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*draft translation for public consultation, version effective from 1 May 2020*

## **Act No. 256/2004 Sb., on Capital Market Business, as amended**

Amended by Acts No. 635/2004 Sb., No. 179/2005 Sb., No. 377/2005 Sb., No. 56/2006 Sb., No. 57/2006 Sb., No. 62/2006 Sb., No. 70/2006 Sb., No. 159/2006 Sb., No. 120/2007 Sb., No. 296/2007 Sb., No. 29/2008 Sb., No. 104/2008 Sb., No. 126/2008 Sb., No. 216/2008 Sb., No. 230/2008 Sb., No. 7/2009 Sb., No. 223/2009 Sb., No. 227/2009 Sb., No. 230/2009 Sb., No. 281/2009 Sb., No. 420/2009 Sb., No. 156/2010 Sb., No. 160/2010 Sb., No. 409/2010 Sb., No. 41/2011 Sb., No. 139/2011 Sb., No. 188/2011 Sb., No. 420/2011 Sb., No. 428/2011 Sb., No. 37/2012 Sb., No. 172/2012 Sb., No. 254/2012 Sb., No. 134/2013 Sb., No. 241/2013 Sb., No. 303/2013 Sb., No. 135/2014 Sb., No. 336/2014 Sb., No. 375/2015 Sb., No. 148/2016 Sb., No. 183/2017 Sb., No. 204/2017 Sb., No. 307/2018 Sb., No. 111/2019 Sb., No. 204/2019 Sb. and No. 119/2020 Sb.

The Parliament has adopted the following Act of the Czech Republic:

### **PART ONE**

#### **GENERAL PROVISIONS**

##### **Section 1**

##### **Scope of application**

(1) This Act incorporates the relevant law of the European Union (hereinafter referred to as the “EU”)<sup>1)</sup>, while following the directly applicable EU regulations<sup>2)</sup> and regulates the provision of services on the capital market and protection of the capital market and protection of investors.

(2) This Act also incorporates the relevant EU law governing close-out netting arrangements<sup>24)</sup> and regulates the legal regime of the close-out netting arrangements.

(3) This Act further regulates the competence of the Czech National Bank (hereinafter referred to as the “CNB”) and, where applicable, the competence of the Ministry of Finance of the Czech Republic (hereinafter referred to as the “MoF”), and offences in connection with

(a) the directly applicable EU regulation on credit rating agencies<sup>49)</sup> (hereinafter referred to as the “CRA-R”),

- (b) the directly applicable EU regulation on short selling and certain aspects of credit default swaps<sup>42)</sup> (hereinafter referred to as the “SS-R”),
- (c) the directly applicable EU regulation on OTC, central counterparties and trade repositories<sup>43)</sup> (hereinafter referred to as the “EMIR”),
- (d) the directly applicable EU regulation on prudential requirements for credit institutions and investment firms<sup>50)</sup> (hereinafter referred to as the “CRR”),
- (e) the directly applicable EU regulation on improvement of settlement of securities transactions in the EU and on central securities depositories<sup>51)</sup> (hereinafter referred to as the “CSDR”),
- (f) the directly applicable EU regulation on market abuse<sup>52)</sup> (hereinafter referred to as the “MAR”),
- (g) the directly applicable EU regulation on transparency of trades providing financing and re-use<sup>61)</sup> (hereinafter referred to as the “SFTR”),
- (h) the directly applicable EU regulation on markets in financial instruments<sup>53)</sup> (hereinafter referred to as the “MiFIR”),
- (i) the directly applicable EU regulation on disclosure of key information on structured retail investment products and insurance products with investment component<sup>60)</sup> (hereinafter referred to as the “PRIIPS-R”),
- (j) the directly applicable EU regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds<sup>62)</sup> (hereinafter referred to as the “BMR”),
- (k) the directly applicable EU regulation laying down a general framework for securitization and creating a specific framework for simple, transparent and standardized securitisation<sup>63)</sup> and
- (l) the directly applicable EU regulation on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market<sup>66)</sup>.

## Section 2

### Definitions

(1) For the purposes of this Act, the following definitions should apply:

- (a) “client” means the person to whom the investment service is provided,
- (b) “derivative” means financial instruments referred to in Section 3(1)(d) to (k) and transferable securities referred to in Section 3(2)(e),
- (c) “certificate” means a security tradable on the capital market, which:
  1. represents the right of ownership of the securities of an issuer not having its registered office in an EU member state, and
  2. may be admitted to trading on an EU regulated market and traded independently of the issuer's securities referred to in point 1,
- (d) “execution of orders” means instructions leading to the conclusion of a contract for the purchase or sale of a financial instrument on behalf of the client, including the conclusion of a contract for the purchase of a financial instrument issued by an investment firm, bank, savings or credit cooperative bank or similar foreign person established in an EU member state on client's account at the time of issue,
- (e) “dealing on own account” means trading with own assets,
- (f) “investment advice” means the provision of a tailor-made recommendation to the client regarding a transaction with a particular financial instrument, regardless of whether it is provided at the initiative of the client or potential client,
- (g) “commodity derivative” means a financial instrument referred to in Section 3(1)(g) to (k) and the transferable securities referred to in Section 3(1)(e), the value of which relates to the commodity or to any of the indicators mentioned in Section 3(1)(j) and (k),
- (h) “personal data” means
  1. in the case of a legal person and an undertaking natural person, the name, registered office and the identification number of the person, if assigned,
  2. in the case of a natural person who is not doing business, the date of birth or the birth number, if assigned, and the place of residence,
- (i) “initial capital” means the initial capital as referred to in Article 26(1)(a) to (e) of the CRR,

- (j) “qualifying holding” means a direct or indirect share in the registered capital or voting rights of a legal entity of a sum of at least 10 % according to Section 10b(1) and (2), Section 122(1), Section 122(1)(a) to (g), Section 122a(1) and (2) and Section 122c(1)(b) and (c), or of a sum enabling to exercise a significant influence over management of this legal entity,
- (k) “close link” means the close link referred to in Article 4(1)(38) of the CRR,
- (l) “management body” means a body of a legal person whose members are elected, appointed or otherwise called upon into function, empowered to determine the strategy, objectives and overall direction of that person, or to oversee the management processes at the management level and monitor such processes,
- (m) “member of staff” means a person who is in a base employment relationship with another person, a person who is a proxy (in Czech “*prokurista*”) of another person, a person who is a member of an organ of another legal entity and who is elected, appointed or otherwise called into function, or a person who is a member of committee of another legal entity; if a member of the body of a legal entity is a legal person who is elected, appointed or otherwise called into function, a natural person who is designated by that legal person to carry out such activity is the “member of staff”,
- (n) “person in senior management” means a natural person who provides day-to-day management of the performance of a legal entity's activities and is directly subordinate to the management body of that legal person or to a member thereof in the exercise of this office, even if such a position is held by a member of the management body of that legal person,
- (o) “client's assets” means cash and financial instruments belonging to a client held by an investment firm in order to provide an investment service to that client, the client's assets do not cover deposits under the law regulating the activity of banks, which accounted for by an investment firm, which is a bank,
- (p) “package” means a set of services or products offered together that can be negotiated at least partially separately,
- (q) “durable medium” means a list or other information carrier that allows the client to store information intended to him personally so that they can be used for a period of time reasonable for that information and which allows the reproduction of that information in an unaltered form,
- (r) “structured deposit” means a deposit according to the law regulating the activity of banks, which is fully due at maturity (term deposit) and whose yield is determined by a formula including for example an index, a financial instrument, an exchange rate, a commodity or other object (hereinafter referred to as the “thing”) other than a commodity, or a combination thereof; a “structured deposit” is not a floating interest rate deposit whose yield is directly linked to an interest rate index,
- (s) “algorithmic trading” means a trading with financial instruments where a computer algorithm automatically, without or with a limited human intervention, determines the individual parameters of the instructions, such as the order, timing, price or volume of the order, or the method of handling the instruction after its submission; “algorithmic trading”, however, does not mean merely routing instructions to one or more trading venues, processing instructions without specifying any trading parameters, confirming instructions or processing trades,
- (t) “high-frequency algorithmic trading technique” means an algorithmic trading which
  1. automatically, without human intervention, initiates the process of creating an order, routing or execution, for individual trades or instructions,
  2. inserts or cancels a high number of instructions or quotes during a trading day, and
  3. uses infrastructure to minimize network and other types of delays, including at least co-location with other similar devices in the immediate proximity of the trading venue, location close to the trading venue, or high-speed direct electronic access,
- (u) “direct electronic access” means a measure, by which a participant of a trading venue allows another person to use its business identification data to electronically transmit instructions relating to an investment instrument directly to that trading venue,
  1. a “direct access”, which means measures that use the infrastructure or the system of connecting that participant to hand over the instructions, and
  2. a “sponsored approach”, which means measures that do not use the infrastructure or the system of connecting that participant to hand over the instructions,
- (v) “EU investment firm” means an investment firm or a similar foreign person authorised by the supervisory authority of another EU member state to provide at least one main investment service,
- (w) “matched principal trading” means trading on its own account in such a way that an additional person (facilitator) is incorporated between the seller and the buyer in the trade in such a way that

1. this person is not exposed to market risk in connection with dealing with the seller and the buyer,
  2. trades with both the seller and the buyer take place simultaneously and
  3. a trade with the seller and with the buyer is closed at a price at which this person will not suffer loss or profits, except for the previously announced remuneration, and
- (x) “structured finance product” means a structured finance product as referred to in Article 2(1)(28) of the MiFIR and
- (y) “intermediation of transactions in financial instruments” means an activity provided on a commercial basis consisting in
1. offering the possibility to negotiate a trade in financial instruments or to provide an investment service on behalf of an investment service provider or on behalf of a client,
  2. submitting proposals for negotiating a trade in financial instruments or providing an investment service on behalf of the investment service provider or on behalf of the client,
  3. carrying out preparatory work aimed at negotiating a trade in financial instruments or providing an investment service on behalf of the investment service provider or on behalf of a client, including providing recommendations leading to the negotiation of such a trade or service,
  4. negotiating trade in financial instruments or negotiating the provision of investment services on behalf of the investment service provider or on behalf of the client, or
  5. assistance in the exercise of rights and obligations in negotiating trade in financial instruments or in providing investment services on behalf of the investment service provider or on behalf of the client.

(2) For the purposes of this Act, the following definitions should also apply:

- (a) an institutional investor is a domestic insurance company and a third-country insurance company authorized to conduct life insurance under the Insurance Act, a domestic reinsurance company and a third-country reinsurance company authorized to conduct life insurance under the Insurance Act and an occupational pension insurance institution with the registered office in the Czech Republic under the Act governing institutions for occupational retirement insurance,
- (b) the asset manager
1. an investment firm,
  2. a foreign person providing main and additional investment services in the Czech Republic through a branch on the basis of an authorisation pursuant to Section 28a (1),
  3. an investment fund and foreign investment fund manager entitled to exceed the relevant threshold,
  4. an investment fund and foreign investment fund manager authorized to manage standard funds or comparable foreign investment funds,
  5. a foreign person with an authorisation pursuant to Section 481 of the Act on Investment Companies and Investment Funds,
- (c) voting adviser means a legal entity with registered office or head office in the Czech Republic or a legal entity with a registered office in a state other than a Member State of the European Union, operating in the Czech Republic through a branch, , which, as a business activity, provides advice and recommendations to an investor for voting at the general meeting of an issuer with the registered office in a Member State of the European Union whose shares or similar securities representing a share on a legal entity are admitted to trading on a European regulated market,
- (d) a related party means a related party in accordance under point 9 of International Accounting Standard IAS 24 Related Party Disclosures, annexed to Commission Regulation (EU) No 1126/2008<sup>63</sup>.

(3) The “trading venue” is

- (a) an EU regulated market,
- (b) a multilateral trading facility (hereinafter referred to as the “MTF”) and
- (c) an organised trading facility (hereinafter referred to as the “OTF”).

(4) The ”execution venue” is

- (a) a trading venue,
- (b) a systematic internaliser,
- (c) a market maker or other liquidity provider established in an EU member state or
- (d) a person or a market in financial instruments having its registered office in a state which is not an EU member state with a similar activity to one of the persons or markets referred to in letters (a) to (c).

(5) The “market maker” is a person who is permanently active on the financial markets as a person willing to trade on own account by buying and selling financial instruments using his own assets and pricing.

## Section 2a

### **Professional client**

(1) In this Act “professional client” means

- (a) a bank,
- (b) a savings and credit cooperative bank,
- (c) an investment firm,
- (d) an insurance company,
- (e) a reinsurance company,
- (f) a management company,
- (g) an investment fund,
- (h) a pension company,
- (i) another person who operates on the financial market on the basis of an authorisation issued by a financial market supervisory authority, but with the exception of
  1. a tied agent under this Act
  2. a tied agent and an intermediary of the tied consumer credit under the act on consumer credit
  3. a tied agent under the act on supplementary pension savings and
  4. a tied agent and supplementary insurance intermediary under the Act on insurance a reinsurance distribution.
- (j) a person who secures the securitization,
- (k) a person who trades on own account with financial instruments in order to reduce the risk (hedging) of transactions in financial instruments mentioned in Section 3(1)(d) to (k) and this activity is one of its key activities,
- (l) a person who trades on own account with the financial instruments mentioned in Section 3(1)(g) to (i) or commodities, and that activity is one of its core activities,
- (m) a legal person who is competent to manage the assets of the state in securing the purchase, sale or management of its receivables or other assets, or in the restructuring of companies or other legal entities with a state holding,
- (n) a foreign person with a similar activity to one of the persons referred to in letters (a) to (m),
- (o) a state or a member state of the federation,
- (p) the CNB, a foreign central bank or the European Central Bank and
- (q) the World Bank, the International Monetary Fund, the European Investment Bank or other international financial institutions.

(2) In this Act “professional client” also means

- (a) a legal person established for the purpose of business, which, according to the latest financial statements, meets at least 2 of the following 3 criteria, which are
  1. total assets equal to at least equivalent of EUR 20 million,
  2. an annual total net turnover equal to at least equivalent of EUR 40 million,
  3. equity equal to at least equivalent of EUR 2 million,
- (b) a foreign person established for the purpose of business that satisfies the conditions set out in letter (a).

(3) The client referred to in subsections (1) and (2) shall be considered as a client who is not a professional client in the scope of transactions in a financial instrument or investment services he agreed with the investment firm. In the event that this agreement has not been concluded in writing, the investment firm is obliged to issue to the client at his request a confirmation of the facts mentioned in the first sentence.

## Section 2b

### **Professional client on request**

(1) In this Act, “professional client” also means a person

- (a) who requests an investment firm to treat it as a professional client, if the investment firm agrees with the request, and
- (b) who meets at least 2 of the following 3 criteria:
  1. has executed for each of the last 4 consecutive quarters in the relevant financial market area the trades in the financial instrument concerned by the request in a significant volume and in an average of at least 10 trades per quarter,
  2. the volume of its assets consisting of cash and financial instruments is at least EUR 500 000,
  3. has pursued, for a period of at least 1 year, a financial market activity requiring knowledge of the business or services to which the application relates in the context of the pursuit of his employment, profession or function.

(2) The application referred to in subsection (1)(a) it must be in written form and it must be clear from it what trade or transactions in financial instruments or investment services it is concerned with. Attachment of the application is a written statement by the applicant that he is aware of that

- (a) this change may mean the loss of the right to compensation from a foreign guarantee system for the purpose of a similar scheme provided by the Guarantee Fund of Investment Firms,
- (b) the duties set out in Sections 15 to 15r in relation to a professional client are met by an investment firm to a lesser extent than to a non-professional client; the investment firm shall explicitly notify the applicant of such facts.

(3) An investment firm may grant the consent under subsection (1)(a), if it ensures itself that the applicant fulfils the criteria referred to in subsection (1)(b) and has the necessary experience and expertise in relation to the trading or trading of the financial instrument or investment service concerned by the request, is able to make its own investment decisions and understands the associated risks.

(4) The professional client referred to in subsection (1) shall be deemed to be a non-professional client if he so requests the investment firm. It must be clear from the application which trade or dealings with the financial instrument or which investment services such an application relates. Such a request will be accepted by the investment firm.

(5) An investment firm shall continuously verify and periodically assess whether the professional client referred to in subsection (1) has not ceased to fulfil the conditions set out in subsection (3).

