Government of Romania - Emergency Ordinance no. 32/2012 of 27 June 2012

Emergency Ordinance no. 32/2012 on undertakings for collective investment in transferable securities and investment management companies and amending and supplementing Law no. 297/2004 on the capital market

In force as of 10 July 2012

The consolidation of 10 August 2022 is based on the publication in the Official Gazette, Part I, no. 435 of 30 June 2012 and includes amendments made by the following laws: L 10/2015; L 268/2015; L 29/2017; L 243/2019; L 158/2020; L 239/2022; L 237/2022; Will be amended by the following acts: L 233/2022;
Last amendment on 01 August 2022.

In view of the Government's commitment to continue economic and financial reforms in order to maintain economic stability in the context of the current global financial crisis and to ensure appropriate improvement of the relevant legislative framework, including by integrating the EU acquis into national legislation,

taking into account that the adoption of this emergency ordinance is required following the expiry of the deadline for transposition into national law (1 July 2011) of the provisions of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities and Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, rules of conduct, risk management and content of the agreement between the depository and the management company and Commission Directive 2010/44/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions relating to fund mergers, master/feeder structures and notification procedure,

i.e. failure to transpose the provisions of the above-mentioned Directives as a matter of urgency would mean that the reform of undertakings for collective investment in transferable securities would lose credibility,

given that since the entry into force of Law no. 297/2004 on the capital market, as subsequently amended and supplemented, a number of relevant normative acts have been adopted at Community level with an impact on the capital market, the transposition of which requires the adoption of provisions at the level of primary legislation,

taking into account the fact that concrete situations that have arisen in practice since the adoption of the Capital Market Law call for the urgent amendment of some existing provisions in order to ensure a higher degree of protection for investments and investors in the capital market,

pursuant to Art. 115 para. (4) of the Constitution of Romania, republished,

The Government of Romania adopts this emergency ordinance.

TITLE I
Undertakings for collective investment in transferable securities and investment management companies

CHAPTER I
General provisions

Art. 1 – (1) This Title regulates the establishment and operation of undertakings for collective investment in transferable securities and investment management companies.

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

Art.2 - (1) Undertakings for collective investment in transferable securities, hereinafter referred to as UCITS, are open-ended investment funds and investment companies, which cumulatively meet the following conditions:

a) have the sole purpose of making collective investments, placing their money in liquid financial instruments referred to in Art. 82 and operating on the principle of risk diversification and prudent management;

b) the units are, at the request of the holders, redeemable on a continuous basis, directly or indirectly, out of the assets of those undertakings. The activity of UCITS in ensuring that the value of its units in a market does not vary significantly in relation to the value of the unit net assets may be considered equivalent to a repurchase transaction.

(2) UCITS may consist of several investment compartments.

(3) UCITS shall be established either as open-ended investment funds, on the basis of a civil contract, or as investment companies, by means of a memorandum of association.

(4) UCITS units are fund units or shares issued by UCITS, depending on the manner in which they are established.

(5) Investment companies which invest their assets, through subsidiaries, predominantly in other than securities, are not covered by this Emergency Ordinance.

(6) UCITS may not be transformed into other types of collective placement bodies.

(7) Any collective investment undertaking may be transformed into a UCITS, subject to the provisions of this Emergency Ordinance and the regulations issued by CNVM (National Securities Commission).

Art. 3 - (1) For the purposes of this Title, the following terms and expressions shall have the following meanings:

1. initial capital - funds defined according to the joint regulations of the National Bank of Romania/National Securities Commission (BNR/CNVM) on own funds issued in application of Government Emergency Ordinance no. 99/2006 on credit institutions and capital

adequacy, approved with amendments and additions by Law no. 227/2007, hereinafter referred to as GEO no. 99/2006;

2. client - any natural or legal person or any other entity, including a UCITS, to whom an investment management company provides the service of collective portfolio management or the services referred to in Art. 5 para. (3);

3. unit-holder - any natural or legal person who holds one or more units of a UCITS;

3[1]. sustainability factors - sustainability factors as defined in Art. 2 para. (24) of Regulation (EU) 2019/2.088 of the European Parliament and of the Council of 27 November 2019 on sustainability disclosures in the financial services sector, hereinafter Regulation (EU) 2019/2.088;

4. synthetic risk and return indicators - synthetic indicators within the meaning of Art. 8 of Commission Regulation (EU) no. 583/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards key investor information and the conditions to be met for providing key investor information or the prospectus in a durable medium other than paper or by means of a website;

5. money market instruments - financial instruments usually traded on the money market, which are liquid and the value of which can be accurately determined at any time;

6. own funds - own funds defined according to the joint NBR/CNVM regulations on own funds issued in application of GEO no. 99/2006;

7. the merger of the UCITSs - an operation whereby:

(i) one or more UCITS or investment compartments thereof, referred to as the merged UCITS, transfer, on their dissolution without liquidation, all their assets to another existing UCITS or investment compartment thereof, referred to as the merging UCITS, in exchange for the distribution of units of the acquiring UCITS to their unit-holders and, possibly, a cash payment not exceeding 10% of the net asset value of those units;

(ii) two or more UCITS or investment compartments thereof, referred to as the merged UCITS, transfer to each other, on their dissolution without going into liquidation, all their assets and liabilities to a UCITS which they form or to an investment compartment thereof, referred to as the acquiring UCITS, in exchange for the distribution of units to the newly created UCITS to their unit-holders and, if applicable, a cash payment not exceeding 10% of the net asset value of those units;

8. national merger of UCITS - a merger between UCITS established in Romania, where at least one of the UCITS involved has notified the distribution of its units in another Member State;

9. cross-border merger of UCITS - a merger between several UCITS:

(i) of which at least one UCITS is established in Romania and one UCITS in another Member State; or

(ii) which are established in Romania, but the merger results in a new UCITS established in another Member State; or

(iii) which are established in a Member State other than Romania, but the merger results in a new UCITS established in Romania;

10. close links - the situation referred to in Art. 2 para. (1) point 16 of Law no. 297/2004;

11. Feeder UCITS - a UCITS or an investment compartment thereof which has been authorised to invest, by way of derogation from Art. 2 para (1) a) art. 82, 85, 88 and art. 90

para. (2) c), at least 85% of its assets in units issued by another UCITS or by an investment compartment thereof which is the master UCITS;

12. Master UCITS - a UCITS or an investment compartment thereof which:

a) has at least one feeder UCITS among its unit-holders;

b) is not itself a feeder UCITS; and

c) does not hold units in a feeder UCITS;

13. qualifying holding - a direct or indirect holding in an investment management company which represents 10% or more of the share capital or of the voting rights or which makes it possible to exercise a significant influence over the management of the investment management company in which that holding subsists. The determination of holdings and voting rights shall be carried out in accordance with the provisions of the CNVM regulations transposing the provisions of Articles 9 and 10 of Directive no. 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers the securities of which are admitted to trading on a regulated market with regard to the harmonisation of transparency requirements, taking into account the conditions of aggregation laid down in Art. 12 para. and (5) of the same Directive;

14. relevant person in relation to an investment management company:

a) a director/member of the management board, shareholder or equivalent, or a director/member of the supervisory board of an investment management company; or

b) an employee of the investment management company or any other natural person whose services are made available to and under the control of the investment management company and who is involved in the provision of the collective portfolio management service by the investment management company; or

c) a natural person directly involved in the provision of services to the investment management company under a delegation agreement entered into with a third party in order for the investment management company to perform the activity of collective portfolio management;

15. market timing - a fraudulent practice whereby an investor systematically underwrites and redeems or converts units within a short period of time, taking advantage of timing differences and/or deficiencies in the method of determining net asset value;

16. portfolio rebalancing - a significant change in the composition of the portfolio of a UCITS;

17. counterparty risk - the risk of loss to the UCITS arising from the possibility that a counterparty to a transaction may fail to meet its obligations before the final settlement of the cash flow of the transaction;

18. liquidity risk - the risk that a position in the UCITS' portfolio cannot be sold, liquidated or closed at limited cost within a reasonably short period of time, affecting the ability of the UCITS to comply at all times with the provisions of Art. 2 para. (1) (b);

19. operational risk - the risk of loss to the UCITS arising from the inadequacy of internal processes and from human error and deficiencies in the investment management company's systems or from external events and includes legal and documentation risk and the risk arising from trading, settlement and valuation procedures carried out on behalf of the UCITS;

20. market risk - the risk of loss to the UCITS arising from fluctuations in the market value of positions in the portfolio of the UCITS which may be attributable to changes in market variables such as interest rates, foreign exchange rates, equity and commodity prices or the creditworthiness of an issuer;

20^{1} . sustainability risk - sustainability risk as defined in Art. 2(22) of Regulation (EU) 2019/2.088;

21. member states - the Member States of the European Union and the other states belonging to the European Economic Area;

22. Member State of origin:

a) the Member State in which the investment management company/investment company has its registered office;

b) the Member State in which a UCITS is authorised and established;

23. host Member State:

a) the Member State, other than the home Member State, in which an investment management company has a branch or carries on business;

b) the Member State, other than the home Member State of the UCITS, in which the units issued by it are distributed;

24. branch - an organised structure, without separate legal personality, of an investment management company which provides some or all of the services for which the investment management company has been authorised. All offices established in Romania by an investment management company having its registered office in another Member State are considered as one branch;

25. durable medium - any instrument by means of which the investor can store information addressed personally to him in such a way that the information can be retrieved at a later date for a period of time appropriate to the purpose of the information and which enables the stored information to be reproduced faithfully;

26. securities:

a) shares and other securities equivalent to shares;

b) bonds and other debt securities;

c) any other negotiable securities giving the right to acquire such securities by subscription or exchange.

27. management body - the body with final decision-making power in an investment management company, investment company or depository, established in accordance with the articles of incorporation, in accordance with the provisions of the Law no. 31/1990 on companies, republished, as amended and supplemented, which supervises and monitors the management decision-making process. If the aforementioned entities are managed in a unitary system, the management body is represented by the board of directors and the directors, and if they are managed in a two-tier system, the management body is represented by the supervisory board and the board of directors in accordance with the provisions of Law no. 31/1990, republished, as amended and supplemented;

28. management body in its supervisory function - the management body which performs its supervisory and monitoring role in the management decision-making process and which is represented by the board of directors in the unitary system of management and by the supervisory board in the two-tier system of management;

29. senior management - individuals who exercise effective management functions within an investment management company, depository, or investment company and who are responsible and accountable to the governing body for the day-to-day management activity of those entities. Senior management is represented by directors under the unitary system of management and by the board of directors under the two-tier system of management;

30. financial instruments:

a) securities;

b) money market instruments;

c) units issued by collective investment undertakings;

d) options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest or yield/return rates, emission allowances or other derivatives, financial indices or financial indicators which may be settled by physical delivery or in cash;

e) options, futures, swaps, forwards and any other derivative contracts relating to commodities which are to be settled in cash or may be settled in cash at the request of either party, excluding events of default or other termination events;

f) options, futures, swaps, forwards and any other derivative contract relating to commodities which may be settled by physical delivery, provided that they are traded on a regulated market, a multilateral trading facility, hereinafter referred to as a MTF , or an organised trading facility, hereinafter referred to as an OTF, with the exception of wholesale energy products traded on an OTF which must be settled by physical delivery;

g) options, futures, swaps, forwards and any other derivative contracts relating to commodities that can be settled by physical delivery, not included in the category referred to in point f), and having no commercial purpose, which have the characteristics of other derivative financial instruments;

h) derivatives for the transfer of credit risk;

i) financial contracts for differences;

j) options, futures, swaps, forward rate agreements and any other derivative contract relating to climatic variables, freight rates or inflation rates or other official statistical indicators which is to be settled in cash or may be settled in cash at the request of one of the parties, excluding the event of default or other incident leading to termination, as well as any other derivative contract relating to assets, rights, obligations, indices and indicators, not included in this definition, which has the characteristics of other derivative financial instruments, taking into account, in particular, its trading on a regulated market, a MTF or a SOT;

k) emission allowances as defined in Art. 3 (b) of Government Decision no. 780/2006 on the establishment of the greenhouse gas emission allowance trading scheme, as subsequently amended and supplemented.

(2) In applying the provisions of para. (1) (6) the national regulations transposing the provisions of Articles 13 to 16 of Directive 2006/49/EC of the European Parliament and of the Council of 14 June 2006 on the capital adequacy of investment companies and credit institutions (recast) shall apply mutatis mutandis.

(3) In applying the provisions of para. (1) 26, securities shall exclude the techniques and instruments referred to in Art. 84.

CHAPTER II
Investment management companies

SECTION 1
Conditions for the authorisation and withdrawal of authorisation of an investment management company

SUBSECTION 1
General provisions

Art. 4 - (1) The investment management company, hereinafter referred to as IMC, a Romanian legal entity, is established as a joint stock company, issuing registered shares, in accordance with the Law no. 31/1990 on companies, republished, with subsequent amendments and additions, hereinafter referred to as Law no. 31/1990 on companies, and operates only on the basis of the authorization of the National Securities Commission.

(2) The IMC shall be entered in the CNVM Register at the date of authorization.

(3) In all official documents, the IMC must indicate, in addition to its identification data, the number and date of its entry in the CNVM Register.

(4) CNVM shall immediately notify the European Securities and Markets Authority, hereinafter referred to as ESMA, of any authorisation of an IMC.

(5) The provisions of Title IX "Financial Audit" of the Law no. 126/2018 on Markets in Financial Instruments shall be duly applied by the IMC and the UCITS.

SUBSECTION 2
Services provided by investment management companies

Art. 5 - (1) The IMC shall have as its object of activity the management of UCITS established in Romania or in another Member State.

(2) In addition to the administration of the UCITS provided for in para. (1), the IMC may also manage other collective investment undertakings which are not covered by this Emergency Ordinance and for which the IMC is subject to prudential supervision, but whose units may not be marketed in other Member States under this Emergency Ordinance.

(3) By way of exception to para. (1), the IMC may also carry out, in addition to the administration of the UCITS, the following activities:

a) the management of individual investment portfolios, including those held by pension funds, on a discretionary basis in accordance with mandates given by investors, where such portfolios include one or more financial instruments;

b) related services:

(i) investment advice on one or more financial instruments;

(ii) safekeeping and administration activities relating to units in collective investment undertakings.

(4) The IMC may be authorised to carry out the activities referred to in para. (3) only if it is previously authorised to carry out the activities referred to in para. (1) and may be

authorised to carry out the activities referred to in para. (3)(b) only if it carries out the activities referred to in para. (3)(a).

Art.6 - The collective portfolio management activity refers to:

a) investment management;

b) carrying out activities relating to:

1. legal and accounting services related to portfolio management;

2. customer information requests;

3. valuation of the portfolio and determination of the value of the units, including tax aspects;

4. monitoring compliance with the regulations in force;

5. maintaining a register of unit-holders;

6. income distribution;

7. issue and redemption of units;

8. record keeping;

c) marketing and distribution.

Art. 7 - (1) The management of individual investment portfolios referred to in Art. 5 para. (3) a), must be carried out in accordance with the CNVM transposing the provisions of Art. 2 para. (2), Art. 12, 13 and 19 of Directive 2004/39/EC.

(2) IMC carrying out the activities referred to in Art. 5 para. (3) may invest all or part of the managed investment portfolio in units of collective investment undertakings under its management only with the prior consent of the investor.

SUBSECTION 3

Initial capital

Art.8 - (1) The initial capital of an IMC shall be at least the equivalent in lei of 125,000 EUR, calculated at the reference rate communicated by the National Bank of Romania, valid on the date of submission of the application for authorisation.

(2) The IMC shall be obliged to top up the initial capital if it falls below the level laid down in para. (1), not later than the date of the first report on the initial capital level submitted to CNVM.

(3) In order to comply with the requirements of European legislation, CNVM shall amend, by order of the President, the level of initial capital of an IMC.

(4) If the value of the portfolio managed by the IMC exceeds the equivalent in lei of 250,000,000 EUR, the IMC must add to its own funds a 0.02% share of the amount by which the value of the portfolios managed by it exceeds the equivalent in lei of 250,000,000 EUR, so that the total of the initial capital and the additional amount does not exceed the equivalent in lei of 10,000,000 EUR.

(5) For the purposes of this Article, a portfolio managed by the IMC shall mean:

a) the portfolio of open-ended investment funds under management, including portfolios for which management activity has been delegated, excluding the portfolio for which management activity has been delegated to it;

b) the portfolio of investment companies for which the IMC has been appointed as investment management company;

c) the portfolio of other collective investment undertakings managed by the IMC, including portfolios for which management activity has been delegated, but excluding portfolios for which management activity has been delegated to it by another IMC.

(6) The amount of own funds of the IMC shall not fall below that set out in Art. 13 of Regulation (EU) 2019/2.033 of the European Parliament and of the Council of 27 November 2019 on prudential requirements for investment companies and amending Regulations (EU) No 1093/2010, (EU) No 575/2013, (EU) No 600/2014 and (EU) No 806/2014, hereinafter Regulation (EU) 2019/2.033.

SUBSECTION 4

Authorisation, suspension and withdrawal of authorisation

Art. 9 - (1) IMC, a Romanian legal person, may be authorised by CNVM if it fulfils at least the following cumulative conditions:

a) the company is incorporated as a public limited company and includes in the name of the company the phrase "investment management company" ("societate de administrare a investiţiilor") or the abbreviation IMC (”S.A.I.”);

b) the registered office and the head office, if any, representing the principal place of business of the IMC are located in Romania;

c) the training, experience and professional integrity of the members of the management/supervisory board, the directors/management board members, the internal auditors and the staff of the internal control department comply with the requirements imposed by CNVM regulations;

d) shareholders holding at least one qualifying holding in the IMC comply with the criteria laid down in the CNVM regulations on the rules of procedure and criteria applicable to the prudential assessment of acquisitions and increases of holdings in a financial investment services company;

e) provide proof of the existence of the initial capital, subscribed and fully paid up in cash, established by this Emergency Ordinance;

f) the application for authorisation is accompanied by a business plan, showing at least the organisational structure of the company;

g) has concluded a contract with a financial auditor, member of the Chamber of Financial Auditors of Romania, and who meets the common criteria established by CNVM and the Chamber of Financial Auditors of Romania.

(2) If the IMC is in close links with other natural or legal persons, CNVM shall be entitled to grant authorisation only if these links do not hinder the exercise of its supervisory functions.

(3) CNVM shall not grant the authorisation if the legal framework or administrative provisions of a third country governing one or more natural or legal persons with which the IMC has close links prevent the exercise of its supervisory powers.

(4) Authorisation may be refused if, although the conditions referred to in para. 1 are met, it is unequivocally considered that prudent management cannot be ensured.

(5) CNVM will grant the operating authorization, within a maximum of 6 months from the date of submission of all the documentation required by the regulations in force, or will

issue, in case of rejection of the application, a reasoned decision, which may be appealed within 30 days from the date of its communication.

(5[1]) If, within 4 months from the submission to ASF of the application for authorisation, the entity does not submit the complete documentation in accordance with para. (1) and (5), ASF shall consider that the application has been abandoned and shall issue a rejection decision which may be appealed within 30 days from the date of communication.

(6) The IMC may start its activity at the date of granting the authorisation, except for the activity referred to in Art. 5 para. (3) (a), which is also conditional upon the acquisition of membership of the Investor Compensation Fund.

(7) The IMC shall comply with the authorisation conditions, prudential and capital adequacy requirements, established by this emergency ordinance and by the CNVM regulations, throughout the duration of its activity and shall notify or submit in advance for authorisation, as the case may be, any change in its organisation and operation, in accordance with the provisions of the CNVM regulations.

(8) The prudential supervision of an IMC authorised by CNVM, whether or not it establishes a branch or provides services in another Member State, shall be carried out by CNVM, without prejudice to the powers of the competent authorities of the host Member States.

Art. 10 - CNVM shall request information and consult with the competent authorities of another Member State before authorising an IMC, when it is:

a) a subsidiary of another IMC, an investment company, a credit institution or an insurance company authorised in that Member State;

b) a subsidiary of the parent company of another IMC, investment company, credit institution or insurance company authorised in that Member State;

c) a company controlled by the same natural or legal persons as another IMC, investment company, credit institution or insurance company authorised in that Member State.

Art. 11 - CNVM is entitled to withdraw the authorisation granted to the IMC under the following conditions:

a) does not commence activity within 12 months of obtaining authorisation or does not carry out any activity authorised by CNVM for more than 6 months;

b) expressly requests the withdrawal of the authorisation;

c) the authorisation was obtained on the basis of false or misleading statements or information;

d) no longer fulfils the conditions on the basis of which the authorisation was issued;

e) no longer complies with the provisions of GEO no. 99/2006 and the regulations issued in its application, when it is authorized to carry out the activities referred to in Art. 5 para. 3 letter a);

f) has seriously and/or systematically violated the provisions of this Emergency Ordinance and/or the regulations issued in application of this Emergency Ordinance;

g) other cases provided for by CNVM regulations.

SUBSECTION 5

Management, internal control and qualifying holdings

Art.12 - (1) The effective management of the activity of an IMC organised in a unitary system must be ensured by at least two natural persons, hereinafter referred to as directors. The names of these persons, as well as those who replace them, shall be communicated to ASF.

(2) The effective management of the business of a two-tier system IMC must be ensured by at least three natural persons, hereinafter referred to as members of the management board. The names of these persons, as well as those who replace them, shall be communicated to ASF.

(3) The persons referred to in para. (1) and (2) must be of good repute and professional experience, in relation to the type of UCITS managed by the IMC, as established in the ASF regulations.

Art. 13 - (1) The provisions of Articles 34-45 and Art. 272 of the Law no. 126/2018 on markets in financial instruments, as well as the ASF regulations on the rules of procedure and criteria applicable to the prudential assessment of acquisitions and increases of holdings in a financial investment services company shall apply accordingly to qualified holdings in an IMC.

(2) For the purposes of this Emergency Ordinance, the term "FISC" in Articles 34-45 of Law no. 126/2018 shall read "IMC" and the term "regulated entity" in Art. 272 of the same law shall include "IMC".

Art. 14 - (1) In application of the provisions of Art. 22, the IMC is obliged to organize an internal control department, specialized in supervising compliance by the company and its staff with the legislation in force concerning the capital market, as well as with internal regulations.

(2) The conditions regarding the authorization of the staff, organization and functioning of the internal control department shall be established by the CNVM regulations

SECTION 2
Prudential rules

Art.15 - IMC authorized by CNVM shall at all times, during the course of their activity, comply with the prudential rules established by CNVM regarding the management of UCITS. These rules shall relate, without limitation, to:

a) appropriate administrative and accounting procedures, controls and security for electronic data processing, as well as adequate internal control mechanisms, including rules relating to personal transactions of employees and the IMC;

b) adequate procedures to ensure the separation of financial instruments belonging to investors from each other and from those of the IMC, in order to protect their ownership rights and against the use of such financial instruments by the IMC in transactions for its own account;

c) appropriate procedures to ensure that the operations carried out by the IMC can be reconstructed, including their origin, nature, the parties involved, the time and the place where they were carried out;

d) keeping records of the transactions carried out, in order to allow CNVM to supervise compliance with prudential rules, rules of business conduct, and other legislative and regulatory requirements;

e) the existence of an organisational structure which minimises the risk of a conflict of interest between the IMC and the investors, between the investors and the UCITS or between the UCITSs.

Art. 16 - (1) In application of the provisions of Art. 15, the IMC must meet the following requirements:

a) establish, implement and maintain decision-making procedures and an organisational structure that clearly specifies and documents reporting lines and assigns functions and responsibilities to these lines;

b) ensure that the relevant persons of the IMC are aware of the procedures they are required to follow in order to carry out their responsibilities in practice;

c) establish, implement and maintain appropriate internal control mechanisms to ensure compliance with decisions and procedures at all hierarchical levels of the IMC;

d) establish, implement and maintain an effective internal reporting and communication system at all relevant hierarchical levels of the IMC, as well as effective exchanges of information with relevant third parties;

e) maintain proper and orderly records of the activity and internal organisation of the IMC;

(1^1) The IMC shall establish, implement and maintain appropriate policies and procedures that identify any sustainability risks, taking into account the adverse effects on sustainability in its business.

(2) In order to comply with the provisions of para. (1) and (1^1), the IMC shall take into account the nature, scale and complexity of its business, as well as the nature and range of services and activities carried out.

(3) The IMC shall establish, implement and maintain appropriate systems and procedures to ensure the security, integrity and confidentiality of the information, taking into account the nature of the information concerned.

(4) The IMC shall establish, implement and maintain a business continuity plan designed to ensure, in the event of an interruption of its systems and mechanisms, the storage of essential data and functions, the maintenance of services and activities or, where this is not possible, the timely recovery of such data and functions and the immediate resumption of services and activities.

(5) IMC shall establish, implement and maintain accounting policies and procedures that enable them to provide, upon request by CNVM, in a timely manner, financial reports that reflect a true and fair view of their financial position and that comply with all applicable accounting standards and rules.

(6) IMC shall periodically monitor and evaluate the ability and effectiveness of their systems, procedures and internal control mechanisms established in accordance with para.(1) to (5) and take appropriate measures to remedy any deficiencies.

Art. 17 - 1) IMC shall employ qualified personnel with the skills, knowledge and experience necessary to carry out their assigned responsibilities.

2) IMC shall have the resources and expertise to effectively monitor the activities of third parties under an agreement with IMC, in particular in relation to the risk management of that agreement.

3) IMC shall ensure that the performance of multiple functions by relevant persons of the IMC does not or will not affect the fair, honest and professional performance of any of the functions undertaken.

(3[1]) IMC shall ensure that it integrates sustainability risks into the management of the UCITS.

(3[2]) IMC shall ensure that, for the purposes referred to in para. (1) to (3), has the necessary resources and expertise to effectively integrate sustainability risks.

(4) In order to comply with the provisions of para. (1) - (3)[2], the IMC shall take into account the nature, scale and complexity of its business, as well as the nature and range of services and activities carried out.

Art. 18 - (1) IMC shall establish, implement and maintain effective and transparent procedures for the prompt handling of complaints received from investors and shall keep a record of each complaint and the measures taken to resolve it.

(2) Investors may lodge complaints free of charge. Information on the procedures referred to in para. (1) must be made available to investors free of charge.

(3) IMC, investment companies and UCITS depositories shall establish, implement and maintain effective and transparent procedures for reporting by employees of these entities of breaches of the provisions of this Emergency Ordinance through a specific, independent and autonomous channel.

Art. 19 - (1) IMC must take the necessary measures to have adequate electronic systems to enable it to properly and timely record all transactions with financial instruments in its portfolio and subscription or redemption requests, so as to comply with the provisions of Articles 26 and 27.

(2) IMC must ensure a high level of security of electronic systems during electronic data processing and the integrity and confidentiality of recorded information, as appropriate.

Art. 20 - (1) IMC shall use accounting policies and procedures in accordance with the provisions of Art. 16 para. (5) in order to ensure the protection of the interests of unit-holders. The accounts of the UCITS must be kept in such a way that all their assets and liabilities can be directly identified at any time.

(2) Where a UCITS has more than one investment compartment, separate accounts must exist for each compartment.

(3) IMC must establish, implement and maintain accounting policies and procedures in accordance with the accounting rules in force in the UCITS home Member State so that the calculation of the net asset value of each UCITS is correctly made on the basis of accounting data and subscription and redemption requests can be correctly processed at that net asset value.

(4) IMC must establish appropriate procedures to ensure the proper and correct valuation of the assets and liabilities of the UCITS in accordance with the regulations issued by CNVM in application of the provisions of Art. 63 para. (3) letter b).

Art. 21 - (1) IMC shall ensure that, when assigning internal functions, the directors/members of the management board and members of the board of directors/supervisory board are responsible for ensuring that the IMC complies with its obligations under this Emergency Ordinance and the regulations issued in application thereof.

(2) IMC must ensure that the directors/members of the board:

a) are responsible for the application of the general investment policy for each managed UCITS as defined in the prospectus, the fund rules or the articles of incorporation of the investment company, as the case may be;

b) approve the investment strategies for each UCITS managed;

c) are responsible for ensuring that the IMC has a permanent and effective internal control function, in accordance with Art. 22;

d) ensure and periodically verify that the overall investment policy, investment strategies and risk limits of each managed UCITS are properly and effectively implemented and adhered to, even if the risk management function is delegated to a third party;

e) approve and periodically review the adequacy of the internal investment decision-making procedures for each managed UCITS to ensure that these decisions are consistent with the approved investment strategies;

f) approve and periodically review the risk management policy and the measures, processes and techniques for its implementation, in accordance with Art. 44, including the risk limit system, for each UCITS it manages.

g) are responsible for ensuring that the IMC integrates sustainability risks into its activities referred to in points (a) to (f).

(3) IMC must ensure that the directors/members of the management board and the members of the management board/supervisory board:

a) periodically evaluate and verify the effectiveness of the policies, measures and procedures put in place to fulfil the obligations established under the provisions of this Emergency Ordinance;

b) take appropriate measures to remedy any deficiencies.

(4) IMC must ensure that directors/board members receive written reports on internal control, internal audit and risk management on an ongoing basis and at least annually, indicating, in particular, whether adequate measures have been taken to remedy any deficiencies.

(5) IMC shall ensure that directors/board members receive regular reports on the implementation of the investment strategies and internal procedures for taking investment decisions referred to in para.(2) (b) to (e).

(6) IMC shall ensure that the members of the management board/supervisory board receive regular written reports on the matters referred to in para. (4).

(7) The members of the board of directors/supervisory board have the duty to supervise the directors/members of the management board of the IMC

Art. 22 - (1) IMC shall establish, implement and maintain appropriate policies and procedures to identify any risk of non-compliance by the IMC with its obligations under the provisions of this Emergency Ordinance, as well as the associated risks, and adopt appropriate measures and procedures to minimise those risks and to enable CNVM to effectively exercise its powers conferred by this Emergency Ordinance.

(2) In order to comply with the provisions of para. (1), IMC shall take into account the nature, scale and complexity of its business and the nature and range of services and activities carried out.

(3) IMC shall establish and maintain on a permanent and operational basis an internal control function, which shall be conducted independently and have the following responsibilities:

(a) regularly monitor and evaluate the effectiveness and proper implementation of the measures and procedures established in accordance with para. (1) and (2), as well as the measures in place to address any instances of non-compliance with the obligations of the IMC;

b) provide advice and assistance to the relevant persons responsible for carrying out services and activities in order to comply with the requirements imposed on the IMC under the provisions of this Emergency Ordinance.

(4) In order to enable the person appointed as the representative of the internal control department to carry out his responsibilities fairly and independently, the IMC must ensure that the following conditions are met:

a) the person must have the necessary authority, resources and experience and access to all relevant information;

b) the person appointed as the internal control representative shall be responsible for compliance with the duties of the internal control function and for any reporting on compliance with the regulations in force, including whether adequate measures have been taken to remedy any deficiencies.

c) persons appointed as representatives of the internal control department must not be involved in the performance of the services and activities they monitor;

d) the method of determining the remuneration of persons appointed as representatives of the internal control function must not compromise their objectivity and must not lead to this possibility.

(5) IMC may be exempted from the application of the provisions of para. (4) (c) or (d), where it can demonstrate that the requirements imposed under those provisions are not proportionate to the nature, scale and complexity of its business and to the nature and range of services and activities carried out and that the control function continues to be effectively performed.

Art.23 - (1) IMC shall establish and maintain an internal audit function that is separate and independent from other functions and activities of the IMC. Depending on the nature, size and complexity of its business and in relation to the nature and range of the collective portfolio management activities carried out, the IMC may delegate this function to a third party.

(2) The performance of the internal audit function referred to in para. (1) entails the following responsibilities:

a) establish, implement and maintain an audit plan to assess and review the effectiveness and adequacy of the IMC systems, internal control mechanisms and procedures;

b) issuing recommendations based on the outcome of the work carried out under point a);

c) verification of compliance with the recommendations referred to in point (b);

d) reporting on internal audit matters in accordance with Art. 21 para. (4).

Art. 24 - (1) IMC shall establish and maintain a person with a permanent risk management function.

(2) The permanent risk management function referred to in para. (1) must be hierarchically and functionally independent of the other departments, unless this is not justified by the nature, size and complexity of the business of the IMC and the UCITS managed by it.

(3) Where, having regard to the nature, scale and complexity of its business, the IMC determines not to maintain an independent risk management function, it must be able to demonstrate that it has put in place adequate safeguards against conflicts of interest to enable the independent exercise of risk management activities and that the risk management processes meet the requirements laid down in Art. 84.

(4) The permanent risk management function referred to in para. (1) entails the performance of the following tasks:

a) implementation of risk management policy and procedures;

b) ensuring compliance with the UCITS risk limit system, including the legal limits on aggregate exposure and counterparty risk, in accordance with Articles 47, 48 and 49;

c) assisting the board of directors/members of the management board in identifying the risk profile of each UCITS it manages;

d) provide regular reports to the Management Board/Supervisory Board on:

(i) the consistency between the current level of risk to which each managed UCITS is exposed and the agreed risk profile for that UCITS;

(ii) the compliance by each managed UCITS with the relevant risk limit systems;

(iii) the adequacy and effectiveness of the risk management process, indicating whether adequate measures have been taken to remedy any deficiencies;

e) providing regular reports to the directors/members of the management board, highlighting the current level of risk to which each managed UCITS is exposed and any actual or foreseeable risk limits exceeded, so that prompt and appropriate action can be taken;

f) reviewing and supporting, where appropriate, mechanisms and procedures for the valuation of derivatives traded outside regulated markets in accordance with Art. 50.

(5) The permanent risk management function referred to in para. (1) shall have the necessary authority and access to all relevant information necessary to perform the tasks set out in para. (4).

Art. 25 - (1) Where any of the relevant persons is involved in activities that could lead to a conflict of interest or has access to inside information, within the meaning of Art. 244 para. (1), (2) and (4) of Law no. 297/2004, or to other confidential information relating to the UCITS or to transactions with or for the UCITS, through an activity carried out by that person on behalf of the IMC, the IMC must establish, implement and maintain appropriate procedures aimed at preventing the following situations:

a) conducting a personal transaction that meets at least one of the following criteria:

(i) that person is prohibited from carrying out such transactions according to the provisions of Law no. 297/2004 and the regulations issued by CNVM in application thereof on market abuse;

(ii) involves misuse or improper disclosure of that confidential information;

(iii) conflicts or may conflict with an obligation of the IMC under the provisions of this Emergency Ordinance or with the provisions of Law no. 297/2004;

b) advising or inducing, otherwise than in the course of the relevant business of an employee or service provider under a contract, any other person to deal in financial instruments which, if it were a personal transaction of the relevant person, would fall within the scope of Art. 101 para. (2) (a) or (b) of Regulation No. 32/2006 on financial investment services, approved by Order of the National Securities Commission No. 121/2006, as amended, or would otherwise constitute a misuse of information relating to orders being executed;

c) without prejudice to Art. 246 (a) of Law no. 297/2004, disclosing otherwise than in the normal course of his employment or as a service provider under a contract any information or opinion to any other person where the relevant person knows or ought reasonably to have known that as a result of that disclosure that person would or might do any of the following:

(i) participate in a transaction in financial instruments which, if it were a personal transaction of a relevant person, would fall within the scope of Art. 101 para. (2) (a) or (b) of Regulation no. 32/2006 on financial investment services, approved by Order of the National Securities Commission no. 121/2006, as amended, or would otherwise constitute a misuse of information relating to pending orders;

(ii) advise or procure another person to enter into such a transaction.

(2) The procedures provided for in (1) shall be designed to ensure that the following are distinctly provided for:

a) each relevant person referred to in para. (1) is aware of the restrictions on personal transactions and the measures established by the IMC with regard to personal transactions and disclosure of information, in accordance with the provisions of para. (1);

b) IMC shall be informed promptly of any personal transaction in which a relevant person is involved, either on the basis of a notification of that transaction or through other procedures enabling the IMC to identify such transactions;

c) personal transactions notified to the IMC or identified by the IMC are recorded in a register, including any authorisation or prohibition in relation to such transactions.

(3) In applying the provisions of para. (2) (b), where certain activities are delegated to third parties, the IMC must ensure that the entity to which the activity is delegated keeps records of personal transactions entered into by the relevant persons and provides it with this information promptly on request.

(4) The provisions of para. (1) and (2) shall not apply to the following types of personal transactions:

a) personal transactions carried out on the basis of the provision of the portfolio management service on a discretionary basis, where there has been no prior communication about the transaction between the portfolio manager and the relevant person or other person on whose behalf the transaction has been executed;

b) personal transactions in units of UCITS or other collective investment undertakings which are subject to supervision under the national law of a Member State which provides for a risk spreading equivalent to that of the UCITS, where the relevant person and any other person on whose behalf the transactions are carried out are not involved in the management of that collective investment undertaking.

(5) In the application of the provisions of this Article, personal transaction shall have the meaning set out in Art. 88 of Regulation no. 32/2006 on financial investment services, approved by Order of the National Securities Commission no. 121/2006, as amended.

Art. 26 - (1) IMC shall ensure that, for each transaction with financial instruments in the portfolio of a UCITS, a record is made without delay containing sufficient information to enable the details of the order to be reconstructed.

(2) The registration provided for in para. (1) shall include at least:

a) the name or an identifier of the UCITS and of the person acting on behalf of the UCITS;

b) the details necessary to identify the instrument concerned;

c) the quantity;

d) the type of order;

e) the price;

f) the exact date and time of transmission of the order and the name or an identifier of the person to whom the order was transmitted;

g) the name of the person transmitting the order;

h) where applicable, the reasons for revoking an order.

Art. 27 - (1) IMC shall take all measures to ensure that subscription and redemption requests for units of the UCITS are centralized and registered upon receipt.

(2) The registration provided for in para. (1) shall include at least information on:

a) the UCITS concerned;

b) the person making or transmitting the request;

c) the person receiving the application;

d) the date and time of submission of the application;

e) the method of payment;

f) the type of application (subscription/redemption);

g) the date of issue/cancellation of the units;

h) the number of units subscribed or redeemed;

i) the subscription or redemption price for each unit;

j) the total amount subscribed or redeemed for units;

k) the gross amount of the application, including underwriting fees, or the net amount after deduction of redemption fees.

Art. 28 - (1) IMC must ensure that the records referred to in Articles 26 and 27 are kept for a minimum period of 5 years.

(2) In exceptional circumstances, CNVM may request IMC to keep certain or all records for a longer period of time than the period referred to in para. (1), depending on the nature of the instrument or transaction with financial instruments in the portfolio of the UCITS, if necessary for CNVM to be able to exercise its supervisory functions under this Emergency Ordinance.

(3) CNVM may request IMC, upon withdrawal of the authorization, to keep the records referred to in para. (1) for the remaining period of 5 years.

(4) In the event that an IMC transfers its responsibilities relating to UCITS to another IMC, CNVM may request that the necessary measures be taken to ensure that the records referred to in para. (1) of the last 5 years are accessible to that IMC.

