

## **DECREE**

**244**

of 24 July 2013

### **on More Detailed Regulation of Some Rules Set Out by the Act on Management Companies and Investment Funds**

The Czech National Bank stipulates pursuant to Article 20(5), Article 22(6), Article 30(5), Article 47(5), Article 49(4), Article 58(3), Article 196(2), Article 234(6), Article 238(4), Article 291(3), Article 389(3), Article 405(3), Article 478 and Article 638(3) of Act No. 240/2013 Coll., on Management Companies and Investment Funds:

#### **PART ONE**

#### **GENERAL PROVISIONS**

##### **Article 1**

##### **Subject of Regulation**

This Decree implements the relevant regulations of the European Union<sup>1)</sup>, simultaneously relating to the directly applicable regulations of the European Union<sup>2)</sup>, and stipulates in more detail

- a) requirements for the qualitative criteria for the management and control system of the manager and administrator of an investment fund or of a foreign investment fund, to the extent not regulated in the directly applicable regulation of the European Union that implements the directive of the European Parliament and of the Council framing the activities of managers of alternative investment funds<sup>2)</sup>, pursuant to Article 20(5) and Article 47(5) of the Act on Management Companies and Investment Funds (hereinafter the “Act”);
- b) procedures for determining the fair value of the assets and liabilities of an investment fund pursuant to Article 196(2) of the Act;

---

<sup>1)</sup> Article 43(3), Article 51(1), Article 69(3) and (4), and Schedule B of Annex I to 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 transferrable securities (UCITS) (recast), as amended by Directives 2010/78/EU, 2010/83/EU, 2011/61/EU and 2013/14/EU of the European Parliament and of the Council.

Articles 3 to 29 and Articles 38 to 40 of Commission Directive 2010/43/EU of 1 July 2010 implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organizational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depository and a management company.

Articles 3 to 7 of 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 concerning fund mergers, master-feeder structures and notification procedure.

Article 13, Article 14, Article 15(1) to (3), Article 16 and Annex II to Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010, as amended by Directive 2013/14/EU of the European Parliament and of the Council.

<sup>2)</sup> Commission Regulation (EU) No. 231/2013 of 19 December 2012 supplementing Directive 2011/61/EU of the European Parliament and of the Council with regard to exemptions, general operating conditions, depositories, leverage, transparency and supervision.

- c) requirements for the qualitative criteria for the procedures, rules, principles and duties within the scope of the rules for the conduct of business by the manager and administrator of an investment fund or of a foreign investment fund, to the extent not regulated in the directly applicable legal regulation of the European Union that implements the directive of the European Parliament and of the Council framing the activities of managers of alternative investment funds<sup>2)</sup>, pursuant to Article 22(6) and Article 49(4) of the Act;
- d) requirements for the contents, provision and disclosure of certain documents pursuant to Article 234(6), Article 238(4), Article 291(3), Article 389(3), Article 405(3), Article 478 and Article 638(3) of the Act; and
- e) rules for determining the amount of capital pursuant to Article 30(5) and Article 58(3) of the Act.

## Article 2

### Definition of Terms

For the purposes of this Decree, the following definitions shall apply:

- a) *identification data* means
  1. the first name(s), surname, date of birth, birth number (if assigned), residence address or, as the case may be, registered office address (if different from the residence address) and identification number (if assigned), provided that a natural person is concerned; and
  2. the firm or corporate name, registered office address and identification number (if assigned), provided that a legal entity is concerned;
- b) *information system* means a functional whole that is to ensure the obtaining, processing, transmission, sharing and storing of information in any form;
- c) *control body* means the supervisory board, the control committee, the board of directors in exercising the control competence or another body with similar control competence, depending on the legal form of the legal entity concerned;
- d) *organizational department* means a group of persons or person that has been entrusted with the performance of a certain activity of the manager or administrator of an investment fund or of a foreign investment fund, including any body or committee of this manager or administrator (if set up);
- e) *operational risk* means the risk of loss resulting from inadequacies or failures of internal processes, the human factor or systems of the manager or administrator of an investment fund or of a foreign investment fund, or resulting from the external environment, including the legal risk and documentation risk and the risk resulting from inadequacies or failures of the rules for the trading, settlement and procedures for the valuation of the assets and liabilities of an investment fund or of a foreign investment fund;
- f) *concentration risk* means the risk of loss resulting from a significant concentration of exposures, particularly with respect to a single entity or a single group of economically related entities<sup>3)</sup>, or with respect to a group of entities where the probability of their default depends on a common risk factor, in particular an identical type of industry (or a part thereof), geographical area, part of the financial market, type of positions or issuer of a security;
- g) *liquidity risk* means the risk of loss of the ability to meet financial obligations at the time of their maturity, including the risk that it might be impossible to sell or compensate a position in the assets of an investment fund or of a foreign investment fund with limited

---

<sup>3)</sup> Article 2(1)(d) of Decree No. 123/2007 Coll., on Prudential Rules for Banks, Credit Unions and Investment Firms, as amended.

expenses and within a reasonably short period of time, which might thus jeopardize the ability of an investment fund or of a foreign investment fund to repurchase unit certificates or investment shares or comparable securities or dematerialized securities issued by a foreign investment fund;

- h) *counterparty risk* means the risk of loss resulting from the fact that the counterparty to a transaction might fail to meet its obligations prior to the final settlement of this transaction;
- i) *management body* means the statutory body, the board of directors in exercising the management competence or another body with similar management competence, depending on the legal form of the legal entity concerned;
- j) *market risk* means the risk of loss resulting from changes in market prices, interest rates and currency exchange rates, including the risk resulting from fluctuations of the market value of positions in the assets of an investment fund or of a foreign investment fund caused by changes in market variables, particularly in interest rates, currency exchange rates, market prices of participating securities and commodities or in the creditworthiness of the issuer of an investment instrument; and
- k) *recognized standard* means recognized and time-tested principles and procedures applied in the performance of activities on the financial market, particularly recommendations issued by the European Securities and Markets Authority (ESMA), by the European Commission or by the International Organization of Securities Commissions (IOSCO).

## **PART TWO**

### **MANAGEMENT AND CONTROL SYSTEM OF THE MANAGER AND ADMINISTRATOR OF AN INVESTMENT FUND OR OF A FOREIGN INVESTMENT FUND**

#### **CHAPTER I**

### **MANAGEMENT AND CONTROL SYSTEM OF THE MANAGER AND ADMINISTRATOR OF A STANDARD FUND OR OF A FOREIGN STANDARD FUND**

#### **Part 1**

#### **General Requirements**

##### Article 3

#### **Basic Requirements for the Management and Control System**

[Re: Article 20(1)(a) and Article 47(1)(a) of the Act]

(1) The manager and administrator of a standard fund or of a foreign investment fund comparable with a standard fund (hereinafter a “foreign standard fund”) shall ensure that the requirements stipulated for the management and control system and the procedures of this manager and administrator for their fulfilment and in the performance of other activities shall be reflected in the organizational rules and in other internal regulations of this manager and administrator and within the regulated consolidated group<sup>4)</sup>. The manager and administrator of a standard fund or of a foreign standard fund shall stipulate the procedure to be followed in adopting, amending, implementing and applying internal regulations.

(2) The manager and administrator of a standard fund or of a foreign standard fund shall reflect in its internal regulations the general guidelines of the European Securities and

---

<sup>4)</sup> Article 5 of Decree No. 123/2007 Coll.

Markets Authority and the recognized standards selected by this manager and administrator, unless their specific provisions would contradict the requirements of legal regulations. The manager and administrator shall regularly verify whether the internal regulations and the recognized standards selected by it are still up-to-date and appropriate to the nature, scope and complexity of the activities performed.

(3) The manager and administrator of a standard fund or of a foreign standard fund shall ensure that all approval and decision-making processes and control activities, including the related internal regulations, are possible to reconstruct. Compliance with this requirement shall also be ensured with the assistance of an information storing system that the manager and administrator of a standard fund or of a foreign standard fund shall implement, maintain and apply as part of its information system.

#### Article 4

##### **Ensuring the Performance of Individual Activities by a Third Party**

[Re: Article 20(1)(a) and Article 47(1)(a) of the Act]

(1) The manager and administrator of a standard fund or of a foreign standard fund shall ensure that, in connection with the entrusting of a third party with the performance of an individual activity that does not include the management and administration of an investment fund or of a foreign standard fund,

- a) the activities that constitute the subject of the entrusting of a third party are in accordance with the applicable legal regulations, with the statute of the standard fund and with a comparable document of the foreign standard fund, and with internal regulations;
- b) the fulfilment of information duties with respect to the Czech National Bank, the conduct of supervision, including a potential control of the facts that are subject to supervision at the third party, and the performance of an audit of the financial statements and other verifications stipulated by legal regulations, are not restricted;
- c) the prerequisites for the due and prudent performance of the activities of this manager and administrator [are not jeopardized];
- d) the rights of the unit-holders or partners of the standard fund or of the foreign standard fund are not jeopardized; and
- e) rules for the controlling of the activities that constitute the subject of the entrusting of a third party, including a potential control of the facts relating to the entrusting of a third party directly at the third party, are stipulated.

(2) If the manager and administrator of a standard fund or of a foreign standard fund has entrusted a third party with the performance of an individual activity that does not include the management and administration of an investment fund or of a foreign standard fund, Article 24(2) and Article 51(2) of the Act shall be applied mutatis mutandis.

#### Article 5

##### **Organization of the Performance of Activities**

[Re: Article 20(1)(b) and Article 47(1)(b) of the Act]

The manager and administrator of a standard fund or of a foreign standard fund shall stipulate the work content of the organizational departments so as to support the due and prudent performance of activities and to enable efficient communication and cooperation at all levels.

## Article 6

### **Conflict of Interest Management and Incompatibility of Functions**

[Re: Article 20(1)(b) and Article 47(1)(b) of the Act]

(1) The manager and administrator of a standard fund or of a standard investment fund shall ensure that

- a) conflict of interest areas and areas of its potential occurrence are identified in time;
- b) powers, competence and responsibilities of organizational departments at all management and organizational levels are stipulated so as to sufficiently prevent the occurrence of a potential conflict of interest;
- c) procedures for conflict of interest identification and management are observed (Article 26 to Article 28 hereof); and
- d) conflict of interest areas and areas of its potential occurrence are subjected to continuous independent monitoring.

(2) The manager of a standard fund or of a foreign standard fund shall, independently of the management of the assets of the standard fund or of the foreign standard fund, carry out and perform

- a) settlement of transactions arranged on financial markets;
- b) control of congruence of information on transactions arranged on financial markets with the actual status, and elimination of any incongruities identified (reconciliation);
- c) management of risks;
- d) approval and control of observance of the limits for risk management; and
- e) preparation of quantitative and qualitative information on the risks that are to be reported to the manager's control or management body.