## Section 2c

### **Professional knowledge, experience and financial background of a professional client**

(1) For the purpose of requiring information by an investment firm from a client in the provision of an investment service (Sections 15h to 15k), the professional client referred to in Section 2a shall be deemed to have the expertise and the experience in the field of investment to make its own investment decisions and assesses the risks it faces in relation to the investment service or the trading of the financial instrument for which it is a professional client.

(2) For the purposes of providing investment advice, the professional client referred to in Section 2a(1) and (2) shall be deemed to have financial assets to undertake the associated investment risks appropriate to its investment objectives.

#### Section 2d

##### **Eligible counterparty**

(1) An investment firm shall not be obliged to provide the main investment services referred to in Section 4(2)(a), (b) or (c) to fulfil the duties laid down in Sections 15 to 15r in relation to the professional client referred to in Section 2a(1). For a professional client in relation to whom an investment firm is not provided in the provision of the main investment services referred to in Section 4(2)(a), (b) or (c) shall be deemed to have fulfilled the duties laid down in Sections 15 to 15r, it shall be deemed to be expressly agreed also by a natural person residing or having its registered office in another EU member state. The order of that member state is not a foreign person authorised by that member state to provide investment services without being required to provide the main investment services referred to in Section 4(2)(a), (b) or (c) to carry out duties similar to those set out in Sections 15 to 15r. It must be clear from the consent that the deal or dealings with the financial instrument or the investment services are concerned.

(2) An investment firm shall not be obliged to provide the main investment services referred to in Section 4(2)(a), (b) or (c), in respect of the professional client referred to in Sections 2a(2) and 2b(1), fulfil the duties laid down in Sections 15 to 15r, provided that such professional client so requests in writing. It must be clear from the application what trading or dealing in a financial instrument or what investment services it is concerned with.

(3) An investment firm shall be obliged, when providing the main investment services mentioned in Section 4(2)(a), (b) or (c) to fulfil the duties set out in Sections 15 to 15r in relation to a professional client in respect of which he or she does not comply within the meaning of subsection (1) or (2), insofar as such client of the investment firm so requests in writing. Such a request must be clear what kind of deal or dealings with the financial instrument or which investment services are involved.

(4) An investment firm shall, when providing the main investment services referred to in Section 4(2)(a), (b) or (c) is obliged to act in relation to a professional client for whom he fails to fulfil the duties set out in Sections 15 to 15r within the meaning of subsection (1) or (2), in a qualified, honest and fair manner, and shall not use unclear, false, misleading communication with him or misleading information.

#### *Section 2e*

*repealed*

### **PART TWO**

## **FINANCIAL INSTRUMENTS AND INVESTMENT SERVICES**

### **TITLE I**

#### **GENERAL PROVISIONS**

#### **Section 3**

##### **Financial instruments**

(1) The “financial instruments” are

(a) transferable securities,

- (b) units in collective investment undertakings,
- (c) money-market instruments,
- (d) options, futures, swaps, forwards and other instruments whose value relates to the exchange rate or value of securities, FX exchange rates, interest rate or interest yield, greenhouse gas emission allowances, as well as other derivatives, financial indices or financial quantitative Indicators and from which the right to cash settlement or the right of delivery of the item to which their value relates,
- (e) credit risk transfer instruments,
- (f) contracts for financial differences,
- (g) options, futures, swaps, forwards and other instruments the value of which relates to commodities and derives the right to settle in money or the right of at least one party to choose whether it wishes to settle in cash, unless it is a settlement in money due to the failure of one of the parties to the derivative or another reason for the premature termination of the derivative,
- (h) options, futures, swaps, forwards and other instruments the value of which relates to commodities and derives the right to deliver such commodities and traded on an EU regulated market or in an MTF or an OTF, with the exception of wholesale energy products, as defined in Article 2(4) of Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (hereinafter referred to as the “REMIT”), traded on OTFs that must be physically settled,
- (i) options, futures, swaps, forwards and other instruments the value of which relates to commodities and which derive the right to deliver the commodity not referred to in letter (h) are not intended for business purposes and have features of other derivative financial instruments,
- (j) options, futures, swaps, forwards and other instruments the value of which relates to climatic indicators, transport tariffs or inflation rates and other economic indicators published in the field of official statistics, resulting in the right to cash settlement or the right of at least one party to opt, whether it wishes to settle in cash unless it is a settlement in cash due to the default of one of the parties to the derivative or for another reason of premature termination of the derivative,
- (k) instruments whose value relates to things, rights, debts, indices or quantified indicators not referred to in letters (a) to (j) and which have the characteristics of other derivative financial instruments, in particular those traded on an EU regulated market or in an MTF or in an OTF,
- (l) greenhouse gas emission allowances.

(2) The “transferable securities” are securities that are tradable on the capital market. The “transferable securities” are mainly

- (a) shares or similar securities representing a share in a legal person,
- (b) bonds or similar securities with which the right to repay a sum owed is linked,
- (c) depositary receipts representing the ownership of the securities referred to in letters (a) and (b),
- (d) securities authorised to acquire or dispose of transferable securities referred to in letters (a) and (b),
- (e) securities giving rise to a right to settle in money, the value of which is determined by the value of transferable securities, exchange rates, interest rates, interest income, commodities or financial indices or other quantifiable indicators.

(3) The “units in collective investment undertakings” are securities representing a share in investment funds or foreign investment funds.

(4) The “money-market instruments” are instruments normally dealt in on the money market, in particular treasury bills, certificates of deposit and commercial papers.

(5) Payment instruments are not “financial instruments”.

(6) One financial instrument may, depending on its characteristics, display features of several types of financial instruments.

#### Section 4

#### **Investment services**



(1) Investment services are the main investment services and activities (hereafter only “main investment services”) and ancillary investment services provided on a commercial basis.

(2) The “main investment services” are

- (a) reception and transmission of orders in relation to one or more financial instruments,
- (b) execution of orders on behalf of clients in relation to one or more financial instruments,
- (c) dealing on own account in relation to one or more financial instruments,
- (d) managing portfolios of clients' assets on a discretionary client-by-client basis under a contractual mandate (portfolio management), where such portfolios include one or more financial instruments,
- (e) investment advice in relation to one or more financial instruments,
- (f) operation of an MTF,
- (g) operation of an OTF,
- (h) underwriting and/or placing of financial instruments on a firm commitment basis,
- (i) placing of financial instruments without a firm commitment basis.

(3) The “ancillary investment services” are

- (a) safekeeping and administration of financial instruments for the client, including custodianship and related services, with the exception of the maintaining asset accounts by the central securities depository or a foreign central securities depository,
- (b) granting credits or loans to an investor to allow him to carry out transaction with one or more financial instruments, where the firm granting the credit or loan is involved in the transaction,
- (c) advisory services relating to the structure of capital, industrial strategy and related matters, as well as the provision of consultations and services relating to the transformation of companies or the transfer of business premises or the acquisition of participation in a business corporation,
- (d) investment research and financial analysis or other forms of general recommendation relating to the trading of financial instruments,
- (e) foreign exchange services related to the provision of investment services,
- (f) services relating to the underwriting of financial instruments,
- (g) a service similar to an investment service that relates to a thing to which the value of a financial instrument referred to in Section 3(1)(g) to (k) and which is related to the provision of investment services.

(4) The investment service “receiving and transmitting instructions relating to financial instruments according to Subsection (2) (a)” also includes for the purposes of this Act the intermediation of transactions in financial instruments.

(5) The investment service “safekeeping and administration of financial instruments for the client” also includes maintenance of register linked to the Central Register of book-entry securities (Section 92), maintenance of a separate register of financial instruments or maintenance of register linked to a separate register of financial instruments (Section 93).

#### Section 4a

The main investment services and ancillary investment service referred to in Section 4(3)(a) shall not be provided without an authorisation issued by the CNB, unless otherwise provided in this Act or other law.

#### Section 4b

### **Exemptions from the authorisation requirement to provide main investment services**

(1) An authorisation according to this Act is not required for the provision of the main investment services if the main investment service is provided by

- (a) an insurance undertaking or reinsurance undertaking in the exercise of the activities referred to in Section 3(1)(f) or (l) of the Insurance Act,
- (b) a person providing the main investment services exclusively to
  1. persons controlling the the person providing main investment service,
  2. persons controlled by the person providing the main investment service, or
  3. persons controlled by the same person as the person providing the main investment service,
- (c) a person providing the main investment service only on an occasional basis in connection with the exercise of another professional or entrepreneurial activity where there is another law or a code of conduct governing such activities and this provision does not prohibit the provision of such main investment service,
- (d) a person trading on own account with financial instruments other than commodity derivatives and greenhouse gas emission allowances and derivatives thereof that does not provide other main investment service in relation to financial instruments other than commodity derivatives and greenhouse gas emission allowances and derivatives thereof, unless he is
  1. a market maker,
  2. a participant of a regulated market or a MTF, with the exception of a non-financial entity that trades in the trading venue are objectively measurable as reducing risks directly related to the business activity or corporate financing of that non-financial entity or the persons constituting the consolidation unit,
  3. a person having direct electronic access to the trading venue, with the exception of a non-financial entity that trades in the business system that are objectively measurable as mitigating the risks directly related to the commercial activity or corporate financing of that non-financial entity or persons constituting the consolidation unit,
  4. a person performing high frequency algorithmic trading, or
  5. a person who trades on his own account when executing client orders,
- (e) the operator of an installation or aircraft is required to fulfil the requirements of the Act governing the trading conditions of greenhouse gas emission allowances which, when trading greenhouse gas emission allowances, does not fulfil the client's instructions and does not provide any main investment service other than trading on its own account unless engaged in high frequency algorithmic trading,
- (f) the person providing the main investment services only within the framework of the management of employee participation schemes,
- (g) the person providing the main investment services both within the management of employee participation schemes and also exclusively to the persons referred to in letters (b)(1) to (3)
- (h) a member of the European System of Central Banks and other national entities performing similar functions in the EU, other public authorities responsible for the management of public debt in the EU or involved in the management of public debt in the EU and international financial institutions created by two or more member states funding and financial assistance to the benefit of its members who have serious funding problems or are threatened with such problems,
- (i) a manager of an investment fund or a foreign investment fund, a pension company or a depository of an investment fund, a foreign investment fund, a transformed fund or a participatory fund,
- (j) a person who trades on own account with commodity derivatives or greenhouse gas emission allowances or their derivatives, including the market maker, but excluding a person who trades on own account in executing client orders or a person who provides main investment services other than dealing on own account in relation to commodity derivatives or greenhouse gas emission allowances or their derivatives, clients or suppliers of their main business activity,
  1. in each of these cases individually and collectively, in the context of a group assessment, the activity is ancillary to their main business activity and the main business activity is not the provision of investment or banking services or the activity as a market maker in relation to commodity derivatives,
  2. this person does not perform high frequency algorithmic trading and
  3. that person annually informs the CNB of the use of this exemption and, on request, informs them of the reasons why it considers its activities under the introductory part of this subsection to be ancillary to its main business activity,
- (k) a person who provides investment advice in the exercise of another professional activity not covered by this Act, unless the provision of such investment advice is remunerated separately,

- (l) a transmission system operator, gas storage operator or distribution system operator within the meaning of Sections 24, 25, 58, 59 and 60 of the Energy Act in fulfilling their tasks according to the Energy Act, directly applicable EU regulation governing the conditions for access to the cross-border electricity trade<sup>54)</sup> or a directly applicable EU regulation governing access conditions to natural gas transmission networks<sup>55)</sup> or network codes or framework guidelines adopted according to those regulations, a person acting as a service provider for such providers in the performance of their tasks under those rules, framework guidelines adopted under those directly applicable regulations and the system operator or system operator for balancing the electricity or gas system, the pipeline network or the system to is to maintain a balance between energy supply and consumption in the performance of these tasks; this exemption applies to a person engaged in the activities referred to in this letter only if he provides the main investment services in relation to commodity derivatives for the purpose of carrying out such activities and this exemption does not apply to the operation of the secondary market including the secondary trading venue for financial transfer rights, and
- (m) the central securities depository except as provided for in Article 73 of CSDR.

(2) The exemption from the authorisation to provide the main investment services according to subsection (1)(a), (i) or (j) shall apply irrespective of the conditions referred to in subsection (1)(d).

(3) The rights referred to in Section 21(4), Section 22(4), Section 24(2) and Section 25(2) shall not apply to the counterpart of the transactions entered into by public authorities executing public debt or members of the European System of Central Banks in fulfilment of the tasks set out in the Treaty on the Functioning of the EU and Protocol No 4 on the Statute of the European System of Central Banks and of the European Central Bank or equivalent tasks under national law.

## TITLE II

### INVESTMENT FIRM

#### Chapter 1

#### General provisions

##### Section 5

(1) The “investment firm” (in Czech: “*obchodník s cennými papíry*”) is a legal person authorised by the CNB to provide main investment services under an authorisation to operate as an investment firm.

(2) For the purposes of Sections 9a, 9aj to 9au, 10, 10a, 12g to 12j, 16a, 16d, 16e, 24a, 24b, 27, 135a, 135b, 135c, 135d, 150 to 156, an investment firm shall mean an investment firm which is an investment firm according to Article 4(1)(2) of the CRR.

(3) Under this Act, except for the provisions referred to in subsection (2), an investment firm shall also mean a bank authorised by the CNB to provide main investment services.

##### Section 6

#### Requirements on an investment firm

(1) The CNB shall grant an authorisation to the business of an investment firm at the application of a commercial company, or a founder of a commercial company before the date of its incorporation in the Commercial Register, if the following conditions are met:

- (a) that company has or will have the legal form of joint stock company (in Czech: “*akciová společnost*”) or the legal form of limited liability company (in Czech: “*společnost s ručením omezeným*”),
- (b) the registered office and the corporate office of that company are or will be in the Czech Republic,

- (c) this company has good repute (Section 197); this shall not be considered if the company is not yet incorporated in the Commercial Register,
- (d) the initial capital of that company amounts to the minimum amount referred to in Section 8a and is of transparent and non-discriminatory origin and that company has, or will have, at the latest at the commencement date of its business, its own capital of a size that permits proper conduct of the business of an investment firm,
- (e) only persons fulfilling the requirements according to Section 10d(6) have or will have qualifying holdings in this company,
- (f) close links of that company with another person do not prevent or hinder effective supervision over the investment firm; where close links exists between that company and a person who has its registered office or corporate office in a state which is not EU member state, the law of that state and the manner in which it is enforceable, including the enforceability of the right must not prevent the effective exercise of supervision of the investment firm,
- (g) the business plan of that company
  1. defines and covers the types of business envisaged,
  2. is based on real economic calculations, and
  3. defines the activities which it intends to delegate to another person, including information whether it intends to employ member of staff, investment intermediaries and tied agents,
- (h) this company has or will have at its disposal, at the latest on the commencement date of the business, the material, personnel and organisational prerequisites to the extent to which it intends to perform the activity of the investment firm for the proper conduct of the business of an investment firm, allowing its business plan to be fulfilled and to ensure compliance of the investment firm with its duties, in particular in the area of client negotiation rules, and rules for the sound and prudent provision of investment services, including
  1. organisational arrangements,
  2. supervision over the persons through whom investment firm carries out the business, and
  3. ensuring that the persons with whom the investment firm acts as an investment firm have full legal capacity, good repute and have the necessary knowledge, skills and experience,
- (i) the management body of that company and its members meet the requirements laid down in Section 10,
- (j) in the case of a limited liability company, it has a supervisory board,
- (k) in the case of an authorisation to provide the main investment service referred to in Section 4(2)(f),
  1. the rules governing trading in the MTF meet the requirements under Section 69(2)(a),
  2. the rules governing admission of financial instruments to trading in an MTF fulfil the requirements under Section 69(2)(c) and
  3. the rules governing access to the MTF meet the requirements under Section 69(2)(d), and
- (l) in the case of an authorisation to provide the main investment service referred to in Section 4(1)(g),
  1. the rules governing trading in an OTF fulfil the requirements under Section 73f(1)(a),
  2. the rules governing admission of financial instruments to trading in an OTF fulfil the requirements under Section 73f(1)(c),
  3. the rules governing access to the OTF meet the requirements under Section 73f(1)(d),
  4. there is a detailed explanation why the OTF does not correspond to and cannot operate as a regulated market, MTF, or a systematic internaliser,
  5. there is a detailed description as to how discretion when operating an OTF will be exercised, in particular when an order to the OTF may be retracted and how two or more client orders will be matched within the OTF,
  6. there is explanation of its use of matched principal trading.