(5) The records referred to in para. (1) shall be kept on a medium which permits the storage of information in such a way that it is accessible to CNVM and the following conditions are met:

a) CNVM must be able to quickly access the information and be able to reconstruct each key stage in the processing of each transaction in financial instruments in the portfolio of the UCITS;

b) it must be possible to readily ascertain any corrections or other changes and the content of the records prior to such corrections and changes;

c) it must not be possible for the records to be manipulated or otherwise altered.

SECTION 3

Conflict of interest

Art. 29 - (1) In order to identify the types of conflicts of interest that arise in the course of providing services and activities whose existence could be detrimental to the interests of the UCITS, IMC shall take into account, on the basis of minimum criteria, the situation in which it, a relevant person or a person directly or indirectly linked to it by control is in any of the following situations, as a result of providing collective portfolio management services or as a result of another situation:

a) IMC or that person could obtain a financial gain or avoid a financial loss at the expense of UCITS;

b) IMC or that person has an interest in the outcome of a service or activity provided to the UCITS or another client or in a transaction carried out on behalf of the UCITS or another client which is different from the UCITS' interest in that outcome;

c) IMC or that person receives a financial or other incentive to favour the interest of another client or group of clients to the detriment of the interests of UCITS;

d) IMC or that person carries out the same activities for UCITS and for another client or other clients who are not UCITS;

e) IMC or that person receives or will receive from a person other than the UCITS an incentive for collective portfolio management activities provided to UCITS in the form of money, goods or services in addition to the standard commission or fee for the service.

(2) IMC shall, when identifying types of conflicts of interest, take into account:

a) the interests of IMC, including those arising from its membership of a group or from the provision of services and activities, the interests of its clients and the obligation of IMC towards UCITS;

b) the interests of two or more UCITS which it manages.

c) the interests of a UCITS as a result of the integration of sustainability risks.

(3) Where the IMC identifies the types of conflicts of interest whose existence may be detrimental to the interests of a UCITS, the IMC shall include those types of conflicts of interest that may arise as a result of integrating sustainability risks into their processes and systems and their internal controls. These conflicts of interest include those arising from the remuneration or personal dealings of relevant staff, those that could give rise to environmental misinformation, mis-selling or misrepresentation of investment strategies, and conflicts of interest between different UCITS managed by the same management company.

Art. 30 - (1) IMC shall establish, implement and maintain an effective conflict of interest policy, which shall be set out in a written procedure and shall take into account the size and organisation of the company and the nature, scale and complexity of its business.

(2) Where the IMC is a member of a group, its policy must also take into account any circumstances of which it is aware or ought to be aware which could lead to a conflict of interest arising from the structure and activities of other members of the group.

(3) The conflict of interest policy established in accordance with para. (1) and (2) shall read as follows:

a) identification, with reference to the collective portfolio management activities carried out by or on behalf of the IMC, of circumstances constituting a conflict of interest or likely to lead to a conflict of interest, inducing a material risk or damage to the interests of the IMC or of one or more other clients;

b) specify the procedures to be followed and the measures to be taken to manage such conflicts.

(4) The procedures and measures referred to in para. (3) (b) shall be established in such a way as to ensure that relevant persons carrying out various activities involving a conflict of interest of the nature specified in para. (3) (a) carry out those activities at a level of independence appropriate to the size and activities of the IMC and the group to which it belongs and the relevance of the risk of damage to the interests of clients.

(5) Within the meaning of para. (3) (b), the procedures to be followed and the measures adopted shall include the following requirements necessary and appropriate to ensure the independence of the IMC:

a) effective procedures to prevent or control the exchange of information between relevant persons involved in collective portfolio management activities involving a risk of conflict of interest, where the exchange of information may harm the interests of one or more clients;

b) separate supervision of relevant persons whose main duties involve carrying out collective portfolio management activities on behalf of clients or providing services to clients or investors whose interests may be affected or who otherwise represent various interests which may conflict including the interests of the IMC;

c) the elimination of any direct link between the remuneration of relevant persons principally engaged in one activity and the remuneration or income generated by other relevant persons engaged in another activity, where a conflict of interest may arise in relation to those activities;

d) measures to prevent or limit any person from exercising improper influence over the manner in which a relevant person carries out collective portfolio management activities;

e) measures to prevent or control the simultaneous or successive involvement of a relevant person in collective portfolio management activities where such involvement may prejudice the proper management of conflicts of interest.

(6) Where the adoption or application of one or more of the measures and procedures referred to in para. (3) (b) does not ensure the necessary level of independence, the IMC shall adopt such alternative or additional measures and procedures as are necessary and appropriate for that purpose.

Art.31 - (1) IMC shall keep and periodically update records of the types of collective portfolio management activities carried out by or on behalf of IMC which have generated or, in the case of ongoing collective portfolio management activities, may generate a conflict of interest with a significant risk of damage to the interests of one or more UCITS or other clients.

(2) Where the organisational and administrative structure of the IMC established for the management of conflicts of interest is not sufficient to reasonably ensure that the interests of UCITS or its unit-holders are not adversely affected, the directors/members of the management board must be promptly informed so that they can take any decision necessary to ensure that the IMC acts in the best interests of the UCITS and its unit-holders.

(3) IMC shall inform investors of the situations referred to in para. (2) in an appropriate durable medium and give reasons for its decision.

Art.32 - (1) IMC must develop appropriate and efficient strategies to determine when and how to exercise the voting rights attached to the instruments held in the managed portfolios, for the exclusive benefit of the respective UCITS.

(2) The strategies referred to in para. (1) shall provide for measures and procedures to:

a) monitoring of important events occurring at the level of portfolio companies of the UCITS;

b) ensuring that voting rights are exercised in accordance with the investment objectives and policy of the relevant UCITS;

c) preventing or managing possible conflicts of interest arising from the exercise of voting rights.

(3) A summary description of the strategies referred to in para. (1) shall be made available to investors.

(4) The details of the actions taken on the basis of the strategies referred to in para. (1) shall be made available to unit-holders free of charge and on request.

SECTION 4

Delegation of collective portfolio management activity

Art.33 - (1) IMC may delegate to third parties, subject to the prior approval or notification of CNVM and on the basis of a written contract, the exercise of the activities referred to in Art. 6, in accordance with the CNVM regulations issued in application of this Emergency Ordinance.

(2) The delegation of the activities referred to in para. (1) must take place under the following conditions:

a) CNVM shall transmit the information without delay to the competent authorities of the home Member State of the UCITS if the UCITS is authorised in another Member State;

b) the mandate must not prevent proper supervision of the IMC and prevent the IMC from acting or prevent the UCITS from being managed in the interest of the investor;

c) where the delegation concerns the management of investments, the mandate may be granted only to IMC having their registered office in Romania and in other Member States or to other IMC which meet the conditions of authorisation and supervision similar to those referred to in the CNVM regulations and which are authorised to carry out such activity by the competent authority of a third country with which CNVM has a cooperation relationship;

d) measures must be established to enable the persons who conduct the business of the IMC to monitor effectively and at all times the activity of the entity to which the activity has been delegated;

e) the delegation must not prevent the directors/board members of a delegating IMC from giving further instructions to the entity to which the activity has been delegated at any time and from allowing the immediate withdrawal of the mandate granted when this is in the interest of investors;

f) the entity to which the activity has been delegated must be qualified to perform the functions delegated to it;

g) the prospectus of the UCITS must mention the activities that have been delegated.

(3) The IMC and the depository with which it has concluded a storage contract for the UCITS under management shall not be released from liability as a result of the delegation of functions by the IMC to third parties. The IMC may not delegate its functions to third parties in such a way as to leave it without the object of activity covered by this Emergency Ordinance.

(4) Activities delegated to third parties under the conditions of this Article shall be carried out in accordance with the same regime applicable to IMC.

SECTION 5
Rules of conduct

SUBSECTION 1
General provisions

Art. 34 - (1) IMC are obliged to compply with, throughout the entire duration of their operation, the rules of conduct issued by CNVM.

(2) IMC are, at least, obliged to:

a) act with fairness and professional diligence in order to protect the interest of the investors of the UCITS it manages and the integrity of the market;

b) commit and make efficient use of all resources, to develop and use effectively the procedures necessary for the proper conduct of the business;

c) avoid conflicts of interest and, if they cannot be avoided, ensure that the UCITS it manages is treated fairly and impartially;

d) carry out its activity in accordance with the applicable CNVM regulations, in order to promote investors' interests and market integrity.

(3) IMC shall operate in accordance with the fund rules or the investment company's articles of incorporation and shall not carry out operations from which some of the individual accounts, AIF or UCITS would benefit to the detriment of the others.

(4) IMC may not carry out transactions with the UCITS and AIF it manages.

Art. 34[1] - (1) IMC shall establish and implement remuneration policies and practices that promote and are consistent with sound and effective risk management and that do not encourage risk-taking that is inconsistent with the risk profiles set out in the articles of incorporation of the UCITS it manages and that do not affect the fulfilment of the IMC's obligation to act in the best interests of the unit-holders of the UCITS it manages.

(2) Remuneration policies and practices shall disclose the fixed and variable components of remuneration and discretionary benefits such as pensions.

(3) Remuneration policies and practices shall apply to those categories of staff whose professional activities have a material impact on the risk profile of the IMC or the UCITS they manage, including senior management, risk managers, control functions and any employees receiving total remuneration that falls within the remuneration bracket of senior management and risk managers.

(4) ASF shall issue regulations on the remuneration policies and practices applied to the persons referred to in para. (3), taking into account the guidelines and recommendations issued by ESMA.

Art. 34[2] - (1) In establishing and applying the remuneration policies referred to in Art. 34 [1], IMC shall comply with the following principles, in a manner and to an extent appropriate to their size, their internal organisation and the nature, scale and complexity of their activities:

a) the remuneration policy is consistent with and promotes sound and effective risk management and does not encourage risk-taking that is inconsistent with the risk profile, fund rules or, where applicable, the articles of incorporation of the investment companies that the IMC manages;

b) the remuneration policy is consistent with the business strategy, objectives, values and interests of the IMC and of the UCITS it manages, as well as those of the unit-holders of these UCITS, and includes measures to avoid conflicts of interest;

(c) the remuneration policy shall be adopted by the management body of the IMC as part of its supervisory function, and this body shall adopt and evaluate at least annually the general principles of the remuneration policy and supervise their implementation;

d) the tasks referred to in point (c) shall be carried out only by non-executive members of the management body of the IMC, i.e. non-executive members of the board of directors in the case of unitary management or members of the supervisory board in the case of two-tier system management, who have experience in risk management and remuneration;

e) the implementation of the remuneration policy shall be subject, at least annually, to a central and independent internal assessment of compliance with the remuneration policies and procedures adopted by the management body of the IMC as part of its supervisory function;

f) staff members in control functions shall be rewarded on the basis of the achievement of objectives related to their functions, independent of the performance of the business areas they control;

g) the remuneration of persons who coordinate risk management and compliance/internal control activities is directly overseen by the remuneration committee, where such a committee exists;

h) where remuneration is performance related, the total amount of remuneration shall be calculated on the basis of an assessment combining the individual performance and the performance of the relevant business unit of the IMC or of the respective UCITS, as well as their risks and the overall performance of the IMC when assessing individual performance, taking into account financial/quantitative and non-financial/qualitative criteria;

i) the performance assessment shall be carried out within a multiannual framework appropriate to the holding period recommended to investors of the UCITS managed by the IMC, in order to ensure that the assessment process is based on the long-term performance of the UCITS and the risks associated with their investments and that the actual payment of the performance-related components of the remuneration is made over the same period;

j) guaranteed variable pay is exceptional, only in the context of hiring new staff and is limited to the first year of employment;

k) the fixed and variable components of total remuneration are appropriately balanced and the fixed component represents a sufficiently large proportion of total remuneration to allow for a flexible policy on variable components of remuneration, including the possibility of not paying any variable component of remuneration;

l) payments related to early termination of a contract shall reflect performance during the period of employment/engagement and shall be awarded in a manner that does not reward probable performance or failure;

m) the performance measurement used in the calculation of variable components of remuneration or sets of variable components of remuneration includes a comprehensive adjustment mechanism that includes all relevant types of present or future risks;

n) depending on the legal structure of the UCITS and the fund rules or, as the case may be, the articles of incorporation of the investment company, a significant percentage, which may not be less than 50%, of any variable component of the remuneration shall consist of units

of the relevant UCITS or other equivalent instruments evidencing the ownership of such units or the benefits attaching to such holdings, unless the assets of the UCITS under management represent less than 50% of the total portfolio managed by the IMC, including individual accounts, in which case the 50% minimum shall not apply;

o) the instruments referred to in point (n) shall be subject to an appropriate retention policy designed to align incentives with the interests of the IMC, the managed UCITS and the holders of units in the UCITS concerned. The provisions of point n) shall apply both to the percentage of the variable component of remuneration which is deferred in accordance with point p) and to the percentage of the variable component of remuneration which is not deferred;

p) subject to the conditions set out in points (n) and (o), at least 40% of the variable component of the remuneration shall be deferred for an appropriate period in terms of the holding period recommended to the unit-holders of the UCITS concerned, such period being appropriate to the nature of the risks assumed by the UCITS concerned;

q) the period referred to in point (p) shall be at least 3 years, and remuneration due under deferral arrangements may be granted only on a pro rata basis, in the case of a particularly large component of variable remuneration, at least 60% of the amount being deferred;

r) variable remuneration, including the deferred part, shall be paid or granted only if it is sustainable in relation to the financial situation of the IMC and if it is justified by the performance of the operating unit of the IMC, of the UCITS and of the person concerned;

s) the total variable remuneration shall be significantly reduced in the event of poor or negative performance of the IMC or the UCITS concerned, taking into account both current remuneration and reductions in the payment of amounts previously earned, including through the application of the "malus" principle or claw-back mechanisms;

ș) the pension policy is consistent with the business strategy, objectives, values and long-term interests of the IMC and the managed UCITS;

t) if the employee voluntarily terminates the contractual relationship with the IMC before retirement, discretionary pension-type benefits shall be retained by the IMC for 5 years in the form of the instruments referred to in n). If an employee reaches retirement age, discretionary pension benefits shall be paid to that employee in the form of the instruments referred to in point (n), subject to a 5-year retention period;

ț) the IMC staff declares under their own responsibility that they do not use personal hedging strategies or insurance linked to remuneration or liability to undermine the effects of the risk alignment set out in their remuneration contracts;

u) variable remuneration is not paid by means of instruments or methods that facilitate the avoidance of the requirements of this Emergency Ordinance.

(2) Upon ESMA's request, ASF shall provide ESMA with information on the remuneration policies and practices referred to in Art. 34^1.

(3) The principles set out in para. (1) shall apply to benefits of any kind paid by the IMC, to all amounts paid directly by the UCITS itself, including performance fees, and to all transfers of fund units or shares of the UCITS itself, made for the benefit of those categories of staff, including senior management, risk managers, control functions and any employee receiving total remuneration falling within the same remuneration category as senior management and risk managers whose professional activities have a significant impact on their risk profile or on the risk profile of the UCITS they manage.

(4) IMC significant in terms of their size or the size of the UCITS they manage, defined according to the regulations issued by ASF in application of this Emergency Ordinance, their internal organisation and the nature, extent and complexity of their activities, shall appoint a remuneration committee. The remuneration committee shall review in an independent manner the remuneration policies and practices as well as the incentives offered by the IMC with a view to risk management.

(5) The Remuneration Committee shall be responsible for decisions on remuneration, including decisions having implications for the risk and risk management of the relevant IMC or UCITS, to be taken by the management body in its supervisory function.

(6) The Remuneration Committee shall be composed of members of the management body who do not hold executive functions in the IMC concerned. One of the members of the management body shall act as chairman of the remuneration committee.

(7) In making its decisions, the remuneration committee shall take into account the long-term interest of the unit-holders of the UCITS and other stakeholders, as well as the public interest.

Art. 35 - (1) IMC or self-managed investment companies, as the case may be, shall adopt measures in accordance with the provisions of Art. 158 para. (5) and shall develop appropriate procedures and arrangements to ensure that investor complaints are properly dealt with and that no restrictions are imposed on investors in the exercise of their rights, if Romania is not the home Member State of the UCITS managed by the IMC authorised by CNVM. These measures must allow investors to lodge complaints in the official language(s) of their Member State(s).

(2) IMC shall develop appropriate procedures and arrangements to make information available to the public or to the competent authorities of the home Member State of the UCITS, at their request.

(3) IMC with registered office in other Member States managing UCITS authorised by CNVM shall adopt measures in accordance with the provisions of Art. 174 para. (2) and shall develop appropriate procedures and arrangements to ensure that investor complaints are properly dealt with and that no restrictions are imposed on Romanian investors in the exercise of their rights. Those measures shall allow investors to lodge complaints in Romanian.

(4) The IMC referred to in para. (3) shall develop appropriate procedures and arrangements to make information available to the public or to CNVM, upon their request.

Art.36 - (1) IMC shall ensure fair treatment of all unit-holders of the managed UCITS.

(2) IMC must not give greater weight to the interests of one group of unit-holders than to the interests of any other group of unit-holders.

(3) IMC must have policies and procedures in place to prevent fraudulent practices that may affect the stability and integrity of the market.

(4) IMC must use fair, equitable and transparent pricing models and valuation systems for the managed UCITS in order to comply with the obligation to act in the best interests of unit-holders. The IMC must be able to demonstrate that the portfolios of the UCITS are fairly valued.

(5) IMC must act in such a way as to prevent the imposition of unjustified costs on UCITS and their unit-holders.

Art. 37 - (1) IMC must take all necessary steps in the selection and ongoing monitoring of investments in the interest of the UCITS and the integrity of the market, and must have adequate knowledge and understanding of the assets in which the UCITS has invested.

(2) IMC must establish written policies and procedures on professional due diligence and implement effective measures to ensure that investment decisions on behalf of the UCITS are made in accordance with the objectives, investment strategy and risk limits of the UCITS.

(3) After considering the nature of a planned investment, if deemed necessary in the process of implementing the risk management policy, IMC shall prepare forecasts and perform analyses on the contribution of the respective investment to the composition, liquidity, risk and return profile of the UCITS' portfolio before making the investment. The analyses must be carried out only on the basis of reliable and up-to-date data, both quantitative and qualitative.

(4) IMC shall act with all due skill, impartiality and professional diligence when entering into, manageing or terminating agreements with third parties relating to the performance of risk management activities.

(5) Before concluding agreements under para. (4), IMC shall take the necessary measures to verify that the third party has the necessary skill and capacity to carry out risk management activities in a professional and efficient manner and shall establish methods for the ongoing assessment of the third party's performance standards.

(6) IMC shall be obliged, throughout the entire duration of its operation, to take into account sustainability risks in order to comply with the provisions of para. (1) - (5).

(7) When the IMC considers the main negative effects of investment decisions on sustainability factors, according to Art. 4 para. (1) (a) of Regulation (EU) 2019/2.088 or, as the case may be, according to Art. 4 (3) or (4) of that Regulation, the relevant IMC shall take into account such material adverse effects when complying with the due diligence requirements and the rules of conduct for the prevention and management of conflicts of interest.

SUBSECTION 2

Subscription and redemption requests

Art. 38 - (1) Where the IMC processes a subscription or redemption request from a unit-holder, it shall notify the unit-holder, by means of a durable medium, confirming the issue/cancellation of the units as soon as possible and at the latest on the first business day after issue/cancellation.

(2) The provisions of para. (1) shall not apply if the confirmation would contain the same information as a confirmation sent promptly to the unit-holder by another person.

(3) The confirmation provided for in para. (1) shall include, as appropriate, at least the following information:

a) the identification data of the IMC;

b) the name of the unit-holder or any similar information concerning the unit-holder;

c) the date and time of receipt of the request and method of payment;

d) the date of issue/cancellation of the units;

e) the identification of the UCITS;

f) the type of request (subscription or redemption);

g) the number of units;

h) the unit value at which the units were subscribed or redeemed;

i) the date of the reference value;

j) the gross amount of the request, including underwriting fees, or the net amount after deduction of redemption fees;

k) the total amount of fees and expenses charged and, at the investor's request, a breakdown.

(4) Where requests are processed periodically for a particular unit-holder, IMC shall either report in accordance with para. (1) or provide the unit-holder at least once every 6 months with the information referred to in para. (3) relating to those transactions.

(5) IMC shall provide the unit-holder, upon request, with information on the status of its request.

SUBSECTION 3
Best execution

Art. 39 - (1) IMC must act in the best interests of the UCITS it manages when transmitting trading orders on their behalf to be executed by other entities.

(2) IMC is obliged to establish and implement an order transmission policy which must lead to the best possible results for the UCITS, taking into account price, costs, speed, likelihood of execution and settlement, volume, nature of the order or any other characteristics relevant to the execution of the order.

(3) The importance of the factors referred to in para. (2) shall be determined on the basis of the following criteria:

a) the objectives, investment policy and specific risks of the UCITS as specified in the prospectus or, where applicable, in the fund rules or articles of incorporation of the investment company;

b) the characteristics of the order;

c) the characteristics of the financial instruments which are the subject of the order;

d) the characteristics of the trading venues to which the order may be directed.

Art. 40 - (1) The policy provided for in Art. 39 para. (2) must identify, for each class of instruments, the entities to which orders may be transmitted. The IMC shall conclude agreements for the execution of orders only if they are compatible with the obligations laid down in this Article.

(2) IMC must make available to unit-holders adequate information on the policy established in accordance with Art. 39 para. (2) and material changes thereto.

(3) IMC shall periodically monitor the effectiveness of the policy established under Art. 39 para. (2) and, in particular, the quality of the execution of orders by the entities identified in the policy and, if necessary, remedy any deficiencies.

(4) IMC shall annually review the policy referred to in Art. 39 para. (2). Reviews shall also be carried out whenever a significant change occurs which affects the ability to continue to achieve the best results for the UCITS managed.

(5) IMC must be able to demonstrate that it has transmitted orders on behalf of the UCITS in accordance with the policy established under Art. 39 para. (2).

SUBSECTION 4

Administration of orders

Art.41 - (1) IMC shall establish and implement procedures and measures to enable the transmission of orders for the prompt and fair execution of transactions in financial instruments in the portfolio of UCITS on their behalf.

(2) The procedures and measures implemented by the IMC in accordance with para. (1) must fulfil the following conditions:

a) ensure that orders submitted for execution on behalf of the UCITS are promptly and accurately recorded and allocated;

b) transmit immediately for execution comparable orders of the UCITS, unless this is impossible due to the characteristics of the order concerned or prevailing market conditions or where the interests of the UCITS require otherwise.

(3) IMC shall ensure that the financial instruments or monies received as a result of the execution of orders are immediately and correctly transferred to the account of the relevant UCITS.

(4) IMC shall not misuse information on pending orders of the UCITS and shall take all necessary measures to prevent the misuse of such information by relevant persons.

Art. 42 - (1) IMC shall not aggregate an order of a UCITS with any of the following orders:

(i) an order of another UCITS;

(ii) an order of another customer; or

(iii) an order for own account, unless the following conditions are met:

a) the aggregation of orders must not be to the disadvantage of any of the UCITS or clients whose orders are to be aggregated;

b) an order allocation policy must be established and implemented, providing sufficiently precise terms for the proper allocation of aggregate orders, including how the volume and price of orders will determine the allocation and treatment of partial execution.

(2) An IMC which has aggregated an order of a UCITS with one or more orders of other UCITS or clients and the aggregated order is partially executed must allocate the related orders according to its order allocation policy.

(3) An IMC which has aggregated orders for its own account with one or more orders of UCITS or other clients shall not allocate the related orders to the detriment of a UCITS or another client.

(4) An IMC which has aggregated an order of a UCITS or of another client with an order for its own account and the aggregated order is partially executed shall allocate the related UCITS orders to the UCITS or to another client in priority to those for its own account.

(5) Where the IMC can demonstrate to the UCITS or another client that without aggregation of the order it would not have been possible to execute the orders in such an advantageous manner or that the orders would not have been executed at all, the IMC may allocate the orders on its own account on a pro rata basis in accordance with the allocation policy set out in para. (1)(b).

SUBSECTION 5
Incentives

Art. 43 - (1) An IMC shall be deemed not to be acting fairly and professionally in accordance with the best interests of the UCITS if, for the activities referred to in Art. 6 (a) and (b), it pays or receives as payment any fee or commission or provides or is provided with any other non-monetary benefits, other than:

a) a fee, commission or non-monetary benefit paid or provided to the UCITS or by the UCITS or a person on behalf of the UCITS;

b) a fee, commission or non-monetary benefit paid or provided to or by a third party or another person acting on behalf of that third party where the following conditions are met:

(i) the existence, nature and amount of the tariff, commission or benefit or, where the amount cannot be determined, the method of calculating that amount must be clearly disclosed to the UCITS in a comprehensive, accurate and comprehensible manner prior to the provision of the service concerned;

(ii) the payment of the fee or commission or the provision of the non-monetary benefit must be so arranged as to enhance the quality of the relevant service and not to affect the obligation of the IMC to act in the best interests of the UCITS;

c) appropriate charges which permit or are necessary for the provision of the relevant services, including custody costs, settlement and exchange charges, regulated taxes or statutory charges and which, by their nature, may not lead to conflicts in the fulfilment of the IMC's obligations to act honestly, fairly and professionally in accordance with the best interests of the IMC.

(2) In applying the provisions of para. (1) (b) (i), IMC may publish in the prospectus a summary of the main terms of the provisions relating to charges, fees or non-monetary benefits, provided that it undertakes to communicate further details at the request of unit-holders and to comply with this obligation.

SECTION 6
Risk management

SUBSECTION 1
Risk management policy and risk measurement

Art. 44 - (1) In application of the provisions of Art. 84 para. (1), the IMC must establish, implement and maintain an adequate and documented risk management policy which identifies the risks to which the UCITS it manages are or may be exposed.

(2) The risk management policy referred to in para. (1) must include the procedures necessary to enable the IMC to assess for each UCITS it manages the exposure to market risk, liquidity risk, sustainability risk and counterparty risk as well as the exposure of the UCITS to all other relevant risks, including operational risk, which may be material to each UCITS managed.

(3) IMC shall include in the risk management policy referred to in para. (1) at least the following elements:

a) techniques, instruments and measures enabling IMC to fulfil its obligations under Articles 46 and 47;

b) allocation of risk management responsibilities within the IMC.

(4) The risk management policy referred to in para. (1) shall specify the conditions, content and frequency of the reports of the risk management function referred to in Art. 24 to the Management Board/Supervisory Board and to the Directors/Members of the Executive Board.

(5) In the application of para. (1) to (4), IMCs shall take into account the nature, scale and complexity of their business and of the UCITS they manage.

Art. 45 - (1) IMC shall periodically evaluate, monitor and review:

a) the adequacy and effectiveness of the risk management policy and the measures, processes and techniques referred to in Articles 46 and 47;

b) the extent to which the IMC complies with the risk management policy and the measures, processes and techniques referred to in Articles 46 and 47;

c) the adequacy and effectiveness of the measures taken to address deficiencies in the risk management process.

(2) IMC must notify CNVM of any significant change in the risk management process.

(3) The requirements laid down in para. (1) shall be subject to continuous review by CNVM and to the granting of authorisation to the IMC.

SUBSECTION 2

Risk management processes, counterparty risk exposure and issuer focus

Art. 46 - (1) IMC shall adopt appropriate and effective measures, processes and techniques to:

a) measuring and managing at all times the risks to which the UCITS it manages are or could be exposed;

b) ensuring compliance with the limits on global exposure and counterparty risk under Articles 47 and 49.

(2) The measures, processes and techniques referred to in para. (1) shall be proportionate to the nature, scale and complexity of the activities of the IMC and the UCITS that they manage and to the risk profile of the UCITS.

(3) In the application of para. (1) and (2), the IMC shall take the following measures for each UCITS it manages:

a) put in place the necessary risk management measures, processes and techniques to ensure that the risks associated with the positions and their contribution to the overall risk profile are properly measured on the basis of appropriate and reliable data and that the risk measurement measures, processes and techniques are properly documented;

b) carry out, where appropriate, periodic back-tests to examine the validity of risk measurement methods that include model-based forecasts and estimates;

c) carry out, where appropriate, stress tests and periodic scenario analyses to address risks arising from possible changes in market conditions that may adversely affect UCITS;

d) establish, implement and maintain a documented system of internal limits on the measures used to manage and control the risks relevant to each UCITS, taking into account all

risks that may be material to the UCITS, as referred to in Art. 44, and ensuring consistency with the risk profile of the UCITS;

e) ensure that the current level of risk complies with the system of risk limits laid down in point d) for each UCITS;

f) establish, implement and maintain adequate procedures which, in the event of actual or anticipated breaches of the UCITS' system of risk limits, enable prompt remedial action to be taken in the interests of unit-holders.

(4) IMC must employ an adequate liquidity risk management process to ensure that each UCITS it manages complies at all times with the provisions of Art. 2 (1)(b). Where appropriate, the IMC must carry out stress tests in order to assess the liquidity risk of the UCITS in exceptional situations.

(5) IMC must ensure that for each UCITS it manages the liquidity profile of the investments of the UCITS corresponds to the redemption policy set out in the fund rules, the articles of incorporation of the investment company or the prospectus.

Art. 47 - (1) IMC shall calculate the global exposure of an managed UCITS, as referred to in Art. 84 para. (6), as one of the following:

a) the additional exposure and leverage, defined according to the CNVM regulations issued in application of this Emergency Ordinance, generated by the UCITS managed through the use of derivative financial instruments, including transferable securities or money market instruments that integrate a derivative financial instrument, according to Art. 84 para. (10), which may not exceed the total net assets of the UCITS;

b) market risk related to the UCITS portfolio.

(2) IMC must calculate the overall exposure of the UCITS at least daily.

(3) IMC may calculate the global exposure using the accruals-based method, the value-at-risk method or other advanced risk measurement methods it considers appropriate. For the purposes of this provision, value-at-risk is a measure of the maximum expected loss that the UCITS may incur over a specified time period with a given probability.

(4) IMC shall ensure that the method selected for measuring the global exposure is appropriate, taking into account the investment strategy of the UCITS, the types and complexity of derivatives used and the proportion of derivatives in the portfolio of the UCITS.

(5) Where a UCITS uses, in accordance with Art. 84 para. (4), techniques and instruments, including repurchase agreements or securities lending transactions, to generate leverage or additional exposure to market risk, the IMC must take these transactions into account when calculating the overall exposure.

Art.48 - (1) Where the commitment method is used to calculate the global exposure, the IMC shall apply this method to all positions in derivative financial instruments, including positions in transferable securities or money market instruments embedding a derivative financial instrument, in accordance with Art.84 para. (10), regardless of whether they are used as part of the general investment policy of the UCITS, for risk reduction or for efficient portfolio management.

(2) Where the commitment method is used to calculate the aggregate exposure, the IMC shall convert each position in a derivative into the market value of an equivalent position in the underlying of that derivative.

(3) IMC may take netting and hedging into account when calculating the overall exposure, where such netting and hedging take into account obvious and significant risks and result in a clear reduction of risk exposure.

(4) Where the use of derivatives does not result in an additional exposure for the UCITS, the exposure to the underlying asset need not be included in the calculation of liabilities.

(5) When using the liability-based approach, the calculation of the global exposure need not include temporary loan agreements entered into on behalf of the UCITS under Art. 103.

Art. 49 - (1) IMC shall ensure that the counterparty risk arising from a derivative transaction traded outside regulated markets is subject to the limits laid down in Art. 85.

(2) In calculating the exposure of a UCITS to counterparty risk according to the limits laid down in Art. 85 (2), IMC must use the positive mark-to-market value of the contract relating to the OTC derivative financial instrument entered into with that counterparty.

(3) IMC may offset the derivative positions of a UCITS with the same counterparty, provided that a netting agreement is concluded with the counterparty on behalf of the UCITS. Netting is permitted only for derivatives traded outside regulated markets with the same counterparty and not for other exposures that the UCITS may have to the same counterparty.

(4) IMC may reduce the UCITS's exposure to a counterparty in an OTC derivative transaction by receiving collateral. The collateral received must be sufficiently liquid to be sold quickly at a price close to its valuation prior to sale.

(5) IMC must take collateral into account when calculating the exposure to counterparty risk referred to in Art. 85 (2) where the IMC provides collateral to the counterparty in a transaction in a financial derivative traded outside regulated markets on behalf of the UCITS. The collateral provided may be taken into account on a net basis only if the IMC has entered into a netting agreement with the counterparty on behalf of the UCITS.

(6) IMC must calculate the limits per issuer referred to in Art. 85 on the basis of the exposure to the underlying asset created through the use of derivatives under the liability method.

(7) In respect of exposures arising from transactions in derivatives traded outside regulated markets referred to in Art. 85 para. (3) and (4), the IMC must include in the calculation any counterparty risk exposure arising from those transactions.

SUBSECTION 3

Procedures for the valuation of OTC derivatives

Art.50 - (1) IMC shall ensure that the exposures to UCITS arising from transactions in derivatives traded outside regulated markets are assigned fair values which are not based solely on the market quotations of the counterparties to transactions in these instruments and which meet the criteria laid down in the CNVM regulations implementing the provisions of Art. 8 para. (4) of Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions.

(2) In the application of para. (1), the IMC shall establish, implement and maintain arrangements and procedures to ensure an adequate, transparent and fair valuation of exposures to UCITS arising from derivative transactions traded outside regulated markets.

(3) IMC must ensure that the fair value of derivatives traded outside regulated markets is subject to adequate, fair and independent valuation.

(4) Valuation mechanisms and procedures should be appropriate and proportionate to the nature and complexity of derivatives traded outside regulated markets.

(5) Where the arrangements and procedures for the valuation of derivatives traded outside regulated markets involve delegation of activities to third parties, the IMC shall comply with the requirements laid down in Art. 17 (2) and Art. 37 (4).

(6) The evaluation mechanisms and procedures referred to in para. (2) shall be properly documented.

SUBSECTION 4
Transmission of information on derivatives

Art.51 - (1) IMC authorised by CNVM must provide CNVM, at least once a year, with reports containing information reflecting an accurate and fair picture of the types of derivative financial instruments in which each managed UCITS invests, the related risks, the quantitative limits and the methods chosen to estimate the risks associated with transactions with derivative financial instruments.

(2) CNVM shall examine the regularity and completeness of the information referred to in para. (1) and may request amendments, if necessary.

CHAPTER III
The Depository

SECTION 1
General provisions

Art.52 - (1) The assets of a UCITS authorised by ASF shall be entrusted for safe custody, on the basis of a written contract, to a single depository.

(2) The contract referred to in para. (1) shall govern, inter alia, the flow of information deemed necessary to enable the depository to perform its functions for the UCITS for which it has been appointed depository, as provided for in this Emergency Ordinance, in the regulations issued by ASF in application thereof and in Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 supplementing Directive 2009/65/EC of the European Parliament and of the Council as regards obligations of depositories, hereinafter referred to as Delegated Regulation (EU) 2016/438.

(3) The depository shall:

a) ensure that the sale, issue, redemption or cancellation of units is carried out by the IMC or another entity on behalf of the UCITS in accordance with this Emergency Ordinance, the regulations of ASF and the fund rules or, as the case may be, the investment company's articles of incorporation;

b) ensure that the value of the units is calculated in accordance with the rules of the fund or, as the case may be, the investment company's articles of incorporation and the provisions of this Emergency Ordinance;

c) comply with the instructions of the IMC or the investment companies, unless they are contrary to the law in force or to the rules of the fund or, as the case may be, to the investment company's articles of incorporation;

d) to ensure that, in transactions involving the assets of the UCITS, any amount is paid within the time limit;

e) ensure that the income of the UCITS is managed and calculated in accordance with the legislation in force, the regulations of ASF and the rules of the fund or, as the case may be, the investment company's articles of incorporation.

(4) The depository shall ensure that the cash flows of the UCITS are properly monitored and, in particular, that all payments made by or on behalf of investors on the subscription of units of the UCITS have been received and that all cash of the UCITS has been recorded in cash accounts which:

a) are opened in the name of the UCITS or of the IMC acting on behalf of the UCITS or of the depository acting on behalf of the UCITS;

b) are opened with a central bank, a credit institution authorised under Community law or a bank authorised in a third country and are managed in accordance with the principles laid down in the regulations issued by ASF on the obligation to safeguard the rights of customers in relation to financial instruments and funds belonging to them.

(5) Where cash accounts are opened in the name of the depository acting on behalf of the UCITS, the cash of the entity referred to in para. (4)(b) shall not be recorded in such accounts nor the depository's own cash.

(6) The assets of the UCITS shall be entrusted to the depository for safekeeping as follows:

a) for financial instruments that may be held in custody, the depository:

1. keep in custody all financial instruments that can be recorded in a financial instruments account opened in its books and all financial instruments that can be physically delivered;

2. ensure that all financial instruments which may be recorded in a financial instruments account opened in its books are recorded in separate accounts opened in the name of the UCITS or of the IMC acting on behalf of the UCITS so that they can be clearly identified at any time as belonging to the UCITS;

b) for other assets, the depository:

1. verify the ownership of the UCITS or the IMC acting on behalf of the UCITS of the assets concerned, by examining whether the UCITS or the IMC acting on behalf of the UCITS is the owner of the assets concerned, on the basis of information or documents provided by the UCITS or the management company and, if available, external evidence;

2. keep a record of the assets in respect of which it is satisfied that the UCITS or the IMC acting on behalf of the UCITS is the owner and update this record.

(7) The depository shall submit at least monthly to the IMC or the investment company a comprehensive inventory of all the assets of the UCITS.

(8) Assets held in custody by the depository shall not be re-used on its own account by the depository or by a third party to whom the custody function has been delegated. Re-use includes all transactions with assets held in custody including, but not limited to, transfers, pledges, sales and loans.

(9) Assets held in custody by the depository may be re-used only if:

a) the re-use of assets is carried out on behalf of the UCITS;

b) the depository executes the instructions of the IMC on behalf of the UCITS;

c) the re-use is for the benefit of the UCITS and in the interest of the unit-holders; and

d) the transaction is covered by high quality and liquid collateral received by the UCITS under a title transfer agreement. The market value of the collateral at any point in time amounts to at least the market value of the assets re-used plus a premium.

(10) In the event of the insolvency of a depository and/or a third party entity located in a Member State to which custody of the assets of the UCITS has been delegated, the assets of the UCITS held in custody by that depository/third party entity may not be used for distribution among the creditors of that depository and/or third party entity, may not be the subject of enforcement proceedings initiated by creditors of the depository, may not be seized or attached by them.

(11) The depository shall have its registered office or be established in the home Member State of the UCITS.

Art. 52[1] - (1) The depository may not delegate to third parties the functions referred to in Art. 52 para. (3) - (5).

(2) The depository may delegate to third parties the functions referred to in Art. 52 (6), but only on condition that:

a) the tasks are not delegated with the intention of circumventing the depository's obligations;

b) the depository is able to demonstrate to the IMC, the investment company, the unit-holders of the UCITS whose assets are held in safe custody or ASF, as the case may be, the existence of an objective reason for the delegation;

c) the depository acts with due skill, care and diligence when selecting and appointing a third party entity to which it intends to delegate part of its tasks and continues to exercise due skill, care and diligence when periodically reviewing and supervising on an ongoing basis the third party entity to which it has delegated part of its tasks and the actions taken by the third party entity in relation to the tasks delegated to it.

