performs the compliance function and notified to the management of the S.S.I.F.
(3) The amount stipulated in paragraph (1) may not exceed the value of the client's liquid assets for which S.S.I.F. covered the settlement requirements, which are in custody of S.S.I.F.
(4) S.S.I.F. establishes through internal procedures the way of evaluation of financial instruments belonging to the client and in the custody of S.S.I.F. as well as criteria for the inclusion of financial instruments in the category of liquid financial instruments.
(5) At the time of conclusion of the contract, S.S.I.F. informs the client about the manner of assessing the financial instruments provided for in paragraph (4).
(6) S.S.I.F. grants the amount provided in paragraph (1) for customers whose brokerage agreements contain clauses providing for the possibility of S.S.I.F. to use the assets in custody of S.S.I.F.
(7) The brokerage agreement concluded between S.S.I.F. and the client includes provisions relating to the costs incurred by the operation provided for in paragraph (1).
(8) In the event that S.S.I.F. owns funds and financial instruments of investors, it must have an automatic account verification system to ensure that the provisions of paragraph (3) are respected.

Art. 61. - (1) Within a maximum of five days from the settlement date, the client has the obligation to return the amount granted according to art. 60.
(2) In the interval between the settlement date and the time of the customer's return of the due amount, is forbidden to S.S.I.F. to introduce new purchase orders for that client.
(3) Within 10 days from the settlement date, S.S.I.F. performs the necessary steps to recover amounts that have not been returned by the customer.
(4) The compliance officer and the person managing the risk management function shall monitor the compliance with the maximum amount set in accordance with art. 60 par. (3), as well as the actions undertaken by S.S.I.F. for debt recovery.
(5) S.S.I.F. keeps track of situations where customer obligations have been covered, evidence that includes:
a) the name of the customer;
b) account feed date by S.S.I.F.;
c) amount covered by S.S.I.F.;
d) the justification of the exceptional situation which led to the customer not feeding to the account at the settlement date;
e) the value of the client's portfolio at the date of the debit record;
f) the method in which S.S.I.F. is considering recovering the amount owed by the customer;
g) measures imposed on the client to recover the amount due;
h) date of debit cover

Art. 62. - (1) S.S.I.F. makes available to A.S.F. at any time, at its request, the outcome of the monitoring provided for in Art. 61 par. (4).
(2) A.S.F. may forbid a S.S.I.F., by reasoned decision, to carry out the operation provided for in art. 60 par. (1), taking into account the S.S.I.F. conduct, the level of indicators calculated for the purpose of assessing prudential requirements, the risk induced by its financial position and the transactions made by it.

Art. 63. - S.S.I.F. transmit, at the request of ASF, the names of the customers whose accounts were fed under Art. 60 par. (1) and who did not return the amounts due within the time limit set in art. 61 par. (1).

CHAPTER VI
Remote contracts and internet transactions

1st SECTION
The content and minimum clauses of distance contracts concluded by S.S.I.F. with investors

Art. 64. - The express agreement of the investor provided in art. 60 par. (6) of the Law no. 126/2018 can be obtained by sending it on a standard document, paper or other durable medium, by post, fax, e-mail or any other automated call system without human intervention, including by using an IT application which allows the sender to be identified, which may be an annex to the contract.

Art. 65. - Without prejudice to the information obligations of investors provided for by Law no. 126/2018 and the European regulations issued pursuant to Directive 2014/65 / EU before concluding a distance contract or at the time of submission of the proposal to conclude a distance contract, S.S.I.F. has the obligation to inform investors in a timely, correct and complete manner about at least the following:
a) data on the possibility of identifying S.S.I.F., which will include:
1. the name of S.S.I.F., the investment services and activities, as well as the ancillary services provided, the registered office, the secondary offices and the means of contact, telephone, fax, e-mail, the unique registration code at the Trade Register Office of S.S.I.F .;
2. the name and surname of the senior management of the S.S.I.F., the address, the phone / fax number and the e-mail where they can be contacted;
3. the authorization granted by A.S.F. and address, phone / fax number and e-mail of A.S.F;
(b) information on investment services and activities and the ancillary services they are going to provide or intend to provide, which shall relate to:
1. description of the main features of the investment service and ancillary service;
2. the total cost that the investor has to pay for the investment service and ancillary service provided by the S.S.I.F., including all commissions, fees, charges or related charges paid directly by the investor or via the S.S.I.F.; and where it cannot be indicated an exact cost of the service provided, S.S.I.F. is required to inform the investor of the calculation method necessary to verify the total cost;
3. specifying that:
(i) investment services and activities as well as ancillary services entail specific risks characteristic to financial instruments;
(ii) the operations to be executed depend on the fluctuations of the financial markets on which S.S.I.F. has no influence;
(iii) the achieved statistical performance is not indicative of future performance;
4. Notification of the possibility of other fees and / or costs not paid through S.S.I.F. or imposed by it;
5. indication of the time limit until which the information provided is valid;
6. specification of the payment methods and making the payment;

7. Indication of any additional cost to the investor resulting from its use of the means of distance communication, if such additional costs are separately invoiced.
c) information on the distance contract to be concluded, which shall include:
1. the existence of the right to terminate the contract unilaterally according to art. 60 par. (5) and (7) of Law no. 126/2018, as well as information on the amount the investor will have to pay for services provided prior to the exercise of this right, as well as the consequences arising from the non-exercise of this right;
2. the minimum duration for which the distance contract is concluded in the case of the provision of investment services and ancillary services of a permanent or temporary nature;
3. the rights that the parties may have to terminate the contract before or after the unilateral terms by virtue of the terms of the distance contract, including the penalties provided for by the contract in such cases;
4. indication of the practical ways of exercising the right to terminate the contract unilaterally, as well as the indication of the address to which the notification of unilateral termination of the contract may be dispatched;
5. the legal norms in Romania, in the Member State or in the third country envisaged by S.S.I.F. as the legal basis of the contractual relationship with the investor, specified before the conclusion of the distance contract;
6. any contractual clause regarding the law applicable to the distance contract and / or the competent court in the settlement of possible disputes between the parties;
7. the language(s) in which the contractual terms and conditions are formulated, the prior information to be provided by S.S.I.F. to the investors, as well as the language or languages in which S.S.I.F. has agreed, in agreement with the investor, to communicate during the execution of the distance contract;
d) information on how to settle disputes between the parties, namely:
1. the possibility of resorting to mediation procedures prior to the court's referral, as the case may be, by the investor who is a party to the contract, and also the ways in which the investor can use these procedures;
2. existence of guarantee funds or other compensation mechanisms, other than those provided by Law no. 297/2004 on the capital market, as subsequently amended and supplemented, hereinafter referred to as Law no. 297/2004.

Art. 66. - The information provided in art. 65, the commercial purpose of which must be unequivocally stated, will be communicated clearly, easily understood by the investor by the means of distance communication, taking account, first of all, of rules of conduct and good commercial practice, the principles governing the protection of people without exercise capacity, such as juvenile.

Art. 67. - (1) S.S.I.F. who provide investment services under a distance contract may use at least the following means of distance communication:
a) phone;
b) fax;
c) Internet;
d) any other automated calling system without human intervention.
(2) Use of remote means of communication requires the express prior consent of the investor and is not allowed if the investor has disagreed about their use.

(3) The expenses resulting from the application of par. (2) in order to obtain the investor's agreement for the use of the means of distance communication shall in no case be borne by the investor.
(4) Expression of the investor's agreement provided in paragraph (2) is recorded by S.S.I.F. on a durable medium.

Art. 68. - (1) Where the means of distance communication is the phone or any other means of direct speech at the beginning of the conversation with the investor, S.S.I.F. has the obligation to fully, accurately and precisely inform about:
a) the name and identification data of S.S.I.F.;
b) the purpose of the phone call initiated by S.S.I.F.
(2) The phone conversation with the investor may be continued only with the explicit consent of the investor, in which case the identity of the person who contacted the investor from S.S.I.F. and in what capacity represents the S.S.I.F and, in the pre-contractual stage, the information provided in art. 65 letter b) points 1, 2, 4 and letter c) point 1.
(3) S.S.I.F. is required to inform the investor that any additional information is available on request and at the same time to indicate the nature of that information. S.S.I.F. must provide all complete information when fulfilling its obligations under Art. 69 par. (1) and (3).
(4) Information on contractual obligations shall be communicated to the investor in the pre-contractual phase. This information must be in accordance with the contractual obligations resulting from the legal provisions applicable to the distance contract if it is concluded.

Art. 69. - (1) Under the sanction of nullity of the contract, S.S.I.F. communicates to the investors, in full, the contractual terms and conditions, as well as the information provided by art. 65, in writing, on paper or on any durable medium available or accessible to the investor in good time before it has obligations resulting from the conclusion of a distance contract or acceptance of a distance investment service offer.
(2) If the contract has been concluded, at the express request of the investor, by using means of distance communication which do not allow the fulfilment of the pre-information procedure provided in par. (1), S.S.I.F. will fulfil its obligations immediately after the conclusion of the distance contract.
(3) Throughout the execution of the distance contract, the investor has the right to request the communication of the terms and contractual provisions on paper. The investor is also entitled to request change of the used distance communication method if this is not inconsistent with the terms of the concluded contract or the nature of the service provided.

Art. 70. - (1) S.S.I.F. who intends to provide investment services on the basis of a distance contract must first verify the identity of the investor and the empowered person as the case may be.
(2) In order to meet the requirement to verify investors' identity and investment capacity, S.S.I.F. which intends to provide remote investment services for an investor first must receive:
a) a photocopy of identification documents for investors and empowered persons, as appropriate;
b) information regarding the bank account, including the account holder's account statement;
c) records of the client's domicile;

d) the correspondence address to be used by the client in relation with S.S.I.F. or the credit institution providing investment services and activities.
(3) S.S.I.F. may provide investment and ancillary services only after the completion of the process of verification of the application, the conclusion of the contract and the obtaining of the investor's agreement.

Art. 71. - The term stipulated in art. 60 par. (5) of the Law no. 126/2018, in which an investor has the right to unilaterally terminate the distance contract concluded with a S.SFI, begins to run:
a) from the day of conclusion of the distance contract, if the investor has received the information provided in art. 69 par. (1); or
b) the day when the investor receives the terms, the contractual conditions and the information under the conditions provided in art. 69 par. (1), if that date is later than that referred to in point a).

Art. 72. - (1) In the case of exercising the right of unilateral termination of the distance contract, based on the information received from S.S.I.F. according to art. 65 letter a) and letter c) point 4, the investor shall notify the S.S.I.F., before the expiration of the term stipulated by art. 60 par. (5) of the Law no. 126/2018, by any means that can be substantiated.
(2) The term shall be deemed to have been complied with if the notification made on paper or on another durable medium, available and accessible to S.S.I.F., is dispatched before the expiry of the period within which such right may be exercised.
(3) If the investor exercises his/her right to terminate unilaterally according to art. 60 par. (5) of the Law no. 126/2018, if a distance contract for an investment service and ancillary service concluded at a certain moment is attached to another distance contract for services offered by S.S.I.F. or a third party on the basis of a contract between a third party and a supplier, this distance contract will be terminated without payment of any additional penalties or costs.
(4) If, on the occasion of the unilateral termination of the distance contract, the investor is obliged to pay the services already provide in accordance with the terms of the contract, the requested amount to be paid:
(a) it may not exceed an amount determined in proportion to the period during which the investment service and ancillary service was provided in relation to the total duration of the contract;
b) it cannot be envisaged as a payment which could be the payment of any penalty in any form.
(5) In the situation stipulated in paragraph (4), S.S.I.F. cannot require the investor to pay the services provide in accordance with the terms of the contract, without proof that he/she has been informed in due time as to the obligation to pay them, according to art. 65 letter c) point 1. The investor may not be obliged to make the payment if the performance of the contract began before the expiration of the withdrawal period without the prior request or express agreement on his/her part.
(6) Within a maximum of 30 days from the date of receipt of the notification of unilateral termination of the distance contract, S.S.I.F. shall be obliged to reimburse any sums received under the distance contract, except for the amounts provided for in paragraph (4).
(7) The investor shall be obliged to refund to the S.S.I.F. no later than 30 days from the sending of the notification of unilateral termination of the distance contract, any amount or

financial instruments granted by S.S.I.F. in the exercise of the service referred to in point 2 of Section B of Annex no. 1 of the Law no. 126/2018.

Art. 73. - (1) It is forbidden to provide investment services and ancillary services without assuming by the investor the obligation to make an immediate or a term payment when the provision of services implies such payment.
(2) The investor is relieved of any payment obligation in the case of supply by S.S.I.F. of an unsolicited investment service and ancillary service, the lack of investor's response not having the value of tacit consent.

Art. 74. - Contracts for the provision of investment services and remote ancillary services cannot contain, even with the express agreement of the investor, clauses for renunciation of the rights provided by this Regulation.

2nd SECTION
Internet trading

Art. 75. - The use of the Internet as a means of communicating with investors does not exonerate S.S.I.F. the obligation to comply with the rules established by Law no. 126/2018, this Regulation and the regulations issued pursuant to Directive 2014/65 / EU on the provision of investment services and ancillary services.

Art. 76. - (1) S.S.I.F. who provide investment services and ancillary services over the Internet must have adequate IT equipment in view of the volume of activities they may be required to carry out and the need to execute investors' orders promptly.
(2) S.S.I.F. must ensure that the computer systems used guarantee the confidentiality of data transmitted over the Internet.
(3) According to security standards in the field of information systems, S.S.I.F. will ensure the security of the computerized order pickup and transmission system for execution. In particular, the system must ensure data integrity, authentication of the origin of data and the protection of confidential messages.

Art. 77. - When the offer of a S.S.I.F. is clearly addressed to the residents of another State, S.S.I.F. must ensure that the offer complies with the regulations of the State concerned.

Art. 78. - To ensure increased protection of information, S.S.I.F. and the investor will establish a system for accessing the account by user and password and periodically changing it.

Art. 79. - (1) S.S.I.F. informs investors that no internet transaction can be initiated until the following are received:
a) the documents referred to in art. 70, in the case of a new investor;
b) the contract, on a durable medium, specific to the use of the Internet.
(2) S.S.I.F. has the obligation to establish control mechanisms and procedures to ensure that customers have the funds and tools at the time of settlement.

Art. 80. - The provisions of art. 60-63 apply accordingly for internet trading.

CHAPTER VII
Margin transactions, granting credits and the borrowing of financial instruments, other than those provided under art. 2 par. (3) of the Law no. 126/2018

1st SECTION
General dispositions

Art. 81. - (1) The provisions of this Chapter shall apply to margin transactions in relation to financial instruments other than those referred to in art. 2 par. (3) of the Law no. 126/2018, conducted by S.S.I.F. at or outside a trading venue, and shall be supplemented, in the case of transactions with financial derivatives, other than those provided under art. 2 par. (3) of the Law no. 126/2018, admitted to trading / traded on a regulated market / multilateral trading system, with the provisions of the regulations and procedures of the regulated market / multilateral trading system, approved by A.S.F.

(2) In applying the provisions of this Chapter, the terms below shall have the following meanings:

a) agent in loan operations - S.S.I.F. which performs operations in connection with the financial instruments borrowing between a customer of that S.S.I.F. and another client of that S.S.I.F., another S.S.I.F. or the client of another S.S.I.F. The agent in the borrowing operations acts on behalf and accounts of clients holding financial instruments evidenced in the accounts opened at that S.S.I.F.;

b) the S.S.I.F. who acts as principal in the loan operation – the S.S.I.F. which grants the loan to a client of the latter one or of another S.S.I.F. by using its own patrimony;

c) margin call - the request as mandatory for compliance with the limits imposed by the contract in the case of the margin account;

(d) margin requirements - the minimum amount to be secured by margin assets for open positions or to cover liabilities arising from short selling or borrowing transactions recorded in the margin account opened at a S.S.I.F.;

e) margin account - the account in which all the operations related to margin purchases and / or financial instrument borrowings and derivatives transactions are recorded. The margin account operates by depositing an initial margin, marking at the market the margin as well as covering the obligations arising from short selling or borrowing transactions, as well as pursuing the maintenance of a mandatory minimum level under this Regulation;

f) margin buying - the purchase of financial instruments on the basis of a loan granted by S.S.I.F.;

g) Marking at the market - updating, at least daily, margin accounts, with the favourable / unfavourable differences resulting from the revaluation of margins at the current market price level, the coverage of liabilities resulting from short selling transactions or from the borrowing operation; and of open positions;

h) margin:

A. for margin transactions with derivative financial instruments in terms of margin and assets accepted as collateral, there are applied the provisions of Regulation (EU) No. No 648/2012 of the European Parliament and of the Council of 4th of July 2012 on OTC derivatives, central

counterparties and trade repositories, hereinafter referred to as Regulation (EU) No. 648/2012, and the European standards issued for its implementation;
B. for margin transactions with financial instruments other than financial derivatives, the asset deposited in the margin account used to cover margin requirements; the margin may consist of the following asset classes:
1. money funds:
(i) denominated in the national currency of Romania;
(ii) denominated in foreign currencies, taking into account currency risk;
2. government securities;
3. bonds fully guaranteed by the state;
4. shares and bonds traded on a regulated market meeting the liquidity criteria imposed by the respective SSI on the basis of internal procedures approved by the persons responsible for risk management;
5. Securities of the tradable OVPVVM (E.T.F.);
i) margin trading - transactions performed by S.S.I.F. either by financial instruments, on the basis of a loan granted for the purpose of a margin purchase or a financial instrument loan for short selling, as well as for the other purposes set out in Art. 4 par. (1) of the Regulation of the National Securities Commission no. 5/2010 on the use of the system of global accounts, the application of mechanisms with and without the pre-validation of financial instruments, the execution of securities borrowing operations, the creation of collateral and short selling transactions, as subsequently amended and supplemented, hereinafter referred to as CNVM Regulation no. 5/2010, or with derivative financial instruments;
j) short sale - for all financial instruments, the definition of short selling is applied in accordance with the provisions of. Regulation (EU) No. 236/2012 of the European Parliament and of the Council of 14th of March 2012 on Short Selling and certain aspects of credit default swaps, hereinafter referred to as Regulation (EU) No. 236/2012.
(3) In the case of shares admitted to trading on a trading venue in Romania and in the case of debt securities issued by the Romanian State, the provisions of this Chapter shall be supplemented by the provisions of Regulation (EU) no. 236/2012 and the regulations issued in its application.
Art. 82. - (1) Loans may be granted to make margin purchases for financial instruments admitted to trading on a regulated market / multilateral trading system and the financial instruments which are the object of a public offer for admission to trading on a regulated market / multilateral trading system for any natural or legal person under this Chapter.
(2) Loans granted by S.S.I.F. to its clients or to other S.S.I.F. clients may be done with any free financial instruments admitted to trading on a regulated market / multilateral trading facility for any natural or legal person under the terms of this Chapter.

Art. 83. - (1) The total value of credits for margin purchases and the total value of loans shall comply with the provisions of the European direct application regulations and the national regulations issued in application of Regulation (EU) no. 575/2013 of the European Parliament and of the Council of 26th of June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, hereinafter referred to as Regulation (EU) no. 575/2013.
2. For the purpose of calculating capital requirements, the margin and loan transactions provided for in this Regulation shall be made in compliance with the European direct application rules and national regulations issued pursuant to Regulation (EU) no. 575/2013.

Article 84. - (1) A.S.F. may prohibit an S.S.I.F.by reasoned decision, taking into account the conduct of the SSIF, the level of the indices calculated for the purpose of assessing the prudential requirements and the risk induced by its financial position and transactions made by it to carry out transactions and / or operations of the kind covered by this chapter, also notifying the central depositary of this decision.
(2) For the granting of loans and borrowings of financial instruments, S.S.I.F. the ancillary service provided in annex no. 1, Section B, point 2 of Law no. 126/2018.
(3) In order to act as an agent in the borrowing operations, S.S.I.F. must be authorized by A.S.F. to provide the ancillary service provided in annex no. 1, Section B, point 1 of Law no. 126/2018.

Article 85. - (1) S.S.I.F. has the obligation to open, in its records, a margin account for the borrowed financial instruments and a margin account for the derivative transactions carried out on its own account.
(2) S.S.I.F. has the obligation to open in its records margin accounts for both margin purchases and financial instrument borrowings as well as for transactions in financial derivative instruments executed on behalf of each individual or legal entity for which it will perform margin trading.
(3) If the credits for margin purchases and loans of financial instruments take place at the same time, such operations shall be evidenced in separate sub-accounts for each of the two types of operations.

2nd SECTION
Margin trading with financial instruments, other than financial derivatives

Art. 86. - (1) Upon the opening of a margin account, a framework contract for margin transactions shall be signed, containing at least the following provisions:
a) Contracting Parties;
b) subject of the contract;
(c) the rights and obligations of the Contracting Parties;
d) the client's responsibilities for the payment of the borrowed amount and the interest related to the loan obtained from S.S.I.F.;
e) limits on the margin account at least regarding how to determine the margin requirements, how to set up and assess the initial margin and the minimum level of margin requirements to be maintained in the account;
f) clauses regarding the assets that can be formed as margin;
g) clauses regarding the extent to which the margin falls below the minimum margin requirements, i.e. the period for which the client is under an obligation to respond to the margin call and, if applicable, to convert financial instruments constituted as margin, to the execution of obligations assumed through the margin account operations;
h) clauses regarding the exercise of the rights with respect to the financial instruments, namely the interest related to the money funds, constituted in the form of margin or acquired after the margin transactions;
i) clauses relating to the replacement of margin assets in the margin account and to the withdrawal / release of the assets upon repayment of the credit or loan or during the performance of the framework contract for margin transactions;
j) clauses regarding the fees and commissions to be paid by the client for the margin transactions, as well as the conditions and modalities for their payment;

(k) clauses on the termination of the contract, including where limitations, restrictions or prohibitions on margin transactions are made by certain natural or legal persons or certain financial instruments;
l) clauses on the possibility of advance repayment of the credit;
m) the clauses for the proper application of the provisions of the legislation in force regarding the mortgages, respectively certain financial guarantee contracts;
n) the clause on the automatic sale of financial instruments in the form of margin or gained through margin trading;
o) the principles to be applied in the case of non-payment on time.
(2) Upon the opening of the margin account, the client shall be required to lodge a security equivalent to at least 50% of the total amount of the credit granted, this percentage being maintained for the entire duration of the margin account.
(3) For the performance of margin transactions (margin buying and borrowing of financial instruments) it is mandatory to sign an addendum to the framework contract for margin transactions, which shall contain at least the following provisions:
(a) for margin purchases, clauses relating to:
1. the value of the credit, the period of the loan and the interest thereon;
2. the repayment period for the credit used by the client;
3. clauses regarding the transmission, validity and manner of execution of orders for margin purchases;
b) for loans related to short selling and for the loans granted for the other purposes provided in art. 4 par. (1) of the C.N.V.M. Regulation no. 5/2010 clauses relating to:
1. the fact that for the short sales of shares admitted to trading on a regulated market / multilateral trading system in Romania, the provisions of Regulation (EU) no. 236/2012 and the European regulations issued in its application and short sales of financial instruments other than shares are allowed subject to the provisions of Art. 12 par. (1) letters (a) and (b) of Regulation (EU) No. 236/2012;
2. the transmission, validity and manner of execution of orders for short sales;
3. the type, number and market value of the borrowed financial instruments at the time of the loan, specifying the issuer and the ISIN code;
4. the manner of calculating the margin requirements for guaranteeing the loan;
5. duration and price of the loan.
(4) The clauses listed in paragraph (3) may be included in the framework contract provided for in paragraph (1) to the extent that the customer agrees that they are valid in the case of any loan agreement which he/she is about to conclude after the signature of the framework contract.

Article 87. - (1) Before the order is submitted for each margin transaction involving the assumption of additional obligations in relation to those already recorded in the margin account, the customer shall be required to hold or deposit an initial margin of at least the level of margin requirements set by contract.
(2) The financial instruments resulting from the settlement of the margin purchase transaction based on a loan granted by S.S.I.F. are considered to be client assets and, except for financial instruments traded on a multilateral trading system, they are formed in the form of a margin to guarantee the credit received by the investor.
(3) After settlement of the purchase transaction provided in par. (2), financial instruments made in the form of margin may be replaced by other financial instruments of the same value.

(4) By contract, S.S.I.F. may require customers different margin requirements depending on the risk associated with their underlying obligations, the risk levels associated with the financial instruments traded, or the client's financial condition, and may alter these margin requirements according to market conditions or based on the change of the situation compared to when they were established.

Article 88. - Financial instruments traded on a regulated market purchased through margin trading on behalf of the client may be used to set the margin after their settlement.

Art. 89. - (1) The assets set up as margin in the margin account shall be assessed by the S.S.I.F. on the basis of internal procedures endorsed by the persons responsible for risk management, taking into consideration at least the following principles regarding the current price of the market:

a) at the time of the transaction or transactions, the average purchase price;

b) at the end of the trading session, the reference price.

(2) The value of the assets set up in the margin account for margin purchase / borrowings of financial instruments resulting from the evaluation provided for in par. (1) may be adjusted by the following elements, as appropriate:

1. commissions or other transaction costs;
2. currency risk;
3. price volatility risk;
4. the liquidity risk of the market.

(3) For the evaluation of the assets constituted in the form of loan securities, the prices stipulated in par. (1) may be determined on the basis of the efficiency of these instruments.

4. The amount of the margin account for loans and borrowings of financial instruments shall be calculated on the basis of the following elements:

a) obligations assumed by margin purchases/ borrowing of financial instruments:

(i) the value of the principal;

(ii) the cost of the principal;

(iii) the amount of the margin requirements;

b) assets held in the margin account for margin purchases / borrowings of financial instruments:

(i) the value of financial instruments in the form of margin, valued in accordance with paragraph (1) and (2);

(ii) the amount of funds in the form of margin.

Art. 90. - (1) Until the repayment of credits related to the margin purchases of financial instruments, in the margin account of the client the margin should be maintained at least at the level of the margin requirements established by the contract, for the credit granted and for the related interests and commissions.

(2) For compliance with the margin limits, if the margin value falls below the minimum margin requirements and the client does not respond to the margin call as requested by S.S.I.F., S.S.I.F. will act in accordance with the clause relating to the "automatic sale order" provided in the contract.

(3) S.S.I.F. may require customers any additional measure to ensure against any breach by customers of the obligations assumed by contract.

Art. 91. - (1) S.S.I.F. has the obligation to calculate in real time the value of the assets and liabilities registered in the margin account of each client, to proceed to its adjustment and to determine the minimum level of the margin requirements under the contract.

(2) If the margin amount is below the minimum limit imposed on the margin account by contract, S.S.I.F. will issue a margin call and inform the client of the margin gap as well as the amount of this deficit, requesting that the deficit be covered in accordance with the stipulations of the contract.

(3) If the client does not respond to the margin call and the deficit has not been covered or eliminated within the period stipulated in the contract, but not more than two working days, S.S.I.F. is authorized to execute the automatic sale order and use the resulting funds to reduce the exposures according to which the margins on the margin account are determined to cover or eliminate the deficit.

(4) The margin call may not be covered by assets from other client accounts opened at S.S.I.F. in the absence of a customer authorization in this respect.

Art. 92. - Interest receivable, rights acquired, and dividends related to the client's assets in the form of margin or acquired through margin transactions and deposited to cover the minimum margin requirements shall be due to the client.

3rd SECTION
Short selling of financial instruments

Art. 93. - (1) Prior to making a short sale on the basis of a loan granted or intermediated by S S.S.I.F., each customer must open a margin account at the respective S.S.I.F.

(2) Short selling transactions with shares admitted to trading on a regulated market / multilateral trading system in Romania shall be performed taking into account the provisions of Regulation (EU) no. 236/2012 and the regulations issued in its application.

(3) Short selling transactions with financial instruments, other than those stipulated in par. (2) admitted to trading on a regulated market / multilateral trading system in Romania shall be performed in compliance with the provisions of art. 12 par. (1) letter (a) and (b) of Regulation (EU) No. 236/2012 and the regulations issued in its application.

Art. 94. - (1) The money funds resulting from the settlement of the short selling transaction based on the borrowed financial instruments are considered as client assets that are constituted as a margin to guarantee the loan obtained by the client.

(2) After settlement of the sale transaction stipulated in paragraph (1), money funds may be replaced by financial instruments of the same value.

(3) Assets constituted as margin may not be borrowed.

Art. 95. - (1) Any natural or legal person shall be obliged to report to A.S.F. or to post for publication on the A.S.F. site the significant net short positions per share admitted to trading on a regulated market / multilateral trading facility in Romania, in accordance with the provisions of Regulation (EU) No. 236/2012 and the regulations issued in its application.

(2) In the case of short sales made in accordance with the provisions of art. 12 par. (1) letter (b) and (c) of Regulation (EU) No. 236/2012 and the regulations issued in its application, the client is obliged to notify in writing or by means of communication agreed between the parties and which can subsequently be verified that the order given by S.S.I.F. is a "short selling

order" and passes on to S.S.I.F. proof of the existence of the loan agreement, according to art. Article 5 (2) of Implementing Regulation (EU) No. No 827/2012 of 29th of June 2012 laying down implementing technical standards on the net publication of net positions in the format of the information to be forwarded to the European Securities and Markets Authority as regards net short positions , types of agreements, arrangements and measures to adequately ensure that sovereign debt or sovereign debt instruments are available for settlement as well as the dates and period for determining the principal place of trading of an action in accordance with Regulation (EU) No. No 236/2012 of the European Parliament and of the Council on Short Selling and certain aspects of credit default swaps, or evidence of cartels, confirmations and instructions, 6 (5) of the same Regulation, as the case may be.
(3) Before making the short sale and on the basis of the information and documents provided by the client in accordance with paragraph (2), S.S.I.F. must verify that the conditions for restrictions on short selling without coverage as specified in Regulation (EU) No. 236/2012 and the regulations issued in its application to identify whether the financial instruments are available for borrowing or acquiring and to ensure that the client has the ability to effect the settlement of the short selling at maturity.

4th Section
Borrowing financial instruments

Art. 96. - (1) The granting of a loan by S.S.I.F. of the financial instruments shall be carried out in compliance with the provisions of this Chapter.
(2) Can be the subject of the loan granted by S.S.I.F. the following financial instruments:
a) those held by S.S.I.F. in own account;
b) borrowed by S.S.I.F. from another S.S.I.F. or credit institution providing investment services;
c) belonging to clients of S.S.I.F. and which are borrowed by S.S.I.F. from them, on the basis of the contract concluded between the two parties.
d) belonging to clients of another S.S.I.F. and which are borrowed by S.S.I.F. from them, on the basis of the contract concluded between the two parties.
(3) S.S.I.F. can act as an agent in loan operations for financial instruments taken or granted by clients of that S.I.F. from, respectively to:
a) other clients of the same S.S.I.F.;
b) other S.S.I.F.
c) client of another S.S.I.F.

(4) In situations where he/she acts as an agent in borrowing operations, S.S.I.F. performs the following:
a) intermediates the loan of financial instruments by:
1. conclusion of the contract in the name and on behalf of the client in accordance with the client's mandate and instructions; or
2. conclusion of the contracts with each party involved in the loan operation;
b) performs the transfers of financial instruments subject to the loan, based on transfer instructions sent to the central depository, in accordance with the provisions of the Regulation of the National Securities Commission no. 13/2005 regarding the authorization and functioning of the central depository, the clearing houses and the central counterparties, approved by the Order of the National Securities Commission no. 60/2005, with the

subsequent amendments and completions, and according to the regulations of the Central Depository;
c) manages the guarantees related to the loan;
d) sends reports to each client for all operations performed on his/her account.