(2) In the pronouncement part of the decision to grant an authorisation the CNB specifies main and ancillary investment services the investment firm is authorised to provide and in relation to which financial instruments and whether it is entitled to receive client's finances or client's financial investment or, where applicable, that an investment firm is authorised to provide data reporting services and which kind of data reporting services it is authorised to provide. The authorisation must include at least one main investment service.

(3) An investment firm complies at all times with the conditions under subsection (1).

(4) An investment firm notifies the CNB, without undue delay, upon any significant change in the facts on the basis of which it obtained an authorisation to operate, unless the change is subject to separate approval or notification under this Act.

#### Section 6a

##### **Ancillary business activity of a non-bank investment firm**

(1) An ancillary business activity may be performed by an investment firm who is not a bank only after its registration with the CNB.

(2) The ancillary business activity of an investment firm referred to in Section 8a(1) to (3) may consist only in providing of other services on the financial market, in particular

- (a) in activities relating to building savings, mortgages or other loans, supplementary pension schemes, supplementary pension schemes or insurance, where they consist of brokering or other procurement activity or advice,
- (b) in the hire of security boxes,
- (c) in exchange and non-cash foreign exchange transactions,
- (d) in educational activities in the financial market.

(3) The investment firm referred to in Section 8a(1) to (3) may furthermore carry on business activities consisting of activities directly related to the management of own assets.

(4) The CNB shall register the applicant's ancillary business activities and shall send the applicant a registration certificate without undue delay.

(5) If the pursuit of ancillary business activity prevents the proper provision of investment services or the effective exercise of the supervision of an investment firm, or the application fails to meet the requirements under Section 7(3), the CNB may

- (a) refuse to grant registration, or
- (b) limit the scope of ancillary business activities or, where appropriate, determine the conditions to be met by the investment firm prior to the commencement of each of the ancillary business activities or, where applicable, conditions to be met during the performance of the business.

(6) In the case of decision on the registration of ancillary business activity referred to in subsection (3), the CNB will reject the registration, unless the reasons for a special consideration are given for the purpose of registration of this ancillary business activity, the CNB shall assess, in particular, whether the registration of this ancillary business activity will contribute to the improvement of the quality of investment services, the refusal of registration would cause considerable damage to the investment firm, or shall assess the scope, complexity and nature of such ancillary business activity. In the decision to register ancillary business activity referred to in subsection (3), the CNB may limit the scope of the registered activity or, where appropriate, determine the conditions to be met by the investment firm prior to commencement of each of the registered activities.

#### Section 6aa

An investment firm may also carry out, to the extent appropriate, the administration of investment funds or foreign investment funds if it holds an authorisation to carry out the administration under the law governing management companies and investment funds.

#### Section 7

### **Application handling**

(1) An application for an authorisation to the business of an investment firm may be submitted only electronically.

(2) The CNB shall issue a decision on the authorisation to the business of an investment firm within 6 months of the submission of the application, which has the prescribed requirements and has no defects.

(3) An application for registration of ancillary business activity may be submitted only electronically.

(4) The application for registration of ancillary business activity shall contain, in addition to the items stipulated by the Administrative Procedure Code, also data and documents proving compliance of the conditions according to Section 6a.

(5) The details of the requisites of the application for registration of additional business activity proving compliance with the conditions according to Section 6a, its format and other technical specifications shall be specified in an implementing regulation.

*Section 7a*

*repealed*

Section 7b

### **Procedures for granting an authorisation in relation to the crisis**

(1) The CNB by virtue of office may grant an authorisation to the business of an investment firm to the bridge institution in accordance with the law governing the recovery and resolution in the financial market for a limited period of time, even though it does not fulfil one of the conditions for granting an authorisation under Section 6.

(2) The CNB shall decide on the application of the acquirer of the assets or liabilities of the liable entity pursuant to the law recovery and resolution in the financial market for the authorisation of the business of an investment firm pursuant to Section 6 without undue delay.

*Section 8*

*repealed*

### **Chapter 2**

#### **Certain conditions for the business of an investment firm**

##### **Subchapter 1**

##### **Initial capital**

Section 8a

(1) The initial capital of an investment firm which is not a bank and does not have the provision of investment services limited in accordance with subsections (2) to (9) shall amount to at least EUR 730 000.

(2) The initial capital of an investment firm which is not a bank and is not authorised to provide the investment services referred to in Section 4(2)(c) and (h) shall amount to at least EUR 125 000.

(3) The initial capital of an investment firm which is not a bank and is not authorised to provide the investment services referred to in Section 4(2)(c) and (h), and is not authorised to receive client funds or financial instruments, it must be at least EUR 50 000.

(4) The initial capital of an investment firm which is not a bank and is authorised to provide only the main investment services referred to in Section 4(2)(a) and (e), and at the same time is not entitled to receive cash or client's financial instruments, it must be at least EUR 50 000.

(5) The initial capital of an investment firm may be lower than that provided for in subsection (4) if such an investment firm is insured against liability for damage caused by the provision of investment services with a limit of claims

- (a) at a rate corresponding to at least EUR 1 million for each insured event, and
- (b) in the case of overlapping multiple claims in one year at a level corresponding to at least EUR 1 500 000.

(6) The initial capital or limit of indemnity for damage liability may be lower than that provided for in subsections (4) and (5) if their combination corresponds to, or is equivalent to, the coverage level set out in subsection (4) or (5).

(7) The initial capital of an investment firm referred to in subsection (4) which is in accordance with EU law<sup>2g)</sup> is authorised to engage in insurance mediation and which is also insured against liability for damage caused by the performance of an insurance intermediary in accordance with the requirements of the law<sup>2h)</sup> shall be at least EUR 25 000.

(8) The initial capital of an investment firm may be lower than that provided for in subsection (7) if such an investment firm is insured against liability for damage caused by the provision of investment services with a limit of claims

- (a) at a level corresponding to at least EUR 500 000 for each insured event, and
- (b) in the case of overlapping multiple claims in one year at a level corresponding to at least EUR 750 000.

(9) The initial capital or limit of indemnity for damage liability may be lower than that provided for in subsections (7) and (8) if their combination corresponds or is equivalent to the level of coverage set out in subsection (7) or (8).

## **Subchapter 2**

### **Capital adequacy and engagement**

#### *Section 9*

#### *repealed*

#### Section 9a

(1) An investment firm that is not a bank shall adopt and apply reliable, effective and comprehensive strategies and procedures for determining, continually assessing and maintaining internally determined capital of such amount, structure and distribution as to adequately cover the risks to which it is would or could be exposed. An investment firm which is a bank complies only with the law regulating the activities of banks.

(2) An investment firm which is not a bank shall periodically review the strategies and procedures referred to in subsection (1) to ensure that they are operational, effective and proportionate to the nature, scale and complexity of the firm's activities.

(3) The duties referred to in subsections (1) and (2) apply only to an investment firm which

- (a) is not controlled by a domestic controlling investment firm [Section 151(1)(p)], the domestic controlling bank, a domestic financial holding company [Section 151(1)(r)] or the domestic mixed financial holding company [Section 151(1)(s)],
- (b) is not a responsible investment firm in a foreign controlling investment firm group [Section 151(1)(w)] or in the group of an EUropean financial holding company [Section 151(1)(u)],
- (c) is not a responsible investment firm controlled by an EUropean mixed financial holding company or other investment firm controlled by a mixed financial holding company [Section 151(1)(f)],
- (d) does not control another investment firm, a foreign investment firm, a bank, a foreign bank, a financial institution,
- (e) is not included in consolidation under Article 19 of the CRR, or
- (f) is not obliged to fulfil the capital requirements on a consolidated basis, according to an exemption granted by the CNB according to Article 14 of the CRR.

(4) The duties referred to in subsections (1) and (2) apply on a consolidated basis in the manner provided for in Part One, Title II, Chapter 2, Sections 2 and 3 of the CRR only to an investment firm which is

- (a) a domestic controlling investment firm [Section 151(1)(p)],
- (b) a controlling investment firm [Section 151(1)(c)], but is not a domestic controlling investment firm, a responsible investment firm in a financial holding company group or a responsible investment firm controlled by a mixed financial holding company, a member of its consolidated group being a foreign investment firm, a foreign bank, or a financial institution domiciled in a state which is not an EU member state,
- (c) a responsible investment firm in a financial holding company group [Section 151(1)(v)],
- (d) a responsible investment firm in a foreign controlling investment firm group [Section 151(1)(w)],
- (e) a responsible investment firm in a foreign controlling bank group [Section 151(1)(x)], or
- (f) a responsible investment firm controlled by a mixed financial holding company [Section 151(1)(y)].

*Sections 9aa to 9ai*

*repealed*

Section 9aj

**Combined capital buffer**

(1) An investment firm authorised to provide investment services according to Section 4(2)(c) or (h) whose average number of employees is at least 250 and which according to the latest financial statements has an annual net turnover equal to at least EUR 50 million, or whose assets total at least EUR 43 million, maintains tier 1 in accordance with Article 50 of the CRR in the amount corresponding to the combined capital buffer, going beyond the capital requirements of Article 92 of the CRR, the requirements To the capital imposed on him by means of remedial measures and other measures under this Act or other laws and taking into account internally set capital.

(2) The combined capital buffer shall be

- (a) a security capital buffer,
- (b) counter-cyclical capital buffer,
- (c) the capital buffer to cover systemic risk,
- (d) a capital buffer for a global systemically significant institution,
- (e) a capital buffer for another systemically significant institution.

(3) The investment firm according to subsection (1) shall maintain the capital buffers in accordance with subsection (2)(a) to (c) and (e) on an individual and consolidated basis under Part One, Title II of the CRR. An investment firm under subsection (1) shall maintain a capital buffer under subsection (2)(d) on a



consolidated basis under Part One, Title II of the CRR. The duty to maintain the capital buffer under subsection (2)(d) and (e) also has a responsible investment firm as referred to in subsection (1) in the European Financial Holding Group or the liable investment firm referred to in subsection (1) which is controlled by an EUropean mixed financial holding company if that European financial holding company or an EUropean mixed financial holding company has been identified as a systemically important institution under Section 9aq(2) or Section 9ar(2).

(4) Where an investment firm does not maintain a combined capital buffer as defined in subsection (1), it shall not distribute a proportionate share of the profit after tax and shall, within 5 working days of the day when the combined capital buffer falls below the required amount, submit to the CNB an application for approval of a recovery plan. The CNB may extend this period up to 10 business days depending on the assessment of the individual situation of the investment firm under subsection (1), taking into account the extent and complexity of its activities.

(5) The CNB shall approve the capital recovery plan referred to in subsection (4) if it can be expected that, under this plan, an investment firm will fulfil the combined capital buffer within the time limit set. If the CNB does not approve the plan for the resumption of capital, it will impose remedies according to Section 136(2)(q) or Section 136(2)(r).

(6) Implementing regulation specifies

- (a) the rules on the combined capital buffer referred to in subsection (1) and the capital buffer referred to in subsection (2),
- (b) the rules for calculating the proportion of the profit after tax under subsection (4),
- (c) the details of the recovery plan referred to in subsection (4).

#### Section 9ak

#### **Rate of security capital buffer**

The Security Capital Requirement shall be 2,5 % of the total amount of risk exposure referred to in Article 92(3) of the CRR.

#### **Countercyclical capital buffer**

#### Section 9al

(1) The CNB will quarterly calculate the indicative counter-cyclical capital buffer indicator as the benchmark for the counter-cyclical capital buffer rate. This indicator is based on the deviation of the ratio of the volume of credits provided and the gross domestic product from the long-term trend.

(2) The CNB takes into account, in calculating the indicative indicator of counter-cyclical capital

- (a) the credit cycle and growth in the volume of loans granted in the Czech Republic,
- (b) changes in the ratio between the volume of loans granted and the gross domestic product,
- (c) the specifics of the Czech national economy and
- (d) a recommendation issued by the European Systemic Risk Board (hereinafter referred to as the “ESRB”).

(3) The rate of the counter-cyclical capital buffer for the Czech Republic is set quarterly, taking into account

- (a) an indicative counter-cyclical capital buffer indicator calculated in accordance with subsections (1) and (2),
- (b) a recommendation issued by the ESRB, and
- (c) indicators that may signal systemic risk growth.

(4) The rate of countercyclical capital buffer provided for in subsection (3) of the CRR shall be set at 0 % to 2.5 % of the total amount of risk exposure referred to in Article 92(3) in multiples of 0,25 percentage points. In cases where this is justified on the basis of the facts mentioned in subsection (3), the CNB may set this rate higher than 2.5 %.

(5) The CNB shall lay down measures of a general nature

- (a) the rate of countercyclical capital buffer for the Czech Republic according to subsection (3) and
- (b) the day from which the investment firms according to Section 9aj(1) are required to use the rate under letter (a) for the purpose of calculating the combined capital buffer.

(6) At the first fixing of the tariff in accordance with subsection (5)(a) or, if this rate is increased, the day referred to in subsection (5)(b) be fixed at the earliest 1 year after the date of the adoption of measures of a general nature; in cases of special consideration, this period may be shorter. This shall not apply if the rate referred to in subsection (5)(a) decrease.

(7) The CNB shall indicate in a measure of a general nature

- (a) the information referred to in subsection (5),
- (b) the ratio of the volume of loans granted to the gross domestic product of the Czech Republic and the deviation of this ratio from the long-term trend,
- (c) the reference rate of the counter-cyclical capital buffer referred to in subsections (1) and (2),
- (d) the justification of the rate referred to in subsection (5)(a), including an indication of all the factors that the CNB has taken into account when setting this rate,
- (e) the reasons for shortening the time limit where the period referred to in subsection (6) is less than one year,
- (f) the non-binding period, after which the rate referred to in subsection (5)(a) will not be increased, including the justification for the length of this period if the anti-cyclical capital buffer rate has been reduced.

(8) The CNB shall coordinate the issue of measures of a general nature with the competent authorities or designated authorities of other states.

#### Section 9am

(1) The investment firm, according to Section 9aj(1), shall apply the countercyclical capital buffer rate for another EU member state at the level determined by the competent authority or designated authority of that member state<sup>44)</sup>, provided that the rate is set at 2.5 % of the total amount of risk exposure referred to in Article 92(3) of the CRR.

(2) Where a competent authority or a designated authority of another EU member state has set a countercyclical capital buffer rate higher than 2.5 % of the total risk exposure under Article 92(3) of the CRR, the CNB will recognize this rate or set a rate of 2.5 %. An investment firm according to Section 9aj(1) shall in such case apply the rate set by the CNB.

(3) The CNB shall lay down measures of a general nature

- (a) the countercyclical capital buffer rate for another EU member state according to subsection (2),
- (b) the name of the State to which the rate referred to in letter (a) applies, and
- (c) the day from which the investment firms according to Section 9aj(1) are required to use the rate under letter (a) for the purpose of calculating the combined capital buffer.

(4) At the first fixing of the tariff in accordance with subsection (3)(a) or at an increase in that rate, the day referred to in subsection (3)(c) not earlier than 1 year after the date of the adoption of a measure of a

general nature; in cases of special consideration this period may be shorter. This shall not apply if the rate referred to in subsection (3)(a) decrease.

(5) Where the period referred to in subsection (4) is shorter than one year, the CNB, in measures of a general nature, shall state the reasons for shortening the time limit.

#### Section 9an

(1) The investment firm, according to Section 9aj, subsection (1), shall apply the rate of countercyclical capital buffer for a State which is not an EU member state at the amount determined by the competent authority of that State, provided that this rate was set at 2.5 % of the total risk exposure under Article 92(3) of the CRR.

(2) Where the competent authority of a State which is not an EU member state has set a countercyclical capital buffer rate of less than 2.5 % of the total amount of risk exposure referred to in Article 92(3) of the CRR, the CNB may raise the rate up to 2.5 % if it deems it necessary in view of the risks associated with the volume of lending in that country. An investment firm according to Section 9aj(1) shall in such case apply the rate set by the CNB.

(3) If the competent authority of a state which is not EU member state has set a countercyclical capital buffer rate higher than 2.5 % of the total risk exposure under Article 92(3) of the CRR, the CNB will recognize this rate or set a rate of 2.5 %. An investment firm according to Section 9aj(1) shall in such case apply the rate set by the CNB.

(4) If the competent authority of a state which is not EU member state does not set the countercyclical capital buffer rate, the CNB may set this rate up to 2.5 % of the total risk exposure under Article 92(3) of the CRR. An investment firm according to Section 9aj(1) shall in such case apply the rate set by the CNB.