(3) If the manager of a standard fund or of a foreign standard fund also performs the administration of the standard fund or of the foreign standard fund, it shall, independently of the management of the assets and of the management of the risks of such funds, also

- a) approve procedures for the valuation of the assets and liabilities of such funds;
- b) value the assets and liabilities of such funds; and
- c) calculate the current value of a security or dematerialized security issued by such funds.

(4) The administrator of a standard fund or of a foreign standard fund shall perform the management of risks independently of the activities specified in subparagraphs a) to c) of paragraph 3 above.

(5) The manager of a standard fund or of a foreign standard fund shall ensure that, up to the level of the management body, the powers associated with the governance of the management of the assets of the standard fund or of the foreign standard fund are separated from the powers associated with the management of risks and with the settlement and reconciliation of transactions arranged on financial markets.

(6) The manager and administrator of a standard fund or of a foreign standard fund shall ensure appropriate independence of the internal control performance with respect to the nature, subject and significance of control, and conflict of interest prevention in the ensuring of all control mechanisms, including the compliance function; the internal audit function shall be independent of all activities associated with the management and administration of such funds.

## Article 7

### **Control Body**

[Re: Article 20(1)(b) and Article 47(1)(b) of the Act]

(1) The manager and administrator of a standard fund or of a foreign standard fund shall ensure that its control body

- a) supervises and at least once a year evaluates the efficiency, integrity and adequacy of the management and control system;
- b) regularly discusses issues relating to the business strategy of this manager and administrator;
- c) regularly discusses the steering of the risks to which this manager or administrator are or might be exposed;
- d) takes part in the strategy-making, planning and evaluating of internal audit activities and in the evaluating of compliance (Article 18 hereof); and
- e) issues a previous statement on a proposal of the management body of the manager and administrator of the standard fund or of the foreign standard fund to entrust a natural person or a legal entity with the performance of the risk management function, of the internal audit function or of the compliance function, and on a proposal to recall such a person or entity; if more natural persons than one ensure the performance of the risk management function, of the internal audit function or of the compliance function within the manager and administrator, the control body shall only issue a statement on a proposal to entrust or recall the head of the relevant organizational department.

(2) The manager of a standard fund or of a foreign standard fund shall ensure that its control body regularly discusses issues relating to the investment strategy of the standard fund or of the foreign standard fund, and issues relating to the management of the risks to which the standard fund or foreign standard fund are or might be exposed.

(3) If a system of remuneration of persons [Article 665(3)(b) of the Act] is part of the management and control system of the manager of a standard fund or of a foreign standard fund, this manager shall ensure that its control body approves and regularly evaluates the system of remuneration of the persons whose activities performed within the scope of their employment, occupation or function have a significant impact on the risks to which this manager or the standard fund or foreign standard fund managed by this manager might be exposed, and the degree of such risks, unless this lies within the competence of the supreme body of this manager. A more detailed specification of certain requirements for remuneration is provided in Annex No. 1 to this Decree.

### **Management Body**

## Article 8

[Re: Article 20(1)(b) and Article 47(1)(b) of the Act]

The manager and administrator of a standard fund or of a foreign standard fund shall ensure that its management body provides for the creation and evaluation of a management and control system and the permanent maintenance of its functionality and efficiency. In order to comply with this requirement, the manager and administrator of a standard fund or of a foreign standard fund shall proceed in such a manner as to ensure that the management body always provides for

- a) compliance of the management and control system with legal regulations;

- b) adequacy of information and efficient communication in the performance of the activities of the manager and administrator of the standard fund or of the foreign standard fund;
- c) stipulation of the overall strategy, including sufficiently specific prerequisites, principles and objectives for its fulfilment;
- d) functioning of a system of internal control;
- e) stipulation of the principles for the staffing, including the principles for the selection, remuneration, evaluation and motivation of the persons through which the manager and administrator of the standard fund or of the foreign standard fund performs its activities;
- f) stipulation of the requirements for the knowledge and experience of the persons through which the manager and administrator of the standard fund or of the foreign standard fund performs its activities, and the manner of proving the required knowledge and experience, and the manner of verifying whether the knowledge and experience of such persons are still appropriate to the nature, complexity and scope of the activities performed by them;
- g) stipulation of the rules formulating the ethic principles and expected models of behaviour and conduct of the persons through which the manager and administrator of the standard fund or of the foreign standard fund performs its activities, and the enforcement of such rules; and
- h) application of the due procedures for the performance of activities, and application of such management procedures as prevent any undesirable activities, in particular,
  1. prioritization of any short-term results and objectives that are not in accordance with the fulfilment of the overall strategy;
  2. a system of remuneration that is excessively dependent on short-term performance; or
  3. procedures that make it possible to abuse resources or to conceal inadequacies.

#### Article 9

[Re: Article 20(1)(b) and Article 47(1)(b) of the Act]

(1) The manager and administrator of a standard fund or of a foreign standard fund shall ensure that its management body

- a) approves and regularly evaluates
  1. the business strategy;
  2. the organizational structure;
  3. the strategy relating to the capital and capital adequacy;
  4. the information system development strategy;
  5. the risk management strategy;
  6. principles of the internal control system, including the principles for the prevention of occurrence of a potential conflict of interest, and the principles of compliance;
  7. security principles, including the security principles for the information system; and
  8. the strategic and periodic internal audit plan;
- b) supervises the implementation of the strategies and principles approved by it;
- c) duly and timely evaluates regular reports as well as any extraordinary findings, including information submitted to it by the auditor<sup>5)</sup> or by supervisory authorities; based on such evaluations, the said management body shall adopt adequate measures that are to be implemented without undue delay; and

---

<sup>5)</sup> Act No. 93/2009 Coll., on Auditors and on the Amendment of Some Other Acts (the Act on Auditors), as amended.

d) regularly discusses issues relating to the management and control system, at least once a year evaluates the efficiency, integrity and adequacy of the management and control system, and ensures potential measures to rectify any inadequacies thus identified.

(2) The manager of a standard fund or of a foreign standard fund shall ensure that its management body approves and regularly evaluates

- a) the investment strategy of the standard fund or of the foreign standard fund; and
- b) a set of limits that are to be used by this manager, particularly with respect to the standard fund or foreign standard fund managed by this manager, in order to reduce risks, always including the market risk, operational risk, concentration risk, counterparty risk and liquidity risk.

#### Article 10

[Re: Article 20(1)(b) and Article 47(1)(b) of the Act]

The manager and administrator of a standard fund or of a foreign standard fund shall further ensure that its management body provides for, in particular,

- a) implementation of approved strategies and principles of the manager and administrator of the standard fund or of the foreign standard fund, including the elaboration of procedures for their fulfilment and for the everyday management of this manager and administrator;
- b) maintenance of a functional and efficient organizational structure, including the separation of incompatible functions and prevention of occurrence of a potential conflict of interest; and
- c) creation, maintenance and application of a functional and efficient system of obtaining, using and storing of information.

### **Information and Communication**

#### Article 11

[Re: Article 20(1)(b) and Article 47(1)(b) of the Act]

(1) The manager and administrator of a standard fund or of a foreign standard fund shall ensure that up-to-date, reliable and comprehensive information is available to the competent organizational departments for their decision-making and other stipulated activities.

(2) The manager and administrator of a standard fund or of a foreign standard fund shall ensure that its management body is without undue delay informed of all facts that might to a significant extent adversely affect the financial standing of this manager and administrator.

(3) The manager of a standard fund or of a foreign standard fund shall ensure that its management body is without undue delay informed of

- a) all facts that might to a significant extent adversely affect the financial standing of the standard fund or of the foreign standard fund, including the effects of any changes in the internal and external environment; and
- b) each instance of exceeded limits that jeopardizes the observance of the acceptable risk level of the manager, and the observance of the risk profile of the standard fund or of the foreign standard fund, always including the market risk, operational risk, concentration risk, counterparty risk and liquidity risk.

(4) The manager of a standard fund or of a foreign standard fund shall ensure that its management body is at least once a year informed of



- a) compliance with the manner of investment of the standard fund or of the foreign standard fund;
- b) the degree of the risks being taken; and
- c) compliance with the capital requirements (Article 29 to Article 32 of the Act).

#### Article 12

[Re: Article 20(1)(b) and Article 47(1)(b) of the Act]

- (1) The manager and administrator of a standard fund or of a foreign standard fund shall
- a) stipulate the conditions for the access of the persons through which it performs its activities to the information system and to the information recorded therein, the scope of access rights and the process for their determining, including the manner of decision-making about the scope of access rights of the individual persons, and of decision-making about their changes;
  - b) stipulate the conditions under which information relating to the transactions executed and services provided is to be input into the information system, and under which it may be modified, and the conditions for the disposal of such information, and ensure an easy traceability of the original content and of any modifications made; and
  - c) ensure protection of the information system against damage and against access and interference by unauthorized persons; in the case of damage to the information system, ensure the reconstruction of the information.

(2) The manager of a standard fund or of a foreign standard fund shall store the information from the information system in such a manner as to enable the Czech National Bank to reconstruct from it easily all the key phases of the processing of each transaction executed in the management of the assets of the standard fund or of the foreign standard fund, and to identify the original content of such information prior to any corrections or changes.

#### Article 13

##### **Ensuring Information for the Purposes of Conduct of Supervision**

[Re: Article 20(1)(b) and Article 47(1)(b) of the Act]

(1) The manager and administrator of a standard fund or of a foreign standard fund shall implement and maintain a system for the creation, control and provision of information to the Czech National Bank so that information is provided by it in an up-to-date, reliable and comprehensive manner.

(2) The manager and administrator of a standard fund or of a foreign standard fund shall implement, maintain and apply internal control mechanisms to ensure the completeness and correctness of all the calculations, data, reports and other information provided to the Czech National Bank on a regular basis or upon its request.

(3) The manager and administrator of a standard fund or of a foreign standard fund shall ensure that the process for the creation and provision of information to the Czech National Bank pursuant to paragraph 2 above is reconstructible at least for a period of five years.

#### Article 14

##### **Basic Requirements for the Risk Management System**

[Re: Article 20(1)(c) and Article 47(1)(c) of the Act]

(1) The manager and administrator of a standard fund or of a foreign standard fund shall provide for the recognition of risks so that it is ensured in respect of all activities and at all management and organizational levels and so that it enables to discover new, yet unidentified risks.

(2) The manager and administrator of a standard fund or of a foreign standard fund shall ensure that the risk management system provides an undistorted picture of the degree of the risks being taken.

(3) In the management of risks, the manager and administrator of a standard fund or of a foreign standard fund shall take into account all the significant risks and risk factors to which the manager, the administrator, the standard fund and the foreign standard fund are or might be exposed. The management of risks shall take into account the internal and external factors, including the business strategy of the manager and administrator, the investment strategy of the managed standard fund or foreign standard fund, the effects of the economic environment and cycle, and the effects of the regulatory environment. The management of risks shall take into consideration the quantitative and qualitative aspects of risks, the real chances for their management and the expenses and yield resulting from the management of risks.