Art. 97. - (1) In the case of the use of the system of global accounts, for the execution of financial instrument borrowing operations between two clients of the same participant in the central depository system, the respective participant shall also have the exclusive responsibility to notify the central depository, an appropriate instruction, in the format laid down in the central depository's regulations, on the transfer of the financial instruments object of the loan operation to the global customer account. The participant will record in its back office the transfer of financial instruments.

(2) Upon return of the financial instruments object of the financial instruments borrowing operations between two clients of the same participant to the central depository's system, the respective participant shall notify the central depository by submitting an appropriate instruction in the format stipulated in the Central Depository's regulations, with respect to the transfer of the financial instruments object of the loan operation performed within the global customer account. The participant will record in its back office the transfer of financial instruments.

(3) The participants in the central depository system have the obligation to correlate the operations provided for in paragraph (1) and (2) for each individual borrowing operation.

Art. 98. - (1) If the borrowing operations are carried out by a S.S.I.F. or by a credit institution providing investment services that is not a participant in the central depository system, the obligation provided for in Art. 96 paragraph (4) letter b) is performed on a contractual basis by a participant in the central depository system.

(2) S.S.I.F. or the credit institution providing investment services, a participant in the central depository's system, which notifies the borrowing operation to the central depository in accordance with paragraph (1) has the obligation to report the purpose of the loan according to art. 4 par. (1) of the C.N.V.M. Regulation no. 5/2010.

(3) S.S.I.F. or the credit institution providing investment services which is not a participant in the central depository's system, and which carries out the intermediation of the loan, has the obligation to comply accordingly to the provisions of this Chapter.

Art. 99. - (1) The loan of financial instruments shall be granted in exchange for a price of the loan by the financial instrument holder, hereinafter referred to as creditor, to a natural or legal person, hereinafter referred to as the debtor, for the purposes stipulated in art. 4 of the C.N.V.M. Regulation no. 5/2010. The debtor has the obligation to return the same financial instrument to the creditor at the end of a specified period of time in the addendum to the framework contract for margin transactions.

(2) The Loan of financial instruments shall be granted only after the conclusion of the framework contract for margin transactions and, if the case, if the respective contract does not provide clauses according to art. 86 par. (3), of the addendum for performing the loan of financial instruments according to art. 86, and after opening a margin account. The contract cannot be incorporated into other contracts concluded by S.S.I.F. with the borrowed financial instruments holders or with clients wanting to borrow financial instruments from S.S.I.F.

Article 100. - (1) S.S.I.F. who does not act as an agent will register in its own margin account all borrowing operations of financial instruments and make a margin for these operations. The value of margin requirements for financial instruments borrowed by S.S.I.F. will be mutually agreed by the parties under the concluded contract and these margin requirements may not be lower than the lowest margin requirement set for its customers.

(2) The provisions of paragraph (1) shall also apply accordingly in cases where S.S.I.F. borrows financial instruments from another S.I.F.

3. During the borrowing period, if the issuing company distributes dividends or interest on borrowed financial instruments, at the time of their collection, that payment must be made by the debtor to the creditor.

Article 101. - Loans for financial instruments are recorded in the margin accounts and the provisions of this Chapter relating to margin requirements, marking on the market, the establishment and maintenance of margins, and those on margin calls shall apply accordingly.

5th SECTION
Trading with derivative financial instruments

Art. 102. - (1) For transactions with derivative financial instruments, S.S.I.F. will open a margin account for derivative financial instruments on behalf of the natural or legal persons for which it will execute transactions with such instruments.

(2) S.S.I.F. will not execute any orders for customers who did not constitute the initial margin.

(3) S.S.I.F. cannot maintain open positions of purchase and sale on the same derivative financial instrument and same maturity.

(4) In its relations with the central counterparty or with the clearing member, as the case may be, S.S.I.F. is responsible for the existence of the required amounts in the account for transactions with derivative financial instruments executed on the accounts of its clients.

Art. 103. - (1) The provisions of art. 86 par. (1) on the opening of a margin account also applies to derivative financial instruments accounts.

(2) The financial services provision contract, which also includes the execution of transactions with derivative financial instruments, shall additionally include at least the following:

a) clauses specifying how to cover the margin requirement generated by other accounts with the surplus in the margin account for derivative financial instruments;

b) clauses on the situations in which the underlying asset undergoes significant changes in price (e.g., change in the nominal value of shares) or quantity in accordance with the rules of the regulated market;

c) the maximum period within which the client may cover the margin call in accordance with the rules of the regulated market;

d) the clause for executing forced closure without notification of open positions in case of non-compliance of the margin call;

e) the obligation of the client to immediately notify S.S.I.F. termination of payments and, where appropriate, judicial reorganization or bankruptcy.

Art. 104. - (1) S.S.I.F. has the obligation to perform at least daily mark up on the margin account of each client in accordance with the rules of the central counterparty.

(2) If the account balance is below the required margin, S.S.I.F. will issue a margin call that will be explicitly included in the daily trading report.
(3) If the deficit has not been covered within the period stipulated in the contract, S.S.I.F. is authorized to close positions held by the client up to cover margin requirements.
(4) If assets have been deposited in the margin account provided in art. 81 paragraph (2) lit. h) lit. B points 2-5 , for coverage of margin calls, in the same time with the closure of positions held by the client, S.S.I.F. is authorized to liquidate these financial assets (at the current market price) until the customer's debts are covered.
(5) If the value of the margin account falls below the level established by the contract, S.S.I.F. is authorized to sell the financial assets provided for in paragraph (4) to cover the deficit.

Art. 105. - (1) In the event of erroneous transactions in the client's account, S.S.I.F. is required to perform the necessary operations and procedures so that the customer is not prejudiced.
(2) Any losses, as well as the commissions related to the transactions performed under the conditions of par. (1) shall be borne by S.S.I.F.

CHAPTER VIII
Cross-border operations

1ST SECTION
General dispositions

Art. 106. - If according to art. 114 par. (3) of the Law no. 126/2018, A.S.F. considers that the administrative structure or financial situation of a S.S.I.F. is not appropriate, it may issue a decision rejecting the application for approval of the opening of a branch in a Member State by a S.S.I.F.

2nd SECTION
Branches of S.S.I.F. in third countries

Art. 107. - In order to establish a branch of S.S.I.F. in the territory of a third country, the following conditions must be met:
a) the existence in the third country of legal provisions for authorization, supervision, as well as organizational structure similar to those in Romania;
b) the existence of a cooperation agreement between A.S.F. and the competent authority of the third country in whose territory the S.S.I.F. intends to set up the branch;
c) fulfilling the conditions of reciprocity in the country of origin, within the limits allowed by the international agreement.

Art. 108. - (1) Any modification of the elements which are considered in the authorization of the establishment of the branch shall be subject to the authorization of A.S.F. at least 30 days prior to implementation.
(2) S.S.I.F. may provide ancillary services in the territory of a third country only when providing a service or an investment activity.

(3) The S.S.I.F. branch will carry out investment services and activities through the personnel registered / authorized by A.S.F.

Art. 109. - (1) In the application of art. 126 of the Law no. 126/2018, in order to obtain the authorization to establish a branch in the territory of a third country, before the registration AT the Trade Register Office of the mention of the establishment of the branch and the beginning of the activity of the branch, S.S.I.F. will send to A.S.F. an application accompanied by the following documents:

a) the decision of the competent body, which shall indicate: the third country on the territory of which it intends to set up the branch, the object of activity to be performed, the identity of the person / persons designated to manage the branch, specifying the responsibilities and limits of competence for these, the name of the person performing the compliance function and the address of the branch;

b) the addendum to the articles of incorporation of the S.S.I.F., as the case may be, in the original or in a legalized copy;

c) the business plan, in Romanian and legalized translation in the language of the state in which it intends to set up the branch, to justify the opportunity to open that branch and including, inter alia, information on:

(i) the types of activities to be carried out through the branch;

(ii) the organizational structure of the branch;

(iii) the technical endowment of the branch;

(iv) the estimated volume of activity in the first 3 years of branch activity;

(v) estimates of the financial position and performance of the business to be carried out by the branch;

(vi) Market research and factors that may affect the feasibility of the business plan.

d) the organization and functioning regulation of the branch, as well as the internal procedures that ensure the observance of the organizational requirements provided by the Law no. 126/2018 and this Regulation, namely compliance with the rules of conduct in the third country;

e) the certificate of criminal and fiscal records within the legal validity terms, in original or in a legalized copy or in a copy bearing the attorney attestation or legalization issued by the mayor's secretary where there are no notary offices, the copy of the identity document and the curriculum vitae of each person designated to manage the branch, accompanied by a declaration on his/her own responsibility of the person concerned about the sanctions applied to him/her during the past 10 years ordered by the supervisory authorities or by the credit or financial institutions in which he/she has carried out the activity;

f) the names of the persons providing investment services and activities and of the person fulfilling the compliance function, authorized by A.S.F, to be carried out at the branch office;

g) statement of the head of the S.S.I.F from which it can be concluded that the branch office meets the conditions stipulated in art. 6 letter f);

h) the compensation scheme that will ensure the compensation of the investors who open accounts at the respective branch;

(i) the presentation of the legislative and institutional framework in the third country, containing at least information on: the authority responsible for supervision and the capital market supervision system, the legislation on professional secrecy, money laundering and terrorist financing, standards on customer knowledge and any other relevant information regarding possible impediments to the conduct of prudential supervision by A.S.F., such as restricting access to information or the possibility of on-the-spot checks;

j) proof of payment in the account of A.S.F. of the tariff stipulated in the regulations of the A.S.F.;
k) other documents that A.S.F. can request them.
(2) If the persons mentioned in par. (1) letter f) are established in the territory of the third country in which the branch is opened, by way of derogation from the provisions of art. 4 and, as the case may be, art. 5, 6 or 8 of the A.S.F./B.NR Regulation. no. 14/7/2018 and Art. 25 letter c) of this Regulation, the persons concerned may not attend the specific training course, organized by a training body certified by A.S.F. and not to pass the related exam if S.S.I.F. provides to the person concerned a training similar to that of a training body.

Art. 110. - (1) A.S.F. decide to authorize the establishment of a branch in the territory of a third country within a maximum of 3 months from the registration of the applicant's full file.
(2) If the application is rejected, A.S.F. shall issue a reasoned decision, which may be challenged within a maximum of 30 days from the date of communication.
(3) A.S.F. may reject the application to authorize the opening of the branch if, on the basis of the information held and the documentation submitted by S.S.I.F., finds out or, as the case may be, considers that:
a) the documents filed by S.S.I.F. are incomplete, illegible or are found to be deposited in an inappropriate form or lack of documents, as well as in case that the provisions of Law no. 126/2018 and / or the A.S.F regulations are not respected;
b) S.S.I.F. it does not have the administrative capacity or the adequate financial situation in relation to the activity to be carried out through the branch;
c) S.S.I.F. is experiencing an inappropriate development of the financial situation;
d) the existing legal framework in the third country and / or the manner in which it is applied impedes the exercise by A.S.F. of its supervisory functions;
e) the legal framework existing in the third country does not contain legal provisions for authorization, supervision, and organizational structure similar to those in Romania;
f) there is no cooperation agreement between A.S.F. and the competent authority of the third country and no such agreement is concluded within two months from the registration to A.S.F. of an application for authorization of the establishment of the S.S.I.F. on the territory of that third country;
g) conditions of reciprocity in the third country are not met within the limits allowed by the international agreement.

Art. 111. - (1) S.S.I.F. shall register at the Trade Register Office the mention of the establishment of a branch in the territory of a third country only after obtaining the authorization for the establishment issued by A.S.F.
(2) S.S.I.F. transmits A.S.F. copy of the registration certificate within maximum 5 days from the registration of the establishment of the branch at the Trade Register Office but no later than 90 days from the date of the authorization issued by A.S.F.
(3) S.S.I.F. informs A.S.F. regarding the beginning of the activity of the branch within maximum 5 days from the start date of the activity.
4. If the legislation of the third country lays down additional requirements regarding the staff of branches of investment firms in third countries, S.S.I.F. must ensure that those requirements are met by staff of the S.S.I.F. established in the territory of that third country.

Article 112. - (1) A.S.F. may withdraw the authorization of a branch of S.S.I.F. established in the territory of a third country:

at the request of S.S.I.F.;
in the situations provided by art. 113 par. (1).
(2) In order to withdraw the authorization of a branch of a S.S.I.F. established in the territory of a third country, S.S.I.F. will send A.S.F. an application accompanied by the following documents:
a) the decision of the competent body;
b) Explanatory note on the situation of the archive, the persons providing investment services and activities and the person performing the compliance function who have carried out their activity at that branch office;
c) certificates issued by the capital market entities from the third country in whose territory the branch was established, to which the S.S.I.F. has been a member or participant in the system, through the branch, mentioning, as appropriate, the conclusion of the contractual relations, the fact that it is not subject to the payment of debts, the withdrawal of the access of S.S.I.F. and its personnel from the operations carried out in the respective systems, respectively blocking / deactivating access codes and passwords;
d) proof of payment of debts to clients and the transfer of securities in the accounts indicated by the clients;
e) proof of payment of the withdrawal fee related to the authorization in the account of A.S.F.

Art. 113. - (1) A.S.F. may withdraw the authorization of a branch of S.S.I.F. established in the territory of a third country in any of the following situations:
a) S.S.I.F. or the branch no longer fulfils the necessary conditions for the establishment of a branch in the territory of a third country;
b) S.S.I.F. does not transmit the information and reports requested by A.S.F. with regard to the branch activity;
c) S.S.I.F. has transmitted false, incorrect or misleading information about the branch or its business;
d) the person / persons designated / appointed to manage the branch, or the staff of the branch does not comply with the regulations of the A.S.F. and / or the third country in whose territory the branch and / or regulated markets of the third country in question are established;
e) the risks arising from the activity of the branch are significantly higher than the risks resulting from S.S.I.F. activity conducted in Romania;
f) withdrawal of the operating license of S.S.I.F.;
g) the occurrence of a situation out of those stipulated in art. 110 par. (3) letters b) - g);
h) withdrawal of the authorization of S.S.I.F. by the competent authority of the third country.
(2) A.S.F. shall immediately inform the competent authority of the third country in whose territory the S.S.I.F. branch is established in the case of withdrawal of branch authorization.
(3) Upon notification of the withdrawal of the operating license of the branch, S.S.I.F. shall cease to carry out investment services and activities through its branch in the third country no later than the date specified in the individual decision of revocation of the decision.
(4) The provisions of art. 112 par. (2) letters b) - e) shall also apply in case of withdrawal of the authorization by A.S.F.

Art. 114. - (1) A.S.F. will supervise the compliance of prudential and organizational requirements by S.S.I.F. which carries out investment services and activities in the territory of a third country.

(2) S.S.I.F. will send A.S.F. the reports transmitted to the competent authority of the third country and reports on performed transactions through the branch established in that third country.
(3) If that A.S.F. will receive a notification from a competent authority in a third country about the violation of legal provisions in that State by the branch of a S.S.I.F., A.S.F. shall arrange for appropriate measures and shall inform that authority of the manner of settlement and, where appropriate, of the measures taken.
(4) A.S.F. may request the cooperation of a competent authority from a third country in its supervision activity for an on-site verification (at the branch office) by that authority or for an investigation or may initiate a direct check at the branch office, in which case it will inform the competent authority of the third country.

3RD SECTION
Making transactions or placements in financial instruments traded on the financial instruments' markets

Article 115. - (1) S.S.I.F. may enter into contracts with investment firms and credit institutions in Member States or with third country firms to carry out transactions, investments or placements in financial instruments traded on trading venues subject to the following conditions, without being limited to these:
(a) to inform investors of the conditions under which orders are executed through the entities referred to in the introductory part of this paragraph and the related costs, including commissions;
(b) to act diligently if client assets are placed in an investment firm or credit institution in a Member State or in a third country company in the selection of that entity, considering at least the following criteria:
(i) the financial position of that entity and its reputation;
(ii) the applicable legal provisions in the jurisdiction of that entity that could adversely affect the rights of the client, including in the event of dissolution or insolvency of S.S.I.F. or entity concerned;
(iii) the legal provisions applicable in the Member State or third country as regards client asset protection rules, which must provide at least the same level of protection as those applicable to a client of a S.S.I.F.;
(iv) the obligation to draw up an internal procedure containing rules on the periodic review, at least on an annual basis, of compliance by the entity that has been entrusted with the clients' assets with the provisions of this Article;
c) to inform the client and obtain explicit consent to the transfer of client assets to an investment firm / credit institution providing investment services and ancillary services in a Member State or a to a company from third party country and to register it. The registration containing the customer's consent must be kept by S.S.I.F. and to allow it to clearly demonstrate the subject of the customer's consent;
d) to include appropriate information on how to protect clients' assets and the associated risks in the agreements signed with them.
e) to include in the contract concluded with the client according to art. 38 para. (1), a contractual clause regarding the situation in which ceases the contract concluded between

S.S.I.F. and an entity as those set out in the introductory part of this paragraph to which are placed the financial instruments held by S.S.I.F. in the name of the customer.
(2) If it is closed the contract concluded between S.S.I.F. and an entity as those set out in the introductory part of paragraph (1) to which the financial instruments held by S.S.I.F. in the name of the client, if the contract with the client includes the clause stipulated in par. (1) letter e) , if the customer cannot be contacted / notified at the address indicated by the contract / additional acts of the contract within a predetermined period by the parties or if the client does not transfer its financial instruments to another entity or does not liquidate its positions held within a reasonable period of time communicated by the S.S.I.F. in the notification, S.S.I.F. will proceed to the sale of the respective financial instruments, complying with the principle of obtaining the best result for the client, it will transfer the funds obtained through sale to the client's account and it will conclude the contractual relations with the respective client, applying accordingly the clauses stipulated in art. 38 para. (1) letters f) and g).
(3) S.S.I.F. is solely and fully responsible for verifying the fulfilment of the conditions stipulated in paragraph (1).

Article 116. - S.S.I.F. cannot directly connect to the financial instruments' markets of a third country, unless, under Art. 126 of the Law no. 126/2018, A.S.F. has approved the establishment of a branch of S.S.I.F. in that third country.

CHAPTER IX
Rules on the application of the provisions of art. 10 par. (7) of the Law no. 126/2018

Art. 117. - This chapter establishes rules on the application of the provisions of art. 10 par. (7) of the Law no. 126/2018 in the case of the fiduciary contract, as it is regulated by Law no. 287/2009 on the Civil Code, republished, as subsequently amended, as well as on the activities that may be performed by de S.S.I.F., other than the investment services and activities, as well as the ancillary services provided by the Law no. 126/2018.

1st SECTION
Fiduciary activities

Subsection 1.1

The effects of the fiduciary contract on the operations of financial instruments on the capital market and on the activity of issuers

Art. 118. - (1) In the case of a fiduciary contract through which to the fiduciary is transferred in the fiduciary patrimonial mass the rights related to some financial instruments / shares, the fiduciary is registered as a shareholder from the date of transfer of the shares to his / her securities account affected by the trust open at the central depository.
2) The Fiduciary has the rights and obligations associated with the shares in his/her securities account affected by the trust, which he/she exercises in compliance with the provisions of the fiduciary contract, as well as other relevant legal provisions. These rights

and obligations are, but are not limited to, the rights and obligations of the shareholders provided by Law no. 126/2018 and the A.S.F. Regulation no. 5/2018.

(3) The voting rights related to the shares registered in its securities account affected by the trust shall be exercised by the fiduciary or, as the case may be, by the person empowered by him / her. By way of derogation from the provisions of art. 200 par. (6) of the A.S.F. Regulation no. 5/2018, the fiduciary has the option to express votes for shares in the securities account affected by fiduciary different from those related to shares existing in other securities accounts and forming part of their own patrimonial mass. For the exercise of this right, the central depository shall separately disclose to the issuer the shares held by the fiduciary in the securities account affected by the trust.

(4) The transfer of ownership of financial instruments from the trustees' account to the beneficiaries of the trust shall be affected in the same way as the transfer of those financial instruments from the constituent's account to the fiduciary's account.

Art. 119. - The transfers provided under art. 118 par. (1) and (4) represent direct transfer.

Art. 120. - (1) Establishing a concertation relationship between the constituent, the fiduciary and / or the beneficiary, as well as between them and third persons shall be determined in accordance with the incidental provisions of the Law no. 24/2017 on Issuers of Financial Instruments and Market Operations, hereinafter referred to as Law no. 24/2017, and the regulations issued in its application, as well as taking into account the provisions of the fiduciary contract.

(2) If the fiduciary is also the beneficiary of the trust, when calculating the holdings he has with the persons with whom he acts in concert within the meaning of art. 2 par. (1) pct. 30 and par. (2) and (3) of Law no. 24/2017, account shall be taken of both the holdings in the securities accounts forming part of their own property stock and the holdings in the securities account affected by the trust.

Subsection 1.2

Implications of the fiduciary on the S.S.I.F.

Art. 121.

(1) The S.S.I.F., which has the status of a fiduciary and which has its own trading activity:

a) has the obligation to expressly mention, at least in the records of own transactions in which he has the fiduciary capacity;
b) will not take into account the capital requirements of the trust fund;
c) will not be able to trade as a market maker with tied assets.

(2) The provisions of paragraph (1) letter (b) also apply to an investment firm which has the status of a fiduciary and which does not have business on its own.

Art. 122.

1) A S.S.I.F. that has the status of a fiduciary and does not deal with own-account trading, if the fiduciary contract involves transactions with assets from the trust, will conclude a contract for services and investment activities with an S.S.I.F. or a credit institution providing investment services and activities.
2) The service and investment services contract concluded between the fiduciary S.S.I.F. and the S.S.I.F. / credit institution providing investment services and activities may not exceed the fiduciary contract and shall include clauses on the termination of

the contract in the situation in which the fiduciary is replaced or the fiduciary contract ceases.

3) The S.S.I.F. that has the fiduciary capacity shall be considered by the S.S.I.F. / credit institution providing investment services and activities as provided for in paragraph (1) professional client / counterpart eligible according to the service rendered, if he does not request to be treated as a retail client.

Art. 123.

(1) In the case of a trust agreement involving transactions in tied assets and the fiduciary is not a S.S.I.F., the fiduciary shall conclude a service and investment contract with a S.S.I.F. that provides services and investment activities and will become a client of the respective S.S.I.F., being applicable to the provisions of this Regulation and the provisions of the European Union regulations issued pursuant to the Directive 2014/65/EU.

(2) The service contract and the investment activity concluded between the fiduciary and the S.S.I.F. shall respect the limits of the trust agreement under the responsibility of the fiduciary and shall contain clauses on the termination of the contract if the trustee is replaced or the fiduciary contract ceases.

(3) In the case provided for in paragraph (1), the person subject to the analysis of the beneficial owner is the beneficiary of the trust.

Art. 124.

- The S.S.I.F. submits a copy of the trust agreement to A.S.F. within maximum 5 working days from the date of its signing.

SECTION 2
Other activities that may be rendered by the S.S.I.F

Art. 125.

- The S.S.I.F. may, based on the provisions of art. 10 par. (7) of Law no. 126/2018, render the following activities:

a) administration of the organized markets, as regulated by the Law no. 357/2005 on commodity exchanges, hereinafter referred to as Law no. 357/2005;

b) renting the immovable property, provided that it is not the registered office of the S.S.I.F. or a secondary establishment authorized by the A.S.F.;

c) the main intermediary activity according to the provisions of Law no. 236/2018 on insurance distribution, hereinafter referred to as Law no. 236/2018, and the relevant legal provisions;

d) the activity of secondary intermediary according to the provisions of Law no. 236/2018 and the relevant legal provisions;

e) credit intermediary, in compliance with the provisions of Government Emergency Ordinance no. 50/2010 on credit agreements for consumers, approved with amendments and completions by Law no. 288/2010, as amended;

f) by private pensioner, in compliance with the provisions of the Norm of the Financial Supervisory Authority no. 16/2013 regarding the marketing activity of the voluntary pension fund, approved by the Decision of the Council of the Financial Supervisory Authority no. 64/2013, as subsequently amended and supplemented, hereinafter referred to as A.S.F. Standard;

g) to promote the services of another S.S.I.F. / investment firm / credit institution registered in the A.S.F. Registry on the basis of a contract concluded with it.

Art. 126.

(1) Before commencing the activity provided for in art. 125 lit. a), the S.S.I.F. will notify the AIF of its intention, specifying the expected start date of the activity.
The S.S.I.F. will transmit to A.S.F. the opinion of the Management Board of the Chamber of Commerce and Industry of Romania regarding its authorization to perform the administration of the organized markets according to the provisions of Law no. 357/2005.

(2) In order to perform the activity provided in art. 125 letter a), the S.S.I.F. shall comply, by summing up, both the initial capital requirement provided by art. 47 of the Law no. 126/2018, as well as the share capital requirement provided by art. 5 par. (1) letter e) of Law no. 357/2005, ensuring their distinct accounting in the accounting.

(3) In order to perform the activity provided in art. 125 letter a), the S.S.I.F. will observe the prudential rules according to the provisions of GEO no. 99/2006, of the A.S.F. Regulation no. 3/2014, of Regulation (EU) No. 575/2013 and the technical standards issued in its application.

(4) In order to perform the activity stipulated in art. 125 letter a), the S.S.I.F. shall ensure a separate organizational structure of the activity related to the provision of services and investment activities.

(5) Prior to commencement of the activities provided for in art. 125 letter b) - e), the S.S.I.F. shall notify the AIF of its intention, specifying the expected start date of the activity.

(6) The provision of the activity stipulated in art. 125 letter f) is made with the opinion of the A.S.F., under the conditions stipulated by the provisions of art. 3 par. (2) of the A.S.F. Standard no. 16/2013.

(7) In case of performing the activity provided in art. 125 letter b), the S.S.I.F. shall send a copy of the lease to A.S.F. within maximum 30 days from the date of its signing.

(8) The rental activity of the buildings provided in art. 125 letter b) it must be carried out in such a way that it does not become the core business of the S.S.I.F.

(9) In the case of performing the activities provided for in art. 125, the S.S.I.F. shall provide the accounting records using distinct analytical accounts for each of the activities performed.

TITLE III
Provision of investment services by the persons referred to in art. 7 par. (1) of the Law no. 126/2018
CHAPTER I
Provision of investment services by persons referred to in art. 7 par. (1) letter a) - c) of the Law no. 126/2018
SECTION 1
Authorization Procedures
Subsection 1.1
Investment Consultants
Art. 127.

(1) Investment consultants are natural or legal persons authorized by A.S.F. in accordance with the provisions of art. 7 par. (1) letter a) - c) and 8 of the Law no. 126/2018 to provide investment advice services for securities and fund units of collective investment undertakings and to take over and transmit orders for securities and fund units of collective investment undertakings.

(2) Investment consultants shall be prohibited:

a) to provide investment services other than those provided for in paragraph (1);

b) to take over and send orders in relation to financial instruments other than those provided in paragraph (1);

c) to provide investment advisory services with instruments other than those provided in paragraph (1).

Art. 128.

(1) In order to be authorized by the A.S.F., the investment consultant, a natural person, shall meet cumulatively the following conditions:

a) comply with the incidents stipulated in art. 8 par. (1) of the Law no. 126/2018;

b) to meet the conditions stipulated in art. 4 letter d) - f) and 5 par. (1) letter b) and c) of the A.S.F. / NBR Regulation no. 07/14/2018;

c) not to hold, either directly or indirectly, in his own name or with his spouse, and with the first degree relatives a qualifying holding in a company involved in the capital market or to be employed or to hold a management position at such a company, except for the valuation firm with which it has a contractual relationship;

d) not to be an employee of an institution in the central or local public administration;

e) to have a civil professional liability insurance, which ensures the equivalent protection of the clients according to the provisions of art. 8 par. (2) of the Law no. 126/2018;

f) to submit all the documents stipulated in paragraph (2).

(2) For authorization and registration in the A.S.F. Register, the individual applicant shall submit to A.S.F. a request made according to Annex no. 14, accompanied by the following documents:

a) a copy of the identity document, the conformity of which with the original is certified by handwritten signature;

b) the documents referred to in art. 9 par. (1) letter a) and c) of the A.S.F. / NBR Regulation no. 07/14/2018;

c) the criminal record certificate and the fiscal record certificate, within the legal validity term, in original or in a legalized copy or in a copy bearing the attorney's

certificate or legalization issued by the secretary of the mayor's offices where there are no notary offices;

d) copy of the study document and other relevant certificates held, certified for compliance by the holder thereof;

e) declaration on his own responsibility, signed by handwritten, regarding the fulfilment of the conditions stipulated in paragraph (1), drawn up in accordance with Annex no. 15;

f) the list of securities and fund units held in their own name and on behalf of the spouse, as well as to the first degree relatives or the signed handwritten statement, if there are no such holdings;

g) professional indemnity insurance stipulated in art. 8 par. (2) of the Law no. 126/2018;

h) proof of payment of the corresponding tariff provided by the A.S.F. regulations on the A.S.F. account.

(3) Within 30 days from the obtaining of the authorization decision, the investment consultant shall send the A.S.F. a copy of the fiscal registration certificate issued by the territorial financial administration.

(4) The professional civil liability insurance stipulated in art. 8 par. (2) of the Law no. 126/2018 should be submitted to A.S.F. 5 days before the expiry date of the previous one and within two working days of the end date.

Art. 129.

- In order to be authorized by the A.S.F., the investment adviser, a legal person, must cumulatively fulfil the following conditions:

a) be registered under to form of a limited liability company, according to the Companies Law no. 31/1990, republished, as subsequently amended and supplemented, hereinafter referred to as Law no. 31/1990;

b) to comply with the incidents stipulated in art. 8 par. (1) of the Law no. 126/2018;

c) have a share capital representing the equivalent in RON of at least EUR 20,000 calculated at the reference exchange rate communicated by the NBR at the date of filing the application;

d) the shareholders / associations comply with the conditions set out in the Delegated Regulation (EU) 2017/1946;

e) to comply with the provisions of art. 6 letters a) and c);

f) have adequate technical equipment;

g) the company must have at least one employee through which it carries out its activity and which:

h) meets the requirements of art. 4 par. (2) letter d) - f) and 5 par. (1) lit. b) and c) of the A.S.F. / NBR Regulation no. 07/14/2018;

i) not hold, either directly or indirectly, in his own name or with his spouse, and with the first degree relatives a qualifying holding in a capital market company or not to be employed or not to hold a post management of such a company, except for the investment consultant, a legal person;

j) not be an employee of an institution in the central or local public administration.

k) to have a civil professional liability insurance to ensure an equivalent degree of protection to the clients, according to the provisions of art. 8 par. (2) of the Law no. 126/2018;

l) to submit all the documents stipulated in art. 130 par. (1).

Art. 130.

