

FINANCIAL SUPERVISORY AUTHORITY

REGULATION NO. 2/2017

on the transfer or withdrawal from trading of securities of issuers in case of closure of an alternative trading system

Based on the provisions of art. 1 para. (2), art. 2 para. (1) letter a) and d), art. 3 para. (1) letter b), art. 6 para. (1) and (2), as well as of those of art. 14 of the Government Emergency Ordinance no. 93/2012 on the establishment, organization and functioning of the Financial Supervisory Authority, approved with amendments and supplements by Law no. 113/2013, as further amended and supplemented.

according to the provisions of art. 1 and art. 101-107 of Law no. 24/2017 on issuers of financial instruments and market operations.

according to the provisions of art. 1 și art. 139- 156 of Law no. 297/2004 on the capital market, as further amended and supplemented,

following the deliberations from the meeting of the board of the Financial Supervisory Board from April 26, 2017,

the **Financial Supervisory Authority** issues this regulation.

Art. 1. – This regulation establishes the legal framework applicable for the transfer or withdrawal from trading of securities of issuers, in case of closure of an alternative trading system, following a merger of the system operator with another system operator, following a decision adopted statutorily by the system operator.

Art. 2. - (1) In case of the closure of an alternative trading system, managed by a system operator, hereinafter referred to as *OS1*, as a result of the merger of that system operator with another system operator, the issues whose securities are admitted to trading within the alternative trading system managed by *OS1*, are transferred within the alternative trading system managed by the absorbing system operator/that results after the merger, hereinafter referred to *OS2*.

(2) The transfer of issuers from the alternative trading system managed by OS1 on the alternative trading system managed by OS2, that involves including the transfer of the register of the shareholders of the issuers from the central depository that performs reimbursement activities for the operations developed on the alternative trading system managed by OS1, hereinafter referred to *DC1*, to the central depository that performs reimbursement activities for the operations developed on the alternative trading system, managed by OS2, hereinafter referred to as *DC2*, shall be made according to the calendar established by OS1 and OS2, in cooperation with DC1 and DC2, respecting the following stages:

a) following the communication to OS1, OS2, DC1 and DC2 by the Financial Supervisory Authority, hereinafter referred to *ASF*, of the decision of authorizing the amendments of the conditions held in view when authorizing OS2, following the merger operations, OS1 informs the issuers provided at para. (1), regarding that decision;

b) following the communication of the ASF decision, provided at letter a), OS1 and OS2 establish the date of termination of the trading of securities on the alternative trading system managed by OS1, in such way in which the transfer of issuers from the alternative trading system managed by OS2 to be made according para. (1) until the date on which the withdrawal of the authorization of OS1 as system operator, by ASF, enters into force; OS1 takes measures so the trading on the alternative system, whose activity ends according to the provisions of para. (1), ends starting with the second working day following the communication of the decision of OS1 of terminating the trading, to the participants on the market and investors, by posting a press release on its website, as well as to ASF, issuer, DC1 and DC2;

c) DC1 hands over to DC2 the register of shareholders of all the issuers whose securities are traded within the alternative trading system, no later than the date on which the mergers is effective, based on a delivery-receipt protocol, concluded between DC1 and DC2, that shall consist of the data and information for each issuer, provided at art. 52, para. (1) and art. 65 of the Regulation no. 13/2005 on the authorization and operation of the central depository, clearing houses and central counterparties, approved by the Order of NSC no. 60/2005, as further amended and supplemented, as well as the following data and information that shall be communicated on a lasting electronic support as well, with electronic signature, according to the dispositions of Law no. 445/2001 on the electronic signature, republished:

(i) total number of securities, recouped in the number of securities free of obligations and the number of restricted securities;

(ii) the updated synthetic structure of the shareholders of each issuer;

(iii) databases comprising in the identification data of shareholders, as well as their holdings at the date of handing over the registry, mentioning the restricted holdings and those with obligations;

(iv) documents that are the basis for the operations of registering restrictions and obligations of holdings;

d) in case of issuers that distribute dividends through DC1, DC1 shall reimburse the undistributed amounts as dividends to the issuer and shall transmit the situation of the distribution of dividends;

c) issuers have the obligation to, no later than the date on which the merger is effective, to conclude a registry service contract with DC2, according to the provisions of art. 146 para. (4) of Law no. 297/2004 on the capital market, as further amended and supplemented;

f) by deliver-receipt protocol, DC1 certifies the integrity of the data and information put at disposal of DC2, that shall be further responsible with the integrity and confidentiality of the data received;

g) DC2 shall send to the issuer a copy of the delivery-receipt protocol, mentioned at letter c).

