

## **DECREE**

**No. 58/2006 Coll.**

of 23 February 2006

### **on the manner of keeping separate records of investment instruments and records based on separate records of investment instruments**

as follows from amendments introduced by Decree **No. 238/2008 Coll.**

Pursuant to Article 199 (2) (g) and (k) of Act No. 256/2004 Coll., on capital market undertakings, as amended by Act No. 56/2006 Coll., (hereinafter the "Act"), the Czech Securities Commission stipulates the following:

## **PART ONE**

### **GENERAL PROVISIONS**

#### **Article 1**

##### **Subject**

(1) This Decree stipulates the manner of keeping separate records of investment instruments (hereinafter "separate records") and records based on separate records of investment instruments (hereinafter "follow-up records") and the details of the method of sending information by a person keeping records.

(2) Follow-up records pursuant to this Decree shall also include records based on the records of securities kept by the Czech National Bank pursuant to Article 93 (5) of the Act.

#### **Article 2**

##### **Definitions**

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

- a) records mean separate records or follow-up records;
- b) record-keeping system means hardware and software equipment whereby entries in asset accounts are created and maintained;
- c) instruction means an expression of will of an authorized person addressed to the person keeping records whose execution requires entry in the records;
- d) entry in records means any entry of data in an asset account, particularly within
  1. opening or canceling of an asset account;
  2. change in the details on the account holder;
  3. issuing and canceling of a book-entered security;

4. crediting or debiting an account with a certificated security upon its acceptance for safekeeping or release thereof from safekeeping;

**5. crediting an account kept abroad for a person keeping records with a foreign security or debiting an account kept abroad for a person keeping records with a foreign security;**

6. transfer or passage of an investment instrument or co-ownership interest in an investment instrument;

7. establishment, change or expiry of a right of pledge to an investment instrument;

8. registration or cancellation of suspension of exercise of the owner's right to dispose of a book-entered security;

9. change in the nominal value or other requisites of an investment instrument;

e) document concerning data registered in records (hereinafter a "document") means an instruction to make an entry in the records and documents attesting to authorization of the relevant person to give the instruction; where execution or the manner of execution of an instruction depends on other facts, this also includes documents proving these facts, particularly information on a change in the state of an owner account or an account kept by a foreign person;

f) user means an employee or some other person performing tasks following from recordkeeping for persons keeping the records;

g) close of a trading day means the time of closure of entries in the records on a trading day;

h) agreement on keeping an asset account means an agreement set out in Article 5 (3) or (4);

i) reconciliation shall mean check of conformity of the data registered in the records with the actual state of affairs and the procedure for remedying any ascertained variances.

### Article 3

#### **Organizational and Technical Measures to Secure Recordkeeping**

(1) Records shall be kept in electronic form.

(2) The record-keeping system shall

a) ensure maintenance of all data whose records are required by this Decree;

b) allow for setting and verifying access rights of the individual users;

c) adequately provide for protection of data kept in the records against unauthorized use;

d) record information on the user who has entered the data in the records;

e) allow for creation of regular backups of data;

f) allow for full and accurate reconstruction of data.

(3) The person keeping records shall provide for creation of regular backups of data from which the data kept in the records can be reconstructed. The carriers with recorded backup data shall be kept outside the building in which the technical means of the record-keeping system

servicing for storage of data for usual operational needs are located. Backups shall be created according to a schedule determined in advance by the person keeping records, but always without delay after close of a trading day.

(4) The person keeping records shall ensure that carriers containing recorded backup data are secured against unauthorized interference by third persons and against loss and destruction.

(5) A person keeping records shall provide for substitute operation of the record-keeping system in the event of its failure. Fulfillment of the requirements set out in paragraph 2 above shall be ensured in the substitute operation of the system.