## Article 15

### **Risk Management Strategy**

[Re: Article 20(1)(c) and Article 47(1)(c) of the Act]

(1) In its risk management strategy, the manager and administrator of a standard fund or of a foreign standard fund shall stipulate, in particular,

- a) a definition of the risks to which this manager, the standard fund and the foreign standard fund managed by it, and this administrator is or might be exposed;
- b) principles for the assessment of materiality of the risks in terms of their management;
- c) principles for the management of the individual types of risks;
- d) methods for the risk management;
- e) its accepted risk level, and in the case of the manager of a standard fund or of a foreign standard fund also the risk profile of the managed funds;
- f) principles for the preparation of and making amendments to the contingency plan in the case of the liquidity risk;
- g) principles for the defining of permitted positions, currencies, countries, geographic areas, markets and counterparties; and
- h) principles for the rendering of reports on the risks being taken and on their management to the management body and to the control body.

(2) The manager and administrator of a standard fund or of a foreign standard fund shall ensure that all the persons through which it performs its activities, and the activities of which affect the risk management, are acquainted with the approved strategy to the necessary extent and act in accordance with this strategy and with the procedures and limits arising from it.

(3) The manager and administrator of a standard fund or of a foreign standard fund shall ensure that any and all material changes in the risk management system are communicated to the Czech National Bank without undue delay.

## Article 16

### **Risk Management**

[Re: Article 20(1)(c) of the Act]

- (1) In the management of risks, the manager of a standard fund shall
- a) implement procedures for the measurement of risks so that the risks and their impact on the risk profile of the standard fund are measured accurately on the basis of trustworthy and reliable information that is not based solely on external ratings or on their mechanical acceptance, and so that the procedures for the measurement of risks are duly documented; if it is appropriate to the nature, scope or complexity of the risks being taken, advanced procedures for the measurement of risks shall be used, also including the value-at-risk (VaR) method;
  - b) perform regular back testing for the purpose of checking the validity of the methods for the measurement of risks;
  - c) perform regular stress testing and analyses of potential development scenarios for the purpose of capturing the risks resulting from potential changes in the market conditions that might have an adverse impact on the standard fund;
  - d) implement, maintain and apply a documented system of limits to reduce the risks for each standard fund, taking into account all the risks that might be of crucial importance to the standard fund, and in accordance with the risk profile of the standard fund;
  - e) ensure that the current risk level complies with the system of limits aimed to reduce the risks; and
  - f) create, implement and maintain appropriate procedures that, in the case of an actual or expected breach of the limits aimed to reduce the risks of the standard fund, will ensure a timely adoption of remedial measures.

(2) The manager of a standard collective investment fund shall apply such procedures for the management of the liquidity risk as ensure that this fund is able to repurchase the unit certificates pursuant to Article 131 of the Act and the investment shares pursuant to Article 163(2) of the Act at any time. The manager of a standard fund shall perform stress testing that enables it to assess the liquidity risk of this investment fund in extraordinary circumstances.

(3) The manager of a standard fund shall ensure that, in terms of liquidity, the manner of investment and the risk profile of this fund is appropriate to the repurchasing rules stipulated in the statute of the fund or in the articles of association.

(4) In managing the risks of a foreign standard fund, its manager shall proceed pursuant to paragraph 1 above *mutatis mutandis*. In managing the risks of a foreign standard fund that is comparable with an open-end unit trust or with a joint-stock company with variable registered capital, its manager shall proceed pursuant to paragraphs 2 and 3 above *mutatis mutandis*.

## Article 17

### **Basic Requirements for the Internal Control**

[Re: Article 20(1)(d)(1) and Article 47(1)(d)(1) of the Act]

(1) The manager and administrator of a standard fund or of a foreign standard fund shall implement and maintain rules of the internal control that are to be applied at all levels of management and organization.

(2) The manager and administrator of a standard fund or of a foreign standard fund shall ensure that control activities are part of its routine, usually day-to-day activities and include, in particular,

- a) management control in discharging the duties by subordinate persons, to be performed by their superiors;

- b) appropriate control mechanisms for the individual processes, in particular,
  1. control of compliance with legal and internal regulations and with limits;
  2. control of approval and authorization of transactions exceeding the stipulated limits;
  3. control of the course of activities and transactions;
  4. verification of transaction details;
  5. verification of the outputs of the risk management systems and methods used; and
  6. regular reconciliation; and
- c) physical control that shall be aimed, in particular, at restricting access to tangible assets, investment instruments and other financial assets, and at regular stocktaking of assets.

## Article 18

### **Compliance**

[Re: Article 20(1)(d)(2) and Article 47(1)(d)(2) of the Act]

(1) The manager and administrator of a standard fund or of a foreign standard fund shall implement, maintain and apply principles and procedures for the ensuring of compliance. The objective of such principles and procedures shall be to ensure, in particular,

- a) compliance of internal regulations with legal regulations;
- b) mutual compliance of internal regulations; and
- c) compliance of all activities with legal and internal regulations.

(2) The manager and administrator of a standard fund or of a foreign standard fund shall ensure a continuous control of compliance with legal duties and with the duties arising from their internal regulations, including a continuous control of compliance with the duties of the manager and administrator of a standard fund or of a foreign standard fund arising from the statute of the standard fund or from a comparable document of the foreign standard fund, and with the obligations arising from contractual relations (compliance function).

(3) The manager and administrator of a standard fund or of a foreign standard fund shall ensure that

- a) the management body of this manager and administrator is informed of any non-compliances identified or, as the case may be, the control body of this manager and administrator is informed of all significant non-compliances identified;
- b) the relevant levels of management are informed of any pending or new legal regulations, general guidelines of the European Securities and Markets Authority and recognized standards relating to the activities of this manager and administrator; and
- c) the management body and, as the case may be, the control body of this manager and administrator are provided with other useful information relating to compliance activities, particularly on whether appropriate remedial measures have been adopted in the case of any significant non-compliances identified.

(4) The manager and administrator of a standard fund or of a foreign standard fund shall stipulate principles and procedures for the ensuring of compliance so that such principles and procedures cover all of their activities in a comprehensive and interconnected manner.

## Article 19

### **Internal Audit**

[Re: Article 20(1)(d)(3) and Article 47(1)(d)(3) of the Act]

(1) The manager and administrator of a standard fund or of a foreign standard fund shall ensure that the following aspects are subject to the internal audit, in particular,

- a) compliance with the prudential rules of this manager and administrator;
- b) compliance with the internal regulations of this manager and administrator;
- c) the risk management and internal control system;
- d) the financial management and the valuation of assets and liabilities;
- e) the completeness, conclusiveness and correctness of bookkeeping;
- f) the reliability of accounting, statistical and other information, including of the information provided to the bodies of this manager and administrator; and
- g) the functionality and security of the information system, including the reliability of the system for the preparation and submission of reports to the Czech National Bank.

(2) The manager and administrator of a standard fund or of a foreign standard fund shall ensure that the following activities are always performed within the scope of the internal audit

- a) a risk analysis is prepared at least once a year;
- b) a strategic and periodic plan of the internal audit is prepared;
- c) a system to monitor any remedial measures ordered on the basis of internal audit findings is created and maintained; and
- d) the functionality and efficiency of the management and control system is evaluated at least once a year.

(3) The person that performs the internal audit function shall inform the management body and the control body of the manager and administrator of a standard fund or of a foreign standard fund of any facts identified and, provided that findings that might to a significant extent adversely affect the financial standing of this manager, administrator, standard fund or foreign standard fund are concerned, the said person must propose that an extraordinary meeting of the control body should be held.

## Part 2

### **Further Requirements for the Management and Control System**

#### Article 20

##### **Records of Communication**

[Re: Article 20(1)(a) and Article 47(1)(b) of the Act]

(1) The manager and administrator of a standard fund or of a foreign standard fund shall stipulate

- a) rules for the use of communication equipment, at least by reserving certain telephone lines or, as the case may be, other communication equipment for the activities relating to the transactions executed and services provided, including the communication between the manager or administrator and the depository and a third party pursuant to Article 23 and Article 50 of the Act, and for the recording of communication on such telephone lines or, as the case may be, on other communication equipment; and
- b) requisites of the record pursuant to subparagraph a) above, which shall include at least the date and time of communication, identification data of the sender and of the recipient (if available) and the content of the message transmitted; the manager and administrator shall ensure that it is possible to make full abstracts of the records of communication on the reserved telephone lines or, as the case may be, on other communication equipment, and that it is possible to make printouts from the recording equipment.

(2) The manager and administrator of a standard fund or of a foreign standard fund shall store the records pursuant to Article 24(1) and Article 25(1) hereof at least for a period of five years from the moment of execution of a transaction or of an order; the foregoing shall also

apply to an entity whose authorization to perform the activities of a management company, of an autonomous investment fund or of a primary administrator has been revoked or has ceased to exist, as well as to the legal successor of such an entity. The manager and administrator of a standard fund or of a foreign standard fund shall store the records of communication pursuant to paragraph 1 above, and the documents and information necessary to monitor compliance with the limits stipulated by legal regulations, at least for a period of five years from the day of their making.

## Article 21

### **Rules for the Handling of Complaints and Claims**

[Re: Article 47(2)(d) and Article 49(3)(e) of the Act]

The administrator of a standard fund or of a foreign standard fund shall

- a) create, implement and maintain efficient and transparent procedures for the due, gratuitous and prompt handling of complaints and claims lodged by the unit-holders or shareholders of the standard fund or by persons in a comparable position with respect to the foreign standard fund;
- b) publish the rules for the gratuitous handling of complaints and claims lodged by such unit-holders, shareholders or persons on the website of the standard fund or of the foreign standard fund; and
- c) keep records of any complaints and claims received from such unit-holders, shareholders or persons, and of any measures adopted on the basis thereof.