Art. 3. - (1) The competent bodies of the issuers provided at art.2, para. (1) have the liability to include on the agenda of an extraordinary general meeting of the shareholders the adoption of a decision with regards to:

a) further trading of securities within an alternative trading system managed by OS2/trading within another alternative trading system, approved by Law no. 297/2004, as further amended and supplemented, and by the regulations issued for its application; or

b) the withdrawal of securities from trading, while respecting the right of the shareholder to withdraw from the company.

(2) The competent bodies of the issuers perform the necessary endeavors so the extraordinary general meeting of shareholders provided at para. (1) to take place until the deadline of a term of 90 days since the date on which the merger of the system operators is effective.

(3) The competent bodies of issuers will draft and will put at the disposal of the shareholders a report consisting in the presentation of alternative trading system on which the issuers' securities can be traded, according to para. (1), letter a).

Art. 4. - (1) Within 30 days from the date of the extraordinary general meeting of shareholders, on which the further trading/trading within the alternative trading system provided at art. 3, para. (1) letter a) was decided, the issuer shall submit to the system operator that manages that alternative trading system, a request regarding the further trading/trading within the alternative trading system.

(2) The system operator send to the issuer the agreement/rejection of the request regarding the further trading/trading within the alternative trading system, within 7 working days since the submission of the request by the issuer.

Art. 5. – Securities of issuers provided at art. 2, para. (1) are withdrawn from trading on the alternative trading system managed by OS2, while respecting art. 6-10 and with the approval of the right to withdraw from the company of the shareholders that do not agree the withdrawal from trading, in the following situations:

a) the extraordinary general meeting of the shareholders provided at art. 3 approved the initiation of endeavors for the withdrawal of securities from trading, according to art. 3, para. (1), letter b);

b) the system operators reject the further trading/trading within the alternative trading system managed by it;

c) the extraordinary general meeting of shareholders shall take place within the term provided at art. 3, para. (2), but without fulfilling the legal or statutory quorum conditions or no decision is adopted because of the failure to comply with the legal or statutory conditions regarding the adoption of a decision;

d) the extraordinary general meeting of shareholders is not convened in such way in which it can take place in the term provided at art. 3 para. (2).

Art. 6. - (1) Within 7 working days since the occurrence of the events provided at art. 5 letter a) – c), respectively since the ending of the term provided at art. 5, letter d), the competent bodies of the issuers that were transferred on the alternative trading system managed by OS2, have the liability to appoint an independent authorized assessor registered with ASF, that fulfils the conditions provided at art. 87 para. (4) letter d) pct. (ii) sub-item 3 of the Regulation no. 1/2006 on issuers and operations with securities, approved by the Order of the NSC no. 23/2006, as further amended and supplemented, in order to draft an assessment report on the price per share, that is to be paid in case of the withdrawal of the shareholders from the issuer. The price cannot be smaller than the market value established according with the international assessment standards.

(2) The costs generated by the drafting of the report provided at para. (1) shall be supported by the issuer. The independent assessor shall perform the necessary endeavors in order to finalize the report on the price in maximum 30 working days from the designation.

(3) The shareholders existing in the register of shareholders at the date of the identification have the right to withdraw from the company according to art. 5, established as follows:

a) in the situation provided at art. 5, letter a), at the date of registration established in the extraordinary general meeting of shareholders, that will be ulterior to this with at least 10 working days, but no later than 15 working days.

b) in the situations provided at art. 5, letters b)-c), in the 10th working day ulterior the event took place;

c) in the situation provided at art. 5, letter d), in the 10th working day since the ending of the term of 90 days provided at art. 3, para. (2).