(5) The CNB, when setting the countercyclical capital buffer rate in accordance with subsections (2) to (4), takes into account the recommendations issued by the ESRB.

(6) The CNB shall lay down measures of a general nature

- (a) the rate of the countercyclical capital buffer for a State which is not an EU member state under subsections (2) to (4),
- (b) the name of the State to which the rate referred to in letter (a) applies, and
- (c) the day from which the investment firms according to Section 9aj(1) are required to use the rate under letter (a) for the purpose of calculating the combined capital buffer.

(7) At the first fixing of the rate according to subsection (6)(a) or, if this rate is increased, the day referred to in subsection (6)(c) not earlier than 1 year after the date of the adoption of a measure of a general nature; in cases of special consideration, this period may be shorter. This shall not apply if the rate referred to in subsection (6)(a) decrease.

(8) The CNB shall, in a measure of a general nature, justify the amount of the rate referred to in subsection (6)(a) and, if the period referred to in subsection (7) is shorter than one year, the CNB shall state the reasons for shortening the time limit.

### **Capital buffer to cover systemic risk**

#### Section 9ao

(1) The CNB may stipulate that investment firms according to Section 9aj(1), a group of designated investment firms according to Section 9aj(1) or an individual investment firm according to Section 9aj(1), shall maintain a capital buffer To cover systemic risk on an individual and consolidated basis under Part One,

Title II of the CRR, beyond the capital requirements of Article 92 of the CRR, the capital requirements imposed on the investment firm According to Section 9aj subsection (1) through corrective measures and other measures according to this Act or other laws and taking into account internal capital.

(2) The CNB shall set a capital buffer to cover systemic risk for exposures located in the Czech Republic of at least 1 % of the total amount of risk exposure under Article 92(3) of the CRR In multiples of 0.5 percentage point, and this rate may also be set for exposures located in another EU member state or in a state which is not EU member state. The CNB, when setting the rate, takes account of the fact that the rate of interest has not had a negative impact on the financial market as a whole or a part thereof in other EU member states or the whole of the EU and has not hampered the functioning of the single market. The CNB examines the reasons for setting the capital buffer to cover systemic risk at least once every two years.

(3) The CNB shall determine by decision or measure of a general nature

- (a) the capital buffer rate to cover the systemic risk referred to in subsections (1) and (2),
- (b) the data required to identify an investment firm according to Section 9aj(1) which is required to maintain a capital buffer to cover systemic risk,
- (c) the date from which the investment firm concerned according to Section 9aj(1) is required to use the rate referred to in letter (a), and
- (d) the names of the states to which the rate referred to in letter (a) applies.

#### Section 9ap

(1) The CNB shall notify the Commission (EU), the European Supervisory Authority (European Banking Authority)<sup>46)</sup> (hereinafter referred to as the “EBA”), the ESRB, the competent authorities and the designated authorities of the States concerned of its intention to set the capital buffer rate for systemic risk coverage.

(2) The notification referred to in subsection (1) shall include

- (a) the capital buffer rate to cover systemic risk,
- (b) a description of systemic or macro-prudential risk,
- (c) justification of the amount of the rate referred to in letter (a) in relation to the degree of systemic or macro-prudential risk and the stability of the financial system in the Czech Republic,
- (d) justification of the amount of the rate referred to in letter (a) in terms of its effectiveness and adequacy to mitigate systemic or macro-prudential risk,
- (e) the justification for the effectiveness and proportionality of the rate referred to in letter (a) in relation to the other existing measures applicable under this Act and CRR, with the exception of Articles 458 and 459 of the CRR,
- (f) an assessment of the probable positive and negative impacts of setting the capital buffer to cover systemic risk in the EU's single market on the basis of the information available to the CNB.

(3) Where the CNB intends to set a capital buffer rate to cover systemic risk up to 5 % of the total amount of risk exposure under Article 92(3) of the CRR, 1 at the latest 1 month before the date of the issuance of a decision or a measure of a general nature according to Section 9ao, subsection (3). If the CNB intends to set a capital buffer rate to cover systemic risk exceeding 5 % of the total amount of risk exposure under Article 92 of the CRR, notify the intention in accordance with subsection (1), and decisions or measures of a general nature according to Section 9aa(3) shall only be issued following a Commission (EU) Regulation or Decision.

(4) Where the CNB intends to set a capital buffer rate to cover systemic risk up to 5 % of the total amount of risk exposure under Article 92(3) of the CRR for exposures placed in other EU member states, the rate of capital buffer to cover systemic risk must be the same for all EU member states.

(5) The CNB may request the ESRB to issue a recommendation to the competent authorities or designated authorities of other EU member states to recognize the capital buffer rate for the systemic risk exposure set by the CNB for the Czech Republic.

(6) Where the CNB intends to set a capital buffer rate to cover systemic risk of more than 3 % and less than or equal to 5 % of the total amount of risk exposure under Article 92(3) of the CRR, it shall request the Commission (EU)'s opinion before any decision or measure of a general nature according to Article 9a(3). If the CNB fails to fulfil the Commission (EU)'s opinion, it will provide the reasons for it.

(7) Where the CNB intends to set a capital buffer rate to cover systemic risk of more than 3 % and less than or equal to 5 % of the total amount of risk exposure under Article 92(3) of the CRR and the CNB and the competent authorities or designated authorities of the member state concerned do not agree, or where the opinions of the Commission (EU) and the European Systemic risk councils are rejected, the CNB may refer the matter to the EBA in accordance with the directly applicable EU regulation governing EBA<sup>44</sup>. The CNB shall not issue decisions or measures of a general nature according to Section 9ao, subsection (3), unless the EBA decides to do so.

#### Section 9aq

(1) Where a competent authority or a designated authority of another EU member state establishes a capital buffer for the systemic risk for that member state, the CNB may recognize the rate for the purposes of calculating the capital buffer to cover systemic risk and a decision or measure of a general nature, Section 9a(3) provides for this rate. Before setting the rate, the CNB shall take account of the information provided in the notification of the competent authority of the EU member state concerned.

(2) The CNB shall notify the recognition of the rate referred to in subsection (1) to the Commission (EU), the EBA, the ESRB and the competent or designated authority of the EU member state.

#### Section 9ar

### **Capital buffer for a global systemically important institution**

(1) The CNB decides that an investment firm according to Section 9aj(1), which has been designated as a global systemically significant institution, continuously maintains the capital buffer for a global systemically significant institution on a consolidated basis under Part One, Title II of the CRR beyond the capital requirements of Article 92 of the CRR, the capital requirements imposed on it by means of remedial measures and other measures under this Act or other legislation and taking into account internally set capital.

(2) The CNB shall decide on the designation of a global systemically significant institution on a consolidated basis in Part One, Title II of the CRR. An EUropean systemic investment firm may be designated as an EUropean systemic investment firm under Section 9aa(1), an EUropean financial holding company, an EUropean mixed financial holding company or an investment firm according to Section 9aj, subsection (1), with the exception of an investment firm under Section 9a(1) controlled by an EUropean controlling institution, an EUropean financial holding company or an EUropean mixed financial holding company.

(3) The CNB determines the systemic relevance of the global systemically important institution on the basis of the following criteria:

- (a) the size of the group of global systemically significant institutions,
- (b) the interconnection of the group of global systemically important institutions with the financial system,
- (c) the substitutability of the services provided by the group of global systemically important institutions,
- (d) the complexity of the group of global systemically important institutions,
- (e) the cross-border activity of the group of global systemically important institutions.

(4) The CNB shall decide to include a global systemically significant institution in one of at least 5 categories based on an assessment of the systemic relevance of the institution, following the methodology established by the Commission (EU)'s decision or regulation. The CNB may, in justified cases, rank a global systemically significant institution into a category with higher systemic significance, and may also include in one of the categories an institution that was not identified as systemically significant. The CNB shall inform the EBA of the cases referred to in the second sentence and shall state the reasons for doing so.

(5) The implementing regulation specifies the systemic significance of the capital buffer for a systemically significant systemic institution for each category of systemic significance, for institutions classified as having the lowest level of systemic significance, this rate is set at 1 % and for institutions classified as having the highest level of systemic significance Amounting to 3.5 % of the total amount of risk exposure under Article 92(3) of the CRR. The CNB shall set the rate in the fourth category at multiples of 0.5 percentage points.

(6) The CNB shall inform the Commission (EU), the EBA and the ESRB of the names of the institutions identified as being globally systemically relevant.

#### Section 9as

#### **Capital buffer for another systemically significant institution**

(1) The CNB may provide that an investment firm according to Section 9aj(1), which has been designated as another systemically significant institution, continuously maintains the capital buffer for another systemically significant institution on an individual and consolidated basis under Part One, Title II of Regulation Of CRR beyond the capital requirements of Article 92 of this Regulation, the capital requirements imposed on him by means of remedial measures and other measures under this Act or other legislation and taking into account internally Established capital.

(2) The CNB shall decide on the designation of another systemically significant institution on a consolidated basis in Part One, Title II of the CRR. Another European systemic investment firm may be designated as an EUropean systemic investment firm under Section 9aj(1), an EUropean financial holding, an EUropean mixed financial holding company or an investment firm according to Section 9aj, subsection (1).

(3) The CNB shall establish the systemic significance of another systemically significant institution at least according to one of the following criteria:

- (a) the size of the institution or group of other systemically important institutions,
- (b) the importance of an institution or group of other systemically important institutions for the economy of the EU or the Czech Republic,
- (c) the significance of the cross - border activities of an institution or group of other systemically important institutions, or
- (d) the interconnection of an institution or group of other systemically important institutions with the financial system.

(4) The CNB may decide to set a capital buffer rate for another systemically significant institution of up to 2 % of the total amount of risk exposure under Article 92(3) of the CRR, taking into account Systemic materiality of the institution in accordance with subsection (3). The CNB shall take into account when setting the rate that the level of the rate has no adverse effect on the financial market as a whole or part thereof in other EU member states or throughout the EU and does not hamper the functioning of the single market. The CNB shall review the requirement for a capital buffer for another systemically significant institution at least once a year.

(5) The CNB shall notify the Commission (EU), the EBA, the ESRB and the competent authorities or designated authorities of the States concerned of the intention to set or change the capital charge for another

systemically significant institution no later than one month before the date of the decision referred to in subsection (4).

(6) The notification referred to in subsection (5) shall include

- (a) the capital buffer rate for another systemically significant institution,
- (b) justification of the amount of the rate referred to in letter (a) in terms of its effectiveness and adequacy to mitigate risk, and
- (c) an assessment of the probable positive and negative impacts of setting the capital buffer for another systemically important institution on the EU's single market on the basis of the information available to the CNB.

(7) Where another systemically significant institution is controlled by a global systemically important institution or other systemically significant institution that is an European parent credit institution and is required to maintain a capital buffer for another systemically significant institution on a consolidated basis, the capital buffer for that other systemically significant institution on an individual or sub-consolidated basis, as referred to in Article 4(1)(49) of the CRR, may not exceed the higher of:

- (a) 1 % of the total amount of risk exposure referred to in Article 92(3) of the CRR, or
- (b) capital buffers calculated from the total amount of risk exposure referred to in Article 92(3) of the CRR using a capital buffer rate for a systemically significant systemic institution or a capital buffer rate for another systemically significant institution Group on a consolidated basis.

#### Section 9at

(1) The CNB reviews the designation of global systemically important institutions and other systemically important institutions and the inclusion of global systemically important institutions into system significance categories once a year. The CNB shall inform the systemically relevant institutions, the Commission (EU), the EBA and the ESRB of the outcome of the review.

(2) The CNB shall publish in a manner allowing remote access an up-to-date list of institutions that have been designated as being globally systemically significant or as being of other systemic importance and the systemic significance category into which the systemic global institution has been classified.

#### Section 9au

(1) Should the disclosure of a justification of a measure of a general nature issued according to Section 9aa(3) endanger the stability of the financial system of the States concerned, the CNB shall not disclose the justification.

(2) If the publication of a justification for a decision according to Section 9aa(3) would endanger the stability of the financial system of the States concerned, the CNB shall not disclose the justification.

*Sections 9b and 9c*

*repealed*

### **Subchapter 3**

### **Management body**

#### Section 10

(1) Depending on the legal form and internal structure, an investment firm must have at least 2 members of the board of directors, 2 members of the administrative board or 2 executives who actually manage its business; executives forms as a collective body.

(2) A member of the administrative board of an investment firm shall always be its statutory director. However, the statutory director of an investment firm may not be the chairman of the administrative board of that investment firm, unless the CNB allows it on a justified application of such investment firm. On the application under the preceding sentence, the CNB shall decide, taking into account the impact of the concurrence of functions on the regularity and prudence of the performance of the activities of such investment firm, in view of their nature, scale and complexity, taking into account the individual circumstances, particularly whether that person has the time capacities to perform his duties and due to potential conflicts of interest.

(3) An investment firm shall ensure that:

- (a) each member of its management body has good repute and has sufficient expertise, skills and experience to understand the activities of the investment firm, including the associated main risks,
- (b) adequate personal and financial resources have been allocated to the continuous education of the members of its management body,
- (c) a policy promoting diversity in the selection of the members of its management body was put in place,
- (d) the members of its management body have fulfilled the requirements under subsection (4),
- (e) a member of its management body has access to all necessary information and documents in order to be able effectively to challenge the decisions of senior management and to oversee the decision-making of senior management and
- (f) the members of its management body have adequate collective knowledge, skills and experience to understand the activities of such investment firm.

(4) A member of the management body of the investment firm for the duration of his/her duties

- (a) performs his duties properly, honestly and independently and devotes sufficient time to the exercise of this function,
- (b) may act at the same time as a member of the bodies of other legal persons only if he/she continues to have sufficient time to carry out the duties of an investment firm with regard to the nature, scale and complexity of its activities and taking into account the individual circumstances,
- (c) in an investment firm which is significant in terms of its size, internal organisation, the nature, the scope and complexity of its activities, may not at the same time hold positions in bodies of other legal persons in a greater extent than performance of
  1. one function of a member of the body of a legal person who holds an executive management function in that person with two functions of a member of a body of a legal person who does not hold an executive management function (hereinafter referred to as the “non-executive member”),
  2. four functions of a non-executive member.

(5) The CNB may, on the basis of a reasoned application by an investment firm, authorise a member of the management body of an investment firm which is significant in terms of its size, internal organisation, the nature, scale and complexity of its activities, to hold one additional function of a non-executive member at the body of another legal person beyond the scope of subsection (4)(c), provided that this does not affect the proper performance of his/her duties in the body of that investment firm.

(6) The function of a member in a legal person that does not pursue predominantly commercial objectives purposes shall not count for the purposes of subsection (4)(c), and also the performance of one function is considered to be an executive and a non-executive member

- (a) of the same group of a controlling investment firm [Section 151(1)(a)],
- (b) of the same institutional protection scheme as referred to in Article 113(7) of the CRR and
- (c) of a commercial corporation in which an investment firm has a qualifying holding.



(7) Only a natural person may be a member of the management body of an investment firm.

Section 10a

**Reporting changes to the management body**

(1) An investment firm shall report to the CNB any change concerning its management body or its members and shall provide it with the information necessary to assess the fulfilment of the requirements under Section 10 not later than one month before the day of its execution. If a change occurs independently of the will of an investment firm, the investment firm shall notify the change without undue delay after it has learned of the change.

(2) If the CNB, on the basis of the notification referred to in subsection (1), considers that the requirements referred to in Section 10 are not or will not be fulfilled, it shall notify the notifying person within one month of the date of receipt of the notification referred to in subsection (1).

**Subchapter 4**

**Acquisition, increase and loss of qualifying holdings and control of the investment firm**

Section 10b

**Determination and calculation of qualifying holdings**

(1) The person or persons acting in concert must notify their intention and have the consent of the CNB

- (a) to acquire a qualifying holding in an investment firm,
- (b) to increase the qualifying holding in the investment firm to reach or exceed 20 %, 30 % or 50 %, or
- (c) to become persons controlling an investment firm,

even if those persons do not exercise the voting rights associated with the participation thus acquired in the investment firm; by not exercising the voting rights there is no change in the share of voting rights of these or other persons.

(2) For the purposes of calculating the holding referred to in subsection (1), the voting rights resulting from the participation in an investment firm which is a joint stock company shall also be considered to be the voting rights referred to in Section 122(2); Section 122a(4) to (6) and Section 122b(1) to (3) shall apply *mutatis mutandis*.

