

Regulation no. 4/2019
for amending and supplementing the ASF Regulation no. 4/2013 regarding the
underlying shares for the certificates of deposit, approved by the Decision of the ASF
Council no. 44/2013

In force starting with 3rd April 2019

published in the Official Gazette, Part I no. 257 of 03rd of April 2019. Form applicable at 4th of April 04, 2019.

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 on the establishment, organization and functioning of the Financial Supervisory Authority, approved with amendments and supplements by Law no. 113/2013, with subsequent amendments and completions,

based on art. 1 of the Law no. 24/2017 on issuers of financial instruments and market operations,

following the deliberations of the meeting of the Financial Supervisory Authority Council dated 25.03.2019,

The Financial Supervisory Authority issues this Regulation.

Art. I. - ASF Regulation no. 4/2013 regarding the underlying shares for the certificates of deposit, approved by the Decision of the ASF Council no. 44/2013, published in the Official Gazette of Romania, Part I, no. 622 of October 7, 2013, with subsequent amendments and modifications, is amended and completed as follows:

1. In Article 1, after paragraph (2), a new paragraph, paragraph (3), is inserted with the following content:

" **(3)** This Regulation shall also apply accordingly in situations where certificates of deposit are issued:

a) are to be admitted to trading in a third country of the European Union in a market equivalent to the regulated market within the connotation of Law no. 126/2018 on the markets for financial instruments, hereinafter referred to as Law no. 126/2018 and European regulations on the basis of a prospectus published and approved by the relevant competent authority in that field from that third country and having a content similar to that provided for

by European regulations on the information to be included in a prospectus and the conditions under which certificates of the deposit are based on the securities referred to in paragraph (1)

b) are admitted to trading in a third country of the European Union, based on the securities referred to in paragraph (1) and which, at the time of admission to trading on that market in the third country, was subject to the requirements set out in paragraph (1)."

2. In Article 2, paragraph 1 is amended and will have the following content:

" **Art. 2. - (1)** The terms and expressions used in this Regulation have the meaning given in Art. 2 par. (1) of the Law no. 24/2017 on Issuers of Financial Instruments and Market Operations, hereinafter referred to as Law no. 24/2017, as well as in the regulations issued in its application by the Financial Supervisory Authority, hereinafter referred to as A.S.F."

3. In Article 2 paragraph (2), letter (b) is revoked.

4. In Article 2 paragraph (2), letters d) and d¹) are amended and will have the following content:

" **d)** central depository - the entity referred to in art. 146 par. (1) of the Law no. 297/2004 regarding the capital market, as subsequently amended and supplemented, or, as the case may be, at art. 3 par. (1) point 20 of the Law no. 126/2018, which performs stock-holding operations and / or, as the case may be, allocation rights as well as registry operations for the issuer defined at letter e);

d¹) underlying allocation rights or allocation rights - allocation rights as defined in art. 2 par. (2) letter i) of the ASF Regulation no. 5/2018 on Issuers of Financial Instruments and Market Operations, hereinafter referred to as A.S.F Regulation no. 5/2018, issued in the case of the public offers mentioned in art. 1 par. (1) letter a), based on which certificates of deposit are issued;"

5. In Article 2, paragraph 3 is amended and will have the following content:

" **(3)** The certificates of deposit based on shares / allocation rights covered by this Regulation are not those referred to in Art. 3 par. (1) point 33 of the Law no. 126/2018."

6. In Article 3, paragraphs 3 and 10 are amended and will have the following content:

" **(3)** Carrying out the crediting operations of the special account referred to in paragraph (1) with the number of underlying shares under which certificates of deposit are issued and also the blocking of the underlying shares shall be made only after and on the basis of the relevant instructions transmitted to the central depository or, as the case may be, to the participant to the central depository system, certificates of deposit, approved by the competent authority of the home Member State, determined in accordance with the provisions of Art. 4

letter b) of Law no. 24/2017, or, as the case may be, by the competent authority in the third country referred to in Art. 1 par. (3) letter a).

.....

(10) The transfer instructions provided in paragraph (7) and (8) will always be based on, and will be in compliance with, the conversion request, the issuer of deposit certificates being obliged to issue / cancel the deposit certificates without delay immediately after the registration of the transfers and according to the prospectus for certificates of deposit, approved by the competent authority of the home Member State, respectively by the competent authority in the third country referred to in Art. 1 par. (3) letter a)"

7. In Article 5, paragraphs 1, 3 and 4 are amended and will have the following content:

" **Art. 5. - (1)** The provisions of Section 1 of Chapter IV of Title III of Law no. 24/2017, respectively those of Subsection 3.1 of Section 3 of Chapter III of Title IV of the A.S.F. Regulation no. 5/2018 shall also apply accordingly to the deposit certificates, respectively to the holders of certificates of deposit and to persons holding possessions constituted both by shares and by certificates of deposit.

.....

(3) The subject of the notification obligation provided in paragraph (1) has the obligation to inform, at the same time, about the achievement, overrun or decrease under thresholds, the issuing company of the underlying shares and A.SF, according to art. 72 par. (2) of the Law no. 24/2017 and in compliance with the provisions of art. 80 of Law no. 24/2017, as well as art. 149 paragraph (10) of the A.S.F. Regulation no. 5/2018.