(3) The safe custody functions of the UCITS assets in custody or other assets may be delegated by the depository to a third party entity only if for the entire period of performance of the tasks delegated to it:

(a) it shall have adequate structures and expertise commensurate with the nature and complexity of the assets of the UCITS or the IMC acting on behalf of the UCITS entrusted to it;

b) with regard to the custodial tasks referred to in Art. 52 para. (6) (a), they shall be subject to:

1. effective prudential regulation, including minimum capital requirements, and supervision in the jurisdiction concerned;

2. a regular external audit to ensure that the financial instruments are in its possession;

c) separate the assets of the depository's clients from its own assets and from the assets of the depository so that they can be clearly identified at any time as belonging to the clients of a particular depository;

d) take all necessary measures to ensure that, in the event of the insolvency of the third party, the assets of the UCITS held in the custody of the third party entity may not be used for distribution among its creditors, may not be subject to enforcement proceedings by creditors of the third party entity, or may not be seized or attached by them; and

e) complies with the provisions of Art. 52 para. (2), (6), (8) and (9) and Art. 55.

(4) Without prejudice to the provisions of para. (3)(b)(1), where the law of the third State requires certain financial instruments to be held in custody by a local entity and no local entity meets the delegation requirements set out in that point, the depository may delegate its functions to such local entity only to the extent provided for in the law of the third State and only so long as there are no local entities meeting the delegation requirements, subject to the following conditions being met:

(a) the holders of units of the UCITS concerned are duly informed, before making the investment, that such delegation is required by legal constraints under the law of the third country in relation to the circumstances justifying the delegation and the risks involved therein;

(b) the investment company or management company acting on behalf of the UCITS has instructed the depository to delegate custody of such financial instruments to such local entity.

(5) The third party entity may also sub-delegate these functions, provided that the same requirements are met. In such cases, Art. 54 para. (4) shall apply accordingly to the relevant parties.

(6) For the purposes of this Article, the provision of services provided for in Law no. 253/2004 on settlement finality in payment and securities settlement systems, as amended and supplemented, by units settlement systems, designated for the purposes of that Act, or the provision of similar services by units settlement systems in third countries shall not be considered as a delegation of custody functions.

Art.53 - (1) The activity of storage of assets of a UCITS authorized by ASF may be carried out by:

a) National Bank of Romania;

b) a credit institution in Romania authorised by the National Bank of Romania in accordance with the legislation applicable to credit institutions, or a branch in Romania of a credit institution authorised in another Member State in accordance with Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 relating to the taking up and pursuit of the business of credit institutions and the prudential supervision of credit institutions and investment companies and amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, as endorsed by ASF for deposit activity, in accordance with the provisions of this emergency ordinance and the regulations issued by ASF in application thereof; or

c) by another legal person, approved by ASF to carry out asset safekeeping activities of the UCITS in accordance with the regulations issued by ASF in application of this Emergency Ordinance and subject to capital adequacy requirements which are not less than the requirements calculated, depending on the approach selected, in accordance with Art. 315 or

Art. 317 of Regulation (EU) no. 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment companies and amending Regulation (EU) no. 648/2012, and which holds own funds at least equal to the amount of initial capital referred to in Art. 7 para. (8) of Law no. 297/2004 on the capital market, as amended.

(2) The legal person referred to in para. (1)(c) shall be subject to authorisation, regulation and supervision by ASF and shall meet the following minimum requirements:

a) has the necessary infrastructure to hold in custody financial instruments that can be recorded in a financial instruments account opened in the depository's books;

b) establishes policies and procedures to ensure the entity's compliance with its obligations under this Emergency Ordinance, including compliance by its management and employees;

c) has adequate and rigorous accounting and administrative procedures, internal control mechanisms, effective risk assessment procedures and effective control and safeguard mechanisms for IT systems;

d) maintains and implements organisational and administrative arrangements to take all measures to prevent conflicts of interest;

e) takes measures to keep records of all services, activities and transactions it carries out, sufficient to enable ASF to carry out its supervisory duties and to carry out enforcement actions to ensure compliance with the relevant provisions laid down in this Emergency Ordinance;

f) takes measures to ensure the continuity and smooth operation of its depository functions through the use of appropriate systems, resources and procedures;

g) all members of the governing body and senior management shall at all times be of good repute as established by ASF and possess sufficient knowledge, skills and experience;

h) the management body as a whole possesses adequate knowledge, competence and experience to understand the depository's activities, including the main risks;

i) all members of the governing body and senior management act with honesty and integrity.

Art.54 - (1) The depository shall be liable to the UCITS and to the holders of units of the UCITS for the loss of financial instruments held in custody in accordance with the provisions of Art. 52 para. (6) (a), regardless of whether the loss is due to the depository or to a third party to whom custody has been delegated.

(2) In the event of the loss of a financial instrument held in custody by the depository, the depository shall return a financial instrument of the same type or of a corresponding value to the UCITS or to the IMC acting on behalf of the UCITS without undue delay. The depository shall be exonerated from liability if it can prove that the loss occurred as a result of an external event beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to counteract it.

(3) The depository of a UCITS shall be liable to the UCITS and to the investors of the UCITS for any other losses suffered by them as a result of the depository's negligent or wilful failure to properly discharge its obligations under this Emergency Ordinance and the regulations issued by ASF pursuant thereto.

(4) The liability of the depository referred to in para. (1) to (3) may not be waived or limited by contract by the fact that he has delegated the activities referred to in Art. 52 [1].

(5) Any contract concluded in breach of the provisions of para. (4) shall be null and void.

(6) Holders of units issued by the UCITS may invoke the liability of the depository directly or indirectly through the IMC or the investment company, provided that this does not result in double damages or unequal treatment of unit-holders.

Art. 55 - (1) A depository of the assets of a UCITS may not at the same time act as an IMC or an investment company.

(2) In the performance of their duties, the IMC and the depository, respectively the investment company and the depository, shall act honestly, fairly, professionally, independently and solely in the interest of the UCITS and its investors.

(3) The Depository shall not carry out any activities in relation to the UCITS or the IMC acting on behalf of the UCITS which may create conflicts of interest between the UCITS, the UCITS investorss investors, the management company and the depository itself; where possible conflicts of interest are identified, the depository shall perform its depository duties separately from other duties that could give rise to conflicts of interest, which shall be functionally and hierarchically separate. Possible conflicts of interest are identified, managed, monitored and duly communicated to ASF and to the UCITS investors by the decision-making staff of the department/service carrying out operations related to the depository activity.

Art.56 - (1) The rules of the open-ended investment fund shall define the conditions for the replacement of the IMC and the depository and shall provide for rules ensuring the protection of unit-holders in the event of such replacement, in accordance with ASF regulations.

(2) The articles of incorporation of the investment company shall define the conditions for the replacement of the IMC and the depository and shall lay down rules to ensure the protection of shareholders in the event of such replacement, in accordance with the regulations of ASF

Art. 56[1] - (1) The depository shall make available to ASF, upon request, all the information it has obtained in the performance of its duties and which may be necessary for ASF to carry out its prerogatives.

(2) In the case of UCITS authorised by ASF but managed by investment management companies from other Member States on the basis of Art. 63 para. (2), ASF shall transmit the information received without delay to the competent authorities of the management company.

Art. 57 - (1) The publication and use of other measures or expressions for net asset value, unit value of net assets and number of unit holders, other than those certified by the depository, shall be prohibited.

(2) The assets of the deposited entities shall be recorded in accounts separate from each other and from those of the depository.

(3) The depository is obliged to immediately inform CNVM of any abuse of the IMC in relation to the deposited UCITS assets.

SECTION 2

Agreement between the depository and the IMC

Art.58 - The depository and the IMC shall include in the written contract referred to in Art. (1) the following clauses relating to the services provided and the procedures to be followed by the parties to the contract, taking into account the provisions of the delegated acts of the European Commission and the ASF regulations:

a) a description of the procedures, including those relating to the safekeeping of assets, to be adopted for each type of asset of the UCITS entrusted to the depository;

b) a description of the procedures to be followed when the IMC intends to amend the fund rules or the UCITS' prospectus, specifying when the depository must be informed or when the depository's prior consent is required for the amendment;

c) a description of the arrangements and procedures by which the depository will provide the IMC with all relevant information it needs to fulfil its obligations, including a description of the arrangements and procedures for the exercise of rights in respect of financial instruments and the arrangements and procedures applied to ensure that the IMC and the UCITS have prompt and accurate access to information relating to the accounts of the UCITS;

d) a description of the means and procedures by which the depository will have access to all relevant information it needs to fulfil its obligations;

e) a description of the procedures by which the depository may verify the activity of the AIS and assess the quality of the information submitted, including through on-site visits;

f) a description of the procedures by which the IMC may review the depository's performance in meeting its contractual obligations.

Art.59 - (1) The depository and the IMC shall include in the written contract referred to in Art. 52 para. (1) the following clauses relating to the exchange of information and obligations in terms of confidentiality and money laundering, taking into account the provisions of the Delegated Regulation (EU) 2016/438 and the ASF regulations:

a) a list of all information to be exchanged between the UCITS, the IMC and the depository relating to the subscription, redemption, issue and cancellation of the units of the UCITS;

b) the confidentiality obligations applicable to the contractual parties;

c) information on the duties and responsibilities of the contracting parties with regard to obligations relating to the prevention of money laundering and terrorist financing, where applicable.

(2) The obligations referred to in para. 1 (b) must be drafted in such a way as not to impair the ability of the competent authorities of the home Member State of the IMC or of the UCITS to have access to the relevant documents and information.

Art.60 - If the depository or the IMC intends to appoint third parties for the performance of their tasks, they shall include in the written contract referred to in Art.52 para. (1) the following clauses, taking into account the provisions of the Delegated Regulation (EU) 2016/438 and ASF regulations:

a) an undertaking by both contracting parties to provide on a regular basis details of the third parties appointed by the depository or by the IMC for the performance of their tasks;

b) an undertaking that, at the request of one of the Parties, the other Party will provide information on the criteria used to select the third party and the measures taken to monitor the work of the selected third party;

c) a declaration that the depository's liability under Art. 54 para. (2) is not affected by the fact that it has entrusted to a third party all or part of the assets in its safe-keeping.

Art.61 - The depository and the IMC shall include in the written contract referred to in Art. 52 para. (1) the following clauses related to the amendment and termination of the contract, taking into account the provisions of the Delegated Regulation (EU) 2016/438 and the ASF regulations:

a) the period of validity of the contract;

b) the conditions under which the contract may be amended or terminated;

c) the conditions necessary to facilitate the transfer to another depository and, in the event of such a transition, the procedure by which the depository must send all relevant information to the new depository.

Art.62 - (1) Taking into account the provisions of the Delegated Regulation (EU) 2016/438 and the regulations of ASF, the depository and the IMC shall include in the written contract referred to in Art. 52 para. (1) a mention that the law applicable to the contract is the law of the home Member State of the UCITS.

(2) Where the parties to the contract referred to in Art. 52 para. (1) agree to have recourse to the electronic transmission of all or part of the information they exchange, the contract shall, taking into account the provisions of the Delegated Regulation (EU) 2016/438 and the ASF regulations, contain provisions for keeping a record of such information.

(3) The contract referred to in Art. 52 para. (1) may cover more than one UCITS managed by the IMC. In this case, the contract must list the UCITS covered.

(4) The provisions concerning the modalities and procedures referred to in Art. 58 lit. (c) and (d) may be included either in the contract referred to in Art. 52 para. (1) or in a separate written contract.

CHAPTER IV

Undertakings for collective investment in transferable securities

SECTION 1

Authorisation of the UCITS

Art. 63 - (1) The UCITS for which Romania is the home Member State shall carry out its activity on the basis of the authorisation of CNVM, according to this Emergency Ordinance and the regulations issued for its application.

(2) A UCITS shall be authorised after CNVM has previously authorised the IMC or expressed its consent to the application of an IMC of a Member State to manage the UCITS concerned, authorised the fund rules or, as the case may be, the investment company's articles of incorporation, the choice of depository and the prospectus.

(3) CNVM shall issue regulations on the content of the rules of an open-ended investment fund and of the memorandum of association of an investment company, which shall take into account at least the following:

a) the procedures for the issue, sale, redemption and cancellation of units;

b) calculation of the net asset value per unit;

c) the identity of the IMC, the depository and the relationship between these parties and the investors;

d) conditions for the replacement of the IMC, the depository and rules to ensure investor protection in such situations;

e) the commissions charged by the IMC and the expenses which the IMC is empowered to incur for the UCITS, as well as the calculation methods for these commissions.

(4) Without prejudice to para. (2), if Romania is the home Member State of the UCITS but not of the IMC, CNVM shall decide on the IMC's application to manage the UCITS in accordance with Art. 168. The authorisation shall not be conditional on the administration of the UCITS by an IMC having its registered office in Romania or on the performance or delegation of activities of the IMC in Romania.

Art. 64 - (1) CNVM shall not authorize a UCITS if:

a) decides that the investment company does not satisfy the preconditions set out in Chap. IV, Section 3; or

b) the IMC is not authorised to manage UCITS in its home Member State.

(2) CNVM shall grant the authorization to a UCITS, as well as the authorization to initiate and conduct the continuous public offer of unis, within a maximum period of two months from the date of receipt of the complete documentation provided for by the regulations in force, or shall issue, in case of rejection of the application, a reasoned decision.

(3) CNVM shall be entitled not to grant authorisation to a UCITS if the persons actually in charge of the warehousing activity do not have the necessary reputation or experience to carry out specific activities for that type of UCITS, in compliance with the provisions of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, as subsequently amended and supplemented.

(4) CNVM shall not grant authorisation to a UCITS if it is legally restricted, including by a provision in the fund rules or in the investment company's articles of incorporation, from distributing its units in Romania.

(5) Authorisation may be refused if CNVM decides that prudential management cannot be ensured.

(6) If the complete documentation is not submitted within 4 months from the submission of the application for authorisation of the UCITS to ASF, ASF shall consider that the application has been abandoned and shall issue a rejection decision which may be appealed within 30 days from the date of communication.

Art. 65 - The conditions on which the authorisation issued by CNVM is based must be maintained throughout the existence of a UCITS. Any modification of these conditions shall be subject to prior authorisation by CNVM

Art. 66 - (1) CNVM shall ensure that complete information on this Emergency Ordinance and on the regulations issued in application thereof relating to the establishment and operation of the UCITS is easily accessible remotely or by electronic means.

(2) CNVM shall ensure that the information referred to in para. (1) is available at least in a language customary in the sphere of international finance, is provided in a clear and unambiguous manner and is kept up to date.

Art.67 - (1) The IMC/Self-managed investment company shall be obliged to launch a continuous public offer of units within a maximum period of 12 months from the granting of

the authorisation for the initiation and conduct of the continuous public offer of units, provided for in Art. 64 para. (2).

(2) Open-ended investment funds and investment companies that have been authorised shall be entered in the CNVM Register.

(3) IMC shall indicate the number of the entry in the register provided for in para. (2) in all acts, documents and correspondence issued or initiated by the IMC on behalf of the UCITS it manages.

SECTION 2

Open-ended investment funds

Art. 68 - The rules of the open-ended investment fund are an integral part of the prospectus and are annexed to it.

(2) The rules of the common fund need not be attached to the prospectus if the investor is informed by the prospectus that, on request, these documents will be sent to him or that he will be informed in writing of the place where he may consult them in each Member State where the units are marketed.

Art. 69 - (1) Fund units issued by open-ended investment funds shall be of a single type and shall confer equal rights on their holders, with the exception of fund units issued by open-ended investment funds consisting of several investment compartments and fund units divided into classes of fund units. Fund units will be registered, dematerialised and fully paid up at the time of subscription.

(2) Participation in an open-ended investment fund shall be evidenced by a document confirming the ownership of fund units.

(3) CNVM shall issue regulations on the authorisation by CNVM and the operation of open-ended investment funds consisting of several investment compartments.

Art. 70 - Open-ended investment funds shall not issue financial instruments other than fund units.

Art.71 - (1) The net asset value and the fund unit value of an open-ended investment fund shall be published daily by the IMC, for each business day, on the basis of data certified by the depository.

(2) CNVM shall issue regulations on the method of calculation of net assets and unit net assets.

SECTION 3

Investment companies

Art. 72 - (1) An investment company shall issue registered shares, fully paid up at the time of subscription**.**

(2) An investment company may not engage in activities other than those referred to in Art. 2 para. (1).

(3) Investment companies may only manage their own assets and may not, under any circumstances, be mandated to manage assets on behalf of a third party.

(4) Investment companies shall establish, implement and maintain appropriate policies and procedures throughout their operations that identify any sustainability risks, taking into account the adverse effects on sustainability in their business. When investment companies consider the main adverse effects of investment decisions on sustainability factors, according to Art. 4 para. (1) (a) of Regulation (EU) 2019/2.088 or, as the case may be, under Art. 4 para. (3) or (4) of that Regulation, those investment companies shall take into account those material adverse effects when complying with the due diligence requirements, rules of conduct on the prevention and management of conflicts of interest.

(5) In order to comply with the provisions of para. (4), an investment company shall ensure that it has the necessary resources and expertise to effectively integrate sustainability risks, taking into account the nature, scale and complexity of its business and the nature and range of services and activities undertaken.

Art. 73 - An investment company shall be managed by an IMC or by an administrative/supervisory board, according to the articles of incorporation.

Art.74 - (1) The initial capital of a self-managed investment company shall be calculated in accordance with the CNVM regulations and shall be at least the equivalent in lei of 300,000 EUR, calculated at the reference rate communicated by the National Bank of Romania, valid on the date of the application for authorisation.

(2) The self-managed investment company shall be required to top up the initial capital if it falls below the level laid down in para. (1), no later than the date of the first report on the level of initial capital submitted to CNVM.

(3) In order to comply with the requirements of European legislation, CNVM shall periodically amend, by order of the President, the level of initial capital of a self-managed investment company.

Art. 75 - (1) Where this Emergency Ordinance does not expressly state otherwise, self-managed investment companies shall duly comply with the provisions of this Emergency Ordinance applicable to IMC, referred to in Art. 6, Art. 9 para. (1) (b), (c), (e)-(g), para. (2) and (3), Art. 12, Art. 33 and Art. 52-56^{1} , as well as the conditions laid down in the ASF regulations.

(2) By way of derogation from Art. 64 para. (2), CNVM shall grant the authorisation to a self-managed investment company within 6 months from the date of receipt of the complete documentation required by the regulations, or shall issue, in case of rejection of the application, a reasoned decision, which may be appealed within 30 days from the date of its communication.

(3) The authorisation may be refused or withdrawn if, although the conditions laid down in para. (1) and (2), as well as in the CNVM regulations, prudent management cannot be ensured.

(4) CNVM shall be entitled to withdraw the authorisation of an investment company under the conditions laid down in Art. 11.

(5) If within 4 months from the submission to ASF of the application for authorisation the entity does not submit the complete documentation in accordance with the provisions of para. (2), ASF shall consider that it has abandoned the application and shall issue a rejection decision which may be appealed within 30 days from the date of communication.

Art. 76. - The provisions of Sections 2, 3 and 6 of Chapter II, as well as the provisions of Art. 34 para. (1) and (2), Articles 34^{1}, 34^{2} and 36-43 shall also apply to self-managed investment companies, in accordance with the regulations of ASF.

Art.77 - The changes arising from the issues and repurchases of shares during each financial year shall be made, by way of derogation from Law no. 31/1990, and shall be registered at the Trade Register Office once a year, within 30 days from the approval of the financial statements.

Art. 78 - (1) CNVM shall issue regulations on the conditions to be fulfilled and the procedures for the authorisation of an investment company, the minimum content of the memorandum of association and the management contract.

(2) The articles of incorporation of the investment company shall form an integral part of the prospectus and shall be annexed thereto.

(3) The articles of incorporation of the investment company need not be attached to the prospectus if the investor is informed by the prospectus that these documents will be sent to him on request or that he will be informed in writing of the place where he may consult them in each Member State where the units are marketed.

Art. 79 - (1) Investment companies shall apply for admission to trading on a regulated market within 90 working days of the date of obtaining authorisation.

(2) The shares of an investment company may be redeemed at any time with the appropriate application of Art. 106.

Art. 80 - "repealed"

SECTION 4

Investment policy of the UCITS

Art. 81 - Where a UCITS is made up of several investment compartments, each compartment shall be considered a separate UCITS for the purposes of this chapter.

Art. 82 - Investments of a UCITS shall be made exclusively in one or more of the following assets:

a) securities and money market instruments listed or traded on a regulated market, as defined in Art. 125 of Law No 297/2004, in Romania or in a Member State;

b) transferable securities and money market instruments admitted to official listing on a stock exchange in a third country or dealt in on another regulated market in a third country which operates regularly and is recognised and open to the public, provided that the choice of stock exchange or regulated market is approved by CNVM or is provided for in the fund rules or in the articles of incorporation of the investment company approved by CNVM;

c) newly issued securities, provided that:

1. the terms of issue include a firm commitment that admission to trading on a stock exchange or other regulated market which operates regularly and is recognised and open to the public will be sought, provided that the choice of stock exchange or regulated market is approved by CNVM or is provided for in the fund rules or the investment company's articles of incorporation approved by CNVM;

2. this admission be secured within a maximum of one year from issue;

d) units of the UCITS or AIF with the characteristics set out in Art. 2 para. (1) (a) and (b), whether or not established in Member States, provided that the following conditions are met:

1. AIFs are authorised under legislation which provides that they are subject to supervision by CNVM equivalent to that provided for in this emergency ordinance and that there are cooperative relations between CNVM and the competent authority of the home State;

2. the level of protection of investors in those AIFs is equivalent to that of investors in UCITS and, in particular, the rules on segregation, borrowing and selling short securities and money market instruments are similar to the provisions of this Emergency Ordinance;

3. the activities of the AIF are the subject of half-yearly and annual reports, which allow an assessment of assets and liabilities, income and operations during the reporting period;

4. a maximum of 10% of the total assets of the other UCITS and/or AIFs in which it is intended to invest may, in accordance with the rules of the fund or the investment company's articles of incorporation, be invested in units issued by other UCITS and AIFs;

e) deposits with credit institutions, which are repayable on demand or have the right of withdrawal, with a maturity not exceeding 12 months, provided that the registered office of the credit institution is located in Romania or in a Member State. If it is located in a third country, the credit institution must be subject to prudential rules assessed by CNVM as equivalent to those issued by the European Union;

(f) derivatives, including those involving the final settlement of money market funds, dealt in on a regulated market within the meaning of points (a) and (b), and/or derivatives, dealt in outside regulated markets, provided that all of the following conditions are met:

1. the underlying assets shall consist of the instruments referred to in this Article, financial indices, interest rates and exchange rates, in which the UCITS may invest according to its investment objectives as laid down in the fund rules or in the articles of incorporation of the investment company;

2. counterparties, in the context of trading outside regulated markets, are entities, subject to prudential supervision, belonging to the categories approved by CNVM;

3. derivatives traded outside regulated markets are subject to daily and verifiable valuation and may, at the initiative of the UCITS, be sold, liquidated or the position may be closed out at any time at fair value through a reverse transaction;

g) money market instruments, other than those dealt in on a regulated market, which are liquid and have a value which can be accurately determined at any time, provided that the issue or issuer is subject to regulations relating to the protection of investors and their savings, provided that they:

1. issued or guaranteed by a central, local or regional administrative authority, a central bank of a Member State, the European Central Bank, the European Union or the European Investment Bank, a third country or, in the case of federal States, by one of the component members of the federation or by a public international body of which one or more Member States are members; or

2. are issued by an undertaking whose units are traded on regulated markets referred to in points a) and b); or

3. are issued or guaranteed by an entity subject to prudential supervision in accordance with criteria defined by European legislation, or by an entity which is subject to and complies with prudential rules validated by CNVM as equivalent to those laid down by European legislation; or

4. are issued by other entities belonging to the categories approved by CNVM, provided that investments in such instruments are subject to investor protection equivalent to that set out in points 1, 2 and 3 and that the issuer is a company whose capital and reserves amount to at least the equivalent in lei of 10,000,000 EUR and which presents and publishes its annual accounts in accordance with the applicable European legislation, or an entity which, within a group of companies containing one or more listed companies, has the role of financing the group or is an entity dedicated to the financing of securitisation vehicles benefiting from a bank line of financing.

Art. 83 - (1) By exception to the provisions of Art. 82:

a) a UCITS may invest no more than 10% of its assets in transferable securities or money market instruments other than those referred to in Art. 82;

b) an investment company may acquire only those movable and immovable assets necessary for the conduct of its business;

c) a UCITS may not invest in precious metals or in book-entry securities evidencing their ownership.

2) A UCITS may hold cash and current account liquidities, temporarily, and within the limits provided for by the regulations of CNVM.

(3) If the IMC or self-managed investment companies are exposed to a securitisation that no longer meets the requirements set out in Regulation (EU) 2.402/2017 of the European Parliament and of the Council of 12 December 2017 establishing a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) 1.060/2009 and (EU) 648/2012, they must, in the interest of investors in SIVs, -the relevant UCITS, act and take remedial measures as appropriate.

Art.84 - (1) The IMC and the self-managed investment company must use a risk management system, in accordance with the regulations of ASF and in compliance with the guidelines issued by ESMA, which allows them to:

a) monitor and quantify, at all times, the risk associated with the positions and their influence on the overall risk profile of the UCITS portfolio. In this respect, the IMC and the self-managed investment company shall not rely exclusively or automatically on credit ratings issued by credit rating agencies as defined in Art. 3 para. (1)(b) of Regulation (EC) no. 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies for the purpose of assessing the creditworthiness of the assets of UCITS;

b) ensure a fair and independent valuation of derivatives traded outside regulated markets.

(2) The IMC and the self-managed investment company shall regularly disclose to CNVM the types of derivatives, the risk of the underlying assets, the quantitative limits and the methods chosen to estimate the risk associated with derivatives transactions for each UCITS managed.

(3) Information received pursuant to para. (2) aggregated on all IMC and self-managed investment companies shall be accessible to ESMA, in accordance with Art. 35 of Regulation (EU) No 1.095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision no. 716/2009/EC and repealing Commission Decision 2009/77/EC and the

European Systemic Risk Board, in accordance with Art. 15 of Regulation (EU) no. 1.092/2010 of the European Parliament and of the Council of 24 November 2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board for the monitoring of systemic risks at the level of the European Union.

(4) CNVM may authorize a UCITS to use techniques and instruments related to securities and money market instruments, under the conditions and within the limits established by this Emergency Ordinance, provided that such techniques and instruments are used for an efficient and prudent management of its portfolio. Where such operations involve the use of derivatives, the conditions and limits shall be in accordance with the provisions of this Emergency Ordinance.

(5) In no case shall the operations referred to in para. (4) shall not cause a UCITS to contravene its investment objectives as laid down in the fund rules, the articles of incorporation of the investment company or the prospectus.

(6) A UCITS shall ensure that its overall exposure relating to derivatives does not exceed the total value of its net assets.

(7) The exposure shall be calculated taking into account the current value of the underlying asset, the counterparty risk, the market development and the time remaining to liquidate the position.

(8) A UCITS may invest, as part of its investment policy and within the limits laid down in Art. 85 para. (9) to (12), in derivatives, provided that the risk exposure of the underlying asset does not exceed the aggregate limits laid down in Art. 85.

(9) Where a UCITS invests in index-based derivatives, CNVM may approve that these investments need not be combined within the limits laid down in Art. 85.

(10) Where securities or money market instruments embed a derivative financial instrument, that derivative financial instrument shall be taken into account when applying the requirements of this Article.

(11) Taking into account the nature, scale and complexity of the activities of the UCITS, ASF shall monitor the adequacy of the credit risk assessment processes of management companies and self-managed investment companies respectively, assess the use of references to credit ratings as referred to in para. (1) in the investment policies of those UCITS and, where appropriate, encourage the mitigation of the impact of such references, with a view to reducing the exclusive and automatic reliance on such credit ratings.

Art. 85 - (1) A UCITS may not hold more than 5% of its assets in securities or money market instruments issued by the same issuer. A UCITS may not hold more than 20% of its assets in deposits with the same entity.

(2) The counterparty risk exposure of a UCITS in a derivative transaction traded outside regulated markets may not exceed:

a) 10% of its assets where the counterparty is a credit institution of the type referred to in Art. 82(e); or

b) 5% of its assets in other cases.

(3) The limit of 5% provided for in para. (1) may be exceeded up to a maximum of 10% provided that the total amount of securities and money market instruments held by a UCITS in each of the issuers in which it holds more than 5% of its assets does not exceed, in any case, 40% of the value of the assets of that UCITS.

This limit does not apply to deposits and derivative transactions traded outside regulated markets with financial institutions subject to prudential supervision.

(4) Subject to compliance with the individual limits laid down in para. (1) and (2), a UCITS may not combine more than 20% of its assets:

a) investments in securities or money market instruments issued by the same entity;

b) deposits made with the same entity; or

c) exposures arising from derivative transactions traded outside regulated markets with the same entity.

(5) The limit of 5% provided for in para. (1) may be exceeded, up to a maximum of 35%, where the securities or money market instruments are issued or guaranteed by a Member State, by the local public authorities of the Member State, by a third country or by public international bodies of which one or more Member States are members.

(6) The limit of 5% provided for in para. (1) may be exceeded up to a maximum of 25% for certain bonds if they are issued by a credit institution which has its registered office in a Member State and which is subject to special supervision by public authorities designed to protect bondholders. In particular, the proceeds from the issue of these bonds must be invested, in accordance with the law, in assets which, throughout the life of the bonds, will cover claims arising from the bonds and which, in the event of the insolvency or bankruptcy of the issuer, will be used on a priority basis for the repayment of the principal and payment of accrued interest.

21/08/2022 - the paragraph will be amended by Law 233/2022[1] , as follows:

(6) The limit of 5% provided for in para. (1) may be exceeded up to a maximum of 25% in the case of bonds issued before the date of entry into force of Law no. 233/2022 on covered bonds, as well as for the amendment and supplementing of certain financial regulatory acts that meet the requirements laid down in Law no. 304/2015 on mortgage bond issues or, as the case may be, in the case of bonds issued before 8 July 2022 that meet the requirements laid down in the legislation of another Member State transposing the provisions of Art. 52 para. (4) of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), as applicable at the date of issue, and in the case of bonds falling within the definition of covered bonds under Law no. 233/2022 on covered bonds, as well as for the amendment and supplementing of certain acts in the financial field or, where applicable, in accordance with the legislation of another Member State transposing the provisions of Art. 3(1) of Directive (EU) 2019/2.162 of the European Parliament and of the Council of 27 November 2019 on the issuance of covered bonds and the public oversight of covered bonds and amending Directives 2009/65/EC and 2014/59/EU.

[1] *According to the provisions of Art. 58. para. (1) of the Law no. 233/2022 on covered bonds, as well as for the amendment and completion of some normative acts in the financial field, its provisions enter into force 30 days after the date of publication in the Official Gazette of Romania, Part I, except for the provisions of Art. 56, which enter into force 3 days after publication.*

(7) If a UCITS holds more than 5% of its assets in the bonds referred to in para. (6) and issued by a single issuer, the total value of such holdings may not exceed 80% of the value of the assets of that UCITS.

(8) CNVM shall transmit to ESMA and to the European Commission the list of the categories of bonds specified in para. (6) and the categories of authorised issuers in accordance with the legislation and supervisory provisions referred to in para. (6), to issue bonds complying with the above criteria. The list shall be accompanied by a note specifying the status of the related guarantees.

21/08/2022 – the paragraph will be repealed by Law no. 233/2022.

(9) The securities and money market instruments referred to in para. (5) and (6) shall not be taken into account for the application of the 40% limit referred to in para. (3).

(10) The limits laid down in para. (1) to (7) may not be combined and holdings of securities or money market instruments issued by the same entity, deposits or derivatives made with that entity in accordance with para. (1) to (7) may in no case exceed a total of 35% of the assets of a UCITS.

(11) Companies included in a group for the purpose of consolidation of financial statements, in accordance with European legislation and internationally recognised accounting rules, shall be regarded as a single entity for the purpose of calculating the limits laid down in this Article.

(12) Cumulative investments in securities and money market instruments within the same group are permitted up to a limit of 20%.

Art. 86 - (1) Subject to compliance with the limits laid down in Art. 90, the limits laid down in Art. 85 may be exceeded up to a maximum of 20% for holdings of shares or debt securities of the same issuer, only when, according to the rules of the fund or the investment company's memorandum of association, the investment policy of the UCITS is aimed at reproducing the structure of a particular share or debt security index which is recognised by the competent authorities, on the following basis:

a) the structure of the index is sufficiently diversified, according to the CNVM regulations issued in application of this Emergency Ordinance;

b) the index is representative of the market to which it refers;

c) the index is published in an appropriate manner.

(2) CNVM may approve the lifting of the limit referred to in para. (1) up to a maximum of 35% if it is justified by exceptional market conditions, in particular on regulated markets where certain securities or money market instruments have a dominant weighting in the index. Holdings up to this limit are permitted for a single issuer.

Art. 87 - (1) By way of exception to Art. 85, CNVM may authorise a UCITS to hold, on the principle of risk diversification, up to 100% of its assets in transferable securities and money market instruments issued or guaranteed by a Member State, by one or more of its local public authorities, by a third country or by a public international body of which one or more Member States are members.

(2) CNVM may grant an exception under para. (1) only if it decides that the level of protection of investors in that UCITS is equivalent to that of investors in a UCITS complying with the limits laid down in Art. 85.

(3) The UCITS referred to in para. (1) must hold securities and money market instruments relating to at least 6 different issues, provided that the securities and money market instruments of any one issue do not exceed 30% of its total assets.

(4) The UCITS referred to in para. (1) must expressly mention in the fund rules or in the articles of incorporation of the investment company the state, local authority or public international body issuing or guaranteeing the securities and money market instruments in which the UCITS intends to invest more than 35% of its assets.

(5) Each UCITS referred to in para. (1) must include in its prospectus and advertising material an express provision drawing attention to the authorisation obtained under the conditions laid down in para. (4) and indicate the Member States, local authorities or public international bodies issuing transferable securities and money market instruments in which the UCITS intends to invest or has invested more than 35 % of its assets.

Art. 88 - (1) A UCITS may hold units of another UCITS or AIF referred to in Art. 82 (d), provided that it does not invest more than 20% of its assets in units of the same UCITS or 10% in units of the same AIF.

(2) Holdings of units issued by the AIF may not exceed, in aggregate, 30% of the assets of the respective UCITS.

(3) Where a UCITS holds units of other UCITS or AIFs, CNVM may approve that those assets need not be combined up to the limits laid down in Art. 85.

Art. 89 - (1) When a UCITS invests in units of other UCITS or AIFs which are managed, directly or by delegation, by the same IMC or by any other company to which the AIF is linked by common management or control, or by a substantial direct or indirect holding, that IMC or that other company may not charge a buying or redemption fee on account of the investment of the UCITS in units of other UCITS or AIF.

(2) A UCITS which invests a substantial percentage of its assets in other UCITS or AIFs shall indicate in its prospectus the maximum level of management fees which may be charged to the UCITS concerned and to the other UCITS or AIFs in which it intends to invest. In its annual report it shall indicate the maximum management fee charged on its assets and on the assets of the UCITS or the AIF in which it invests.

Art. 90 - (1) An investment company or an IMC acting in connection with the UCITS it manages, as the case may be, may not hold more than 10% of the share capital of an issuer or of the voting rights or a holding which makes it possible to exercise a significant influence over the management of the issuer. In the case of AIF, this limit shall be calculated cumulatively for all the UCITS it manages.

(2) A UCITS may not hold more than:

a) 10% of the non-voting shares of an issuer;

b) 10% of an issuer's bonds;

c) 25% of the units of a UCITS or AIF referred to in Art. 82 d);

d) 10% of the money market instruments issued by an issuer.

(3) The limits laid down in para. (2)(b), (c) and (d) may be exceeded at the time of acquisition only if the gross value of the bonds or money market instruments or the net value of the units issued cannot be calculated at the time of acquisition.

Art. 91 - (1) The UCITS shall not be bound by the limits laid down in this Chapter in the case of the exercise of subscription rights attached to securities or money market instruments included in its assets.

(2) CNVM may approve that a UCITS may derogate from the provisions of Articles 85-88 for 6 months from the date of its authorisation, with the supervision of compliance with the principle of risk diversification.

(3) If the holding limits are exceeded for reasons beyond the control of a UCITS or as a result of the exercise of subscription rights, it must adopt, as a priority objective of its sales transactions, measures to remedy the situation as soon as possible, while respecting the interests of unit-holders.

(4) Exceeding the investment limits of a UCITS, according to the provisions of this Emergency Ordinance, may be done under the condition of including a statement of such excess in the prospectus.

SECTION 5
Rules on transparency and publicity

SUBSECTION 1
Publication of the prospectus and periodic reports

Art. 92 - (1) IMC, for each UCITS managed and authorised by CNVM, and self-managed investment companies authorised by CNVM must publish and transmit to CNVM the following documents:

a) the issue prospectus;

b) the annual report;

c) the half-yearly report;

d) periodic reports on the net asset value and the unit value of net assets, according to the CNVM regulations

(2) The reports referred to in para. (1) d) shall be transmitted free of charge, at the request of investors, and shall be filed with CNVM within the terms and conditions established by regulations.

(3) The annual and half-yearly reports must be published within the following time limits, which shall begin to run from the end of the period to which they relate:

a) 4 months for the annual report;

b) two months for the half-yearly report.

(4) The annual report shall contain a balance sheet or statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the current financial year, and other significant information to assist investors in making an informed assessment of the activities of the UCITS and its results, as provided for in the CNVM regulations

(4^1) The annual report also contains:

a) the total amount of remuneration for the financial year, broken down into fixed and variable remuneration paid by the IMC or the investment company to their staff, the number of

beneficiaries and, where applicable, any amount paid directly from the IMC's account, including any performance fees;

b) the total amount of the remuneration broken down by category of employees or other staff members referred to in Art. 34^1 para. (3);

c) a description of how the remuneration and benefits are calculated;

d) the result of the evaluations referred to in Art. 34^2 para. (1) (c) to (e), including any irregularities found;

e) substantial changes in the remuneration policy adopted.

(5) The half-yearly report shall include the information provided for in the regulations of CNVM issued in compliance with the applicable European legislation.

Art. 93 - (1) The prospectus must contain the information necessary to enable investors to make an informed assessment of the investment proposed to them and, in particular, of the risks involved. The prospectus must include a clear and easily understandable description of the risk profile of the fund, irrespective of the instruments in which it invests. The prospectus must include detailed information on the updated remuneration policy, including but not limited to a description of how remuneration and benefits are calculated, the identity of the persons responsible for allocating remuneration and benefits, including the composition of the remuneration committee, if such a committee exists. Detailed information on the remuneration policy shall be publicly available through the website of the IMC or of the self-managed investment company and shall be delivered free of charge in paper form upon request to any interested party.