(6) A person keeping records shall stipulate in writing organizational and technical measures securing recordkeeping, including at least

a) the conditions for access of users to the record-keeping system, the scope of access rights and the process of setting thereof, including the manner of decision-making on the scope of access rights of the individual users and decision-making on changes therein;

b) the procedure in and schedule of creation of backups of data pursuant to paragraph 3 above;

c) the procedure in reconstructing data kept in the records from the backup data;

d) the method of storing documents;

e) the procedure in resolving failures of the record-keeping system, including the manner of ensuring substitute operation;

f) the procedure in resolving situations where equipment used for recordkeeping on the basis of an agreement with a third party can no longer be used;

g) the procedure in correction of errors in the records.

**(7) The provisions of paragraphs 1 to 6 above shall not apply to foreign persons who have been granted authorization to provide investment services by a supervisory authority of another Member State of the European Union.**

#### Article 4

(1) The schedule for acceptance and processing of orders during a trading day (hereinafter the “schedule of a trading day”) stipulated by a person keeping records shall be published in a manner allowing remote access during the term of recordkeeping. The schedule of a trading day shall include specification of the close of the trading day.

(2) An entry in follow-up records that follows from an entry made in the nominee account shall be made without undue delay after the entry in the nominee account, as of the trading day when the entry was made in the nominee account. An analogous procedure shall apply in keeping separate records of foreign securities.

(3) An entry on acceptance of certificated securities for safekeeping and release thereof from safekeeping shall be made without undue delay after acceptance of the certificated securities

for safekeeping or release thereof from safekeeping, as of the trading day when the securities were accepted for safekeeping or released from safekeeping.

## Article 5 Establishment of an Asset Account

(1) When establishing an asset account, a person keeping records shall verify the details on the account holder that are entered in the records. Similarly, it shall verify the details on the account holder upon entering a change in these data in the records. This shall in no way prejudice the obligations pursuant to **other** legal regulations.1)

(2) A person keeping separate records shall establish a nominee account only for a person who demonstrates that he is entitled to keep follow-up records.2)

(3) An investment firm or a foreign person established in a country that is not a Member State of the European Union which provides investment services in the territory of the Czech Republic through a branch **pursuant to Article 28 of the Act** or an investment company, in safekeeping and administration of securities issued by a collective investment fund 3) (hereinafter an “obliged person”), shall always establish an asset account

a) if it concludes an agreement on safekeeping of certificated securities as the depositary, unless the depositor has already established an account with the obliged person; and

b) in conclusion of an agreement on provision of an investment service under which the **obliged person is to accept** foreign securities **pursuant to Article 93 (1) (c) of the Act**, unless the client has already established an account with the obliged person.

(4) In cases other than those set out in paragraph 3 above, the person keeping records shall establish an asset account on the basis of an agreement with the account holder or issuer of a book-entered security, under which the person keeping records is obliged to establish and keep an asset account for the account holder.

1) E.g., Act No. 61/1996 Coll., on certain measures against legalisation of the proceeds of crime and amending and supplementing related laws, as amended, Act No. 101/2000 Coll., on personal data protection and on amendment to some laws, as amended.

2) **E.g., Article 4 (6) of the Act on Capital Market Undertakings, as amended by Act No. 230/2008 Coll.**

3) Article 9 (1) of Act No. 189/2004 Coll., on collective investment.

## Article 6 Requisites of Asset Accounts

(1) An owner account shall include, in particular:

a) specification of the account which unambiguously identifies the account in the records;

b) indication that an owner account is involved;

c) details on the person **pursuant to Article 2 (1) (j) of the Act** for whom it is being kept;

d) details on the investment instruments **pursuant to Article 12 (1) and (2), Articles 15, 18 and 21;**

e) **details on separately transferable rights pursuant to Article 12 (3).**

(2) An owner account may contain, if stipulated in the agreement on keeping the asset account, in addition to the data pursuant to paragraph 1 above, also information on the co-owner of the investment instrument and the size of his co-ownership interest.