(3) Shares in the registered capital shall not be included in the calculation of the participation or voting rights in participating securities relating to securities which a credit institution referred to in Article 4(1)(1) or an investment firm according to Article 4(1)(2) of the CRR in its power in direct connection with the subscription or placement of securities unless the voting rights are exercised or otherwise interfered with the management of the issuer of the securities and if the securities are alienated within 1 year from the date of their acquisition.

(4) Subsection (2) and (3) shall apply *mutatis mutandis* to an investment firm which is a limited liability company.

Section 10c

**Consent to acquiring or increasing qualifying holdings or control and notification**

(1) Consent according to Section 10b(1) must be obtained by the person or persons acting in concert prior to the acquisition or increase of a qualifying holding in an investment firm or its control.

(2) Any person who acquires or increases a qualifying holding in an investment firm without the prior consent of the CNB shall immediately report to the CNB this fact and without undue delay apply for its consent according to Section 10b(1).

(3) The acquisition or increase of a qualifying holding in an investment firm or its control without the prior consent of the CNB shall not result in the invalidity of a legal negotiation on the basis of which such changes occurred in the participations in an investment firm, but the corresponding voting rights may not be exercised until such consent is granted.

#### Section 10d

#### **Qualifying holdings assessment**

(1) The CNB shall, in writing and within 2 working days following receipt of a complete application for consent according to Section 10b(1), acknowledge receipt thereof; if the application is incomplete, promptly invites the applicant to remedy the deficiencies of the application. The CNB, together with a confirmation of receipt of a complete application under the first sentence, shall inform the applicant of the date of expiry of the assessment period of the application referred to in subsection (2). The application shall include details of the person or persons intending to acquire or increase a qualifying holding in the investment firm or an investment firm to be controlled, the data on the investment firm in which the participation is to be acquired or increased or which is to be controlled, an indication of the total amount of the interest the applicant makes to that investment firm by acquiring or increasing a qualifying holding or control and the data on the person transferring the share of the applicant. The applicant shall attach to the application the documents necessary for the assessment of the application with a view to meeting the conditions set out in subsection (6).

(2) The CNB shall issue a decision on the application no later than 60 working days from the date of sending a written acknowledgement of receipt of a complete application according to subsection (1). If the CNB does not issue a decision within this period, the consent is shall be deemed to be granted. This does not apply in the case of an application for consent according to Section 10c(2). In the case of a decision on an application for a transfer of business activity to a private acquirer under the law governing recovery and resolution in the financial market, the CNB shall proceed in such a way that the transition of this business activity has not been delayed and that the achievement of the purpose of crisis management has not been hampered.

(3) If necessary for the assessment of the application, the CNB shall, without undue delay, no later than the 50th working day of the period specified in subsection (2), in writing, request the applicant to submit further information, and the CNB shall acknowledge receipt of requested information in writing and within the time limit referred to in subsection (1). On the date of dispatch of this request, the period laid down in subsection (2) shall be interrupted for a maximum period of 20 working days. The assessment period shall only once be interrupted. The assessment period set in subsection (2) shall be extended up to 30 working days if the applicant

- (a) is domiciled or has its registered office in a state which is not EU member state, or
- (b) is not subject to supervision by an authority of a state which is not EU member state supervising banks, insurance undertakings, reinsurance undertakings, investment service providers or foreign investment fund managers.

(4) An application for consent according to subsection (1) may be submitted only electronically.

(5) When assessing an application, the CNB shall only assess the fulfilment of the conditions set out in subsection (6) and shall not take into account the economic needs of the market. The CNB shall oppose the application only the requirements set out in subsection (6) are not fulfilled or if the information submitted by the applicant is insufficient to assess the application.

(6) The CNB shall grant an application if, with a view to ensuring the sound and prudent management of an investment firm, there are no reasonable grounds for fear of a possible influence on the conduct of its business, and if the following conditions are met:

- (a) persons applying for consent have good repute,
- (b) persons who, in connection with the acquisition of a qualifying holding, are proposed as members of a management body or a person in senior management of an investment firm, meet without any doubt the conditions set out in Section 10,
- (c) the financial soundness of the applicant and sufficient volume, transparency of the origin and soundness of its financial resources, in relation to the type of business pursued and envisaged in the investment firm,
- (d) the investment firm will continue to be able to fulfil the prudential requirements based on an individual and consolidated basis,
- (e) the structure of the consolidation unit into which the investment firm is to be included,
  - 1. does not prevent effective supervision of an investment firm,
  - 2. does not prevent the effective exchange of information between the CNB and the supervisory authority of another EU member state that supervises the financial market, or
  - 3. it does not obstruct the exercise of powers of the individual supervisory authorities over this consolidation group and the persons included in this consolidation unit,
- (f) there are no reasonable grounds to suspect a breach of the law governing the measure against the legalization of proceeds from crime and the financing of terrorism in connection with the proposed acquisition or increase of a qualifying holding in an investment firm or its control, or that such a breach has already occurred, and
- (g) it is a case of special consideration worthy of an application regarding Section 10c(2).

(7) In the decision on the application, the CNB

- (a) may fix a period for the acquisition of a qualifying holding in an investment firm according to Section 10b(1),
- (b) state the conclusions resulting from the opinions it has received in accordance with the procedure referred to in Section 149k(1)(a) before the decision is taken.

#### Section 10e

#### **Disposal or reduction of qualifying holding**

(1) A person, or persons acting in concert, shall report to the CNB, without undue delay, that he or she or they:

- (a) reduced their qualifying holding in an investment firm by falling below 50 %, 30 % or 20 %, or wholly dispose it, or
- (b) reduced their qualifying holding in the investment firm in such a way that they stop controlling it.

(2) The notification referred to in subsection (1) shall include details of the person or persons reducing or disposing his or her qualifying holding in the investment firm or of the person or persons who cease to control it, the details of the investment firm in which the interest is reduced or disposed or which ceases to be controlled, an indication of the total amount of interest in that investment firm after its reduction, and details of the person or persons who acquire or increase the interest in the investment firm.

#### Section 11

Section 10b to 10e shall not apply to an investment firm which is a bank. In this case, it is proceeding according to the law regulating the activities of banks.

### **Chapter 3**

#### **Rules of business and management of an investment firm**

##### ***Subchapter 1***

*repealed*

*Section 11a*

*repealed*

##### **Subchapter 2**

#### **Proper provision of investment services**

Section 12

#### **Sound and prudent performance of the business**

(1) An investment firm shall carry out its activities in a sound and prudent manner.

(2) In order to ensure the sound and prudent performance of the activity of an investment firm, unless it has been granted by the CNB a derogation under Article 7 of the CRR, it shall establish, maintain and apply the governing and supervisory system, in a way that is to the benefit to the stability and functioning of the market and to the interests of its clients.

Section 12a

#### **Governing and supervisory system**

(1) Governing and supervisory system of the investment firm includes

- (a) strategic and operational management,
- (b) organisational arrangements, including the internal rules governing it, with a sound, transparent and coherent definition of the activities, including the activities of the body of the investment firm and the committees it has set up, and the associated competences and decision-making powers; within the framework of an organisational arrangement, the investment firm shall set functions that are mutually incompatible,
- (c) a risk management system that always includes
  1. access of an investment firm to the risks to which it is or may be exposed, including risks arising from the internal and/or external environment and liquidity risk and
  2. recognizing, evaluating, measuring, monitoring, reporting and limiting risks, including the adoption of measures to reduce the occurrence or impact of the risk,
- (d) an internal control system which always includes
  1. control of subordinate employees and persons who carry out its activities according to the orders of another, their superiors,
  2. ongoing review of compliance with the legal duties of an investment firm,
  3. an internal audit ensuring an independent and objective internal control of the performance of an investment firm's activities and making clear recommendations to remedy the shortcomings thus identified at the appropriate management level,
- (e) sound administrative and accounting procedures,

- (f) system of internal and external communication,
- (g) monitoring, evaluating and updating internal rules,
- (h) management of conflicts of interest in the performance of its activities, including their detection, prevention and announcement to clients, especially conflicts of interests among
  1. an investment firm, its tied agents and its member of staff and clients of an investment firm or its potential clients,
  2. a person who controls an investment firm, person who is controlled by an investment firm or a person controlled by the same person as an investment firm and members of their management body and tied agents and clients of an investment firm or its potential clients,
  3. clients or potential clients of an investment firm,
  4. investment intermediaries through whom an investment firm carries out its activities and its clients,
- (i) control and security measures for the processing and recording of information, taking into account their nature, including control and security measures for securing and verifying means of information transfer, minimizing the risk of data corruption and unauthorised access, and preventing leakage of information in order to preserve data confidentiality at all times,
- (j) handling complaints from non-professional clients,
- (k) control of the activities of persons who are not its members of staff and by whom they carry out activities, in particular tied agents,
- (l) ensuring the continuity and regularity in the performance of the investment firm's operations in the financial market, in accordance with the subject matter and plan of its activities, including measures and procedures to ensure the continuity and regularity in the performance of investment services,
- (m) ensuring that the persons with whom its engage in the business of an investment firm are of full legal capacity, have good repute and necessary knowledge, skills and experience,
- (n) a remuneration system for persons whose activities in the exercise of their employment, occupation or function have a significant impact on the risks and rewards they undertake, including the principles for determining and conditions for the payment of fixed and variable components of remuneration, remuneration decision-making procedures and the method of assessment efficiency so that the remuneration system contributes to and is consistent with sound and effective risk management,
- (o) rules for the conclusion of personal transactions,
- (p) the rules for accounting for client assets and for maintenance of register of clients' assets,
- (q) ensuring compliance with duties when dealing with clients.

(2) The investment firm's governing and supervisory system shall be effective, coherent and proportionate to the nature, scale and complexity of the risks associated with the business model and the activities of the investment firm in its entirety and in its parts.

(3) An investment firm is obliged to continuously verify and periodically evaluate the effectiveness, coherence and proportionality of the governing and supervisory system as a whole and its parts and to take an adequate remedy without undue delay.

(4) The Act on Banks and the special requirements under this Act, including subsection (1)(a), shall apply to the governing and supervisory system of the investment firm, which is a bank.

## Section 12b

### **Governing and supervisory system on a consolidated basis**

(1) Where an investment firm is not an investment firm referred to in Section 8a(4) and (7), it shall establish and maintain a governing and supervisory system also on a consolidated basis if it is a person referred to in Section 9a(4).

(2) An investment firm which has the duty under subsection (1) shall ensure that the controlled entity not subject to the supervision of the CNB shall establish the principles and procedures for management, organisational arrangements and other procedures and mechanisms under Section 12a(1). The CNB may grant

exception of this duty, if an investment firm proves that the establishment of such principles, procedures, arrangements and mechanisms is not in accordance with the law of the home state of controlled entity.

(3) An investment firm which has the duty to establish and maintain a governing and supervisory system on a consolidated basis shall also ensure that the principles and procedures for management, organisation, procedures and mechanisms under Section 12a(1) used by the members of the consolidated group are mutually consistent and interconnected, resulting in all the information needed for the purposes of the decision-making processes within the consolidation unit and for the purposes of supervision.

#### Section 12ba

##### **Investment firm manufacturing a financial instrument for sale to clients**

(1) An investment firm that manufactures a financial instrument offered to clients shall establish, maintain and apply procedures for the approval of each financial instrument and significant adaptations of financial instruments before it is marketed or distributed to clients.

(2) An investment firm shall continuously verify and regularly evaluate the procedures referred to in subsection (1) and shall take appropriate remedy without undue delay.

(3) The procedures referred to in subsection (1) must

- (a) specify an identified target market for each financial instrument,
- (b) ensure that all risks to an identified target market are assessed, and
- (c) ensure that the intended distribution strategy is consistent with the identified target market.

(4) Part of the procedures referred to in subsection (1) shall be

- (a) appropriate organisational arrangements for the manufacturing of financial instruments for sale to clients,
- (b) management of conflicts of interest and compliance with remuneration rules when manufacturing a financial instrument,
- (c) an evaluation of the cost structure and fees associated with the relevant financial instrument and
- (d) ensuring that the financial instrument does not harm clients and threaten the integrity of the market.

(5) An investment firm which manufactures a financial instrument offered or distributed to clients shall continuously verify and regularly review the financial instruments it offers and markets and take an adequate remedy of the identified deficiencies without undue delay,

- (a) taking into account all events that could significantly affect potential risks to the identified target market,
- (b) assess whether the financial instrument continues to meet the needs of the identified target market, and
- (c) assess whether the distribution strategy remains appropriate.

(6) An investment firm which manufactures a financial instrument offered to clients shall provide the investment firm referred to in Section 12bb with all necessary information about

- (a) this financial instrument,
- (b) the procedures for approving this financial instrument, and
- (c) the identified target market of this financial instrument.

#### Section 12bb

##### **An investment firm offering a financial instrument which it does not manufacture**

Where an investment firm offers or recommends financial instrument which it does not manufacture, it shall establish, maintain, and apply adequate arrangements to

- (a) obtain information according to Section 12ba(6), also from non-investment firms, which manufacture a financial instrument offered to clients,
- (b) understand the characteristics of this financial instrument and
- (c) understand the identified target market of this financial instrument, taking into account available information about its clients.

#### Section 12c

##### **Maintenance of a register**

(1) An investment firm shall ensure maintenance of a register of

- (a) book-entry or immobilised securities with whose owner has entered into an agreement on the maintenance of the asset account in which the investment firm maintains a register of owner's book-entry or immobilised securities which are simultaneously registered in the central register of the book-entry securities on the clients' account; this register is maintained in the register linked to the central register of book-entry securities,
- (b) certificated financial instruments that the investment firm has taken over from clients to safekeeping or immobilised securities; this register is maintained in a separate register of financial instruments (Section 93),
- (c) foreign financial instruments, that the investment firm has taken over from clients for the purpose of providing an investment service; this register is maintained in a separate register of financial instruments (Section 93),
- (d) the financial instruments that the investment firm has taken over from clients for the purpose of providing an investment service and which are not mentioned in letters (a) to (c) and of which nature allows it; this register is maintained in a separate register of financial instruments (Section 93).

(2) The registers referred to in subsection (1) shall be maintained in an electronic form.

#### Section 12d

##### **Outsourcing**

(1) Where an investment firm outsources critical or important operational functions to another person, it is obliged to establish, maintain and apply appropriate risk management measures and measures to avoid the occurrence of disproportionate operational risk.

(2) The investment firm shall ensure that a critical or important an operational function performed by an outsourcing provider is not exercised in a manner that would substantially reduce the quality of the governing and supervisory system, or the ability of the CNB to exercise supervision over compliance with the duties of an investment firm<sup>3)</sup>. The duty of an investment firm to compensate for the damage caused by a breach of its duty under this Act, according to this Act or a set by directly applicable EU regulations in the field of financial market activities<sup>2)</sup> shall not be affected by the delegation of critical or important operational functions to another person.

(3) The operational function of an investment firm is deemed to be critical or important if the deficiency in its performance would seriously undermine the continuous and regular performance of investment services or the fulfilment of the duties of the investment firm, jeopardize its financial stability or represent a change in the requirements underlying the investment firm being granted an authorisation for the activity of an investment firm.

(4) A critical or important operational functions of an investment firm is not considered an activity of

- (a) legal or other advice, training of its members of staff, activities relating to the billing of services rendered to him, the protection of his premises and members of staff or other services provided by an investment firm, provided that such services are not part of the investment services provided by an investment firm,
- (b) taking of standardized services, including market and price information.

(5) The performance of activities related to the provision of the main investment service according to Section 4(2)(d) to a non-professional client may be delegated to another person established in a state which is not EU member state, provided that:

- (a) that person is authorised or registered to carry out that activity in the state in which he is established and is subject to supervision of compliance with prudential rules for the provision of investment services and
- (b) the CNB has concluded a cooperation agreement with the relevant supervisory authority.

(6) If the conditions laid down in subsection (5) are not fulfilled, an investment firm may outsource the exercise of the activity under subsection (5) by another person established in a state which is not EU member state only if it notifies the CNB in advance of this intention and the CNB shall not prohibit this delegation within 2 months from the date of delivery of the notification, due to the inappropriateness of the proper and prudent provision of investment services. The appeal is not admissible against this decision.

(7) In connection with the conditions set out in subsection (5), the CNB is entitled to conclude cooperation agreements with supervisory authorities of states which are not EU member states. The CNB shall publish in the CNB's Bulletin (in Czech: "*Věstník ČNB*") and on its website the list of supervisory authorities with which it has concluded the cooperation agreement.