(4) The shareholders provided at para. (3) may request the withdrawal from the Company, in 45 days from the date of publishing the report provided at art. 8, para. (1), letter c), by sending in writing to the issuer a request for this matter. Within that request, the method by which the payment is required shall be mentioned as well, respecting the payment method established according to the provisions of art. 106¹ of Regulation no. 1/2006, approved by the Order of NSC no. 23/2006, as further amended and supplemented. .

Art. 7. - (1) The issuer shall pay the shareholders that request the withdrawal, the counter-value of the shares, on the date established by the issuer, but no later than 15 working days from the expiry of the term of exercising the right to withdraw.

(2) The issuer has the liability to, in 24 hours since the receipt of a request of withdrawal from the company of a shareholder, request the central depositary the performance of the endeavors for blocking the shares of that shareholder. The payment provided at para. (1) shall be made by the issuer, based on the confirmation received from the central depositary regarding the blocking of the shares.

(3) The provisions regarding the direct transfer shall apply accordingly in the case of the transfer of the property rights from shareholders that exercised the right to withdraw from the company. The issuer has the liability to request the central depositary the registration of the direct transfer in 3 working days from the date of the payment to the shareholder.

(4) The costs generated by the operations provided at para. (1)-(3) shall be supported by the issuer.

Art. 8. - (1) The issuer has the liability to draft and send the system operator and ASF current report, without delay, but no later than 24 hours since the production or acknowledgement of the following operations:

a) events provided at art. 5, letter a) – c) or ending of the term provided at art. 5, letter d); in case of the events provided at art. 5, letter b) – c), respectively of the ending of the term provided at art. 5, letter d), the issuer has the liability to mention the calendar day as well, calculated according art. 6, para. (3), that represents the identification date;

b) appointment of the independent authorized assessor, according to art. 6, para (1); the report shall contain the name of the assessor as well;

c) establishment by the independent authorized assessor of the price of shares that is to be paid to the shareholders that request the withdrawal from the company. The report shall contain the methods by which the shareholders can consult the report drafted by the designated assessor, the price for a share determined by the designated assessor, the period in which the request of withdrawal from the company can be submitted, as well as the date on which the counter-value of the shares held by the shareholders that exercised their right to withdraw from the company will be paid;

d) ending of the period for submitting request of withdrawal from the company. The report will contain as well mentions on the number of shareholders, respectively the number of the shares for which the right to withdraw from the company was exercised;

e) finalization of the payments to the shareholders withdrawn from the company of the counter-value of the shares held, respectively the finalization of the procedure of withdrawal of the shareholders from the company.

(2) In case of the events provided at para. (1), letter a), the issuer shall publish the current report and in at least 2 national days. If the company has a webpage, the report shall be published on that webpage.

Art. 9. – In the situations provide at art. 5, the withdrawal from trading, respectively the radiation from the ASF registries, shall be made by ASF following the finalization of the payments to the shareholders withdrawn from the company of the counter-value of the shares held and after the finalization of the procedure for the withdrawal of shareholders from the company, respectively ulterior to the receipt of the confirmation from the central depository on the performance of the direct transfers associated to all the withdrawal request received and paid by an issuer.

Art. 10. - In case of the issuers provided at art. 2, para. (1) whose shares were traded within the alternative trading system managed by OS1, the right of the shareholders to withdraw from the company shall not apply in the situation in which the securities are admitted to trading on a regulated market. The admission to trading on a regulated market shall be made while complying the conditions of admission on a regulated market.

Art. 11. - (1) In case that, previous to the date on which the merger is effective, the issuer has decided in the extraordinary general meeting of shareholders that the securities are to be traded within an alternative trading system managed by the system operator provided at art. 3 and this rejects the admission to trading within an alternative trading system, previous to the date on which the merger is effective, the securities of the issuer taken over according to art. 2, para. (1), shall be withdrawn from trading, applying accordingly the provisions of art. 5, case in which the term of 7 working days provided at art. 6, para. (1) starts from the date on which the merger is effective, and the identification date provided at art. 6, para. (3) letter b) shall be considered the 10th working day ulterior to the date on which the merger is effective.