**(3) An owner account kept for a natural person who has not been assigned a birth identification number shall also contain specification unambiguously identifying the natural person in the records. An asset account kept for a legal person that has not been assigned an identification number shall also contain specification unambiguously identifying the legal person in the records.**

(4) A nominee account shall include

a) data pursuant to paragraph 1 (a) to (c),

b) indication that a nominee account is involved; and

c) **details on the investment instruments pursuant to Articles 12 (1), 15 (1), 18 (1) and 21 (1);**

e) **details on separately transferable rights pursuant to Article 12 (3).**

#### **Article 7 Entry in Records**

(1) A person keeping records shall make entries in the records so that the data registered in the records correspond to the actual state of affairs.

(2) Prior to making an entry in the records, a person keeping records shall verify whether the instruction has been submitted by an authorized person; where the execution or manner of execution of the instruction depends on other facts, it shall verify whether such facts have occurred.

#### **Article 8 Statement of an Asset Account**

(1) A statement of an asset account shall include

a) details on the person keeping records that issued the statement of the asset account;

b) data registered in the asset account pursuant to Article 6; specification of the data pursuant to Article 12 (1) (b) shall not be required if the statement of the asset account contains information pursuant to Article 12 (1) (c) together with the business name, designation or name of the issuer;

c) the trading day as of which the statement of the asset account is issued;

d) the day on which the statement of the asset account is issued.

(2) Where a person keeping records issues a statement in the form of a report corresponding to the requirements of the Society for Worldwide Interbank Financial Telecommunication (SWIFT) based on an agreement with the holder of the asset account,

a) the provisions of paragraph 1 (a) above shall not apply; if the person keeping records is not the sender of the report corresponding to the requirements of SWIFT, the report must specify the person keeping records as the originator of the report in accordance with rules corresponding to the requirements of SWIFT;

b) specification of the entity corresponding to the requirements of SWIFT shall be used to identify the holder of the asset account instead of the details on the person pursuant to paragraph 1 (b) above, in conjunction with Article 6 (1) (b); if the person keeping records is not the recipient of the report corresponding to the requirements of SWIFT, it must be identified in the report as its final addressee in accordance with rules corresponding to the requirements of SWIFT;

c) if a statement of a nominee account is involved, the data set out in the report corresponding to the requirements of SWIFT must indicate that the account holder is not the owner of the investment instruments; if a statement of an owner account is involved, these facts need not be stated.

(3) Where a statement of an asset account is issued as of some other time than the close of a trading day, this fact must be indicated in the statement together with specification of the time as of which the statement is issued.

## **Article 9 Cancellation of an Asset Account**

An asset account may not be cancelled when investment instruments are still recorded in the account.

## **Article 10 Keeping Records Not Required by Law**

A person authorized to keep records that are not required from that person by the law pursuant to **Article 12c (1)** of the Act and Article 9 (1) (b) of the Collective Investment Act 4), shall notify the **Czech National Bank**

a) that it will commence keeping records and shall specify the date from which it will keep records;

b) that it will cease to keep records and shall specify the date from which it will cease to keep records;

c) of its mailing address in matters of recordkeeping and every change therein. A foreign person shall also notify its address in the territory of the Czech Republic, if it has established such an address.

4) Act No. 189/2004 Coll.

## **Article 11**

The provisions of Parts One and Six of this Decree and the provisions of Part Two, Three or Four of this Decree, providing for keeping records of investment instruments that are, in their nature, the most similar to these other investment instruments, shall apply to keeping records of investment instruments other than book-entered **collective investment securities**, certificated securities in safekeeping, foreign securities or securities in records based on records of securities kept by the Czech National Bank. When assessing the nature of such other investment instrument, account shall be taken particularly of importance of the entry in the records from the viewpoint of arising and existence of the rights following from the investment instrument, the possibility of transferring the rights associated with the investment instrument through an entry in the records and the possibility of **assumption of the investment instrument by a third party**.