## Article 22

### **Personal Transactions**

[Re: Article 20(2)(m) and Article 22(2)(d) of the Act]

(1) In order to protect inside information pursuant to Article 124 of the act that regulates capital market undertakings and in order to prevent conflicts of interest, particularly among persons with a special relationship to the manager of a standard fund or of a foreign standard fund [Article 22(4) of the Act], the manager of the standard fund or of the foreign standard fund shall

- a) identify the persons with a special relationship to the manager of the standard fund or of the foreign standard fund and other persons who
  1. perform activities that may give rise to a conflict of interest;
  2. have obtained or might obtain inside information; or
  3. have access to other confidential information on the standard fund or on the foreign standard fund or on its transactions;
- b) adopt measures to prevent a person pursuant to subparagraph a) above from concluding a personal transaction pursuant to Article 22(2)(d) of the Act where, in doing so,
  1. s/he might use inside or other confidential information, or such information might be disclosed in an unauthorized manner; or
  2. some other duty of this manager stipulated by the Act might be breached;
- c) ensure that a person pursuant to subparagraph a) above does not incite or prompt a third party to conclude a transaction beyond the scope of the performance of his/her working duties, if
  1. s/he were not authorized to conclude a personal transaction pursuant to subparagraph b) above himself/herself; or

2. information on any unsettled transaction of the standard fund or of the foreign standard fund or of some other client might be used in this transaction;
  - d) adopt measures to prevent each person with a special relationship to the manager of the standard fund or of the foreign standard fund from disclosing any information or opinions to a third party beyond the scope of the routine performance of his/her work duties, if s/he is aware, or in ordinary circumstances should be aware, that this third party might
    1. use the provided information to conclude a personal transaction pursuant to item 1 or item 2 of subparagraph b) or subparagraph c) above; or
    2. incite or prompt someone else to conclude a transaction referred to in item 1 above;
  - e) ensure that the persons with a special relationship to the manager of the standard fund or of the foreign standard fund are informed of the restrictions in relation to their personal transactions;
  - f) ensure that the persons referred to in subparagraph a) above notify it of any personal transactions without undue delay; provided that a third party entrusted by the manager with the performance of an individual activity is concerned, the manager shall require that this third party keeps records of any personal transactions concluded by a person with a special relationship to the manager of the standard fund or of the foreign standard fund and, upon request, provides such records to the manager without undue delay; and
  - g) keep records of
    1. any notified or otherwise identified personal transactions pursuant to subparagraph f) above; and
    2. any potential authorizations or prohibitions to conclude personal transactions.
- (2) The rules pursuant to paragraph 1 above shall not apply to personal transactions
- a) executed in the management of the assets of a person pursuant to subparagraph a) of paragraph 1 above, on condition that no prior communications on the transaction have taken place between the portfolio manager and this person; or
  - b) in securities or dematerialized securities issued by a standard fund, by a foreign standard fund or by another collective investment fund that invests on a comparable principle of risk spreading and that is subject to supervision in a Member State, unless the person pursuant to subparagraph a) of paragraph 1 above is involved in the management of the assets of such a fund.

## Article 23

### **Principles for the Exercise of Voting Rights**

[Re: Article 20(2)(m) and Article 22(2)(i) of the Act]

(1) The manager of a standard fund or of a foreign standard fund shall implement appropriate and efficient principles for the exercise of the voting rights associated with any participating securities being in the possession of these funds so that such rights are exercised exclusively for the benefit of the standard fund or foreign standard fund concerned.

(2) The principles referred to in paragraph 1 above shall include procedures for

- a) the monitoring of any significant events in the company or in some other legal entity;
- b) the exercise of the voting rights in accordance with the investment strategy of the given standard fund or foreign standard fund; and
- c) the prevention or management of any conflicts of interest resulting from the exercise of the voting rights.

(2) The manager of a standard fund or of a foreign standard fund shall make a summary description of the principles referred to in paragraph 1 above accessible to the owners of the

securities or dematerialized securities issued by the standard fund or by the foreign standard fund on the websites of such funds, and shall ensure that details of the exercise of the voting rights are gratuitously accessible to the owners of such securities upon their request.

#### Article 24

##### **Record-Keeping of Transactions Relating to the Assets of a Managed Standard Fund and Foreign Standard Fund**

[Re: Article 20(2)(i) of the Act]

(1) The manager of a standard fund or of a foreign standard fund shall immediately make a record of the details of an order and of an executed transaction in the register pursuant to Article 20 (2)(i) of the Act.

(2) The record pursuant to paragraph 1 above shall, if the nature of the matter does not preclude it, contain the following information

- a) identification data of the standard fund or of the foreign standard fund; if the standard fund or the foreign standard fund is not a legal entity, only the designation thereof;
- b) identification data of the investment instrument or of other positions that were the subject of the order or of the executed transaction;
- c) the quantity of investment instruments or other positions;
- d) the type of the order or of the executed transaction;
- e) the price specified in the order or in the executed transaction;
- f) the date and time of the transmission of the order, and identification data of the person to whom the order was transmitted;
- g) the date and time of the decision to execute the transaction, and the date and time of its execution;
- h) identification data of the person who transmitted the order or executed the transaction;
- i) if the order was recalled, the reasons for its recall; and
- j) identification data of the counterparty of the executed transaction, and identification data of the execution venue.

#### Article 25

##### **Record-Keeping of the Subscription, Issuance and Repurchasing of Securities and Dematerialized Securities Issued by a Standard Fund and by a Foreign Standard Fund**

[Re: Article 47(2)(j) of the Act]

(1) The administrator of a standard fund or of a foreign standard fund shall, immediately after receiving an order, make a record of the details of the order in the register pursuant to Article 47(2)(j) of the Act.

(2) The record pursuant to paragraph 1 above shall, if the nature of the matter does not preclude it, contain the following information

- a) identification data of the standard fund or of the foreign standard fund; if the standard fund or the foreign standard fund is not a legal entity, only the designation thereof;
- b) identification data of the person who placed and transmitted the order to subscribe, issue or repurchase;
- c) identification data of the person who received the order to subscribe, issue or repurchase;
- d) the date and time of the receipt of the order;
- e) the terms and means of payment associated with the order;
- f) the type of the order;



- g) the date of the execution of the order;
- h) the quantity of subscribed, issued or repurchased securities or dematerialized securities issued by the standard fund or by the foreign standard fund;
- i) the unit price at which a security or dematerialized security issued by the standard fund or by the foreign standard fund was subscribed, issued or repurchased;
- j) the total price at which securities or dematerialized securities issued by the standard fund or by the foreign standard fund were subscribed, issued or repurchased; and
- k) the gross value of the order, consisting of the total price pursuant to subparagraph j) above together with the surcharge associated with the subscription or issuance of a security or dematerialized security issued by the standard fund or by the foreign standard fund; or the net value of the order, consisting of the total price pursuant to subparagraph j) above, less the deduction associated with the repurchasing of a security or dematerialized security issued by the standard fund or by the foreign standard fund.

## Article 26

### **Conflict of Interest Identification and Management**

[Re: Article 20(2)(c) and Article 47(2)(c) of the Act]

(1) If the manager and administrator of a standard fund or of a foreign standard fund is a member of a business group pursuant to the act that regulates commercial companies and cooperatives, it shall identify and manage conflicts of interest pursuant to Article 20(2)(c) of the Act or Article 47(2)(c) of the Act also with respect to all predictable circumstances that may give rise to a conflict of interest as a consequence of the structure of the business group and of the lines of business of the group's members.

(2) If it is impossible to reliably prevent an adverse impact of a conflict of interest on the interests of the unit-holders or shareholders of a standard fund, or on the interests of persons in a comparable position with respect to a foreign standard fund, in spite of the measures adopted pursuant to Article 20(2)(c) of the Act or Article 47(2)(c) of the Act, the manager and administrator of the standard fund or of the foreign standard fund shall ensure that the management body of this manager and administrator is informed without delay. The management body of this manager and administrator shall take measures necessary to ensure that this manager and administrator in all circumstances acts in the best interest of the unit-holders or shareholders of the standard fund, or in the best interest of persons in a comparable position with respect to the foreign standard fund.

(3) Simultaneously with the informing of the management body pursuant to paragraph 2 above, the manager and administrator of a standard fund or of a foreign standard fund shall communicate information on the nature or source of the conflict of interest to the owner of the securities issued by the standard fund or by the foreign standard fund; in the case of a standard fund or foreign standard fund that is a legal entity, to this fund only. An autonomous standard fund and its administrator shall communicate such information to the owner of the securities issued by this fund.

(4) The manager and administrator of a standard fund or of a foreign standard fund shall provide the owner of the securities issued by the standard fund or by the foreign standard fund with information pursuant to paragraph 3 above on a durable information medium<sup>6)</sup> and to such an extent as will enable this owner of securities to properly take into account the conflict of interest relating to the activities of this manager and administrator.

---

<sup>6)</sup> Article 15e of Act No. 256/2004 Coll., on Capital Market Undertakings, as amended by Act No. 230/2008 Coll.

## Article 27

### **Conflict of Interest Identification and Assessment**

[Re: Article 20(2)(c) and Article 47(2)(c) of the Act]

(1) In the identification and assessment of the conflicts of interest relating to its activities, the manager and administrator of a standard fund or of a foreign standard fund shall take into consideration whether the person in a conflict of interest

- a) might make a financial gain, or avoid a financial loss, at the expense of the unit-holders or shareholders of the standard fund, or at the expense of persons in a comparable position with respect to the foreign standard fund;
- b) has an interest in the outcome of a service provided to the standard fund or to the foreign standard fund, or in the outcome of a transaction executed on behalf or on the account of the standard fund or of the foreign standard fund, that is different from the interest of the unit-holders, shareholders or persons in a comparable position with respect to these funds;
- c) has a motivation to favour the interest of the unit-holders or shareholders of the standard fund, or the interest of persons in a comparable position with respect to the foreign standard fund, over the interests of the unit-holders or shareholders of some other standard fund, or over the interests of persons in a comparable position with respect to some other foreign standard fund;
- d) performs activities similar to those performed by the manager of the standard fund or of the foreign standard fund; and
- e) receives or will receive from a party other than the standard fund or foreign standard fund an inducement pursuant to Article 22(5) of the Act in relation to a service provided to the standard fund or to the foreign standard fund, and whether such an inducement does not constitute a customary consideration for the provided service.

(2) The manager and administrator of a standard fund or of a foreign standard fund shall further always

- a) identify any circumstances that, in relation to the specific services and activities provided by this manager and administrator or by a third party on their behalf or on their account, might give rise to a conflict of interest that would constitute a material risk of damage to the interests of the unit-holders or shareholders of the standard fund, or to the interests of persons in a comparable position with respect to the foreign standard fund (hereinafter a “material conflict of interest”);
- b) specify binding procedures and measures for the management of material conflicts of interest; and
- c) keep up-to-date records of any provided services that have given or might give rise to a material conflict of interest.

## Article 28

### **Material Conflict of Interest Management**

[Re: Article 20(2)(c) and Article 47(2)(c) of the Act]

(1) The manager and administrator of a standard fund or of a foreign standard fund shall ensure that the persons with a special relationship to this manager and administrator that are involved in the provision of services with which a material conflict of interest is associated, perform their activities with such a degree of independence as is appropriate to the nature, scope and complexity of the activities of this manager and administrator and of the business group pursuant to the act that regulates commercial companies and cooperatives to which it

belongs, and as is appropriate to the materiality of the risk of damage to the interests of the standard fund or of the foreign standard fund.