(2) The provisions of art. 3 –9 shall not apply in the following situations:

a) the extraordinary general meeting of shareholders of the issuer whose securities are admitted to trading within an alternative trading system managed by OS1 has decided, previous to the date on which the merger is effective, the trading within an alternative trading system managed by the system operator provided at art. 3 and this system operator agreed on that trading;

b) the issuer is in liquidation procedure, previous to the date on which the merger is effective.

(3) In case in which, previous to the date on which the merger is effective, the issuer has decided in the extraordinary general meeting of the shareholders that the securities are not to be traded within the alternative trading system provided at art. 3 and, as a consequence, these are withdrawn from trading, without complying with the conditions provided at art. 87 para. (4) letter d) of Regulation no. 1/2006, approved by the Order of NSC no. 23/2006, as further amended and supplemented, and the issuer does not perform, ulterior to the date on which the merger is effective, a new extraordinary general meeting of the shareholders according to art. 3, the provisions of art. 5, letter d), respectively art. 6, para. (3), letter c) shall apply accordingly.

(4) In case that, previous to the date on which the merger is effective, the issuer transferred on the alternative trading system managed by OS2 has decided that the securities to be

withdrawn from trading, according to art. 87, para. (4), letter d) of the Regulation no. 1/2006, approved by the Order of NSC no. 23/2006, as further amended and supplemented, the withdrawal from trading shall be made according to the provisions of the previously mentioned article.

(5) In case the issuer transferred on the alternative trading system managed by OS2 is in insolvency procedure, the procedure provided at art. 3-9 shall be applied after the conclusion of the insolvency procedure and reinsertion of the debtor in the business activity, situation in which the term of 90 days provided at art. 4, para. (2) shall start from the date of conclusion of the insolvency procedure and reinsertion of the debtor in the business activity.

Art. 12. - OS2 has the liability to accordingly modify its own regulations, in such way in which the companies in insolvency or liquidation procedure, transferred according to art. 2, para. (1), to be traded further until the date of termination of the insolvency procedure and reinsertion of the debtor in the business activity/until the date of radiation from the Trade Registry.

Art. 13. - (1) The provisions of art. 3-18 shall apply accordingly as well in the case in which the extraordinary general meeting of shareholders of a system operators decides the closure of an alternative trading system, without deciding, until the date of the termination of that alternative trading system, the merger with another system operator, case in which the term provided at art. 3, applicable in case of issuers whose shares are admitted to trading within that alternative trading system, is of 250 days and shall start at the date of decision of the extraordinary general meeting of shareholders of the system operator. In this case, the provisions of art. 5-10 shall apply accordingly with regards to the withdrawal from trading of securities of issuers previously mentioned, within the alternative trading system whose activity stops.

(2) In case the issuer is in insolvency procedure, the procedure provided at art. 3-9 shall apply after the termination of the insolvency procedure and reinsertion of the debtor in the business activity, case in which the term of 250 days provided at para. (1) shall begin at the date of termination of the insolvency procedure and reinsertion of the debtor in the business activity.

(3) The provisions of art. 3-9 shall not apply in the situation in which the issuer is in liquidation procedure, previous to the date on which the extraordinary general meeting of shareholders of a system operator decides the closure of an alternative trading system, according to para. (1).

Art. 14. – The activity on the alternative trading system that is to be closed according art. 13 or following a merger of the system operator with another system operator cannot end sooner than the date of termination of the trading activity on that alternative trading system and the date of withdrawal of the authorization of that alternative trading system.

Art. 15. – Non-compliance with the provisions of this regulation shall be sanctioned, as appropriate, according to the dispositions of title VI of Law no. 24/2016 on issuers of financial instruments and market operations or of title X of Law no. 297/2004, as further amended and supplemented.

Art. 16. – This regulation shall be published in the Official Journal of Romania, Part I, in the bulletin of the Financial Supervisory Authority, as well as on its website, and shall enter into force on the date of its publishing in the Official Journal of Romania.

President of the Financial Supervisory Authority,
Mișu Negrițoiu

Bucharest, 27.04.2017

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