(2) CNVM shall issue regulations on the minimum content and format of the prospectus. The information contained in the fund rules or in the investment company's articles of incorporation annexed to the prospectus is not required to be included in the prospectus.

(3) Any person subscribing for units shall give a declaration confirming that he has received, read and understood the prospectus.

(4) The essential elements of the prospectus of issue of the UCITS shall be updated with all changes that occur, according to the regulations issued by CNVM.

Art. 94 - The accounting data in the annual report must be audited by a financial auditor, in accordance with the provisions of Art. 258 of Law no. 297/2004. The financial auditor's report and, where appropriate, the reservations expressed by him shall be reproduced in full in each annual report.

Art. 95 - Where an IMC authorised by CNVM manages a UCITS from another Member State, the IMC shall send to CNVM, upon request, for each UCITS managed the prospectus, any amendments thereto, as well as the annual and half-yearly reports.

Art. 96 - (1) The prospectus and the latest published annual and half-yearly reports must be provided to investors on request and free of charge.

(2) The prospectus may be provided on a durable medium or by means of a website. A printed copy must be provided to investors on request and free of charge.

(3) The annual and half-yearly reports must be made available to investors in the manner specified in the prospectus and in the key investor information referred to in Art. 98. A printed copy of the annual and half-yearly reports must be provided to investors on request and free of charge.

SUBSECTION 2

Publication of publicity material

Art. 97 - The dissemination of any advertising material in relation to a UCITS shall be carried out in accordance with the provisions of Art. 4 of Regulation (EU) 2019/1.156 of the European Parliament and of the Council of 20 June 2019 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) no. 345/2013, (EU) no. 346/2013 and (EU) no. 1.286/2014, hereinafter referred to as Regulation (EU) 2019/1.156, and the regulations issued by ASF on the advertising of UCITS.

SUBSECTION 3

Key investor information

Art. 98 - (1) Investment companies which self-manage/IMC for each managed UCITS must prepare a short document containing key information for investors. The phrase 'key investor information' must be explicitly mentioned in this document, in the official language or one of the official languages of the UCITS host Member State or in a language approved by the competent authorities of that Member State.

(2) Key investor information should include adequate information on the key features of the UCITS which should be provided to investors so that they are able to understand the nature and risks of the UCITS and therefore make informed investment decisions.

(3) Key investor information must disclose information on the following key elements relating to the UCITS:

a) identification of the UCITS and the competent authority of the UCITS;

b) a brief description of the investment objectives and investment policy;

c) a presentation of past performance or, where appropriate, forecasts of results;

d) the costs and related expenses; and

e) the risk/return profile of the investment, including appropriate recommendations and warnings regarding the risks associated with investments in the UCITS concerned.

(4) The essential elements must be capable of being understood by the investor without reference to other documents.

(5) Key investor information should clearly indicate where and how additional information on the proposed investment can be obtained, including but not limited to where and how the prospectus and the annual and half-yearly reports can be obtained on request, free of charge and at any time, and the language in which such information is made available to investors.

(5^1) Key investor information shall also include a statement containing the information referred to in Art. 93 (1).

(6) Key investor information should be written in a concise manner, using non-technical language. It should be presented in a common, easily comparable format so that retail investors can understand it.

(7) Key investor information must be used without adaptation or supplement, except for translations, in all Member States in which the UCITS has notified the distribution of its units.

Art. 99 - (1) Key investor information constitutes pre-contractual information. It must be fair, clear and not misleading. Its content must be consistent with the relevant parts of the prospectus.

(2) Key investor information or translations thereof shall not give rise to civil liability of any person unless it is misleading, incorrect or inconsistent with the relevant parts of the prospectus. The key investor information shall contain a clear warning to that effect.

Art. 100 - (1) Self-managed investment companies and IMC for each managed UCITS, which sell units of the UCITS, shallto investors either directly or through another natural or legal person, acting under its full and unconditional responsibility, must provide key investor information on those UCITS in good time and before the proposed date of subscription of units of the UCITS.

(2) Self-managed investment companies and IMC for each managed UCITS which do not sell UCITS units to investors -s directly or through another natural or legal person, acting under its full and unconditional responsibility towards investors, must provide on request key investor information to entities issuing financial products and to intermediaries selling or advising investors on potential investments in UCITS or products with an exposure to UCITS.

(3) Intermediaries selling units of UCITS or advising investors on potential investments in UCITS must provide investors with key investor information.

(4) Key investor information must be provided to investors free of charge.

Art. 101 - (1) Self-managed investment companies and IMC, for each managed UCITS, may provide key investor information in a durable medium or via a website. A printed copy must be distributed to the investor on request and free of charge.

(2) An updated version of the key investor information shall be published on the website of the investment company or the IMC

Art. 102 - (1) The IMC, for each UCITS managed and authorised by CNVM, and the self-managed investment companies authorised by CNVM must transmit to CNVM the key investor information, as well as any changes and additions thereto.

(2) Key elements of the key investor information will be updated with any changes that occur.

SECTION 6

General obligations of the UCITS

Art. 103 - (1) No self-managed investment company, IMC or depository acting on behalf of a UCITS may borrow on its behalf.

(2) By way of derogation from para. (1), CNVM may authorise a UCITS to contract loans, provided that such loan:

a) be temporary and represent a maximum of 10% of the assets of a UCITS;

b) in the case of an investment company, be for the acquisition of immovable property essential for the direct pursuit of its business and represent no more than 10% of its assets.

(3) Where a UCITS is authorised to lend in accordance with para. (2) (a) and (b) cumulatively, those loans may not exceed in total 15% of its assets.

(4) A UCITS may acquire foreign currency in the back-to-back borrowing system.

(5) Without prejudice to the application of Articles 82 and 84, a self-managed investment company, an IMC or a depository acting on behalf of a UCITS may not grant loans or guarantee such loans to a third party.

(6) The provisions of para. (5) shall not prevent the acquisition by the undertakings concerned of securities, money market instruments or other financial instruments referred to in Art. 82 (d), (f) and (g) which are not fully paid.

Art. 104 - (1) In exceptional circumstances and only for the protection of the interests of unit-holders, self-managed investment companies and IMC acting on behalf of a UCITS may temporarily suspend the issue and redemption of units, subject to the provisions of the fund rules, the investment company's articles of incorporation and the CNVM regulations.

(2) In order to protect the public interest and investors, CNVM may temporarily decide to suspend or limit the issuance and/or redemption of the units of a UCITS, authorized in accordance with the provisions of this Emergency Ordinance.

(3) The act of suspension shall specify the terms and reason for the suspension. The suspension may be extended if the grounds for suspension are maintained.

(4) In the situations referred to in para. (1), the UCITS must, without delay, communicate its decision to CNVM and to the competent authorities of the Member States in which it distributes its units.

Art. 105 - (1) The distribution or reinvestment of the income of a UCITS shall be made in accordance with the legal provisions in force, the fund rules or the investment company's articles of incorporation.

(2) Creditors of an IMC, depositories or sub-depositories may not institute legal proceedings against the assets of a UCITS.

Art.106 - (1) Units of a UCITS shall be issued only after their consideration, at the net issue price, is recorded in the account of the UCITS.

(2) The redemption price of the units of a UCITS shall be calculated according to the date of receipt of the redemption request, in accordance with the regulations of CNVM issued in application of this Emergency Ordinance. Payment will be made within a reasonable time, but not more than 10 working days from the date of submission of the request.

Art. 107 - Self-managed investment companies, IMC and the depository acting on behalf of a UCITS may not carry out uncovered sales of securities, money market instruments or other financial instruments referred to in Art. 82 letters d), f) and g), defined according to the CNVM regulations issued in application of this Emergency Ordinance.

SECTION 7
Merger of the UCITS

SUBSECTION 1
Authorisation of mergers

Art. 108 - (1) For the purposes of this Chapter, the concept of UCITS shall also cover the investment compartments of a UCITS.

(2) Irrespective of the manner of establishment of the UCITS under Art. 2 para. (3), CNVM shall authorise national and cross-border mergers as defined in Art. 3 para. (1) points 8 and 9 according to the merger methods set out in Art. 3 para. (1) point 7.

Art. 109 - (1) Mergers shall be authorised in advance by CNVM, if Romania is the home Member State of the merged UCITS.

(2) The merged UCITS shall provide CNVM with the following information:

a) the joint draft of the proposed merger duly approved by the merging UCITS and the acquiring UCITS;

b) an updated version of the prospectus and of the information for investors according to Art. 98 belonging to the acquiring UCITS if it is established in another Member State;

c) a declaration issued by the depository of the merging and the acquiring UCITS, stating that, in accordance with Art. 112, they have verified the conformity of the points listed in Art. 111 para. (1). (a), (f) and (g) with the requirements of this Emergency Ordinance and with the rules of the funds or the articles of incorporation of the respective UCITS; and

d) the information concerning the proposed merger which the merging UCITS and the acquiring UCITS intend to provide to their respective unit-holders.

(3) The information referred to in para. (2) shall be provided in a form which enables both CNVM and the competent authorities of the home Member State of the acquiring UCITS to read it in the official language or one of the official languages of the Member State or Member States or in a language approved by those competent authorities.

(4) In the case of a cross-border merger, as soon as the file is complete, CNVM shall transmit without delay copies of the information referred to in para. (2) to the competent authorities of the home Member State of the acquiring UCITS. CNVM shall analyse the potential impact of the proposed merger on the unit-holders at the merging UCITS in order to assess whether the unit-holders are provided with adequate information. CNVM may request in writing clarification of the information to be provided to unit-holders at the merging UCITS.

(5) In the event of a national merger, CNVM shall consider the impact of the proposed merger on unit-holders at the merging UCITS and the acquiring UCITS in order to assess whether adequate information is provided to unit-holders, and may request in writing clarification of the information to unit-holders at the merging UCITS in accordance with para. (4) or to amend the information to be given to unit-holders of the acquiring UCITS in accordance with para. (6).

(6) In the case of a cross-border merger where CNVM is the competent authority of the home Member State of the acquiring UCITS and receives from the competent authority of the home Member State of the acquired UCITS the information referred to in para. (2), it may request in writing and not later than 15 working days after receipt of the copies containing all the information referred to in para. (2) that the acquiring UCITS amend the information to be provided to its unit-holders.

(7) In the situation referred to in para. (6), CNVM shall forward its objections to the competent authorities of the home Member State of the merging UCITS. CNVM shall inform the competent authorities of the home Member State of the merging UCITS whether it agrees with the amended information to be provided to holders of units in the merging UCITS within 20 days of the date on which CNVM was notified thereof.

Art. 110 - (1) CNVM shall authorise a proposed cross-border merger if the following conditions are met:

a) the proposed merger complies with all the requirements of Articles 109-113;

b) the acquiring UCITS has notified the distribution of its units to the competent authorities of the Member States in which the UCITS being acquired is either authorised or has notified the distribution of its securities in accordance with Art. 158; and

(c) CNVM and the competent authorities of the home Member State of the acquiring UCITS validate the information proposed to be provided to the unit-holders or the competent authorities of the home Member State of the acquiring UCITS have raised no objection to this.

(2) CNVM shall authorise a proposed national merger if the conditions set out in para. (1) (a) and (b) are met and CNVM validates the proposed information to be provided to the holders of units of the merged UCITS and the acquiring UCITS.

(3) If CNVM considers that the file is not complete, it shall request additional information within 10 days of receipt of the information referred to in Art. 109 para. (2).

(4) CNVM shall inform the UCITS within 20 working days from the submission of the complete file, according to Art. 109 para. (2), whether or not the merger has been authorised.

(5) In the case of a cross-border merger, CNVM shall inform the competent authorities of the home Member State of the acquiring UCITS of its decision in accordance with para. (4).

(6) CNVM may grant exemptions from the provisions of Art. 85-88 for the acquiring UCITS, according to Art. 91 para. (2).

Art. 111 - (1) The merged UCITS and the acquiring UCITS shall draw up a joint merger plan, which shall include the following elements:

a) identification of the type of merger and the UCITSs involved;

b) the background to and rationale for the proposed merger;

c) the expected impact of the proposed merger on the holders of units in both the merged UCITS and the acquiring UCITS;

d) the criteria adopted for the valuation of the asset and, where applicable, the liability at the date on which the exchange rate is calculated, as referred to in Art. 123 para. (1);

e) the method of calculating the exchange rate;

f) the expected effective date of the merger;

g) the rules applicable to the transfer of assets and the exchange of units; and

h) in the case of a merger pursuant to Art. 3 para. (1) (ii), the fund rules or the articles of incorporation of the new acquiring UCITS.

(2) CNVM may not request the inclusion of additional information in the joint draft terms of merger.

(3) The merged UCITS and the acquiring UCITS may decide to include other elements in the joint draft terms of merger.

SUBSECTION 2

Third-party control, information to unit-holders and other rights of unit-holders

Art.112.-The depository of the merged UCITS and that of the acquiring UCITS shall verify the conformity of the points referred to in Art. 111 para. (1) (a), (f) and (g) with the

requirements of this Emergency Ordinance and with the fund rules or the articles of incorporation of the UCITS.

Art. 113 - (1) In the situation referred to in Art. 109 para. (1), CNVM shall entrust a depository or an independent auditor, authorised in accordance with Government Emergency Ordinance no. 90/2008 on statutory audit of annual financial statements and annual consolidated financial statements, approved with amendments by Law no. 278/2008, with subsequent amendments and additions, hereinafter referred to as GEO no. 90/2008, with the task of validating the following:

a) the criteria adopted for the valuation of the asset and, where applicable, the liability at the date on which the exchange rate is calculated, as referred to in Art. 123 para. (1);

b) cash payment by unit, if applicable; and

c) the method of calculating the exchange rate, as well as the exchange rate valid on the date on which that rate is calculated, as referred to in Art. 123 para. (1).

(2) The statutory auditors of the merged UCITS or the statutory auditor of the acquiring UCITS, defined according to GEO no. 90/2008, shall be considered independent auditors for the purposes of para. (1).

(3) A copy of the reports of the independent auditor or, as the case may be, of the depository shall be made available to the holders of units both at the merged UCITS and at the acquiring UCITS and at the disposal of the respective competent authorities on request and free of charge.

Art. 114 - (1) The merged UCITS and the acquiring UCITS must provide their unit-holders with useful and accurate information on the proposed merger so that they can make an informed decision on the impact of the proposal on their investment and exercise their rights under Articles 120 and 121.

(2) The information referred to in para. (1) shall be provided to the holders of units in the merged UCITS and the acquiring UCITS only after CNVM has authorised the proposed merger.

(3) The information referred to in para. (1) shall be submitted at least 30 days before the deadline for requesting redemption or, where applicable, conversion at no extra cost in accordance with Art. 121 para. (1).

(4) The information referred to in para. (1) shall include the following elements:

a) the background to and rationale for the proposed merger;

b) the possible impact of the proposed merger on unitholders, including, but not limited to, any significant differences with respect to investment policy and strategy, costs, expected outcome, periodic reporting and downside performance risk and, if applicable, a prominent warning to investors that their tax treatment may change after the merger;

c) any specific rights that unit-holders have in connection with the proposed merger, including, but not limited to, the right to obtain additional information, the right to obtain, upon request, a copy of the independent auditor's or depository's report, and the right to request the repurchase or, if applicable, the conversion free of charge of their units, pursuant to Art. 121 para. (1) and the deadline for exercising that right;

d) the relevant procedural aspects and the expected date of entry into force of the merger;

e) a copy of the key investor information of the acquiring UCITS in accordance with Art. 98.

(5) Where the merged UCITS or the acquiring UCITS has notified the distribution of its units in other Member States, the information referred to in para. (4) must be provided either in the official language or one of the official languages of the host Member State of the relevant UCITS or in a language approved by its competent authorities. The translation shall be carried out under the responsibility of the UCITS of the Member State from which the information is requested. The translation in question shall reflect the exact content of the original information.

SUBSECTION 3

Content of merger information

Art. 115 - (1) The information to be provided to unit-holders pursuant to Art. 114 para. (1) must be in concise, non-technical language which enables unit-holders to make an informed assessment of the impact of the proposed merger on their investment.

(2) Where the proposed merger is cross-border, the merged UCITS and the acquiring UCITS must each explain, in non-technical language, conditions or procedures relating to the other UCITS which differ from those currently in place in the other Member State.

(3) The information to be provided to unit-holders of the merged UCITS must meet the needs of investors who do not have prior knowledge of the characteristics of the merged UCITS or of its operations. They should draw attention to the key investor information of the acquiring UCITS and emphasise the usefulness of reading it.

(4) The information to be provided to the holders of units of the acquiring UCITS must focus on the completion of the merger and its impact on the acquiring UCITS.

Art. 116 - (1) Information provided to holders of units of the merged UCITS pursuant to Art. 114 para. (4) (b) must also include the following:

a) details of the differences between the rights of the holders of units of the merged UCITS before and after the proposed merger;

b) if the key investor information of the merged UCITS and the acquiring UCITS contains synthetic risk and return indicators in different categories or identifies significant different risks in the accompanying description, a comparison of these differences;

c) a comparison of all fees, commissions and expenses for both UCITS, based on the amounts indicated in the key investor information of each UCITS;

d) if the merged UCITS applies a performance fee, an explanation of how it will be applied until the merger takes effect;

e) if the acquiring UCITS applies a performance fee, the manner in which it will be applied after the merger to ensure the fair treatment of unit-holders who previously held units of the UCITS being acquired;

f) in cases where Art. 122 permits the allocation of costs relating to the preparation and implementation of the merger to the merged UCITS, the acquiring UCITS or the holders of their units, details of how these costs are to be allocated;

g) explanations of any intention of the IMC of the merged UCITS or of the merged self-managed investment company to carry out a rebalancing of the portfolio before the merger.

(2) Information given to holders of units of the acquiring UCITS in accordance with Art. 114 para. (4) (b) must state whether the IMC of the acquiring UCITS or the acquiring self-managed investment company expects the merger to have a significant impact on the portfolio of the acquiring UCITS and whether it intends to rebalance the portfolio before or after the merger.

(3) The information provided in accordance with Art. 114 para. (4) shall also include the following:

a) details of how the income accrued in each UCITS will be treated;

b) an indication of how the report of the independent auditor or the depository referred to in Art. 113 para. (3) can be obtained.

(4) If the conditions of the merger include a cash payment in accordance with Art. 3 para. (1) (7) (i) and (ii), the information provided to the unit-holders of the merged UCITS must contain details of the proposed payment, including the time and procedure by which the unit-holders of the merged UCITS will receive the cash payment.

(5) The information to be provided in accordance with Art. 114 (4) (d) shall include:

a) the procedure whereby unit-holders will be invited to approve the proposed merger and the means by which they will be informed of the results, if so provided for in the fund rules or the articles of incorporation of the UCITS concerned;

b) details of any suspension of trading in the units to enable the merger to proceed smoothly;

c) the date on which the merger will take effect in accordance with Art. 123.

(6) In cases where the merger proposal must be approved by the unit holders, the information may contain a recommendation from the IMC or the self-managed investment company as to the option to be made.

(7) The information to be provided to holders of units of the merged UCITS shall include:

a) the period during which unit-holders may continue to subscribe for and redeem the units of the merged UCITS;

b) the time at which unit-holders who do not exercise the rights conferred by Art. 121 para. (1) within the prescribed period shall be entitled to exercise their rights as unit-holders of the acquiring UCITS;

c) the clarification that, in cases where, according to the rules of the fund or the articles of incorporation of the UCITS, the merger proposal must be approved by the unit-holders of the merged UCITS and is approved by the required majority, the unit-holders who vote against the proposal or who do not vote at all and do not exercise their rights under Art. 121 para. (1) within the prescribed time limit shall become holders of units of the acquiring UCITS.

(8) If a summary of the key points of the merger proposal is provided at the beginning of the disclosure document, it must contain references to the parts of the disclosure document where additional information can be found.

Art. 117 - (1) Holders of units of the merged UCITS shall be provided with an updated version of the key investor information of the acquiring UCITS.

(2) Key investor information of the acquiring UCITS must be provided to holders of units of the acquiring UCITS if it has been amended for the purposes of the proposed merger.

Art. 118 - Between the date on which the information document referred to in Art. 114 para. (1) is provided to unit-holders and the date on which the merger takes effect, the information document and the updated key investor information of the acquiring UCITS must be provided to each person who purchases or subscribes for units of the UCITS.the merged UCITS or the acquiring UCITS or who requests copies of the fund rules or the articles of incorporation of the investment company, the prospectus or the key investor information of any UCITS.

SUBSECTION 4

The provision of information

Art. 119 - (1) The merged UCITS and the acquiring UCITS shall provide the holders of units with the information referred to in Art. 114 para. (1) on paper or on another durable medium.

(2) Where information is to be provided to all or certain unit-holders in a durable medium other than paper, the following conditions must be satisfied:

a) the provision of information is appropriate in relation to the business relationship which is or will be carried on between the unit-holder and the merged or acquiring UCITS or, if applicable, the IMC;

b) the unit-holder to whom that information is to be provided expressly chooses to have it provided in a durable medium other than paper, where he has the choice between information in paper form or information in another durable medium.

(3) In the application of para. (1) and (2), the communication of information by means of an electronic system shall be deemed appropriate in relation to the business relationship which is or will be conducted between the merged and the acquiring UCITS or their IMC and the unit-holder, if it is certain that the unit-holder has constant access to the Internet. The provision by the unit-holder of an e-mail address for the conduct of that business will be deemed to fulfil such a condition.

Art. 120 - (1) Where the fund rules or the articles of incorporation of the UCITS provide for the approval of mergers between UCITS by the unit-holders, the resolution on the merger may be adopted by not more than 75% of the votes cast by the unit-holders present or represented at the general meeting of unit-holders.

(2) The provisions of para. (1) shall be without prejudice to any quorum required by Law no. 31/1990, by the rules of the fund or by the constitutive act of the UCITS. CNVM shall not impose stricter quorums for cross-border mergers than for domestic mergers, nor stricter quorums for mergers between UCITS than for mergers between corporate entities.

Art. 121 - (1) Holders of units in both the merged UCITS and the acquiring UCITS shall have the right to request, free of any charges other than those levied to cover disinvestment costs, the repurchase of their units or, if possible, their conversion free of charge into units in another UCITS with a similar investment policy and managed by the same IMC or by any other company with which the IMC is linked by common management or control or by a substantial direct or indirect holding.

(2) The right referred to in para. (1) shall become effective from the moment the holders of units in the merged UCITS and the holders of units in the acquiring UCITS have been

notified of the proposed merger pursuant to Art. 114 and shall cease to exist 5 working days after the date on which the exchange rate referred to in Art. 123 para. (1).

(3) Without prejudice to the provisions of para. (1) and by way of derogation from Art. 2 para. (1) (b), CNVM may request or permit the temporary suspension of the subscription or redemption of units, provided that such suspension is justified by the intention to protect unit-holders.

SUBSECTION 5

Costs and entry into force

Art. 122 - Unless a UCITS is not managed by an IMC, all legal, administrative or consultancy expenses relating to the preparation and implementation of the merger shall not be charged to the merged UCITS, the acquiring UCITS or their unit-holders.

Art. 123 - (1) The date on which the merger takes effect, as well as the date on which the exchange rate between the units of the merged UCITS and the units of the acquiring UCITS and, if applicable, the date on which the net asset value for cash payments is determined, shall be set out in the joint draft terms of merger referred to in Art. 111.

(2) Where the fund rules or the articles of incorporation of the UCITS provide for the approval of mergers between UCITS by the unit-holders, the dates referred to in para. (1) shall be determined after approval of the merger by the unit-holders of the acquiring UCITS or the merged UCITS.

(3) The entry into force of the merger shall be made public by all appropriate means by the acquiring UCITS and notified to the competent authorities of the home Member States of the acquiring UCITS and of the acquired UCITS.

Art. 124 - (1) A merger carried out in accordance with Art. 3 para. (1) point 7 subpoint (i) has the following consequences:

a) all assets and liabilities of the merged UCITS shall be transferred to the acquiring UCITS or, if applicable, to the depository of the acquiring UCITS; and

b) holders of units in the merged UCITS shall become holders of units in the acquiring UCITS and, if applicable, shall be entitled to receive a cash payment not exceeding 10% of the net asset value of the units held by them in the merged UCITS;

c) the merged UCITS shall cease to exist on the date of entry into force of the merger.

(2) A merger carried out in accordance with Art. 3 para. (1), point 7, subpoint (ii) has the following consequences:

a) all assets and liabilities of the merged UCITS shall be transferred to the new acquiring UCITS or, if applicable, to the depository of the acquiring UCITS; and

b) holders of units in the merged UCITS shall become holders of units in the new acquiring UCITS and, if applicable, shall be entitled to receive a cash payment not exceeding 10% of the net asset value of the units held by them in the merged UCITS;

c) the merged UCITS shall cease to exist on the date of entry into force of the merger.

(3) The IMC of the acquiring UCITS or the acquiring self-managed investment company, as the case may be, shall send a confirmation to the depository of the acquiring UCITS that the transfer of assets and, where applicable, liabilities has been completed.

(4) Where the acquiring investment company resulting from a merger carried out in accordance with Art. 3 para. (1) point 7, subpoint (i) is established on the territory of Romania, the instrument amending its memorandum of association shall be registered, in accordance with the law, in the commercial register in whose district the company has its registered office. The Trade Register Office shall, ex officio, send the amending instrument to the Official Gazette of Romania for publication in Part IV, at the company's expense.

(5) Where the investment company resulting from a merger as referred to in Art. 3 para. (1) point 7, subpoint (ii) is newly established on the territory of Romania, it shall be registered, in accordance with the law, in the commercial register in which it has its registered office.

SECTION 8
Master and feeder UCITSs

SUBSECTION 1
Scope and approval

Art. 125 - (1) A feeder UCITS defined according to Art. 3 para. (1) point 11 may hold up to 15% of its assets in the form of:

a) other liquid assets according to Art. 83 par. (2);

b) derivatives which may be used only for hedging purposes in accordance with Articles 82(f) and 84 para. (4) - (10);

c) movable and immovable property which is necessary for the direct pursuit of the business, if the feeder UCITS is an investment company.

(2) In order to comply with the requirements laid down in Art. 84 para. (6) to (10), the feeder UCITS shall calculate its global exposure relating to the holding of derivative financial instruments by combining its direct exposure under para. (1)(b) with:

a) the actual exposure of the master UCITS relating to the holding of derivatives in proportion to the investments of the feeder UCITS in the master UCITS; or

b) the maximum potential exposure of the master UCITS in respect of the holding of derivatives set out in the fund rules or in the articles of incorporation of the investment company in proportion to the investments of the feeder UCITS in the master UCITS.

(3) The following exceptions shall apply in the case of a master UCITS:

a) if a master UCITS has at least two feeder UCITS among its unit-holders, the provisions of Art. 2 (1)(a) shall not apply, thus giving the master UCITS the choice of whether or not to raise capital from other investors;

b) if a master UCITS does not raise capital in a Member State other than the Member State in which it is established and has only one or more feeder UCITS in that Member State, the provisions of Chap. V, Section 1, Subsection 2 or Section 2, Subsection 2 and the provisions of Art. 191 para. (2) shall not apply.

Art. 126 - (1) Where CNVM is the competent authority of the feeder UCITS, the investments of the feeder UCITS in a given master UCITS exceeding the limit laid down in Art. 88 para. (1) relating to investments in other UCITS shall be subject to prior approval by CNVM.

(2) The feeder UCITS shall be informed, within 15 working days from the submission of the complete file, whether or not CNVM has approved the investments of the feeder UCITS in the master UCITS.

(3) For the purposes of the approval referred to in para. (2), the feeder UCITS must provide CNVM with the following documents:

a) the fund rules or the memorandum of association of the feeder UCITS and the master UCITS;

b) the prospectus and key investor information of the feeder UCITS and the master UCITS according to Art. 98;

c) the agreement between the feeder UCITS and the master UCITS or the internal rules of conduct referred to in Art. 127 para. (4);

d) where applicable, the information to be given to unit-holders referred to in Art. 143 para. (1);

e) if the master UCITS and the feeder UCITS have different depositories, the agreement on the exchange of information referred to in Art. 135 para. (1) between the respective depositories;

f) if the master UCITS and the feeder UCITS have different auditors, the agreement on the exchange of information referred to in Art. 139 para. (1) between the respective auditors.

(4) If the feeder UCITS is established in a Member State other than the home Member State of the master UCITS, the feeder UCITS must also present a certificate issued by the competent authorities of the home Member State of the master UCITS attesting that the master UCITS is a UCITS or an investment compartment thereof which fulfils the conditions laid down in Art. 3 para. (1), point 12 (b) and (c).

(5) The documents shall be submitted by the feeder UCITS in Romanian or in a language agreed by CNVM.

SUBSECTION 2

Common provisions for feeder UCITSs and master UCITSs

Art.127 - (1) The master UCITS is obliged to provide the feeder UCITS with all documents and information necessary for it to meet the requirements set out in this Emergency Ordinance.

(2) For the purposes set out in para. (1), the feeder UCITS shall conclude an agreement with the master UCITS.

(3) The feeder UCITS shall not invest more than the limit laid down in Art. 88 para. (1) in units of the master UCITS before the entry into force of the agreement referred to in para. (2), which shall be available, on request and free of charge, to all unit-holders.

(4) Where the master UCITS and the feeder UCITS are managed by the same IMC, the agreement may be replaced by internal rules of conduct ensuring compliance with the requirements set out in this Emergency Ordinance.

(5) The master UCITS and the feeder UCITS shall take the necessary measures to coordinate the timing of the calculation and publication of their net asset value in order to avoid the application of market timing practices to their units, preventing the possibility of arbitrage.

(6) If the master UCITS temporarily suspends the repurchase or subscription of its units, either on its own initiative or at the request of its competent authorities, each of its feeder UCITS shall have the right to suspend the repurchase or subscription of its units, by way of derogation from the conditions laid down in Art. 104, for the same period as the master UCITS.

(7) If a master UCITS is liquidated, the feeder UCITS shall also be liquidated unless the UCITS, as the competent authority of the home Member State of the feeder UCITS, approves:

a) investing at least 85% of the assets of the feeder UCITS in units of another master UCITS; or

b) amending the rules of the fund or the articles of incorporation of the investment company so that the feeder UCITS can be converted into a UCITS which is not a feeder UCITS.

(8) The liquidation of a master UCITS may not take place earlier than 3 months after the date on which the master UCITS has informed all unit-holders and CNVM, as the competent authority of the feeder UCITS' home Member State, of the compulsory liquidation decision.

(9) If a master UCITS merges with another UCITS or if it splits into two or more UCITS, the feeder UCITS shall be liquidated, unless the UCITS, as the competent authority of the home Member State of the feeder UCITS, approves the feeder UCITS:

a) continue to be a feeder UCITS of the master UCITS or of another UCITS following the merger or division of the master UCITS; or

b) invest at least 85% of its assets in units of another master UCITS not resulting from a merger or division; or

c) amend its fund rules or the investment company's articles of incorporation to convert into a UCITS which is not a feeder UCITS.

(10) No merger or division of a master UCITS shall take effect unless the master UCITS has communicated to all its unit-holders and to CNVM, as the competent authority of the home Member State of the feeder UCITS, the information referred to in Art. 114 or information comparable thereto not later than 60 days before the proposed effective date.

(11) Unless CNVM grants approval pursuant to para. (9)(a), the master UCITS shall permit the feeder UCITS to redeem all the units of the master UCITS before the merger or division of the master UCITS takes effect.

SUBSECTION 3

Agreement and internal rules of conduct between the feeder UCITS and the master UCITS

Art.128 - The agreement concluded between the UCITS of the master type and the UCITS of the feeder type referred to in Art.127 para. (2) must include the following provisions:

a) how and when the master UCITS provides the feeder UCITS with a copy of the fund rules or the investment company's articles of incorporation, prospectus and key investor information and any amendments thereto;

b) how and when the master UCITS informs the feeder UCITS of the delegation of investment management and risk management functions to third parties in accordance with Art. 33;

c) if applicable, how and when the master UCITS provides the feeder UCITS with internal operational documents, such as risk management procedures and internal control reports;

d) details to be provided by the master UCITS to the feeder UCITS of any breach by the master UCITS of the law, the fund rules or the investment company's articles of incorporation and the agreement between the master UCITS and the feeder UCITS, and the manner and time within which such details shall be provided;

e) where the feeder UCITS invests in derivatives for hedging purposes, how and when the master UCITS provides the feeder UCITS with information on its actual exposure to derivatives to enable the feeder UCITS to calculate its own global exposure in accordance with Art. 125 para. (2)(a);

f) the specification that the master UCITS must inform the feeder UCITS of any other information-sharing agreements concluded with third parties and, if applicable, how and when the master UCITS makes available to the feeder UCITS the other information-sharing agreements;

g) a list of the classes of shares/fund units of the master UCITS in which the feeder UCITS may invest;

h) the fees and expenses to be borne by the feeder UCITS and details of any reductions or eliminations of fees or expenses by the master UCITS;

i) if applicable, the conditions under which an initial or subsequent transfer of assets in kind from the feeder UCITS to the master UCITS may be carried out;

j) coordination of the frequency and timing of the calculation of the net asset value and the publication of the unit value of the net asset;

k) coordination of the transmission of trading orders by the feeder UCITS, including, where appropriate, the role of transfer agents or any other third party;

l) if applicable, any necessary measures to take into account the fact that one or both of the UCITS are admitted to trading or traded on a secondary market;

m) if necessary, other appropriate measures to ensure compliance with the requirements of Art. 127 para (5);

n) if the units of the feeder UCITS and the master UCITS are denominated in different currencies, the basis for the conversion of trading orders;

o) the settlement cycles and payment details for subscriptions and redemptions of units of the master UCITS including, if agreed between the parties, the conditions under which the master UCITS may settle redemption requests by a transfer of assets in kind to the feeder UCITS, in particular in the cases referred to in Art. 127 para. (7) and (9);

p) procedures to ensure that requests and complaints from unit-holders are dealt with in accordance with the legal provisions in force;

q) where the fund rules or the articles of incorporation of the investment company and the prospectus of the master UCITS confer certain rights or privileges on the master UCITS in relation to unit-holders and the master UCITS chooses to limit or waive the exercise of all or any of those rights and privileges in relation to the feeder UCITS, a statement of the terms of such limitation or waiver;

r) how and when any of the UCITS notifies the temporary suspension and resumption of the redemption or subscription of its own units;

s) the measures taken for the notification and correction of pricing errors at the level of the master UCITS;

ș) where the financial year of the feeder UCITS and the master UCITS coincide, coordination of the submission of their periodic reports;

t) where the feeder UCITS and the master UCITS have different financial years, the provisions necessary for the feeder UCITS to obtain from the master UCITSthe master UCITS all the information necessary to enable it to submit its regular reports on time and for the auditor of the master UCITS to be able to draw up a report at the end of the financial year for the feeder UCITS, in accordance with Art. 139 para. (3);

ț) the manner and timing of notification by the master UCITS of proposed or actual changes to the fund rules or the investment company's articles of incorporation, prospectus and key investor information, if these details differ from the standard provisions for unitholder notification contained in the fund rules, the investment company's articles of incorporation or the master UCITS' prospectus;

u) the manner and timing of notification by the master UCITS of a planned or proposed liquidation, merger or division;

v) the manner and time of notification by any of the UCITS that it no longer meets or will no longer meet the conditions to be a master UCITS or a feeder UCITS;

w) the manner and timing of notification by any of the UCITS of the intention to replace the IMC, the depository, the auditor or any third party that is mandated to perform investment management or risk management functions;

x) the manner and timing of notification of other changes to existing provisions that the master UCITS undertakes to provide.

Art. 129 - (1) Where the feeder UCITS and the master UCITS are established in Romania, the agreement between the feeder UCITS and the master UCITS referred to in Art. 127 para. (2) provides that the law applicable to the agreement is national law and that the parties agree on the exclusive jurisdiction of the courts, in accordance with the legal provisions in force.

(2) Where only the feeder UCITS or the master UCITS is established in Romania, the agreement between the feeder UCITS and the master UCITS referred to in Art.127 para. (2) provides that the law applicable to the agreement is either the law of the Member State in which the feeder UCITS is established or the law of the Member State of the master UCITS and that the parties agree on the exclusive jurisdiction of the courts, in accordance with the rules of private international law contained in Book VII of Law no. 287/2009 on the Civil Code, republished, as amended.

Art. 130 - (1) The internal rules of conduct of the IMC referred to in Art. 127 para. (4) shall include procedures to minimise conflicts of interest that may arise between the feeder UCITS and the master UCITS or between the feeder UCITS and other unit-holders of the master UCITS, to the extent that such conflicts are not fully prevented by the measures adopted by the IMC to comply with the requirements laid down in this emergency ordinance.

(2) The internal rules of conduct of the IMC shall include at least the provisions referred to in Art. 128 (g)-(o) and (q)-(t).

SUBSECTION 4

Winding-up, merger or division of a master UCITS

Art. 131 - (1) Within two months from the date on which the master UCITS informed the feeder UCITS of the decision to liquidate, the feeder UCITS shall send the following information to CNVM:

a) if the feeder UCITS intends to invest at least 85% of its assets in units of another master UCITS, in accordance with Art. 127 para. (7) (a):

(i) the application for approval of this investment;

(ii) the application for approval of proposed amendments to the fund rules or the investment company's articles of incorporation;

(iii) amendments to the prospectus and key investor information in accordance with Articles 95 and 102;

(iv) the other documents referred to in Art. 126 para. (3) - (5);

b) if the feeder UCITS intends to transform itself into a UCITS which is not a feeder UCITS, in accordance with Art. 127 para. (7) b):

(i) the application for approval of proposed amendments to the fund rules or the investment company's articles of incorporation;

(ii) amendments to the prospectus and key investor information in accordance with Articles 95 and 102;

c) if the feeder UCITS intends to liquidate, a notification of this intention.

(2) By way of derogation from para. (1), if the master UCITS has notified the feeder UCITS of its binding decision to liquidate more than 5 months before the date of commencement of the liquidation, the feeder UCITS must submit to CNVM the application or notification referred to in para. (1) (a), (b) or (c) at least 3 months before that date.

(3) The feeder UCITS must inform its unit-holders of its intention to liquidate without delay and as a matter of priority.

Art. 132 - (1) Within 15 working days from the submission of all the documents referred to in Art. 131 para. (1) letter a) or b), as the case may be, CNVM shall inform the feeder UCITS whether it has granted the requested approvals.

(2) Upon receipt of the approval of CNVM under para. (1), the feeder UCITS shall notify the master UCITS.

(3) The feeder UCITS shall take all necessary measures to comply with the requirements laid down in Art. 143 immediately after the granting of the approvals by CNVM referred to in Art. 131 para. (1) a).