(2) The procedures for the management of material conflicts of interest that will ensure the independence pursuant to paragraph 1 above shall, depending on the circumstances of a specific situation, include

- a) efficient procedures for the prevention or control of the exchange of information among the persons with a special relationship to this manager and administrator, if the risk of a conflict of interest is associated with such information and if the exchange of information might damage the interests of the unit-holders or shareholders of the standard fund, or the interests of persons in a comparable position with respect to the foreign standard fund;
- b) an independent control of the persons with a special relationship to this manager and administrator who are involved in the provision of services for the standard fund or for the foreign standard fund and whose interests, or the interests of the persons for whom they perform activities, might be in mutual conflict;
- c) the prevention of any direct link between the remuneration of a person with a special relationship to this manager and administrator who predominantly performs a certain activity, and the remuneration or income of some other person with a special relationship to this manager and administrator who performs a different activity, if a conflict of interest might arise in relation to these activities;
- d) such measures as make it impossible to exercise unauthorized or unjustified influence over the manner in which a person with a special relationship to this manager and administrator ensures the provision of services;
- e) measures that will prevent a person with a special relationship to this manager and administrator from being involved in the provision of a service, if this might jeopardize the due management of conflicts of interest; or measures that will ensure the control of this activity so as to avoid the due management of conflicts of interest being jeopardized; and
- f) other suitable measures, if the measures adopted pursuant to subparagraphs a) to e) above fail to ensure the necessary degree of independence pursuant to paragraph 1 above.

## **CHAPTER II**

### **MANAGEMENT AND CONTROL SYSTEM OF A MANAGER THAT IS AUTHORIZED TO EXCEED THE RELEVANT LIMIT, AND OF THE ADMINISTRATOR OF THE SPECIAL FUNDS, FUNDS OF QUALIFIED INVESTORS AND COMPARABLE FOREIGN INVESTMENT FUNDS MANAGED BY THIS MANAGER**

#### Article 29

##### **General Guidelines and Recognized Standards Selected**

[Re: Article 20(1)(a) and Article 47(1)(a) of the Act]

A manager that is authorized to exceed the relevant limit, and the administrator of the special fund, fund of qualified investors or comparable foreign investment fund managed by this manager, shall proceed pursuant to Article 3(2) hereof mutatis mutandis.

#### Article 30

##### **Conflict of Interest**

[Re: Article 20(1)(b) and Article 47(1)(b) of the Act]

(1) A manager that is authorized to exceed the relevant limit, and the administrator of the special fund, fund of qualified investors or comparable foreign investment fund managed by this manager, shall abide by the rules specified in Article 6 hereof mutatis mutandis, and in further respects shall proceed pursuant to Articles 30 to 35 and 37 of the directly applicable regulation of the European Union that supplements the directive of the European Parliament and of the Council framing the activities of managers of alternative investment funds<sup>2)</sup>.

(2) If it is impossible to reliably prevent an adverse impact of a conflict of interest on the interests of the unit-holders, partners or beneficiaries of a special fund or of a fund of qualified investors managed by a manager that is authorized to exceed the relevant limit, in spite of the measures adopted pursuant to Article 20(2)(c) of the Act or Article 47(2)(c) of the Act, the manager and administrator of this fund shall communicate information on the nature or source of the conflict of interest to the unit-holders, partners or beneficiaries of this fund prior to executing any transaction on the account of this fund, for the purpose of which it shall reflect suitable principles, rules and procedures in its internal regulations. In further respects, it shall proceed pursuant to Article 36 of the directly applicable regulation of the European Union that supplements the directive of the European Parliament and of the Council framing the activities of managers of alternative investment funds<sup>2)</sup>.

#### Article 31

#### **Risk Management**

[Re: Article 20(1)(c) of the Act and Article 47(1)(c) of the Act]

(1) A manager that is authorized to exceed the relevant limit shall abide by the rules specified in Articles 14 to 16 hereof mutatis mutandis and shall regularly, but at least once a year, review the risk management system and modify it as necessary. In further respects, it shall proceed pursuant to Articles 38 to 49 of the directly applicable regulation of the European Union that supplements the directive of the European Parliament and of the Council framing the activities of managers of alternative investment funds<sup>2)</sup>.

(2) The administrator of a special fund, of a fund of qualified investors or of a comparable foreign investment fund, the manager of which is authorized to exceed the relevant limit, shall abide by the rules specified in Articles 14 and 15 hereof mutatis mutandis.

#### Article 32

#### **System of Remuneration**

[Re: Article 20(2)(j) of the Act]

A manager that is authorized to exceed the relevant limit shall ensure that its control body approves and regularly evaluates a system of remuneration of the persons whose activities within the scope of their employment, occupation or function have a significant impact on the risks to which this manager or the special fund, fund of qualified investors or comparable foreign investment fund managed by this manager might be exposed, and the degree of such risks, unless this lies within the competence of the supreme body. A more detailed specification of certain requirements for remuneration is provided in Annex No. 1 to this Degree.

## Article 33

### **Rules for the Handling of Complaints and Claims Lodged by Unit-Holders and Shareholders**

[Re: Article 47(2)(d) of the Act]

The administrator of a special fund or of a comparable foreign investment fund, the manager of which is authorized to exceed the relevant limit, shall proceed pursuant to Article 21 hereof mutatis mutandis.

## PART THREE

### **VALUATION OF THE ASSETS AND LIABILITIES OF AN INVESTMENT FUND**

## Article 34

### **Determining the Fair Value in Special Cases**

[Re: Article 196(2) of the Act]

(1) The fair value of a security or dematerialized security issued by an issuer shall be equal to zero, if insolvency proceedings have been initiated against the issuer's assets and if such proceedings have not yet been completed, or if a court has rejected an insolvency petition due to lack of assets on the issuer's part<sup>7)</sup>, or if similar decisions have been issued under foreign laws.

(2) The basis for determining the fair value of a receivable that has been overdue

- a) for not more than 90 days shall be reduced by 10 %;
- b) for more than 90 days, but not more than 180 days, shall be reduced by 30 %;
- c) for more than 180 days, but not more than 360 days, shall be reduced by 66 %; and
- d) for more than 360 days shall be reduced by 100 %.

(3) The basis for determining the fair value of a receivable from a debtor shall be reduced by 100 %, if insolvency proceedings have been initiated against the debtor and if such proceedings have not yet been completed, or if a court has rejected an insolvency petition due to lack of assets on the debtor's part, or if similar decisions have been issued under foreign laws.

(4) If there are reasons to believe that the value of a security or receivable determined pursuant to paragraphs 1 to 3 above does not correspond to the price at which the said asset can be liquidated with due professional care, the administrator of a collective investment fund shall determine the value of such an asset in a manner that, within the meaning of the international accounting standards provided for by law of the European Union<sup>8)</sup>, gives a true and fair picture of its fair value. The reasons for and the manner of determining the fair value shall be discussed by the administrator of a collective investment fund with the depository of this fund, and recorded in writing.

---

<sup>7)</sup> Act No. 182/2006 Coll., on Insolvency and Methods of its Resolution (the Insolvency Act), as amended.

<sup>8)</sup> Commission Regulation (EC) No. 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council.

PART FOUR  
**RULES OF CONDUCT**

Article 35

**Analysis of Economic Profitability of Transactions**

[Re: Article 22(1) and (2)(c) of the Act]

Prior to executing a transaction and as necessary after taking the nature of a contemplated transaction into account, the manager of a standard fund or of a foreign standard fund shall carry out analyses of economic profitability of transactions and determine prognoses of how the transaction will affect the composition of the assets, the liquidity and the risk profile of this fund. The analyses must be carried out exclusively on the basis of reliable and up-to-date quantitative and qualitative information.

Article 36

**Information on Executed Orders**

[Re: Article 49(2)(a) and (3)(a) of the Act]

(1) Information on an executed order to issue, repurchase or subscribe a security or dematerialized security issued by a standard fund or by a foreign standard fund that is to be provided to the investor by the administrator of the standard fund or of the foreign standard fund shall include, if the nature of the matter does not preclude it,

- a) identification data of the standard fund or of the foreign standard fund; if the standard fund or the foreign standard fund is not a legal entity, only the designation thereof;
- b) identification data of the administrator of the standard fund or of the foreign standard fund;
- c) identification data of the investor;
- d) the date and time of the receipt of the order;
- e) the terms and means of payment associated with the order;
- f) the type of the order (to issue, subscribe or repurchase);
- g) the date of the execution of the order;
- h) the quantity of issued, subscribed or repurchased securities or dematerialized securities issued by the standard fund or by the foreign standard fund to which the order relates;
- i) the unit price at which a security or dematerialized security issued by the standard fund or by the foreign standard fund was issued, subscribed or repurchased;
- j) the gross value of the order including the surcharge associated with the issuance or subscription of a security or dematerialized security issued by the standard fund or by the foreign standard fund, or the net value of the order less the deduction associated with the repurchasing of securities or dematerialized securities issued by the standard fund or by the foreign standard fund; and
- k) the total amount of surcharges or deductions; upon the investor's request, the administrator shall break the surcharges and deductions down into individual items.

(2) Information pursuant to paragraph 1 above shall be sent to the investor by the administrator of a standard fund or of a foreign standard fund on a durable information medium<sup>6)</sup> without undue delay, but not later than

- a) on the next business day following the execution of the order;
- b) on the next business day following the delivery of a confirmation by a third party, if this information requires a confirmation by a third party before it can be sent; or

- c) once in every six months, if the investor's orders are executed on a regular basis and if the said administrator has not taken steps pursuant to subparagraphs a) and b) above.

(3) If information to the extent of paragraph 1 above is to be sent to the investor without undue delay by a third party that is obliged to do so in accordance with the act that regulates capital market undertakings, the provisions of paragraph 2 above shall not be applied.

(4) Information on the status of an unexecuted order shall be provided by the administrator of a standard fund or of a foreign standard fund without undue delay upon the investor's request.

### **Execution of Transactions under the Best Conditions**

[Re: Article 22(2)(e) and (3)(f) of the Act]

#### Article 37

(1) The manager of a standard fund or of a foreign standard fund shall execute orders to trading or transmit orders to execute transactions on the account of the standard fund or of the foreign standard fund to third parties under the best conditions and shall not prioritize the interests of one group of the owners of securities or dematerialized securities issued by the standard fund or by the foreign standard fund over the interests of any other group of the owners of securities or dematerialized securities issued by the standard fund or by the foreign standard fund. Considering the specific investment strategy and the risk profile of a standard fund or of a foreign standard fund stipulated in the statute or in a comparable document, the type of the order, the nature and features of the investment instrument that is the subject of this order, as well as considering the nature of the execution venues<sup>9)</sup> to which this order can be directed, the manager of the standard fund or of the foreign standard fund shall take into account

- a) the price that can be achieved at the execution venue;
- b) the total volume of expenses to be charged to the standard fund or to the foreign standard fund;
- c) the swiftness at which the order can be executed;
- d) the probability of the execution of the order;
- e) the terms of settlement;
- f) the volume of the required transaction;
- g) the type of the order; and
- h) any other factor relevant to the execution of decisions on trading or to the giving of orders on the account of the standard fund or of the foreign standard fund to third parties for the execution of the transaction of the standard fund or of the foreign standard fund under the best conditions.