(1) In order to obtain the authorization of an investment consultant, the legal representative of the legal person shall send to A.S.F. the application made according to the annex no. 16, accompanied by the following documents:

a. the documents and information referred to in Annex I of Implementing Regulation (EU) 2017/1945;
b. the documents provided by the A.S.F. Regulation no. 1/2019 for members of the management structure, except for documents already required by Delegated Regulation (EU) 2017/1943;
c. list of securities and fund units held in their own name and on behalf of the spouse, as well as the first degree relatives, for each member of the management body, shareholder / associate holding a qualifying holding in the company and employee of the company through which they carry out their activity or the declaration on their own responsibility, under a handwritten signature, where there are no such holdings;
d. proof of the full payment of the share capital or the latest balance sheet recorded at the trade registry office, as the case may be;
e. a certified copy or copy bearing the attestation of law or legalization issued by the secretary of the mayor's offices where there are no notary offices of the document certifying the legal holding of the space for the registered office;
f. documents referred to in art. 9 par. (1) letter a) and c) of the A.S.F. / NBR Regulation no. 14/7/2018 and declaration on his own responsibility, signed with a handwritten signature, regarding the fulfilment of the conditions stipulated in art. 129 letter g), drawn up in accordance with Annex no. 17 for the personnel of the firm providing consultancy services;
g. the criminal record certificate and the fiscal record certificate, within the legal validity term, in original or in a legalized copy or in a copy bearing attestation of law or legalization issued by the mayor's secretary where there are no notary offices for the staff of the company providing consultancy services;
h. copy of the study document and other relevant certificates held, certified for compliance by the holder for the staff of the consulting firm;
i. the professional liability insurance stipulated in art. 8 par. (2) of the Law no. 126/2018;
j. proof of payment of the corresponding tariff provided by the A.S.F. regulations on the A.S.F. account

(2) For the purpose of art. 1 letter c) of the Delegated Regulation (EU) 2017/1943, the documents of the company and the evidence regarding the registration in the national register of companies in Romania are:

a) the act of incorporation, in a legalized copy;
b) the conclusion of the delegate judge from the office of the trade register, establishing and registering the company;
c) the registration certificate at the Trade Register Office;
d) extract or certificate from the trade registry office stating the object of activity, the shareholders / associations and the management of the company, issued no more than 60 days before the filing of the application.

(3) The extract or certificate from the trade registry office must include the investment services for which the company applies for authorization.

(4) Upon authorization, the company shall transmit to the AIF, together with supporting documents, a notification of any change in the documents submitted at the time of the authorization, in relation to matters other than those referred to in paragraph (6) and Art. 27 of the Law no. 126/2018, within a maximum of two working days from the date of their production.

(5) The professional civil liability insurance stipulated in art. 8 par. (2) of the Law no. 126/2018 should be submitted to A.S.F. 5 days before the expiry date of the previous one and within two working days of the end date.

(6) Changes in relation to shareholders holding qualifying holdings and persons providing consultancy services shall be notified to A.S.F. at least 30 days prior to their entry into force.

(7) The provisions of art. 13 par. (6) shall also apply as regards the members of the governing bodies of the investment advisers to legal persons. Article 131.

Art. 131.

The provisions of art. 132 par. (1) letter b) and par. (2) letter b) - d) also applies to the personnel of the investment consultants - legal persons who take over and transmit orders for securities and fund units of some collective investment undertakings and do not provide consultancy services.

Subsection 1.2

Persons referred to in art. 7 par. (1) letter. a) - c) of the Law no. 126/2018 who take over and transmit orders for securities and fund units of collective investment undertakings and do not provide consulting services

Art. 132.

(1) The natural persons referred to in art. 7 par. (1) letter a) - c) of the Law no. 126/2018, which take over and transmit orders for securities and fund units of collective investment undertakings and do not provide consultancy services, shall meet cumulatively the following conditions:

a) comply with the incidents stipulated in art. 8 par. (1) of the Law no. 126/2018;

b) to comply with the conditions provided in art. 4 letter b) and d) - f) of the A.S.F. / NBR Regulation no. 07/14/2018;

c) not to hold, either directly or indirectly, in his own name or with his spouse, and with the first degree relatives a qualifying holding in a company involved in the capital market or to be employed or to hold a management position at such a society;

d) not to be an employee of an institution in the central or local public administration;

e) to have a civil professional liability insurance, which ensures the equivalent protection of the clients according to the provisions of art. 8 par. (2) of the Law no. 126/2018;

f) to submit all the documents stipulated in paragraph (2).

(2) For authorization and registration in the A.S.F. Register, the individual applicant shall submit to A.S.F. a request made according to Annex no. 18, accompanied by the following documents:

a) a copy of the identity document, the conformity of which with the original is certified by handwritten signature;

b) Europass, signed and dated curriculum vitae, specifying the relevant studies and training, the professional experience, including the names of all the organizations

for which he has worked, the nature and duration of the duties performed, in particular as regards the activities is relevant for the activity envisaged;

c) a copy of the study document and other relevant certificates held, certified for compliance by the holder thereof;

d) the criminal record certificate and the fiscal record certificate, within the legal validity term, in original or in a legalized copy or in a copy bearing the attestation of law or legalization issued by the secretary of the mayor's offices where there are no notary offices;

e) declaration on his own responsibility, signed by handwritten, regarding the fulfilment of the conditions stipulated in paragraph (1), drawn up in accordance with Annex no. 19;

f) the list of securities and fund units held in their own name and on behalf of the spouse, as well as to the first degree relatives or the signed handwritten statement, if there are no such holdings;

g) professional indemnity insurance stipulated in art. 8 par. (2) of the Law no. 126/2018;

h) proof of payment of the corresponding tariff provided by the A.S.F. regulations on the A.S.F. account.

(3) Within 30 days from the obtaining of the authorization decision, the person stipulated in paragraph (1) shall transmit to A.S.F. the copy of the fiscal registration certificate issued by the territorial financial administration.

(4) The professional civil liability insurance stipulated in art. 8 par. (2) of the Law no. 126/2018 should be submitted to A.S.F. 5 days before the expiry date of the previous one and within two working days of the end date.

Art. 133.

(1) The legal persons referred to in art. 7 par. (1) letter a) - c) of the Law no. 126/2018, which take over and transmit orders for securities and fund units of collective investment undertakings and do not provide consultancy services, shall cumulatively fulfil the following conditions:

a) the conditions stipulated in art. 129 par. (1) letter a) - f) and h);

Company personnel must:

b) meet the requirements of art. 4 lit. b) and d) - f) of the A.S.F. / NBR Regulation no. 14/07/2018;

c) not hold, either directly or indirectly, in his own name or with his spouse, and with the first degree relatives a qualifying holding in a capital market company or not to be employed or not to hold a post to such a company, except for the legal person concerned.

(2) For the purposes of authorization and registration in the A.S.F. Register, the applicant legal entity shall submit to A.S.F. a request made in accordance with Annex no. 20, accompanied by the documents stipulated in art. 130 par. (1) letter a) - e) and g) - j).

(3) The provisions of art. 130 par. (2) to (7) shall also apply to the persons referred to in paragraph (1).

SECTION 2

Specific obligations of the persons referred to in art. 7 par. (1) letter. a) - c) of the Law no. 126/2018

Art. 134.

(1) The persons referred to in art. 7 par. (1 letter a) - c) of the Law no. 126/2018 have the obligation to comply with the provisions regarding the investment services

authorized according to the requirements established for the S.S.I.F. for the respective investment services.

(2) The persons provided in art. 7 par. (1) letter a) - c) of the Law no. 126/2018 shall be obliged to prepare and keep the documents related to the investment services authorized according to the requirements established for the S.S.I.F. for the respective investment services.

(3) The legal persons referred to in art. 7 par. (1) letter a) - c) of the Law no. 126/2018 shall transmit the following reports to A.S.F.:

a) the half-yearly report, within the legal term established by the A.S.F. regulations, which will comprise half-yearly accounting reports composed of the statement of assets, liabilities and equity, profit and loss account, informative data;

b) the annual report, within the legal term established by the A.S.F. regulations, which will include:

1. the annual financial statements;
2. the administrators' report;
3. the auditor's report / audit firm's report.

c) an activity report on the investment services carried out in the previous year, to be transmitted together with the report referred to in point b).

(4) The natural persons referred to in art. 7 par. (1) letter a) - c) of the Law no. 126/2018 shall send annually, by 31 March of the following year at the latest, the activity report on investment services carried out in the previous year.

SECTION 3
Procedures for suspending and withdrawing authorization Article 135.

Art. 135.

(1) The persons referred to in art. 7 par. (1) letter a) - c) of the Law no. 126/2018 may request for a period of maximum 24 months the suspension of the authorization on the basis of an application accompanied by the following documents:

a) the statement of the authorized natural person, namely the decision of the statutory body of the authorized legal person, stating:
   - the reasons for the decision to suspend;
   - the period for which authorization is requested;

b) any other documents that A.S.F. deems necessary for the settlement of the request.

(2) From the date of submission to the A.S.F. of the application for suspension of the authorization according to the provisions of para. (1) and the related documents, the legal person is relieved of the observance of the obligations regarding the personnel and of the professional indemnity insurance stipulated in art. 8 par. (2) of the Law no. 126/2018.

(3) The resumption of the activity of the persons mentioned in par. (1) implies the prior fulfilment by those persons of all the conditions under which the authorization was based.

(4) The authorized natural person or the authorized legal person has the obligation to transmit the following documents within 5 working days prior to resuming the activity, but not later than 5 days before the deadline for suspending the authorization:

a) the statement of the authorized natural person, respectively the decision of the statutory body of the authorized legal person specifying the period from which the activity will resume if the resumption of the activity will take place before the expiry of the period stipulated in the decision to suspend the authorization;

b) declaration on the responsibility of the legal representative of the authorized legal person regarding the fulfilment of the conditions stipulated by the Law no. 126/2018 and this Regulation by the company at the date of resumption of business.

Art. 136.

(1) Withdrawal of the authorization of persons referred to in art. 7 par. (1) letter a) - c) of the Law no. 126/2018 can take place in the situations stipulated in 17 of the Law no. 126/2018 by a decision to withdraw the authorization:

a) at the request of the person stipulated in art. 7 par. (1) letter a) - c) of the Law no. 126/2018;

b) at the initiative of the A.S.F., in the event of non-observance of the regulations in force, including the conditions envisaged at the moment of granting the authorization, in compliance with the provisions of the title X of the Law no. 126/2018.

(2) Withdrawal of the authorization at the express request of the person referred to in art. 7 par. (1) letter a) - c) of the Law no. 126/2018 shall be made on the basis of an application signed, where appropriate, by the natural person concerned or by the legal representative of the legal person concerned.

The application shall be accompanied by the proof of payment of the withdrawal fee to the A.S.F. account.

CHAPTER II

The provision of investment services by the legal entities referred to in art. 7 par. (1) letter d) and e) of Law no. 126/2018

Art. 137.

(1) For the purpose of authorization by the A.S.F., the legal person stipulated in art. 7 par. (1) letter d) and e) of Law no. 126/2018 must fulfil the following conditions:

a) be constituted in the form of a joint stock company or a limited liability company, according to Law no. 31/1990;

b) to comply with the incidents stipulated in art. 8 par. (1) of the Law no. 126/2018;

c) have an initial capital representing the equivalent of at least EUR 50,000, calculated at the reference exchange rate of the NBR on the day of the payment.

(2) Upon establishment, the initial capital is equal to the full share capital paid into the account opened for this purpose in a credit institution;

a) the shareholders / associations comply with the conditions set out in the Delegated Regulation (EU) 2017/1946;

b) to comply with the provisions of art. 6 letter a) and d);

c) have adequate technical equipment;

d) to have a professional civil liability insurance to ensure an equivalent degree of protection to the clients, according to the provisions of art. 8 par. (2) of the Law no. 126/2018;

e) to present all the documents stipulated in paragraph (2).

(3) The authorization granted to the person referred to in par. (1) shall be issued on the basis of a request drawn up in accordance with Annex no.

a) the documents referred to in Annex I to Implementing Regulation (EU) 2017/1945;

b) the documents provided by the A.S.F. Regulation no. 1/2019 for members of the management structure, except for the documents already required by the Delegated Regulation (EU) 2017/1943;

c) a certified copy or a copy bearing the attestation of law or legalization issued by the secretary of the mayor's offices where there are no cabinets of the document certifying the legal holding of the space for the registered office;

d) proof of the full payment of the share capital or the latest balance sheet recorded at the trade registry office, as the case may be;

e) the declaration of the legal representative, drawn up in accordance with Annex no. 22A or 22B, as the case may be, showing that the company will provide investment services exclusively on commodities, emission allowances and / or derivative financial instruments, in the case of the companies referred to in art. 7 par. (1) letter d) of Law no. 126/2018, or exclusively on emission certificates and / or derivative financial instruments in the case of the companies referred to in art. 7 par. (1) letter e) of Law no. 126/2018;

f) the declaration of the legal representative, drawn up in accordance with Annex no. 22C or 22D, showing that the company's clients meet the following conditions:

(i) in the case provided for in Art. 7 par. (1) letter d) of Law no. 126/2018:

1. are exclusively economic operators in the field of electricity, as defined in art. 3 point 42 of the Law no. 123/2012, or economic operators in the natural gas sector, as defined in art. 100 point 67 of the same normative act;
2. hold jointly 100% of the company's share capital or voting rights, exercise joint control and are exempted under art. 6 par. (1) letter j) of Law no. 126/2018 if they themselves provide such investment services;

(ii) in the case provided for in Art. 7 par. (1) letter e) of Law no. 126/2018:

1. are exclusively operators defined in art. 3 letter g) of the Government Decision no. 780/2006;
2. hold jointly 100% of the company's share capital or voting rights, exercise joint control and are exempted under art. 6 par. (1) letter j) of Law no. 126/2018 if they themselves provide such investment services;

g) the documents provided by the A.S.F. / BNR Regulation no 14/7/2018;

h) the professional liability insurance stipulated in art. 8 par. (2) of the Law no. 126/2018;

i) proof of payment on the A.S.F. account of the corresponding tariff provided by the A.S.F. regulations

(3) For the purpose of art. 1 letter c) of the Delegated Regulation (EU) 2017/1943, the documents of the company and the evidence regarding the registration in the national register of companies in Romania are:

a) the act of incorporation, in a legalized copy;

b) the conclusion of the delegate judge from the office of the trade register, establishing and registering the company;

c) the registration certificate at the Trade Register Office;

d) extract or certificate from the trade registry office stating the object of activity, the shareholders / associations and the management of the company, issued no more than 60 days before the filing of the application.

(4) The extract or certificate from the trade registry office must include the investment services for which the company applies for authorization.

(5) After the authorization, the person stipulated in par. (1) shall transmit to the AIF, together with supporting documentation, a notification of any change in the documents submitted at the time of the authorization in relation to aspects other than those provided for in paragraph (7) and Art. 27 of the Law no. 126/2018, within a maximum of two working days from the date of their production.

(6) The professional civil liability insurance stipulated in art. 8 par. (2) of the Law no. 126/2018 should be submitted to A.S.F. 5 days before the expiry date of the previous one and within two working days of the end date.

(7) Changes made in relation to qualifying shareholders and persons providing consultancy services shall be notified to A.S.F. at least 30 days prior to their entry into force. 126/2018.

(8) The provisions of art. 13 par. (6) shall also apply accordingly to the members of the management bodies of the legal person referred to in art. 7 par. (1) letter d) and e) of Law no.

Art. 138.

(1) The legal person stipulated in art. 7 par. (1) letter d) and e) of Law no. 126/2018 must draw up and maintain the documents related to the investment services authorized according to the requirements established for the S.S.I.F. for the respective investment services.

(2) The legal person provided in art. 7 par. (1) letter d) and e) of Law no. 126/2018 shall transmit the following reports to the A.S.F.:

a) the half-yearly report, within the legal term established by the A.S.F. regulations, which will comprise half-yearly accounting reports composed of the statement of assets, liabilities and equity, profit and loss account, informative data;

b) the annual report, within the legal term established by the A.S.F. regulations, which will include:

1. the annual financial statements;
2. the administrators' report;
3. the report of the financial auditor / audit firm;

c) annually, the legal person stipulated in art. 7 par. (1) letter d) and e) of Law no. 126/2018 will transmit A.S.F. no later than 31 January updated information in the form of Annex no. 23, and annex no. 22A or 22B, as appropriate;

d) an activity report on the investment services carried out in the previous year, which shall be submitted together with the report referred to in point b).

Art. 139.

The provisions of art. 10 to 12 shall apply accordingly to the legal person referred to in Art. 7 par. (1) letter d) and e) of Law no. 126/2018.

TITLE IV
Cross-border operations by investment firms and credit institutions in other Member States and third country firms
SECTION 1
Notification obligation

Art. 140.

(1) Any of the following activities carried out by an investment firm or an institution of credit from other Member States, a third-country company, or for such an entity, entails the need to apply to the entity the notification procedures provided for in Art.

109 or art. 113 of Law no. 126/2018, as the case may be, respectively the authorization procedure provided in art. 122 of the Law no. 126/2018:

a) promotion / advertising of investment services and activities and auxiliary services on Romanian territory;

b) conducting promotional campaigns aimed at attracting clients from Romania;

c) the existence of a website in Romanian;

d) contracting / addressing, by any means, persons from Romania for the purpose of providing services and investment and / or ancillary services.

(2) Owning a national telephone number by an investment firm or credit institution in another Member State, or a third-country firm through which it promotes services / contacting potential customers, for example the physical presence of on the territory of Romania attracts the necessity to apply the notification procedures provided by art. 113 of Law no. 126/2018, respectively the authorization procedure provided for in art. 122 of the Law no. 126/2018.

SECTION 2
Delegated Agents of Investment Firms and Credit Institutions of Other Member States of the European Union

Art. 141.

(1) Where investment firms and credit institutions from other Member States operate in Romania through Delegated Agents established in Romania, such Delegated Agents shall be registered in the A.S.F. Registry on the basis of the notification received by A.S.F. from the competent authority of the home Member State of that investment firm / credit institution.

(2) The deletion from the A.S.F. Register of the delegated agents provided in paragraph (1) shall be based on the notification received by A.S.F. from the competent authority of the home Member State of that investment firm / credit institution.

SECTION 3
Branches of third country companies

Art. 142.

(1) Establishment of branches on the territory of Romania by a company from a third country shall be carried out under the conditions provided by art. 122 of the Law no. 126/2018.

(2) In applying the provisions of art. 123 of Law no. 126/2018, in order to obtain the authorization, the company in a third country will send to A.S.F. an application made in accordance with Annex no. 24, also accompanied by the following documents:

a) the authorization issued by the competent authority of the State of origin;

b) a certificate from the competent authority of the State of origin stating that:

1. the registered office of the registered office which must be in the same State as the competent authority issuing the authorization;
2. the object of activity corresponding to the services provided in Annex no. 1 of the Law no. 126/2018;
3. subscribed and fully paid-up share capital of the company which must represent the equivalent of the initial minimum capital provided in art. 47 of the Law no. 126/2018;

4. Certification that the company has been audited by a financial auditor / audit firm for the past 3 years and that it has not been loss-making for the past 3 years;

a) the organization and operation regulations of the branch;

b) the documents proving the legal holding of the branch office;

c) the criminal record certificate and the fiscal record certificate, within the legal validity period, in the original or in a legalized copy or in a copy bearing the attestation of law or legalization issued by the secretary of the mayor's offices where there are no notary offices for the managers of the branch;

d) the list of specimens of signatures for the persons running the branch and for the persons performing the compliance function;

e) investor compensation scheme, authorized or recognized in accordance with Directive 97/9 / EC, which will provide compensation to investors opening accounts at that branch;

f) the documents provided by the A.S.F.

NBR Regulation no. 14/7/2018, as appropriate, for persons providing investment services and activities;

a) the documents provided by Regulation no. 1/2019 for the persons responsible for the management of the branch and for the person who performs the compliance function;
b) list of key outsourced operational functions;
c) proof of payment on the A.S.F. account of the corresponding tariff provided by the A.S.F. Regulation no. 16/2014;
d) other documents that A.S.F. may require to verify compliance with the authorization requirements.

(3) If the investor compensation scheme indicated is SC Investor Compensation Fund, the branch may commence its activity on the date the authorization is granted, subject to the submission to A.S.F. of evidence of membership of the Fund.

(4) If the investor compensation scheme indicated is not SC Investor Compensation Fund, the proof of membership of the respective compensation scheme shall be submitted together with its identification data and the specific procedures applicable in the case of clearing the investments made on the territory of Romania, together with the application and documentation related to the authorization of the branch.

(5) Advertising and promotion of services and / or activities of a third-country company to Romanian clients may be carried out in compliance with the rules imposed on the S.S.I.F. and only after authorization in accordance with the procedure described in art. 123 of Law no. 126/2018 and in this article.

Art. 143.

The Branch shall notify A.S.F. no later than two working days from the date of its occurrence any modification of the conditions and / or documentation on which the authorization was granted and request the authorization / withdrawal of the authorization, for example the inclusion / deletion of the persons performing investment services and activities and the persons performing the compliance function from the A.S.F. Register in accordance with the provisions of this Regulation.

Art. 144.

Companies from third countries cannot directly connect to regulated market systems and / or to multilateral trading systems / organized trading systems in Romania, unless the AIF has authorized the branch of a third-country company under the conditions provided by art. 122 - 124 of the Law no. 126/2018 and art. 142 of this Regulation.

TITLE V
Transitional and Final Provisions

Art. 145.

(1) The documents and information provided in this Regulation, as well as in the European regulations issued pursuant to Directive 2014/65 / EU, to which referred to in this Regulation, shall be transmitted in Romanian and documents issued in another language shall be copied together with their legalized translation, in compliance with the provisions of the conventions to which Romania is a party.

(2) Documents relating to foreign natural and legal persons, issued in a language other than Romanian, shall be accepted if they are in English or in Romanian or English.

(3) All acts and documents issued by the authorities of other States submitted to A.S.F. under this Regulation have the legal regime established by the applicable Romanian legislation and the A.S.F. regulations.

(4) Notifications provided for in Implementing Regulation (EU) 2017 / 2382 laying down implementing technical standards on standard forms, templates and standard procedures for the transmission of information in accordance with Directive 2014/65 / EU of the European Parliament and of the Council will be accepted if they are in English or translated in the language Romanian or English.

Art. 146.

- Notification of the S.S.I.F. classification in the exception provided in art. 6 par. (1) letter j) of Law no. 126/2018 shall be transmitted annually to A.S.F. in the form presented in Annex no. 25.

Art. 147.

(1) The S.S.I.F. has the obligation to update the object of activity stipulated in its own constitutive act according to the provisions of Law no. 126/2018 at the first extraordinary general meeting of the shareholders, but not later than 12 months from the date of entry into force of this Regulation, and to transmit to the A.S.F. the supplementary act amending the constitutive act in order to update the operating authorization.

(2) After receiving the authorization provided for in paragraph (1) within a maximum of 5 days from the date of registration of the S.S.I.F. activity object update at the registry of the S.S.I.F. but no later than 90 days from the date of the authorization issued by the AIF, the S.S.I.F. shall be obliged to transmit A.S.F. the copy of the registration certificate, or the copy of the new registration certificate, if the modification required requires the issuance of a new certificate.

(3) The responsibility for fulfilling the requirements mentioned in paragraph (1) and (2) shall belong to the S.S.I.F.'s compliance function and superior management.

(4) In case the updating of the object of activity performed according to the provisions of para. (1) does not involve the extension / restriction of the previously authorized object of the A.S.F., the operation does not represent a change in the organization and functioning of the S.S.I.F. and does not fall under the provisions of the A.S.F. Regulation no. 16/2014.

(5) The analysis regarding the updating of the object of activity of S.S.I.F. carried out in accordance with the provisions of para. (1) and (4) shall be made on the basis of the correlation table set out in Annex no.26

Art. 148.

(1) The natural persons authorized as investment consultants on the basis of Law no. 297/2004, acting on its own behalf, shall:

a) notify A.S.F., within 30 days from the entry into force of this Regulation whether it intends to take over and to transmit orders for securities and units of the Fund to collective investment undertakings;

b) submit A.S.F., within 45 days from the entry into force of this Regulation, the documents referred to in art. 128 par. (2) letter b) and e) -g).

(2) Within 30 days from the entry into force of this Regulation, the natural persons authorized as investment consultants on the basis of Law no. 297/2004, acting on behalf of an investment advisory firm, shall communicate to the A.S.F. the way in which it intends to perform this activity in the future:

a) in its own name, in which case the provisions of para. (1) letter a) and b);

b) on behalf of a consulting company.

(3) The legal persons authorized as investment consultants on the basis of Law no. 297/2004, shall:

a) notify A.S.F., within 30 days after the entry into force of this Regulation, whether it intends to take over and to transmit orders for securities and units of collective investment undertakings;

b) submit A.S.F., within 45 days from the entry into force of this Regulation, the documents referred to in art. 130 par. (1) letter a) -c) and i).

(4) The authorizations of investment consultants granted on the basis of Law no. 297/2004 shall cease to be valid in the case of:

a) natural persons who:

(i) fail to fulfil their obligations under par. (1) letter b) or (2);

(ii) although they fulfil their obligations under paragraph (1) letter b) or (2), after analysing the submitted documents, it is established that the persons do not meet the conditions stipulated in art. 128 par. (1);

b) legal persons who:

(i) fail to fulfil their obligations under paragraph (2) letter b);

(ii) although they fulfil their obligations under paragraph (2) letter b), after analysing the documents submitted, it is established that the persons do not meet the conditions stipulated in art. 129.

(5) The A.S.F. shall update, where appropriate, the A.S.F. Registry on the basis of the information provided.

Art. 149.

(1) The documents referred to in the A.S.F. regulations by the persons subject to this Regulation, at the request of judicial bodies or other public authorities, shall be transmitted in accordance with the following conditions:

a) at the headquarters of the person keep a copy of each original document, under the same conditions as the original document;

b) the legal representative of the legal entity and, where appropriate, the person fulfilling the compliance function certifies the conformity of each copy with the original document, in the case of the legal persons, respectively the natural person in the cases provided by art. 128 and art. 132;

c) the copy shall bear the words "copy according to the original" and the signature of the legal representative and, if applicable, of the person performing the compliance function, in the case of legal persons, respectively of the natural person in the cases provided by art. 128 and art. 132;

d) the proof of transmission of the original documents shall be archived together with the copy referred to in let. a).

(2) The provisions of paragraph (1) shall also apply to credit institutions providing investment services and activities registered with A.S.F. for the documents related to the rendering of services and investment activities with financial instruments other than those provided under art. 2 par. (2) letter d) and par. (3) of the Law no. 126/2018.

Art. 150.

Infringement of the provisions of this Regulation shall be sanctioned according to the provisions of Title X of Law no. 126/2018.

Art. 151.

Article 83 of the Regulation of the Financial Supervisory Authority no. 13/2018 regarding the trading venues, published in the Official Journal of Romania, Part I, no. 1040 of 7 December 2018 shall be amended and shall have the following content:

"Art. 83. - (1) The market operator / S.S.I.F. shall clearly distinguish the transactions concluded within the SMT / SOT, in accordance with the provisions of art. 71 par. (1), the daily report having the same regime as the regulated market."

Art. 152.

In annex no.3 the current number 1, after item 1.3. of the Regulation of the Financial Supervisory Authority no. 16/2014 regarding the revenues of the Financial Supervisory Authority, published in the Official Journal of Romania, Part I, no. 899 of December 11, 2014, with the subsequent amendments and completions, a new point, point 1.31, shall be inserted, with the following content:

No.	Income category	Specification (operation, basis of calculation, etc.)	Tariff / tax / quota level (%)
1.	Tariff / fee for solving authorization / approval / approval / authorization / withdrawal requests / regulated	1.31. authorization: a) natural persons stipulated in art. 7 par. (1) letter a) - c) of the Law no. 126/2018 which take over and transmit orders for securities and fund units of some collective investment undertakings and do not provide consultancy services; b) legal persons referred to in art. 7 of Law no. 126/2018, other than investment consultants, legal persons.	a) 2.000 lei b) 7.500 lei

Art. 153.

Annexes no.1-26 are an integrant part of the present regulation.

Art. 154.

Annexes no. 1 to 26 form an integral part of this Regulation. Art. 154.

(1) The applications for approval submitted to A.S.F. and pending before the entry into force of this Regulation shall be solved by A.S.F. according to the provisions in force

at the date of their submission, in compliance with the provisions of art. 282 par. (1) of the Law no. 126/2018.

(2) On the date of entry into force of this Regulation, the following shall be repealed:

a) The Regulation of the National Securities Commission no. 15/2006 regarding the presentation of the recommendations for investments in financial instruments, approved by the Order of the President of CNVM no. 81/2006, published in the Official Journal of Romania, Part I, no. 943 of November 22, 2006;

b) Regulation of the National Securities Commission no. 32/2006 on financial investment services, approved by the CNVM President Order no. 121/2006, published in the Official Journal of Romania, Part I, no. 103 of 12 February 2007, as subsequently amended and supplemented;

c) Regulation of the Financial Supervisory Authority no. 8/2015 regarding financial investment services agents, delegated agents and amending and supplementing Regulation no. 32/2006 on financial investment services, approved by the Order of the National Securities Commission no. 121/2006, published in the Official Journal of Romania, Part I, no. 465 of 29 June 2015, as amended and supplemented;

d) Regulation of the Financial Supervisory Authority no. 1/2015 regarding the performance of certain activities by the financial investment services companies and the application of certain provisions of the capital market legislation in the case of the fiduciary contract, published in the Official Journal of Romania, Part I, no. 142 of 25 February 2015;

e) Order of the National Securities Commission no. 144/2012 for the approval of Instruction no. 8/2012 on the Application of the Guidelines on Certain Aspects of the MiFID Requirements for Suitability, published in the Official Journal of Romania, Part I, no. 8 of January 7, 2013;

f) Disposition of measures of the National Securities Commission no. 11 / 22.10.2008;

The acts stipulated in art. 154 par. (1) letter f) and g) have not been published in the Official Journal of Romania, Part I. Disposition of measures of the National Securities Commission no. 08 / 04.05.2009;

a) Decision of the National Securities Commission no. 998 / 06.10.2011;

b) any other contrary provisions, provided in the A.S.F. regulations

(3) Whenever by other normative acts reference is made to the CNVM Regulation no. 32/2006, as amended and supplemented, the reference shall be deemed to be made to the corresponding provisions of this Regulation.

Art. 155.

This Regulation shall be published in the Official Journal of Romania, Part I, in the Bulletin and on the A.S.F. website and shall enter into force on the date of its publication in the Official Journal of Romania, Part I.

The President of the Financial Supervisory Authority

Leonardo Badea Bucharest,

06.06.2019

Annex no. 1
DECLARATION

I, the undersigned....., residing in ...., holder of the identity ID .... series ... .. no. ....., issued by .... on ...., valid until ....., PNC ...., as the legal representative of the investment firm .... hereby declare that the secondary office (branch) of ..... meets the requirements of art. 17 par. ... of the A.S.F. Regulation no. 5/2019 regarding the regulation of some provisions regarding the provision of investment services and activities according to Law no. 126/2018 on financial instrument markets.

At the same time, I mention the following data regarding the secondary establishment for which we request authorization:

Phone no:

Fax no.:

E-mail address:

Persons fulfilling the compliance function:

No.	Name and surname	No. and date of authorization A.S.F.

1 To be completed in the event of the establishment of a subsidiary branch office.
2 Mention BI for bulletin card, ID card or PAS for passport for foreign individuals.
3 Complete the name of the financial investment services company.
4 Completion of par. (2) or paragraph (2) letter b) -e) and par. (3).