#### Section 12e

#### **Protection of client's assets**

(1) An investment firm is required, when dealing with financial instruments of the client, to establish measures to safeguard the ownership right of the, especially in the event of the insolvency of an investment firm, and to prevent the use of a client's financial instruments on own account or for the account of another client, except with the client's express consent.

(2) An investment firm shall, when handling the client's funds establish measures to safeguard the rights of the client to such assets and, except for deposits with an investment firm that is a bank, to prevent the use of such assets for its own account or on account of another client.

(3) An investment firm is obliged to ensure that its auditor, according to the law regulating the activity of the auditors, files to the CNB at least once a year the report on the adequacy of the measures taken to protect the client's assets.

#### Section 12f

#### **Implementing regulation**

Implementing regulation of the CNB specifies, unless it is regulated by the CRR<sup>50</sup>, by a regulation or a decision of the Commission (EU),

- (a) more detailed requirements for the governing and supervisory system of the investment firm on an individual and consolidated basis within the limits set out in Section 12 to 12b,
- (b) more detailed requirements for an investment firm in connection with manufacturing, offering or distributing of financial instruments within the limits laid down in Section 12ba and 12bb,
- (c) the details, time limits and manner of sending the auditor's reports according to Section 12e(3),
- (d) requirements for organisational arrangements in relation to the safeguarding of the client's assets,



- (e) the scope of powers, competence, composition and functioning of the bodies and committees of the investment firm, as well as the requirements for their members.

#### Section 12g

##### **Committees**

(1) An investment firm, which is significant with regard to its size, internal organisation, nature, scale and complexity of its activities, shall establish

- (a) a risk committee,
- (b) a nomination committee, and
- (c) a remuneration committee.

(2) The risk committee, the nomination committee and the remuneration committee shall be composed of non-executive members of the board of the investment firm.

(3) The implementing regulation specifies the criteria for assessing the significance of an investment firm according to subsection (1).

#### Section 12h

##### **Duties of the CNB**

###### The CNB

- (a) uses information on remuneration principles in accordance with Article 450 of the CRR to compare trends and remuneration practices,
- (b) monitors whether, in view of the nature, scale and complexity of its business, the investment firm relies not only on external credit assessment when assessing the creditworthiness of an entity or financial instrument for the purposes of this Act as a financial instrument under Article 4(1)(50) of the CRR,
- (c) monitors the range of risk-weighted exposure amounts or capital requirements of an investment firm, excluding capital requirements for operational risk, for exposures or comparative portfolio transactions arising from the internal approaches of an investment firm; “operational risk”, for the purposes of this Act, means the operational risk referred to in Article 4(1)(52) of the CRR,
- (d) at least once a year, assesses the quality of internal approaches of the investment firm,
- (e) takes remedial measures if the internal approach leads to an understatement of the capital requirements of an investment firm that is not the consequence of existing differences in positions or exposures; the remedial measure maintains the objectives of the internal approach,
- (f) monitors developments in relation to liquidity risk profiles,
- (g) takes measures if the developments referred to in letter (f) can lead to instability of an investment firm or systemic instability,
- (h) uses information on diversity policy in accordance with Article 435 of the CRR to compare policy to support diversity in the choice of members of the statutory body, members of the administrative board and members of the supervisory body of the investment firm.

#### Section 12i

##### **Reporting mechanism**

(1) An investment firm establishes, maintains and applies an effective mechanism to enable its members of staff reporting of actual or potential infringements of provisions of this Act, its implementing regulation and directly applicable EU regulations in the field of financial market activities<sup>2)</sup> through a specific, independent and autonomous channel.

(2) The reporting mechanism referred to in subsection (1) shall include at least:

- (a) the procedures for reporting of actual or potential infringement and its follow-up,
- (b) the protection of a person who reports actual or potential infringements; if the person is a member of staff the protection is at least against discrimination or other types of unfair treatment,
- (c) the protection of the identity of both the person who reports actual or potential infringement or who is allegedly responsible for an actual or potential infringement, unless such disclosure is required by national law in the context of further investigation or subsequent judicial proceedings.

(3) The implementing regulation specifies the requirements for the reporting mechanism referred to in subsection (1).

## Section 12j

### **Variable elements of remuneration of the persons with influence on risk**

(1) The amount of the variable remuneration component may not exceed for the natural person or group of natural persons designated by the investment firm in accordance with the procedure laid down in Regulation (EU) No 604/2014<sup>56)</sup> as a person or persons whose activities have a significant influence on the risk profile of an investment firm (hereinafter referred to as the “person with influence on risk”), the amount of the fixed component of the remuneration, unless the investment firm’s general meeting decides according to subsection (2).

(2) The competence of the general meeting of an investment firm is also to decide that the amount of the variable elements of the remuneration of a person with influence on risk may be higher, but not more than twice the fixed elements of the remuneration; the general meeting may decide only on the basis of a reasoned proposal submitted to the general meeting, depending on the legal form and internal structure, by the board of the directors, the administrative board or by the executive,

- (a) the proposed amount of the ratio of the variable elements of the remuneration to the fixed elements of the remuneration in percentage terms,
- (b) the reasons for the approval of the proposed decision and the indication of the number of persons with influence on risk to which the decision applies,
- (c) the expected impact of the decision on compliance with capital requirements in terms of volume and structure under this Act, under CRR<sup>57)</sup> or under the decision of the CNB or other competent authority.

(3) For the decision of the general meeting according to subsection (2) shall be required a consent of

- (a) at least 66 % of the majority of the votes of shareholders present, on condition that shareholders attending the general meeting who hold at least half the voting rights of the investment firm are present,
- (b) at least three-quarters of the majority of the votes of the shareholders present, unless members are present who handle at least half of the voting rights in the investment firm.

(4) Persons with influence on risk who have a higher level of ratio between the fixed and variable elements of the remuneration under subsection (1) and the persons acting in concert with them shall not exercise voting rights in the decision-making of the general meeting referred to in subsection (2).

(5) If the general meeting rescinds a decision taken according to subsection (2) or changes it in such a way as to determine the lower proportion of the variable element of the remuneration to the fixed element of the remuneration, the investment firm shall align the remuneration of the persons with influence on risk with the new decision of the general meeting till the first day of the year following the year in which the decision was taken.

(6) Where a right to a variable element has arisen from remuneration under a previous decision of the general meeting, the right to remuneration to the extent that the variable component of remuneration exceeds

the amount of the variable component resulting from the new general meeting's decision ceases on the day of effectiveness of the new decision of the general meeting.

(7) The investment firm shall immediately report to the CNB its recommendation to the shareholders as well as of the proposed higher maximum ratio of the fixed and variable components of the total remuneration and its justification, and at the request of the CNB to prove that the proposed higher ratio is not in contrary to its duties under this Act or CRR, in particular with regard to capital requirements.

(8) For the purposes of calculating the variable remuneration component, an investment firm may apply a discount rate of up to 25 % of the total variable component of the remuneration of a person with influence on risk, provided that it is paid out through instruments which can be exercised at the earliest in five years.

### **Subchapter 3**

#### **Journal of an investment firm**

##### Section 13

(1) An investment firm shall keep a journal, which is a record of the instructions received to acquire the purchase, sale or other transfer of financial instruments and trades concluded on the basis of these instructions, as well as transactions entered into by the investment firm on own account and documentary records according to Section 17(6).

(2) The journal of an investment firm shall be kept in electronic form. An investment firm is authorised to handle the birth numbers of participants of the transactions for the purpose of keeping the journal of an investment firm.

(3) The manner in which the investment firm's journal is kept and its requisites shall be specified by an implementing regulation.

### **Subchapter 4**

#### **Expertise**

##### Section 14

#### **Staff**

The staff of an investment firm must be proportionate to the nature, scale and complexity of the activities of the investment firm.

##### Section 14a

#### **Certain conditions of operation of an investment firm**

(1) An investment firm may be represented only by members of its staff, an investment intermediary or a tied agent when dealing with a client or a potential client in the framework of provision of investment services.

(2) An investment firm shall ensure that members of its staff, its tied agents and members of staff of its tied agents who deal with clients or potential clients in the framework of provision of investment services or who are responsible for dealing with clients fulfil the conditions of professional competence (Section 14b) and good repute.

(3) Subsection (2) shall not apply to a person who, in the context of the provision of investment services, deals exclusively with the persons referred to in Section 2a (1) or (2) or in Section 2b.

#### Section 14b

##### **Professional competence**

(1) The “professional competence” in this Act means acquiring

- (a) the general knowledge necessary for dealing with a client or potential client in the framework of the provision of investment services, and
- (b) the expertise and skills necessary to deal with the client or potential client in the framework of the provision of investment services.

(2) The general knowledge necessary to negotiate with the client or potential client in the provision of investment services shall be substantiated by a certificate of graduation (secondary education diploma) or a certificate of higher education.

(3) The professional knowledge and skills necessary to negotiate with the client or potential client in the provision of investment services shall be substantiated by a certificate of successful completion of the proficiency exam (Section 14f).

(4) The professional knowledge and skills necessary for dealing with a client or a potential client in the provision of investment services shall be understood in this Act with regard to the investment services and financial instruments provided

- (a) knowledge
  1. within the scope of the (professional) bases on the financial market,
  2. structures, entities and the functioning of the capital market,
  3. regulation of the provision of investment services, including codes of conduct in the field of capital market, if any,
  4. financial instruments and their issuances, investment services and investment funds,
  5. investments, investment strategies and portfolios and related risks, and
  6. financial analysis and
- (b) skill to
  1. explain to the client or potential client a financial instrument, an investment service and investment funds,
  2. analyse the available financial instruments and
  3. offer a client or potential client a financial instrument that meets their needs

#### Section 14c

##### **Requirements for an accredited person**

(1) An accredited person may organise expert exams proving the expertise and skills necessary for dealing with a client or potential client in the provision of investment services.

(2) An accredited person is defined in this Act as the person who has been granted accreditation by the CNB.

(3) The CNB grants accreditation or extends its period to the applicant if:

- (a) the applicant is fully legally competent and credible, if he is a natural person; the condition of good repute must also be met by the controlling entity of the applicant if it is a legal person,

- (b) the applicant fulfils the conditions of eligibility, qualification, organisational structure and personnel for the activity of an accredited person, especially meets the organisational and technical requirements for organising expert exams,
- (c) the applicant submits the rules of exam according to Section 14f(2) and
- (d) the data referred to in the application enable authorisation identification of the applicant in the relevant base register.

(4) An application for accreditation or change of accreditation may be submitted only electronically.

(5) The application referred to in subsection (4) shall contain, in addition to the requirements laid down by the Administrative Procedure Code, also data and documents proving the fulfilment of the conditions under subsection (3).

(6) The CNB shall grant an accreditation under subsection (4) within three months from the date on which the application was received by the CNB, if the conditions set out in subsection (3) are met.

(7) The accredited person is obliged to notify the CNB without undue delay of the change of the conditions according to subsection (3). Such notification shall be submitted electronically.

#### Section 14d

##### **Duration, extension and termination of accreditation**

(1) Accreditation is granted for a period of 5 years.

(2) Accreditation may be repeatedly renewed for an additional 5 years, on an application.

(3) An application under subsection (2) may be submitted only electronically.

(4) The CNB approves an application as referred to in subsection (2) within a period of 3 months from the date on which the application was received by the CNB provided that the conditions set out in this Act are met. If the CNB fails to take a decision within this time limit, the accreditation shall be extended.

(5) Accreditation ceases by:

- (a) the death of a natural person,
- (b) the disappearance of a legal person,
- (c) upon expiry of the period for which the accreditation was granted, unless the accreditation has been extended in accordance with subsection (4), or
- (d) withdrawal (Section 14e).

#### Section 14e

##### **Withdrawal of accreditation**

(1) The CNB shall withdraw the accreditation if the accredited person applies for it.

(2) The CNB may withdraw accreditation if

- (a) the information on the basis of which accreditation was granted was false or misleading,
- (b) the accredited person ceases to fulfil the conditions for accreditation,
- (c) the accredited person seriously or repeatedly breached the duties set out in this Act.

(3) An application under subsection (1) may be submitted electronically.

#### Section 14f

##### **Expert exam and certificate of successful completion of the expert exam**

(1) The accredited person carries out expert exams using a set of exam questions prepared by the CNB in cooperation with the MoF.

(2) During the expert exam, the accredited person shall follow the rules of exam, the content of which ensures the proper course of the expert exam.

(3) The expert exam may also be only written. Proper conduct of the expert exam is ensured by an accredited person through a committee with an odd number of members. Members of the commission must be credible.

(4) The accredited person shall publish well in advance on his website

- (a) the date of the exam,
- (b) how many persons can make a expert exam within the given deadline,
- (c) the amount of the payment for the performance of the expert exam, and
- (d) the rules of exam.

(5) The accredited person shall, without undue delay, inform the examiner of the result of the exam.

(6) The accredited person shall issue without undue delay to the person who successfully passed the expert exam a certificate of successful completion of the expert exam which must include:

- (a) the identity of the person who carried out the expert exam,
- (b) the identity of the accredited person,
- (c) indication of the scope of the expert exam,
- (d) the date of the exam,
- (e) a list of members of the commission,
- (f) the signature of the person authorised to act as an accredited person.

#### Section 14g

##### **Document storage**

(1) The accredited person shall keep the documents relating to the performance of the expert exams, in particular

- (a) records of the course and results of the expert exams,
- (b) records of certificates issued for successful completion of the expert exam.

(2) The accredited person shall keep the documents referred to in subsection (1) for at least 10 years from the date of the exam to which the documents relate; this also applies to the person whose accreditation has been withdrawn or terminated, as well as to its legal successor, including the insolvency administrator and the liquidator.

#### Section 14h

##### **Implementing regulation**

Implementing regulation specifies

- (a) the range of professional knowledge and skills under Section 14b(4),

- (b) the minimum scope of the conditions of eligibility, qualification, organisational structure and personnel according to Section 14c(b),
- (c) the details of the requisites of applications according to Sections 14c(4) and 14d(2), including annexes demonstrating compliance with the conditions of Section 14c(3), their formats and other technical specifications,
- (d) the details of the notification referred to in Section 14c(7), its formats and other technical details,
- (e) the application formats according to Section 14e(1) and other technical details,
- (f) requirements for the course, form, extent and manner of evaluation and the minimum standard of the expert exam according to Section 14f,
- (g) the rules for the provision of a set of test questions under Section 14f(1) to accredited persons, handling and updating of them, and
- (h) the requirements for the rules of exam according to Section 14f(2) and the manner of negotiation and composition of the commission according to Section 14f(3).

## **Subchapter 5**

### **Conduct of business rules of an investment firm**

#### Section 15

#### **General duties when dealing with clients**

(1) An investment firm provides investment services with professional care. The provision of investment services by an investment firm with professional care means, in particular, that an investment firm acts in a qualified, honest and fair manner and in the best interest of the client, in particular, the investment firm fulfils duties laid down in this Section.

(2) Duties under Section 15 to 15r shall not apply to the conclusion of transactions between participants in an EU regulated market or MTF or to the conclusion of transactions between the operator of MTF and participants in that system. This is without prejudice to the duties of an investment firm which is a member or a participant in that market or system to fulfil the duties under Section 15 to 15r in relation to its clients when acting on their behalf and executing their orders on that market. To conclusions of transactions in an OTF, the duties under Section 15 to 15r apply.

(3) An investment firm shall not be provided or provide any fee or commission or other financial or non-monetary benefit (hereinafter referred to as the “incentive”) in connection with the provision of investment services, including research, which may lead to a breach of the duty set out in subsection (1) or duties under Section 12a(1)(h). Fee, commission or other financial or non-monetary benefit received from a client or a person acting on his behalf or provided to a client or a person acting on his behalf is presumed not to be incentives.

(4) Incentive according to the Subsection (3) is permissible only if it

- (a) contributes to enhance the quality of the service provided and does not conflict with the duty laid down in subsection (1) or
- (b) allows the provision of investment services or is necessary for that purpose and does not conflict with the duty laid down in subsection (1), such as custody costs, settlement fees, transfer and exchange fees, regulatory levies or legal fees.

(5) If the investment firm informs the client that the main investment service referred to in Section 4(2)(e) is provided on an independent basis or if the investment firm provides the client with the main investment service specified in section 4(2)(d), the investment firm shall not, in connection with the provision of such services, retain an incentive in the form of a fee or commission or any monetary or other cash benefit, nor shall the investment firm accept an incentive in the form of a non-monetary benefit; this does not apply to a minor non-monetary benefit which may contribute to enhance the quality of the service provided and which

are of a scale and nature such that they cannot be judged as an benefit to impair compliance with the duty of an investment firm to act in the best interest of the client if the client is clearly aware of it.