(2) In order to ensure the performance of the duty pursuant to paragraph 1 above, the manager of a standard fund or of a foreign standard fund shall implement, maintain and apply rules for the execution of transactions in respect of the individual types of investment instruments, which shall stipulate at least

- a) a determination of the relative importance of the factors referred to in paragraph 1 above selected by the manager, or at least the manner of determining their relative importance;
- b) information on the execution venues where the manager executes transactions;
- c) other factors pursuant to subparagraph h) of paragraph 1 above that the manager takes into account in selecting execution venues; and

---

<sup>9)</sup> Article 2(2) of Act No. 256/2004 Coll.

d) the designation of the person to whom this manager transmits orders to trading in respect of the individual types of investment instruments, or the designation of the person through whom the manager executes transactions.

(3) The rules pursuant to paragraph 2 above shall be determined for the individual types of investment instruments by the persons to whom orders to execute transactions may be given.

(4) The manager of a standard fund or of a foreign standard fund must obtain a prior consent of the standard fund or foreign standard fund that is a legal entity and whose assets the manager manages to the rules for the execution of transactions pursuant to paragraph 2 above.

(5) The manager of a standard fund or of a foreign standard fund shall in an appropriate manner inform the owners of securities or dematerialized securities issued by the standard fund or by the foreign standard fund, of the rules for the execution of transactions and of any material amendments thereto.

#### Article 38

(1) The efficiency of the rules for the execution of transactions, including the quality of the execution of orders to trading by a third party, shall be evaluated by the manager of a standard fund or of a foreign standard fund on a continuous basis, and any inadequacies identified shall be rectified without undue delay.

(2) The rules for the execution of transactions shall always be reviewed by the manager of a standard fund or of a foreign standard fund without undue delay following any material change that affects the capability to achieve through executing an order to trading the best possible result for the standard fund or for the foreign standard fund, but at least once a year.

(3) Upon request, the manager of a standard fund or of a foreign standard fund must be able to substantiate to the Czech National Bank that it executes transactions on the account of the standard fund or of the foreign standard fund, or that it transmits orders on the account of the standard fund or of the foreign standard fund, in accordance with the rules to be adopted pursuant to Section 37 hereof.

#### Article 39

##### **Processing of Transactions**

[Re: Article 22(2)(f) of the Act]

(1) The manager of a standard fund or of a foreign standard fund shall implement, maintain and apply rules for the processing of transactions, which shall stipulate procedures at least for

- a) the accurate recording of the execution of transactions without undue delay;
- b) the processing of comparable transactions in the sequence in which the orders to trading were given, except for cases where it is justified by the nature of the transaction, by the current conditions on the market, or by the interest of the unit-holders or shareholders of the standard fund, or by the interest of persons in a comparable position with respect to the foreign standard fund;
- c) the fair settlement of an executed transaction, if it is to be ensured by the manager; and
- d) the immediate and accurate allocation of the investment instruments, of the funds obtained and of the expenses incurred in the case of aggregation of transactions (Article 40 hereof).



(2) The manager of a standard fund or of a foreign standard fund shall not use any information relating to unexecuted transactions of the managed standard fund or foreign standard fund so as, based on such information and prior to the execution of the transaction of such a fund, to acquire or alienate the investment instrument that constitutes the subject of the unexecuted transaction, or any other investment instrument the value of which relates to the investment instrument that constitutes the subject of the unexecuted transaction.

(3) The manager of a standard fund or of a foreign standard fund shall take all reasonable steps in order to prevent the use of any information relating to unexecuted transactions of the managed standard fund or foreign standard fund by the persons with a special relationship to this manager.

#### Article 40

### **Aggregation of Transactions**

[Re: Article 22(2)(g) of the Act]

(1) The rules for the allocation of the fulfilments and liabilities resulting from an aggregated transaction must contain procedures for

- a) the determining of the assets of the standard funds or of the foreign standard funds and of the clients that the aggregated transaction is to relate to;
- b) the determining of the impact of the volume and price of the transaction on the allocation of the fulfilments and liabilities resulting from the executed aggregated transaction; and
- c) the allocation of the fulfilments and liabilities resulting from the executed aggregated transaction in the case of a partial execution of the transaction.

(2) The manager of a standard fund or of a foreign standard fund may execute a transaction of the standard fund or of the foreign standard fund together with one or more transactions of another standard fund or foreign standard fund, or together with a transaction of another client, or together with a transaction on its own account, if

- a) it is unlikely that the aggregation of transactions might be less favourable for any of the standard funds or foreign standard funds or for any of the clients whose transactions are to be aggregated than would be their separate execution;
- b) the allocation of the fulfilments and liabilities resulting from the executed aggregated transaction shall take place in accordance with the rules pursuant to paragraph 1 above; and
- c) the allocation of the fulfilments and liabilities resulting from the aggregated transaction shall not harm any standard fund or foreign standard fund or any client.

(3) If a transaction of a standard fund or of a foreign standard fund aggregated with a transaction on one's own account has been executed only partly, the manager of the standard fund or of the foreign standard fund shall allocate the fulfilments and the corresponding liabilities resulting from the aggregated transaction preferentially to the standard fund or to the foreign standard fund, unless the conditions pursuant to paragraph 4 below are met. This shall also apply mutatis mutandis, provided that an aggregation of a transaction on one's own account with a transaction of another client is concerned.

(4) If the manager of a standard fund or of a foreign standard fund is able to substantiate to this fund or to the client whose transaction the manager has aggregated with a transaction on its own account, that the aggregated transaction has been executed under more favourable conditions than would have probably been attained for the individual transactions, or that the

transaction would not have been executed at all, the manager may also allocate the fulfilments and liabilities resulting from the aggregated transaction to its own account.

#### Article 41

#### **Inducement**

[Re: Article 22(2)(h) and (3)(g) and Article 49(2)(b) and (3)(f) of the Act]

(1) An inducement [Article 22(5) of the Act] shall be deemed permitted within the bounds of Article 22 and Article 49 of the Act, if it is

- a) paid by a standard fund or by a foreign standard fund, paid on behalf of a standard fund or of a foreign standard fund, or paid to a standard fund or to a foreign standard fund; or
- b) paid to a third party or for a third party, or provided by a third party or on behalf of a third party; and
  1. prior to the performance of the relevant activity, the standard fund or the foreign standard fund has been informed in a clear, comprehensible and full manner of the existence and nature of the inducement and of the amount or value thereof, or of the method of its calculation, if it cannot be ascertained in advance;
  2. the inducement contributes to the improvement of the quality of the relevant activity; and
  3. the inducement is not at variance with the duty of the manager or administrator of a standard fund or of a foreign standard fund to act in a competent, honest and fair manner and in the best interest of the unit-holders, shareholders or persons in a comparable position with respect to such funds.

(2) Permitted shall be such an inducement that enables the performance of the relevant activity, or that is necessary for this purpose, and the nature of which is not at variance with the duty of the manager or administrator of a standard fund or of a foreign standard fund to act in a competent, honest and fair manner and in the best interest of the unit-holders, shareholders or persons in a comparable position with respect to such funds.

(3) The manager or administrator of a standard fund or of a foreign standard fund may provide the information pursuant to item 1 of subparagraph b) of paragraph 1 above in the form of a summary description of the main terms of the inducement; however, upon request by the standard fund or foreign standard fund that is a legal entity, or upon request by a unit-holder, shareholder or person in a comparable position, it shall always also disclose the details on a durable information medium.<sup>6)</sup>

(4) A manager that manages a standard fund or foreign standard fund that is not a legal entity, and the administrator of such funds shall fulfil the information duty pursuant to item 1 of subparagraph b) of paragraph 1 above by publishing the required information in the manner pursuant to Article 638 of the Act.

#### PART FIVE

#### **REGULAR REPORTS AND INFORMATION**

#### Article 42

#### **Annual and Semi-Annual Report**

[Re: Article 234(6), Article 238(4), Article 291(3) and Article 478 of the Act]

- (1) Other material information that is to be contained in

- a) an annual report of a collective investment fund shall include the information specified in Annex No. 2 to this Decree;
- b) a semi-annual report of a collective investment fund shall include the information specified in paragraphs a) to e), h), i), l) and m) of Annex No. 2 to this Decree; and
- c) an annual report of a fund of qualified investors, the manager of which is authorized to exceed the relevant limit, shall include the information specified in paragraphs a) to f) of Annex No. 2 to this Decree.

(2) An annual report and a semi-annual report shall be pursuant to Article 455 of the Act provided to the Czech National Bank in electronic form as stipulated by the legal regulation on the digitalization of the Commercial Register<sup>10)</sup>. An annual report in electronic form signed with a recognized electronic signature<sup>11)</sup> shall be sent by this manager and administrator to the electronic address of the filing department of the Czech National Bank, or through the public data network to the data box<sup>12)</sup>.

(3) If the size of a data message makes it impossible to send the same by electronic mail or through the data box, the manager and administrator of an investment fund or of a foreign investment fund shall send an annual report in electronic form on a technical data medium to the address of the Czech National Bank.

### **Notification of Consolidation or of Merger by Acquisition**

[Re: Article 389(3) and Article 405(3) of the Act]

#### Article 43

(1) A notification of consolidation of a standard fund, or a notification of merger of a standard fund by acquisition, which is to be provided to unit-holders and shareholders,

- a) must be written in a brief and comprehensible manner so as to enable the unit-holders and shareholders to make an informed assessment of the impacts of the proposed merger by acquisition, or of the proposed consolidation, on their interests; and
- b) shall contain information pursuant to Annex No. 3 to this Decree.

(2) In the case of consolidation or merger by acquisition in which a foreign standard fund is involved, all of the terms or procedures relating to the foreign investment fund comparable with a standard fund that differ from the terms and procedures commonly used in the Czech Republic shall be explained in the manner pursuant to paragraph 1 above.

(3) A notification which is to be provided to the unit-holders and shareholders of the standard fund that is to be dissolved, must assume that these unit-holders and shareholders have no information on the basic features of the successor standard fund or foreign standard fund, or on the manners of its operation, and must emphasize the necessity to make oneself familiar with the key information on this successor standard fund or foreign standard fund.

(4) A notification of consolidation of a standard fund, or a notification of merger of a standard fund by acquisition, which is to be provided to the unit-holders and shareholders of the successor unit trust, shall be focused, in particular, on the implementation of the merger

---

<sup>10)</sup> Article 2 of Decree No. 562/2006 Coll., stipulating the manner of transfer of instruments to electronic form, the manner of treatment of the transferred instruments and the obligatory electronic form of instruments (the Decree on the Digitalization of the Commercial Register).