Persons providing the investment service referred to in point 5 of Section A, Annex no. 1 of the Law no. No. 126/2018 on financial instrument markets:

No.	Name and surname	No. and date of A.S.F. authorisation

Persons providing information on financial instruments, investment services or ancillary services on behalf of the S.S.I.F. in accordance with Art. 87 par. (1) of the Law no. 126/2018 regarding markets of financial instruments:

No.	Name and surname	Registration no. in A.S.F. Registry

Persons providing information on financial instruments, investment services or ancillary services on behalf of the S.S.I.F. in accordance with Art. 87 par. (1) of the Law no. 126/2018:

No.	Name and surname

Date and signature today, on your own responsibility, knowing that the forgery in statements is punishable under the law.
Date .....
Signature .....

DECLARATION

I, the undersigned ....., residing in ...., holder of identity card type .... series ... .. no. ....., issued by .... on ...., valid until ....., CNP ...., as the legal representative of the investment firm .... I hereby declare that the secondary establishment (other than a branch) of the type ..... of ..... meets the requirements of art. 17 par. (5) of the A.S.F. Regulation no. 5/2019 regarding the regulation of some provisions regarding the provision of investment services and activities according to Law no. 126/2018 on financial instrument markets.
At the same time, I mention the following data regarding the secondary establishment for which we request authorization:
Phone no:
Fax no.:
E-mail address:
Address of the branch to which it is subordinated:
Persons providing the investment service referred to in point 5 of Section A, Annex no. 1 of the Law no. No. 126/2018 on financial instrument markets:

No.	Name and surname	No. to be registered in the A.S.F.

To be completed in the event of the establishment of a secondary establishment other than a branch.
Make BI for bulletin card, ID card or PAS for passport for foreign individuals.
Complete the name of the financial investment services company.
Clearly fill in the type of secondary establishment other than the branch.

Persons providing information on financial instruments, investment services or ancillary services on behalf of the S.S.I.F. in accordance with Art. 87 par. (1) of the Law no. 126/2018:

No.	Name and surname

Date and signature today, on your own responsibility, knowing that the forgery in statements is punishable under the law.

Date .....
Signature .....

DECLARATION

I, the undersigned ... ., residing in ...., holder of identity card type .... series ... .. no. ....., issued by .... on ...., valid until ....., CNP ...., as the legal representative of the investment firm .... I hereby declare that:

- the secondary office in ....., authorized by the decision of the A.S.F. no. ..... has ceased to operate as of ....;
- documents, records, archives of the headquarters company have been transferred to ... .;
- the situation of persons fulfilling the compliance function who have carried out their activity at the secondary office is the following:

No.	Name and surname	No.and date of authorisation decision	Situation		
			Transferred to the registered office of the company		Requested the cancellation of the authorisation
			of	Authorised by decision	
					□
					□
					□

The situation of the persons who provided the investment service provided in item 5 of section A, 1 of the Law no. No. 126/2018 on the financial instruments markets, on behalf of the company at the secondary office is as follows:

No.	Name and surname	Registration no.in A.S.F. Registry	Situation		
			Transferred to the registered office of the company		Requested the cancellation from A.S.F. Registry
			of	Authorised by decision	
					□
					□
					□

To be completed in the case of the abolition of secondary premises.
Make BI for bulletin card, ID card or PAS for passport for foreign individuals.
Complete the name of the financial investment services company.
To be filled in for branches

Persons who provide information on financial instruments, investment services or ancillary services on behalf of S.S.I.F. in accordance with art. 87 par. (1) of the Law no. No. 126/2018 on financial instrument markets:

No.	Name and surname	Situation

Date and signature today, on your own responsibility, knowing that the forgery in statements is punishable under the law.
Date .....
Signature.....

DECLARATION IV

I, the undersigned ...., residing in ...., owner of the identity ID .... series ... .. no. ....., issued by .... on ...., valid until ....., CNP ...., as the ..... of the investment firm ... ., hereby declare that the registered office of ..... meets the requirements of art. 6 letter f) of the A.S.F. Regulation no. 5/2019 regarding the regulation of some provisions regarding the provision of investment services and activities according to Law no. 126/2018 on financial instrument markets.
At the same time, I mention the following data regarding this headquarters:
Phone no.:
Fax no.:
E-mail address:
Date and signature today, on your own responsibility, knowing that the forgery in statements is punishable under the law.
Date .....
Signature .....

IV To be filled in for registered office No.
Make BI for bulletin card, ID card or PAS for passport for foreign individuals.
Complete "legal representative" at the time of authorization of the S.S.I.F. or director for further changes to the registered office.
Complete the name of the financial investment services company.

Annex no. 2

APPLICATION FOR WITHDRAWAL OF THE AUTHORIZATION OF THE FINANCIAL INVESTMENT SERVICES SOCIETY

....
Granted by the AMS decision no. . ..... of .....
Registration certificate at the Trade Registry Office:
……
(series, number and date of issue)
Unique registration code in the Register Commerce:
.....
Headquarters:
....
(street and number)
.....
(locality)
.....
(county)
.....
(postal code)
Telephone number:
....
Fax number:
.....
E-mail address:
..... ……
Legal representative:
…….
(name, surname and position)
....
(telephone number)
Date on which the company ceased operations:
.....
Address of the registered office of the company's archive:
....
(street and number)
.....
(locality)
.....
(county)
.....
(postal code)
The person responsible for archive management:
.....
(Surname and forename)
.....

(Telephone number)
Address of the person in charge of archive management:
....
Does the company have debts to customers or to market entities?
Yes □
No □
Are ongoing proceedings, complaints or inquiries against society?
Yes □
No □
Does the company have judgements or guarantees that have not been enforced? 3
Yes □
No □
This application is accompanied by a copy of the attached documents and a number ..... documents, totalizing a number ..... file.
Signature of the legal representative:
....
Date:
The name of the applicant will be filled in.
If yes, a list of creditors' name and credentials, sums owed and how to settle debts is attached.
The list will be signed by the legal representative.
If the answer is yes, details will be given on a separate page, with the signature of the legal representative.

NOTE:
If the space in the form is not sufficient for detailing the answers, the additions will be made on a separate page with the signature of the legal representative.

Annex no. 3

LIST OF DOCUMENTS FOR THE WITHDRAWAL OF AUTHORIZATION of the financial investment services company 1	
Decision of the statutory body	□
Certificates issued by the capital market entities to which the S.S.I.F. is a member or participant in the system (referring to the elements referred to in Article 12 (b) of the ASF Regulation no. 5/2019 regarding some provisions related to the provision of investment services and activities according to Law no. 126/2018 on financial instrument markets.) Entity name	
	□
	□
	□
Proof of payment of debts	
to clients	□
A.S.F.	□
Proof of transfer of securities to the issuer depositary or accounts indicated by clients	□
Indication of the address of the archive and identification and contact details the person in charge of the archive management	□
The auditor's report / audit firm's report on the situation of the S.S.I.F. at the time of the cessation of the activity	□
Proof of payment of the withdrawal fee for the A.S.F account	□
Name and surname of the legal representative: .... Signature of the legal representative: .... Date:	

NOTE:
If the space in the form is not sufficient for the details replies, completions will be made on a separate page, with the signature of the legal representative.

1 Please fill in the name of the applicant

Annex no. 4

PAGE 1/1 IDENTIFICATION DATA OF THE APPLICANT	**APPLICATION FOR AUTHORIZATION OF MODIFICATIONS IN THE MODIFICATION AND OPERATION OF THE FINANCIAL INVESTMENT SERVICES SOCIETY**

Applicant's name: ..... ……

Registration certificate at the Trade Registry Office:. ……

(series, number and date of issue)

Unique registration code in the Register Commerce: ……

Headquarters: ……..……..… ……

(street and number)

…… ..... ……

… (county) …

(locality) (postal code)

Telephone number: ..... Fax number: .....

E-mail address: ……

S.S.I.F. Manager: …… …… …… ...

(name and surname) (telephone number)

Conformity positions: …… …… …… ...

(name and surname) (telephone number)

Changes in the organization and functioning of the company subject to the authorization of the A.S.F. (prior to registration with the Trade Registry Office):

capital stock1

- increase of the share capital □
- reduction of the share capital □

object of activity

- extension □
- restriction □

composition of the board of directors / board supervision □

directors / members of the S.S.I.F. directorate □

change of registered office □

secondary offices

- establishment of secondary offices □
- abolition of secondary offices □

change of name □

1 If the increase or decrease in the share capital occurs as a result of merger / splitting operations, the application will be drawn up in accordance with Annex no. 1

PAGE 1/1 IDENTIFICATION DATA OF THE APPLICANT	**APPLICATION FOR AUTHORIZATION OF MODIFICATIONS IN THE MODIFICATION AND OPERATION OF THE FINANCIAL INVESTMENT SERVICES SOCIETY**
This application is accompanied by a copy of the attached documents and a number ..... documents, totalizing a number ..... pages. Signature of the legal representative: …… ….. Signature of the person responsible for the compliance function: .... Date:	

NOTE:
If the space in the form is not sufficient for detailing the answers, the additions will be made on a separate page with the signature of the legal representative.

Annex no. 5

PAGE no. 1/1;	**LIST OF DOCUMENTS FOR THE AUTHORISATION OF MODIFICATIONS IN THE MODIFICATION AND OPERATION OF THE FINANCIAL INVESTMENT SERVICES SOCIETY ……..……1**	
General documents		
Decision of the Statutory Organism of S.S.I.F.		□
Additional act to the constituent act of the S.S.I.F. 2		
- original		□
- legalized copy		□
- a copy of a lawyer certificate or legalization issued by the mayor's secretary where no notary offices exist		□
Proof of payment of the fee for amending / completing the authorization		□
Specific documents for (check the attached documents depending on the change requested to be authorized)		
Change of the share capital	- proof of the full payment of the share capital in a special account opened for this purpose in a credit institution	□
	- the auditor's report / audit firm's report on the legality increase / decrease of the share capital □	□
Change of the object of activity	- proof of holding the initial capital provided in art. 47 of the Law no. 126/2018 on the financial instruments market corresponding to the object of activity subject to authorization □	□
Change of the registered office	- a certified copy or a copy bearing the attorney's certificate or legalization issued by the mayor's secretary where there are no notary offices of the document certifying the legal possession of the space intended the registered office for the operation of the S.S.I.F.	□
	- a personal statement on behalf of the S.S.I.F. legal representative	□
Establishment / dissolution of secondary offices	- legalized copy or copy bearing attorney's certificate or legalization issued by the mayor's secretary where no notary offices exist of the document certifying the legal holding of the space for the operation of the secondary office of the S.S.I.F.	□
	- the organization and functioning regulation that will include those mentioned in art. 15 par. (1) letter f) of the ASF Regulation no. ..... / 2019 regarding the regulation of certain provisions regarding the provision of services and investment activities according to Law no. 162/2018 regarding markets of financial instruments	□
	- an explanatory note on the situation of the archive, the delegated agents and, where applicable, the persons providing	□

1 The applicant's name will be filled in.

2 It will not be transmitted if the shareholder structure is changed.

	the investment service referred to in point 5 of Section A of Annex no. 1 to the Law no. 126/2018 and the persons fulfilling the compliance function who have performed their activity at the secondary offices, in the case of requesting the withdrawal of the authorization of the respective secondary offices	
	- a declaration on own responsibility by the legal representative of the S.S.I.F. which will include the ones mentioned in art. 15 par. (1) letter h) of the ASF Regulation no. 5/2019	□
First and last name of the legal representative:		Signature of the legal representative:
Name and surname of the person performing the compliance function:		Signature of the person who performs the compliance function: ……
Date:		

Notes:

For changes in the composition of the management body of S.S.I.F., the documents provided in Regulation no. 1/2019 on the evaluation and approval of members of the management structure and key personnel within the entities controlled by the Financial Supervisory Authority, except those already required by Commission Regulation (EU) 2017/1943 of 14 July 2016 supplementing Directive 2014/65 / EU of the European Parliament and of the Council as regards the regulatory technical standards on information and requirements for the authorization of investment firms.

If the space in the form is not sufficient for detailing the answers, the additions will be made on a separate page with the signature of the legal representative.

Annex no. 6

PAGE 1/1	**APPLICATION FOR THE AUTHORISATION OF MODIFICATION OF CAPITAL STOCK OF THE COMPANY OF SERVICES OF FINANCIAL INVESTMENTS FOLLOWING MERGER/DIVISION**

Applicant's name: ……

Registration certificate at the Trade Registry Office: . ……

(series, number and date of issuance)

Unique registration code in the Register Commerce: ……

Headquarters: ……..……..… ……

(street and number)

.... ……

(locality) . (county) … (postal code)

Telephone number: ..... Fax number: ……

E-mail address: …….

Legal representative: …… …… … …

(name and surname) (telephone number)

Persons fulfilling the compliance function: …… …… … …

(name and surname) (telephone number)

Changes in the organization and functioning of the company subject to the authorization of the A.S.F. (prior to registration with the Trade Registry Office):

- increase of capital stock following the merger with the company.....1 □
- reduction of the capital stock following division □

Capital stock resulted as a following merger/division.....

This application is accompanied by a copy of the attached documents and a number ..... documents, totalizing a number ..... file.

Signature of the legal representative: …… …

Signature of the person who performs the compliance function: …… …

Date:

NOTE:

If the space in the form is not sufficient for detailing the answers, the additions will be made on a separate page with the signature of the legal representative.

1 One will fill in with the name of the company that will be absorbed.

Annex no. 7

PAGE 1/1	**LIST OF DOCUMENTS FOR THE AUTHORISATION OF MODIFICATION OF CAPITAL STOCK OF THE COMPANY OF SERVICES OF FINANCIAL INVESTMENTS FOLLOWING MERGER/DIVISION 1**	
Declaration under holograph signature, of the legal representative of S.S.I.F. regarding the termination of the activity of the absorbed company accompanied		□
□ Certificates issued by the capital market entities to which the S.S.I.F. is a member or participant in the system (referring to the elements referred to in Article 1 (b) of the ASF Regulation no. 5/2019 regarding some provisions related to the provision of investment services and activities according to Law no. 126/2018 on financial instrument markets.) Entity name		
		□
		□
Proof of payment of debts		
to clients		□
- ASF		□
Proof of transfer of securities to the issuer depositary or accounts indicated by clients		□
Decisions of the extraordinary general meetings of the companies involved in the merger Name		
		□
		□
The draft of		
the merger		□
- The division		□
The amending act of the acts the constituent of the participating S.S.I.F. or, as the case may be, the statement of the resulting S.S.I.F. / results		□
The merger / division accounts		□
The Directors' report on the merger / division		□
The auditors / auditors / mergers / division audit reports		□
Statement provided in art. 16 par. (2) of the ASF Regulation no. 5/2019 in the case of the merger of a S.S.I.F. with a company with a different object of activity		
Proof of payment of the authorization fee to the ASF account		□
Name and surname of the legal representative: ..... Name and surname of the person performing the compliance function: ..... Date:	Signature of the legal representative: …… Signature of the person who performs the compliance function: ……	

1 The applicant's name will be filled in.

NOTE:
If the space in the form is not sufficient for detailing the answers, the additions will be made on a separate page with the signature of the legal representative.

Annex no. 8

Fill in the name of the financial investment services company.
No. and the date of the authorization decision

Evidence of S.S.I.F's Borrowing Operations as a Principal

Symbol	Maturity	Financial Instruments Loaned to Financial				Instruments Loaned from S.S.I.F.			
		Clients		S.S.I.F.		Clients		S.S.I.F.	
		Quantity	Market value	Quantity	Market value	Quantity	Market value	Quantity	Market value
1	2	3	4	5	6	7	8	9	10
SMB	< 30 days								
	30-60 days								
	< 60 days								

Record of loan operations in which the S.S.I.F. acts as an agent

Symbol	Maturity	Financial Instruments Loaned by				Financial Instruments Loaned by			
		Clients		S.S.I.F.		Clients		S.S.I.F.	
		Quantity	Market value	Quantity	Market value	Quantity	Market value	Quantity	Market value
1	2	3	4	5	6	7	8	9	10
SMB	< 30 days								
	30-60 days								
	< 60 days								

1 - The symbol of the financial instrument that is the subject of the report will be filled in.

2 - The maturity of the loan granted / taken will be matched: <30 days, 30-60 days, over 60 days.

3, 5 - The amount of financial instruments loaned to customers, other intermediaries, will be filled in according to the maturity of 2.

4, 6 - The current market value will be filled in (reference quantity X on the date for which to report financial instruments borrowed to clients or other intermediaries, depending on the maturity of items listed in item 2.

7, 9 - The amount of financial instruments borrowed from clients, other intermediaries, depending on the due maturity at point 2.

8, 10 - The current market value (the X reference price on the reporting date) of the financial instruments received by loan of clients, other intermediaries, depending on the maturity mentioned under p. 2.

Evidence of margin purchases on.....

Client	Symbol	Maturity	Financial instruments bought in margin		
			Quantity	Average procurement price	Market value
1	2	3	4	5	6
	SMB	< 30 days			
		30-60 days			
		< 60 days			

1 - Will be filled in for each customer.

2 - The symbol of the financial instrument that is the subject of the report will be filled in.

3 - The maturity of the loan granted / taken will be matched: <30 days, 30-60 days, over 60 days.

4 – Fill in the total amount of financial instruments that were purchased by investors on the basis of the credits granted by the S.S.I.F.

5 - The purchase price of the financial instruments purchased by the investors on the basis of the credits granted by S.S.I.F. (Amount X average purchase price).

6 - The current market value of the financial instruments that were purchased by investors on the basis of the credits granted by the S.S.I.F. (X reference price on the date of reporting) will be added.

Record-keeping of margin assets for operations requiring collateral in the margin account on.....

	Warranties for margin purchases		Guarantees for financial instrument borrowings		Total assets deposited in the margin account
Symbol	Quantity	Market value	Quantity	Market value	
1	2	3	4	5	6 = 3 + 5
SMB					

1 - The symbol of the asset deposited as collateral for operations requiring collateral in the margin account (money funds have the symbols according to international conventions, and the financial instruments have the symbols according to the markets in which these instruments are traded) will be added.

2 and 4 - The total amount for each asset that has been set as margin and for each operation requiring collateral in the margin account will be filled in.

3 and 5 - Will be filled in with the current market value for each asset that has been set as margin for each operation requiring collateral in the margin account (X reference price on the reporting date).

6 - To be filled in with the total amount of margin assets for all operations requiring collateral in the margin account (6 = 3 + 5).

Annex no. 9

PAGE 1/4 **APPLICANT'S IDENTIFICATION DATA**	**UPDATED INFORMATION REGARDING S.S.I.F.**

S.S.I.F. Name: ……

Unique registration code in the Register Commerce: ……

Headquarters: ……..…….

……

(street and number)

..... …… ……

(locality) (county) ..

(postal code)

Telephone number: Fax number: .....

……..

E-mail address: ……

Legal representative: …… ……

. ..

(name, surname and position) (telephone number)

Contact person: …… ……

. ..

(name, surname and position) (telephone number)

This application is accompanied by a copy of the attached documents and a number ..... documents, totalizing a number ..... file.

Signature of the legal representative: Contact person signature: …… …….

Date:

NOTE:

If the space in the form is not sufficient for detailing the answers, the additions will be made on a separate page with the signature of the legal representative.

PAGE 2/4 AUTHORISED ACTIVITIES	UPDATED INFORMATION REGARDING S.S.I.F.

Authorised services and activities

A. Investment services and activities:

1. Receiving and sending orders on one or more financial instruments □
2. Execution of orders on behalf of clients □
3. Own trades □
4. Portfolio management □
5. Investment advice □
6. Subscription of financial instruments and / or placement of financial instruments with firm commitment □
7. Placing of financial instruments without firm commitment □
8. Operation of an SMT □
9. Operation of a CMO □

B. Ancillary services:

1. Preservation and administration of financial instruments on behalf of clients, including custody and services ancillary services such as cash / guarantee management and excluding the provision and administration of securities accounts at the highest level □
2. Granting credits or loans to an investor to enable it to perform a transaction with one or more financial instruments, the credit granting firm is involved or loan □
3. Business consulting on capital structure, industrial strategy and related issues; advice and services in the field of mergers and acquisitions □
4. Foreign exchange services where such services are related to the provision of investment services □
5. Investment research and financial analysis or any other form of general recommendation on transactions in financial instruments □
6. Underwriting services □
7. Investment services and activities as well as ancillary services of the type referred to in this point or under A on the underlying assets of derivatives included in Section C points 5-7 and 10 of annex no. 1 to the Law no. 126/2018 on markets in financial instruments where they are linked to the provision of investment services or ancillary services □

First and last name of the legal representative: …… Signature of the legal representative: ……..…

Name and surname of the contact person: …… Contact person signature: ……..…

Date:

NOTE:

If the space in the form is not sufficient for detailing the answers, the additions will be made on a separate page with the signature of the legal representative.

PAGE 3/4	UPDATED INFORMATION REGARDING S.S.I.F.

9. MEMBERS OF MANAGEMENT BODY PERSONS FULFILLING THE COMPLIANCE FUNCTION. DELEGUATE AGENTS		
Name and surname	Function	Personal numerical code
First and last name of the legal representative:…… Signature of the legal representative: …….. Date:		

NOTE:
If one page is not enough, supplements will be made on a separate page, with the signature of the legal representative and the stamp of the company.

_____
_____

PAGE 4/4 DATA ABOUT THE SHAREHOLDERS OF THE COMPANY	**UPDATED INFORMATION REGARDING S.S.I.F.**

10. S.S.I.F. SHAREHOLDERS Physical/Juridical persons1

No.	SHAREHOLDERS2 Denomination / Name and surname	Residence state	Competent surveillance Authority3	Ownership		Unique registration code / Personal numerical code4
				No. of shares	Percentage of the capital stock	

First and last name of the legal representative: .....

Signature of the legal representative: .....

Date:

NOTE:

If a page is not sufficient, the additions will be made on a separate page, with the signature of the legal representative.

1 If the company has more than 20 shareholders, only the shareholders of the company holding at least 5% of the share capital shall be registered, the last line being filled in with "other shareholders natural and legal persons with holdings below 5%" and respectively the total holdings them.

2 The "Shareholders" column will be filled in starting with the shareholder structure of the requesting company. For each shareholder holding a qualifying holding in a legal entity, a new page will be added, specifying the structure of its shareholder's shareholding to the shareholder, including the natural person. It shall not be filled in for companies admitted to trading on a regulated market and those to which the State or a public administration authority is a shareholder or associate, specifying this situation.

3 Enter the name of the supervisory authority in the home country with the contact details (full address, telephone, fax, e-mail) for legal persons only.

4 For foreign physical and juridical persons, the serial number and passport number or the registration number of the similar institution to the Trade Register Office in the State of origin shall be completed as appropriate.

Annex no. 10

GUIDELINES on certain aspects of the MiFID requirements for the compliance function

I. Application domain

Who?

1. These Guidelines apply to investment firms (as defined in Art. 4 par. (1) (1) of MiFID, including credit institutions providing investment services, to UCITS management companies1) and competent authorities.

1) These Guidelines apply only to UCITS management companies when providing investment services for portfolio management or investment advice (within the meaning of Article 6 (3) (a) and (b) of the POCVM Directive).

What?

2. These Guidelines apply in relation to the provision of the services and investment activities listed in Section A and the ancillary services listed in Section B of Annex I to the MiFID.

When?

3. These Guidelines shall apply after 60 calendar days from the reporting requirement referred to in paragraph 10.

II. Definitions

4. Unless otherwise specified, the terms used in the MiFID and the MiFID Implementing Directive have the same meaning in these Guidelines. In addition, the following definitions apply:

Directive regarding the markets of financial instruments MiFID	Directive 2004/39 / EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611 / EEC and 93/6 / EEC and Directive 2000/12 / EC of the European Parliament and of the Council and repealing Council Directive 93/22 / EEC, as amended;
Directive for the implementation of MiFID	Commission Directive 2006/73 / EC of 10 August 2006 implementing Directive 2004/39 / EC of the European Parliament and of the Council as regards organizational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive;
The compliance function	Function within an investment firm responsible for identifying, evaluating, consulting, monitoring and reporting on the compliance risk of an investment firm;
Risk compliance	Risk that an investment firm will not comply with its obligations under MiFID and under its respective national law as well as the

applicable standards established by the European Securities and Markets Authority (ESMA) and the competent authorities in respect thereof provisions.

5. The guidelines do not reflect absolute obligations. For this reason, the word "should" is often used. However, when describing a MiFID requirement, "must" or "must have" is used.

III. Scope

6. The purpose of these Guidelines is to clarify the application of certain aspects of the MiFID requirements for the compliance function in order to ensure the common, uniform and consistent application of Art. 13 of the Markets in Financial Instruments Directive (MiFID), art. 6 of the MiFID Implementing Directive and associated provisions.

7. ESMA expects these guidelines to promote greater convergence in the interpretation and supervisory approaches of MiFID compliance requirements, highlighting a number of important issues and thus increasing the value of existing standards. By ensuring compliance of firms with regulatory standards, ESMA expects an appropriate improvement in investor protection.

IV. Compliance and reporting obligations

Status of guidelines

8. This document contains guidelines issued under art. 16 of the ESMA Regulation2. According to art. 16 par. (3) of the ESMA Regulation, competent authorities and financial market participants shall make every effort to comply with these guidelines. 2) Regulation (EU) No. No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing the European Supervisory Authority (European Securities and Markets Authority), amending Decision No. 716/2009 / EC and repealing Commission Decision 2009/77 / EC.

9. The competent authorities to which these guidelines apply should comply by including them in their supervisory practices, including where specific guidance is principally addressed to financial market participants. Reporting requirements

10. The competent authorities to which these Guidelines apply shall inform ESMA of whether it complies or intends to comply with the guidelines, giving reasons for any non-compliance. The competent authorities must notify ESMA within two months of the publication of the translations by ESMA at compliance.388@esma.europa.eu. In the absence of a reply sent within this deadline, the competent authorities shall be deemed not to comply with the guidelines. A model of notifications is available on the ESMA website.

11. Financial market participants are under no obligation to report whether or not they comply with these guidelines.

V. Guidelines on Certain Aspects of MiFID Requirements for Compliance Assurance

12. As part of its responsibility to ensure compliance by the investment firm with its obligations under the MiFID Directive, drivers must ensure that the compliance function fulfils the requirements of Art. 6 of the MiFID Implementing Directive.

13. The guidelines should be interpreted in conjunction with the principle of proportionality provided for in Art. 6 par. (1) of the MiFID Implementing Directive. The guidelines shall apply to investment firms, taking into account the nature, size and complexity of their activities, as well as the nature and range of services and investment activities provided / developed within their business.

VI. Guidelines on Conformity Assurance Responsibilities

Compliance Risk Assessment

Relevant legislation: article 6 paragraph (1) of the Directive for the implementation of MiFID

General guideline 1

14. Investment firms it should ensure that the compliance function follows a risk-based approach for an efficient allocation of function resources. A conformity risk assessment should be used to determine the purpose of the compliance and compliance function of the compliance function. The compliance risk assessment should be carried out periodically to ensure that the scope and scope of compliance monitoring and advisory activities remain valid.

Specific Guidelines

15. MiFID requires investment firms to establish, implement and maintain adequate policies and procedures designed to detect any risk of non-compliance by the investment firm with the obligations under MiFID. As part of this, the compliance function should identify the level of compliance risk faced by the investment firm, taking into account the investment services, ancillary activities and services provided by the investment firm and the types of financial instruments traded and distributed.

16. The compliance risk assessment should take into account the applicable MiFID obligations, national enforcement regulations and the policies, procedures, systems and controls implemented within the firm in the field of investment services and activities. The evaluation should also take into account the results of any monitoring activities and any relevant internal or external audit findings.

17. The objectives and work schedule of the compliance function should be developed and established on the basis of this conformity risk assessment. The identified risks should be reviewed periodically as well as ad hoc if it is necessary to ensure that any emerging risks are taken into account (e.g. resulting from new business areas or other changes in the structure of the investment firm).

Obligations to monitor compliance function

Relevant legislation: Art. 6 par. (2) letter (a) of the MiFID Implementing

General guideline 2

18. Investment firms should ensure that the compliance function establishes a monitoring program that takes into account all areas of the services and activities of the investments and any relevant ancillary services of the investment firm. The monitoring program should set out the priorities of the conformity risk assessment to ensure full compliance monitoring. Specific guidelines

Specific guidelines

19. The purpose of a monitoring program should be to assess whether the investment firm's business is carried out in accordance with its obligations under MiFID and whether its

internal guidelines or organizational and control measures maintain its effectiveness and adequacy.

20. Where an investment firm is part of a group, the responsibility for the compliance function lies with each investment firm within that group. An investment firm should therefore ensure that its compliance function remains responsible for monitoring its own risk of compliance. This includes when a company outsources compliance tasks to another company within the group. The compliance function within each investment firm should, however, take into account the group it is part of - for example, by working closely with audit, legal, regulatory and compliance staff in other parts of the group.

21. A risk-based approach to compliance should be the basis for establishing appropriate tools and methodologies used by the assurance function, as well as the scope of the monitoring program and the frequency of monitoring activities performed by the compliance function (which may be recurrent, ad-hoc and / or continuous). The compliance function should also ensure that its monitoring activities are not only office but also check how policies and procedures are put in place, for example through on-site inspections at the premises of the company. The compliance function should also take into account the purpose of the analyses to be carried out.

22. Appropriate tools and methodologies for monitoring activities that may be used by the assurance function include (but are not limited to):

a) the use of aggregated risk measures (e.g. risk indicators);

b) the use of reports that warrant management's attention, which document the significant deviations between actual facts and expectations (an exception report) or situations that need to be settled (a problem journal);

c) targeted transaction supervision, verifying compliance with procedures, examining files and / or interviewing relevant staff.

23. The monitoring program should reflect changes in the investment firm's risk profile, which may arise, for example, from important events such as company-level acquisitions, changes to the IT system, or reorganization. This should also extend to the implementation and effectiveness of any remedial measures taken by the investment firm in response to MiFID infringements.

24. The monitoring activities carried out by the compliance function should also take into account:

a) the obligation of the firm to comply with the regulatory requirements of the field of activity;
b) Level I controls in the fields of activity of the investment firm (e.g. controls of operational units as opposed to Level II compliance checks); and
c) Analyses performed by the risk management function, internal control function, internal audit function or other control functions in the field of investment services and activities.

25. The analyses carried out by other control functions should be coordinated with the monitoring activities carried out by the compliance function while respecting the independence and mandate of the various functions.

26. The compliance function should have the role of overseeing the functioning of the complaints process and should consider complaints as a source of relevant information in the context of its overall monitoring responsibilities. It does not require compliance functions

to play a role in determining the outcome of complaints. In this regard, investment firms should give access compliance to all customer complaints received by the firm.

Compliance reporting function reporting obligations

Relevant legislation art. 6 paragraph (3) letter (b) and art. 9 of the Directive for the implementation of MiFID

General guideline 3

27. Investment firms should ensure that written periodic reports of compliance assessment are submitted to managers. The reports should contain a description of the implementation and effectiveness of the overall control environment for investment services and activities and a summary of the risks identified and the remedial measures adopted or to be adopted. Reports must be drawn up at appropriate intervals and at least annually. If the compliance function makes important findings, the compliance officer should, in addition, report promptly to the drivers. The oversight function, if any, should also receive the reports.