(4) If the payment of the proceeds from the liquidation of the master UCITS is to be made before the date on which the feeder UCITS starts to invest either in another master UCITS, according to Art. 131 para. (1) a) or in accordance with the new investment objectives and policy, pursuant to Art. 131 para. (1) b), CNVM shall grant approval subject to the following conditions:

a) The feeder UCITS must receive the liquidation proceeds:

(i) in cash; or

(ii) in part or in full as a transfer of assets in kind, if the feeder UCITS so wishes and if the agreement between the feeder UCITS and the master UCITS or the internal conduct of business rules and the binding winding-up decision so provide;

(b) cash held or received under this paragraph may be reinvested only for the purpose of its efficient management before the date on which the feeder UCITS is to invest either in another master UCITS or in accordance with the new investment objectives and policy.

(5) Where the provisions of para. (4) (a) (ii) apply, the feeder UCITS may convert any part of the assets transferred in kind into cash at any time.

Art. 133 - (1) The feeder UCITS must submit to CNVM, within one month from the date on which it has been informed of a planned merger or division, in accordance with Art. 127 para. (10), as follows:

a) whether the feeder UCITS intends to continue to be a feeder UCITS of the same master UCITS:

(i) a request for approval to that effect;

(ii) if applicable, the application for approval of proposed amendments to the fund rules or the investment company's articles of incorporation;

(iii) if applicable, amendments to the prospectus and key investor information;

(b) if the feeder UCITS intends to become a feeder UCITS of another master UCITS resulting from the proposed merger or division of the master UCITS or if the feeder UCITS intends to invest at least 85% of its assets in units of another master UCITS not resulting from the merger or division:

(i) the application for approval of this investment;

(ii) the application for approval of proposed amendments to the fund rules or the investment company's articles of incorporation;

(iii) amendments to the prospectus and key investor information in accordance with Articles 95 and 102;

(iv) the other documents referred to in Art. 126 para. (3) - (5);

c) if the feeder UCITS intends to transform itself into a UCITS which is not a feeder UCITS, in accordance with Art. 127 para. (7) (b):

(i) the application for approval of proposed amendments to the fund rules or the articles of incorporation of the investment company;

(ii) amendments to the prospectus and key investor information in accordance with Articles 95 and 102;

d) if the feeder UCITS intends to liquidate, a notification of this intention.

(2) In applying of para. (1) (a) and (b), the following shall be taken into account:

- The expression "continue to be a feeder UCITS of the same master UCITS" refers to situations where:

a) The master UCITS is the acquiring UCITS in a proposed merger;

b) The master UCITS is to continue unchanged as one of the UCITS resulting from a proposed division.

- The expression "become a feeder UCITS of another master UCITS resulting from the merger or division of the master UCITS" refers to situations where:

a) the master UCITS is the merged UCITS and, following the merger, the feeder UCITS becomes a unit holder of the merged UCITS;

b) the feeder UCITS becomes a unit holder of a UCITS resulting from a division which is different from the master UCITS.

(3) By way of derogation from para. (1), where the master UCITS has provided the feeder UCITS with the information referred to in Art. 114 or comparable information more than 4 months before the proposed effective date, the feeder UCITS must submit to CNVM the application or notification referred to in one of points (a) to (d) of para. (1) at least 3 months before the proposed effective date of the merger or division of the master UCITS.

(4) The feeder UCITS must inform the unit-holders and the master UCITS of its intention to liquidate without delay and with priority.

Art.134 - (1) Within 15 working days from the submission of all the documents referred to in Art.133 para. (1) letters a) - c), as the case may be, CNVM shall inform the feeder UCITS whether it has granted the requested approvals.

(2) Upon receipt of the information that CNVM has granted the approvals according to para. (1), the feeder UCITS shall notify the master UCITS.

(3) Upon receipt of the information by the feeder CNVM that CNVM has granted the necessary approvals pursuant to Art. 133 para. (1) letter b), the feeder UCITS shall take all necessary measures to comply without delay with the requirements laid down in Art. 143.

(4) In the cases referred to in Art. 133 para. (1) (b) and (c), the feeder UCITS shall exercise its right to request the repurchase of its units of the master UCITS in accordance with Art. 127 (11) and Art. 121 par. (1) if CNVM has not granted the necessary approvals provided for in Art. 133 para. (1) by the working day preceding the last day on which the feeder UCITS may request the repurchase of the units of the master UCITS before the merger or division takes place.

(5) The feeder UCITS shall also exercise the right provided for in para. (4) in order to ensure that the right of its own unit-holders to request the repurchase of the units they hold in the feeder UCITS pursuant to Art. 143 para. (1) (d).

(6) Before exercising the right provided for in para. (4), the feeder UCITS shall also examine other available solutions which may help to avoid or reduce transaction costs or other negative consequences for its own unit-holders.

(7) When the feeder UCITS requests the repurchase of its units in the master UCITS, it shall receive one of the following:

a) the cash redemption value;

b) the full or partial redemption value as a transfer in kind, if the feeder UCITS so wishes and if the agreement between the feeder UCITS and the master UCITS provides for this possibility.

(8) Where the provisions of para. (7)(b) apply, the feeder UCITS may convert any part of the assets transferred into cash at any time.

(9) CNVM shall grant approval provided that the cash held or received in accordance with para. (7) may be reinvested only for the purpose of efficient management before the date on which the feeder UCITS is to invest either in the new master UCITS or in accordance with the new investment objectives and policy.

SUBSECTION 5

Depositories and auditors

Art. 135 - (1) Where the master UCITS and the feeder UCITS have different depositories, the depositories shall conclude an agreement on the exchange of information in order to ensure the fulfilment of their obligations.

(2) The feeder UCITS shall not invest in units of the master UCITS until the entry into force of the agreement referred to in para. (1).

(3) When complying with the requirements set out in this Chapter, neither the depository of the master UCITS nor the depository of the feeder UCITS shall be deemed to be acting in breach of the rules setting out restrictions on disclosure of information or of data protection rules, where such rules are imposed by contract or by applicable law.

(4) The feeder UCITS or, where applicable, the IMC of the feeder UCITS shall be obliged to communicate to the depository of the feeder UCITS any information relating to the master UCITS which is necessary for compliance with the obligations of the depository of the feeder UCITS.

(5) The depository of the master UCITS shall without delay inform the competent authorities of the home Member State of the master UCITS, the feeder UCITS or, where applicable, the IMC of the feeder UCITS of any irregularities detected with regard to the master UCITS which are deemed to have a negative impact on the feeder UCITS.

Art. 136. - The agreement on the exchange of information concluded between the depository of the UCITS of the master type and the depository of the UCITS of the feeder type referred to in Art. 135 para. (1) shall include the following:

a) identification of the documents and categories of information to be routinely exchanged between depositories and whether such information and documents are to be provided by one depository to the other depository or made available upon request;

b) the manner and timing of the transmission of information by the depository of the master UCITS to the depository of the feeder UCITS, including any applicable deadlines;

c) coordinating the involvement of both depositories in relation to operational issues, including:

(i) the procedure for calculating the net asset value of each UCITS, including any appropriate safeguards against market timing practices, in accordance with Art. 127 para. (5);

(ii) the processing of instructions from the feeder UCITS to subscribe for or redeem units of the master UCITS and the settlement of such transactions, including any agreements relating to the transfer of assets in kind;

d) coordination of accounting procedures at the close of the financial year;

e) details of any non-compliance with the law, fund rules or the investment company's articles of incorporation by the master UCITS which the depository of the master UCITS is to provide to the depository of the feeder UCITS and how and when they are to be provided;

f) the procedure for dealing with requests for assistance received by one depository from the other depository;

g) identification of possible events to be notified by one depository to the other depository and how and when such notification is to be made.

Art. 137 - (1) Where an agreement has been concluded between the feeder UCITS and the master UCITS in accordance with Art. 127 para. (2), the agreement between the depository of the UCITS of the master type and that of the UCITS of the feeder type shall provide that the

law of the Member State which applies to that agreement under Art. 129 shall also apply to the agreement on the exchange of information concluded between the depositories and that the depositories agree on the exclusive jurisdiction of the courts, in accordance with the provisions of Law no. 105/1992 on the regulation of private international law relationships, as subsequently amended and supplemented.

(2) In cases where the agreement between the feeder UCITS and the master UCITS is replaced by internal rules of conduct under Art. 127 (4), the agreement between the depository of the UCITS of the master type and that of the UCITS of the feeder type provides that the law applicable to the agreement on the exchange of information between the 2 depositories is either that of the Member State in which the UCITS is established or that of the Member State of the feeder type.the Member State in which the feeder UCITS is established, or the Member State in which the master UCITS is established, where two different Member States are involved, and that both depositories agree on the exclusive jurisdiction of the courts of the Member State whose law applies to the information exchange agreement.

Art. 138 - The rules referred to in Art. 135 para. (5) which the depository of the master UCITS identifies in the course of performing his duties under national law and which may have a negative impact on the feeder UCITS include, but are not limited to:

a) errors in the calculation of the net asset value of the master UCITS;

b) errors in the subscription or redemption transactions of units of the master UCITS carried out by the feeder UCITS or in the settlement of such transactions;

c) errors in the payment or capitalisation of income from the master UCITS or in the calculation of any related withholding tax;

d) breach of the investment objectives, policy or strategy of the master UCITS described in the fund rules or the investment company's articles of incorporation, prospectus or key investor information;

e) breach of investment and borrowing limits laid down in national law or in the fund rules, the investment company's articles of incorporation, prospectus or key investor information.

Art. 139 - (1) Where the master and feeder UCITSs have different auditors, these auditors shall conclude an agreement on the exchange of information in order to ensure compliance with the obligations of both auditors.

(2) The feeder UCITS shall not invest in units of the master UCITS until the entry into force of this agreement.

(3) In his audit report, the auditor of the feeder UCITS shall take into account the audit report of the master UCITS. If the UCITS of the master type and the UCITS of the feeder type do not have the same financial year, the auditor of the UCITS of the master type shall draw up a report on the year-end date for the UCITS of the feeder type.

(4) The auditor of the feeder UCITS shall include in the report any irregularities noted in the audit report of the master UCITS and their impact on the feeder UCITS.

(5) The provisions of Art. 135 para. (3) shall also apply to the auditor of the UCITS of the master type and of the UCITS of the feeder type.

Art. 140 - (1) The agreement on the exchange of information concluded between the auditor of the UCITS of the master type and the auditor of the UCITS of the feeder type referred to in Art. 139 para. (1) shall include the following elements:

a) identification of documents and categories of information to be routinely exchanged between auditors;

b) whether the information or documents referred to in point (a) are to be provided by an auditor to the other auditor or made available on request;

c) how and when the auditor of the master UCITS shall send the information to the auditor of the feeder UCITS, including any applicable deadlines;

d) coordinating the involvement of each auditor in the year-end accounting procedures for the relevant UCITS;

e) the identification of the aspects to be treated as irregularities in the audit report of the auditors of the UCITS of the master type, according to art. 139 para. (4);

f) the procedure and time limit for dealing with requests for assistance from one auditor to the other, including requests for additional information on irregularities reported in the audit report of the master UCITS auditor.

(2) The agreement referred to in para. (1) shall include provisions on the preparation of the audit reports referred to in Art. 139 (3) and Art. 94 and the manner and timing of the provision of the audit report for the master UCITS and the draft reports to the auditor of the feeder UCITS.

(3) Where the financial year of the feeder UCITS differs from the financial year of the master UCITS, the agreement referred to in para. (1) shall include the manner and time at which the auditor of the master UCITS is to draw up the report referred to in Art. 139 para. (3) and provide it, together with drafts thereof, to the auditor of the feeder UCITS.

Art. 141 - The provisions of Art. 137 shall also apply accordingly in the case of the conclusion of the agreement between the auditor of the UCITS of the master type and that of the UCITS of the feeder type.

SUBSECTION 6

Compulsory and advertising information of the feeder UCITS.

Art.142 - (1) In addition to the information provided for in CNVM regulations, the prospectus of the feeder UCITS shall contain the following information:

a) a statement that the feeder UCITS is a feeder UCITS of a particular master UCITS and that, in that capacity, it invests at least 85% of its assets in units of that master UCITS on a permanent basis;

(b) the investment objective and policy, including the risk profile, and whether the performance of the feeder UCITS is identical to or different from that of the master UCITS, and if different, to what extent and for what reasons, including a description of the investments made under Art. 125 para. (1) and (2);

(c) a brief description of the master UCITS, its organisation, investment objective and policy, including its risk profile, and information on how to obtain the prospectus of the master UCITS;

d) a summary of the agreement concluded between the feeder UCITS and the master UCITS or of the internal rules of conduct referred to in Art. 127 para. (4);

(e) how unit-holders may obtain additional information on the master UCITS and on the agreement concluded between the feeder UCITS and the master UCITS pursuant to Art. 127 para. (3);

(f) a description of all remuneration and reimbursement of costs charged to the feeder UCITS as a result of its investment in units of the master UCITS and the total expenses of the feeder UCITS and the master UCITS; and

g) a description of the tax consequences for the feeder UCITS of its investment in the master UCITS.

(2) In addition to the information provided for in the regulations of CNVM, the annual report of the feeder UCITS shall also include a statement of the total expenses of the feeder UCITS and the master UCITS. The annual and half-yearly reports of the feeder UCITS shall specify how the annual and half-yearly reports of the master UCITS can be obtained.

(3) Where CNVM is the competent authority of the feeder UCITS' home Member State, it shall also transmit to CNVM the key investor information and any changes thereto as well as the annual and half-yearly reports of the master UCITS.

(4) A feeder UCITS shall disclose in all relevant publicity that it invests at least 85% of its assets in units of the master UCITS.

(5) The feeder UCITS shall send investors, on request and free of charge, a printed copy of the prospectus and the annual and half-yearly reports of the master UCITS.

SUBSECTION 7

Conversion of existing UCITSs to feeder UCITSs and replacement of master UCITSs

Art. 143 - (1) Where a feeder UCITS is already operating as a UCITS, including as a feeder UCITS of another master UCITS, the feeder UCITS shall provide the following information to unit-holders:

a) a statement that CNVM, as the competent authority of the feeder UCITS home Member State, has approved the investment of the feeder UCITS in units of the master UCITS;

b) the key investor information of the feeder UCITS and the master UCITS in accordance with Art. 98;

c) the date on which the feeder UCITS is to invest in the master UCITS or, if it has already invested in the master UCITS, the date on which its investment will exceed the limit allowed under Art. 88 art. (1); and

d) a statement that unit-holders have the right to request, within 30 days, the repurchase of their units free of any charges other than those levied to cover disinvestment costs; the right shall become effective when the feeder UCITS has notified the information referred to in this Article.

(2) The information referred to in para. (1) shall be forwarded no later than 30 days before the date referred to in para. (1) c).

(3) Where the feeder UCITS has notified the distribution of its units in another Member State, the information referred to in para. (1) must be provided in the official language or one of the official languages of the host Member State of the feeder UCITS or in a language approved by its competent authorities. The feeder UCITS shall be responsible for the translation, which shall faithfully reflect the content of the original.

(4) The feeder UCITS shall not invest in units of a master UCITS above the limit allowed under Art 88 para. (1) before the expiry of the 30-day period referred to in para. (2).

Art. 144 - The feeder UCITS shall provide unit-holders with the information referred to in Art. 143, in accordance with the provisions of Art. 119.

SUBSECTION 8

Obligations and competent authorities

Art. 145 - (1) The feeder UCITS shall effectively monitor the activity of the master UCITS.

(2) In fulfilling the obligation laid down in para. (1), the feeder UCITS shall take into account the information and documents received from the master UCITS or, where applicable, from the IMC, the depository or its auditor, unless there are grounds for doubt as to the accuracy of such information and documents.

(3) Where, in an investment in units of the master UCITS, the feeder UCITS, the IMC of the feeder UCITS or any person acting either on behalf of the feeder UCITS or the IMC of the feeder UCITS receives a distribution fee, commission or other pecuniary benefit, these shall be included in the assets of the feeder UCITS.

Art. 146 - (1) Where CNVM is the competent authority of the master UCITS, the latter shall inform CNVM without delay of the identity of each feeder UCITS investing in its units.

(2) Where the master UCITS is established in Romania and the feeder UCITS in another Member State, CNVM shall inform as soon as possible the competent authorities of the home Member State of the feeder UCITS of the investments referred to in para. (1).

(3) The master UCITS shall not charge subscription or redemption fees from the feeder UCITS for the purchase or sale of units of the master UCITS.

(4) The master UCITS shall ensure that all information required under applicable law and the fund rules or the investment company's articles of incorporation is provided immediately to the feeder UCITS or, where applicable, its IMC, as well as to the competent authorities, the depository and the auditor of the feeder UCITS.

Art. 147 - (1) If the UCITS of the master type and the UCITS of the feeder type are established in Romania, CNVM shall notify without delay the feeder UCITS of any decision, measure, finding of non-compliance with the conditions of this Chapter relating to the master UCITS or, where applicable, its IMC, depository or auditor.

(2) Where the master UCITS is established in Romania and the feeder UCITS in another Member State, CNVM shall communicate as soon as possible to the competent authorities of the UCITS home Member Stateof the feeder UCITS any decision, measure, finding of non-compliance with the conditions of this Chapter relating to the master UCITS or, where applicable, to its SA, depository or auditor.

(3) Where the feeder UCITS is established in Romania and the master UCITS is established in another Member State, and CNVM receives information pursuant to para. (2), it shall immediately inform the feeder UCITS thereof.

CHAPTER V

Cross-border operations

SECTION 1

CNVM - competent authority of the home Member State

SUBSECTION 1

Right of establishment and freedom to provide services by IMC authorised by CNVM

Art. 148 - (1) IMC, Romanian legal persons, may carry out the activities and services for which they have received authorisation from CNVM in another Member State, either by setting up a branch or directly, under the free movement of services, without additional requirements such as a minimum level of capital, obtaining an authorisation or equivalent measures from the competent authority of the host Member State.

(2) If the IMC proposes only to distribute in another Member State the units of the UCITS it manages, authorised by CNVM, without intending to establish a branch in the Member State, to carry on any other activities or to provide any other services, only the requirements set out in Section 2 "Special provisions applicable to UCITS authorised by CNVM distributing their units in another Member State" shall apply.

Art. 149 - (1) An IMC intending to open a branch in another Member State shall notify CNVM thereof, together with the following documents and information:

a) application for authorisation by CNVM of a branch on the territory of another Member State;

b) the Member State within the territory of which it intends to establish a branch;

c) a programme of work which shall include:

(i) the activities and services referred to in Articles 5 and 6 to be carried out within the branch;

(ii) the organisational chart of the branch;

(iii) a description of the risk management system developed by the IMC;

(iv) a description of the procedures and measures taken in accordance with Art. 35 para. (1) and (2);

d) the address in the host Member State from which documents may be obtained;

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

f) the investor compensation scheme of which that IMC is a member, in the case of activities or services covered by the investor compensation rules;

g) a description of the scope of the authorisation issued by CNVM and any restrictions on the types of UCITS that the IMC has been authorised to manage, if the IMC wishes to carry out the collective portfolio management activity provided for in Art. 6;

h) proof of payment of the branch authorisation fee.

(2) The documents referred to in para. (1) lit. c) and g) shall be submitted to CNVM in Romanian and English.

(3) Within two months of receipt of all the information referred to in para. (1), CNVM shall authorise the branch and notify the competent authority of the host Member State, informing the IMC accordingly.

(4) Where the IMC intends to carry out the activity of collective portfolio management referred to in Art. 6, the notification sent to the competent authority of the host Member State

referred to in para. (3) shall be accompanied by an attestation by which CNVM certifies that the IMC has been authorised in accordance with this Emergency Ordinance, as well as a description of the scope of the IMC's authorisation and details of any restrictions on the types of UCITS the IMC is authorised to manage.

(5) By way of exception to the application of para. (3), where, on the basis of the information and documentation submitted by the IMC, CNVM finds that the IMC does not have the administrative capacity or an adequate financial situation in relation to the activities it intends to carry on in the territory of another Member State, it may issue, within the period provided for in para. (3), a decision rejecting the application for authorisation of a branch in that Member State and may refuse to notify the authority of the host Member State, informing the IMC of the reasons for the refusal.

(6) CNVM shall inform ESMA and the European Commission of the number and cases in which it has refused authorisation to establish a branch of the IMC in another Member State.

Art. 150 - The branch authorised by CNVM may start business in the host Member State from the date of notification by the competent authorities of the host Member State or, in the absence of such notification, within two months from the date of notification by CNVM pursuant to Art. 149.

Art. 151 - (1) In the event of a change in the information notified under Art. 149 para. (1) c), d) and e), IMC shall notify the change in writing to ASF and to the competent authority of the host Member State at least one month before the change is made, so that ASF may take a decision on the change and inform the competent authority of the host Member State accordingly.

(2) In the event of a change in the scope of the authorisation of the IMC or in the details of any restrictions on the types of UCITS it is authorised to manage, ASF shall update the information contained in the certificate referred to in Art. 149 para. (4) and notify the competent authority of the host Member State of the IMC accordingly.

(3) If, following the amendment referred to in para. 1, IMC no longer complies with the provisions of this Emergency Ordinance, ASF shall inform IMC, within 15 working days of receipt of all the information referred to in the same paragraph, that the amendment in question cannot be implemented and shall inform the competent authorities of the IMC's host Member State to that effect.

(4) If the change of which ASF has informed the IMC in accordance with the provisions of para. (3) is implemented by the IMC after the transmission of the information referred to in para. (1) and, as a result of that change, the IMC no longer complies with the provisions of this Emergency Ordinance, ASF shall take all necessary measures in accordance with the provisions of Art. 1 para. (2), Art. 193^1 and 193^2 and shall immediately notify the competent authorities of the host Member State of the IMC of the measures taken.

Art. 152 - (1) The activities carried out within the branch established in the territory of another Member State must comply with the rules of conduct approved by the competent authority of the host Member State of the IMC.

(2) The monitoring of compliance with the rules of conduct within the IMC branch, as provided for in para. (1) shall be carried out in accordance with the rules laid down by the competent authority of the host Member State of the IMC.

Art. 153 - (1) Any IMC wishing to carry out for the first time the activities for which it has received authorisation, on the territory of another Member State, on the basis of the free movement of services, shall communicate the following information and documents to CNVM:

(a) the Member State in whose territory it intends to operate; and

(b) an activity programme indicating the activities and services referred to in Articles 5 and 6 envisaged and including a description of the risk management system developed by the IMC, as well as a description of the procedures and measures taken in accordance with Art. para. (1) and (2);

c) a description of the scope of the authorisation issued by CNVM and any restrictions on the types of UCITS that the IMC has been authorised to manage, if the IMC wishes to carry out the activity of collective portfolio management.

(2) The documents referred to in para. (1) letters b) and c) shall be submitted to CNVM in Romanian and translated into English.

(3) CNVM shall notify the competent authority of the host Member State of the information referred to in para. (1) and of the investor compensation scheme of which the IMC is a member, within one month of their transmission by the IMC.

(4) If the IMC notifies CNVM of its intention to carry out in another Member State the activity of collective portfolio management referred to in Art. 6, CNVM shall attach to the notification referred to in para. (3) an attestation certifying that the IMC has been authorised under this Emergency Ordinance and a description of the scope of the IMC's authorisation and details of any restrictions on the types of UCITS which the IMC is authorised to manage.

(5) Subject to compliance with the provisions concerning the establishment of a UCITS in another Member State and/or those concerning the distribution of units in another Member State, the IMC may commence business after notification by CNVM to the competent authority of the host Member State.

(6) An IMC carrying on business under the freedom of movement of services in another Member State shall comply with the rules of conduct approved by CNVM in accordance with this Emergency Ordinance.

(7) In the event of a change in the information notified in accordance with para. 1, (b), IMC shall notify CNVM and the competent authority of the host Member State in writing of the change before it is made.

(8) If there is a change in the scope of the authorisation of the IMC or in the details of any restrictions on the types of UCITS that it is authorised to manage, CNVM shall update the information contained in the certificate referred to in para. (4) and notify the competent authority of the host Member State of the IMC accordingly.

Art. 154 - (1) IMC authorised by CNVM carrying out collective portfolio management activities in a cross-border framework, either by setting up a branch or under the free movement of services, shall be supervised by CNVM as regards compliance with this emergency ordinance and the CNVM regulations issued in application thereof, with regard to:

a) the organisation of the IMC, including the modalities of delegation;

b) risk management procedures;

c) prudential rules and supervision;

d) the procedures referred to in Art. 15;

e) reporting requirements of the IMC

(2) IMC referred to in para. (1) which will manage a UCITS authorised in another Member State shall comply with the rules of the UCITS home Member State concerning its establishment and operation similar to those laid down in Art. para. (1) (a) to (o).

(3) The IMC referred to in para. (1) must comply with the obligations laid down in the fund rules or articles of incorporation of the investment companies as well as the obligations contained in the prospectus, which must comply with the applicable regulations referred to in para. (1) and (2).

(4) The monitoring of compliance with the obligations referred to in para. (2) and (3) shall be carried out in accordance with the rules laid down by the competent authorities of the home Member State of the UCITS.

(5) IMC shall assume responsibility for and decide on the adoption and implementation of decisions concerning the necessary structure and organisation of the company so that it can comply with the rules relating to the constitution and operation of the UCITS, as well as the obligations laid down in the fund rules or in the articles of incorporation of the investment company and the obligations laid down in the prospectus.

(6) CNVM shall monitor the compliance of the IMC's structure and organisation to ensure that it complies with the obligations and rules relating to the constitution and functioning of all IMCs it manages.

Art. 155 - (1) An IMC intending to manage a UCITS authorised in another Member State shall submit to the competent authorities of the UCITS' home Member State an application accompanied by the documentation provided for in the legislation of that State, similar to the documentation referred to in Art. 168 (1) and (2).

(2) CNVM shall give its opinion if the competent authority of the home Member State of the UCITS requests clarifications and information on the documentation submitted by the IMC in accordance with para. (1) and, on the basis of the attestation referred to in Art. 149 para. (4) and Art. 153 para. (4), clarifications and information to verify whether the type of UCITS for which authorisation is requested falls within the scope of the authorisation of the IMC, within 10 working days of receipt of the initial application.

Art. 156 - If notified by the competent authority of the IMC's host Member State of the company's refusal to provide that authority with the information requested or to take the necessary measures to put an end to an infringement established by that authority, in accordance with its responsibility, CNVM shall as soon as possible take all measures to ensure that the IMC complies with its obligations and shall inform the competent authority of the host Member State accordingly.

SUBSECTION 2

Special provisions applicable to UCITS authorised by CNVM distributing their units in another Member State

Art. 157 - The provisions of this section also cover the investment compartments of a UCITS.

Art. 158 - (1) Where a UCITS authorised by CNVM wants to distribute the units in another Member State, it must send to CNVM in advance a notification letter containing information on the arrangements envisaged for the distribution of units in that Member State,

including, where applicable, the classes of shares/units of the fund. In the case of application of the provisions of Art. 148 para. (1), the notification letter shall state that the units of the UCITS are distributed in that Member State by the IMC managing the UCITS.

(1[1]) The notification letter referred to in para. (1) shall also include the necessary information, including the address for invoicing or for communicating any fees or charges levied by the competent authorities of the host Member State and information on the structures for carrying out the tasks referred to in para. (5).

(2) The letter of notification referred to in para. (1) shall be accompanied by the latest version, in Romanian and translated in accordance with (a) and (b), of the following documents:

(a) the fund rules or the articles of incorporation of the investment company, the prospectus and, where applicable, the latest report and the half-yearly report, translated in accordance with Art. 159 para. (2) (c) and (d); and

b) the key investor information referred to in Art. 98, translated in accordance with Art. 159 (2)(b) and (d);

c) proof of payment to the account of CNVM of the fee for issuing the certificate referred to in para. (3).

(3) CNVM shall verify whether the documentation is complete according to para. (1) and (2) and, within 10 working days of receipt of the complete documentation, shall forward it to the competent authority of the Member State in which the UCITS is established wants to distribute units, accompanied by a certificate by which CNVM will certify that the UCITS fulfils the conditions imposed by the national law transposing the provisions of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities.

(4) When submitting the documentation in accordance with para. (3) CNVM shall immediately notify the UCITS which may distribute the units in the territory of the host Member State from the date of such notification.

(5) UCITS shall be required to provide, in each host Member State in which it intends to distribute its units, structures ensuring:

(a) the processing of subscription, redemption and refund orders and other payments to unit-holders in the host Member State in accordance with the conditions duly set out in the documents referred to in Art. 68, 71 para. (1), art. 78 para. (2), Art. 92 para (1) (a) to (c) andn para. (3) to (5), Art. 93 para. (1), (2) and id_link=13899475; (4) and Art. 94-102;

(b) the provision of information to investors in the host Member State on how the orders referred to in point (a) are to be transmitted and how redemption and repurchase proceeds are to be paid;

(c) facilitating access to information and to the procedures and arrangements referred to in Art. 35 relating to the exercise by investors of the rights they acquire as a result of their investment in the UCITS in the Member State where the units of that UCITS are distributed;

d) making the information and documents referred to in point a) available to investors, under the conditions laid down in Art. 159, for the purpose of analysing them and obtaining copies thereof;

(e) making available to investors, on a durable medium, relevant information on the operations carried out by these structures;

f) the function of contact point for communication with the competent authority of the host Member State.

(6) The notification procedure shall comply with the provisions of Chap. 1 of Commission Regulation (EU) no. 584/2010 of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards the form and content of the standard notification letter and the attestation of the UCITS, the use of electronic means of communication between competent authorities for notification purposes, the procedures for on-the-spot checks and investigations and the exchange of information between competent authorities.

(7) The letter of notification and the attestation referred to in para. (3) shall be transmitted to the competent authority of the host Member State in a language customary in the sphere of international business.

(8) The documents referred to in para. (2) shall be transmitted and stored electronically.

(9) The UCITS shall ensure access by the competent authorities of the host Member State to the electronic version of each of the documents referred to in para. (2)(a) and (b) and, where appropriate, to any translation thereof. The UCITS shall update those documents and translations, notify the competent authority of the host Member State of any changes and indicate where those documents can be obtained in electronic form.

(10) The electronic version of the documents referred to in para. (2)(a) and (b) shall be made available to the competent authority of the host Member State on the website of the UCITS, the website of the IMC manageing the UCITS or another website designated by the UCITS in the notification letter or its updates. Documents made available on the website must be provided in a format that allows the documents to be viewed, reproduced and stored at the level of technology in current use.

(11) In the event of a change in the information communicated in the notification letter referred to in para. (1) or a change in the class of shares/units of the fund being distributed, the UCITS must give written notice to that effect to both ASF and the competent authority of the host Member State at least one month before implementing the change.

(12) If, following the amendment provided for in para. (11) the UCITS no longer complies with the provisions of this Emergency Ordinance, ASF shall inform the UCITS, within 15 working days of receipt of all the information referred to in the same paragraph, that the amendment in question cannot be implemented and shall notify the competent authorities of the UCITS host Member State of this situation.

(13) If the amendment provided for in para. (11) is implemented by the UCITS after the submission of the information in accordance with para. (12) and, as a result of such amendment, the UCITS no longer complies with the provisions of this Emergency Ordinance, ASF shall take all necessary measures in accordance with the provisions of Art. para. (2), art. 193^1 and 193^2 .

Art. 159 - (1) A UCITS authorised by CNVM, which distributes its units in a host Member State, shall be obliged to provide investors in the territory of that Member State with all the information and documents which a UCITS provides to investors in Romania in accordance with the provisions of Chap. IV Section V "Rules on transparency and disclosure".

(2) The information and documents referred to in para. (1) shall be provided to investors in accordance with the following provisions:

a) without prejudice to the provisions of Chap. IV, Section 5 "Transparency and Disclosure Rules", such information and/or documents shall be provided to investors in the manner prescribed by the laws, regulations and administrative provisions of the UCITS host Member State;

b) the key investor information referred to in Art. 98 shall be translated into the official language or one of the official languages of the UCITS host Member State or into a language approved by the competent authorities of that Member State;

c) information or documents other than the key investor information referred to in Art. 98 shall be translated at the choice of the UCITS into the official language or one of the official languages of the host Member State of the UCITS or into a language approved by the competent authorities of that Member State or into a language customary in the sphere of international business; and

d) translations of information and/or documents pursuant to points b) and c) shall be carried out under the responsibility of the UCITS and shall accurately reflect the content of the original information.

(3) The requirements laid down in para. (2) shall also apply to any changes to the particulars and documents referred to in this Article.

Art. 160 - For the purpose of carrying out their activities, UCITS may use in the host Member State, in their name, the same reference to their legal form - "investment company" or "open-ended investment fund" - as the one they use in Romania.

Art. 160[1] - (1) The UCITS may withdraw its notification of the distribution of units, including, where applicable, classes of shares/fund units, in a Member State for which it has made a notification to ASF in accordance with Art. 158, if the following conditions are cumulatively met:

a) the UCITS shall make a general offer for the repurchase or redemption, free of any charge or deduction, of all units of that UCITS held by investors in that Member State, which shall be publicly available for at least 30 working days and addressed, directly or through financial intermediaries, on an individual basis to all investors in that Member State whose identity is known;

b) the intention to cease the distribution of units in that Member State is made public by means of a communication medium, including electronic means, which is customary for the distribution of units of UCITS and appropriate for a typical UCITS investor;

c) any contractual arrangements with financial intermediaries or other persons to whom distribution has been delegated are amended or terminated with effect from the date of withdrawal of the notification in order to prevent a further direct or indirect offer or placing of the units identified in the notification referred to in para. (4).

(2) The information referred to in para. (1) (a) and (b) shall clearly describe the consequences for investors if they do not accept the offer to repurchase or redeem the units held.

(3) The information referred to in para. (1) (a) and (b) shall be provided in the official language or in one of the official languages of the Member State for which the UCITS has

made a notification to ASF in accordance with Art. 158 or in a language approved by the competent authority of the host Member State concerned. As from the date of withdrawal of the notification, UCITS shall not make any further direct or indirect offer or placing of its securities which were the subject of the withdrawal of the notification in that Member State.

(4) UCITS shall send to ASF a notification containing the information referred to in para. (1).

(5) ASF shall verify whether the notification sent by the UCITS pursuant to para. (4) is complete and shall, within 15 working days of receipt of the complete notification at the latest, forward that notification to the competent authority of the Member State identified in the notification referred to in para. (4) and ESMA.

(6) After the notification has been submitted in accordance with para. (5), ASF shall immediately inform the UCITS of such transmission.

(7) UCITS shall provide the investors who maintain their investments in the UCITS following the procedure provided for in this Article, as well as ASF with the information referred to in Articles 68, 71 para. (1), Art. 78 para. (2), Art. 92 par. (1) (a) to (c) and para. (3) to (5), Art. 93 para. (1), (2) and (4), Art. 94-102 and Art. 159.

(8) ASF shall transmit to the competent authority of the Member State identified in the notification referred to in para. (4) information on any changes to the documents referred to in Art. 158 para. (2).

(9) If ASF is identified as the competent authority in a notification similar to the one referred to in para. (4) in another Member State, it shall have the same rights and obligations as a competent authority of the host Member State of the UCITS, in accordance with the national law of that Member State transposing the provisions of Art. 21 para. (2), Art. 97 para. (3) and Art. 108 of Directive 2009/65/EC.

(10) Without prejudice to other monitoring and surveillance activities provided for in Member States' national legislation transposing the provisions of Art. 21 para. (2) and Art. 97 of Directive 2009/65/EC, from the date of transmission of the information referred to in para. (8), the competent authority of the Member State identified in the notification referred to in para. (4) shall no longer require that UCITS to demonstrate compliance with the national laws, regulations and administrative provisions governing the distribution requirements laid down in Art. 5 of Regulation (EU) 2019/1.156.

(11) In applying the provisions of para. (7), UCITS may use any electronic or other means of distance communication, provided that the information and means of communication are made available to investors in the official language or one of the official languages of the Member State in which the investors are located or in a language approved by the competent authority of that Member State.

SECTION 2

CNVM - competent authority of the host Member State

SUBSECTION 1

Right of establishment and freedom to provide services by IMCs authorised in another Member State

Art. 161 - (1) IMC authorised by the competent authorities of other Member States may carry on in Romania, within the limits of the authorisation granted by the competent authority of the home Member State, the activities and services provided for in this emergency ordinance either by setting up a branch or directly, under the freedom of movement of services, without being required by CNVM to have a minimum level of capital, to obtain an authorisation or equivalent measures.

(2) If the IMC decides only to distribute in Romania the units of the UCITS it manages and whose home Member State is other than Romania, without intending to set up a branch in Romania, to carry out any other activities or to provide any other services, only the requirements laid down in subsection 2 "Special provisions applicable to UCITS from other Member States distributing their units in Romania" shall apply.

(3) In the application of para. (1), IMC in other Member States and their branches shall be entered in the CNVM Register.

(4) The registration of IMC and their branches in the CNVM Register shall be carried out on the basis of the certificate by which CNVM, as the competent authority of the IMC's host Member State, takes note of the notifications transmitted by the competent authorities of the home Member State.

(5) In the case of branches, registration in the CNVM Register is also subject to obtaining the registration certificate of the respective branch at the National Trade Registry Office, as well as to the payment of the CNVM fee.

Art. 162 - In the case of the establishment in Romania of a branch of an IMC from another Member State, the notification sent to CNVM by the competent authority of the home Member State shall be accompanied by:

a) the branch's programme of activities, which shall include:

(i) the activities and services referred to in Art. 5 and 6 to be carried out within the branch;

(ii) the organisational chart of the branch;

(iii) a description of the risk management system developed by the IMC;

(iv) a description of the procedures and measures taken in accordance with Art. 35 para. (3) and (4);

b) the address in Romania from which documents may be obtained;

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

d) the investor compensation scheme of which the IMC is a member, in the case of activities or services covered by the investor compensation rules;

(e) attestation from the competent authority of the home Member State certifying that the IMC has been authorised in accordance with Directive 2009/65/EC, as well as a description of the scope of the IMC's authorisation and details of any restrictions on the types of UCITS, if the IMC wishes to carry out the activity of collective portfolio management referred to in Art. 6.

Art. 163 - (1) Before the branch of an IMC from another Member State commences business, CNVM shall have two months from the notification sent by the competent authority of the home Member State, in accordance with Art. 162, to organise the supervision of compliance by the IMC with the rules for which CNVM is responsible.

(2) The branch may start its activity on the date of the notification of CNVM or, in the absence of a reply, on the date of the expiry of the period referred to in para. (1).

Art. 164 - (1) An IMC from another Member State carrying on business through a branch established on the territory of Romania shall comply with the rules of conduct established by CNVM.

(2) Monitoring compliance with the provisions of para. (1) shall be ensured by CNVM

Art. 165 - In the event of a change in the information notified in accordance with Art. 162 para. (1) (a), (b) and (c), the IMC shall notify the competent authority of the home Member State and CNVM in writing of the change at least one month before the change is made, so that:

a) the competent authority of the home Member State may take a decision on this change and notify it to CNVM;

b) CNVM to order the measures according to art. 163 para. (1).