<sup>11)</sup> Article 11(3) of Act No. 227/2000 Coll., on electronic signature and on amendment to some other laws (the Electronic Signature Act), as amended by Act No. 167/2012 Coll.

<sup>12)</sup> Act No. 300/2008 Coll., on electronic acts and authorized document conversion, as amended.

by acquisition, or of the consolidation, and on the potential impact on the successor standard fund.

#### Article 44

(1) As an annex to a notification of consolidation, or as an annex to a notification of merger by acquisition, the administrator of the standard fund that is to be dissolved shall provide the existing unit-holders and shareholders with an up-to-date version of the key information on the successor standard fund.

(2) If the key information on the successor standard fund has been amended for the purposes of the proposed merger by acquisition, the administrator of the fund that is to be dissolved shall provide it to its existing unit-holders and shareholders.

#### Article 45

Further, a notification of consolidation of a standard fund, or a notification of merger of a standard fund by acquisition, and the key information on the successor standard fund shall also be provided to each person who – in the period of time from the date of publication of the notification of consolidation, or from the date of publication of the notification of merger by acquisition, until the relevant day for the consolidation or for the merger by acquisition – purchases or sells unit certificates in the standard fund that is to be dissolved or in the successor standard fund, or who requests a copy of the fund's statute or of the establishment documents or of the key information on the standard fund that is involved in the merger by acquisition or in the consolidation.

#### Article 46

##### **Languages of Provision and Publication of Information**

[Re: Article 307(4)(b) and (5)(b) and Article 638(3) of the Act]

(1) The key information on a standard fund, or a comparable document of a foreign standard fund, shall be provided or published in the Czech Republic in the Czech language.

(2) The statute, an annual report and a semi-annual report of a standard fund, or a comparable document of a foreign standard fund, and information on the amounts for which the unit certificates or investment shares issued by the standard fund are issued and repurchased, or comparable information on the issuance and repurchasing of the securities or dematerialized securities issued by the foreign standard fund, shall be provided or published in the Czech Republic in the Czech language, in the Slovak language or in the English language.

(3) The rules specified in paragraphs 2 and 3 above shall not affect the right of a standard fund or of a foreign standard fund to provide or publish the documents listed therein in some other extra language, too.

#### PART SIX

##### **RULES FOR DETERMINING THE AMOUNT OF CAPITAL**

#### Article 47

##### **Rules for Determining the Amount of Capital of a Management Company**

[Re: Article 30(5) of the Act]

(1) The capital shall be derived from the balance sheet of a management company. Items

that are to be included in the capital must not be taken into account more than once and their amount must be determined net of any tax liabilities.

(2) The capital shall not include any profits or any losses due to a fair value measurement of any liabilities of a management company in connection with changes in the management company's credit risk. The capital shall not include any valuation differences resulting from any hedging derivatives in the hedging of cash flows either.

(3) The capital shall include the paid-up registered capital,

- a) minus acquired own unit certificates, also including any items resulting from transactions in own unit certificates (particularly from forwards and options) and decreasing the equity capital;
- b) plus the share premium, which shall include
  1. the paid-up share premium relating to the paid-up registered capital; and
  2. the share premium resulting from transactions in own unit certificates;
- c) plus reserve funds and retained profit, which shall be the sum of the items specified under 1 to 4 below, minus the item specified under 5 below:
  1. mandatory reserve funds;
  2. other funds created from profit distribution, with the exception of funds created on an ad hoc basis;
  3. the retained profit from previous periods given in a management company's financial statements verified by an auditor and approved by its supreme body, regarding the distribution of which the supreme body has not decided;
  4. the after-tax profit for the accounting period given in a management company's financial statements verified by an auditor, minus the estimated profit share to be paid out and other expected payments from profit distribution; and
  5. the unpaid loss from previous periods, including the loss for the past accounting period;
- d) plus or minus the resulting exchange-rate differences stemming from the consolidation of the data on a foreign branch of a management company's commercial enterprise;
- e) minus the loss for the current accounting period;
- f) minus the goodwill;
- g) minus intangible assets other than the goodwill;
- h) minus the valuation difference resulting from changes in the fair values of instruments included for bookkeeping purposes in the portfolio of realisable financial instruments, if such a valuation difference is negative;
- j) minus capital investments in other entities, if they exceed 10 % of the registered capital of the entities in which they are invested;
- k) minus the sum of the values of capital investments in other entities, namely in the amount that exceeds 10 % of a management company's capital before the deduction of the value pursuant to subparagraph j) above and pursuant to this subparagraph k), if the individual capital investments represent up to 10 % (inclusive) of the registered capital of the entities in which they are invested; and
- l) minus the value of exposures resulting from securitisation which would have a risk weight of 1250 % pursuant to the regulation stipulating the capital requirements for investment firms<sup>13)</sup>.

(4) For the purposes of subparagraphs j) and k) of paragraph 3 above, *capital investment* shall be understood as a participating security, an ownership interest, a membership interest or a similar position, or a subordinated receivable.

---

<sup>13)</sup> Decree No. 123/2007 Coll.

Article 48

**Rules for Determining the Amount of Capital of an Autonomous Investment Fund, of a Foreign Entity Having an Authorization of the Czech National Bank, and of a Primary Administrator**

[Re: Article 30(5) and Article 58(3) of the Act]

In order to determine the amount of the capital of an autonomous investment fund, of a foreign entity having an authorization pursuant to Article 481 of the Act, and of a primary administrator, Article 47 hereof shall be applied mutatis mutandis.

PART SEVEN

**FINAL PROVISIONS**

Article 49

**Effective Day**

This Decree shall become effective on the day of its promulgation.

Governor:

Ing. Singer, Ph.D., signed

**System of Remuneration of Certain Persons**

[Re: Article 20(2)(j) of the Act]

**I. General provisions**

1. The principles and procedures within the remuneration system shall be applied
  - a) to a person's salary, consideration, special pension benefits and other benefits and similar forms of income that may be regarded as remuneration (hereinafter "remuneration");
  - b) to selected groups of persons whose activities within the scope of their employment, occupation or function have a significant impact on the risks to which the manager or the investment fund or foreign investment fund managed by this manager might be exposed, particularly including
    - ba) members of the control body or management body of this manager (bodies, executive and non-executive directors);
    - bb) persons who actually manage the activities of this manager (senior management);
    - bc) persons in internal control functions of this manager (control functions), particularly persons responsible for the risk management, compliance or internal audit;
    - bd) persons or groups of persons whose activities are associated with the risk-taking by this manager, investment fund or foreign investment fund (risk takers); and
    - be) other persons whose remuneration is similar to that of the persons referred to in items ba) to bd) above;
  - c) in the manner and to the extent that takes into account the size and organizational structure of the manager and the nature, scope and complexity of the activities of the manager of an investment fund or of a foreign investment fund.
2. The principles and procedures within the remuneration system shall
  - a) promote the due and efficient risk management and be consistent with it;
  - b) not encourage any risk-taking beyond the framework of the risk profile of the manager of an investment fund or of a foreign investment fund, particularly with regard to the statute or to the memorandum of association of the managed investment fund, or with regard to a comparable document of the managed foreign investment fund;
  - c) be consistent with the business strategy, objectives, values and interests of the manager of an investment fund or of a foreign investment fund, or of this fund; and
  - d) include procedures to prevent conflicts of interest in relation to remuneration.

**II. Selected prerequisites for and the arrangement of the remuneration system**

1. The manager of an investment fund or of a foreign investment fund shall ensure that its control body, within the scope of its powers, approves and periodically evaluates the overall principles and procedures of remuneration and is responsible for their implementation and application.
2. The implementation and application of the principles of remuneration shall be, at least once a year, subjected to an overall independent internal review in terms of compliance with the principles and procedures within the remuneration system approved by the control body of the manager of an investment fund or of a foreign investment fund pursuant to paragraph 1 above.
3. Persons in internal control functions shall be independent of the departments they control, and shall be remunerated in accordance with the achievement of the objectives stipulated in respect of the given control function, independently of the performance of the organizational

departments they control; remuneration of the heads of the risk management and compliance organizational departments shall be directly overseen by the remuneration committee of the manager of an investment fund or of a foreign investment fund, if set up (paragraph 4 below), or by the control body of the manager of an investment fund or of a foreign investment fund.

4. If it is appropriate to the size and organizational structure of the manager of an investment fund or of a foreign investment fund, and to the nature, scope and complexity of the activities of the manager of an investment fund or of a foreign investment fund, this manager shall set up a remuneration committee that is to be composed of members of the manager's control body. The remuneration committee shall be constituted in such a manner as to ensure a competent and independent assessment of the principles and procedures of remuneration and of the motivational incentives for the management of risks of this manager, investment fund or foreign investment fund. The manager of an investment fund or of a foreign investment fund shall ensure that the remuneration committee is responsible for the preparation of proposals for decisions regarding remuneration, including those that have an impact on the risks and risk management of the manager of the investment fund or of the foreign investment fund, or of this fund, and that are to be adopted by the control body of this manager. Members of the remuneration committee shall be selected members of the control body of the manager of an investment fund or of a foreign investment fund.

#### *Measuring performance in relation to remuneration*

5. Where performance-related remuneration is stipulated,

- a) the total remuneration shall be based on a combination of an assessment of the work performance of an individual, and of the performance of the organizational department concerned, and of the performance of the manager of an investment fund or of a foreign investment fund, or of the performance of the investment fund or foreign investment fund concerned;
- b) in assessing the performance of an individual, both financial and non-financial criteria shall be taken into account; and
- c) an assessment of performance shall be done on a multi-year basis in order to ensure that the assessment process is based on a longer-term performance and that the payment of portions of the variable component of performance-related remuneration is spread over a period that takes into account any repurchases of securities or dematerialized securities issued by the investment fund or by the foreign investment fund managed by the manager of an investment fund or of a foreign investment fund, as well as any risks associated with investment.

#### *Form and structure of remunerations*

6. The fixed and variable components of a person's total remuneration shall be appropriately balanced; the fixed component shall constitute a sufficiently large proportion of the total remuneration so as to allow the application of a flexible principle to the variable remuneration component, including the option of paying no variable remuneration component at all. The manager of an investment fund or of a foreign investment fund shall determine an appropriate ratio between the fixed and the variable components of remuneration on a case-by-case basis in respect of the individual persons or groups of persons.

7. The measurement of performance for the purpose of calculating the individual components of variable remunerations, or for the purpose of calculating a set of such components, within the manager of an investment fund or of a foreign investment fund shall also include a comprehensible method of adjustment that will make it possible to take into account all types of existing and future risks.