Specific Guidelines

28. The written compliance assessment report addressed to managers should target all departments involved in the provision of services and investment and ancillary services. If the report does not cover all these activities of the investment firm, it should clearly indicate the reasons.

29. The following aspects should, if relevant, be dealt with in these written conformity assessment reports:

a) a description of the implementation and effectiveness of the overall control environment for investment services and activities;
b) a summary of the major findings of the policy and procedures assessment;
c) a summary of the on-the-spot inspections or desk reviews carried out by the compliance function, including the breaches and deficiencies found in the investment firm's organization and the compliance of the investment firm's compliance processes and the appropriate measures taken accordingly;
d) the risks identified in the scope of the compliance function's monitoring activities;
e) relevant changes and developments of regulatory requirements during the period covered by the report and the measures taken and to be adopted to ensure compliance with the amended requirements (when drivers have not previously been informed about them through other channels);
f) other important compliance issues that have occurred since the last report; and
g) important correspondence with the competent authorities (when drivers were not previously informed about it via other channels).

30. The compliance function should report appropriately to ad hoc leaders when significant compliance issues such as material breaches of MiFID and the requirements of the relevant national legislation have been identified. The report should also contain recommendations on the necessary remedial measures.

31. The compliance function should take into account the need for additional reporting lines to any group compliance assurance function.

32. ESMA notes that some competent authorities require investment firms to provide periodic or ad hoc reports of their compliance function. A competent authority also requires managers to provide it with an annotated version of the report that contains explanations of

the findings of the compliance function. These practices provide the competent authorities with a first-hand perspective on the activities of an investment firm for compliance, as well as any breaches of regulatory standards.

This description of the specific practices of the competent authorities aims to provide readers with additional information on the different approaches of the competent authorities, without laying down additional requirements for investment firms or competent authorities [thus causing compliance or justification under Art. 16 par. (3) of the ESMA Regulation]

Obligations of the compliance function to provide advice

Relevant legislation, article 6 paragraph (2) of the directive for the implementation of MiFID

General guideline 4

33. Investment firms should ensure that their compliance function fulfils their advisory responsibilities, including: providing support for staff training, providing daily assistance to staff and participating in new policies and procedures within the investment firm. Specific Guidelines

34. Investment firms should promote and strengthen a "business culture" across the enterprise. The purpose of compliance culture is not only to establish the general environment in which compliance aspects are dealt with, but also to inspire staff to improve the protection of investors.

35. The investment firm must ensure that its personnel are adequately trained. The compliance function should support the departments involved in the provision of investment services and activities (e.g. all staff directly or indirectly involved in the provision of investment services and activities) in the conduct of any training. Training and other types of support should focus, in particular, but not exclusively, on:

a) the internal policies and procedures of the investment firm and its organizational structure in the field of investment services and activities; and
b) MiFID, relevant national legislation, applicable standards and guidelines established by ESMA and competent authorities, and other relevant supervisory and regulatory requirements, as well as any changes thereto.

36. Training should be conducted on a regular basis and needs-based training should be carried out when necessary. Training should be provided, as appropriate, for example to all staff of the investment firm as a whole, to specific departments or to a particular person.

37. Training should be developed on an ongoing basis to take into account all relevant changes (e.g. new legislation, standards or guidelines issued by ESMA and competent authorities, and changes to the business model of the investment firm).

38. The compliance function should periodically assess the extent to which investment services staff and investment personnel have the necessary level of awareness and correctly apply the investment firm's policies and procedures.

39. Conformance staff should also assist departmental staff in their day-to-day work and be available to answer the questions arising from day-to-day business.

40. Investment firms should ensure that the compliance function is involved in developing the relevant policies and procedures within the investment firm in the field of investment services and auxiliary services. In this context, the compliance function should have the ability, for example, to provide expertise and advice for departments to comply with

all strategic decisions or new business models or to launch a new advertising strategy in the field services and investment activities. If the recommendation of the compliance function is not complied with, the compliance function should document the situation accordingly and report it in its conformity assessment reports.

41. Investment firms should ensure that the compliance function is involved in developing the relevant policies and procedures within the investment firm in the field of investment services and auxiliary services. This includes decision-making when new industries or new financial products are approved. In this context, the compliance function should be given the right to participate in the process of approving the financial instruments to be taken over in the distribution process. Leaders should therefore encourage departments to consult their compliance function with regard to their operations.

42. Investment firms should ensure that the compliance function is involved in all significant non-performing correspondence with the competent authorities in the field of investment services and activities.

VII. Guidelines on the organizational requirements of the compliance function

The effectiveness of the compliance function

Relevant legislation: art. 6 paragraph (3) letter (a) and art. 5 paragraph (1) letter (d) of the Directive for the implementation of MiFID

General guideline 5

43. When securing the allocation of adequate human and other resources to the compliance function, investment firms should consider the size and types of investment and ancillary services and services provided by the investment firm. They should also provide staff responsible for ensuring compliance with the necessary authority to perform their duties effectively, as well as access to all relevant information on investment services and activities as well as ancillary services provided.

44. The compliance officer should have sufficient knowledge and experience and a sufficiently high level of competence to assume responsibility for the overall compliance function and ensure its effectiveness.

Specific Guidelines

45. The number of staff required for the tasks of the compliance function depends to a large extent on the nature of the investment and ancillary services and activities as well as on the nature of other services provided by the investment firm. If the activities of an investment firm are very extensive, the investment firm should ensure that the compliance function is as extensive as is necessary in view of changes to the firm's compliance risk. Leaders should periodically monitor whether the number of staff still corresponds to the fulfilment of the duties of the compliance function.

46. In addition to human resources, sufficient IT resources should be allocated to the compliance function.

47. Where an investment firm sets up budgets for functions or departments, the compliance function should be allocated a budget in line with the level of compliance risk the firm is exposed to. The compliance officer should be consulted before establishing the budget. All decisions on significant budget cuts should be documented in writing and should contain detailed explanations.

48. To ensure that staff responsible for ensuring compliance with information relevant to the performance of their tasks at all times are available, investment firms should be able

to access all relevant databases. In order to have an overall view of the fields of the investment firm where sensitive or relevant information might arise, the compliance officer should have access to all relevant information systems within the investment firm, as well as any internal or external audit reports or other reports to the directors or supervisory function, if any. Where appropriate, the compliance officer should also be able to participate in the meetings of the directors or the supervisory function. If this right is not granted, the situation should be documented and explained in writing. The compliance officer should have in-depth knowledge of the organization of the investment firm, corporate culture and decision-making processes in order to be able to identify the meetings to which it is important to participate.

49. In order to ensure that compliance officers have the necessary authority to carry out their tasks, the managers of the investment firm should assist the personnel in the performance of those tasks. The Authority requires a proper experience and relevant personal skills, and can be strengthened by explicitly recognizing the specific authority of the staff responsible for ensuring compliance through the compliance policy.

50. All members of staff responsible for ensuring compliance should have at least MiFID and the relevant national legislation and all applicable standards and guidelines issued by ESMA and the competent authorities regarding such provisions to the extent that they are relevant for the performance of their tasks. The compliance officer should be regularly trained to maintain the level of knowledge. A higher level of experience is required for the designated compliance officer.

51. The compliance officer should provide evidence of sufficient professional experience necessary to assess the compliance risks and conflicts of interest inherent in the business of the investment firm. The necessary professional experience can be acquired, inter alia, in operational functions, other control functions or regulatory functions.

52. The compliance officer should have specific knowledge of the various activities provided by the investment firm. Relevant experience may vary from one investment firm to another because the nature of the main compliance risks faced by firms will differ. Regarding art. 5 par. (1) letter (d) of the MiFID Implementing Directive, a recently employed person in charge of the compliance function may therefore need additional specialized knowledge based on the specific business model of the investment firm, even if the person was previously responsible for the compliance function within another investment firm.

The effectiveness of the compliance function

Relevant legislation art. 6 paragraph (2) letter (a) of the Directive for the implementation of MiFID

General guideline 6

53. MiFID requires investment firms to ensure that the compliance function fulfils its tasks and responsibilities at all times. Investment firms should therefore establish appropriate measures to ensure that the responsibilities of the compliance officer are met in the absence thereof and appropriate measures to ensure that the responsibilities of the compliance function are met in a continuous manner. These measures should be in writing.

Specific Guidelines

54. An investment firm should ensure, for example, through internal procedures and temporary measures, that the responsibilities of the compliance function are adequately met during the absence of the compliance officer.

55. The responsibilities and competences as well as the compliance officer's authority should be set out in a "compliance policy" or other general policies or internal rules that take into account the scope and nature of the firm's investment services and activities investment. This should include information on the monitoring program and the reporting obligations of the compliance function as well as information on the risk-based approach of the compliance function with respect to monitoring activities. Relevant changes to the regulatory provisions should be reflected immediately by adapting these policies / rules.

56. The compliance function should carry out its activities permanently and not only in special situations. This requires regular monitoring based on a monitoring program. Monitoring activities should cover on a regular basis all key areas of investment services and activities, taking into account the compliance risk associated with their fields of activity. The compliance function should be able to respond quickly to unforeseen events, thus changing the focus of its activities within a short timeframe, if necessary.

Independence of the compliance function

Relevant legislation, article 6 paragraph (3) of the directive for the implementation of MiFID

General guideline 7

57. Investment firms should ensure that the compliance function holds a position in the organizational structure that ensures that the compliance officer and other compliance officers act independently when performing their tasks. The compliance officer should be appointed and replaced by the supervisor or supervisor.

Specific Guidelines

58. While managers are responsible for establishing an appropriate compliance organization and monitoring the effectiveness of the implemented organization, the tasks performed by the compliance function should be carried out independently by the managers and other departments of the investment firm. In particular, the organization of the investment firm should ensure that other departments cannot issue instructions or otherwise influence the staff responsible for ensuring compliance and its activities.

59. If managers deviate from important recommendations or assessments issued by the compliance function, the compliance officer should document the situation accordingly and report it to the compliance reports.

Exemptions

Relevant legislation, article 6 paragraph (3) of the directive for the implementation of MiFID

General guideline 8

60. Where an investment firm considers that it is not proportionate to comply with the requirements set out in Art. 6 par. (3) letter (c) or (d) of the MiFID Implementing Directive, it should assess whether the effectiveness of the compliance function is compromised by the proposed measures. This assessment should be periodically revised.

Specific Guidelines

61. Investment firms should decide on the most appropriate measures, including organizational measures and the level of resources, to ensure the effectiveness of the compliance function in the company's specific situation. In making this decision, investment firms should consider (among other things) the following criteria:

a) the types of investment services and activities and ancillary services as well as other commercial activities provided by the investment firm (including those that are not related to investment services and activities and ancillary services);
b) the interaction between investment services and activities and ancillary services and other commercial activities carried out by the investment firm;
c) the scope and volume of services and investment and ancillary services carried out (absolute and relative values relative to other commercial activities), the balance sheet total and commission income from fees and other income, in the context of the provision of services and investment and ancillary services;
d) types of financial instruments offered to clients;
e) types of clients targeted by the investment firm (professional, retail, eligible counterparties);
f) number of employees;
g) if the investment firm is part of an economic group within the meaning of art. 1 of the Seventh Council Directive of 13 June 1983 on consolidated accounts (Directive 83/349 / EC);
h) services provided through a commercial network, such as delegated agents or branches;
i) cross-border activities provided by the investment firm;
j) organization and complexity of IT systems.

62. The competent authorities may also consider these criteria as useful and to determine the types of investment firms that can benefit from the exemption under the proportionality principle, in accordance with Art. 6 paragraph (3) of the MiFID Implementing Directive.

63. An investment firm may, for example, be eligible for exemption on the basis of the principle of proportionality where the fulfilment of the required compliance tasks does not require a full-time function, taking into account the nature, size and complexity business activity, as well as the nature and range of services and investment activities and ancillary services provided.

64. Although the compliance officer should always be appointed for a smaller investment firm with a very limited scope, it may be disproportionate to appoint a separate person responsible for the compliance function (e.g. a person responsible for the compliance function) do not perform any other function). Where an investment firm makes use of the exemption on the basis of the principle of proportionality, conflicts of interest between the tasks carried out by the persons concerned should be reduced as much as possible.

65. An investment firm that is not required to meet all the requirements set out in Art. 6 paragraph (3) of the MiFID Implementing Directive, on the basis of the proportionality principle, may combine the legal function and the compliance function. However, an investment firm with more complex or larger business activities should generally avoid such a combination if it could undermine the independence of the compliance function.

66. Where an investment firm makes use of the exemption on the basis of the principle of proportionality, it should record the justification so that the competent authority can assess it.

Combining the function of assurance of compliance with other internal control functions

Relevant legislation, article 6 paragraph (3) of the directive for the implementation of MiFID

General guideline 9

67. In general, an investment firm should not combine the function of ensuring compliance with the internal audit function. The combination of the assurance of conformity with other control functions may be accepted if this does not compromise the effectiveness and independence of the compliance function. Any combination should be documented with the motivation of the combination so that the competent authorities can assess the appropriateness of the combination of functions in those cases.

Specific Guidelines

68. Conduct staff should generally not be involved in the activities they monitor. However, a combination of the conformity assurance function with other control functions at the same level (such as money laundering prevention) may be accepted if it does not generate conflicts of interest or compromise the effectiveness of the assurance function compliance.

69. The combination of the assurance function with the internal audit function should generally be avoided since this would undermine the independence of the compliance function as the internal audit function is responsible for supervising the compliance function. However, for practical reasons (for example, decision-making) and in certain situations (e.g. in companies with only two employees), it may be more appropriate to have a person in charge of both positions. To this end, companies should consider discussing the combination with the competent oversight authority. In addition, in the event of such a combination, the firm must, of course, ensure that the responsibilities of each function are properly fulfilled (e.g. fair, honest and professional).

70. The fact that the staff of other control functions also carry out compliance tasks should also be a relevant consideration in determining the appropriate number of staff members for the compliance function.

71. Whether or not the compliance function is combined with other control functions, the compliance function should coordinate its activities with the level II control activities carried out by other departments.

Outsourcing the compliance function

Relevant legislation: art. 6 and14 of the directive for the implementation of MiFID

General guideline 10

72. Investment firms should ensure that all applicable requirements for the compliance function are met if the compliance function is fully or partially outsourced.

Specific Guidelines

73. MiFID requirements for the outsourcing of critical or important functions are fully applicable to the outsourcing of the compliance function.

74. The requirements for the compliance function are the same regardless of whether the compliance function is outsourced in whole or in part; the responsibility for meeting the existing requirements lies with the company's managers.

75. The investment firm should carry out a thorough assessment before choosing a service provider to ensure that the criteria set out in Art. 6 and 14 of the MiFID Implementing Directive. The investment firm should ensure that the service provider has the necessary authority, resources and experience and access to all relevant information for the efficient

execution of the outsourced tasks of the compliance function. The level of thorough evaluation depends on the nature, scale, complexity and risk of outsourced tasks and processes.

76. Investment firms should also ensure that the compliance function maintains its permanence when outsourced in part or in full, for example the service provider should be able to perform its function on a continuous basis and not only in specific situations.

77. Investment firms should monitor whether the service provider performs its tasks properly, including monitoring the quality and quantity of the services provided. Leaders are permanently responsible for overseeing and monitoring the outsourced function and should have the resources and expertise to fulfil this responsibility. Leaders can appoint a person to supervise and monitor the outsourced function on their behalf.

78. Outsourcing the compliance function within a group does not lead to a decrease in the level of responsibility of the managers of each of the investment firms within the group. However, a centralized compliance function group may in some cases provide better access to information for the compliance officer, leading to an increase in the efficiency of the function, in particular where entities share the same headquarters.

79. Where an investment firm is unable, due to the nature, size and scope of its business activities, to employ staff responsible for ensuring compliance independently of the provision of the services it monitors, then the outsourcing of the insurance function compliance can be an appropriate approach.

VIII. Assessment of the Competent Authority

Competent Authority Assessment of Compliance by Competent Authorities

Relevant Legislation: art. 7 and17 of MiFID

General guideline 11

80. Competent authorities should assess how investment firms intend to meet, implement and maintain the MiFID requirements for the compliance function. This should apply in the authorization process as well as, following a risk-based approach, in the course of continuous surveillance.

Specific Guidelines

81. Art. 7of the MiFID provides that the competent authorities shall not issue any authorization to an investment firm until it is fully satisfied that the applicant complies with all the requirements set out in the legal provisions adopted under MiFID. As a consequence, the competent authority should assess whether a company's compliance function has sufficient resources and is properly organized and the appropriate reporting lines have been established. It should request that any necessary changes to the compliance function be made as a condition for authorization.

82. In addition, as part of the ongoing oversight process, a competent authority should assess - based on a risk-based approach - whether the measures put in place by the investment firm for the compliance function are adequate and if the compliance function satisfactorily fulfils its responsibilities. Investment firms have the responsibility to determine the need to modify the resources and organize the compliance function as a result of changing the business model of the investment firm. Competent authorities should also assess and monitor, where necessary, in the framework of continuous oversight and following a risk-based approach, the extent to which such changes are necessary and have been implemented. The competent authority should provide the company with a reasonable

period for the operation of the changes. However, changes in investment firms are not necessarily subject to the approval of the competent authorities.

83. Some competent authorities shall authorize or approve the compliance officer designated after the assessment of his / her qualifications. This assessment may include an analysis of the CV of the compliance officer, as well as an interview with the designated person. This type of authorization process can help strengthen the position of the compliance function within the investment firm and in relation to third parties.

84. Other regulatory approaches require that only the managers of the investment firm be responsible for assessing the qualifications of the compliance officer. Leaders assess the competency capabilities of the compliance function prior to the appointment. The compliance of the investment firm with this requirement is further analysed in the general assessment of the firm's compliance with the relevant MiFID requirements.

85. Some Member States require investment firms to inform the competent authorities of the appointment and replacement of the compliance officer. In some jurisdictions, the notification must also be accompanied by a detailed statement of the reasons for the replacement. This can help competent authorities to gain insight into possible tensions between the compliance officer and the managers, which could indicate the independence of the compliance function. 86. The above practices could also be useful to other competent authorities4.

86. The above practices could also be useful to other competent authorities4.

4 This description of the specific practices of the competent authorities aims to provide readers with additional information on the different approaches of the competent authorities, without laying down additional requirements for investment firms or competent authorities (thus causing compliance or justification under Art.16 paragraph (3) of the ESMA Regulation].

Annex no. 11

ESMA Guidelines on Cross-selling Practices

1. Application domain

1. The purpose of this guide is to establish a consistent and effective approach to company supervision by competent authorities to help improve the level of investor protection in the Member States. Therefore, the guide will help to clarify the expectations of standards of conduct and organizational measures for companies involved in cross selling, in order to reduce the associated adverse effects on investors.

2. Scope

2. The guide applies to cross-selling practices within the meaning of Article 4 (1) (42) of MiFID II. In particular, the guide applies to providing an investment service with another service or product as part of a package or to condition an agreement or package.

3. In view of the above definition, ESMA would like to recall that each of the products or services that are the subject of cross-selling by a particular firm or the package resulting from cross selling practices may be subject to other standards of conduct in businesses (as set out in other EU sectorial legislation than MiFID II). None of the provisions of this Guide affects the obligation of companies to comply with such applicable requirements.

4. The guide applies to linked and grouped packages, unless prohibited under any applicable law for the products or services included in the package.

3. Addressees

5. The Guidelines are addressed to the authorities responsible for supervising companies subject to the following directives:

a. The Markets in Financial Instruments Directive (recast) (Directive 2014/65 / EU MiFID II);
b. Directive on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (Directive 2009/65 / EC - OPCVM Directive);
c. Alternative Investment Fund Managers Directive (Directive 2011/61 / EU - AIFMD).

4. Conformity, reporting obligations and date of application

Status of Guidance

6. This guidance document is developed under Article 16 of the ESMA Regulation. Pursuant to paragraph 3 of this article, the competent authorities must make every effort to comply with the guidelines. The competent authorities to which the Guidelines apply must comply by incorporating them into their supervisory practices, as appropriate (for example, by modifying their regulatory framework or through their own supervisory processes).

7. In accordance with Article 24 (11) of MiFID II, ESMA has cooperated with EBA and EIOPA in the development of this guidance.

8. This Guideline shall apply from 3 January 2018.

Reporting requirements

9. Within two months of the publication of the versions translated by ESMA, the competent authorities to which this Guideline is addressed shall notify ESMA of whether it complies or intends to comply guide, stating reasons for non-compliance, at addressacross-selling1861@esma.europa.eu. In the absence of a reply sent within this deadline, the competent authorities will be deemed not to comply with the guidelines. A notification model is available on the ESMA website.

10. Where appropriate, the guidelines in the following paragraphs will be followed by one or more examples. The examples detail how companies could put each practice into practice (implemented by the competent authorities). However, a firm may choose to implement this guide in other ways.

5. Definitions

11. Unless otherwise stated, the terms used in MiFID II have the same meaning in this Guide. In addition, for the purposes of this Guide, the following definitions apply:

Companies — The following financial market participants:

a) investment firms (as defined in Article 4 (1) (1) MiFID;
b) credit institutions (as defined in Article 4 (1) (1) of Regulation (EU) 575/2013] when performing services and investment activities within the meaning of Article 4 (1) (2) of MiFID II;
c) management companies (as defined in Article 2 (1) (b) of Directive 2009/65 / EC) when providing services pursuant to Article 6 (3) of Directive 2009/65 / EC; and
d) external AIFM (as defined in Article 5 (1) (a) of Directive 2011/61 / EU) when providing services under Article 6 (4) of Directive 2011/61 / EU.

Grouped package — A package of products and / or services where each of the products or services offered is separately available and the customer has the option of choosing to purchase each component of the package separately from the firm.

Bundled package — A package of products and / or services where at least one of the products or services offered in the package is not separately available for the customer from the firm.

Component — The separate product and / or service that is part of the bundled or tied package.

6 Guideline on cross-selling practices

Full disclosure of price and cost information

Guideline 1

12. The competent companies supervising companies that distribute a tying or grouped bundle must require firms to ensure that customers are provided with information on the price of the package and the its components.

13. The competent supervisory authorities of firms that distribute a tied or grouped package must require firms to ensure that customers are provided with a breakdown and a clear aggregation of all known costs associated with the purchase of the package and its components such as administration fees, transaction costs and withdrawal or early repayment penalties. Where costs cannot be accurately calculated in advance, however, they will be borne by customers after the purchase of a package, the competent authority must require the firm to provide an estimate of these costs based on reasonable assumptions.

Example: When cross-selling an interest-rate swap, along with a floating rate credit, to allow a client to cover its interest rate risk (e.g., the client changes its variable interest payment for a flat-rate payment of the company provides the client with key information on all aspects of the swap contract that will significantly affect the cost ultimately borne by the customer such as any payment obligations of the client when the interest rate and the withdrawal fees from the swap contract change.

Visible display and timely communication of price and cost information.

Guideline 2

14. The competent companies supervising companies that distribute a tied or grouped bundle must require firms to ensure that price and all relevant cost information on the package as well as all its components are made available in good time before the client signs the agreement, so that he can make an informed decision.

Guideline 3

15. The competent supervisory authorities of firms that distribute a tied or grouped package must require firms to ensure that the price and cost information of the package and its components are communicated visibly, accurately and in an accessible language (explaining any terms techniques).

16. The competent supervisory authorities of the firms that distribute a tying or grouped bundle must require firms to ensure that, when promoting any of the components constituting a bundled or linked bundle, the price and cost information of these components are equally visible, so that a customer can properly and quickly determine what costs he / she will incur as a result of purchasing components within the package.

Examples:

1) In any marketing communications used by the firm, the font used to communicate the relevant price and cost information of each component to be sold within the package is identical. The relevant information on one of the components is not highlighted by using larger or thicker fonts.
2) When the sale is made on the Internet or through another channel, without the direct involvement of a seller, the price and cost information of both products that form the package appear at the beginning of the corresponding web pages and can be easily found by customers, and namely the price and cost information of any product that will be part of the bundled package is not located or "hidden" at the bottom of the company's online sales form.

Guideline 4

17. The competent companies supervising firms that distribute a tied or grouped bundle must require firms to ensure that price and cost information is presented to customers in a manner that is not misleading and does not distort or hide the real cost for the customer, or which does not hinder significant comparisons with alternative products.

Complete disclosure of key information on non-price characteristics and risks, as appropriate.

Guideline 5

18. The competent companies supervising companies that distribute a tied or grouped bundle must require firms to ensure that key information on non-pricing characteristics and risks, as appropriate, is provided to customers for each component and bundled, including, in particular, risk modulation information as a result of the acquisition of the bundled package instead of the purchase of each separate component.

Example: A firm offers a preferential rate savings account only when the product is purchased together with a structured bond. In this case, the risk level of the entire bundle is different from the risks associated with the savings account independently: the initial capital is guaranteed from a savings account and the only variable is the interest paid. However, the initial capital invested in a structured investment product may not be guaranteed, so it may be partially or fully lost. In this example, the risk profiles of the components are clearly very different, and when combined, the level of risk associated with

the structured product component could invalidate the safety of the savings product component to such an extent that the overall risk profile of the package increases significantly. The firm clearly informs the client about the change in risk due to the acquisition of the bundled package instead of each of the separate components.
Visible display and timely communication of key information on non-pricing characteristics and risks, as appropriate.
Guideline 6
19. The competent firms supervising firms that distribute a tied or grouped bundle must require firms to ensure that key price-related and relevant risk factors are promoted to customers with a similar visibility and scale to price and price information the costs of the components or the packed / bundled package, and this information must be communicated to customers in clear language (with explanation of possible technical terms) in good time before the customer agrees to the agreement.
20. The competent authorities for overseeing firms that distribute a tied or grouped bundle must require firms to ensure that information on the characteristics and risks of the non-price package is presented to customers in a non-misleading or non-distortive manner the impact of these factors on the client.
Examples:

1) The company draws customer's attention to the limitations and risks (if any) of the tied or bundled package and components and assists the customer with the relevant information that establishes the main benefits, limitations and risks (if any) of the package and components. The seller duly and timely explains (before signing the contract by the customer) how these factors are unrelated to the price, depending on (i) the purchase of components and (ii) the selected component. The company draws the attention of the client to the package on the benefits, limitations and overall risks (if any) of the package.
2) The company will not rely solely on a general reference to its terms and conditions to attract customers' attention to non-price key information or to disclose such information. On the contrary, the firm has to explain to the client in clear language the risks (if any) and non-price information.

Visible display and communication of "option to purchase".
Guideline 7
21. The competent companies supervising companies that distribute bundled or bundled packages must require firms to ensure that customers are properly informed of the possibility to purchase the components separately or whether they have a free choice of products or, to the extent permitted by sectorial legislation, whether one of the components must be purchased in such a way that the customer is eligible to purchase one of the other products from the firm.
22. The competent authorities for the supervision of companies that distribute clustered packets must require firms to ensure that they design their procurement options in a way that allows customers to actively select a purchase and therefore make a conscious decision purchase the component or bundled package. Competent authorities should therefore require firms to ensure that they do not use pre-ticked boxes (online or any other sales document) when they sell products or services cross-country.
23. The competent companies supervising companies that distribute bundled packages must require firms to ensure that they present their purchasing options in such a way as to

avoid creating a false impression that the acquisition of the bundled package is mandatory when the acquisition is optional.

Examples:

1) A firm offers a range of investment products. The company makes clear the customer's options. For example, it is clear the customer's option to purchase an exclusive execution service, with no additional products such as market data and financial analysis. Similarly, it is clear whether the customer's freedom of choice is limited to certain groupings of components or whether he has the choice of the ones he can combine.
2) On the company's online sales page, the option to purchase a bundled package containing the exclusive execution service and market research is left blank. The customer must opt for an acquisition by affirming a simple question about his willingness to purchase the additional product (in this case market research) (and hence the bundled package) in addition to the "basic" product.

Appropriate training of competent staff.

Guideline 8

24. The competent authorities supervising firms that distribute bundled or grouped packages must require firms to ensure that staff responsible for distributing each of the products sold in a package receive the appropriate training, including cross-sector training, as appropriate. Training staff should ensure that they are familiar with the risks associated with clustered or typed components and packages, as appropriate, and the ability of staff to communicate these issues to their clients in clear language (without technical terms).

Conflicts of interest in the remuneration structures of sales staff.

Guideline 9

25. Competent authorities supervising firms that distribute bundled or grouped bundles must require firms to ensure that appropriate remuneration models and sales incentives are in place, encouraging responsible professional conduct, equal treatment of customers, and avoiding conflicts of interest for staff who sell linked or clustered packets and that they are monitored by senior management.

Examples:

1) The company does not implement performance-based remuneration policies, practices and competitions that encourage sales staff that could be remunerated on a commission basis to "force" the sale of the bundled package and which could therefore encourage, unnecessary / inappropriate sale of a component of the package or package itself. For example, if sales staff stimulated to sell a loan together with a brokerage account as a result of this remuneration structure, there would be a risk of potentially improper sales of the loan and thus of the package.
2) The firm avoids remuneration policies and practices that substantially reduce the basic salary of sales staff if a certain sales target is not achieved in relation to the bundled / traded package, thus reducing the risk that the seller will make inappropriate sales of the package grouped in order to avoid this result.
3) The company avoids reducing the bonuses or incentives earned by sales staff as a result of not setting a goal or sales threshold for the grouped package.

Cancellation rights after sale.

Guideline 10

26. The competent companies supervising companies that distribute linked or clustered packets must require firms to ensure that when one or more components of a package (if these components are sold individually) apply "waiting times "Or post-sale cancellation rights, these rights continue to apply to the components within the package.
27. The competent authorities overseeing firms that distribute bundled or bundled packages must require firms to ensure that customers are subsequently allowed to divide the bundled products into a cross-selling offer without disproportionate penalties, unless there are justified reasons for which this is not possible.
Examples of harmful cross-selling practices
28. The examples below show, in accordance with Article 24 (11) of MiFID II, a non-exhaustive list of situations in which cross-selling practices do not meet the obligations laid down in Article 24 (1)) of MiFID II.
Examples of monetised situations
Example 1
Offering in a package two products where the price of this offer is higher than the price of each component separately provided by the same firm (as long as the products have exactly the same characteristics in both cases).
Example 2
Calling a customer to purchase a cross-selling offer by announcing / promoting that at the time of sale, the total amount of costs and fees the customer will pay is less than the cumulative price of each component sold separately, although in reality, this value of costs and fees is already scheduled to be increased over time, for example due to the accumulation of costs / operating charges.
Example 3
Non-reversal of a portion of the proportionate share of the premium paid in advance for a part of the package after the termination of an investment service sold with it when the insurance product does not remain in effect.
Example of Mobility Harmful Example
Example 4
Imposition of non-proportional termination fees for an ancillary insurance product if a customer wishes to replace the coverage offered by an alternative supplier or the threat of termination of the contractual relationship in respect of one other product included in the package.
Example of buying unwanted or unnecessary products
Example 5
Offering a product grouped with another product that was not requested by the customer when the company knows or needs to know that the product unnecessarily duplicates another product that the customer already has and which cannot benefit (including because the client is not eligible).

Annex no. 12

ESMA Guidelines on Debt Securities and Complex Structured Deposits

I. Application domain

To whom does it apply?