## **PART TWO**

### **RECORDS OF BOOK-ENTERED COLLECTIVE INVESTMENT SECURITIES**

#### **Article 12**

#### **Data Recorded in an Asset Account on Book-Entered Collective Investment Securities and Separately Transferrable Rights**

**(1) Information on book-entered collective investment securities in an asset account shall include, in particular**

- a) the kind of the security,**
- b) the requisites of the security stipulated by another legal regulation, 5)**
- c) identification according to the system of international securities identification numbers (ISIN); if ISIN has not been assigned, some other unambiguous designation of the security, if assigned;**
- d) the number of items of the securities;**
- e) any limitation of transferability of the security stipulated by the issuer.**

**(2) Based on an instruction of an authorized person, in addition to data pursuant to paragraph 1 above, data shall be recorded in an owner account on**

- a) any right of pledge to the security and details on the pledgee pursuant to Article 2 (1) (j) of the Act;**
- b) any person entitled to exercise the rights associated with the security pursuant to Article 2 (1) (j) of the Act;**
- c) any suspension of exercise of the holder's right to dispose of the security, details on the person pursuant to Article 2 (1) (j) of the Act at whose instruction the disposal of the security was suspended, and on the period for which the disposal of the security is suspended;**

d) any separation of separately transferable rights from the security, with specification of the separately transferable right, including unambiguous differentiating details.

(3) Data on separately transferable rights separated from the book-entered collective investment security that are separately recorded in an asset account shall include, in particular

a) identification of the separately transferable right by specifying

1. ISIN or, if ISIN has not been assigned, some other unambiguous specification, if assigned;  
or

2. description of the separately transferable right, with unambiguous differentiating details, including identification of the security from which the separately transferable right was separated, by means of data pursuant to paragraph 1 (b) or (c) above;

b) the number of items of the separately transferable right if division of the right to items is possible.

5) Act No. 189/2004 Coll. and Act No. 513/1991 Coll., the Commercial Code, as amended.

#### Article 13

#### Reconciliation of the Separate Records and Follow-up Records of Book-Entered Collective Investment Securities

(1) A person keeping separate records of book-entered collective investment securities shall verify, after the close of each trading day, whether the total number of substitutable securities recorded in asset accounts conforms to the total number of issued securities and whether the total number of separately transferable rights separated from the securities recorded in the asset accounts conforms to the total number of issued separately transferable rights.

(2) A person keeping follow-up records of book-entered collective investment securities shall verify, after the close of each trading day, whether the total number of substitutable securities recorded in asset accounts conforms to the total number of substitutable securities recorded in the nominee account kept in separate records for the person keeping follow-up records and whether the total number of separately transferable rights separated from securities recorded in asset accounts conforms to the total number of separately transferable rights recorded in the nominee account kept in the separate records for the person keeping follow-up records.

#### Article 14

#### Keeping Records of an Issue of Book-Entered Collective Investment Securities

(1) Where book-entered collective investment securities are recorded in separate records in asset accounts, the person keeping the separate records shall keep records of the issue for the issuer of the securities.

**(2) The records of an issue of book-entered collective investment securities shall include**

- a) the data set out in Article 12 (1) (a) to (c) and (e);**
- b) information on the total number of securities in the issue;**
- c) details on the owners of securities pursuant to Article 2 (1) (j) of the Act;**
- d) information on the number of securities of the individual owners;**
- e) details on the co-owners of a security pursuant to Article 2 (1) (j) of the Act and on the sizes of their co-ownership interests if recorded in the asset accounts pursuant to Article 6 (2);**
- f) the data pursuant to Article 12 (2).**

**(3) The data pursuant to paragraph 2 (c) to (f) above shall be recorded in the records of the issue only when an extract from the records of the issue is drawn up.**

**(4) An extract from the records of an issue shall be drawn up according to the state as of the close of the trading day as of which the issuer requested the extract from the records. An extract from the records of the issue shall include**