8. A substantial portion, but not less than 40 %, of the variable remuneration component shall be deferred over a period of at least 3 to 5 subsequent years, unless the investment horizon of a managed investment fund or foreign investment fund is shorter; the length of the period must be appropriate to the period for which a fund is established and must be aligned with the nature of the risks associated with the investing of the assets of an investment fund or of a foreign investment fund and with the rules for the repurchasing of securities or dematerialized securities issued by the investment fund or by the foreign investment fund concerned. The entitlement to a deferred portion of the variable remuneration component may not arise faster than on a pro-rata basis. If a portion of the variable remuneration component should reach an extraordinarily high amount, the entitlement to at least 60 % of this amount shall be deferred.

9. With respect to the legal form and the memorandum of association, statute or a comparable document of a managed investment fund or foreign investment fund, a substantial portion, but not less than 50 %, of the variable remuneration component shall consist of securities and dematerialized securities issued by the investment fund or by the foreign investment fund, or of other unit certificates in this fund that are not represented by a security or dematerialized security, or of other instruments linked with the said securities, dematerialized securities or other unit certificates. Where the value of the assets of a special fund, of a fund of qualified investors or of a comparable foreign investment fund managed by a manager that is authorized to exceed the relevant limit does not reach 50 % of the total value of the assets managed by this manager, the first sentence shall not be applied. Such instruments must not be repurchased for an appropriate period according to the principles of the manager of an investment fund or of a foreign investment fund so that the motivation of the persons working for this manager is aligned with the interests of this manager, of this fund and of the fund's unit-holders, partners or beneficiaries. This rule shall apply to both the deferred and the non-deferred portion of the variable remuneration component.

10. If it is appropriate to the size, organizational structure, nature, scope and complexity of the activities of the manager of an investment fund or of a foreign investment fund, the manager of such funds may, in its internal regulations, preclude the application of some or all of the rules contained in paragraphs 8 and 9 above to the remuneration of the persons specified in subparagraph b) of paragraph 1 of section I above.

#### *Limitations on the variable remuneration component*

11. The entitlement to the variable remuneration component, or to any portion thereof, including the deferred one, shall only arise if it is sustainable in consideration of the overall financial standing of the manager of an investment fund or of a foreign investment fund, and if it is justified by the performance of the organizational department, of the fund and by the individual work performance of the person concerned. Otherwise, no entitlement shall arise, or it shall arise to a limited extent only (known as “malus”).

12. The manager of an investment fund or of a foreign investment fund shall implement measures that will enable it to withdraw any already granted, but not yet paid out, variable remuneration component, or any portion thereof, and to demand a refund of any already paid out variable remuneration component (known as “clawback”); the foregoing shall be without prejudice to the provisions of other legal regulations.

13. In the case of an unfavourable financial performance of the manager of an investment fund or of a foreign investment fund, or of a fund managed by this manager, the total variable remuneration component shall be considerably reduced, including the application of measures pursuant to paragraphs 11 and 12 above, both in respect of the current remunerations and in respect of any remunerations granted for the previous periods.

### *Special pension benefits*

14. The principles of the provision of special pension benefits shall be in line with the overall strategy, objectives, values and long-term interests of the manager of an investment fund or of a foreign investment fund and of the funds managed by this manager. Contributions within the framework of employee pension insurance, supplementary pension insurance, retirement insurance, supplementary pension savings or contributions of a similar nature and customary for the persons working for the manager of an investment fund or of a foreign investment fund shall not be regarded as special pension benefits. If this person:

- a) ceases to perform its activities before an entitlement to a retirement pension arises, special pension benefits shall be held by the manager for a period of 5 years in the form of instruments pursuant to paragraph 9 above before they may be granted to this person; or
- b) reaches an entitlement to a retirement pension, special pension benefits shall be granted to it in the form of instruments specified in paragraph 9 above, and these instruments shall not be repurchased for a period of 5 years.

### *Prevention of potential circumvention of the purpose of regulation in respect of remuneration*

15. The variable remuneration component must not be paid out in instruments or in a form that would make it possible to circumvent the requirements of the Act, of this Decree or of other legal regulations.

16. The manager of an investment fund or of a foreign investment fund shall ensure that the persons working for it do not apply any insurance or other individual hedging strategies in relation to their remuneration or to their responsibilities that might jeopardize the effects of those elements of the remuneration principles that are focused on reducing the risk.

17. A variable remuneration component that is guaranteed irrespective of performance shall be provided in exceptional cases only, and shall be permitted only in the context of acquiring new persons; this method of remuneration shall be limited to a period of the first year of their activities.

18. Any payments provided in relation to a premature termination of a contractual relationship shall reflect the person's performance achieved in the course of the given period, and shall be designed in a manner that does not reward failure.

**Annual Report of a Collective Investment Fund**

Other material information pursuant to Article 234(1)(j) of the Act that is to be contained in an annual report of a collective investment fund shall include:

- a) identification data of each person performing asset management (portfolio manager) of the collective investment fund in the relevant period, and information on the period of time for which the person (has) performed such activities, including a brief description of the person's experience and knowledge;
- b) identification data of each depository of the collective investment fund in the relevant period, and information on the period of time for which the person (has) performed the activities of a depository;
- c) identification data of each person entrusted by the depository with the custody or safekeeping of the fund's assets, if more than 1 % of the value of the assets of the collective investment fund have been deposited with such a person;
- d) identification data of each person authorized to provide investment services that (has) performed the activities of a primary supporter in respect of the assets of the collective investment fund in the relevant period, and information on the period of time for which the person (has) performed such activities;
- e) an identification of the assets, if their value exceeds 1 % of the value of the fund's assets as at the day on which the valuation that was used for the purposes of this report was carried out, with a specification of the total acquisition price and the fair value at the end of the relevant period;
- f) the development of the value of a unit certificate or share in the relevant period, which is to be expressed in a graphic form; where the investment strategy of the investment fund monitors or copies a specific index or another quantitatively expressed financial indicator (benchmark), the development of such an index in the relevant period shall also be provided in a graphic form;
- g) judicial or arbitration disputes relating to the assets or to any claim of the owners of the securities or dematerialized securities issued by the collective investment fund, if the value of the dispute exceeds 5 % of the value of the fund's assets in the relevant period;
- h) the value of all profit shares paid out per unit certificate or per investment share;
- i) information on the actually paid consideration to the manager for managing the fund, which is to be broken down into information on the consideration for the performance of the activities of a depository, of an administrator, of a primary supporter and of an auditor, and information on other expenses or taxes;
- j) information on the quantitative restrictions and methods that were selected for the evaluation of the risks associated with the techniques of the fund's management in the relevant period, including information on the counterparties to the transactions, on the type and amount of the hedging received, and on the yield and expenses associated with the application of such techniques;

- k) in the case of a collective investment fund that is neither an open-end unit trust nor a joint-stock company with variable registered capital, information on the day on which the period of time for which the investment fund was set up expires, and information on whether the fund will subsequently enter into liquidation or transform itself into an open-end unit trust;
- l) in the case of a collective investment fund that monitors a specific index or another quantitatively expressed financial indicator (benchmark), the annual variance between the given fund's performance and the performance of the monitored index, including an explanation of any differences between the estimated and actual variance in the relevant period; and
- m) in the case of a collective investment fund that invests in real estate or in interests in a real estate company, information on the acquisition of any real estate to the assets of this fund at a price that is more than 10 % higher than the lower of the prices according to the opinions of experts or of members of a committee of specialists, including a justification; and information on the sale of any real estate from the assets of this fund at a price that is more than 10 % lower than the higher of the prices according to the opinions of experts or of members of a committee of specialists, including a justification.

**Extent of a Notification of Consolidation of a Standard Fund, or of Merger of a Standard Fund by Acquisition**

1. A notification of consolidation of a standard fund, or a notification of merger of a standard fund by acquisition, shall, in addition to the information specified in Article 389(1) and Article 405(1) of the Act, contain the following information, in particular,

- a) a copy of the key information relating to the successor standard fund;
- b) information on potential material differences in the investment policy and strategy, expenses, estimated outcome, regular reporting, potential weakening of the investment's performance or, as the case may be, a substantial warning for the unit-holders or shareholders about the merger's potential impact on their tax arrangements;
- c) information on the differences in the rights of the unit-holders or shareholders of the standard fund that is to be dissolved, before and after the coming into force of the decision whereby the consolidation or the merger by acquisition is permitted;
- d) information on the right to receive additional information, on the right to receive (upon request) a copy of an independent auditor's report or of the depository's report, and on the right to the repurchase of a security or dematerialized security without deduction, in accordance with Article 390 and Article 406 of the Act, including the deadline for the assertion of this right;
- e) if the key information on the standard fund or foreign standard fund that is to be dissolved and on the successor unit trust or foreign standard fund provides synthetic indicators of the risk and yield<sup>14)</sup> in different categories, or if different material risks are indicated in the accompanying commentary, a comparison of these differences shall be provided;
- f) a comparison of all the charges and expenses of both the standard funds or foreign standard funds that are to be consolidated or merged by acquisition, on the basis of the amounts published in their respective key information;
- g) if the standard fund that is to be dissolved stipulated a consideration for the year-on-year growth of the value of the fund capital, a description shall be provided of how it is to be determined until the relevant day for the consolidation or for the merger by acquisition, and a description of how it is to be determined after the relevant day, so as to ensure an equal treatment of the unit-holders or shareholders who previously owned the unit certificates or shares of the standard fund that is to be dissolved;
- h) information on how the profits of future periods are to be disposed of in the relevant standard fund;
- i) information on how the depository's report pursuant to Article 393(2) and Article 409(2) of the Act can be obtained;
- j) information on the plan to suspend the issuance or repurchasing of unit certificates or investment shares in order to implement the consolidation or the merger by acquisition in an efficient manner; and
- k) information on the payment, including when and how the unit-holders or shareholders will receive the monies, if a monetary compensation is provided due to inadequacy of the unit certificate that is to be received in exchange pursuant to Article 396 or Article 412 of the Act.

---

<sup>14)</sup> Article 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 conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website.

2. A notification determined for the unit-holders or shareholders of a unit trust that is to be dissolved shall contain the following information, in particular,
  - a) the period of time during which the unit certificates or investment shares will still be issued and repurchased in the standard fund that is to be dissolved; and
  - b) the day from which those unit-holders or shareholders who did not use their right to the repurchase or replacement of a unit certificate or investment share pursuant to Article 391 or Article 407 of the Act within the relevant deadline, may start asserting their rights as the unit-holders or shareholders of the successor standard fund.
3. A notification determined for the unit-holders or shareholders of the successor standard fund shall also contain information on whether, as a result of the merger by acquisition, the composition of the assets in the successor standard fund will be changed, and whether and in what manner such a situation will be resolved until or after the relevant day for the merger by acquisition.
4. If the notification pursuant to paragraphs 1 or 2 above begins with a summary of the key items of the proposal for the consolidation or for the merger by acquisition, such a summary must contain references to the parts of the notification where further information is provided.