(6) The duties in relation to the client set out in Section 15 to 15k are fulfilled by the investment firm also in relation to the potential client.

(7) Implementing regulation specifies

- (a) the conditions under which the research provided to the investment firm is not considered as an incentive under the first sentence of subsection (3),
- (b) the conditions under which the incentive is deemed to enhance the quality of the service provided under subsection (4)(a),
- (c) the manner in which an investment firm demonstrates an improvement in the quality of the service provided under subsection (4)(a),
- (d) more detailed requirements for the transmission of the incentive received in the form of a monetary or other cash benefit to the client under subsection (5) and according to Section 15e(2),
- (e) more detailed requirements for informing clients of incentives under Section 15e(1) and (2),
- (f) the conditions under which a benefit may be deemed as a minor non-monetary benefit under subsection (5) of the sentence after a semicolon.

#### Section 15a

##### **Communication with clients**

(1) An investment firm, when dealing with a client, including a person's negotiation or a marketing announcement concerning investment services or financial instruments, may not use unclear, false or misleading information. In the case of a marketing announcement, the investment firm will also ensure that it is clear from its content and form that it is a marketing communication.

(2) The information under Section 15d and 15e(1) and (2) provides the investment firm to the client in a comprehensible form in such a manner that client is reasonably able to understand the nature and risks of the investment service and the type of financial instrument that is being offered, and then be able to take investment decision on an informed basis.

(3) An investment firm notifies the client at least once before the provision of the investment service is provided by telephone, about the fact that telephone communications or conversations that result or may result in transactions will be recorded, where such investment services relate to the reception, transmission and execution of client orders.

(4) An investment firm shall not provide, by telephone, investment services to a client who have not been notified in advance according to subsection (3), where such investment service relates to the reception, transmission and execution of client order.

(5) An investment firm shall provide the client, at client's request, with records kept in accordance with Section 17(2) to (5) concerning this client.

#### Section 15b

##### **Duties relating to manufacturing a financial instrument**

(1) Investment firm which manufactures a financial instrument offered to clients, shall ensure that the financial instrument is designed to meets the needs of a target market identified according to Section 12ba(3)(a) and Section 2a to 2d.



(2) The investment firm referred to in subsection (1) shall ensure that the strategy for offering the financial instrument manufactured by this investment firm corresponds to the nature of the target market identified according to Section 12ba(3)(a).

(3) The investment firm referred to in subsection (1) shall take all reasonable steps to offer the financial instrument manufactured by this investment firm to the target market identified according to Section 12ba(3)(a).

#### Section 15c

##### **Duties when offering or recommending a financial instrument to a client**

(1) An investment firm must understand the financial instrument it offers or recommends to the client.

(2) An investment firm must assess whether a financial instrument that it offers or recommends to a client meets the needs of the target market to which the client belongs, as identified according to Section 12ba(3)(a).

(3) An investment firm which provides investment services to client ensures that it does not remunerate or assess the performance of its member of staff and tied agents in a way that conflicts with its duty to act in the best interests of its clients. In particular, it shall not make any arrangement by way of remuneration, sales targets or other otherwise that might provide an incentive to its member of staff or tied agent to offer or recommend to a client, who is not a professional client, a particular financial instrument when the investment firm could offer a different financial instrument which would better meet of the target market identified according to Section 12ba(3)(a) to which the client belongs.

(4) If the investment firm informs the client that the main investment service referred to in Section 4(2)(e) is provided on an independent basis, this investment firm assess a sufficient range of financial instruments available on the market which must be sufficiently diverse with regard to their type and issuers or product providers to ensure that the client's investment objectives can be suitably met.

(5) When assessing the financial instruments referred to in subsection (5), an investment firm shall not limit the assessing to financial instruments issued or provided by

- (a) investment firm itself,
- (b) entities having close links with the investment firm, or
- (c) other entities with which the investment firm has a financial, business or other contractual relationship, which pose a risk of impairing the independent basis of the main investment service referred to in Section 4(2)(e).

##### **Informing clients**

#### Section 15d

(1) An investment firm is obliged in good time before the investment service is provided to provide the client with information with regard to

- (a) the investment firm,
- (b) the investment services it provides,
- (c) the financial instruments to be covered by the investment service and the proposed investment strategies,
- (d) execution venues,
- (e) all costs and related charges and
- (f) a customer compensation scheme and a deposit-guarantee scheme relating to the customer's assets, including the amount and scope of coverage provided by the customer compensation scheme; the

investment firm informs the customer at his request about the conditions of compensation, the procedure for claiming compensation and its payment.

(2) The information referred to in subsection (1)(c) must include

- (a) adequate guidance and warnings regarding the risks associated with investments in these financial instruments or with particular investment strategies, and
- (b) information on whether the financial instrument is intended for retail clients or for professional clients, including with respect to the target market identified according to Section 12ba(3)(a).

(3) The information referred to in subsection (1)(e) must include information relating to

- (a) main and ancillary investment services,
- (b) any cost of advice,
- (c) the cost of the financial instrument offered or recommended to the client,
- (d) the costs and charges in connection with the investment service or financial instrument that are not caused by the occurrence of underlying market risk and
- (e) payment terms, including the possibility of making payments through other persons.

(4) The information referred to in subsection (1)(e) is aggregated to enable the client to understand the overall cost and to assess their cumulative effect on the return of the investment. At the request of the client, the investment firm provides such information as an itemised breakdown.

(5) An investment firm is obliged to inform the client in good time before the provision of the main investment service referred to in Section 4(2)(e) whether

- (a) it provides this investment service on an independent basis or not,
- (b) the provision of this investment service is based on a broad or on a more restricted analysis of different types of financial instruments,
- (c) the analysis referred to in letter (b) is limited to financial instruments issued or manufactured by that investment firm, entities having close links with the investment firm or by other entities having close legal or economic relationship to it as to pose a risk of impairing the independent basis of the advice provided, and
- (d) the investment firm will provide the client with a periodic assessment according to Section 15h(2) in relation to financial instruments recommended or offered to that client.

(6) The duty to provide information under subsection (1) or (5) does not apply to cases where an investment service is offered as part of a complex product subject to an equivalent duty to inform the client under the law regulating banking activities, the law regulating the activities of savings banks and credit cooperatives Consumer credit

#### Section 15e

(1) An investment firm is obliged to inform the client, in good time before the investment service is provided, in a clear, accurate and comprehensive and understandable manner about the existence, nature and amount of the incentive according to Section 15(4), or, where the amount cannot be ascertained, the method of calculating that amount.

(2) Where applicable, the investment firm is obliged to inform the client in good time before the investment service is provided on mechanism for transferring to the client the fee, commission, monetary or non-monetary benefit received in relation to the provision of the investment.

(3) When providing the main investment service referred to in Section 4(2)(e), before the transaction is made, the investment firm provides the client with a statement on suitability in a durable medium specifying

- (a) investment advice provided and
- (b) how that investment advice meets the preferences, objectives and other characteristics of the retail client.

(4) Where the agreement to buy or sell a financial instrument is concluded as a result of the provision of the main investment service referred to in Section 4(2)(e) using a mean of distance communication which prevents the prior delivery of the suitability statement according to subsection (3), the investment firm provides the written statement on suitability in a durable medium immediately after the client is bound by any agreement, provided both the following conditions are met:

- (a) the client has consented to receive the suitability statement without undue delay after the conclusion of the transaction and
- (b) the investment firm has given the client the option of delaying the transaction in order to receive the statement on suitability in advance.

(5) Where an investment firm offers a main investment service to the client as part of a package or as a condition for arranging a package, the investment firm is obliged to inform the client in good time before the investment service is provided whether it is possible to buy the different components separately and provides of the costs and charges of each component, if they are negotiated separately.

(6) Where an investment firm offers to a retail client main investment service as a part of a package or as a condition for arranging a package, the investment firm provides an description of how the risks arising from the package differ from the risks arising from the components of the package, if they are negotiated separately; this does not apply unless the risks arising from the compound product are clearly different from the risks arising from the components of the package if they are negotiated separately.

#### Section 15f

The investment firm complies with Section 1843 of the Civil Code providing for information duties in connection with the conclusion of a financial services contract; Section 1845 of the Civil Code is not affected by this Act.

#### Section 15g

(1) An investment firm is obliged to provide a client on a durable medium with adequate information about the services he has provided.

(2) The information referred to in subsection (1) includes periodic communications to the client, taking into account the type and the complexity of the transactions in the financial instruments involved and the nature of the services provided and includes, where applicable, the costs associated with the transactions and the services provided.

(3) Where applicable, an investment firm provides the client with information according to Section 15d(1)(e) on a regular basis during the life of the investment, at least annually.

(4) Where an investment firm provides the main investment service referred to in Section 4(2)(d) or has informed according to Section 15d(5)(d) the client that it will carry out a periodic assessment according to Section 15h(2), the information referred to in subsection (1) includes an updated statement by the investment firm of how the investment meets the client's preferences, objectives and other characteristics of the retail client.

### **Requiring information from the client**

#### Section 15h

(1) When providing the investment services referred to in Section 4(2)(d) and (e), the investment firm is required to obtain the necessary information from the client regarding the client's

- (a) knowledge in investment,
- (b) investment experience,
- (c) financial situation, including his ability to bear losses, and
- (d) investment objectives, including his risk tolerance.

(2) The information referred to in subsection (1) is the investment firm required to obtain to the extent that it enables investment firm to assess whether the provision of an investment service referred to in subsection (1), advice on a financial instrument or the execution of a financial instrument transaction within the investment service referred to in subsection (1), is suitable for the client's financial situation, investment objectives and knowledge and experience necessary to understand the risks involved, in particular its risk tolerance and ability to bear losses.

(3) Where an investment firm provides investment advice, when providing the investment service referred to in subsection (1), recommending a package of services or products bundled in accordance with Section 15e(5) or (6), the overall package is evaluated in accordance with subsection (2).

#### Section 15i

(1) In the provision of the main investment services, with the exception of the services mentioned in Section 4(2)(d) and (e), an investment firm is required to ask the client for information about his or her

- (a) investment knowledge and
- (b) investment experience.

(2) The information referred to in subsection (1) shall be required by an investment firm to the extent that it enables investment firm to consider whether the provision of the investment service referred to in subsection (1) or the advice concerning a financial instrument or the execution of a financial instrument transaction within the investment service referred to in subsection (1) is appropriate to the client's knowledge and experience required to understand the associated risks.

(3) Where an investment firm considers on the basis of the information received under subsection (1) that the provision of the investment service, advice on the financial instrument or the execution of the transaction in a financial instrument within the investment service referred to in subsection (1) is not appropriate to the client's knowledge or experience, the investment firm warns the client.

(4) Where the client refuses to provide the information referred to in subsection (1) or where the client provides insufficient information, the investment firm instructs the client that the investment firm is not in a position to determine whether the provision of the investment service, advice on a financial instrument or execution of the transaction envisaged within the investment service referred to in subsection (1) is appropriate for the client's knowledge or experience required to understand the risks involved.

(5) Where an investment firm offers in the manner of Section 15e(5) or (6) in the provision of the investment service referred to in subsection (1) a package the investment firm evaluates the package in accordance with subsection (2) as a whole.

#### Section 15j

(1) An investment firm may rely on information received from a client transmitted by another EU investment firm.

(2) An investment firm may rely on a recommendation provided to a client by another EU investment firm.

### Section 15k

(1) When providing main investment service referred to in Section 4(2)(a) or (b) or, if applicable, ancillary investment services related thereto, an investment firm is not required to ask the client for information under Section 15i if the following conditions are met:

- (a) the required investment service is provided at the client's initiative and concerns only a simple financial instrument,
- (b) the investment firm complies with the duties laid down in Section 12a(1)(h) and has informed the client, within the time limit, that the investment firm is not required to ask the client for the information according to Section 15i for the requested main investment service.

(2) Subsection (1) shall not apply if the ancillary investment service referred to in Section 4(3)(b) is provided concurrently, taking into account previously negotiated loans and borrowings.

(3) A “simple financial instrument” for the purposes of this provision means

- (a) a share or equivalent security representing holding of a legal entity admitted to trading on an EU regulated market or on an equivalent market of a state which is a state which is not EU member state, if that market is acknowledged by the Commission (EU) as equivalent, or on a MTF, excluding shares issued by a retail alternative investment fund, qualified investors fund or equivalent foreign investment fund and shares that embed a derivative,
- (b) a bond or similar security with a right to repay a certain amount outstanding admitted to trading on an EU regulated market or on an equivalent market of a state which is not EU member state, if that market is recognized by the Commission (EU) as equivalent, or on a MTF, excluding securities that embed a derivative or incorporate a structure that makes it difficult for the client to understand the risk involved,
- (c) a security replacing the securities referred to in letters (a) and (b),
- (d) a money-market instrument, excluding those that embed a derivative or incorporate a structure that makes it difficult for the client to understand the risk involved,
- (e) a share or unit in a standard fund or securities of a foreign standard fund, excluding structured standard funds as referred to in Article 36(1) of Commission Regulation (EU) No 583/2010,
- (f) a structured deposit, excluding those that incorporate a structure that makes it difficult for the client to understand the risk of return or the cost of exiting the product before term, and
- (g) other financial instrument referred to in the directly applicable Commission (EU) Delegated Regulation supplementing Directive 2014/65/EU.

### **Executing orders on terms most favourable to the client**

#### Section 15l

(1) An investment firm execute the client order on the best terms, taking into account

- (a) the price that can be reached at the execution venue,
- (b) the total amount of charges and costs charged to the client,
- (c) the speed at which the order may be execute,
- (d) the likelihood of execution of the order,
- (e) the size of trade required,
- (f) conditions for settlement,
- (g) the nature of order, or
- (h) any other consideration relevant to the execution of the client's order on the best terms.

(2) Where an investment firm receives a specific instruction from the client regarding execution of the order, the investment firm executes the order following the specific instruction. From the duty under subsection (1), an investment firm may deviate only within the limits set by the client's instruction.

(3) In order to ensure that orders are executed on terms most favourable to the client, the investment firm establish and implement organisational arrangements and order execution policy covering at least

- (a) the execution venues on which the investment firm can execute the orders of the clients permanently under the best terms and
- (b) substantial information on the execution venue at which the client's orders concerning the various financial instruments are executed and a description of the factors affecting the investment firm in the choice of execution venue.

(4) Before executing the order, the investment firm shall have the consent of that client with the order execution policy under subsection (3).

(5) An investment firm is required to monitor the effectiveness of the organisational arrangements and order execution policy in order to identify and correct any deficiencies, in particular the investment firm assess, on a regular basis, whether that the execution venues included in the order execution policy continue to provide for the best possible result for the client the execution of the client orders taking into account the information published according to Section 15n(5) and Section 73l.

(6) Investment firm obtains the prior express consent of the client before proceeding to execute the order outside a trading venue, such consent may be either in the form of a general agreement or in respect of individual transactions.

#### Section 15m

The investment firm shall, at the request, prove to the client that the order or orders was executed or is executed in accordance with order execution policy under Section 15l(3).

#### Section 15n

(1) Where an investment firm performs an order from a non-professional client, the best terms shall be determined with regard to the total cost that includes the price of the financial instrument and the costs associated with executing the order.

(2) The costs associated with the execution of an order under subsection (1) shall include all costs charged to the client directly related to the execution of that client's order, including

- (a) execution venue fees,
- (b) clearing and settlement fees of a transaction concluded on the basis of this order and
- (c) any other fees paid to other entities involved in the execution of the order.

(3) Where there is more than one execution venues to execute an order for a financial instrument, an investment firm shall fulfil its duty under subsection (1) when assessing and comparing the results for the client that would be achieved by executing the order on each of the execution venues listed in the investment firm's order execution policy that is capable of executing that order, and the investment firm's own commissions and the costs for executing the order on each of the eligible execution venues shall be taken into account in that assessment.

(4) An investment firm shall not receive an incentive in connection with the routing or assignment of an order to a particular execution venue that may infringe the requirements set out in subsection (1) or the requirements set out in Section 12a(1)(h).

(5) An investment firm executing client orders makes public on an annual basis for each class of financial instruments

- (a) the top five execution venues in terms of trading volumes where the investment firm executed client orders in the preceding year and
- (b) the summaries and conclusions of the analysis resulting from the monitoring of the quality of the transactions with the financial instruments at the execution venue where the investment firm executed client order in the preceding year.