1. This guideline applies to:
    a. Competent authorities and
    b. Firms.

What does it apply?

2. This Guideline applies in relation to Article 25 (4) of Directive 2014/65 / EU (MiFID II).

When it applies?

3. This Guideline shall apply from 3 January 2017

II. References, abbreviations and definitions

Legislative references	
DAFIA	Directive 2011/61 / EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41 / EC and 2009/65 / EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010.
ESMA Regulation	(EU) No. Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing the European Supervisory Authority (European Securities and Markets Authority), amending Decision No. 716/2009 / EC and repealing Commission Decision 2009/77 / EC.
MiFID	Directive 2004/39 / EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611 / EEC and 93/6 / EEC and Directive 2000/12 / EC of the European Parliament and of the Council and the Council and repealing Council Directive 93/22 / EEC.
MiFID II	Directive 2014/65 / EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92 / EC and Directive 2011/61 / EU (recast).

Abbreviations

AIFM Alternative Investment Fund Manager
AC Competent Authority
DC Consultation Document
EC European Commission
EU European Union
ESMA European Securities and Markets Authority
MiFID Financial Instruments Markets Directive

Definitions

4. Unless otherwise stated, the terms used in MiFID have the same meaning in this guide. In addition, the following definitions apply:

Firms	investment firms (defined in accordance with Article 4 (1) para. (1) of MiFID II), credit institutions (defined in accordance with Article 4 (1) para. (27) MiFID II) when providing investment services and external AIFM when providing ancillary services (in accordance with Article 6 (4) (a) and (b) of DAFIA)
Debt securities	bonds, other securitized debt securities and money market instruments.

III. Object

5. The purpose of this guide is to define the criteria for the assessment of (i) debt securities incorporating a structure that makes it difficult for the client to understand the risks involved and (ii) structured deposits incorporating a structure that makes it difficult for the client to understand the risk related to the cost-effectiveness of the renunciation of the product before maturity.

6. This guide also clarifies the concept of “embedded derivatives” in order to provide a general framework for the application of MiFID II Article 25 (4) in relation to debt securities.

7. ESMA expects this guide to increase investor protection and promote greater convergence in the classification of financial instruments in “complex” or “not complex” instruments or structured deposits in the sense of the suitability / sole execution test in accordance with Article 25 (3) and (4) of MiFID II.

IV. Compliance and reporting obligations

Status of the guide

8. This document includes guidelines issued under Article 16 of the ESMA Regulation. In accordance with Article 16 (3) of the ESMA Regulation, competent authorities and financial market participants must make every effort to comply with the guidelines.

9. The competent authorities to which the Guidelines apply, must observe them by introducing them into their supervisory practices, including where certain guidelines in a document are principally addressed to financial market participants.

Reporting requirements

10. Within two months of the date of publication by ESMA, the competent authorities to whom this guide is addressed must notify ESMA of whether it complies or intends to comply with the guide, stating reasons for non-compliance, at complexproducts1787@esma.europa.eu. In the absence of an answer by this deadline, the competent authorities will be deemed not to comply. A model for notifications is available on the ESMA website.

11. Firms to which this guide applies are not required to report whether they comply with these guidelines.

V. The Guide

V.I Debt securities incorporating a derivative

12. Within the meaning of points (ii) and (iii) of Article 25 (4) (a) of MiFID II, an embedded derivative should be interpreted as a component of a debt instrument that causes partial or

total change, depending on one or more defined variables, of the cash flows that would otherwise arise from the instrument.

V.II Debt securities that incorporate a structure that makes it difficult for the client to understand the risks involved

13. Within the meaning of points (ii) and (iii) of Article 25 (4) (a) of MiFID, debt securities incorporating a structure that makes it difficult for the client to understand the risks involved should include, any of the following:

a) Debt securities the profitability of which depends on the performance of a certain asset portfolio. This category includes debt securities the profitability or performance of which depends on fixed or fluctuating receivables generated by assets in the relevant portfolio.

b) Debt securities the profitability of which is subordinated to the repayment of debt held by others. This category includes debt securities structured so that, in the event of a default by the issuer, priority holders have priority access to the issuer's assets vis-à-vis its subordinated holders.

c) Debt securities for which the issuer is free to change the cash flows of the instrument. This category includes debt securities structured so that the anticipated revenue flows or early repayment of the principal amount depends on variables established by the issuer at its will.

d) Debt securities for which a redemption date or a maturity date has not been specified. This category includes debt securities structured so that there is no established maturity and therefore there is usually no repayment of the principal invested.

e) Debt securities with unusual or unknown support. This category includes structured debt securities so that expected revenue flows or early repayment ofthe principal amount depends on variables that are unusual or unknown by the ordinary retail investor.

f) Debt securities with complex mechanisms for establishing or calculating profitability. This category includes structured debt securities so that expected revenue flows can fluctuate frequently and / or clearly at different times during the instrument either because certain pre-established threshold conditions are met or due to certain deadlines.

g) The debt securities structured so that they can not ensure full reimbursement of the principal amount. This category includes debt securities that have a structure or are subject to a mechanism that, under certain circumstances, causes partial (or zero) reimbursement of the principal amount.

h) Debt securities issued by a special investment vehicle (SIV) in circumstances where the name of the debt instrument or the legal name of the VIS may mislead investors as to the identity of the issuer or guarantor.

i) Debt securities with comprehensive guarantee mechanisms. This category includes debt securities guaranteed by a third party and structured so that it becomes complicated for an investor to accurately assess how the guarantee mechanism affects the risk exposure of the investment.

j) Debt securities with particularities related to leverage. This category includes debt securities structured so that profitability or losses to the investor can reach multiplied values of the initial investment.

V.III Structured deposits that incorporate a structure that makes it difficult for the client to understand the risks of profitability

14. Within the meaning of point (v) of Article 25 (4) (a) of MiFID II, a structure that makes it difficult for the client to understand the risks related to profitability exists when:

a) more than one variable affects the insured profitability; or

b) the relationship between profitability and the variable in question or the mechanism for establishing or calculating the profitability is complex; or

c) the variable involved in the calculation of profitability is unusual or unknown by the ordinary retail investor; or
d) the agreement grants the credit institution the unilateral right to terminate the agreement before maturity.
V.IV Structured deposits incorporating a structure that makes it difficult for the client to understand the cost of giving up the product before maturity
15. Within the meaning of point (v) of Article 25 (4) (a) of MiFID II, a structure that makes it difficult for the client to understand the cost of foregoing the withdrawal of the product exists if the cost of the waiver:
a) is not a fixed amount;
b) is not a fixed amount for each month (or part of a month) remaining until the end of the agreed term;
c) is not a fixed percentage of the amount deposited.

V.V Examples
16. The table in paragraph VI includes an incomplete list of examples of debt securities incorporating a derivative or a structure that makes it difficult for the client to understand the risks involved as well as complex structured deposits within the meaning of Article 25 (4) (a) paragraphs (ii), (iii) and (v) of MiFID II.

VI. Table - Incomplete list of examples
Incomplete list of examples of debt securities incorporating a derivative or a structure that makes it difficult for the client to understand the risks involved and complex structured deposits within the meaning of Article 25 (4) (a) (ii), (iii) and (v) of MiFID II1

CATEGORY OF INSTRUMENTS	(INCOMPLETE) LIST OF EXAMPLES
DEBT SECURITIES INCORPORATING A DERIVATIVE	a) Convertible bonds and debentures that can be exchanged. b) Index-linked bonds andTurbo certificates. c) Contingent convertible bonds. d) Redeemable debentures or puttable bonds. e) Credit linked notes. f) Bonds with warrants.
DEBT SECURITIES INCORPORATING A STRUCTURE THAT MAKES IT DIFFICULT FOR THE CLIENT TO UNDERSTAND THE RISKS INVOLVED	a) Debt securities the profitability of which depends on the performance of a certain asset portfolio.Examples: Asset-backed securitiesand asset-backed commercial papers, residential mortgage backed security (RMBS),

1In some cases, ”specific” types of debt securities have been identified, and in other cases, a specific description has been given. In some cases, a financial instrument could fall into several categories.

	commercial mortgage backed security (CMBS), collateralized debt obligations (CDO) b) Debt securities the profitability of which are subordinated to the repayment of debt held by others. Examples: - subordinated debt securities; - certificates [as defined in Article 2 (1) (27) of miFIR]. c) Debt securities for which the issuer is free to change the cash flows of the instruments. d) Debt securities for which no redemption or maturity date has been specified. Examples: - perpetual bonds. e) Debt securities with unusual or unknown support. Examples: - Debt securities that refer to support, such as non-public reference values, synthetic indicators, niche markets, highly technical measures (including price volatility and combinations of variables); - bonds for catastrophe. f) Debt securities with complex mechanisms for establishing or calculating the profitability. Examples: - debt securities structured so that the expected revenue flows can fluctuate frequently and/or clearly at different times during the instrument either because certain pre-established threshold conditions are met or because certain deadlines are reached. g) Debt securities structured so that they can not ensure full reimbursement of the principal amount. - debt securities for the bail-in instrument h) Debt securities issued by a special investment vehicle (SIV) in circumstances where the name of the debt instrument or the legal name of the SIV may mislead investors as to the identity of the issuer or guarantor. i) Debt securities with comprehensive guarantee mechanisms. examples: - debt securities with a guarantee mechanism where the trigger factor depends on one or more conditions in addition to the default of the issuer;

	- debt securities with a guarantee mechanism in which the level of collateral or the effective triggering factor is subject to time constraints. j) Debt securities with particularities related to leverage.
STRUCTURED DEPOSITS INCORPORATING A STRUCTURE THAT MAKES IT DIFFICULT FOR THE CLIENT TO UNDERSTAND THE RISKS OF PROFITABILITY	Structured deposits in cases where: a) More than one variable affects the insured profitability. Examples: - structured deposits where a basket of instruments or assets must exceed a certain benchmark to ensure profitability; - structured deposits where profitability depends on a combination of two or more indicators. b) The relationship between profitability and the variable in question or the mechanism for establishing or calculating profitability is complex. Examples: - structured deposits that are structured in such a way that the mechanism according to which the price level of an index reflected in profitability involves different market data points (i.e., one or more thresholds must be met) or more measurement values index to different dates; - structured deposits that are structured so that the capital contribution or the due interest rise or fall in specific circumstances; - structured deposits that are structured so that the expected revenue streams can fluctuate frequently and/or obviously at different times during the instrument. c) The variable involved in the calculation of profitability is unknown or unusual for the ordinary retail investor. Examples: - structured deposits where profitability is associated with a niche market, an internal index or other non-public reference values, a synthetic index or a highly technical measure such as asset price volatility. d) The agreement grants credit institutions the unilateral right to terminate the agreement before maturity

STRUCTURED DEPOSITS INCORPORATING A STRUCTURE THAT MAKES IT DIFFICULT FOR THE CLIENT TO UNDERSTAND THE COST OF GIVING UP THE PRODUCT BEFORE MATURITY	Structured deposits in cases where: a) A waiver fee is not a fixed amount. Examples: - structured deposits with a variable or "capped" waiver fee (more specifically, a maximum of EUR 300 is charged in the event of early retirement); - structured deposits that refer to a variable factor, such as an interest rate for calculating the waiver fee. b) A waiver fee is not a fixed amount for each remaining month until the agreed term. Examples: - structured deposits with a variable or capped waiver fee for each month remaining up to the agreed term (i.e. a maximum charge of EUR 50 per month in case of early retirement). c) A waiver fee is not a percentage of the initial invested amount. Examples: - structured deposits for which the waiver fee is at least equal to the sum of earnings earned up to the date of early retirement.

Annex no. 13
ESMA Guide
on certain aspects of MiFID II adequacy requirements
Scope
To whom does it apply?
1. This Guide applies to:
competent authorities and
companies.

What does it apply?
2. This Guide applies to the provision of the following investment services
listed in Section A of Annex I to Directive 2014/65/EU1 (MiFID II):
a. investment advice;
b. portfolio management.

3. This guide deals mainly with the situations where services are provided to retail customers. The guide should also apply, to the extent relevant, where services are provided to professional clients, taking into account the provisions of Article 54 (3) of Commission Delegated Regulation (EU) 2017/5652 (Regulation Delegate of MiFID II) and Annex II of MiFID II

When does it apply?
4. This Guide shall apply after 60 calendar days from the reporting requirement referred to in paragraph 13.
The previous ESMA guide issued under MiFID I3 will cease to apply from the same date.

Definitions
5. Unless otherwise specified, the terms used in MiFID II and the Delegated Regulation ofMiFID II have the same meaning in this Guide.

6. Furthermore, for the purposes of this Guide, the following definitions shall apply:
”investment product”means a financial instrument (within the meaning of Article 4 (1) (15) of MiFID II) or a structured deposit[within the meaning of Article 4 (1) (43) of MiFID II].
”firms”means firms subject to the requirements set out in point 1 and comprises investment firms [as defined in Article 4 para. (1) (1) of MiFID II], including credit institutions when providing investment services and activities [within the meaning of Article 4 (1) (2) of MiFID II],investment firms and credit institutions (when selling or advising clients on structured deposits), UCITS management companies and alternative investment fund managers (AIFMs) [as defined in Article 5 (1) (a) of the AIFM Directive4] when providing investment services such as the management of individual portfolios or related services [within the meaning of Article 6 (3) (a) and (b) of the UCITS5 Directive and Article 6 (4) (a) and (b) of the AIFM Directive];
”adequacy assessment” means the entire process of collecting information about a customer and the subsequent assessment by the firm of the fact that a particular investment product is appropriate for it, also relying on the firm knowledge on the products it can recommend or invest in the name of the customer.
”automatic advice” means the provision of investment advisory or portfolio management services (in whole or in part) through an automated or semi-automated system used as a client-oriented instrument.

7. This guide is fully applicable to all firms providing investment advisory and portfolio management services, regardless of the means of customer interaction. The implementation of certain guidelines is considered particularly relevant when firms offer ”automaticadvice” (as defined above for the purposes of this guide) due to the limited (or non-existent) interaction between clients and company staff. This is particularly noted in the text, if any.

8. The guidelines do not reflect absolute obligations. For this reason, the word ”should” is often used. However, when describing a requirement of MiFID II, the following is use ”should”or”must”.

Object

9. The purpose of this guide is to clarify the application of certain matters of the requirements MiFID II on adequacy to ensure the common, uniform and consistent implementation of Article 25 (2) of MiFID II and Articles 54 and 55 of the Delegated Regulationof MiFID II.

10. ESMA expects this Guide to promote greater convergence in the interpretation and supervisory approaches of MiFID II adequacy requirements, highlighting a number of important issues and thus increasing the value of existing standards. By its contribution to ensuring compliance withthe regulatory standards by the companies, ESMA anticipates an appropriate increase in investor protection.

Compliance and reporting obligations

Status of the guide

11. This document contains guidelines issued under Article 16 of the ESMA6 Regulation. In accordance with Article 16 (3) of the ESMA Regulation, competent authorities and financial market participantsmake every effort to comply with the guidelines.

12. The competent authorities to which this Guide applies should observe it by including them in their national legal and / or supervisory frameworks, as appropriate, including where specific guidelines are principally addressed to financial market participants. In this case, the competent authorities should ensure, through supervisory activities, that the guideline is followed by financial market participants.

Reporting requirements

13. Competent authorities to which this Guideline applies shall notify ESMA of compliance with, or intends to comply with, the Guidelines, as appropriate, stating the reasons for non-compliance if they fail to comply or intend to comply within two months of the publication of the Guidelines on the ESMA website in all official languages of the EU.

14. The firms are not required to report whether or not they comply with this guide.

Guide on certain matters of MiFID II adequacy requirements

I.I INFORMING CUSTOMERS OF THE REASON FOR ADEQUACY ASSESSMENT

Relevant legislation: Article 24 (1), (4) and (5) of MiFID II; Article 54 (1) of the MiFID II Delegated Regulation.

General guidelines 1

15. Companies should clearly and simply inform their customers about the adequacy assessment and its reason, which is to enable the firm to act in the best interests of the client.This should include a clear explanation that evaluating is the responsibility of the firm so that customers understand why they are required to provide certain information and the importance of an update, accurate and complete information. This information can be provided in a standardized format.

Specific guidelines

16. Information on adequacy assessment should help customers understand the purpose of the requirements. They should encourage them to provide accurate and sufficient information on knowledge, experience, financial condition (including loss-making capacity) and investment objectives (including risk tolerance).Firms should emphasize to customers that it is important to collect complete and accurate information so that the firm can recommend appropriate products or services to the customer. Without this information, companies can not offer investment advisory and portfolio management services to their clients.

17. It is at the discretion of the firms to decide how they will inform their customers about the adequacy assessment. The format used should, however, allow checks to verify whether the information has been provided.

18. Firms should avoid specify or give the impression that it is the client who decides on the suitability of the investment or who sets the financial instruments that correspond to their own risk profile. For example, firms should avoid indicating to the client that a specific financial instrument chosen by the client is the right one or asking the customer to confirm that an instrument or service is appropriate.

19. Any statement of disclaimer (or other similar type of statement) that aims to limit the company's responsibility for adequacy assessment would in no way influence the characterization of the service provided in practice for customers, nor the assessment of the compliance of the company with the appropriate requirements.For example, when collecting client information that is needed to perform a suitability assessment (such as their investment horizon / holding period or risk tolerance information), companies should not claim to not assess adequacy.

20. To address possible loopholes in customer understanding of automated counseling services, businesses must inform customers, in addition to other required information, about the following:

a very clear explanation of the degree and exactness of human involvement, and if and in what way can the client request human interaction;

an explanation that the responses of the customer will have a direct impact in determining the suitability of recommended investment decisions or undertaken on their behalf;

a description of the sources of information used to generate investment advice or to provide the portfolio management service (for example, if an online questionnaire is used, firms should explain that questionnaire replies may be the only basis for automated counseling or if the firm has access to other customer information or accounts);

an explanation of how and when customer data will be updated regarding its situation, personal circumstances, etc.

21. Provided that all information and reports provided to customers comply with the relevant provisions (including obligations to provide information in a durable way), firms should also carefully consider whether the information disclosed in writing is effective (for example, the disclosed information is directly made available to customers and are not hidden or incomprehensible). For firms providing automated counseling, this may include, in particular:

highlighting relevant information (for example, by using design features, such as pop-up boxes);

the possibility that certain information may be accompanied by interactive text (e.g. by using design features such as suggestions) or other means to provide more details to customers looking for additional information (for example, through a ”Frequent questions”).

I.II KNOW YOUR CLIENT AND KNOW YOUR PRODUCT

Measures needed to understand customers
Relevant legislation: Article 16 (2) and Article 25 (2) of MiFID II; Article 54 (2) to (5) and Article 55 of the MiFID II Delegated Regulation.

General guidelines 2
22. Firms need to establish, implement and maintain adequate policies and procedures (including appropriate tools) that enable them to understand the key dates and characteristics of their customers. Firms should make sure that evaluation
of the information collected about their customers is made in an appropriate manner, regardless of the means used to collect this information.

Specific guidelines

23. Business policies and procedures allow them to collect and evaluate all the information needed to perform a suitability assessment for each customer, taking into account the elements set out in Guideline 3.

24. For example, firms could use questionnaires (including digital format) completed by their customers or information gathered during discussions with them. The firms should ensure that the questions they ask for the clients can be correctly understood and that any other method used to collect information is designed to obtain the information necessary for an adequacy assessment.

25. When making questionnaires to collect information about their clients for the purpose of adequacy assessment, firms should be aware of and take into account the most frequent reasons why investors may not respond correctly to the questionnaires.
In particular:
Attention should be given to the clarity, exhaustiveness and comprehensibility of the questionnaire, avoiding misleading, confusing, imprecise and excessively technical language;
The layout should be carefully elaborated and should avoid orienting investors' choices (font, line spacing…);
Presenting questions in batteries (collecting information on a series of items through a single question, particularly when assessing knowledge and experience and the risk tolerance) should be avoided.
Firms should carefully consider the order in which they ask questions to collect information in an effective manner;
In order to be able to ensure necessary information is collected, the possibility not to reply should generally not be available in questionnaires (particularly when collecting information on the investor's financial situation).

26. Firms should also take reasonable steps to assess the client's understanding of investment risk as well as the relationship between risk and return on investments, as this is the key to enable firms to act in accordance with the client's best interest when conducting the suitability assessment. When presenting questions in this regard, firms should explain clearly and simply that the purpose of answering them is to help assess clients' attitude to risk (risk profile), and therefore the types of financial instruments (and risks attached to them) that are suitable for them.

27. Information necessary to conduct a suitability assessment includes different elements that may affect, for example, the analysis of the client's financial situation (including his

ability to bear losses) or investment objectives (including his risk tolerance). Examples of such elements are the client's:
marital status (especially the client's legal capacity to commit assets that may belong also to his partner);
family situation (changes in the family situation of a client may impact his financial situation e.g. a new child or a child of an age to start university);
age (which is mostly important to ensure a correct assessment of the investment objectives, and in particular the level of financial risk that the investor is willing to take, as well as the holding period/investment horizon, which indicates the willingness to hold an investment for a certain period of time);
employment situation (the degree of job security or that fact the client is close to retirement may impact his financial situation or his investment objectives);
need for liquidity in certain relevant investments or need to fund a future financial commitment (e.g. property purchase, education fees).

28. ESMA considers it would be a good practice for firms to consider non-financial elements when gathering information on the client's investment objectives, and – beyond the elements listed in paragraph 27 – collect information on the client's preferences on environmental, social and governance factors.
29. When determining what information is necessary, firms should keep in mind the impact that any significant change regarding that information could have concerning the suitability assessment.
30. Firms should take all reasonable steps to sufficiently assess the understanding by their clients of the main characteristics and the risks related to the product types in the offer of the firm. The adoption by firms of mechanisms to avoid self-assessment and ensure the consistency of the answers provided by the client7 is particularly important for the correct assessment of the client's knowledge and experience. Information collected by firms about a client's knowledge and experience should be considered altogether for the overall appraisal of his understanding of the products and of the risks involved in the transactions recommended or in the management of his portfolio

31. It is also important that firms appraise the client's understanding of basic financial notions such as investment risk (including concentration risk) and risk-return trade off. To this end, firms should consider using indicative, comprehensible examples of the levels of loss/return that may arise depending on the level of risk taken, and should assess the client's response to such scenarios.

32. Firms should design their questionnaires so that they are able to gather the necessary information about their client. This may be particularly relevant for firms providing roboadvice services given the limited human interaction. In order to ensure their compliance with the requirements concerning that assessment, firms should take into account factors such as:
Whether the information collected through the online questionnaire allows the firm to conclude that the advice provided is suitable for their clients on the basis of their knowledge and experience, their financial situation and their investment objectives and needs;
Whether the questions in the questionnaire are sufficiently clear and/or whether the questionnaire is designed to provide additional clarification or examples to clients when necessary (e.g., through the use of design features, such as tool-tips or popup boxes);
Whether some human interaction (including remote interaction via emails or mobile phones) is available to clients when responding to the online questionnaire;
Whether steps have been taken to address inconsistent client responses (such as incorporating in the questionnaire design features to alert clients when their responses

appear internally inconsistent and suggest them to reconsider such responses; or implementing systems to automatically flag apparently inconsistent information provided by a client for review or follow-up by the firm).

Extent of information to be collected from clients (proportionality)
Relevant legislation: Article 25(2) of MiFID II, and Articles 54(2) to 54(5) and Article 55 of the MiFID II Delegated Regulation.

General guideline 3
33. Before providing investment advice or portfolio management services, firms need to collect all ”necessary information”[1] about the client's knowledge and experience, financial situation and investment objectives. The extent of 'necessary' information may vary and has to take into account the features of the investment advice or portfolio management services to be provided, the type and characteristics of the investment products to be considered and the characteristics of the clients.

Specific guidelines
34. In determining what information is 'necessary' firms should consider, in relation to a client's knowledge and experience, financial situation and investment objectives:
the type of the financial instrument or transaction that the firm may recommend or enter into (including the complexity and level of risk);
the nature and extent of the service that the firm may provide;
the needs and circumstances of the client;
the type of client.

35. While the extent of the information to be collected may vary, the standard for ensuring that a recommendation or an investment made on the client's behalf is suitable for the client will always remain the same. MiFID allows firms to collect the level of information proportionate to the products and services they offer, or on which the client requests specific investment advice or portfolio management services. It does not allow firms to lower the level of protection due to clients.

36. For example, when providing access to complex[2] or risky[3], financial instruments, firms should carefully consider whether they need to collect more in-depth information about the client than they would collect when less complex or risky instruments are at stake. This is so that firms can assess the client's capacity to understand, and financially bear, the risks associated with such instruments[4]. For such complex products ESMA expects firms to carry out a robust assessment amongst others of the client's knowledge and experience, including, for example, his ability to understand the mechanisms which make the investment

[1] „Necessary information” should be understood as meaning the information that firms must collect to comply with the suitability requirements under MiFID II.

[2] As defined in MiFID II and taking into account the criteria identified in guideline 7.

[3] It is up to each firm to define a *priori* the level of risk of the financial instruments included in its offer to investors taking into account, where available, possible guidelines issued by competent authorities supervising the firm.

[4] In any case, to ensure clients understand the investment risk and potential losses they may bear, the firm should, as far as possible, present these risks in a clear and understandable way, potentially using illustrative examples of the extent of losses in the event of an investment performing poorly.

product “complex”, whether the client has already traded in such products (for example, derivatives or leverage products), the length of time he has been trading them for, etc.

37. For illiquid financial instruments[5], the ‘necessary information’ to be gathered will include information on the length of time for which the client is prepared to hold the investment. As information about a client’s financial situation will always need to be collected, the extent of information to be collected may depend on the type of financial instruments to be recommended or entered into. For example, for illiquid or risky financial instruments, ‘necessary information’ to be collected may include all of the following elements as necessary to ensure whether the client’s financial situation allows him to invest or be invested in such instruments:
the extent of the client’s regular income and total income, whether the income is earned on a permanent or temporary basis, and the source of this income (for example, from employment, retirement income, investment income, rental yields, etc.);
the client’s assets, including liquid assets, investments and real property, which would include what financial investments, personal and investment property, pension funds and any cash deposits, etc. the client may have. The firm should, where relevant, also gather information about conditions, terms, access, loans, guarantees and other restrictions, if applicable, to the above assets that may exist.
the client’s regular financial commitments, which would include what financial commitments the client has made or is planning to make (client’s debits, total amount of indebtedness and other periodic commitments, etc.).

38. In determining the information to be collected, firms should also take into account the nature of the service to be provided. Practically, this means that:
when investment advice is to be provided, firms should collect sufficient information in order to be able to assess the ability of the client to understand the risks and nature of each of the financial instruments that the firm envisages recommending to that client;
when portfolio management is to be provided, as investment decisions are to be made by the firm on behalf of the client, the level of knowledge and experience needed by the client with regard to all the financial instruments that can potentially make up the portfolio may be less detailed than the level that the client should have when an investment advice service is to be provided. Nevertheless, even in such situations, the client should at least understand the overall risks of the portfolio and possess a general understanding of the risks linked to each type of financial instrument that can be included in the portfolio. Firms should gain a very clear understanding and knowledge of the investment profile of the client.

39. Similarly, the extent of the service requested by the client may also impact the level of detail of information collected about the client. For example, firms should collect more information about clients asking for investment advice covering their entire financial portfolio than about clients asking for specific advice on how to invest a given amount of money that represents a relatively small part of their overall portfolio.

40. Firms should also take into account the nature of the client when determining the information to be collected. For example, more in-depth information would usually need to be collected for potentially vulnerable clients (such as older clients could be) or inexperienced ones asking for investment advice or portfolio management services for the

[5]It is up to each firm to define a priori which of the financial instruments included in its offer to investors it considers as being illiquid, taking into account, where available, possible guidelines issued by competent authorities supervising the firm.

first time. Where a firm provides investment advice or portfolio management services to a professional client (who has been correctly classified as such), it is entitled to assume that the client has the necessary level of experience and knowledge, and therefore is not required to obtain information on these aspects.

41. Similarly, where the investment service consists of the provision of investment advice to a 'per se professional client"[6], the firm is entitled to assume that the client is able to financially bear any related investment risks consistent with the investment objectives of that client and therefore is not generally required to obtain information on the financial situation of the client. Such information should be obtained, however, where the client's investment objectives demand it. For example, where the client is seeking to hedge a risk, the firm will need to have detailed information on that risk in order to be able to propose an effective hedging instrument.

42. Information to be collected will also depend on the needs and circumstances of the client. For example, a firm is likely to need more detailed information about the client's financial situation where the client's investment objectives are multiple and/or long-term, than when the client seeks a short-term secure investment.[7]

43. Information about a client's financial situation includes information regarding his investments. This implies that firms are expected to possess information about the client's financial investments he holds with the firm on an instrument-by-instrument basis. Depending on the scope of advice provided, firms should also encourage clients to disclose details on financial investments they hold with other firms, if possible also on an instrument-by-instrument basis.

Reliability of client information
Relevant legislation: Article 25(2) of MiFID II, and Articles 54(7), first subparagraph of the MiFID II Delegated Regulation.

General guideline 4

44. Firms should take reasonable steps and have appropriate tools to ensure that the information collected about their clients is reliable and consistent, without unduly relying on clients' self-assessment.

Specific guidelines
45. Clients are expected to provide correct, up-to-date and complete information necessary for the suitability assessment. However, firms need to take reasonable steps to check the reliability, accuracy and consistency of information collected about clients[8]. Firms remain responsible for ensuring they have the necessary information to conduct a suitability assessment. In this respect, any agreement signed by the client, or disclosure made by the firm, that would aim at limiting the responsibility of the firm with regard to the suitability

[6]As set out in Section I of Annex II of MiFID II ('Categories of client who are considered to be professionals').

[7]There may be situations where the client is unwilling to disclose his full financial situation. For this particular question see Q&As on MiFID II investor protection topics (ESMA35-43-349)

[8]When dealing with professional clients, firms should take into account the proportionality principles as referred to in guideline 3, in line with Article 54 (3) of MiFID II Delegated Regulation.

assessment, would not be considered compliant with the relevant requirements in MiFID II and related Delegated Regulation.

46. Self-assessment should be counterbalanced by objective criteria. For example:
instead of asking whether a client understands the notions of risk-return trade off and risk diversification, the firm could present some practical examples of situations that may occur in practice, for example by means of graphs or through positive and negative scenarios;
instead of asking a client whether he feels sufficiently experienced to invest in certain products, the firm could ask the client what types of products the client is familiar with and how recent and frequent his trading experience with them is;
instead of asking whether clients believe they have sufficient funds to invest, the firm could ask clients to provide factual information about their financial situation, e.g. the regular source of income and whether outstanding liabilities exist (such as bank loans or other debts, which may significantly impact the assessment of the client's ability to financially bear any risks and losses related to the investment);
instead of asking whether a client feels comfortable with taking risk, the firm could ask what level of loss over a given time period the client would be willing to accept, either on the individual investment or on the overall portfolio.

47. When assessing the risk tolerance of their clients through a questionnaire, firms should not only investigate the desirable risk-return characteristics of future investments but they should also take into account the client's risk perception. To this end, whilst selfassessment for the risk tolerance should be avoided, explicit questions on the clients' personal choices in case of risk uncertainty could be presented. Furthermore, firms could for example make use of graphs, specific percentages or concrete figures when asking the client how he would react when the value of his portfolio decreases.