Art. 166 - (1) If the IMC from another Member State wishes to carry out in Romania for the first time the activities for which it has received authorisation under the free movement of services, the notification sent to CNVM by the competent authority of the home Member State shall be accompanied by:

a) the activity programme of the IMC, which must indicate the activities and services referred to in Art. 5 and 6 envisaged to be carried out in Romania, a description of the risk management system developed by the IMC, as well as a description of the procedures and measures to be taken in accordance with Art. 35 para. (3) and (4);

b) details of the investor compensation scheme of which the IMC is a member and which will be designed to protect investors.

(2) If the notification referred to in para. (1) includes the intention of the IMC to carry out in Romania the activity of collective portfolio management referred to in Art. 6, the notification shall be accompanied by an attestation certifying that IMC has received authorisation under the national law of the home State of the IMC transposing the provisions of Directive 2009/65/EC, as well as a description of the scope of the authorisation of the IMC and details of any restrictions on the types of UCITS that the IMC is authorised to manage.

(3) Subject to compliance with the provisions concerning the establishment of a UCITS in Romania and/or those concerning the distribution of units in Romania, the IMC may start its activity after notification by the competent authority of the home Member State.

(4) In the event of a change in the information notified in accordance with the provisions of para. (1) (a), the IMC shall notify the change in writing to CNVM and the competent authority of the home Member State before the change is made.

Art. 167 - (1) IMC authorised in other Member States which manage in Romania UCITS authorised by CNVM are obliged to comply with the provisions of this Emergency Ordinance and of the regulations issued in application thereof regarding the establishment and operation of UCITS, namely applicable rules:

a) the establishment and authorisation of the UCITSs;

b) the issue and redemption of units;

c) investment policies and limits, including the calculation of total exposure and leverage;

d) restrictions on lending, borrowing and uncovered sales;

e) valuation of assets and accounting of the UCITS;

f) calculation of the issue price or redemption price and errors in the calculation of the net asset value and related investor compensation;

g) distribution or reinvestment of the proceeds;

h) the information and reporting requirements of the UCITS, including the prospectus, key investor information and periodic reports;

i) the measures taken for distribution;

j) the relationship with the holders of units;

k) the merger and restructuring of the UCITSs;

l) the liquidation and dissolution of the UCITSs;

m) the contents of the register of unit-holders, if applicable;

n) authorisation and supervision fees relating to UCITS; and

o) the exercise of voting rights of unit-holders and other rights of unit-holders relating to points (a) to (m).

(2) The IMC referred to in para. (1) must comply with the obligations laid down in the fund rules or articles of incorporation of the investment companies as well as the obligations contained in the prospectus, which must comply with the applicable regulations referred to in para. (1).

(3) CNVM shall monitor compliance with the obligations referred to in para. (1) and (2).

(4) Without being subject to requirements additional to those expressly provided for in this Emergency Ordinance, in the case of the management of a UCITS in Romania, the IMC shall assume responsibility for and decide on the adoption and implementation of decisions concerning the necessary structure and organisation of the company so that it can comply with the rules relating to the constitution and operation of UCITS, as well as the obligations laid down in the fund rules or in the investment company's articles of incorporation and the obligations laid down in the prospectus.

Art. 168 - (1) An IMC authorised in another Member State intending to manage a UCITS authorised in Romania shall submit to CNVM an application to this effect accompanied by the following documents:

a) the written contract concluded with the depository, referred to in Art. 52 para. (1);

b) information on the delegation arrangements in respect of the functions related to the management of the collective portfolio referred to Art. 6 a) and b).

(2) If the IMC already manages other UCITS of the same type in Romania, reference shall be made to the documents previously provided.

(3) CNVM may ask the competent authority of the home Member State of the IMC for clarifications and information on the documentation referred to in para. (2), clarifications and information in order to verify whether the type of UCITS for which authorisation is requested falls within the scope of the IMC authorisation.

(4) CNVM may, after consultation with the competent authority of the IMC's home Member State, reject the IMC's application for the management of a Romanian-based UCITS only if:

a) the IMC does not comply with the provisions falling under the competence of CNVM according to art. 167;

b) the IMC is not authorised by the competent authority of its home Member State to manage the type of UCITS for which it has applied for authorisation; or

c) the IMC has not submitted the documentation referred to in para. (1).

(5) The IMC shall notify CNVM of any subsequent changes to the documentation referred to in para. (1).

Art.169 - (1) CNVM may request IMC having their registered office in other Member States and having branches on the territory of Romania to periodically submit, for statistical purposes, reports on the activities carried out on the territory of Romania.

(2) IMC having their registered office in another Member State and carrying on business in Romania, either by setting up branches or under the free movement of services, shall be obliged to provide CNVM with the information necessary to monitor their compliance with the rules in force applicable to them and falling under the responsibility of CNVM.

(3) In applying the provisions of para. (2), IMC from another Member State shall transmit to CNVM the data, reports and information provided for in the regulations to be transmitted by IMC, Romanian legal persons, in order to monitor their compliance with the same standards.

(4) The IMC referred to in para. (2) shall be obliged, through the procedures and modalities to be implemented in accordance with Art. 35 para. (3) and (4) to allow CNVM to obtain information directly from the IMC.

Art. 170 - (1) If CNVM finds that an IMC having a branch or providing services on the territory of Romania does not comply with one of the rules falling under the supervisory responsibility of CNVM, it shall require the IMC to cease non-compliance and shall notify the competent authority of the IMC's home Member State.

(2) Where the IMC referred to in para. (1) refuses to provide CNVM with the requested information or does not take the necessary measures to put an end to the infringement, CNVM shall notify the competent authority of the home Member State of the IMC accordingly.

(3) If, following measures taken by the competent authority of the home Member State of the IMC or because such measures prove to be inadequate or not applicable in Romania, the IMC continues to refuse to provide the information requested by CNVM or persists in violating the rules in force in Romania, CNVM may, after having notified the competent authority of the home Member State:

a) take appropriate measures in accordance with the legislation in force, including Articles 179 and 195, to prevent or penalise future irregularities; and, where appropriate,

b) impose restrictions on the IMC with regard to new operations on the territory of Romania;

c) request the IMC to cease the administration of the UCITS, if the service provided in Romania is the administration of a UCITS;

d) inform ESMA if it considers that the competent authority of the home Member State of the IMC has not acted appropriately.

(4) Any measure adopted pursuant to the provisions of para. (2) or (3) involving provisions or sanctions shall be adequately substantiated by order of CNVM, shall be communicated in writing to the IMC concerned and may be appealed to the competent court in Romania.

(5) Where the protection of the interests of investors and other persons to whom services are provided urgently requires precautionary measures, CNVM shall, prior to the application of the procedure provided for in para. (1), (2) or (3), may order such measures, informing the European Commission, ESMA and the competent authorities of the other Member States concerned as soon as possible.

(6) At the reasoned request of the European Commission, CNVM shall amend or abolish the measures ordered pursuant to the provisions of para. (5).

Art. 171 - If, after consultation with CNVM, the competent authority of the IMC's home Member State decides to withdraw the authorisation of the IMC managing a UCITS in Romania, CNVM shall take appropriate measures to protect the interests of investors, including preventing the IMC in question from carrying out new transactions in Romania.

Art.172 - CNVM shall inform ESMA and the European Commission of the number and cases in which it has rejected the application of an IMC from another Member State to manage a UCITS in Romania, as well as of any measures taken in accordance with the provisions of Art. 170 para. (3).

SUBSECTION 2

Special provisions applicable to UCITS from other Member States distributing their units in Romania

Art. 173 - (1) UCITS authorised in another Member State may distribute their units in Romania on the basis of the notification procedure laid down in this emergency ordinance.

(2) The provisions of this Section shall also cover the investment compartments of a UCITS.

(3) CNVM shall not impose any additional obligations or administrative procedures on the UCITS authorised in another Member State which distribute their units on the territory of Romania with regard to the matters covered by this Emergency Ordinance.

(4) UCITS authorised in other Member States which distribute their units on the territory of Romania shall be entered in the CNVM Register.

Art. 174 - (1) If a UCITS established in another Member State decides to distribute its securities in Romania, the certificate sent to CNVM by the competent authority of the home Member State of that UCITS certifying that the UCITS fulfils the conditions laid down in Directive 2009/65/EC must be accompanied by complete documentation including:

a) the notification letter of the UCITS containing information on the arrangements for the distribution of the units in Romania, including, if applicable, the classes of shares/fund units. In the case of application of the provisions of Art. 161 para. (1), the letter shall state that the units of the UCITS are distributed by the IMC managing the UCITS;

b) the latest version of the following documents:

(i) the fund rules or the articles of incorporation of the investment company, the prospectus and, where applicable, the latest report and the half-yearly report, translated in accordance with Art. 176 para. (2) (c) and (d); and

(ii) the key investor information referred to in Art. 98, translated in accordance with Art. 176 para. (2), (b) and (d).

(1^1) The notification letter referred to in para. (1)(a) shall also include the necessary information, including the address for invoicing or for communicating any fees or charges levied by ASF and information on the arrangements for performing the tasks set out in para. (2).

(2) A UCITS from another Member State distributing units in Romania shall be obliged to provide Romanian investors with structures ensuring the following tasks:

a) processing subscription, redemption and refund orders and making other payments to unit-holders in accordance with the conditions duly set out in the documents referred to in Art. 68, Art. 71 para. (1), Art. 78 para. (2), Art. 92 para. (1) (a) to (c) and para. (3) to (5), Art. 93 para. (1), (2) and (4) and Art. 94-102;

b) providing information to investors in Romania on the manner of transmission of the orders referred to in point a) and on the manner of payment of the amounts arising from the redemption or repayment by the UCITS of the units held by investors in Romania;

c) facilitating access to information and to the procedures and modalities referred to in Art. 35 relating to the exercise by investors in Romania of the rights they acquire as a result of their investments in the UCITS;

d) making available to investors in Romania the information and documents referred to in point a), under the conditions laid down in Art. 176, in order to be analysed and to obtain copies thereof;

e) making available to investors in Romania, on a durable medium, relevant information on the operations carried out by these structures;

f) the function of contact point for communication with ASF

(2^1) ASF, as the competent authority of the host Member State of the UCITS, shall not impose on it the obligation to have a physical presence on the territory of Romania or to appoint a third party for the purpose of carrying out its tasks under para. (2).

(2^2) The UCITS of another Member State which distributes units in Romania shall ensure that the structures referred to in para. (2) are made available, including by electronic means:

a) in Romanian;

b) by the UCITS or by a third party subject to the regulations and supervision applicable to the tasks to be performed, or by both.

Where the tasks are performed by a third party, the appointment of that third party shall be the subject of a written contract specifying which of the tasks referred to in para. (2) shall not be carried out by the UCITS and that the third party shall receive from the UCITS all relevant information and documents.

(3) The notification procedure shall comply with the provisions of Chap. I of EU Regulation no. 584/2010.

(4) The UCITS may distribute units in Romania without the need to submit any other documents or information, except for those provided for in para. (1), from the date on which the competent authority of the home Member State informs it of the transmission of the documentation to CNVM.

(5) The letter of notification and the attestation referred to in para. (1) shall be submitted to CNVM in English or Romanian.

(6) The documents referred to in para. (1) shall be transmitted and stored electronically.

(7) UCITS shall provide access to CNVM to the electronic version of each of the documents referred to in para. (1) (a) and (b) and, where appropriate, to any translation thereof. UCITS shall update those documents and translations, notify CNVM of any changes and indicate where those documents may be obtained in electronic form.

(8) CNVM shall indicate an e-mail address for the receipt of notifications of updates or amendments to the documents referred to in para. (1) in accordance with para. (7).

(9) UCITSs may notify CNVM of updates or amendments to the documents referred to in para. (1), in accordance with the provisions of para. (7), by e-mail sent to the address indicated in accordance with para. (8). The material notified by e-mail shall be sent in a format that allows the documents to be viewed, reproduced and stored at the level of technologies in current use and shall describe the update or amendment made or contain a new version of the document attached to the message.

(10) The electronic version of the documents referred to in para. (1) (a) and (b) shall be made available to CNVM on the website of the UCITS, the website of the IMC manageing the UCITS or another website designated by the UCITS in the notification letter or its updates. Documents made available on the website must be provided in a format that allows the documents to be viewed, reproduced and stored at the level of technology in current use.

(11) In the event of a change in the information communicated in the notification letter referred to in para. (1) (a) or a change in the class of shares/units of the fund to be distributed, the UCITS must give the competent authority of the home Member State and ASF written notice thereof at least one month before implementing the change.

Art. 175 - "repealed"

Art. 176 - (1) UCITS authorised in another Member State which distributes its units in Romania is obliged to provide investors in Romania with all the information and documents which the UCITS is obliged to provide to investors in its home Member State, in accordance with provisions similar to the provisions of Chap. IV Section 5 "Rules on transparency and disclosure".

(2) The information and documents referred to in para. (1) shall be provided to investors in accordance with the following provisions:

a) without prejudice to the provisions of the Member State of origin similar to the provisions of Chap. IV, Section 5 "Transparency and Disclosure Rules", such information and/or documents shall be provided to investors in accordance with the procedures laid down by Romanian laws, regulations and administrative provisions;

b) the key investor information referred to in Art. 98 shall be translated into Romanian;

c) information or documents other than the key investor information referred to in Art. 98 shall be translated into Romanian or English at the choice of the UCITS;

d) translations of information and/or documents pursuant to points b) and c) shall be made under the responsibility of the UCITS and shall accurately reflect the content of the original information.

(3) The requirements laid down in para. (2) shall also apply to any changes to the particulars and documents referred to in this Article.

(4) The frequency of the publication of the issue or redemption price of units of a UCITS from another Member State shall be governed by the laws, regulations and administrative provisions of the UCITS home Member State.

Art. 176[1] - (1) The UCITS may withdraw its notification regarding the distribution of units, including, where applicable, classes of shares/fund units, in Romania, for which ASF has received a notification in accordance with the provisions of Art. 174, if the following conditions are cumulatively met:

a) the UCITS shall make a general offer for the redemption or repurchase, without any fee or deduction, of all the units of the UCITS held by investors in Romania, which shall be publicly available for at least 30 business days and shall be addressed, directly or through financial intermediaries, individually to all investors in Romania whose identity is known;

b) the intention to cease the distribution of units in Romania is made public by means of a means of communication, including electronic means, which is customary for the distribution of units of the UCITS and appropriate for a typical investor in the UCITS;

(c) any contractual arrangements with financial intermediaries or other persons to whom distribution has been delegated are amended or terminated with effect from the date of withdrawal of the notification in order to prevent a further direct or indirect offer or placing of the units identified in the notification referred to in para. (4).

(2) The information referred to in para. (1)(a) and (b) shall clearly describe the consequences for investors if they do not accept the offer to repurchase or redeem the units held.

(3) The information referred to in para. (1) (a) and (b) shall be provided in Romanian. As from the date of withdrawal of the notification, UCITS shall no longer make any direct or indirect offer or placement of its units which have been subject to the withdrawal of the notification from Romania.

(4) UCITS shall send to its competent authority in the home Member State a notification containing the information referred to in para. (1).

(5) UCITS shall duly provide the investors established in Romania, who maintain their investments in that UCITS following the procedure provided for in this Article, and its competent authority in the home Member State with the information referred to in Art. 68, Art. 71 para. (1), Art. 78 para. (2), Art. 92 para. (1) a) to c) and para. (3)-(5), Art. 93 par. (1), (2) and (4), Art. 94, Art. 96, Art. 97 para. (1) to (3), Art. 98 to 102 and Art. 176.

(6) The competent authority of the home Member State shall inform ASF of any changes to the documents referred to in Art. 158 para. (2).

(7) ASF shall have the same rights and obligations as a competent authority of a host Member State of the UCITS in accordance with the provisions of Art. 190.

(8) Without prejudice to other monitoring and surveillance activities provided for in this Emergency Ordinance, from the date of transmission of the information referred to in para. (6), ASF shall no longer require that UCITS to demonstrate compliance with the provisions of this Emergency Ordinance and the ASF regulations issued pursuant to it, governing the distribution requirements referred to in Art. 5 of Regulation (EU) 2019/1.156.

(9) In applying the provisions of para. (5), UCITS may use any electronic or other means of remote communication, provided that the information and means of communication are made available to investors in Romanian.

Art. 177 - For the purpose of carrying out their activities, UCITS may use in Romania the same reference to their legal form - "investment company" or "open-ended investment fund" - in their name as the one they use in their home Member State.

SECTION 3

Relations with third countries

Art. 178 - (1) The establishment of branches on the territory of Romania by IMC from third countries shall be subject to authorisation by CNVM The conditions for authorisation are:

a) compliance by the branch with the requirements laid down in Art. 9;

b) the authorisation of the company and the legal provisions of the home state in relation to the activities which the IMC intends to carry out in Romania through the branch;

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

d) the existence of cooperation relations between CNVM and the competent authority of the home country;

e) compliance with the conditions of reciprocity in the country of origin.

(2) Branches of IMC from third countries carrying out in Romania activities covered by this Emergency Ordinance shall not benefit from a more favourable treatment compared to that applied to branches of IMC from Member States.

(3) CNVM shall inform ESMA and the European Commission of any difficulties encountered by a UCITS distributing its units in any third country.

(4) CNVM shall issue regulations for the application of this Chapter.

CHAPTER VI

Cooperation of CNVM with the competent authorities of other Member States

Art. 179 - (1) CNVM shall cooperate with the competent authorities of other Member States in the performance of their duties under Directive 2009/65/EC and in the exercise of their powers under Directive 2009/65/EC or under national law.

(2) The cooperation with the authorities of other Member States referred to in para. (1) shall cover the provision of assistance and exchange of information both in situations which constitute breaches of the provisions of the regulations in force in each Member State and in the case of investigations which are not carried out as a result of non-compliance with those regulations.

(3) CNVM shall immediately transmit to the competent authorities of the Member States the information necessary to carry out their duties under Directive 2009/65/EC.

(4) CNVM shall cooperate with ESMA and provide it without delay with all the information necessary for the performance of ESMA's tasks under Art. 35 of Regulation (EU) no. 1.095/2010.

(5) Where CNVM has evidence that acts contrary to the provisions of Directive 2009/65/EC are being or have been committed on the territory of another Member State by entities which are not subject to the supervision of CNVM, CNVM shall immediately inform the competent authorities of the other Member State thereof.

(6) Where CNVM receives an information from a competent authority of another Member State, as provided for in para. (5), it shall take appropriate measures and shall inform that authority of the manner of settlement and, where appropriate, of any interim measures applied.

Art. 180 - (1) CNVM may request the cooperation of the competent authorities of another Member State in the framework of a supervisory activity or for the purpose of an on-the-spot verification or investigation in the territory of the latter within the powers conferred by this Emergency Ordinance.

(2) Where CNVM receives a request from a competent authority of another Member State for an on-the-spot verification or for an investigation, within the limits of the powers conferred on it:

a) carry out the verification or investigation itself;

b) allows the requesting authority to carry out the verification or investigation; or

c) allows auditors or experts to carry out the verification or investigation in compliance with the legal provisions.

(3) Where CNVM requests the cooperation of the competent authorities of another Member State in accordance with the provisions of para. (1) and the verification or investigation is carried out on the territory of another Member State by the competent authorities of that Member State, CNVM may require that members of its staff accompany the staff carrying out the verification or investigation.

(4) If the verification or investigation is carried out on the territory of Romania by the competent authority of another Member State, CNVM may request that members of its staff accompany the staff carrying out the verification or investigation.

(5) CNVM may refuse to exchange information pursuant to Art. 179 para. (3) or to comply with a request for cooperation in carrying out an investigation or on-the-spot verification only if:

a) such investigation, on-the-spot verification or exchange of information risks affecting the sovereignty, security or public order of Romania;

b) judicial proceedings have already been initiated by the Romanian authorities in respect of the same facts or against the same persons;

c) a final judgment has already been rendered in Romania concerning the same facts or against the same persons.

d) compliance with the request for cooperation is likely to adversely affect the ASF's own investigation, enforcement activities or, where appropriate, a criminal investigation.

(6) CNVM shall notify the requesting competent authorities of any decision taken pursuant to the provisions of para. (5) and the reasons for it.

(7) CNVM may notify ESMA of situations where:

a) a request for exchange of information has been refused or not acted upon within a reasonable time;

b) a request for an investigation or on-the-spot verification has been refused or has not been acted upon within a reasonable time; or

c) a request that the staff of CNVM be authorised to accompany the staff of the competent authority of another Member State has been rejected or has not been acted upon within a reasonable time.

Art. 181 - (1) Without prejudice to cases governed by criminal law, the obligation of professional secrecy provided for in Art. 11 of the Statute of the National Securities Commission, approved by Government Emergency Ordinance no. 25/2002, approved with amendments and additions by Law no. 514/2002, with subsequent amendments and additions, implies that the persons concerned may not disclose confidential information obtained in the course of their duties to persons or authorities except in a summary or aggregate form, so that the UCITS, IMC and depositories cannot be individually identified.

(2) The obligation of professional secrecy referred to in para. (1) shall not be enforceable against prosecuting authorities or courts.

Art. 182 - (1) The provisions of Art. 181 shall not prevent CNVM from exchanging information with competent authorities of other Member States in accordance with Directive 2009/65/EC or other acts of European Union law applicable to UCITS, IMC or depositories or from transmitting such information to ESMA in accordance with Regulation (EU) No 1.095/2010 or to the European Systemic Risk Board.

(2) The information referred to in para. (1) shall be subject to the conditions of professional secrecy referred to in Art. 181.

(3) When CNVM exchanges information with other competent authorities as provided for in this Emergency Ordinance, it shall indicate at the time of communication that such information may be disclosed only with its express consent and only for the cases for which CNVM has given its consent.

Art. 183 - (1) CNVM may conclude cooperation agreements on the exchange of information with the competent authorities of third countries only if the information to be disclosed is subject to the guarantee of professional secrecy. The exchange of such information must be related to the exercise of the tasks of those competent authorities.

(2) Where the information to be provided by CNVM originates from the authorities of another Member State, it may be disclosed only with the express agreement of those competent authorities and, where appropriate, only for the purposes for which those authorities gave their agreement.

Art.184 - (1) CNVM may use confidential information during the exercise of its powers for the following purposes, in compliance with the legal provisions in force:

a) to control whether the conditions underlying the authorisation of the activity of the UCITS, the IMC or the depositories are fulfilled and to facilitate the monitoring of the conduct of that activity, of the administrative and accounting procedures and of the internal control mechanisms;

b) to impose sanctions;

c) in administrative proceedings challenging decisions of CNVM; and

d) in proceedings before the courts.

(2) The provisions of Articles 181 and 184 para. (1) shall not prevent CNVM from exercising its supervisory function or from providing the entities manageing compensation schemes with the information necessary for the performance of their functions.

Art. 185 - (1) Without prejudice to Articles 181-183 and 184 para. (1), for the purpose of strengthening stability, including the integrity of the financial system, CNVM may exchange information with:

a) the authorities responsible for the supervision of entities involved in the liquidation and bankruptcy of UCITS, IMCs or depositories or in other similar procedures;

b) the authorities responsible for overseeing persons charged with auditing the financial statements of insurance undertakings, credit institutions, investment companies and other financial institutions;

c) the authorities responsible for the supervision of credit institutions, insurance companies, other financial institutions and financial markets;

d) entities involved in the liquidation and bankruptcy of the UCITS, IMC or depositories or other similar procedures;

e) persons involved in the audit of the financial statements of insurance companies, credit institutions and other financial institutions;

f) the authorities or bodies responsible under the law for identifying and investigating breaches of company law provisions;

g) ESMA, the European Banking Supervisory Authority established by Regulation (EU) no 1.093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority), amending Decision no. 716/2009/EC and repealing Commission Decision 2009/78/EC, the European Insurance and Occupational Pensions Supervisory Authority established by Regulation (EU) no. 1.094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority) amending Decision no. 716/2009/EC and repealing Commission Decision 2009/79/EC and the European Systemic Risk Board.

(2) The exchange of information provided for in para. (1) may be carried out only if at least the following conditions are met:

a) the information is used for the purpose of performing the supervisory functions referred to in para. (1)(a) and (b);

b) the information is used for the purpose of performing the task referred to in para. (1)(f);

c) the information provided is subject to the guarantee of professional secrecy referred to in Art. 181; and

d) where the information to be provided by CNVM originates from the authorities of another Member State, it may be disclosed only with the express agreement of those competent authorities and, where appropriate, only for the purposes for which those authorities gave their agreement.

Art. 186 - (1) CNVM shall communicate to ESMA, the European Commission and the other Member States the identity of the authorities and bodies referred to in Art. 185 para. (1) (a), (b) and (f) which may receive information pursuant to Art. 185 para. (1).

(2) In application of the provisions of Art. 185 para. (2)(d), the authorities or bodies referred to in Art. 185 para. (1) (f) shall communicate to CNVM the identity and responsibilities of the persons to whom the information is to be transmitted.

(3) Where the authorities or bodies referred to in Art. 185 para. (1)(f) carry out their task of detection and investigation with the help of persons appointed for that purpose, having regard to their specific competence, and who are not employed in the public sector, the possibility of exchanging information may be extended to such persons under the conditions laid down in Art. 185 para. (2) and para. (2) of this Article.

Art. 187 - (1) The provisions of Articles 181-186 shall not prohibit CNVM from transmitting to the central banks, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, confidential information necessary for the performance of their tasks. Similarly, CNVM may request from these authorities the information necessary for the performance of the tasks entrusted to it under this Emergency Ordinance.

(2) Information received pursuant to the provisions of para. (1) shall be subject to the conditions of professional secrecy referred to in Art. 181.

(3) In the case of processing of personal data carried out on the territory of Romania pursuant to this Emergency Ordinance, ASF shall apply the provisions of Law no. 677/2001 on the protection of individuals with regard to the processing of personal data and the free movement of such data, as amended and supplemented.

Art. 188 - (1) The provisions of Articles 181-186 do not prohibit CNVM from transmitting the information referred to in Articles 181-183 and 184 para. (1) to a clearing house or a similar body recognised by national law as a provider of clearing and settlement services, if CNVM decides to communicate the information for the purpose of ensuring the proper functioning of the bodies concerned with regard to irregularities or potential irregularities of market participants.

(2) Information received pursuant to para. (1) shall be subject to the conditions of professional secrecy referred to in Art. 181.

(3) Information received pursuant to Art. 182 may not be disclosed under the conditions laid down in para. (1) without the express agreement of the competent authorities which provided it.

Art. 189 - (1) In case of rejection of an application for authorisation, CNVM shall issue a reasoned decision, which may be appealed to CNVM within a maximum of 30 days from the date of its communication.

(2) Any decision of CNVM violating the rights of a natural or legal person recognised by this Emergency Ordinance or the unjustified refusal of CNVM to settle a claim relating to a right recognised by this Emergency Ordinance may be challenged before the competent court.

Art.190 - (1) Only if a UCITS is authorised by CNVM, CNVM is entitled to take the necessary measures against the UCITS if it violates the provisions of this emergency ordinance and the CNVM regulations issued in application thereof, the fund rules or the investment company's articles of incorporation.

(2) Where Romania is the host Member State of a UCITS, ASF may take measures against that UCITS if it infringes laws, regulations and administrative provisions which do not

fall within the scope of Directive 2009/65/EC or the obligations laid down in Art. 174 para. (2) and (2^2) and Art. 176.

(3) Any decision to withdraw authorisation or any other measure taken against a UCITS or any suspension of the issue or redemption of its units shall be communicated forthwith by CNVM to the competent authorities of the UCITS' host Member States and, where the IMC managing the UCITS is established in another Member State, to the competent authorities of its home Member State.

Art. 191 - (1) CNVM may take measures against an IMC with registered office in Romania or with registered office in another Member State which manages UCITS on the territory of Romania, if it infringes the rules within its field of competence.

(2) Where a UCITS from another Member State distributes its units on the territory of Romania and CNVM has evidence that the UCITS is in breach of its obligations under the provisions of Directive 2009/65/EC, which do not confer powers on CNVM, it shall communicate that evidence to the competent authorities of the UCITS home Member State.

(3) If, as a result of measures taken by the competent authorities of the home Member State of the UCITS or because such measures prove to be inapplicable or because the competent authority of the UCITS' home Member State fails to act in a timely manner, the UCITS continues to act in a manner which affects the interests of investors in Romania, CNVM may take any of the following measures accordingly:

a) restricting the distribution of units of the UCITS within Romania, after notification to the competent authorities of the UCITS home Member State; or

b) notification to ESMA of the situation created.

(4) CNVM shall inform without delay the European Commission and ESMA of any measure taken pursuant to the provisions of para. (3) letter a).

Art. 192 - (1) Where an IMC having its registered office in Romania carries on business in one or more host Member States, by providing services or setting up branches, CNVM shall cooperate with the competent authorities of all the Member States concerned.

(2) CNVM shall communicate to the competent authorities of the Member States referred to in para. (1), upon request, all information concerning the management and ownership structure of the IMC which may facilitate its supervision, as well as all information which may facilitate the monitoring of the IMC In particular, CNVM shall cooperate with a view to ensuring that the authorities of the host Member State of the IMC collect the information referred to in Art. 169.

(3) To the extent necessary for the exercise of the supervisory powers of the home Member State of the IMC, CNVM shall inform the competent authorities of the home Member State of the IMC of any measures taken by it pursuant to Art. 170 para. (3) involving measures or sanctions imposed on an IMC or restrictions on the activities of an IMC.

(4) Where CNVM is the competent authority of the home Member State of the IMC manageing a UCITS established in another Member State, CNVM shall, without delay, notify the competent authorities of the home Member State of the UCITS of any problems identified at the level of the IMC which may affect its ability to fulfil its obligations in relation to the UCITS and of any breaches of the requirements laid down in Chapter II.

(5) Where CNVM is the competent authority of the home Member State of the UCITS, CNVM shall notify without delay the competent authorities of the home Member State of the

IMC of any problems identified at the level of the UCITS which could affect the ability of the IMC to fulfil its obligations or to meet the requirements laid down in this Emergency Ordinance.

Art. 193 - (1) CNVM shall ensure that, where an IMC authorised in another Member State carries on business in Romania through a branch, the competent authorities of the home Member State of the IMC may, after notifying CNVM, carry out themselves or through an intermediary whom they appoint for that purpose on-the-spot verification of the information referred to in Art. 192.

(2) The provisions of para. (1) shall be without prejudice to the right of CNVM to carry out, in the exercise of its responsibilities under this Emergency Ordinance, on-site verification of branches established in Romania.

CHAPTER VI [1]

Powers of the Financial Supervisory Authority

Art. 193[1] - ASF shall exercise its supervisory and control powers over the activity of UCITS, IMC, self-managed investment companies and depositories of UCITS assets. These powers shall be exercised in any of the following ways:

a) directly;

b) in cooperation with other authorities;

c) under their responsibility, by delegation to entities to which tasks have been delegated;

d) by referring the matter to the competent judicial authorities.

Art. 193[2] -In application of the provisions of art. 193[1], ASF has the following powers:

a) to have access to any documents held by natural or legal persons covered by this Emergency Ordinance, in whatever form, and to receive copies thereof;

b) to request any person to whom this Emergency Ordinance applies to submit information and, if necessary, to hold a hearing;

c) to carry out checks at the premises of legal persons to which this Emergency Ordinance applies and, in the case of natural persons, with the assistance of the institutions/authorities/bodies competent to exercise this right;

d) to request natural or legal persons to whom the provisions of this Emergency Ordinance apply to cease any practice contrary to the provisions adopted under this normative act and to refrain from repeating it;

e) to refer the matter to the competent judicial authorities in order to order precautionary measures, such as the seizure of the assets of the UCITS, subjects of this Emergency Ordinance;

f) to order the temporary prohibition of the exercise of professional activity by legal persons and/or natural persons subject to this Emergency Ordinance;

g) to adopt, within the limits of its legal powers, measures to ensure that natural and legal persons subject to this Emergency Ordinance comply with the applicable legal provisions in this regard;

h) to request the IMC or self-managed investment companies to suspend the issue or redemption of units in the interest of the holders of such units or in the public interest;

i) to suspend or withdraw the authorisation granted to a UCITS, an IMC or the authorisation granted to a UCITS depository;

j) to refer the matter to the competent prosecution authorities;

k) to request information from the auditors of legal persons carrying out activities in relation to the activities covered by this Emergency Ordinance.

l) to suspend the authorisation to carry out certain activities or to perform certain functions, if it is established or there are reasonable grounds for believing that the interests of investors or the good reputation of the IMC in question will be harmed by continuing to carry out those activities or perform those functions.

m) to request and be entitled to receive from credit institutions authorised by the National Bank of Romania the information necessary for the investigations of ASF, as well as to respond to requests for assistance received by ASF on the basis of international agreements to which ASF is a party.

n) to request, giving reasons, the members of the board of directors or of the supervisory board of the IMC/self-managed investment company, respectively the directors or members of the management board of the IMC/self-managed investment company to convene a meeting of their members or, as the case may be, a general meeting of shareholders, setting out the matters to be placed on the agenda, in order to apply the provisions of this emergency ordinance.

CHAPTER VII

Liabilities and sanctions

Art. 194 - Violation of the provisions of this Emergency Ordinance and of the regulations adopted in its application shall entail liability under the law.

Art. 195 - The following acts committed by the IMC, self-managed investment company or depository and/or by the members of the board of directors or of the supervisory board, directors or members of the management board and representatives of the internal control department of an IMC or self-managed investment company, as well as by natural persons exercising de jure or de facto managerial functions or professional activities covered by this emergency ordinance, as the case may be, shall constitute offences:

a) failure to comply with the conditions for authorisation/approval and the operating conditions referred to in Art. 4 para. (3), Art. 5, 6, 7, Art. 8 para. (1), (2), (4), (5) and (6), Art. 9 para. (1), para. (6) and (7), Art. 12, 13, Art. 14 para. (1), Art. 63 para. (1), Art. 64 para. (4), Art. 65, Art. 67 para. (1) and (3), Art. 68, Art. 69 para. (1) and (2), Art. 70, Art. 71 para. (1), Art. 72, 73, Art. 74 para. (1) and (2), Art. 75 para. (1), Art. 76, 77, Art. 78 para. (2), Art. 79, 80, Art. 84 para. (4), Art. 86 para. (2), Art. 91 para. (2), Art. 103, Art. 104 para. (1) and (4), Art. 105-107, Art. 134 para. (9), Art. 178 para. (1), Art. 201 para. (1) and (4) and Art. 202;

a[1]) obtaining authorisation by an IMC or a self-managed investment company by making false statements as referred to in Art. 11 c);

b) failure to comply with the prudential rules laid down in Articles 15 to 28;

c) failure to comply with the provisions of Art. 29-32 on conflicts of interest for the purposes of this Emergency Ordinance;

d) non-compliance with the provisions of Art. 33 on the delegation of collective portfolio management activity;

e) failure to comply with the rules of conduct provided for in Art. 34-43;

f) failure to comply with the provisions of Art. 44-50 and 51 para. (1) on risk management;

g) non-compliance with the provisions of Art. 52-62 relating to depositories and the agreement between the depository and the IMC;

h) failure to comply with the provisions of Art. 81-83, 84 para. (1), (2), (5) - (8), (10), Art. 85 para. (1) - (7), (9) - (12), Art. 86 para. (1), Art. 87, Art. 88 par. (1) and (2), Art. 89, 90, Art. 91 par. (1), (3) and (4) relating to the investment policy of a UCITS;

i) failure to comply with the transparency and reporting obligations laid down in Art. 92, Art. 93 para. (1), (3) and (4) and Art. 94-102;

j) non-compliance with the provisions of Art. 114-120 para. (1), art. 122-124 relating to mergers of the UCITS;

k) non-compliance with the provisions of Art. 125-131, 132 para. (2) - (5), Art. 133, Art. 134 para. (1) - (8), Art. 135-146 relating to master and feeder UCITSs;

l) failure to comply with the obligations laid down in Art. 150, Art. 151 para. (1), Art. 152 para. (1), Art. 153 para. (5) to (7), Art. 154 para. (2), (3) and (5), Art. 158 para. (1), (9) to (11), Art. 174 para. (2) and (2^2) and Art. 176 on the right of establishment and freedom to provide services by IMC authorised by ASF;

m) failure to comply with the provisions of the internal regulations of the IMC/self-managed investment company, the rules of the fund/incorporation deed of the investment company and/or the prospectuses of the UCITS;

n) failure to comply with the measures laid down in the acts of authorisation, supervision, regulation and control or as a result thereof;

o) unauthorised use of the terms "investment management company", "investment company", "open-ended investment fund" associated with any of the financial instruments defined in Art. 2 para. (1) point 11 of Law no. 297/2004 or any combination thereof;

p) unlawful hindering of the exercise of the rights conferred by law to CNVM, as well as the unjustified refusal of any person to respond to the requests of CNVM in the exercise of its prerogatives according to the legal provisions.

q) failure to comply with the obligations laid down in the regulations issued by ASF regarding training, education and professional development;

r) failure to comply with the measures ordered by the administrative acts issued by ASF pursuant to the provisions of Art. 193^2 lit. c), d), f), g), i) and l).

Art. 195^1. - Breach by an IMC or a self-managed investment company of the provisions of Art. 3-13 on sustainability risks, transparency of sustainable investments and the promotion of environmental and social features of financial products of Regulation (EU) 2019/2.088 of the European Parliament and of the Council of 27 November 2019 on sustainability disclosures in the financial services sector and of regulations adopted in implementation thereof, hereinafter Regulation (EU) 2019/2.088, or the provisions of Articles 5-7 on transparency of sustainable investments and financial products promoting environmental features in pre-contractual information and periodic reports of Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 establishing a framework to facilitate sustainable investments and amending Regulation (EU) 2019/2.088, hereinafter referred to as

Regulation (EU) 2020/852, constitute infringements and shall be sanctioned by ASF, as the competent authority, in accordance with the provisions of Art. 196.

Art.196 - (1) By derogation from the provisions of Art. 8 of the Government Ordinance no. 2/2001 on the legal regime of contraventions, approved with amendments and additions by Law no. 180/2002, with subsequent amendments and additions, hereinafter referred to as Government Ordinance no. 2/2001, the commission of the contraventions referred to in Art. 195 and 195[1] shall be sanctioned as follows:

a) in the case of infringements referred to in Art. 195 (a) to (m), (p) to (r) and Art. 195[1]:

(i) with a warning or a fine from 5,000 lei to 22,098,000 lei for natural persons;

(ii) with a warning or a fine from 10,000 lei up to 22,098,000 lei or 10% of the total turnover achieved in the financial year preceding the sanction, depending on the seriousness of the offence committed, for legal persons;

b) in the case of the offences referred to in Art. 195 (n) and (o):

(i) with a fine from 10,000 lei to 22,098,000 lei for natural persons;

(ii) with a fine from 50.000 lei up to 22,098,000 lei or 10% of the total turnover achieved in the financial year preceding the sanctioning, depending on the seriousness of the offence committed, for legal persons.

(2) By way of exception to para. (1), in the case of the commission of the offences referred to in Art. 195, ASF may increase the amount of the fines up to twice the amount of the benefit resulting from the violation of this Emergency Ordinance, if the benefit exceeds the amount of 22,098,000 lei.