- a) information that this is an extract from the records of an issue within separate records of investment instruments;**
- b) details on the person keeping separate records pursuant to Article 2 (1) (j) of the Act that drew up the extract from the records of the issue;**
- c) the data recorded in the records of an issue pursuant to paragraph 2 (a) to (e) above and Article 12 (2) (a), (b) and (d); specification of the data pursuant to Article 12 (1) (b) is not required if the extract from the records of an issue contains information pursuant to Article 12 (1) (c) in connection with the issuer's business name;**
- d) the trading day as of which the extract from the records of the issue is drawn up;**
- d) the day on which the extract from the records of the issue is drawn up.**

**(5) An extract from the records of an issue drawn up for the purposes of transformation of the type of a book-entered collective investment security shall include, in addition to the data pursuant to paragraph 4 above, information on suspension of exercise of the holder's right to dispose of the security, details on the person pursuant to Article 2 (1) (j) of the Act, at whose instruction the disposal of the security was suspended, and on the period for which the disposal of the security is suspended.**

**(6) A person keeping follow-up records shall provide, at request of the person keeping separate records for the purposes of an extract from the records of an issue of book-entered**

collective investment securities, the data pursuant to paragraph 3 (c), (d), (e) and (f), paragraph 4 (d) and (e) and paragraph 5 above.

(7) Paragraphs 1 to 6 above shall apply to separately transferrable rights separated from book-entered collective investment securities pursuant to Article 12 (3) *mutatis mutandis*.

### PART THREE

#### RECORDS OF CERTIFICATED SECURITIES IN SAFEKEEPING

##### Article 15

##### Data Recorded in an Asset Account on Certificated Securities in Safekeeping

(1) The data on a certificated security in an asset account shall include, in particular

a) identification of the certificated security by specifying

1. ISIN or, if ISIN has not been assigned, some other unambiguous specification of the security, if assigned, or

2. details on the issuer; name of the security; kind and form of the security; nominal value and rights differentiating the security from securities for which the security would otherwise be substitutable; for securities other than shares, similar securities representing an interest in a company or securities issued by a collective investment fund, identification shall be supplemented by specification of the subject and maturity of the rights arising out of the security;

b) the number of shares or the summary nominal value of certificated securities if the number of items cannot be determined.

(2) If agreed in the agreement on keeping an asset account, based on an instruction of an authorized person, data shall also be kept in the asset account in the records, in addition to the data pursuant to paragraph 1 above, on

d) any separation of separately transferable rights **from the security, with specification of the separately transferable right, including unambiguous differentiating details;**

b) any right of pledge encumbering the security and the pledgee.

##### Article 16

Entry of a transfer of a certificated security in the records shall be made by the person keeping the records only if it is proven that the change in the owner of the security will occur on the basis of the transfer agreement at the latest upon entry of the transfer in the records.

##### Article 17

##### Reconciliation of Records of Certificated Securities

(1) A person keeping separate records shall regularly, at least once every 12 months, verify whether the total number of substitutable certificated securities recorded in asset accounts conforms to the total number of substitutable certificated securities that are actually provided for safekeeping.

(2) A person keeping separate records shall regularly, at least once every month, verify whether the total number of individual substitutable certificated securities recorded in **asset** accounts conforms to the total number of substitutable certificated securities recorded in the nominee account kept in the separate records for the person keeping follow-up records.

## **PART FOUR**

### **RECORDS OF FOREIGN SECURITIES**

#### Article 18

##### **Data Recorded in Asset Account on Foreign Securities**

(1) The data on a foreign security that is an investment instrument (hereinafter a “foreign security”) in an asset account in the records shall include in, particular

a) identification of the foreign security by specifying

1. ISIN or, if ISIN has not been assigned, some other unambiguous specification of the security, if assigned, or

2. details on the issuer; name of the security; kind, form and type of the security; nominal value and rights differentiating the security from securities for which the security would otherwise substitutable; for securities other than shares, similar securities representing an interest in a company or securities issued by a collective investment fund, identification pursuant to the preceding sentence shall be supplemented by specification of the subject and maturity of the rights arising out of the security;

b) the number of shares or the summary nominal value of foreign securities if the number of items cannot be determined.