48. Where firms rely on tools to be used by clients as part of the suitability process (such as questionnaires or risk-profiling software), they should ensure that they have appropriate systems and controls to ensure that the tools are fit for purpose and produce satisfactory results. For example, risk-profiling software could include some controls of coherence of the replies provided by clients in order to highlight contradictions between different pieces of information collected.

49. Firms should also take reasonable steps to mitigate potential risks associated with the use of such tools. For example, potential risks may arise if clients were encouraged to provide certain answers in order to get access to financial instruments that may not be suitable for them (without correctly reflecting the clients' real circumstances and needs)[9].

50. In order to ensure the consistency of client information, firms should view the information collected as a whole. Firms should be alert to any relevant contradictions between different pieces of information collected, and contact the client in order to resolve any material potential inconsistencies or inaccuracies. Examples of such contradictions are clients who have little knowledge or experience and an aggressive attitude to risk, or who have a prudent risk profile and ambitious investment objectives.

[9]In this regard, see also paragraph 54 of Guideline 5, which addresses the risk of clients being influenced by firms to change answers previously provided by them, without there being any real modification in their situation.

51. Firms should adopt mechanisms to address the risk that clients may tend to overestimate their knowledge and experience, for example by including questions that would help firms assess the overall clients' understanding about the characteristics and the risks of the different types of financial instruments. Such measures may be particularly important in the case of robo-advice, since the risk of overestimation by clients may result higher when they provide information through an automated (or semi-automated) system, especially in situations where very limited or no human interaction at all between clients and the firm's employees is foreseen.

Updating client information
Relevant legislation: Article 25(2) of MiFID II, subparagraph 2 of Article 54(7), and Article 55(3) of the MiFID II Delegated Regulation.

General guideline 5

52. Where a firm has an ongoing relationship with the client (such as by providing ongoing advice or portfolio management services), in order to be able to perform the suitability assessment, it should adopt procedures defining:
what part of the client information collected should be subject to updating and at which frequency;
how the updating should be done and what action should be undertaken by the firm when additional or updated information is received or when the client fails to provide the information requested.

Specific guidelines

53. Firms should regularly review client information to ensure that it does not become manifestly out of date, inaccurate or incomplete. To this end, firms should implement procedures to encourage clients to update the information originally provided where significant changes occur.
54. Frequency of update might vary depending on, for example, clients' risk profiles and taking into account the type of financial instrument recommended. Based on the information collected about a client under the suitability requirements, a firm will determine the client's investment risk profile, i.e. what type of investment services or financial instruments can in general be suitable for him taking into account his knowledge and experience, his financial situation (including his ability to bear losses) and his investment objectives (including his risk tolerance). For example, a risk profile giving to the client access to a wider range of riskier products is an element that is likely to require 16 more frequent updating. Certain events might also trigger an updating process; this could be so, for example, for clients reaching the age of retirement.

55. Updating could, for example, be carried out during periodic meetings with clients or by sending an updating questionnaire to clients. Relevant actions might include changing the client's profile based on the updated information collected.

56. It is also important that firms adopt measures to mitigate the risk of inducing the client to update his own profile so as to make appear as suitable a certain investment product that would otherwise be unsuitable for him, without there being a real modification in the client's

situation[10]. As an example of a good practice to address this type of risk, firms could adopt procedures to verify, before or after transactions are made, whether a client's profile has been updated too frequently or only after a short period from last modification (especially if this change has occurred in the immediate days preceding a recommended investment). Such situations would therefore be escalated or reported to the relevant control function. These policies and procedures are particularly important in situations where there is a heightened risk that the interest of the firm may come into conflict with the best interests of its clients, e.g. in self-placement situations or where the firm receives inducements for the distribution of a product. Another relevant factor to consider in this context is also the type of interaction that occurs with the client (e.g. face-to-face vs through an automated system)[11].

57. Firms should inform the client when the additional information provided results in a change of his profile, whether it becomes more risky (and therefore, potentially, a wider range of riskier and more complex products may result suitable for him, with the potential to incur in higher losses) or *vice-versa* more conservative (and therefore, potentially, a more restricted range of products may as a result be suitable for him).

Client information for legal entities or groups
Relevant legislation: Article 25(2)of MiFID II and Article 54(6) of the MiFID II Delegated Regulation.

General guideline 6

58. Firms must have a policy defining on an ex ante basis, how to conduct the suitability assessment in situations where a client is a legal person or a group of two or more natural persons or where one or more natural persons are represented by another natural person. This policy should specify, for each of those situations, the procedure and criteria that should be followed in order to comply with the MiFID II suitability requirements. The firm should, clearly, inform *ex-ante* those of its clients that are legal entities, groups of persons or natural persons represented by another natural person about who should be subject to the suitability assessment, how the suitability assessment will be done in practice and the possible impact this could have for the relevant clients, in accordance with the existing policy.

Specific guidelines

59. Firms should consider whether the applicable national legal framework provides specific indications that should be taken into account for the purpose of conducting the suitability assessment (this could be the case, for instance, where the appointment of a legal representative is required by law: e.g. for underage or incapacitated persons or for a legal person).

[10]Also relevant in this context are measures adopted to ensure the reliability of clients' information as detailed under guideline 4, paragraph 44.

[11]In this regard, also see the clarifications already provided by ESMA in the Q&As on MiFID II investor protection topics (Ref: ESMA35-43-349 – Question on 'Transactions on unsuitable products').

60. The policy should make a clear distinction between situations where a representative is foreseen under applicable national law, as it can be the case for example for legal persons, and situations where no representative is foreseen, and it should focus on this latter situations. Where the policy foresees agreements between clients, they should be made aware clearly and in written form about the effects that such agreements may have regarding the protection of their respective interests. Steps taken by the firm in accordance with its policy should be appropriately documented to enable ex-post controls.

Situations where a representative is foreseen under applicable national law

61. Subparagraph 2 of Article 54(6) of the MiFID II Delegated Regulation defines how the suitability assessment should be done with regard to situations where the client is a natural person represented by another natural person or is a legal person having requested treatment as a professional client. It seems reasonable that the same approach could apply to all legal persons, regardless of the fact that they may have requested to be treated as professionals or not.

62. Firms should ensure that their procedures adequately incorporate this article in their organisation, which would imply amongst others that they verify that the representative is indeed – according to relevant national law – authorised to carry out transactions on behalf of the underlying client.

Situations where no representative is foreseen under applicable national law

63. Where the client is a group of two or more natural persons and no representative is foreseen under applicable national law, the firm's policy should identify from whom necessary information will be collected and how the suitability assessment will be done. Clients should be properly informed about the firm's approach (as decided in the firm's policy) and the impact of this approach on the way the suitability assessment is done in practice.

64. Approaches such as the following could possibly be considered by firms:
they could choose to invite the group of two or more natural persons to designate a representative; or,
they could consider collecting information about each individual client and assessing the suitability for each individual client.

Inviting the group of two or more natural persons to designate a representative

65. If the group of two or more natural persons agrees to designate a representative, the same approach as the one described in subparagraph 2 of Article 54(6) of the MiFID II Delegated Regulation could be followed: the knowledge and experience shall be that of the representative, while the financial situation and the investment objectives would be those of the underlying client(s). Such designation should be made in written form as well as according to and in compliance with the applicable national law, and recorded by the relevant firm. The clients - part of the group - should be clearly informed, in written form, about the impact that an agreement amongst clients could have on the protection of their respective interests.

66. The firm's policy could however require the underlying client(s) to agree on their investment objectives.

67. If the parties involved have difficulties in deciding the person/s from whom the information on knowledge and experience should be collected, the basis on which the financial situation should be determined for the purpose of the suitability assessment or on defining their investment objectives, the firm should adopt the most prudent approach by taking into account, accordingly, the information on the person with the least knowledge and experience, the weakest financial situation or the most conservative investment objectives. Alternatively, the firm's policy may also specify that it will not be able to provide investment advice or portfolio management services in such a situation. Firms should at least be prudent whenever there is a significant difference in the level of knowledge and experience or in the financial situation of the different clients part of the group, or when the investment advice or portfolio management services may include leveraged financial instruments or contingent liability transactions that pose a risk of significant losses that could exceed the initial investment of the group of clients and should clearly document the approach chosen.

Collecting information about each individual client and assessing the suitability for each individual client

68. When a firm decides to collect information and assess suitability for each individual client part of the group, if there are significant differences between the characteristics of those individual clients (for example, if the firm would classify them under different investment profiles), the question arises about how to ensure the consistency of the investment advice or portfolio management services provided with regard to the assets or portfolio 19 of that group of clients. In such a situation, a financial instrument may be suitable for one client part of the group but not for another one. The firm's policy should clearly specify how it will deal with such situations. Here again, the firm should adopt the most prudent approach by taking into account the information on the client part of the group with the least knowledge and experience, the weakest financial situation or the most conservative investment objectives. Alternatively, the firm's policy may also specify that it will not be able to provide investment advice or portfolio management services in such a situation. In this context, it should be noted that collecting information on all the clients part of the group and considering, for the purposes of the assessment, an average profile of the level of knowledge and competence of all of them, would unlikely be compliant with the MiFID II overarching principle of acting in the clients' best interests.

Arrangements necessary to understand investment products

Relevant legislation: Articles 16(2) and 25(2) of MiFID II, and Article 54(9) of the MiFID II Delegated Regulation.

General guideline7

69. Firms should ensure that the policies and procedures implemented to understand the characteristics, nature and features (including costs and risks) of investment products allow them to recommend suitable investments, or invest into suitable products on behalf of their clients.

Specific guidelines

70. Firms should adopt robust and objective procedures, methodologies and tools that allow them to appropriately consider the different characteristics and relevant risk factors (such as

credit risk, market risk, liquidity risk[12], ...) of each investment product they may recommend or invest in on behalf of clients. This should include taking into consideration the firm's analysis conducted for the purposes of product governance obligations20. In this context, firms should carefully assess how certain products could behave under certain circumstances (e.g. convertible bonds or other debt instruments subject to the Bank Recovery and Resolution Directive[13], which may, for example, change their nature into shares).

71. Considering the level of 'complexity' of products is particularly important, and this should be matched with a client's information (in particular regarding their knowledge and experience). Although complexity is a relative term, which depends on several factors, firms should also take into account the criteria and principles identified in MiFID II, when defining and appropriately graduating the level of complexity to be attributed to products for the purposes of the assessment of suitability.

72. Firms should adopt procedures to ensure that the information used to understand and correctly classify investment products included in their product offer is reliable, accurate, consistent and up-to-date. When adopting such procedures, firms should take into account the different characteristics and nature of the products considered (for example, more complex products with particular features may require more detailed processes and firms should not solely relying on one data provider in order to understand and classify investment products but should check and challenge such data or compare data provided by multiple sources of information).

73. In addition, firms should review the information used so as to be able to reflect any relevant changes that may impact the product's classification. This is particularly important, taking into account the continuing evolution and growing speed of financial markets.

I.I MATCHING CLIENTS WITH SUITABLE PRODUCTS
Arrangements necessary to ensure the suitability of an investment
Relevant legislation: Article 16(2) and 25(2) of MiFID II and Article 21 of the MiFID II Delegated Regulation.

General guideline 8

74. In order to match clients with suitable investments, firms should establish policies and procedures to ensure that they consistently take into account:
all available information about the client necessary to assess whether an investment is suitable, including the client's current portfolio of investments (and asset allocation within that portfolio);

[12] It is particularly important that the liquidity risk identified is not balanced out with other risk indicators (such as, for example, those adopted for the assessment of credit/counterparty risk and market risk). This is because the liquidity features of products should be compared with information on the client's willingness to hold the investment for a certain length of time, i.e. the so called 'holding period'.

[13]Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 190–348).

all material characteristics of the investments considered in the suitability assessment, including all relevant risks and any direct or indirect costs to the client.[14]

Specific guidelines

75. Firms are reminded that the suitability assessment is not limited to recommendations to buy a financial instrument. Every recommendation must be suitable, whether it is, for example, a recommendation to buy, hold or sell an instrument, or not to do so[15].

76. Firms that rely on tools in the suitability assessment process (such as model portfolios, asset allocation software or a risk-profiling tool for potential investments), should have appropriate systems and controls to ensure that the tools are fit for purpose and produce satisfactory results.

77. In this regard, the tools should be designed so that they take account of all the relevant specificities of each client or investment product. For example, tools that classify clients or investment products broadly would not be fit for purpose.

78. A firm should establish policies and procedures which enable it to ensure inter alia that:
the advice and portfolio management services provided to the client take account of an appropriate degree of risk diversification;
the client has an adequate understanding of the relationship between risk and return, i.e. of the necessarily low remuneration of risk free assets, of the incidence of time horizon on this relationship and of the impact of costs on his investments;
the financial situation of the client can finance the investments and the client can bear any possible losses resulting from the investments;
any personal recommendation or transaction entered into in the course of providing an investment advice or portfolio management service, where an illiquid product is involved, takes into account the length of time for which the client is prepared to hold the investment; and
any conflicts of interest are prevented from adversely affecting the quality of the suitability assessment.

79. When making a decision on the methodology to be adopted to conduct the suitability assessment, the firm should also take into account the type and characteristics of the services provided and, more in general, its business model. For example, where a firm manages a portfolio or advises a client with regard to his portfolio, it should adopt a methodology that would allow it to conduct a suitability assessment based on the consideration of the client's portfolio as a whole.

[14]See Articles 50 and 51 of MiFID II Delegated Regulation regarding the obligation to inform clients about costs.

[15]See recital 87 of MiFID II Delegated Regulation as well as paragraph 31 of section IV of CESR, Understanding the definition of advice under MiFID, question and answers, 19 April 2010, CESR/10-293.

80. When conducting a suitability assessment, a firm providing the service of portfolio management should, on the one hand, assess - in accordance with paragraph 38 of these guidelines - the knowledge and experience of the client regarding each type of financial instrument that could be included in his portfolio, and the types of risks involved in the management of his portfolio. Depending on the level of complexity of the financial instruments involved, the firm should assess the client's knowledge and experience more specifically than solely on the basis of the type to which the instrument belongs (e.g. subordinated debt instead of bonds in general). On the other hand, with regard to the client's financial situation and investment objectives, the suitability assessment about the impact of the instrument(s) and transaction(s) can be done at the level of the client's portfolio as a whole. In practice, if the portfolio management agreement defines in sufficient details the investment strategy that is suitable for the client with regard to the suitability criteria defined by MiFID II and that will be followed by the firm, the assessment of the suitability of the investment decisions could be done against the investment strategy as defined in the portfolio management agreement and the portfolio of the client as a whole should reflect this agreed investment strategy.

When a firm conducts a suitability assessment based on the consideration of the client's portfolio as a whole within the service of investment advice, this means that, on the one hand, the level of knowledge and experience of the client should be assessed regarding each investment product and risks involved in the related transaction. On the other hand, with regard to the client's financial situation and investment objectives, the suitability assessment about the impact of the product and transaction can be done at the level of the client's portfolio.

81. When a firm conducts a suitability assessment based on the consideration of the client's portfolio as a whole, it should ensure an appropriate degree of diversification within the client's portfolio, taking into account the client's portfolio exposure to the different financial risks (geographical exposure, currency exposure, asset class exposure, etc.). In cases where, for example, from the firm's perspective, the size of a client's portfolio is too small to allow for an effective diversification in terms of credit risk, the firm could consider directing those clients towards types of investments that are 'secured' or per se diversified (such as, for example, a diversified investment fund).
Firms should be especially prudent regarding credit risk: exposure of the client's portfolio to one single issuer or to issuers part of the same group should be particularly considered. This is because, if a client's portfolio is concentrated in products issued by one single entity (or entities of the same group), in case of default of that entity, the client may lose up to his entire investment. When operating through so called self-placement models, firms are reminded of ESMA's 2016 Statement on BRRD[16] according to which "they should avoid an excessive concentration of investments in financial instruments subject to the resolution regime issued by the firm itself or by entities of the same group". Therefore, in addition to the methodologies to be implemented for the assessment of products credit risk (see guideline 7), firms should also adopt ad hoc measures and procedures to ensure that concentration with regard to credit risk is effectively identified, controlled and mitigated (for example, the identification of ex ante thresholds could be encompassed)[17].

[16]See 'MiFID practices for firms selling financial instruments subject to the BRRD resolution regime' (ESMA/2016/902).

[17]To this end, in line with the mentioned ESMA's Statement, firms should also take into account the specific features of the securities offered (including their risk features and the circumstances of the issuer) as well as

82. In order to ensure the consistency of the suitability assessment conducted through automated tools (even if the interaction with clients does not occur through automated systems), firms should regularly monitor and test the algorithms that underpin the suitability of the transactions recommended or undertaken on behalf of clients. When defining such algorithms, firms should take into account the nature and characteristics of the products included in their offer to clients. In particular, firms should at least:
establish an appropriate system-design documentation that clearly sets out the purpose, scope and design of the algorithms. Decision trees or decision rules should form part of this documentation, where relevant;
have a documented test strategy that explains the scope of testing of algorithms. This should include test plans, test cases, test results, defect resolution (if relevant), and final test results;
have in place appropriate policies and procedures for managing any changes to an algorithm, including monitoring and keeping records of any such changes. This includes having security arrangements in place to monitor and prevent unauthorised access to the algorithm;
review and update algorithms to ensure that they reflect any relevant changes (e.g. market changes and changes in the applicable law) that may affect their effectiveness;
have in place policies and procedures enabling to detect any error within the algorithm and deal with it appropriately, including, for example, suspending the provision of advice if that error is likely to result in an unsuitable advice and/or a breach of relevant law/regulation;
have in place adequate resources, including human and technological resources, to monitor and supervise the performance of algorithms through an adequate and timely review of the advice provided; and
have in place an appropriate internal sign-off process to ensure that the steps above have been followed.

Costs and complexity of equivalent products

Relevant legislation: Article 25(2) of MiFID II and Article 54(9) of the MiFID II Delegated Regulation.

General guideline 9

83. Suitability policies and procedures should ensure that, before a firm makes a decision on the investment product(s) that will be recommended, or invested in the portfolio managed on behalf of the client, a thorough assessment of the possible investment alternatives is undertaken, taking into account products' cost and complexity.

Specific guidelines

84. Firms should have a process in place, taking into account the nature of the service, the business model and the kind of products that are provided, to assess products available that are 'equivalent' to each other in terms of ability to meet the client's needs and circumstances, such as financial instruments with similar target markets and similar riskreturn profile.

clients' financial situation, including their ability to bear losses, and their investment objectives, including their risk profile.

85. When considering the cost factor, firms should take into account all costs and charges covered by the relevant provisions under Article 24(4) of MiFID II and the related MiFID II Delegated Regulation provisions. As for the complexity, firms should refer to the criteria identified in the above guideline 7. For firms with a restricted range of products, or those recommending one type of product, where the assessment of 'equivalent' products could be limited, it is important that clients are made fully aware of such circumstances. In this context, it is particularly important that clients are provided appropriate information on how restricted the range of products offered is, pursuant to Article 24(4)(a)(ii) of MiFID II[18].

86. Where a firm uses common portfolio strategies or model investment propositions that apply to different clients with the same investment profile (as determined by the firm), the assessment of cost and complexity for 'equivalent' products could be done on a higher level, centrally, (for example within an investment committee or any other committee defining common portfolio strategies or model investment propositions) although a firm will still need to ensure that the selected investment products are suitable and meet their clients' profile on a client-by-client basis.

87. Firms should be able to justify those situations where a more costly or complex product is chosen or recommended over an equivalent product, taking into account that for the selection process of products in the context of investment advice or portfolio management further criteria can also be considered (for example: the portfolio's diversification, liquidity, or risk level). Firms should document and keep records about these decisions, as these decisions should deserve specific attention from control functions within the firm. The respective documentation should be subject to internal de investiții, reviews. When providing investment advice firms could, for specific well-defined reasons, also decide to inform the client about the decision to choose the more costly and complex financial instrument.

Costs and benefits of switching investments

Relevant legislation: Articles 16(2) and 25(2) of MiFID II and Article 54(11) of the MiFID II Delegated Regulation.

General guideline 10

88. Firms should have adequate policies and procedures in place to ensure that an analysis of the costs and benefits of a switch is undertaken such that firms are reasonably able to demonstrate that the expected benefits of switching are greater than the costs. Firms should also establish appropriate controls to avoid any circumvention of the relevant MiFID II requirements.

Specific guidelines

89. For the purpose of this guideline, investment decisions such as rebalancing a portfolio under management, in the case of a "passive strategy" to replicate an index (as agreed with the client) would normally not be considered as a switch. For the avoidance of doubt, any

[18]In accordance with MiFID II, firms are therefore not expected to consider the whole universe of possible investment options existing in the market in order to comply with the requirement under Article 54(9) of MiFID II Delegated Regulation.

transaction without maintaining these thresholds would be considered as a switch. For per se professional clients, the cost benefit analysis may be carried out on investment strategy level.

90. Firms should take all necessary information into account, so as to be able to conduct a cost-benefit analysis of the switch, i.e. an assessment of the advantages and disadvantages of the new investment(s) considered. When considering the cost dimension, firms should take into account all costs and charges covered by the relevant provisions under Article 24(4) of MiFID II and the related MiFID II Delegated Regulation provisions. In this context, both monetary and non-monetary factors of costs and benefits could be relevant. These may include, for example:
the expected net return of the proposed alternative transaction (which also considers any possible up-front cost to be paid by the client(s)) vs the expected net return of the existing investment (that should also consider any exit cost which the client(s) might incur to divest from the product already in his/their portfolio);
a change in the client's circumstances and needs, which may be the reason for considering the switch, e.g. the need for liquidity in the short term as a consequence of an unexpected and unplanned family event;
a change in the products' features and/or market circumstances, which may be a reason for considering a switch in the client(s) portfolio(s), e.g. if a product becomes illiquid due to market trends;
benefits to the client's portfolio stemming from the switch, such as (i) an increase in the portfolio diversification (by geographical area, type of instrument, type of issuer, etc.); (ii) an increased alignment of the portfolio's risk profile with the client's risk objectives; (iii) an increase in the portfolio's liquidity; or (iv) a decrease of the overall credit risk of the portfolio;

91. When providing investment advice, a clear explanation of the reasons why the benefits of the recommended switch are greater than its costs should be included in the suitability report the firm has to provide to the retail client before the transaction is made.

92. Firms should also adopt systems and controls to monitor the risk of circumventing the obligation to assess costs and benefits of recommended switch, for example in situations where an advice to sell a product is followed by an advice to buy another product at a later stage (e.g. days later), but the two transactions were in fact strictly related from the beginning.

93. Where a firm uses common portfolio strategies or model investment propositions that apply to different clients with the same investment profile (as determined by the firm), the costs/benefits analysis of a switch could be done on a higher level than at the level of each individual client or each individual transaction. More especially, when a switch is decided centrally, for example within an investment committee or any other committee defining common portfolio strategies or model investment propositions, the costs/benefits analysis could be done at the level of that committee. If such a switch is decided centrally, the costs/benefits analysis done at that level would usually be applicable to all comparable client portfolios without making an assessment for each individual client. In such a situation also, the firm could determine, at the level of the relevant committee, the reason why a switch decided will not be performed for certain clients. Although the costs/benefits analysis could be done at a higher level in such situations, the firm should nevertheless have appropriate controls in place to check that there are no particular characteristics of certain clients that might require a more discrete level of analysis.

94. Where a portfolio manager has agreed a more bespoke mandate and investment strategy with a client due to the client's specific investment needs, a cost-benefit analysis of the switch at client-level should be more appropriate, in contrast to the above[19].

95. Notwithstanding the above, if a portfolio manager considers that the composition or parameters of a portfolio should be changed in a way that is not permitted by the mandate agreed with the client (e.g. from an equities-focused to a fixed income-focused strategy), the portfolio manager should discuss this with the client and review or conduct a new suitability assessment to agree a new mandate.

I.II OTHER RELATED REQUIREMENTS

Qualifications of firm staff

Relevant legislation: Articles 16(2), 25(1) and 25(9) of MiFID II and Article 21(1)(d) of MiFID II Delegated Regulation.

General guideline 11

96. Firms are required to ensure that staff involved in material aspects of the suitability process have an adequate level of skills, knowledge and expertise.

Specific guidelines

97. Staff must understand the role they play in the suitability assessment process and possess the skills, knowledge and expertise necessary, including sufficient knowledge of the relevant regulatory requirements and procedures, to discharge their responsibilities.

98. Staff giving investment advice or information about financial instruments, structured deposits, investment services or ancillary services to clients on behalf of the firm (including when providing portfolio management) must possess the necessary knowledge and competence required under Article 25(1) of MiFID II (and specified further in ESMA Guidelines for the assessment of knowledge and competence28), including with regard to the suitability assessment.

99. Other staff that does not directly face clients (and therefore is not subject to the new provisions mentioned in paragraph 97) but is involved in the suitability assessment in any other way must still possess the necessary skills, knowledge and expertise required depending on their particular role in the suitability process[20]. This may regard, for example, setting up the questionnaires, defining algorithms governing the assessment of suitability or other aspects necessary to conduct the suitability assessment and controlling compliance with the suitability requirements.

[19]For relationships with professional clients see paragraph 89.

[20]ESMA notes that some Member States require certification of staff providing investment advice and/or portfolio management, or equivalent systems, to ensure a proper level of knowledge and expertise of staff involved in material aspects of the suitability process.

100. Where relevant, when employing automated tools (including hybrid tools), investment firms should ensure that their staff involved in the activities related to the definition of these tools:
have an appropriate understanding of the technology and algorithms used to provide digital advice (particularly they are able to understand the rationale, risks and rules behind the algorithms underpinning the digital advice); and
are able to understand and review the digital/automated advice generated by the algorithms.
generată de algoritmi.

Record-keeping
Relevant legislation: Articles 16(6), 25(5) and 25(6) of MiFID II, and Articles 72, 73, 74 and 75 of the MiFID II Delegated Regulation.
General guideline 12

101. Firms should at least:

maintain adequate recording and retention arrangements to ensure orderly and transparent record-keeping regarding the suitability assessment, including the collection of information from the client, any investment advice provided and all investments (and disinvestments) made following the suitability assessment made, and the related suitability reports provided to the client;
ensure that record-keeping arrangements are designed to enable the detection of failures regarding the suitability assessment (such as mis-selling);
ensure that records kept, including the suitability reports provided to clients, are accessible for the relevant persons in the firm, and for competent authorities;
have adequate processes to mitigate any shortcomings or limitations of the recordkeeping arrangements.

Specific guidelines

102. Record-keeping arrangements adopted by firms must be designed to enable firms to track ex-post why an (dis)investment was made and why an investment advice was given even when the advice didn't result in an actual (dis)investment. This could be important in the event of a dispute between a client and the firm. It is also important for control purposes - for example, any failures in record-keeping may hamper a competent authority's assessment of the quality of a firm's suitability process, and may weaken the ability of management to identify risks of mis-selling.

103. Therefore, a firm is required to record all relevant information about the suitability assessment, such as information about the client (including how that information is used and interpreted to define the client's risk profile), and information about financial instruments recommended to the client or purchased on the client's behalf, as well as the suitability report provided to clients. Those records should include:
any changes made by the firm regarding the suitability assessment, in particular any change to the client's investment risk profile;
the types of financial instruments that fit that profile and the rationale for such an assessment, as well as any changes and the reasons for them.

104. Firms should understand the additional risks that could affect the provision of investment services through online/digital tools such as malicious cyber activity and should have in place arrangements able to mitigate those risks[21].

[21]Firms should consider such risks not only in relation to the provisions stated in the guideline, but also as part of a firm's wider obligations under Article 16(4) of MiFID II to take reasonable steps to ensure continuity and regularity in the performance of investment service and activities, and corresponding delegated act requirements linked to this.

Annex no. 14

IDENTIFICATION DATA OF THE APPLICANT	APPLICATION FOR AUTHORIZATION of the investment consultant, a natural person authorized by A.S.F. according to Art. 127 of the Regulation No. 5/2019 of the A.S.F. on the rule of some provisions regarding the provision of investment services and activities according to Law no. 126/2018 on financial instrument markets

1. Applicant's first name and surname: . . . .

2. ID card: Typ: ID card [ ] Series: |_|_| Number: |_|_|_|_|_|_| Issuer: |__________________| Date of issue: |_|_|_|_|_|_|_|_| dd mm yyyy

3. Personal identification number: |_|_|_|_|_|_|_|_|_|_|_|_|_|

4. With permanent addres in: . . . . (street and number)
   . . . . (locality) . . . . (county) . . . . (postal code)

5. Postal address, if different: . . . .

6. Telephone number: . . . . (fixed, mobile)

7. Fax number: . . . .

8. Your e-mail address: . . . .

9. This application is accompanied by the documents listed below. totalizing a number of. . . . . file.

a) Copy of ID card	[ ]
b) Curriculum vitae	[ ]
c) Evidence of passing the exam referred to in Art. 8 par. (2), (5) or (6) of the Regulation no. 14/7/2018 of A.S.F./ B.N.R. on the provision of investment services and activities on behalf of investment firms and credit institutions	[ ]
d) Statement on your own responsibility, signed by handwriting, regarding the fulfillment of the conditions stipulated in art. 128 par. (1)	[ ]
e) Criminal record certificate	
- original	[ ]
- certified copy	[ ]
- a copy that is legally certified or legalized by the mayor's secretary where there are no notary offices	[ ]
f) Tax clearance certificate	
- original	[ ]
- certified copy	[ ]
- a copy that is legally certified or legalized by the mayor's secretary where there are no notary offices	[ ]

g) Copy of the study document and other relevant certificates held, certified for compliance by the holder	[ ]
h) List of securities held in their own name and on behalf of the spouse and the first degree relatives	[ ]
i) Statement on own responsibility, signed by handwriting, if there are no holdings	[ ]
j) The professional liability insurance provided in Art. 8 par. (2) of the Law no. 126/2018 on financial instrument markets	[ ]
k) Proof of payment to the A.S.F. of the corresponding tariff	[ ]
Date: . . . . . Signature:	

Annex no. 15

STATEMENT

The undersigned . . . ., domiciled in . . . ., holder of ID card type . . 1), Series. . . . no. . . . . , issued by . . . . . on . . . . . , valid until . . . . . , personal identification number . . . . . ., hereby declare that I meet the conditions provided by Art. 128 par. (1) of Regulation no. 5/2019 of ASF regulating some provisions regarding the provision of investment services and activities according to Law no. 126/2018 on the financial instruments markets for the authorization as an investment consultant and I undertake to comply with the provisions of Law no. 126/2018 on the markets for financial instruments and the regulations issued in its application.

Dated and signed today, on my own responsibility, knowing that the false statement is punishable under the law.

Date . . . . . .
Signature . . . . . .

1) Fill in BI for Identity bulletin or CI for Identity Card.