(3) If the turnover achieved in the financial year preceding the sanction is not available at the date of the sanction, the turnover achieved in the financial year in which the legal person achieved turnover, immediately preceding the reference year, shall be taken into account. Reference year means the year preceding the sanction.

(4) Where the legal person is a parent company or a subsidiary of the parent company which is required to draw up consolidated financial accounts in accordance with the accounting regulations in force, the relevant total annual turnover is the total annual turnover or the corresponding type of income in accordance with the relevant European Union accounting law as shown in the latest available consolidated accounts approved by the statutory body of the ultimate parent company.

(5) In addition to the main contravention penalties provided for in para. (1)-(4), ASF may also order the application of complementary contravention sanctions for legal entities and/or natural persons subject to this Emergency Ordinance. The complementary contravention sanctions are:

1. suspension of authorisation;

2. withdrawal of authorisation;

3. prohibition for a period of between 90 days and 5 years of the right to hold an office, carry out an activity or provide a service for which authorisation is required under the terms of this Emergency Ordinance.

(6) ASF shall make public without delay on its website any measure or sanction imposed for non-compliance with the provisions of this Emergency Ordinance and of the regulations adopted in its application, against which there is no further appeal before ASF and after the person on whom the sanction or measure has been imposed has been informed of the

decision. The publication shall include at least information on the type and nature of the infringement and the identity of the persons responsible. This obligation shall not apply in the case of a decision by ASF to carry out a control on those infringements.

(6[1]) Depending on the nature and seriousness of the offence, in the case of the offences referred to in Art. 195 and 195[1], ASF may apply the administrative measures referred to in para. (6) as well:

1. a public statement indicating the person responsible for the infringement and the nature of the infringement;

2. a decision requiring the person responsible for the infringement to cease the conduct and refrain from repeating it;

3. other warning measures and/or with the aim of preventing or remedying situations of non-compliance with legal provisions, according to the regulations of ASF

(6[2]) The main contravention penalties may be applied cumulatively with one or more complementary contravention penalties provided for in this Emergency Ordinance.

(6[3]) The administrative measures referred to in para. (6[1]) may be applied separately or together with the principal or complementary sanctions provided for in this Emergency Ordinance.

(6[4]) Where two or more offences are found to have been committed, the fine for the most serious offence shall be imposed, notwithstanding the provisions of Art. 10 para. (2) of GO no. 2/2001.

(7) If the publication of the identity of legal persons or personal data of natural persons is considered by ASF to be excessive, following a case-by-case assessment of the proportionality of the publication of such information, or if the publication jeopardises the stability of financial markets or an ongoing investigation, ASF may adopt at least one of the following measures:

(a) the postponement of the publication of the individual act imposing the sanction or measure until the reasons for non-publication cease to be valid;

(b) publication of the individual act imposing the sanction or measure without indicating the identity of the legal persons or the personal data of natural persons, provided that such publication ensures effective protection of the personal data concerned;

(c) non-publication of the individual act imposing a sanction or measure, if the options provided for in points (a) and (b) are considered insufficient to ensure:

1. that the stability of financial markets is not jeopardised;

2. that the proportionality of the publication of such decisions is ensured in cases where those measures are considered to be of a minor nature.

In the case of a decision to publish the sanction or measure without indicating the identity of the legal persons or the personal data of the natural persons, ASF may postpone the publication of the relevant data for a reasonable period of time, if it is expected that during that period of time the reasons for such publication will cease to be valid.

(8) ASF shall inform ESMA of all administrative sanctions imposed but not published in accordance with para. (7) point (c), including any appeal against them and the outcome thereof.

(9) If the decision to impose a sanction or to impose a measure is subject to an appeal before the judicial or other relevant authorities, ASF shall immediately publish on its website

this information and any subsequent information on the outcome of this appeal. ASF shall also publish any decision annulling a previous decision to impose a sanction or measure.

(10) Information published pursuant to this Article shall be maintained on the ASF website for a period of at least 5 years after publication. Personal data contained in the published information shall be kept on the ASF website only for as long as necessary in accordance with the applicable legislation on the protection of personal data.

Art. 197 - The performance without authorization of any activities or operations for which this emergency ordinance requires authorization constitutes a crime and is punishable under criminal law.

Art.198 - (1) CNVM shall ascertain the commission of the offences referred to in Art. 195.

(2) CNVM may delegate the detection of offences to agents empowered to exercise powers regarding the supervision, investigation and control of compliance with the legal provisions and regulations applicable to the capital market.

(3) Upon receipt of the verification documents resulting from the authorisation, supervision or control activity, on the basis of which it is established that one of the contraventions referred to in Art. 195 has been committed, CNVM shall impose the sanctions referred to in Art. 196. Furthermore, by individual acts, CNVM may order the extension of investigations, the taking of precautionary measures and/or the hearing of the persons concerned by the verification acts.

(4) By way of derogation from the provisions of Art. 7 para. (1) and Art. 11 para. (1) and (2) of the Administrative Litigation Law no. 554/2004, with subsequent amendments and additions, the administrative acts adopted by ASF according to the provisions of this Emergency Ordinance or for the application of the regulations adopted at the European Union level in the fields provided for by this Emergency Ordinance, duly motivated, may be appealed, within 30 days from the date of communication, to the Bucharest Court of Appeal, Administrative and Fiscal Litigation Section. The individual administrative act by which ASF imposes the sanction of a fine constitutes an enforceable title.

Art. 199 - (1) In the individualization of the sanction, account shall be taken of the personal and real circumstances of the commission of the offence and of the conduct of the offender, depending on:

a) the seriousness and duration of the infringement;

b) the degree of guilt of the offender;

c) the financial capacity of the offender, indicated for example by the total turnover of the legal person or the annual income of the natural person;

d) the amount of profits made or losses avoided by the offender, damage suffered by other persons and, where appropriate, damage to the functioning of the financial market or the economy as a whole, insofar as this can be determined;

e) the degree of cooperation of the offender with ASF;

f) previous infringements committed by the offender;

g) any measures taken by the offender after the offence has been committed to limit the damage, to cover the loss or to desist from the offence.

(2) In exercising its powers to impose the sanctions provided for in this Emergency Ordinance, ASF shall cooperate with the competent authorities of other Member States to

ensure that administrative sanctions and supervisory and control powers produce the results sought by this Emergency Ordinance.

(3) ASF shall coordinate its actions with the competent authorities of other Member States in order to avoid possible duplication and overlapping in the exercise of supervisory and control powers and in the application of sanctions and administrative measures in cross-border cases in accordance with Art. 179 and 180.

Art. 200 - (1) By derogation from the provisions of Art. 13 of GO no. 2/2001, the limitation period for the application and enforcement of the contravention sanction is 3 years from the date of the offence.

(2) In the case of continuous contraventions, the limitation period of 3 years shall start to run from the date on which the offence is established.

(3) In the case of sanctions imposed for the commission of the contraventions referred to in Articles 195 and 195^1, the sanctioned persons shall pay the fine established in the ASF sanctioning decision, within a maximum of 15 days from the date of its communication, by derogation from the provisions of Art. 16 para. (1) and Art. 28 para. (1) of the Government Ordinance no. 2/2001, regarding the payment of half of the minimum fine provided for in Art. 196.

Art. 200^1 - (1) The reporting to ASF of possible or certain violations of the provisions of this Emergency Ordinance shall be carried out in accordance with the regulations issued by ASF.

(2) ASF shall establish independent and autonomous communication channels, which are secure and ensure confidentiality, for the receipt of reports of violations of the provisions of this Emergency Ordinance, hereinafter referred to as secure communication methods.

(3) Secure communication methods shall be considered independent and autonomous, provided that they fulfil the following criteria cumulatively:

a) are separate from the general communication channels of ASF, including those through which ASF communicates internally and with third parties as part of its regular business;

b) are designed, established and operated in a manner that ensures the completeness, integrity and confidentiality of the information and prevents access by unauthorised employees of ASF;

c) allow for the durable storage of information, in accordance with the regulations issued by ASF, in order to allow further investigations. ASF shall keep the records referred to in this letter in a confidential and secure database.

(4) Secure communication methods allow reporting of possible or certain infringements in at least the following ways:

a) written reporting of infringements, in electronic or paper format;

b) oral reporting of infringements via telephone lines, whether recorded or unrecorded;

c) meeting with specialised employees of ASF, if applicable.

(5) ASF shall ensure that a report of a violation received by means other than the secure communication methods provided for in this Article is transmitted immediately, without modification, to the specialized employees of ASF using the secure communication methods.

(6) The process of handling by ASF of the reports submitted by persons complaining of violations of the provisions of this Emergency Ordinance shall be carried out in accordance with para. (2)-(5) and the regulations issued by ASF, with insurance:

a) the establishment of specific procedures for receiving reports of infringements and taking follow-up action;

b) an adequate level of protection for those employees of IMC, investment companies or UCITS depositories who report violations committed within those entities, at least with regard to acts of retaliation, discrimination and other unfair treatment;

c) the protection of personal data both with regard to the person reporting violations of this Emergency Ordinance and with regard to the natural person suspected of being guilty of a violation, in accordance with the provisions of Law no. 677/2001, as amended and supplemented;

d) confidentiality of the person reporting a breach, unless national law requires disclosure of his or her identity in the context of investigations or subsequent legal proceedings.

(7) The reporting by employees of IMC, investment companies or depositories, as referred to in para. (1) to (5) shall not be deemed to be a breach of any restriction on disclosure of information imposed by contract or by any legislative, regulatory or administrative instrument and shall not give rise to liability on the part of the person making the report.

Art. 200^2 - (1) ASF shall provide ESMA annually with aggregated information on all sanctions and measures applied in accordance with Art. 194-200 by 31 January of the following calendar year.

(2) Where ASF has informed the public of sanctions applied for non-compliance with this Emergency Ordinance, ASF shall simultaneously report those sanctions or measures to ESMA.

CHAPTER VIII

Transitional and final provisions

Art. 201 - (1) UCITS must replace their simplified prospectuses drawn up in accordance with the provisions of Law no. 297/2004 with the key investor information provided for in Art. 98, within 6 months of the entry into force of this emergency ordinance.

(2) CNVM shall continue to accept simplified prospectuses for UCITS authorised in other Member States which distribute their units in Romania until 1 July 2012.

(3) IMC, UCITS, depositories and branches of IMC in third countries which, at the date of entry into force of this Emergency Ordinance, have the authorization/approval of CNVM and operate in Romania, shall be deemed to have the authorization/approval, according to the provisions of this Emergency Ordinance.

(4) IMC, UCITS and depositories must adapt their establishment and operation documents to the provisions of this Emergency Ordinance within 12 months of its entry into force.

(5) The procedure for the examination of applications for authorisation/approval of a UCITS, IMC or depository by CNVM, for which no decisions have been issued by the date of entry into force of this Emergency Ordinance, shall cease automatically.

Art. 202. - "repealed"

Art. 202[1] - (1) The processing of personal data at the level of ASF shall be carried out exclusively for the purpose of performing the tasks of authorisation, supervision, investigation, cooperation with other public authorities and investor protection, in compliance with the provisions of this Emergency Ordinance and in accordance with the provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of individuals with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).

(2) Throughout this Emergency Ordinance, the phrase internal control department representative shall read compliance officer.

TITLE II

Amendment and completion of Law no. 297/2004 on the capital market

Art. 203 - Law no. 297/2004 on the capital market, published in the Official Gazette of Romania, Part I, no. 571 of 29 June 2004, with subsequent amendments and additions, is amended and supplemented as follows:

- In Art. 1, after para. (3) a new paragraph is inserted, para. (3^1), with the following content:

"**(3^1)** In the exercise of the duties set out in its statute, the Financial Supervisory Authority, hereinafter referred to as ASF, may be a provider of training, education and professional development, assessor of professional skills in the field of capital markets. ASF shall also automatically recognise diplomas, certificates and attestations issued by international bodies. "

1. In Art. 2 para. (1), two new points, points 1^1 and 1^2 , are inserted after point 1 with the following content:

"**1^1 .** delegated agent - a natural or legal person who, under the full and unconditional responsibility of a single financial investment services firm on whose behalf he acts, under a contract, promotes investment and/or related services to clients or potential clients, takes and transmits instructions or orders from clients relating to financial instruments or investment services, places financial instruments and/or provides advisory services to clients or potential clients relating to such instruments or services;

1^2 . professional client - a client who possesses the experience, knowledge and ability to make the investment decision and to assess the risks involved; to be considered professional, the client must fall within the categories mentioned in the regulations issued by CNVM and meet the criteria set out in the same regulations, in accordance with European standards;".

1^1 . In Art. 2 para. (1), after point 6, a new point 6^1 is inserted with the following content:

"**6^1 .** investment company - any legal person whose regular business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis as referred to in Art. 5 para. (1), including financial investment services firms as defined in Art. 6;".

2. In Art. 2 para. (1), after point 9, a new point 9^1 is inserted with the following content:

"**9^1 .** key information - fundamental and appropriately structured information that must be provided to investors to enable them to understand the nature and risks associated with the

issuer, guarantor and securities offered to them or admitted to trading on a regulated market and, without prejudice to Art. 184 para. (4)(b), to decide which offers of securities to consider. In relation to the offer and the securities concerned, the essential information shall include the following:

(i) a brief description of the risks associated with the issuer and any guarantors and their principal characteristics, including assets, liabilities and financial condition;

(ii) a brief description of the risks associated with and the essential characteristics of the investment in the securities concerned, including any rights attaching to such securities;

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

(iv) details of admission to trading;

(v) the reasons for the offer and the intended use of the proceeds of the offer;".

3. In Art. 2 para. (1), points 11, 12 and 15 are amended to read as follows:

"**11.** financial instruments means:

a) securities;

b) money market instruments;

c) units in collective investment undertakings;

d) options, futures, swaps, forward rate agreements, forward foreign exchange contracts and any other derivative contracts relating to securities, currencies, interest rates or yields or other derivatives, financial indices or financial indicators, which may be settled physically or in cash;

e) options, futures, swaps, interest rate (one rate) forwards and any other derivative contracts relating to commodities which are required to be settled in cash or may be settled in cash at the request of either party (other than in the event of default or other termination event);

(f) options, futures, swaps and other derivative contracts relating to commodities which can be physically settled, provided that they are traded on a regulated market and/or an alternative trading system;

g) options, futures, swaps, forwards and any other physically settled commodity derivative contracts, not falling under point (f) and having no commercial purpose, which have the characteristics of other derivatives, taking into account, inter alia, whether they are cleared and settled through recognised clearing houses or are subject to regular margin calls;

h) derivatives for the transfer of credit risk;

i) financial contracts for differences;

j) options, futures, swaps, forward rate agreements, forward rate agreements and any other derivative contracts relating to climatic variables, freight, emissions approvals or inflation rates or other official economic indicators, which are to be settled in cash or may be so settled at the request of either party (other than in the event of default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices or indicators, not included in this definition, which have the characteristics of other derivative financial instruments, taking into account, inter alia, whether they are traded on a regulated market or in alternative trading systems and are cleared and settled through recognised clearing houses or are subject to regular margin calls;

k) other financial instruments qualifying as such under European legislation;

12. financial derivatives - instruments as defined in point 11 (d) to (j);

.....

15. qualified investors - persons or entities which, according to the CNVM regulations:

a) fall into the category of professional customers;

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

4. In Art. 2 para. (1), after point 19, a new point 19^1 is inserted with the following content:

"**19^1.** independent dealer - an intermediary who in an organised, frequent and systematic manner enters into transactions for its own account by executing client orders outside regulated markets or alternative trading systems;"

5. In Art. 2 para. (1), after point 20, a new point 20^1 is inserted with the following content:

"**20^1.** qualifying holding - direct or indirect holding in an FISC of at least 10% of the share capital or voting rights or which makes it possible to exercise a significant influence over the management of the FISC in which that holding subsists. "

6. In Art. 2 para. (1), point 24 is deleted.

7. In Art. 2, a new paragraph 3^1 is inserted after para. (3), with the following content:

"**(3^1)** The acts of CNVM are enforceable. "

7^1. After para. (4) of Art. 2 a new paragraph is inserted, para. (4^1), with the following content:

"**(4^1)** ASF exercises supervisory, investigative and control powers, for which it may act in any of the following ways: directly, in collaboration with other market entities, with other authorities by referring the matter to the competent judicial bodies."

7^2. In Art. 2, the introductory part of para. 5 and point (a) are amended to read as follows:

"**(5)** For the purpose of exercising its supervisory, investigative and control powers, ASF may:

a) verify the manner in which the duties and legal and statutory obligations of directors, managers, executive directors and other persons in relation to the activity of regulated entities are fulfilled;"

8. Art. 2 para. (5)(c) is amended to read as follows:

"(**c)** request the competent court to order the convening of general meetings of shareholders if the provisions of (b) are not complied with. The court shall deal with such applications urgently and with priority. "

8^1. In Art. 2, para. (5), points (d) to (f) are amended to read as follows:

"**d)** request information and/or examine any documents, obtain copies, extracts and collect any documents of regulated entities, issuers or other entities carrying out activities or transactions relating to the capital market and financial instruments;

e) carry out inspections and/or controls at the premises of regulated entities and those carrying out activities or transactions relating to the capital market and financial instruments and to request, if necessary, the assistance of competent institutions/authorities/bodies in the exercise of this right;

f) hear any person and request information in relation to its activities on the capital market and/or in relation to requests for assistance made by authorities similar to ASF under international agreements to which ASF is a party. "

8^2. In Art. 2 para. (5), after f), nine new points g) to o) are inserted, with the following content:

"(**g)** seal any premises belonging to entities carrying out activities or transactions relating to the capital market in which documents or other records relating to their activities are kept, for the duration of the investigation and to the extent necessary;

h) order the necessary measures so that the entities carrying out activities or operations related to the capital market and financial instruments comply with the provisions of this law, the regulations of ASF and other regulatory acts related to the capital market;

i) request the cessation of any activity that is contrary to the provisions of this law, the regulations of ASF and other regulatory acts concerning the capital market;

j) prohibit the temporary pursuit of professional activity;

k) request information from auditors of entities carrying out activities or transactions in relation to capital markets and financial instruments;

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

m) refer the matter to the competent judicial bodies;

n) require regulated entities and those engaged in activities or transactions in relation to capital markets and financial instruments to allow verifications to be carried out by auditors or experts at their reasoned request;

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

9. In Art. 4, after para. (1) a new para. (1^1), with the following content is inserted:

"**(1^1)** FISC may delegate the following activities to delegated agents:

a) promotion of investment and/or related services;

b) taking and transmitting orders received from customers or potential customers;

c) the provision of investment advice in relation to financial instruments and investment and/or related services provided by the FISC"

10. Art. 4 para. (3) is amended to read as follows:

"**(3)** CNVM shall issue regulations on the authorisation and registration of financial investment services agents and delegated agents in the CNVM Register, as well as on their incompatibility situations, under the terms of the law. "

11. In Art. 5, para. (1) is amended to read as follows:

"**Art. 5 - (1)** The investment services and activities regulated by this law are:

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

b) execution of orders on behalf of clients;

c) proprietary trading;

d) portfolio management;

e) investment advice;

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

g) placement of financial instruments without a firm commitment;

h) administration of an alternative trading system. "

12. In Art. 5, after para. (1) a new paragraph is inserted, para. (1^1), with the following content:

"**(1^1)** Related services regulated by this Law are:

a) safekeeping and administration of financial instruments on behalf of clients, including custody and related services such as fund or collateral management;

b) granting of credit or loans to an investor to enable the investor to enter into a transaction in one or more financial instruments where the financial investment services firm granting the credit or loan is involved in the transaction;

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

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

e) investment research and financial analysis or other forms of general advice relating to transactions in financial instruments;

f) services in connection with the underwriting of financial instruments on a firm commitment basis;

g) investment services and activities referred to in para. (1) and related services of the kind referred to in points (a) to (f) relating to the underlying of derivatives included in Art. 2 para. (1) point (11) (e), (f), (g) and (j), if they relate to the provisions on investment and related services and activities."

13. In Art. 5, para. (2) is amended to read as follows:

"**(2)** CNVM shall issue regulations on the services and activities provided pursuant to the provisions of para. (1). "

14. In Art. 8 para. (1), points (c) and (h) are amended to read as follows:

"(**c)** the object of business is the provision of investment services and activities and the provision of related services, as the case may be, as referred to in Art. 6, which the company will provide;

[...]

h) the shareholders holding a qualifying holding in the FISC comply with the criteria laid down in the CNVM regulations on the rules of procedure and criteria applicable to the prudential assessment of acquisitions and increases of holdings in a financial investment services company;"

14^1 . In Art. 8, after para. (1) a new paragraph is inserted, para. (1^1), with the following content:

"**(1^1)** Persons who are members of the board of directors/supervisory board of an FISC may simultaneously be members of the board of directors or, as the case may be, of the supervisory board of no more than two other entities authorised by ASF".

15. In Art. 12, a new paragraph 4 is inserted after para. 3, with the following content:

"**(4)** FISCs, which have been authorised to provide only the investment services and activities referred to in Art. 5 para. (1) (d) and (e), may be authorised to manage UCITS as

'investment management companies', provided that they waive the authorisation obtained under Art. 8."

16. In Art. 24, para. (2) is amended to read as follows:

"**(2)** The creditors of an intermediary may not, under any circumstances, have recourse to the assets of investors, including in insolvency proceedings. An intermediary may not use a client's financial instruments for the purpose of carrying out transactions concluded for its own account or for the account of another client unless the client gives its prior written consent. A client's funds may be used for the purpose of carrying out transactions concluded for its own account only by credit institutions. "

17. In Art. 24, a new para. (3) is inserted after paragraph (2), with the following content:

"**(3)** Investors' assets shall be exempt from attachment proceedings if attachment proceedings have been initiated against the intermediary."

18. In Art. 37, point (a) is amended and shall read as follows:

"(**a)** in a Member State in accordance with Art. 38 and 39;".

19. After Art. 39, a new article is inserted, Art. 39^1 , with the following content:

"**Art. 39^1 - (1)** FISCs, Romanian legal entities, may carry out the activities provided for in the authorisation granted by CNVM on the territory of a non-member state only by setting up a branch. For the purposes of this law, all the offices established on the territory of a non-member State are considered as one branch.

(2) The establishment of a branch in a non-member state shall be subject to the prior approval of CNVM, in accordance with the regulations issued by CNVM.

(3) CNVM may reject the application for approval of the establishment of the branch if, on the basis of the information held and the documentation submitted by the FISC, a Romanian legal person, it considers that:

a) FISC does not have an adequate management or financial situation in relation to the activity proposed to be carried out through the branch;

b) the legislative framework existing in the non-member State and/or the way in which it is applied prevents CNVM from exercising its supervisory functions;

c) FISC records an inadequate evolution of the financial prudence indicators or does not meet other requirements established by this Law or by the regulations issued for its application.

(4) Any change in the elements that are considered when approving the establishment of the branch shall be subject to the prior approval of CNVM"

20. Articles 53 to 113 are repealed.

21. In Art. 114, para. (3) and (4) are deleted.

22. Art. 117 para. (2) is deleted.

23. Art. 119 para. (1) is deleted.

24. Art. 121 is repealed.

24^1 . In Art. 126 para. (1), points c) and e) are amended to read as follows:

"**c)** the shareholding structure, identity and integrity of shareholders who exercise significant influence over the members of the management board and the directors or, where applicable, the members of the supervisory board and the members of the management board;

.....

(e) the conditions of qualification, professional experience and reputation to be fulfilled, and the cases of incompatibility and conflict of interest to be avoided, by members of the administrative board and directors or, where applicable, members of the supervisory board and members of the management board, of the market operator;"

25. In Art. 129, para. (4) is amended to read as follows:

"**(4)** In the event of failure to comply with the shareholder integrity requirements or failure to obtain the approval of CNVM, the voting rights attached to shares held in breach of the provisions of para. (1) and (2) shall be suspended by operation of law and the procedure set out in Art. 283 shall apply."

25[1]. Art. 130 is amended and shall read as follows:

"**Art. 130 -** (**1)** The members of the board of directors or, as the case may be, the members of the supervisory board of the market operator shall be validated individually by ASF, before the beginning of their mandate.

(2) Executive management personnel, their spouses or relatives and relatives up to and including the second degree may not be shareholders, directors, auditors, employees, agents for financial investment services, representatives of the internal control department of an intermediary or persons involved with the intermediary.

(3) The members of the administrative board and the directors or, where applicable, the members of the supervisory board and the members of the management board of the market operator shall be obliged to notify the market operator in writing of the nature and extent of the interest or material relationship if:

a) is part of a contract concluded with the market operator;

b) is a member of the administrative board or, where applicable, a member of the supervisory board of a legal person which is party to a contract concluded with the market operator;

c) has close links or a material relationship with a person who is party to a contract with the market operator;

d) is in a position that could influence the adoption of a decision at meetings of the Management Board or, where applicable, the Supervisory Board.

(4) The conditions of qualification, professional experience and reputation to be met, respectively the cases of incompatibility and conflict of interest to be avoided by the members of the board of directors, managers or, as the case may be, the members of the supervisory board and the members of the management board shall be established by ASF regulations."

25[2] . In Art. 139, after para. (1) a new paragraph is inserted, para. (1^1), with the following content:

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

26. Art. 145 is amended and shall read as follows:

"**Art. 145 - (1)** The transfer of ownership of financial instruments, other than derivatives, shall take place, on the settlement date, within the clearing and settlement system, on a delivery versus payment basis.

(2) Purchased securities may be disposed of from the time of purchase in accordance with the rules of the market on which the securities are traded and the rules of the central depository."

26[1]. In Art. 146, paragraphs 1, 2, 5 and 7 are amended to read as follows:

"**Art. 146 - (1)** The central depository is the legal entity, established as a joint-stock company, issuing registered shares, in accordance with the provisions of Law no. 31/1990, republished, with subsequent amendments and additions, authorized and supervised by ASF, which carries out the depository operations of financial instruments, other than derivatives, as well as any operations related thereto.

(2) The central depository shall carry out clearing and settlement of transactions in financial instruments other than derivatives in accordance with Art. 143.

.....

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

.....

(7) The reporting referred to in para. (6) shall be made as follows:

(a) for a particular financial instrument, within 3 business days of the date of The central depository's request;

b) for all financial instruments, within 3 working days of 30 June and 31 December."

26^{2}. Art. 147 is amended and shall read as follows:

"**Art. 147 -** All classes of financial instruments, other than derivatives, traded on a regulated market or in an alternative trading system shall be deposited, on a mandatory basis, with the authorised central depository, in order to carry out transactions with financial instruments in a centralised manner and to ensure a uniform record of such transactions. "

26^{3}. In Art. 149, after para. (1) a new paragraph is inserted, para. (1^{1}), with the following content:

"**(1^{1})** The conditions of qualification, professional experience and reputation that must be met, respectively the cases of incompatibility and conflict of interest that must be avoided by the members of the board of directors, the managers or, as the case may be, the members of the supervisory board and the members of the management board are established by ASF regulations."

26^{4}. In Art. 151, paragraphs 1 to 3 are amended to read as follows:

"**Art. 151 - (1)** The accounts of financial instruments opened with the central depository of intermediaries shall be recorded in such a way as to ensure the separation of financial instruments held in their own name from those held on behalf of their clients.

(2) Participants in the clearing and settlement system shall be required to keep individualised sub-accounts of financial instruments held for the account of their clients and to record the holdings per client for each class of financial instruments in their own register on a daily basis.

(3) The central depository shall be directly responsible for ensuring that the quantity of financial instruments recorded in the securities accounts and the quantity of financial instruments issued are consistent on a daily basis."

27. In Art. 151, paragraphs 4 to 6 are amended to read as follows:

"**(4)** Financial guarantees and mortgages on financial instruments, other than derivatives, shall be established and executed in accordance with the regulations issued by ASF, in compliance with the legal provisions in force.

(5) Enforcement of financial guarantees on financial instruments, other than derivatives, of mortgages on financial instruments, other than derivatives, or, where applicable, enforcement initiated as a result of the institution of the attachment/seizure procedure on financial instruments, other than derivatives, shall be carried out in accordance with the regulations issued by ASF, in compliance with the legal provisions in force.

(6) The seizure of financial instruments which are subject to a mortgage or attachment/restriction may be carried out only if it has not been possible to settle the claim by selling the financial instruments through an intermediary, on a regulated market or in an alternative trading system. "

27^1 . In Art. 155, para. (1) is amended to read as follows:

"**Art. 155 - (1)** The financial instruments held in the accounts opened with the central depository shall not be considered as belonging to its assets and shall not be subject to any claim by the depository's creditors."

27^2. The title of Chapter V is amended as follows:

"**CHAPTER V**

Central counterparty and clearing house"

27^3. Art. 157 is amended and shall read as follows:

"Art. 157. - (1) A central counterparty is a legal person which interposes itself between the counterparties to contracts traded on one or more financial markets, thus becoming the buyer for each seller and the seller for each buyer.

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

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

(4) The derivatives clearing house shall act as central counterparty.

(5) The same entity may be authorised to act as a central counterparty for both derivative and non-derivative financial instruments."

27^4 . In Art. 159, para. 2 and 3 are amended to read as follows:

"**(2)** ASF shall regulate the establishment and operation of the clearing house and the central counterparty in order to ensure the safety of transactions in derivatives and non-derivative financial instruments in accordance with European rules.

(3) The provisions of Art. 148 and 149 shall apply accordingly to the clearing house and the CCP."

27^5. Art. 160 is repealed.

27^6. Art. 161 is amended and shall read as follows:

"**Art. 161 - (1)** Margins held on behalf of clearing members shall not be considered as belonging to the assets of the clearing house/central counterparty and shall not be subject to the claim or payment of creditors of the clearing house/central counterparty.

(2) The provisions of para. (1) shall also apply in the event of bankruptcy or administrative liquidation of the clearing house/central counterparty. "

27^7. Art. 162 is amended and shall read as follows:

"**Art. 162 -** (**1)** The regulations of the CCP shall be subject to the approval of ASF and shall at least relate to the requirements for CCPs under Regulation (EU) no. 648/2012, other relevant European Union rules and regulations issued by ASF

(2) The regulations of the central counterparty shall be subject to the approval of ASF in accordance with the regulations issued by ASF

(3) The CCP shall seek the prior approval of the National Bank of Romania for the securities settlement system and any changes to it. "

27[8]. Art. 167 is amended and shall read as follows:

"**Art. 167 -** When bankruptcy proceedings are initiated against the central counterparty/clearing house, the official receiver shall appoint the liquidator, in consultation with ASF".

28. Art. 168 is amended as follows:

"**Art. 168 - (1)** For the purposes of this Chapter:

(a) "institution" means an entity that participates in the clearing and settlement system and is obliged to execute financial obligations arising from transfer orders issued under that clearing and settlement system, as defined in Art. 2 para. (1) point 2 of Law no. 253/2004, as amended;

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

(c) indirect participant means an institution, a central counterparty, a settlement agent, a clearing house or a clearing system operator, which has a contractual relationship with a system participant executing transfer orders and under which the indirect participant may submit transfer orders in that system, provided that the indirect participant is known to the clearing system operator. For the prevention of systemic risk, an indirect participant may be considered as a participant, without this limiting the liability of the participant through which the indirect participant transmits transfer orders to that clearing system;

d) the operator of the clearing and settlement system is the entity or entities legally responsible for the operation of a clearing and settlement system. A clearing system operator may also act as a settlement agent, central counterparty or clearing house;

(e) interoperable clearing and settlement systems are two or more clearing and settlement systems whose system operators have entered into arrangements under which it is possible to execute transfer orders from one system to another;

(f) settlement agent is an entity which provides other participants in the clearing system with settlement accounts through which transfer orders in the system are settled and which may extend credit to those intermediaries and/or the central counterparty for settlement purposes;

(g) insolvency proceedings shall mean the proceedings referred to in Art. 2 para. (1) point 10 of Law no. 253/2004, as subsequently amended and supplemented.

(2) The provisions of this Chapter shall apply to the clearing and settlement system, as defined in para. (3), to all participants in the netting system and to all financial collateral security created as part of participation in a netting system.

(3) The clearing and settlement system is a system as defined in Art. 1 para. (2) point 1 of Law no. 253/2004, as amended and supplemented, authorized by CNVM or other competent authority of the Member States of the European Economic Area, as the case may be. An

agreement concluded between operators of interoperable clearing and settlement systems does not constitute a system. "

28[1]. In Art. 169, para. (1) is amended to read as follows:

"(1) The moment from which a transfer order is considered to be entered into the clearing and settlement system must be clearly specified by the rules of the clearing and settlement system. "

28[2]. In Art. 169, after para. (1) a new paragraph is inserted, paragraph (1^1), with the following content:

"**(1^1)** A transfer order entered into the system may not be revoked by a participant in the clearing and settlement system or by a third party after the time limit set by the rules of that system. "

29. In Art. 169, paragraphs (2), (3) and (4) are amended to read as follows:

"**(2)** Transfer orders and netting shall be valid, legally effective and enforceable against third parties even in the event of the opening of insolvency proceedings against a participant, provided that such transfer orders have been entered into the system prior to the opening of insolvency proceedings. This shall also apply in the event of the opening of insolvency proceedings against a participant in the relevant clearing and settlement system or an interoperable system or against the operator of an interoperable system which is not a participant, provided that those transfer orders were entered into the system prior to the opening of the insolvency proceedings.

(3) By way of exception, if transfer orders are entered into the system after the opening of insolvency proceedings and are executed on the day of the opening of insolvency proceedings, such transfer orders and netting shall be legally effective and enforceable against third parties, provided that the operator of the netting system can prove, after the time of settlement, that it did not know and was not required to know that insolvency proceedings had been opened.

(4) No legal norm, rule, provision or practice concerning the annulment of contracts and transactions concluded before the opening of insolvency proceedings may lead to the annulment of transfer orders, set-offs, payments and subsequent transfers referred to in para. (1) and (2). "

30. In Art. 169, a new paragraph (5) is inserted after para. (4), with the following content:

"**(5)** In the case of interoperable clearing and settlement systems, each system shall determine, in its own system rules, the time of entry of a transfer order into the system, so as to ensure, as far as possible, coordination in this respect of the rules of all interoperable systems concerned. The rules of a clearing and settlement system concerning the time of entry of transfer orders into the system shall not be affected by the rules of the other clearing and settlement systems with which it is interoperable, unless the rules of all interoperable clearing and settlement systems include express provisions to that effect. "

31. Art. 171 is amended and shall read as follows:

"**Art. 171 - (1)** Insolvency proceedings shall not have retroactive effect with respect to the rights and obligations of participants, rights and obligations arising out of and/or in connection with their participation in the clearing and settlement system, established before the time of the opening of such proceedings. This provision shall also apply in respect of the rights

and obligations of a participant in an interoperable securities clearing and settlement system or of the operator of an interoperable securities clearing and settlement system which is not a participant.

(2) After the opening of insolvency proceedings against a participant or an operator of an interoperable clearing and settlement system, the settlement agent may, on behalf and for the account of the participant, for the purpose of discharging obligations entered into in connection with participation in the system and concluded before the opening of insolvency proceedings, use:

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

b) financial guarantees intended to meet the obligations of the participant in relation to participation in the scheme.

(3) Financial collateral and deposits lodged in the clearing and settlement system or in an interoperable clearing and settlement system by a participant or by the operator of the clearing and settlement system against which insolvency proceedings have been opened shall not be affected by their opening. The remaining claims of the participant or of the operator of the securities clearing system after the performance of obligations incurred in connection with participation in the securities clearing system or in an interoperable securities clearing system prior to the opening of insolvency proceedings may be used in the insolvency proceedings.

(4) In the event of the opening of insolvency proceedings against a participant or the operator of the clearing system, financial instruments and/or funds held in the name and on behalf of the investors of the participant or the operator shall not be subject to the claim or payment of creditors of that participant or the operator of the clearing system. "

32. In Art. 175, para. (1) is amended to read as follows:

"**Art. 175 -** (**1)** The public offer announcement may be launched after the issuance of the decision of approval of the prospectus/offer document by CNVM and must be published in accordance with the applicable European regulations on the content and publication of prospectuses and on the dissemination of advertisements. "

33. In Art. 175 para (3)(a) is amended to read as follows:

"(**a)** it is published in at least one printed or online newspaper in accordance with the applicable European regulations on the content and publication of prospectuses and the dissemination of advertisements;".

34. In Art. 175, a new paragraph (3^1) is inserted after para. (3), with the following content:

"**(3^1)** The tenderer or the persons responsible for drawing up the prospectus who publish the prospectus in accordance with the arrangements provided for in para. (3)(a) or (b), shall also be required to publish the prospectus in electronic form in accordance with the arrangements provided for in point c). "

35. Art. 176 is amended and shall read as follows:

"**Art. 176 -** (**1)** The offer becomes binding on the date on which the announcement or, as the case may be, the prospectus/offer document is published, if the latter is published prior to the announcement, according to the applicable regulations.

(2) The prospectus or offering document must be available to the public after its approval by CNVM in the form and with the content in which it was approved. "

36. Art. 179 is amended and shall read as follows:

"**Art. 179 - (1)** Any material new fact or any material mistake or inaccuracy relating to the information contained in the prospectus which is likely to affect the assessment of the securities and which arises or is discovered between the time of approval of the prospectus and the time of the closing of the public offer or, as the case may be, of the commencement of trading on a regulated market, shall be mentioned in an amendment to the prospectus.

(2) This amendment shall be approved by CNVM within a maximum of 7 working days and shall be disclosed to the public at least under the same conditions as the initial prospectus, including by publication of a notice under the conditions provided for in Art. 175 para. (1).

(3) The summary and any translation thereof shall be amended or supplemented as necessary to take account of new information in the amendment. "

37. In Art. 183, paragraph (3) is amended to read as follows:

"**(3)** Notwithstanding the provisions of para. (1), the drawing up and publication of a prospectus shall not be compulsory in the following cases:

a) for the following types of offer:

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

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

3. other offers of securities specified by CNVM regulations, in accordance with the law;

b) for the following types of securities:

1. offered, allotted or to be allotted, on the occasion of a merger or a division, provided that a document is available containing information considered by CNVM as equivalent to that which the prospectus must include, taking into account the requirements of European legislation;

2. dividends paid to existing shareholders in the form of shares of the same class as those giving entitlement to such dividends, as long as a document containing information on the number and nature of the shares and the reasons for and characteristics of the offer is available;

c) in other cases specified by the regulations issued by CNVM, in accordance with the law. "

38. In Art. 184, paragraphs (2) and (3) are amended to read as follows:

"**(2)** The offer prospectus shall be valid for 12 months after its approval by CNVM and may be used for several issues of securities during this period, provided that it is updated in accordance with Art. 179.

(3) The prospectus shall also include a summary presenting, in a concise manner and in non-technical language, essential information in the language in which the prospectus was originally drawn up. The form and content of the summary of the prospectus shall provide, together with the prospectus, adequate information on the essential elements of the securities concerned to help investors decide whether to invest in such securities. "

39. In Art. 184, the introductory part of para. (4) is amended to read as follows:

"**(4)** The summary shall be drawn up in a common format to facilitate comparability with summaries relating to similar securities and shall include essential information about the securities concerned to help investors decide whether to invest in such securities. The summary must also contain a warning to potential investors that:".