(4) The issuer of the underlying shares who received information according to par. (3) shall inform the public of that operation in accordance with Article. 72 par. (6) of the Law no. 24/2017 and art. 149 paragraph (10) of the A.S.F. Regulation no. 5/2018. "

8. Article 6 is amended and will have the following content:

" **Art. 6. -** The provisions of art. 37 of the Law no. 24/2017 shall also apply accordingly to holders of certificates of deposit, taking into account the number of shares held by them, including those corresponding to the certificates of deposit."

9. Article 7 shall be amended and shall have the following content:

" **Art. 7. - (1)** The issuer of the deposit certificates in whose name the underlying shares based on which the certificates of deposit are issued has the quality of shareholder in the meaning and for the application of Art. 92 of the Law no. 24/2017, respectively of art. 183-210 of the A.S.F. Regulation no. 5/2018.

(2) The access of the issuer of deposit certificates to the shareholders general meeting is carried out under the conditions of art. 92 para. (7) of the Law no. 24/2017."

10. In Article 9, paragraphs 1 and 2 are amended and shall have the following content:

" **Art. 9. - (1)** The issuer of the certificates of deposit shall vote in the shareholders general meeting according to and within the limits of the instructions of the holders of certificates of deposit having this quality at the reference date established according to art. 2 paragraph (2) letter g) of the A.S.F. Regulations no. 5/2018 as well as in compliance with the provisions set out in the issue papers of the certificates of deposit.

(2). By way of exception to the provisions of art. 200 paragraph (6) of the A.S.F. Regulation no. 5/2018, the issuer of deposit certificates may, in the shareholders general meeting of the same issuer, express for some of the underlying shares different votes from those expressed for other underlying shares"

11. Article 11 shall be amended and shall have the following content:

" **Art. 11. -** By way of derogation from the provisions of art. 200 paragraph (4) of Regulation No. 5/2018, the issuer of deposit certificates may authorize each of the holders of certificates of deposit from which he/she has received instructions in accordance with Art. 9 paragraph (1) or any third party designated by one of those holders of certificates of deposit to participate and vote at a general meeting."

12. Article 12 shall be amended and shall have the following content:

" **Art. 12. -** In order to exercise the right provided in art. 92 paragraph (3) of the Law no. 24/2017, the issuer of deposit certificates shall submit to the issuer of the underlying shares a declaration on his / her own responsibility showing the percentage of the share capital for which he exercises this right, a percentage which shall be calculated solely by taking into account the number of underlying shares corresponding to the holdings of deposit certificates of those who gave the instructions"

13. In Article 13, paragraph 3 is amended and will have the following content:

" (3) The Issuer has the obligation to make public the reports foreseen according to Chapter. I, III and IV of Title III and under Title V of Law no. 24/2017 and Regulation (EU) 2014/596 of the European Parliament and of the Council of 16 April 2014 on Market Abuse (Market Abuse Regulation) and revoking of Directive 2003/6 / EC of the European Parliament and of the Council Commission Directives 2003/124/ EC, 2003/125/ EC and 2004/72 / EC, respectively accordingly to provisions of chapters I and III of Title IV, as well as the provisions of Title VI of Regulation no. 5/2018, with due respect of the provisions of art. 105 paragraph (2) and art. 149 paragraph (2) of the A.S.F. Regulation no. 5/2018."

14. In Article 13, after paragraph (3), a new paragraph (4) shall be inserted, with the following content:

" (4) The provisions of art. 149 paragraph (2) of the A.S.F. Regulation no. 5/2018 shall also apply if the certificates of deposit are admitted to trading in the third country according to Art. 1 paragraph (3)."

15. In Article 131, paragraph (2) shall be amended and shall have the following content:

" (2) The issuer of the deposit certificates in the name of which the allocation rights which are the basis of the deposit certificates does not qualify as a shareholder within the meaning of Law no. 24/2017 and the A.S.F. Regulation no. 5/2018."

16. In Article 17, paragraphs 1 and 2 are amended and will have the following content:

" **Art. 17. - (1)** The requirement that global sub-accounts in participants' records should be opened on behalf of other entities that are authorized to open financial accounts for their clients as provided in art. 53 paragraph (3) letter b) of Regulation 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, respectively to art. 46 paragraph (3) letter b) of the A.S.F. Regulation no. 10/2017 on central depositories issued pursuant to Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23rd of July 2014 on the improvement of the securities settlement in the European Union and on securities central securities depositories and amending Directives 98/26 / EC and 2014/65 / EU and Regulation (EU) no. 236/2012 is not applicable if the participant to the central depository opens an account on behalf of the issuer of the certificates of deposit and on behalf of the holders of certificates of deposit, in which the underlying shares on the basis of which the respective deposit certificates were issued are recorded and blocked

(2) In the case of the special global account in which the underlying shares are highlighted based on which certificates of deposit are issued, mentioned in art. 3 paragraph (1), the reporting obligation provided in art. 146 paragraph (6) and (7) of Law no. 297/2004, with the subsequent amendments and completions, respectively to art. 177 paragraph (5) and (6) of Law no. 126/2018 is fulfilled by providing the Central Depository with information on the issuer of deposit certificates"

17. In Article 18, paragraph 2 is amended and will have the following content:

" (2) The committing of the contraventions provided in par. (1) is found and sanctioned by A.S.F. according to the provisions of chapter I of Title VI of Law no. 24/2017."

Art. II. - This Regulation shall be published in the Official Gazette of Romania, Part I, and in the Bulletin of the Financial Supervisory Authority and shall enter into force on the date of its publication in the Official Gazette of Romania, Part I.

The Chairman of the Financial Supervisory
Authority,
Elena-Doina Dascălu

Bucharest, 25th of March 2019.

No. 4.