(2) If agreed in the agreement on keeping an asset account, based on an instruction of an authorized person, data shall also be kept in the asset account in the records, in addition to information pursuant to paragraph 1 above, on

d) any separation of separately transferable rights **from the security, with specification of the separately transferable right, including unambiguous differentiating details;**

b) any right of pledge encumbering the security and the pledgee.

#### Article 19

Entry of a transfer of a foreign security in the records shall be made by the person keeping the records only if it is proven that the change in the owner of the security will occur on the basis of the transfer agreement at the latest upon entry of the transfer in the records.

#### Article 20

### **Reconciliation of Records of Foreign Securities**

(1) A person keeping separate records shall regularly, at least once every month, verify whether the total number of substitutable foreign securities recorded in asset accounts conforms to the total number of substitutable foreign securities kept for the person keeping separate records in accounts in records of foreign persons.

(2) A person keeping separate records shall regularly, at least once every month, verify whether the total number of individual substitutable foreign securities recorded in **asset** accounts conforms to the total number of individual substitutable foreign securities recorded in the nominee account kept in the separate records for the person keeping follow-up records.

## **P A R T F I V E**

### **RECORDS BASED ON RECORDS OF SECURITIES KEPT BY THE CZECH NATIONAL BANK**

#### Article 21

### **Data Recorded on Securities in an Owner Account**

(1) The data on a security in an owner account shall include

- a) the kind of the security,
- b) the requisites of a book-entered security stipulated by **another** legal regulation, 5)
- c) ISIN or, if ISIN has not been assigned, some other unambiguous specification of the security, if assigned, or
- d) the number of items of the security or the summary nominal value of securities.

(2) Based on an instruction of an authorized person, in addition to the data pursuant to paragraph 1 above, data shall be recorded in an owner account also on

- a) any right of pledge to the security and the pledgee;
- b) any person authorized to exercise the rights associated with the security;
- c) any suspension of exercise of the owner's right to dispose of the security, details on the person at whose instruction the disposal of the security was suspended, and on the period for which the disposal of the security is suspended.

(3) Additional data beyond the scope of the data pursuant to paragraphs 1 and 2 above may be recorded in an owner account with the consent of the authorized person.

**5) Act No. 189/2004 Coll. and Act No. 513/1991 Coll., the Commercial Code, as amended.**

Article 22

**Reconciliation of Follow-up Records of Securities**

A person keeping follow-up records of securities shall verify, after the close of each trading day, whether the total number of securities recorded in **asset** accounts in the follow-up records conforms to the total number of securities recorded in the nominee account of that person kept in the records by the Czech National Bank.

**PART SIX**

**TRANSITORY AND FINAL PROVISIONS**

Article 23

(1) Persons keeping records shall be obliged to bring the manner of recordkeeping into accord with this Decree within 6 months of the date of effect of this Decree.

(2) The duty to verify the **accuracy** of the details on the account holder pursuant to Article 5 (1) shall not apply to details on the account holder obtained on the basis of the Act from the records of book-entered **collective investment securities** kept by Prague Securities Center or a person authorized to keep part of the records of the Prague Securities Center.

(3) In this Decree, Member States of the European Union shall also include other countries of the European Economic Area.

Article 24

**Effect**

This Decree enters into effect on the date of its promulgation.

The Chairman:

Ing. Hollmann, MBA *signed*

Article II

**Effect of Decree No. 238/2008 Coll.**

This Decree shall enter into effect on July 1, 2008.

The Governor:

doc. Ing. Tůma, CSc., *signed*