40. In Art. 185, paragraphs (2) and (4) are amended to read as follows:

"**(2)** The issuer presentation sheet approved by CNVM shall be valid for a period not exceeding 12 months. The presentation sheet, updated in accordance with Art. 179 or Art. 185 par. (4), together with the securities note and the summary, shall be deemed to be a valid prospectus.

(4) In the situation referred to in para. (3), the securities note relating to the securities offered or proposed to be offered for trading on a regulated market shall also contain the information that would normally be included in the issuer's presentation document if a material change or new fact occurs which could affect the assessment of investors after the approval of the last updated version of the presentation document, unless such information is provided in an amendment pursuant to Art. 179. The Securities Note and the summary are submitted separately for approval by CNVM"

41. Art. 186 is amended as follows:

"**Art. 186 - (1)** Information may be incorporated in the prospectus by reference to one or more documents previously or simultaneously published and approved by CNVM or filed with CNVM in accordance with the provisions of Title V chap. I Sections 1 and 2 and Title VI Chap. II and V. This information shall be the most recent information available to the issuer.

(2) Where information according to the provisions of para. (1) is incorporated in the prospectus, a correlation table shall be drawn up to enable investors to identify such information.

(3) The summary of the prospectus may not contain information by reference to other documents as provided for in para. (1). "

42. Art. 187 is amended and shall read as follows:

"The prospectus shall contain information about the issuer and the securities which are offered to the public or admitted to trading on a regulated market. The minimum content of the information to be included in the prospectus, the form in which it is to be presented, depending on the type of securities being offered, and the documents that must accompany the prospectus shall be determined by the applicable European regulations on the content and publication of prospectuses and on the dissemination of advertisements or, where applicable, by CNVM regulations"

43. In Art. 189, paragraph (2) is amended to read as follows:

"**(2)** Where the prospectus relates to a public offer of securities, investors who have expressed their intention to subscribe for securities prior to the publication of an amendment to the offer prospectus shall have the right to withdraw their subscriptions made within two working days after the publication of that amendment, provided that the new factor, error or inaccuracy referred to in Art. 179 has occurred before the closing of the public offer and the transfer of securities. This period may be extended by the issuer or the offeror in accordance with the CNVM regulations The final date by which the right of withdrawal may be exercised must be specified in the amendment. "

43[1]. In Art. 189, after paragraph (2) a new paragraph is inserted, paragraph (3), with the following content:

"**(3)** The right of investors to withdraw subscriptions shall be exercised under the conditions and within the limits set out in the prospectus, the offeror having the option to determine that subscriptions may be withdrawn only in the circumstances referred to in para. (1) and/or para. (2), as the case may be. "

44. Art. 192 is amended and shall read as follows:

"**Art. 192 - (1)** The legal provisions on public offers for sale are not mandatory in the case of units issued by UCITS, as well as in other situations established by CNVM regulations.

(2) CNVM shall issue regulations on cross-border public offerings in accordance with the applicable European legislation. "

45. Art. 204 is amended and shall read as follows:

"**Art. 204 -** (**1)** The price in the mandatory takeover bid shall be at least equal to the highest price paid by the bidder or the persons with whom it acts in concert during the 12 months preceding the date of submission of the offer documentation to CNVM.

(2) The provisions of para. (1) shall not apply if the offeror or the persons with whom it acts in concert have not acquired shares of the company subject to the mandatory takeover bid in the 12 months preceding the date of submission of the offer documentation to CNVM or if CNVM, ex officio or following a referral in this respect, considers, with good reason, that the operations through which shares have been acquired are such as to influence the correctness of the pricing.

(3) Under the conditions of para. (2) and if the deadlines provided for in Art. 203 and Art. 205 respectively regarding the submission of the offer documentation to CNVM are respected, the price offered in the public takeover bid shall be at least equal to the highest price among the following values determined by an authorized valuator, according to the law, and appointed by the bidder:

a) the weighted average trading price for the last 12 months preceding the date of submission of the offer documentation to CNVM;

b) the value of the company's net assets divided by the number of shares outstanding as per the last audited financial statement;

c) the value of the shares resulting from an appraisal carried out in accordance with international valuation standards.

(4) If the time limits provided for in Art. 203 or, as the case may be, Art. 205 are not complied with and the offeror or the persons with whom he is acting in concert have not acquired shares in the company subject to the mandatory takeover bid within the 12 months preceding the date of submission of the offer documentation to CNVM or if CNVM, ex officio or as a result of a referral to this effect, is of the opinion, with good reason, that the operations by means of which shares have been acquired are such as to influence the correctness of the pricing, the price offered in the mandatory public takeover bid shall be at least equal to the highest price of the following values determined by a valuator authorised by law and appointed by the offeror, as follows:

a) the weighted average trading price for the last 12 months preceding the date of submission of the offer documentation to CNVM;

b) the weighted average trading price for the last 12 months preceding the date on which the position representing more than 33% of the voting rights was reached;

c) the highest price paid by the offeror or persons with whom it acts in concert in the 12 months preceding the date on which the position representing more than 33% of the voting rights was reached;

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

e) the value of the company's net assets divided by the number of shares outstanding, as per the last audited financial statement prior to the date on which the position representing more than 33% of the voting rights was reached;

f) the value of the shares resulting from an appraisal carried out in accordance with international valuation standards.

(5) Where the provisions of para. (2) and the deadlines provided for in Art. 203 or, as the case may be, Art. 205 are not met, the price offered in the mandatory takeover bid shall be at least equal to the highest of the following values:

a) the highest price paid by the bidder or by persons with whom the bidder is acting in concert during the 12 months preceding the date of submission of the bidding documents to CNVM;

b) the highest price paid by the offeror or persons with whom it acts in concert in the 12 months preceding the date on which the position representing more than 33% of the voting rights was reached;

c) the weighted average trading price for the last 12 months preceding the date of submission of the offer documentation to CNVM;

d) the weighted average trading price for the last 12 months preceding the date on which the position representing more than 33% of the voting rights was reached.

(6) If CNVM, ex officio or following a referral to this effect, considers, with reasons, that the price established by an authorized valuator, according to the law, in any of the situations specified in para. (4), is not such as to lead to the establishment of a fair price in the mandatory public takeover bid, CNVM may request the revaluation.

(7) The valuation report determining the price in mandatory takeover bids shall be made available to the shareholders of the issuing company under the same conditions as the offer document. "

46. In Art. 206, paragraph (1) is amended to read as follows:

"Art. 206 - (1) Following a takeover bid addressed to all shareholders and for all their holdings, the offeror shall have the right to require shareholders who have not subscribed in the bid to sell their shares to him at a fair price if he is in one of the following situations:

(a) holds shares representing not less than 95% of the total number of shares in the share capital carrying voting rights and not less than 95% of the voting rights which may actually be exercised;

(b) has acquired, in the context of the public offer to all shareholders and for all their holdings, shares representing at least 90% of the total number of shares in the share capital carrying voting rights and at least 90% of the voting rights targeted in the offer. "

47. In Art. 206, after paragraph (1) a new paragraph is inserted, paragraph (1^1), with the following content:

"**(1^1)** The tenderer may exercise the right provided for in para. (1) within 3 months of the closing date of the public bid. "

48. In Art. 206, paragraphs (3) and (4) are amended to read as follows:

"**(3)** The price offered in a voluntary takeover bid, where the offeror has acquired through subscriptions in the bid shares representing at least 90% of the total number of shares in the share capital carrying voting rights to which the bid relates, shall be deemed to be a fair price. In the case of a mandatory takeover bid, the price offered in the bid shall be deemed to be a fair price.

(4) Where the provisions of para. (3), the price shall be determined by an valuator authorised by law in accordance with international valuation standards. "

49. In Art. 206, after paragraph (4) a new paragraph is inserted, paragraph (4^1), with the following content:

"**(4^1)** If CNVM, of its own motion or following a referral in this respect, considers, with reasons, that the price established by an authorised valuer, in accordance with the law, pursuant to the provisions of para. (4), is not likely to lead to the establishment of a fair price, it may request the revaluation. "

50. In Art. 206, paragraph (5) is amended to read as follows:

"**(5)** The price determined in accordance with the provisions of para. (3) or (4) shall be made known to the public through the market on which it is traded, by publication in the Bulletin of CNVM, on the website of CNVM and in two financial newspapers of national circulation, within 5 days of the preparation of the report. "

51. In Art. 206, a new paragraph (6) is inserted after paragraph (5), with the following content:

"**(6)** The issuing company shall be removed from trading following the completion of the procedure for exercising the right provided for in para. (1). "

52. In Art. 207, paragraph (1) is amended to read as follows:

"**Art. 207 - (1)** Following a takeover bid addressed to all holders and for all their holdings, a minority shareholder shall have the right to request the offeror who is in one of the situations referred to in Art. 206 (1) to purchase his shares at a fair price in accordance with Art. 206 para. (3) and (4)."

53. In Art. 211 para. (2), point (a) is repealed.

54. In Art. 235, after paragraph (1) a new paragraph is inserted, paragraph (1^1), with the following content:

"**(1^1)** If the cumulative voting method election is not applied following a request made by a significant shareholder, the shareholder has the right to request in court the immediate convening of a general meeting of shareholders. "

55. In Art. 235, a new paragraph is inserted after paragraph (2), paragraph (2^1) with the following content:

"**(2^1)** The provisions of para. (1), (1^1) and (2) shall also apply accordingly to the election of the members of the supervisory board where the company admitted to trading on a regulated market is operated on a two-tier system. "

56. After Art. 240, a new article is inserted, Art. 240^1 , with the following content:

"**Art. 240^1 - (1)** Decisions of the general meeting, contrary to the law or the articles of incorporation, which have the effect of modifying the share capital of companies admitted to trading on a regulated market or in an alternative trading system may be challenged in court, within 15 days from the date of publication in the Official Gazette of Romania, Part IV, by any

of the shareholders who did not take part in the general meeting or who voted against it and requested that this be inserted in the minutes of the meeting.

(2) The actions for annulment referred to in para. (1) shall be dealt with by the courts, in chambers, as a matter of urgency and in the first instance, within a maximum period of 30 days from the date on which the application was lodged.

(3) Decisions given by the court may be appealed against within 15 days from the date of communication.

(4) The appeal shall be decided by the Courts of Appeal as a matter of urgency within 30 days from the date of registration of the case before the appellate court. "

57. Art. 243 is amended and shall read as follows:

"**Art. 243 -** (**1)** The board of directors or the management board, as the case may be, shall convene the general meeting within the period provided for in Art. 117 para. (2) of Law no. 31/1990, republished, as amended.

(2) The time limit laid down in paragraph 1 shall not be less than. (1) shall not apply to the second or subsequent convocation of a general meeting due to the failure of the quorum required for the meeting convened for the first time, provided that:

a) this Article has been complied with at the first convocation;

(b) no new points have been added to the agenda; and

c) at least 10 days must elapse between the final convocation and the date of the general meeting.

(3) The access of shareholders entitled to attend, on the reference date, the general meeting of shareholders is allowed by simply proving their identity, made, in the case of individual shareholders, with their identity card or, in the case of legal entities and represented individual shareholders, with the proxy given to the individual representing them, in compliance with the applicable legal provisions.

(4) The reference date shall be determined by the issuer and may not be earlier than 30 days before the date of the general meeting to which it applies.

(5) Preventing a shareholder who fulfils the conditions of the law from attending the general meeting of shareholders shall entitle any interested person to apply to the courts for the annulment of the decision of the general meeting of shareholders.

(6) Representation of the shareholders in the general meeting of shareholders may also be made by persons other than the shareholders on the basis of a special proxy. The provisions of Art. 125 para. (5) of Law no. 31/1990, republished, as subsequently amended and supplemented, are not applicable to companies whose shares are admitted to trading on a regulated market.

(7) Companies may allow their shareholders any form of participation in the general meeting by electronic means of data transmission.

(8) Shareholders may appoint and revoke their representative by electronic means of data transmission.

(9) Companies are required to establish procedures to give shareholders the opportunity to vote by correspondence before the general meeting. Where resolutions requiring a secret ballot are on the agenda of the general meeting of shareholders, the postal vote shall be cast by means which do not allow it to be revealed to anyone other than the members of the secretariat in charge of counting the secret votes cast and only when the other votes cast in secret by the

shareholders present or by the representatives of the shareholders attending the meeting are known. CNVM will issue regulations on this procedure.

(10) At least 30 days before the date of the general meeting of shareholders, the company shall make available to shareholders the documents or information concerning the points on the agenda on its website.

(11) The Board of Directors or the Management Board shall be obliged to convene a general meeting at the request of the shareholders specified in Art. 119 para. (1) of Law no. 31/1990, republished, as amended and supplemented, if the request contains provisions falling within the competence of the meeting, so that the meeting is held, at the first or second convocation, within 60 days at the latest from the date of the request. "

58. Art. 252 is amended and shall read as follows:

"**Art. 252 -** The prohibitions set out in this Title shall not apply to transactions in own shares under buy-back programmes or to transactions with the objective of stabilising a financial instrument which are executed in compliance with the applicable European regulations on buy-back programmes and stabilisation of financial instruments. "

59. Art. 271 is amended and shall read as follows:

"**Art. 271.-** The infringement of the provisions of this Law and of the regulations adopted for its application shall entail liability under the law. "

60. Art. 272 is amended as follows:

"(**1)** The following acts committed by:

a) FISC and/or by members of the board of directors or the supervisory board, directors or members of the management board, representatives of the internal control department, agents for financial investment services of the FISC and delegated agents, natural persons exercising de jure or de facto managerial functions or exercising in a professional capacity activities regulated by this law, as well as by the person or persons acting in concert who have decided to acquire a qualifying holding in a FISC or are shareholders of the FISC, as the case may be, in relation to:

1. failure to comply with the conditions for authorisation and the operating conditions laid down in Art. 3 para. (2) and (3), Art. 4 para. (1) and (2), Art. 6, Art. 8 para. (5), Art. 9, 14, 15, 16, Art. 18 para. (1), (2), (4), (5), (7) and (8) and Art. 20 para. (3);

2. failure to comply with the prudential rules laid down in Art. 23 para. (1) and (4), Art. 24 and 25;

3. failure to comply with the rules of conduct provided for in Art. 26 para. (1), Art. 27 and Art. 28 para. (1) and (7);

4. failure to comply with the provisions of Art. 37, Art. 38 para. (1) and (4), Art. 39 and 391 relating to cross-border operations of the FISC;

5. failure to comply with the provisions existing in their own regulations and/or those of the market operator/system/central depository/clearing house approved by ASF;

6. failure to comply with the regulations and measures issued by ASF regarding financial investment services;

7. the performance of activities and services referred to in Art. 5 para. (1) which exceed the scope of activity authorised by ASF;

b) credit institutions and/or by the heads of the organisational structure related to capital market operations, representatives of the internal control department and agents for financial

investment services and delegated agents of credit institutions, as well as by natural persons exercising de jure or de facto managerial functions or exercising in a professional capacity activities regulated by this Law, as the case may be, in relation to:

1. failure to comply with the requirement for registration in the ASF Register and the operating conditions provided for in Art. 3 para. (2) and (3), Art. 4 para. (1) and (2) and art. 16;

2. failure to comply with the prudential rules laid down in Art. 23(2). (1) and (4), Art. 24 and 25;

3. non-compliance with the rules of conduct provided for in Art. 26 para. (1), Art. 27 and Art. 28 para. (1) and (7);

4. failure to comply with the existing provisions in the regulations of the market operator/system/central depository/clearing house approved by ASF;

5. failure to comply with the regulations and measures issued by ASF regarding financial investment services;

6. carrying out activities and services referred to in Art. 5 para. (1) which exceed the scope of activity authorised by the National Bank of Romania;

c) intermediaries from other Member States, as well as by natural persons exercising de jure or de facto managerial functions or professional activities covered by this law, as the case may be, in connection with:

1. failure to comply with the requirement for registration in the ASF Register provided for in Art. 3 para. (2) for carrying out financial investment services and activities on the territory of Romania;

2. failure to comply with the provisions of Art. 41 para. (1) - (3), par. (5) and (6) and Art. 42 para. (2) relating to intermediaries from other Member States;

3. failure to comply with the existing provisions in the regulations of the market operator/system/central depository/clearing house approved by ASF;

4. failure to comply with the regulations and measures issued by ASF regarding financial investment services;

d) intermediaries from non-member States, as well as by natural persons exercising de jure or de facto managerial functions or professional activities regulated by this Law, as the case may be, in connection with:

1. failure to comply with the requirement for registration in the ASF Register provided for in Art. 3 para. (2) for carrying out financial investment services and activities on the territory of Romania;

2. failure to comply with the provisions of Art. 43 concerning intermediaries from non-member states;

3. failure to comply with the existing provisions in the regulations of the market operator/system/central depository/clearing house approved by ASF;

4. failure to comply with the regulations and measures issued by ASF regarding financial investment services;

e) traders, as well as by natural persons exercising de jure or de facto managerial functions or professional activities regulated by this Law, as the case may be, in connection with:

1. failure to comply with the requirement for registration in the ASF Register provided for in Art. 30 para. (1);

2. failure to comply with the provisions of Art. 31 relating to the consent of the market operator and compliance with the regulations of the regulated market concerned;

3. failure to comply with the provisions of Art. 32 relating to the clearing and settlement of trades made by traders;

4. failure to comply with the provisions of Art. 33 on prohibitions on traders;

5. failure to comply with the prudential rules and rules of conduct referred to in Art. 23 para. (1) and (4), Art. 24 para. (1) (d) and Art. 26 para. (1);

6. failure to comply with the existing provisions in the regulations of the market/system operator approved by ASF;

7. failure to comply with the regulations and measures issued by ASF regarding financial investment services;

f) investment advisors, as well as by natural persons exercising de jure or de facto managerial functions or professional activities regulated by this Law, as the case may be, in relation to:

1. failure to comply with the prohibitions laid down in Art. 35 para. (4);

2. failure to comply with the rules of conduct referred to in Art. 35 para. (5);

3. failure to comply with the regulations and measures issued by ASF regarding financial investment services;

g) entities authorised, regulated and supervised by ASF, issuers of securities and/or by members of the board of directors or the supervisory board, directors or members of the management board of the authorised, regulated and supervised entity or of the issuers of securities, natural persons exercising de jure or de facto managerial functions or exercising in a professional capacity activities regulated by this law or related to the activity of the entities authorised, regulated and supervised by ASF and/or of the issuers of securities, as well as by the entities which have the obligation to inform about the exceeding of the holding thresholds provided for in Art. 228 para. (1), as the case may be, in relation to:

1. violation of the provisions on public offers and operations of withdrawal of shareholders of a company provided for in Art. 173 para. (2), Art. 174 para. (2), Art. 175 para. (1), $(3)^1$) and (4), Art. 176, 177, Art. 178 para. (1)-(3), Art. 179, Art. 183 para. (1) and (2), Art. 184, Art. 185 para. (2) and (4), Art. 186 para. (1), Art. 187, Art. 190-192, Art. 193 para. (2) and (3), Art. 195 para. (1), Art. 196 para. (2) and (3), Art. 197, Art. 198 para. (1), Art. 199 para. (1), Art. 200, Art. 204 para. (7), Art. 206 para. (5) and Art. 208;

2. violation of the provisions on admission to trading of securities provided for in Art. 211 para. (1), Art. 212, 215, 216, Art. 217 para. (1), art. 219, art. 220 para. (1) to (3), Art. 221, 222 and Art. 223 para. (1);

3. violation of the obligations to report, to carry out operations and to comply with the conduct and conditions laid down in Articles 209, 210, 224 para. (1)-(5) and (8), Art. 225, Art. 226 para. (1)-(5) and (7), Art. 227, Art. 228 para. (1), (3) and (4), Art. 229-233, Art. 235 para. (1), Art. 236, 237, 239, Art. 240 para. (3), Art. 241 para. (1) and (2), Art. 242 and Art. 243 para. (1), (4) and (9) to (11);

4. conducting a public offer without the approval of ASF of the prospectus/offer document, as well as conducting without the approval of ASF of any activities or operations for which this law or ASF regulations require approval;

5. failure to comply with the conditions laid down in the ASF's decision approving the prospectus/offer document, amendments thereto, as well as the preliminary announcement/announcement or advertising materials relating to a public offer;

6. failure to comply with the obligation laid down in Art. 146 para. (4) concerning the conclusion of contracts with the central depository;

7. non-compliance with regulations and measures issued by ASF regarding issuers and market operations;

h) market/system operators, managers or members of the supervisory board, directors or members of the management board of market/system operators, by natural persons exercising de jure or de facto managerial functions or professional activities covered by this law, as well as by persons acquiring shares leading to a direct holding, or together with persons with whom they act in concert, of 20% or more of the voting rights covered by this law, as the case may be, in relation to:

1. failure to comply with the conditions for authorisation and the conditions for the operation of market operators provided for in Art. 126 para. (2) and (3), Art. 129, 130, 131 and 133;

2. failure to comply with the provisions on regulations issued by market operators referred to in Art. 134 para. (1) and (2), Art. 141 and 249;

3. failure to comply with the existing provisions in the regulations of the market/system operator approved by ASF;

4. failure to comply with the provisions on the supervision of regulated markets laid down in Art. 135 para. (2);

5. non-compliance with the obligations stipulated in Art. 136 para. (1) and (2) concerning the provision of data, information and documents, respectively the amendment of own regulations;

6. non-compliance with the provisions on alternative trading systems provided for in Art. 140;

7. unjustifiably not granting access to intermediaries from Member States in accordance with Art. 42 para. (1);

8. non-compliance with the regulations issued by ASF on regulated markets and alternative trading systems;

i) a self-managed IMC, a self-managed AIF or a depository and/or by members of the board of directors or the supervisory board, directors or members of the management board and representatives of the internal control department of a self-managed IMC or AIF, as well as by natural persons exercising de jure or de facto managerial functions or professional activities regulated by this law, as the case may be, in connection with:

1. violation of the conditions for the establishment, registration with ASF and operation of AIF provided for in Art. 115 para. (1) and (4), Art. 117 para. (1), Art. 118, Art. 119 para. (2), Art. 120 para. (1), (3) and (4) and Art. 286 para. (1)-(3);

2. failure to comply with the provisions of the internal rules of the self-managed closed-ended investment company, the rules of the closed-ended investment company's fund/incorporation and/or the prospectus of the AIF;

3. failure to comply with the regulations and measures issued by ASF regarding the activity of investment management companies, ASF authorised/approved investment undertakings and their depositories;

j) central depositories, clearing houses, central counterparties, intermediaries and/or by members of the administrative board or the supervisory board, directors or members of the management board, as well as by natural persons exercising de jure or de facto managerial functions within the aforementioned entities or by other persons responsible, as the case may be, for:

1. failure to comply with the conditions for authorisation and the operating conditions referred to in Art. 148 para. (1) and (2) and Art. 159 para. (2) and (3);

2. the refusal to provide ASF with the information requested, pursuant to Art. 144 para. (2), relating to the clearing and settlement of transactions;

3. refusal to provide issuers with the information necessary for the exercise of rights in respect of securities deposited in accordance with Art. 146 (4) and (5);

4. refusal to report to the central depository the holders of individualised sub-accounts held by intermediaries in accordance with Art. 146 para. (6);

5. failure of intermediaries to comply with the reporting obligations within the time limits laid down in Art. 146 para. (7);

6. failure to comply with the obligations regarding the recording of securities and the charges on securities provided for in Art. 151;

7. the refusal to carry out the requests of ASF referred to in Art. 153 para. (2) and art. 154;

8. failure by the responsible persons to comply with the obligations relating to the acquisition, holding and disposal of the shares of the central depository under Art. 150;

9. failure of the responsible persons to comply with the obligations regarding the acquisition, holding and disposal of clearing house/central counterparty shares in accordance with the rules of the European Union and the regulations issued by ASF;

10. the use of margins for purposes other than those specified in the regulations referred to in Art. 158;

11. failure of the clearing house and/or the CCP to comply with the obligations laid down in Articles 163 and 164;

12. the refusal to comply with the requests of ASF referred to in Art. 153 para. (2) and Articles 165 and 166;

13. failure to comply with the provisions on the establishment and enforcement of financial guarantees and mortgages provided for in Art. 151 para. (4) - (6);

14. failure to comply with the existing provisions in the regulations of the market/system operator approved by ASF;

15. failure to comply with the provisions of the regulations of the central depository/clearing house approved by ASF;

16. unjustifiably not granting access to intermediaries from Member States in accordance with Art. 42 para. (1);

17. failure to comply with the regulations and measures issued by ASF regarding the central depository, clearing houses and central counterparties;

k) the persons responsible on behalf of the Investor Compensation Fund for:

1. failure to comply with the obligations to make compensation payments in accordance with Art. 47 and to publish the information referred to in Art. 48;

2. non-compliance with the Investor Compensation Fund regulations approved by ASF;

3. failure to comply with the regulations and measures issued by ASF regarding the Investor Compensation Fund.

(2) The following offences shall constitute offences:

(a) failure to comply with the measures laid down in the authorisation, supervision, regulation and control acts or following their implementation;

b) failure to comply with the provisions on the preparation of financial statements and their audit, as provided for in Art. 258 para. (1);

c) violation of the provisions of Articles 245-248 on market abuse;

d) failure to comply with the reporting and conduct obligations laid down in Art. 250;

(e) unauthorised use of the terms investment services and activities, financial investment services firm, financial investment services agent, regulated market and stock exchange associated with any of the financial instruments defined in Art. para. (1)(11), or any combination thereof;

f) failure to comply with the obligations laid down in Art. 286^1 ;

g) unlawful hindering of the exercise of the rights conferred by law to ASF, as well as the unjustified refusal of any person to respond to the requests of ASF in the exercise of its powers under the law;

h) failure to comply with the regulations and measures issued by ASF in the field of preventing and combating money laundering and financing of terrorist acts through the capital market;

i) non-implementation of international capital market sanctions;

j) failure to comply with the regulations and measures issued by ASF regarding training, education and professional development, respectively the automatic equivalence of diplomas, certificates and attestations issued by international bodies;

k) non-compliance by the competent statutory body with the obligations provided for in Art. 283 para. (1);

l) non-compliance with the provisions of Title II of Regulation (EU) no. 648/2012."

61. In Art. 273, (a) and (b) of paragraph 1 and the introductory part of paragraph 3 are amended to read as follows:

"**(a)** in the case of the offences referred to in Art. 272 para. (1) (a) to (f), (g) (4), (5) and (7), (h), (i), (j), (1) to (9) and (11) to (17), (k) (2) and (3), and para. (2) (e), (h), (i) and (k):

(i) with a warning or a fine from 1,000 lei to 50,000 lei for natural persons;

(ii) with a warning or a fine of 0.1% to 5% of the net turnover in the financial year preceding the sanction, depending on the seriousness of the offence committed, for legal persons;

(b) in the case of the offences referred to in Art. 272 para. (1), (g) 1, 2, 3 and 6, j) 10), k) 1, para. (2) a), b), d), f), g) and j):

(i) with a fine from 10,000 lei to 100,000 lei for natural persons;

(ii) a fine of 0.1% to 10% of the net turnover in the financial year preceding the sanction, depending on the seriousness of the offence committed, for legal persons.

.....

(3) As an exception to the provisions of Art. 8 of Government Ordinance no. 2/2001, in the case of a legal entity that has registered a turnover of less than 15 million lei or has not registered a turnover in the year preceding the sanction, as well as in the case of a legal entity whose turnover is not accessible to ASF, it shall be sanctioned with:"

61[1]. In Art. 273, after para. (4), two new paragraphs are inserted, paragraphs (5) and (6), with the following content:

"**(5)** In the case of credit institution intermediaries, the amount of the fines referred to in para. (1)(a)(ii) and (b)(ii) shall be determined by applying the respective percentages to the net turnover from capital market activities only, in the financial year preceding the sanction, taking into account the provisions of para. (3).

(6) In the case of credit institutions carrying out the activity of depository for collective investment undertakings authorised/approved by ASF, the amount of the fines referred to in para. (1) letter a) point (ii) shall be determined by applying the respective percentages to the net turnover achieved from warehousing activity, taking into account the provisions of para. (3)."

62. Articles 273^1 and 273^2 are amended as follows:

"**Art. 273[1] -** The performance without authorisation of any activities or operations for which authorisation is required by this Law shall constitute a criminal offence and shall be punishable under criminal law, with the exception of the investment activities and services referred to in Art. 5 para. (1) carried out by FISC and credit institutions, in which case the provisions of Art. 273 par. (1) letter a).

Art. 273[2] - (1) Failure to comply with the obligations provided for in Art. 203 concerning the initiation, within the period provided for by law, of a mandatory takeover bid shall constitute an offence and shall be sanctioned as follows:

(i) for natural persons:

a) a warning or a fine from 1,000 lei to 25,000 lei, if the legal deadline for launching the tender has been exceeded by 30 days at most;

b) a fine from 25,001 lei to 50,000 lei, if the legal deadline has been exceeded by 60 days or less;

c) by exception to the provisions of Art. 8 of Government Ordinance no. 2/2001, a fine from 50,001 lei to 500,000 lei, if the legal deadline has been exceeded by more than 60 days;

(ii) for legal persons:

a) a warning or a fine of 0.1% to 1% of the net turnover achieved in the financial year preceding the sanction, if the legal deadline has been exceeded by no more than 30 days, but not less than 10,000 lei;

b) a fine from 0.1% to 5% of the net turnover achieved in the financial year preceding the sanction, if the legal deadline has been exceeded by no more than 60 days, but not less than 25,000 lei;

c) a fine of 0.1% to 10% of the net turnover achieved in the financial year preceding the sanction, if the legal deadline has been exceeded by more than 60 days, but not less than 50,000 lei.

(2) Failure to comply with the provisions on the prohibition to acquire shares provided for in Art. 203 para. (2) and (4) shall constitute a contravention and shall be penalised as follows:

(i) for natural persons, a warning or a fine from 10,000 lei to 500,000 lei;

(ii) for legal persons, a warning or a fine of 0.1% to 10% of the net turnover in the financial year preceding the sanction.

(3) If the turnover achieved in the financial year preceding the sanction is not available at the date of the sanction, the turnover achieved in the financial year in which the legal person achieved turnover, immediately preceding the reference year, shall be taken into account. Reference year means the year preceding the sanction.

(4) As an exception to the provisions of Art. 8 of Government Ordinance no. 2/2001, in the case of a newly established legal person which has not registered a turnover in the year preceding the sanction or in the case of a legal person whose turnover is not accessible to ASF and which does not comply with the obligations provided for in para. (1), it shall be sanctioned with:

a) a fine from 5,000 lei to 500,000 lei, if the legal deadline has been exceeded by no more than 30 days;

b) a fine from 10,000 lei to 1,000,000 lei, if the legal deadline has been exceeded by 60 days or less;

c) a fine from 15,000 lei to 2,500,000 lei, if the legal deadline has been exceeded by more than 60 days.

(5) As an exception to the provisions of Art. 8 of Government Ordinance no. 2/2001, in the case of a newly established legal person which has not registered a turnover in the year preceding the sanction or in the case of a legal person whose turnover is not accessible to ASF and which does not comply with the obligations provided for in para. (2), shall be sanctioned with a fine from 5,000 lei to 2,500,000 lei.

(6) The provisions of para. (1), (3) and (4) shall also apply accordingly in the event of failure to fulfil the obligations laid down in Art. 205 para. (3)-(5). "

63. Art. 274 is amended and shall read as follows:

"**Art. 274 - (1)** CNVM shall establish the offences referred to in Articles 272 and 273^2

(2) CNVM may delegate the detection of offences to agents empowered to exercise powers regarding the supervision, investigation and control of compliance with the legal provisions and regulations applicable to the capital market.

(3) Upon receipt of the verification documents resulting from the authorisation, supervision or control activity, in case an infringement is found, CNVM shall order the application of the sanctions provided for in art. 273 or 273^2 . Furthermore, by individual acts, CNVM may order the extension of investigations, the taking of precautionary measures and/or the hearing of the persons concerned by the verification acts.

(4) CNVM may make public any measure or sanction imposed for non-compliance with the provisions of this Law and the regulations adopted in application thereof. "

64. In Art. 275, para. 2 is deleted.

65. Articles 276 and 277 are repealed.

66. Art. 278 is amended as follows:

"Art. 278 - (1) With regard to the procedure for establishing and ascertaining contraventions, as well as for the application of sanctions, the provisions of this law derogate from the provisions of Government Ordinance no. 2/2001.

(2) By way of derogation from the provisions of Art. 13 of Government Ordinance no. 2/2001, the limitation period for the establishment, application and enforcement of the contravention sanction is 3 years from the date of the offence.

(3) In the case of continuous contraventions, the limitation period of 3 years shall run from the date on which the offence is established. "

67. Art. 279 is amended and shall read as follows:

"**Art. 279 - (1)** The intentional commission of the acts referred to in Art. 237 para. (3) and Art. 245-248 shall constitute an offence and shall be punishable by imprisonment for a term of six months to five years or by a fine.

(2) It shall be an offence and punishable by imprisonment for a term of 6 months to 5 years or a fine for unauthorised persons to access electronic trading, warehousing or clearing and settlement systems with intent. "

67[1]. A new article is inserted after Art. 279, Art. 279^1 , with the following content:

"**Art. 279^1 . -** Theft of clients' financial instruments and/or of the related funds is a criminal offence and shall be punished in accordance with the provisions of the Criminal Code."

68. Art. 280 is repealed.

68[1]. After Art. 286^2 a new artcile is inserted, Art. 286^3 , with the following content:

"**Art. 286^3 - (1)** The quorum and majority voting requirements for the holding of general meetings of AIF shareholders and the adoption of resolutions shall be those laid down in Art. 115 para. (1) and (2) of Law no. 31/1990, republished, as amended and supplemented.

(2) Notwithstanding the provisions of Law no. 31/1990, republished, with subsequent amendments and additions, the amendments to be made to the articles of incorporation of the AIF, exclusively for the purposes of their compliance with the provisions of para. (1), shall be registered with the Trade Register Office, based on the decision of the board of directors/supervisory board of the AIF or of the IMC managing an AIF, as the case may be, after obtaining the authorisation from ASF".

69. In Art. 288, after para. (4) a new paragraph is inserted, paragraph (4^1), with the following content:

"**(4^1)** CNVM shall cooperate with the European Securities and Markets Authority and the European Systemic Risk Board and shall provide them without delay with all the information necessary for the performance of their tasks. "

TITLE III

Transitional and final provisions

Art. 204 - (1) Art. 175 para. (3^1), art. 179, art. 184 para. (2), (3) and (4), art. 185 para. (2) and (4), art. 186, art. 189 para. (2) and art. 204 of Law No 297/2004 on the capital market, as amended and supplemented by this Emergency Ordinance, shall apply to public offers whose prospectus/offer document is approved after the entry into force of this Emergency Ordinance.

(2) Art. 183 para. (3) of Law no. 297/2004, as amended by this Emergency Ordinance, shall apply to public offers initiated after the entry into force of this Emergency Ordinance.

Art. 205 - Throughout the Law no. 297/2004, as amended, the term "financial investment services" is replaced by the term "investment services and activities" and the term "insolvency" is replaced by the term "insolvency".

Art. 206 - The provisions on contraventions are supplemented by the provisions of Government Ordinance no. 2/2001 on the legal regime of contraventions, approved with amendments and additions by Law no. 180/2002, with subsequent amendments and additions.

Art. 207 - This Emergency Ordinance shall enter into force within 10 days from the date of publication in the Official Gazette of Romania, Part I**.**

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This emergency ordinance transposes:

1. Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), published in the Official Journal of the European Union no. L 302 of 17 November 2009;

2. Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business rules, risk management and content of the agreement between the depository and the management company, published in the Official Journal of the European Union no. L 176 of 10 July 2010, as amended and supplemented by Commission Delegated Directive (EU) 2021/1.270 of 21 April 2021 amending Directive 2010/43/EU as regards sustainability risks and sustainability factors to be taken into account by undertakings for collective investment in transferable securities (UCITS).

3. Commission Directive 2010/44/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions relating to fund mergers, master-feeder structures and notification procedure, published in the Official Journal of the European Union no. L 176 of 10 July 2010;

4. the provisions of Art. 15 para. (4) and Art. 16 para. (3) of Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids, published in the Official Journal of the European Union no. L 142 of 30 April 2004;

5. the provisions of Art. 4 para. (1) 2, 3, 7, 17, 25 şi 27, art. 13 para. 7, art. 23 para. 1 and para, 3 subpara. (1), Art. 50 and Annex I of 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, published in the Official Journal of the European Union no. L 145 of 30 April 2004;

6. the provisions of Art. 5 para. (1) first and third subparagraphs and para. (4) introductory part, Art. 7 para. (3) third sentence, Art. 8 para. (1) introductory part, Art. 10 para. (1), Art. 11 para. (1), first sentence and para. (3), art. 12 first thesis and art. 15 second paragraph of Art. 15 of Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, published in the Official Journal of the European Union no. L 184 of 14 July 2007;

7. the provisions of Art. 3 para. (1) of Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Council Directive 92/49/EEC and Directives

2002/83/EC, 2004/39/EC, 2005/68/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector, published in the Official Journal of the European Union no. L 247 of 21 September 2007;

8. the provisions of Art. 1, 2 a), 3 a) (i), 4 a) (i), 5 a) (i), 9, 11 a), 12, 14 a) and 16 of Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, published in the Official Journal of the European Union no. L 327 of 11 December 2010;

9. the provisions of Art. 6 para. (8) and Art. 11 of Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/CE, 2003/6/CE, 2003/41/CE, 2003/71/CE, 2004/39/CE, 2004/109/CE, 2005/60/CE, 2006/48/CE, 2006/49/CE şi 2009/65/CE in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), published in the Official Journal of the European Union no. L 331 of 15 December 2010.

10. Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depository functions, remuneration policies and sanctions.

11. Directive (EU) 2019/1.160 of the European Parliament and of the Council of 20 June 2019 amending Directives 2009/65/EC and 2011/61/EU as regards the cross-border distribution of collective investment undertakings, published in the Official Journal of the European Union (OJEU), L 188 of 12 July 2019;

12. Art. 60 of Directive (EU) 2019/2.034 of the European Parliament and of the Council of 27 November 2019 on the prudential supervision of investment companies and amending Directives 2002/87/CE, 2009/65/CE, 2011/61/UE, 2013/36/UE, 2014/59/UE şi 2014/65/UE, published in the Official Journal of the European Union (OJEU), Series L, no. 314 of 5 December 2019.

PRIME MINISTER
VICTOR-VIOREL PONTA
Countersigns:
Deputy Prime Minister, Minister of Public Finance,
Florin Georgescu
President of the National Securities Commission (Comisia Naţională a Valorilor Mobiliare- CNVM),
Gabriela Victoria Anghelache
Minister for European Affairs,
Leonard Orban

Bucharest, 27 June 2012.
No. 32.