Annex no. 16

IDENTIFICATION DATA OF THE APPLICANT	APPLICATION FOR CERTIFICATION OF THE INVESTMENT CONSULTANT LEGAL PERSON AUTHORIZED BY A.S.F. ACCORDING TO ART. 127 OF REGULATION NO. ... / 2019 OF A.S.F. ON THE REGULATION OF CERTAIN PROVISIONS REGARDING THE PROVISION OF INVESTMENT SERVICES AND ACTIVITIES ACCORDING TO THE LAW NO. 126/2018 ON FINANCIAL INSTRUMENT MARKETS

1. Name of the applicant: . . . . . .
2. Legal form:
   - joint stock company [ ]
   - limited liability company [ ]
3. Certificate of incorporation with the Trade Registry Office: . . . . . (Series, number and date of issue)
4. Tax identification number with the Trade Registry: . . . . . .
5. Registered office . . . . . .
   (street and number)
   . . . . . | . . . . . | . . . . . .
   (locality) (county) (postal code)
6. Phone number: . . . . . Fax: . . . . . .
7. E-mail address . . . . . .
8. Legal representative: . . . .
   (name, first name and position) (phone number)
9. Contact person: . . . .
   (name, first name and position) (phone number)

This application is accompanied by the documents listed below, totalizing a number. . . . . pages.

a)	The documents provided in Annex no. (1) of Commission Regulation (EU) 1945/2017 dated 19 June 2017 laying down implementing technical standards with regard to notifications pursuant to Directive 2014/65/EU of the European Parliament and of the Council by and to firms demanding investments and authorized investment firms
b)	Documents provided by Regulation no. 1/2019 of A.S.F. on the evaluation and approval of members of the management structure and key personnel within the entities regulated by the Financial Supervisory Authority for members of the management structure, except for the documents already required by the Delegated Regulation (EU) 2017/1943
c)	List of securities and fund units held in their own name and on behalf of the spouse and the first-degree relatives for each member of the management body, shareholder/associate holding a qualifying contribution within the company and is employed of the company through which are operating or

	the declaration on own responsibility, signed by handwriting, in the absence of such holdings	
d)	Proof of the fully paid of the share capital or, as the case may be: The latest balance sheet recorded at the Trade Registry Office	[ ] [ ]
e)	Certified copy or copy bearing the attorney's certificate or legalization issued by the mayor's secretary where there is no notary office, of the act attesting the legal possession of the space for the registered office	[ ]
f)	For the consultant company staff: - the documents referred to in Art. 9 par. (1) (a) and (c) of the Regulation. no. 14/7/2018 of A.S.F./B.NR on the provision of investment services and activities on behalf of financial investment services companies and credit institutions; - declaration under his own responsibility, signed by handwriting, regarding the fulfillment of the conditions stipulated in Art. 129 g) of Regulation no. ... / 2019 of the A.S.F., drawn up in accordance with Annex no. 17 of the same Regulation - the criminal record certificate within the legal validity period, in original or in a certified copy or in a copy bearing the lawyer's attestation or legalization issued by the mayor's secretary where there are no notary offices - the fiscal record certificate within the legal validity term, in original or in a legalized copy or in a copy bearing the lawyer's attestation or legalization issued by the mayor's secretary where there are no notary offices - the copy of the study document and other relevant certificates held, certified for compliance by the holder	[ ] [ ] [ ] [ ] [ ]
h)	The professional liability insurance provided in art. 8 par. (2) of Law no. 126/2018 on financial instrument markets	[ ]
i)	Proof of payment to the A.S.F. account of the corresponding tariff provided by A.S.F.	[ ]
Signature of the legal representative:. . . . . Signature of the contact person: . . . . . . Date:		

NOTE:

If the space in the form is not sufficient for detailing the answers, the additions will be made on a separate page with the signature of the legal representative.

Annex no. 17

STATEMENT

The undersigned . . . . , domiciled in . . . . . , holder of ID card type . . .1) Series . . . no. . . . . , issued by . . . . on . . . . . ,valid until . . . . . , personal identification number . . . . . ., as the legal representative of the investment consultant. . . . . 2), hereby declare that I meet the conditions provided by Art. 128 par. (1) of Regulation no. 5/2019 of ASF regulating some provisions regarding the provision of investment services and activities according to Law no. 126/2018 on the financial instruments markets for the authorization as an investment consultant and I undertake to comply with the provisions of Law no. 126/2018 on the markets for financial instruments.

Dated and signed today, on my own responsibility, knowing that the false statement is punishable under the law.

Date . . . . . .

Signature . . . . . .

1) Fill in BI for Identity bulletin or CI for Identity Card.
2) Fill in the name of the company.

Annex no. 18

IDENTIFICATION DATA OF THE APPLICANT	APPLICATION FOR CERTIFICATION natural person authorized by A.S.F. according to art. 132 of the Regulation No ... / 2019 of ASF on the regulation of certain provisions regarding the provision of investment services and activities according to Law no. 126/2018 on financial instrument markets				
1. Surname and first name of the applicant:					
2. ID Card: Type: BI [ ] CI [ ]	Series: |_|_|	Number: |_|_|_|_|_|_|	Issuer: |_____|	Date of issue: |_|_|_|_|_|_|_|_| d d m m y y y y	
3. Personal identification number: |_|_|_|_|_|_|_|_|_|_|_|_|_|					
4. With permanent residence in:					
(street and number)					
. . . . .		. . . . .		. . . . .	
(locality)		(county)		(postal code)	
5. Postal address, if different:					
6. Phone number:					
(fixed, mobile)					
7. Fax:					
8. E-mail address:					
9. This application is accompanied by the documents listed below, totalizing a number. . . . . pages.					
a) The copy of the identity document, certified by the holder for compliance					[ ]
b) Curriculum vitae					[ ]
c) The copy of the study document and other relevant certificates held, certified for compliance by the holder					[ ]
d) Criminal record certificate					
- original					[ ]
- certified copy					[ ]
- a copy bearing attorney's attestation or legalization issued by the mayor's secretary where there are no notary offices					[ ]
e) Tax clearance certificate					
- original					[ ]
- certified copy					[ ]
- a copy bearing attorney's attestation or legalization issued by the mayor's secretary where there are no notary offices					[ ]

f) Statement on your own responsibility, signed by handwriting, regarding the fulfillment of the conditions stipulated in art. 132 par. (1) of Regulation No ... ../ 2019 of the A.S.F.	[ ]
i) List of securities and fund units held in their own name and in the name of the spouse and the first-degree relatives	[ ]
j) Statement on own responsibility, signed by handwriting, if there are no holdings	[ ]
k) The professional liability insurance provided in art. 8 par. (2) of the Law no. 126/2018 on financial instrument markets	[ ]
l) Proof of payment to the A.S.F. the fee for authorization and registration in the A.S.F. Register.	[ ]
Date: . . . . . Signature:	

Annex no. 19

STATEMENT

The undersigned . . . . . , domiciled in . . . . . , holder of ID card type . . ..1) Series . . . no. . . . . , issued by . . . . . on . . . . . , valid until . . . . . , personal identification number . . . . , hereby declare that I meet the requirements of art. 132 par. (1) of Regulation no. 5/2019 of the A.S.F. regulationg some provisions regarding the provision of investment services and activities according to Law no. 126/2018 on financial instrument markets.

Dated and signed today, on my own responsibility, knowing that the false statement is punishable under the law.

Date . . . . . .

Signature . . . . . .

1) Fill in BI for Identity bulletin or CI for Identity Card.

Annex no. 20

IDENTIFICATION DATA OF THE APPLICANT	APPLICATION FOR CERTIFICATION LEGAL PERSON authorized by A.S.F. according to art. 133 of Regulation no. ... / 2019 of the A.S.F. regulating certain provisions regarding the provision of investment services and activities according to the Law no. 126/2018 on financial instrument markets
1. Name of the applicant:	
2. Legal form: - joint stock company [ ] - limited liability company [ ]	
3. Certificate of incorporation with the Trade Registry Office:. . . . . (series, number and date of issue)	
4. Tax identification number with the Trade Registry:	
5. Headquarters . . . . . (street and number) . . . . . (locality) . . . . . (county) . . . . . (postal code)	
6. Phone number: . . . . . Fax:	
7. E-mail address:	
8. Legal representative: . . . . . (name, first name and position) . . . . . (phone number)	
9. Contact person: . . . . . (name, first name and position) . . . . . (phone number)	
This application is accompanied by the documents listed below, totalizing a number of . . . . . pages.	
a)	The documents provided in Annex no. 1 of Commission Regulation (EU) 1945/2017 of 19 June 2017 laying down technical implementing standards for notifications pursuant to Directive 2014/65 / EU of the European Parliament and of the Council by and to companies demanding investments and authorized investment firms
b)	Documents provided by Regulation no. 1/2019 of the A.S.F. on the evaluation and approval of members of the management structure and key personnel within the entities regulated by the Financial Supervisory Authority for members of the management structure, except for the documents already required by the Delegated Regulation (EU) 2017/1943
c)	List of securities and fund units held in their own name and on behalf of the spouse and the first-degree relatives for each member of the management body, shareholder/associate holding a qualifying contribution within the company and is employed of the company through which are operating or the declaration on own responsibility, signed by handwriting, in the absence of such holdings

d)	Proof of the fully paid of the share capital or, as the case may be: The latest balance sheet recorded at the Trade Registry Office	[ ] [ ]
e)	Certified copy or copy bearing the attorney's certificate or legalization issued by the mayor's secretary where there is no notary office, of the act attesting the legal possession of the space for the registered office	[ ]
f)	For natural persons who take over and transmit orders for securities and fund units of collective investment undertakings - the criminal record certificate within the legal validity period, in original or in a certified copy or in a copy bearing the lawyer's attestation or legalization issued by the mayor's secretary where there are no notary offices - the fiscal record certificate within the legal validity term, in original or in a legalized copy or in a copy bearing the lawyer's attestation or legalization issued by the mayor's secretary where there are no notary offices - the copy of the study document and other relevant certificates held, certified for compliance by the holder	[ ] [ ] [ ]
g)	The professional liability insurance provided in art. 8 par. (2) of Law no. 126/2018	[ ]
h)	Proof of payment to the A.S.F. account of the corresponding tariff provided by A.S.F.	[ ]
Signature of the legal representative: . . . . . Signature of the contact person: . . . . . . Date:		

NOTE:
If the space in the form is not sufficient for detailing the answers, the completions will be made on a separate page with the signature of the legal representative.

Annex no. 21

IDENTIFICATION DATA OF THE APPLICANT	APPLICATION FOR CERTIFICATION LEGAL PERSON authorized by A.S.F. according to Art. 137 of Regulation no. ... / 2019 of the A.S.F. regulating certain provisions regarding the provision of investment services and activities according to the Law no. 126/2018 on financial instrument markets

1. Name of the applicant: . . . . . .
2. Legal form:
   - joint stock company [ ]
   - limited liability company [ ]
3. Certificate of incorporation with the Trade Registry Office:: . . . . . (series, number and date of issue)
4. Tax identification number with the Trade Registry: . . . . . .
5. Headquarters . . . . . .
   (street and number)
   . . . . . | . . . . . | . . . . . .
   (locality) (county) (postal code)
6. Phone number: . . . . . Fax: . . . . . .
7. E-mail address: . . . . . .
8. Legal representative: . . . .
   (name, first name and position) (phone number)
9. Contact person: . . . .
   (name, first name and position) (phone number)

This application is accompanied by the documents listed below, totalizing a number of . . . . . pages.

a)	The documents provided in Annex no. 1 of Commission Regulation (EU) 1945/2017 of 19 June 2017 laying down technical implementing standards for notifications pursuant to Directive 2014/65 / EU of the European Parliament and of the Council by and to companies demanding investments and authorized investment firms	
b)	Documents provided by Regulation no. 1/2019 of the A.S.F. on the evaluation and approval of members of the management structure and key personnel within the entities regulated by the Financial Supervisory Authority for members of the management structure, except for the documents already required by the Delegated Regulation (EU) 2017/1943	
c)	Legalized copy or copy bearing the attorney's certificate or legalization issued by the mayor's secretary where there are no notary offices of the act attesting the legal possession of the space for the registered office	[ ]
d)	Proof of the fully paid of the share capital or, as the case may be: The latest balance sheet recorded at the Trade Registry Office	[ ] [ ]

e)	Declaration on his/her own responsibility of the legal representative, under his/her signature, that the company will provide investment services exclusively on commodities, emission allowances and / or derivative financial instruments on behalf of the companies referred to in Art. 7 par. (1) lit. d) of Law no. 126/2018 on financial instrument markets or Declaration on his/her own responsibility of the legal representative, under his/her signature, that the company will provide investment services exclusively on emission allowances and / or derivative financial instruments on behalf of the companies referred to in art. 7 par. (1) e) of Law no. 126/2018	[ ] [ ]
f)	Statement on your own responsibility, signed by handwriting, regarding the fulfillment of the conditions stipulated in art. 137 par. (2) f) of Regulation No ... ../ 2019 of the A.S.F.	
g)	Documents provided in Regulation. No 14/7/2018 of the ASF/NBR on the provision of investment services and activities on behalf of investment firms and credit institutions	[ ]
h)	he professional liability insurance provided in art. 8 par. (2) of the Law no. 126/2018 on financial instrument markets	[ ]
i)	Proof of payment to the A.S.F. the fee for authorization and registration in the A.S.F. Register.	[ ]
Signature of the legal representative:. . Signature of the contact person: . . . . Date:		

NOTE:

If the space in the form is not sufficient for detailing the answers, the additions will be made on a separate page with the signature of the legal representative.

Annex no. 22 A

STATEMENT

The undersigned . . . . , domiciled in . . . . . , holder of ID card type . . .1) series . . . no. . . . . , issued by . . . . . on . . . . . , valid until . . . . . , personal identification number . . . . . ., as legal representative of the company . . . . 2), hereby declare that the company fulfills the conditions stipulated in art. 7 par. (1) d) of Law no. 126/2018 on financial instrument markets.

Dated and signed today, on my own responsibility, knowing that the forgery in statements is punishable under the law.

Date . . . . . .

Signature . . . . . .

1) Fill in BI for identity bulletin or CI for ID card.
2) Fill in the name of the company.

ANNEX NO. 22 B

STATEMENT

The undersigned . . . . , domiciled in . . . . , holder of ID card type . . .1) Series . . . no. . . . . , issued by . . . . on . . . . , valid until . . . . , personal identification number . . . ., as legal representative of the company . . . . 2), hereby declare that the company fulfills the conditions stipulated in art. 7 par. (1) e) of Law no. 126/2018 on financial instrument markets.

Dated and signed today, on my own responsibility, knowing that the false statement is punishable under the law.

Date . . . .

Signature . . . .

1) Fill in BI for identity bulletin or CI for ID card.
2) Fill in the name of the company.

ANNEX NO. 22 C

STATEMENT

The undersigned . . . . , domiciled in . . . . . , holder of ID Card type . . .1) Series . . . no. . . . . , issued by . . . . on . . . . . , valid until . . . . . , personal identification number . . . . . ., as legal representative of the company . . . . . 2), hereby declare that the clients of the company meet the conditions provided in art. 137 par. (2) f) point (i) of Regulation no. 5/2019 of the A.S.F. regulating some provisions regarding the provision of investment services and activities according to Law no. 126/2018 on financial instrument markets.

Dated and signed today, on my own responsibility, knowing that the false statement is punishable under the law.

Date . . . . . .

Signature . . . . . .

1) Fill in BI for identity bulletin or CI for ID card.
2) Fill in the name of the company.

ANNEX NO. 22 D

STATEMENT

The undersigned . . . . , domiciled in . . . . , holder of ID Card type . . .1) Series . . . no. . . . . , issued . . . . on . . . . . , valid until . . . . . , personal identification number . . . . . ., as legal representative of the company . . . . 2), hereby declare that the clients of the company meet the conditions provided in art. 137 par. (2) f) point (ii) of Regulation no. 5/2019 of the A.S.F. regulating some provisions regarding the provision of investment services and activities according to Law no. 126/2018 on financial instrument markets.

Dated and signed today, on my own responsibility, knowing that the false statement is punishable under the law.

Date . . . . . .

Signature . . . . . .

1) Fill in BI for identity bulletin or CI for ID card.
2) Fill in the name of the company.

Annex no. 23

IDENTIFICATION DATA OF THE APPLICANT	UPDATED INFORMATION FOR LEGAL PERSON authorized by A.S.F. according to art. 137 of Regulation No. 5/2019 of the A.S.F. regulating some provisions regarding the provision of investment services and activities according to Law no. 126/2018 on financial instrument markets

1. Name of the applicant: . . . .
2. Tax identification number with the Trade Registry Office: . . . .
3. Headquarters . . . .
   (street and number)
   . . . .
   (locality) (county) (postal code)
4. Phone number: . . . . Fax: . . . .
5. E-mail address: . . . .
6. Legal representative: . . . .
   (name, first name and position) (phone number)
7. Contact person: . . . .
   (name, first name and position) (phone number)

DATA ON COMPANY SHAREHOLDERS HOLDING QUALIFYING CONTRIBUTIONS	UPDATED INFORMATION OF THE LEGAL PERSON authorized by A.S.F. according to Art. 137 of Regulation no. 5/2019 of the A.S.F.

SHAREHOLDERS Natural/legal persons 1)

No.	SHAREHOLDERS Name/Name and surname	Resident state	The competent supervisory authority3)	Holding		Tax identification number/ personal identification number4
				No. of shares	Percentage of share capital	

MEMBERS OF THE GOVERNING BODY	UPDATED INFORMATION OF THE LEGAL PERSON authorized by A.S.F. according to Art. 137 of Regulation no. 5/2019 of the A.S.F.	
Name and surname	Position	Personal identification number

Name and surname of the legal representative: . . . . . .

Signature of the legal representative: . . . . . .

Date:

NOTE:

If the space in the form is not sufficient for detailing the answers, the additions will be made on a separate page with the signature of the legal representative.

Annex no. 24

APPLICATION FOR AUTHORIZATION
OF THE ESTABLISHMENT OF A BRANCH OF FIRM IN A THIRD COUNTRY

PAGE 1/4 IDENTIFICATION DATA OF THE APPLICANT	APPLICATION FOR AUTHORIZATION OF THE ESTABLISHMENT OF A BRANCH OF FIRM IN A THIRD COUNTRY
1. Name of the applicant:	
2. Headquarters in the third country:	. . . . (locality) . . . . (street and number)
3. Phone number:	. . . . Fax number: . . . .
4. E-mail address:	
5. Legal representative of the company:	. . . . (name, first name and position) . . . . (phone number)
6. Contact person:	. . . . (name, first name and position) . . . . (phone number)
7. Address of the branch office: 8. Phone number: 9. Fax number: 10. E-mail address: 11. Legal representative of the company 12. Contact person:	……………………………………………………………………….…
This application is accompanied by a copy of the attached documents and a number of. . . . . documents, totalizing a number. . . . . . . pages. Signature of the legal reprezentative: . . . . Signature of the contact person: . . . . Date:	

NOTE:

If the space in the form is not sufficient for detailing the answers, the additions will be made on a separate page with the signature of the legal representative.

PAGE 2/17 LIST OF DOCUMENTS	APPLICATION FOR AUTHORIZATION OF THE ESTABLISHMENT OF A BRANCH OF FIRM IN A THIRD COUNTRY	
13.	List of documents	
a)	Authorization issued by the competent authority of the State of origin	[ ]
b)	Certificate issued by the competent authority of the State of origin containing the information provided in Art. 142 para. (2) b) of Regulation no. 5/2019 of the A.S.F. regulating some provisions regarding the provision of investment services and activities according to Law no. 126/2018 on financial instrument markets	[ ]
c)	Organization and operation rules of the branch	[ ]
d)	The documents attesting the legal ownership of the branch office	[ ]
e)	Criminal records certificate for Branch Leaders	[ ]
	- original	[ ]
	- certified copy	[ ]
	- a copy bearing attorney's attestation or legalization issued by the mayor's secretary where there are no notary offices	[ ]
f)	Tax clearance certificate for branch managers	
	- original	[ ]
	- certified copy	[ ]
	- a copy bearing attorney's attestation or legalization issued by the mayor's secretary where there are no notary offices	[ ]
g)	List of signature specimens for branch managers and for persons performing the compliance function	
h)	Acknowledgement of participation in the investor compensation scheme authorized or recognized under Directive 97/9/EC	[ ]
i)	Documents provided in the Regulation no. 14/72018 of A.S.F./NBR concerning the provision of investment services and activities on behalf of financial investment services companies and credit institutions, as the case may be, for persons providing investment services and activities	[ ]
j)	Documents provided by Regulation no. 1/2019 of the A.S.F. regarding the evaluation and approval of the members of the management structure and of the persons holding key positions within the entities regulated by the Financial Supervisory Authority, for the person fulfilling the compliance function	[ ]
k)	Documents provided by Regulation no. 1/2019 of the A.S.F. regarding the evaluation and approval of the members of the management structure and of the persons holding key positions within the entities regulated by the Financial Supervisory Authority for the persons responsible for the administration of the branch	[ ]
l)	List of key outsourced operational functions, if applicable	[ ]
k)	Proof of payment to the A.S.F. accounting of the corresponding tariff	[ ]

Date:	Signature: . . . . .

NOTE:
If the space in the form is not sufficient for detailing the answers, the additions will be made on a separate page with the signature of the legal representative.

PAGE 3/7 activities that are authorized	APPLICATION FOR AUTHORIZATION OF THE ESTABLISHMENT OF A BRANCH OF FIRM IN A THIRD COUNTRY

14. Activities for which authorization is requested

1. main services (investment services and activities):

a) Receipt and transmission of orders on one or more financial instruments; [ ]

b) Execution of orders on behalf of clients; [ ]

c) Trading on own account; [ ]

d) Portfolio management; [ ]

e) Investment advice; [ ]

f) Subscribing financial instruments and / or placing financial instruments with firm commitment; [ ]

g) Placing of financial instruments without firm commitment; [ ]

h) Operating an SMT; [ ]

i) Operating a SOT. [ ]

2. Ancillary services:

a) Preservation and administration of financial instruments on behalf of clients, including custody and ancillary services, such as managing money / guarantees and excluding the provision and administration of securities accounts at the highest level; [ ]

b) Granting credits or loans to an investor to enable him to perform a transaction with one or more financial instruments, a transaction involving the firm granting the loan or the loan [ ]

c) Business consulting on capital structure, industrial strategy and related issues; M & A services and consultancy [ ]

d) Foreign exchange services where these services are related to the provision of investment services [ ]

e) Investment research and financial analysis or any other form of general recommendation on transactions in financial instruments [ ]

f) Subscription services [ ]

g) Investment services and activities as well as ancillary services of the type included in this Section or in Section A on Derivative Assets of Derivatives included in Section C, points 5-7 and 10 of Law no. 126/2018 if they are related to the provision of investment services or ancillary services. [ ]

Name and surname of the legal representative: . . . .. .

Signature of Legal Representative:. . . . . .

Name and surname of the contact person: . . . . . .

Signature of the contact person: . . . . . .

Date:

NOTE:
If the space in the form is not sufficient for detailing the answers, the additions will be made on a separate page with the signature of the legal representative.

PAGE 4/7 15. PERSONS RESPONSIBLE FOR THE ADMINISTRATION OF THE BRANCH PERSONS FULFILLING THE COMPLIANCE POSITION	APPLICATION FOR AUTHORIZATION TO ESTABLISH THE BRANCH OF A COMPANY IN A THIRD COUNTRY	
Name and surname	Position	Personal identification number
Name and surname of the legal representative: . . . . . . Signature of the legal representative: . . . . . . Date:		

PAGE 5/7 16. PERSONS PROVIDING THE INVESTMENT SERVICE REFERRED TO IN POINT 5 OF SECTION A, ANNEX NO. 1 OF THE LAW NO. 126/2018	APPLICATION FOR AUTHORIZATION TO ESTABLISH THE BRANCH OF A COMPANY IN A THIRD COUNTRY	
Name and surname	Position	Personal identification number
Name and surname of the legal representative: . . . . . . Signature of the legal representative: . . . . . . Date:		

PAGE 6/7 17. PERSONS PROVIDING INFORMATION ON FINANCIAL INSTRUMENTS, INVESTMENT SERVICES OR ANCILLARY SERVICES ON BEHALF OF THE BRANCH	APPLICATION FOR AUTHORIZATION TO ESTABLISH THE BRANCH OF A COMPANY IN A THIRD COUNTRY	
Name and surname	Position	Personal identification number
Name and surname of the legal representative: . . . . . . Signature of the legal representative: . . . . . . Date:		

NOTE:

If a page is not enough, the additions will be made on a separate page, with the signature of the legal representative.

PAGE 7/7 DATA ABOUT THE SHAREHOLDERS OF THE COMPANY	APPLICATION FOR AUTHORIZATION TO ESTABLISH THE BRANCH OF A COMPANY IN A THIRD COUNTRY					
18. SHAREHOLDERS natural/legal person1)						
Nr. crt.	SHAREHOLDER2 Name/name and surname	Resident state	Competent supervisory authority 3)	Holding		Tax identification number/ Personal identification number4
				No. of shares	Percentage of the share capital	
Name and surname of the legal representative: . . . . . . Signature of the legal representative: . . . . . . Date:						

NOTE:

If the space in the form is not sufficient for detailing the answers, the additions l be made on a separate page with the signature of the legal representative.

1) If the company has more than 20 shareholders, only the shareholders of the company with minimum 5% holdings of the share capital shall be registered, the last line being filled in with "other natural and legal persons holding less than 5%" and the total number of their holdings.

2) The column "Shareholders" will be completed starting with the shareholder structure of the company requesting the authorization. For each shareholder holding in the company a qualified participation, a legal person, a new page will be filled in specifying the structure of its shareholding to the shareholder, including the natural person. It shall not be completed for companies admitted to trading on a regulated market and those to which the State or a public administration authority is a shareholder or associate, specifying this situation.

3) Enter the name of the supervisory authority in the home country with the contact details (full address, telephone, fax, e-mail) for legal persons only.

4) For foreign natural and legal persons, the serial number and the passport number or the registration number with the similar institution to the Trade Register Office of the state of origin shall be completed, as the case may be.

Annex no. 25

NOTICE
for exemption under Art. 6 par. (1) j)
of Law no. 126/2018 on financial instrument markets

For exemption, the company submitting this notification must comply with the provisions of art. 6 par. (1)j) of Law no. 126/2018 on financial instrument markets:

„Art. 6. - (1) This law does not apply to: (…)
j) persons:
1. trading on their own account commodities derivatives or emission allowances or derivative financial instruments, including market makers, with the exception of persons who deal on their own account in executing client orders;
2. providing investment services, other than own-account trading, in respect of commodity derivatives or emission certificates or derivative financial instruments, clients or providers of the principal business,
provided that:
(i) for each of the above cases, considered individually and aggregated, these activities are ancillary to their core business at group level and that the principal activity is not to provide investment services within the meaning of this law, the conduct of banking activities within the meaning of the Government Emergency Ordinance 99/2006, approved with amendments and completions by Law no. 227/2007, as subsequently amended or supplemented, or market trader activities for commodity derivatives;
(ii) those persons do not use a high-frequency algorithmic trading technique;
(iii) those persons notify annually to the relevant competent authority that they benefit from this exemption and, on request, report to A.S.F. the elements on the basis of which it considers that the activities referred to in points 1 and 2 are ancillary to their core business;"

By submitting this notification, you acknowledge that you understand and meet all the criteria set out in art. 6 par. (1) lit. j) of Law no. 126/2018 for exemption.
A.S.F. can contact you to request records that confirm your exemption.

NOTIFICATION FORM ON THE FULFILLMENT OF THE CONDITIONS SET OUT IN
ART. 6 PAR. (1) j) OF LAW NO. 126/2018

1. Name of the applicant: . . . . . .
2. Identification code LEI1: . . . . . .
3. Headquarters: . . . . . .
(street and number)
. . . . . (locality) . . . . (county) . . . . . (postal code)
4. Phone number: . . . . . Fax: . . . . . .
5. E-mail address: . . . . . .
6. Reprezentant legal: . . . . . (name and surname) . . . . (phone number)
7. Contact person: . . . . . (name and surname). . . . . (position) . . . . . (phone number)

Signature of the legal representative: . . . . . .

Date:

NOTE:
If the space in the form is not sufficient for detailing the answers, the additions will be made on a separate page with the signature of the legal representative.

1 To be completed when the company has assigned a LEI identification code.

Statement of the legal representative regarding the fulfillment of the conditions provided in art. 6 par. (1) j) of Law no. 126/2018

The undersigned . . . . . , domiciled in . . . . . , holder of ID card type . . .1) Series . . . . . no. . . . . , issued by . . . . . on . . . . . , valid until . . . . . personal identification number . . . . . ., as the legal representative of the company mentioned on page 1 of this form, shall transmit this notification.

I confirm that the information contained in this notification is accurate and complete.

I understand that the Financial Supervisory Authority is entitled to request additional information and documents at any time after the submission of this notice.

Dated and signed today, on his own responsibility, knowing that the false statement is punishable under the law.

Date …..

Signature ……

1) Fill in BI for identity bulletin, CI for ID card or PAS for passport, for foreign individuals.

Annex no. 26
Table of correspondence between the provisions on services and investment activities and auxiliary services provided by Law no. 297/2004 and Law no. 126/2018

Law no. 297/2004	Law no. 126/2018
Art. 5. - (1) The investment services and activities covered by this law are:	Investment services and activities
a) the taking over and transmission of orders relating to one or more financial instruments;	1. Receipt and transmission of orders relating to one or more financial instruments
b) execution of orders on behalf of clients;	2. Execution of orders on behalf of clients
c) trading on own account;	3. Trading on own account
d) Portfolio management;	4. Portfolio management
e) Investment advice;	5. Investment advice
f) the underwriting of financial instruments and / or the placement of financial instruments on a firm commitment basis;	6. Underwriting financial instruments and / or placing financial instruments with firm commitment
g) placement of financial instruments without firm commitment;	7. Placing financial instruments without firm commitment
h) managing an alternative trading system.	8. Operating a SMT

(11) The related services regulated by the present law are: a) safekeeping and administration of financial instruments on behalf of clients, including custody and related services, such as the administration of funds or guarantees; b) granting credits or loans to an investor to enable him to perform a transaction with one or more financial instruments if that financial investment services firm that lends the loan or the loan is involved in the transaction; c) advice to entities on capital structure, industrial strategy and related issues, and advice and services on mergers and acquisitions of entities; d) currency exchange services in relation to the rendered investment services; e) investment research and financial analysis or other forms of general recommendation on transactions in financial instruments; f) services in connection with the underwriting of financial instruments on a firm commitment basis; g) services and investment activities referred to in paragraph (1), as well as related services of the type referred to in a) -f) related to the underlying asset of the derivatives included in art. 2 par. (1) point 11 lit. (e), (f), (g) and (j), where they relate to investment services and activities and related services.	Ancillary services 1. Preservation and administration of financial instruments on behalf of clients, including custody and ancillary services, such as managing money / guarantees and excluding the provision and administration of securities accounts at the highest level. The provision and administration of securities accounts at the highest level is the "centralized management service" referred to in point A (2) of the Annex to Regulation (EU) No. 909/2014. 2. Granting credits or loans to an investor to enable him to perform a transaction with one or more financial instruments, a transaction involving the firm granting the loan or the loan 3. advice for companies on capital structure, industrial strategy and related issues; M & A services and advices 4. Foreign exchange services where these services are related to the provision of investment services 5. Investment research and financial analysis or any other form of general recommendation on transactions in financial instruments 6. Underwriting services 7. Investment services and activities as well as ancillary services of the type included in this section or in Section A on derivative assets included in Section C, points 5-7 and 10 where they are related to the provision of investment or ancillary services.