### **Orders handling**

#### Section 15o

An investment firm authorised to provide the main investment service referred to in Section 4(2)(b) provides prompt, fair and expeditious execution of client orders, relative to other client orders or the trading interests of the investment firm; for this purpose the investment firm establishes, maintains and applies procedures and arrangements that ensure at least

- (a) allowance for the execution of otherwise comparable client orders in accordance with the time of their reception by the investment firm,
- (b) in the case of order to buy or sell of a financial instrument referred to in Section 3(2)(a) which has been admitted to trading on an EU regulated market or traded on a trading venue containing a limit price for buy or sell in a specified volume and which could not be executed without undue delay on account of the prevailing market conditions, disclosure of such information to other participants in the trading venue, or handing this order to the trading venue, unless the client determines otherwise.

#### Section 15p

The CNB may, by means of a measure of general nature, waive the duty under Section 15o(b) according a limit order that is large in scale compared with normal market size as determined under Article 4 of the MiFIR.

#### *Section 15q*

*repealed*

#### Section 15r

### **Informing clients in relation to the order's execution**

(1) An investment firm executing the client's order provides the client with information about the order execution policy under Section 15l(3).

(2) The information referred to in subsection (1) explain clearly, in sufficient detail and in a way that can be easily understood by the client how the client's orders are executed.

(3) An investment firm is obliged to notify the client of any material changes to organisational arrangements under Section 15l(3) or order execution policy under Section 15l(3).

(4) An investment firm is obliged to inform the client without undue delay after executing the order of this client where the order was executed.

(5) Where the order execution policy according to Section 15l(3) provides for the possibility that client orders may be executed outside a trading venue, the investment firm shall, in particular, inform its clients about that possibility.

#### *Section 15s*

*repealed*

## **Subchapter 6**

### **Reporting duties of the investment firm**

#### Section 16

(1) An investment firm shall submit to the CNB at its latest 4 months after the end of the accounting period and publish on its website its annual report and the consolidated annual report according to the law regulating accounting, including the financial statements or the consolidated financial statements audited by the auditor and the amount of the basis for calculating the contribution to the Guarantee Fund of Investment Firms [Section 129(1)]. This is without prejudice to the duties of a public limited company or a limited liability company when publishing financial statements and annual reports under other legislation.

(2) If the general meeting of the investment firm does not approve the financial statements or the consolidated financial statements within the period stipulated in subsection (1), the investment firm shall submit it to the CNB together with the reasons for which it has not been approved and with the way of solving the general meeting's remarks; this information shall be published simultaneously on its website. The investment firm then submits to the CNB and publishes on its website without undue delay after its approval the financial statements or the consolidated financial statements.

(3) The investment firm shall report to the CNB

- (a) closed, settled and cancelled transactions with financial instruments,
- (b) any instructions received to obtain the purchase, sale or other transfer of financial instruments,
- (c) financial instruments covered by instructions and trades,
- (d) the submitters of the instructions, clients, counterparties, tied agents and other persons conducting professional business activities related to instruction and trade, and
- (e) securities, other financial instruments and financial resources owned by the client.

(4) An investment firm which is not a bank shall also report to the CNB

- (a) its organisational structure, including information about branches of a business enterprise (hereinafter referred to as the "branch") abroad, members of the management body, contact persons, registered capital, voting rights and employees,
- (b) persons they have qualifying holdings in investment firm and persons on which investment firm has qualifying holding,
- (c) its financial and economic situation, including information about its assets, debts, own funds, receivables, overdue securities, derivative instruments structure, repurchase agreements, revenues, costs, accounting profit, accounting loss, financial assets provided as collateral or impairments,
- (d) the economic situation of the consolidation unit to which it belongs, including information on assets, duties, own funds, commitments and guarantees promises, guarantees, receivables and duties from derivatives,
- (e) the structure of the consolidation unit to which it belongs and the persons included therein, including the details of the members of the management bodies,
- (f) operations within a mixed activity holding entity, including provided and received guarantees, if is the liable person in group of a mixed activity holding entity,
- (g) internally defined capital, approaches to calculating capital requirements, use of a small trading portfolio, risk of default, currency positions,
- (h) intragroup transactions and structural changes, outsourcing, remuneration, change of a person in the management of a key function, and
- (i) a change in the accounting period, operations with selected risk counterparties or geographic areas, and a potential significant reputational threat.



(5) The information referred to in subsections (3) and (4) may also include data of the birth identification number of the client or a person with a qualifying holding or a person with a close link. For this purpose, the investment firm is authorised to keep the birth identification numbers of such persons.

(6) An investment firm who is not a bank shall report to the CNB without undue delay, that

- (a) has ceased to hold an authorisation under another legislation to carry on an activity that has been registered under the Section 6a,
- (b) became aware of the change, which is required to be approved under Section 10b(1), and
- (c) became aware of the change to be notified under Section 10e(1).

(7) The implementing regulation specifies the details, form, manner and structure of reporting duties under subsections (1) to (4). Implementing regulation also specifies the periodicity and timelines of performance information duties under subsections (3) and (4).

## **Subchapter 7**

### **Publication of data by an investment firm**

#### Section 16a

(1) The investment firm shall publish the base information about itself, the structure of the shareholders, the structure of the consolidation unit to which it belongs and its activities and financial situation.

(2) An investment firm with a consolidated liability under this Act or the CRR<sup>50</sup> shall publish annually information on

- (a) property-legal relations between the members of the consolidated group, including information on close links,
- (b) the governing and supervisory system according to Section 12(2) and Section 12a,
- (c) the governing and supervisory system of the consolidation unit according to Section 12b.

(3) An investment firm shall fulfil the duty under subsection (2) also by publication a reference to the place where that information is available.

(4) The CNB may set shorter than one-year periodicity for the publication of information by investment firms under Part Eight of the CRR.

(5) The investment firm shall each year disclose for the immediately preceding accounting period with a distinction according to the individual EU member states and states which are not EU member states in which has the controlled entity or branch,

- (a) a list of the activities it performs and their geographical location,
- (b) the annual total net turnover,
- (c) the average number of employees,
- (d) profit or loss before taxation,
- (e) corporation tax or similar tax paid abroad or loss,
- (f) public support received.

(6) The data referred to in subsection (5) shall be published in the attachment to the annual financial statement or, when the consolidated financial statements are prepared, in the attachment to the consolidated financial statements.

(7) The investment firm publishes in its annual report among key indicators the return on its assets, expressed as a proportion of net profit and total balance sheet.

(8) An investment firm shall publish information on its compliance with the requirements of the governing and supervisory system on its website.

(9) An investment firm shall ensure that the auditor<sup>6)</sup> verifies the publication data on the capital, capital requirements and ratio indicators of the investment firm. In the context of its audit work, the auditor also verifies the information in subsection (5).

(10) The implementing regulation

- (a) shall specify the extent of the information to be published according to subsections (1) to (3), as well as the form, manner, structure and time-limits of the publication, and the frequency of publication referred to in subsection (1),
- (b) may establish the periodicity referred to in subsection (4), the relevant time limits and the manner of publication,
- (c) shall specify the extent of the data to be published according to subsection (8), as well as the form, manner, structure, periodicity and time-limits of publication of the data,
- (d) shall specify the extent of the data audited by the auditor according to subsection 9.

#### Section 16b

(1) An investment firm shall publish the types and scope of the investment services provided.

(2) The implementing regulation specifies the scope, the form, the manner, the structure, the periodicity and the time-limits for the publication of the data referred to in subsection (1).

#### Section 16d

Where the CNB decides according to Article 7(3) of the CRR, it shall publish in a manner allowing for remote access:

- (a) the criteria it applies to determine whether or not there are significant material or legal impediments preventing immediate transfer of capital or repayment of debts,
- (b) the number of controlling entities making use of the options provided for in Article 7(3) of the CRR and the number of controlling entities covering controlled entities in a state which is not an EU member state.
- (c) in aggregate form for the Czech Republic
  1. the total amount of capital of controlling persons on a consolidated basis making use of the options provided for in Article 7(3) of the CRR which is held in controlled entities in a state which is not an EU member state,
  2. the percentage of the total capital of the controlling persons on a consolidated basis using the options provided for in Article 7(3) of the CRR held in controlled entities in a State which is not an EU member state Union,
  3. the percentage of the total capital of the controlling entities under Article 92 of the CRR on a consolidated basis, using the options provided for in Article 7(3) of the CRR, which is held in controlled entities in a state which is not an EU member state.

#### Section 16e

Where the CNB decides according to Article 9(1) of the CRR, it shall publish in a manner allowing remote access:

- (a) the criteria it applies to determine whether or not there are any material, material or legal obstacles preventing immediate transfer of capital or repayment of debts,

- (b) the number of controlling entities making use of the options provided for in Article 9(1) of the CRR and the number of controlling entities which include controlled entities in a state which is not an EU member state.
- (c) collectively for the Czech Republic
  1. the total amount of the capital of the controlling entities making use of the options provided for in Article 9(1) of the CRR which is held in controlled entities in a state which is not an EU member state,
  2. the percentage of the total capital of controlled persons using the options provided for in Article 9(1) of the CRR which is held in controlled entities in a state which is not an EU member state,
  3. the percentage of total capital referred to in Article 92 of the CRR controlling persons using the options provided for in Article 9(1) of the CRR, which is held in controlled entities in a state which is not an EU member state.

## **Subchapter 8**

### **Keeping of records and documents**

#### Section 17

(1) The investment firm shall keep records and documents relating to investment services and trades sufficient to enable the CNB to monitor compliance with the requirements of this Act, the MAR<sup>52)</sup> and the MiFIR<sup>53)</sup>, in particular whether an investment firm complies with its duties towards clients or potential clients and whether it does not disturb the proper functioning of the market.

(2) The records referred to in subsection (1) shall include telephone and electronic communications records relating to trades made by the investment firm on own account and investment services provided to client. Such records shall also be disclosed if their purpose was to enter into trade or provide an investment service under the first sentence, but no such transaction was concluded or no such investment service was provided.

(3) Clients may communicate their instructions by other means, but such communications must be recorded on a durable data medium such as letter shipment, fax, e-mail, or negotiated client orders documents. By writing a written record or message, the content of the particular personal calls with the client can be recorded. These instructions are considered equivalent to telephone commands.

(4) An investment firm shall take all reasonable steps to ensure that:

- (a) have recorded relevant telephone and electronic communications made, dispatched or received using facilities which have been provided by the staff or contractor or which have been authorised or approved by the employee or contractor, and
- (b) an employee or a supplier are prevented from making, sending or receiving the relevant telephone or electronic communications by using a private device which the investment firm is unable to record or copy.

(5) An investment firm shall keep the records referred to in subsection (1) for at least 5 years; this also applies to a person whose authorisation to act as an investment firm has been withdrawn or terminated, as well as to its legal successor, including the insolvency administrator and the liquidator. The CNB may, in justified cases, decide that an investment firm keeps the records referred to in subsection (1) for up to 7 years.

(6) The investment firm holds the documents that have been negotiated between that investment firm and the client and which give rise to their mutual rights and duties and other terms and conditions under which the investment firm provides services to the client; the mutual rights and duties of the investment firm and the client may be stated by reference to other documents or legal texts. Duty records, including contractual terms, regarding the required investment service, are kept by the investment firm for the entire duration of the contract; this also applies to a person whose authorisation to act as an investment firm has been withdrawn or terminated, as well as to its legal successor, including the insolvency administrator and the liquidator.

(7) The records and documents referred to in subsection (1) shall also include birth identification number of the client and other participants of the transaction. For this purpose, the Investment firm is authorised to keep the birth identification numbers of such persons.

## **Subchapter 9**

### **Systematic internaliser**

#### **Section 17a**

(1) A systematic internaliser is an EU investment firm who trades on organised, frequent, systematic and substantial basis outside the trading venue on own account when executing client orders relating to financial instruments without operating the market in financial instruments.

(2) The frequent and systematic basis shall be measured by the number of trades in the financial instrument made in accordance with subsection (1).

(3) The substantial basis shall be measured by the size of trades in a particular in the financial instrument made in accordance with subsection (1) in relation to the total trading of the investment firm with a particular financial instrument or in relation to the total trading in a particular financial instrument in the EU.

(4) AN EU investment firm shall be the systematic internaliser referred to in subsection (1) where it crosses the pre-set limits on a frequent and systematic basis and for substantial basis laid down in the directly applicable regulation supplementing Directive 2014/65/EU, or where it chooses to opt-in under the systematic internaliser regime.

#### **Section 17b**

An investment firm that initiates or terminates an operation as systematic internaliser shall notify this fact in writing without undue delay to the CNB.

## **Subchapter 10**

### **Algorithmic trading, direct electronic access and clearing services**

#### **Section 17c**

#### **Algorithmic trading and related organisational requirements**

(1) An investment firm that performs algorithmic trading shall establish, maintain and apply effective systems and risk controls suitable to business its operates and which ensure that its trading venues

- (a) are resilient and have sufficient capacity,
- (b) are subject to appropriate trading thresholds and limits,
- (c) prevent the sending of erroneous orders or the systems otherwise functioning in a way that may create or contribute to a disorderly market,
- (d) cannot be used for any purpose which is contrary to the MAR<sup>52)</sup> or to the rules of the trading venue to which it is connected and
- (e) have been fully examined and properly monitored to ensure that they meet the requirements set out in letter (a) to (d) and in subsection (2).

(2) An investment firm performing algorithmic trading establish, maintain and apply effective arrangements and procedures to ensure a continuity and regularity in the performance of its business in the event of a failure of its trading venues.

#### Section 17d

##### **Duties fulfilled to supervisory authorities in relation to algorithmic trading**

(1) An investment firm that engages in algorithmic trading shall, without undue delay after starting this activity, report to the CNB and the supervisory authority of another EU member state, which authorised the operator of the trading venue in which that investment firm performs algorithmic trading as a participant that it performs algorithmic trading in this trading venue.

(2) An investment firm that performs algorithmic trading shall provide on ad-hoc or regular basis, at the request of the CNB

- (a) a description of the nature of its algorithmic trading strategies,
- (b) details of the trading parameters or limits to which the system is subject,
- (c) the key compliance and risk control that it has in place to ensure the conditions laid down in Section 17c are satisfied,
- (d) details of the testing of its systems and
- (e) other information concerning algorithmic trading and systems used for such trading.

(3) The CNB shall without undue delay communicate the information obtained according to subsection (2) at the request of the supervisory authority of another EU member state which has authorised the trading venue operator in which the investment firm performs algorithmic trading as a participant.

(4) An investment firm performing algorithmic trading shall arrange for records to be kept in relation to the matters referred to in Section 17c and in subsection (1) and 2 and that those records are sufficient to enable the CNB to monitor compliance with the requirements under this Act.

#### Section 17e

##### **High-frequency algorithmic trading technique**

(1) An investment firm that engages in a high-frequency algorithmic trading technique shall keep in an approved form accurate and time sequenced records of all of its orders, including cancellation of orders, executed orders and quotes on trading venues.

(2) An investment firm that engages in a high-frequency algorithmic trading technique shall make the records referred to in subsection (1) available upon request without undue delay to the CNB.

#### Section 17f

##### **Algorithmic trading to pursue a market making strategy**

(1) An investment firm that engages in algorithmic trading to pursue a market making strategy shall, taking into account the liquidity, scale and nature of the specific market and the characteristics of the instrument traded

- (a) carry out market making continuously during a specified proportion of the trading venue's hours, except under exceptional circumstances, with the result of providing liquidity on a regular and predictable basis to the trading venue,
- (b) enter into a written agreement with the trading venue, which shall at least specify the duties of the investment firm referred to in letter (a),
- (c) establish, maintain and apply effective systems and controls to ensure that it fulfils at all times its duties under the agreement referred to in letter (b).

(2) It shall be considered that an investment firm engaged in algorithmic trading shall be considered to be pursuing a market making strategy, when its strategy as a participant in one or more trading venues involves, in case of dealing on own account, posting firm, simultaneous two-way quotes of comparable size and at competitive prices relating to one or more financial instruments on one or more trading venues, with the result of providing liquidity on a regular and frequent basis to the overall market.

#### Section 17g

##### **Direct electronic access and related organisational requirements**

(1) An investment firm that provides direct electronic access to the trading venue shall establish, maintain and apply effective systems and controls to ensure

- (a) a proper assessment and review of the suitability of clients using the service and ensure that clients using this service are prevented from exceeding appropriate pre-set trading and credit threshold,
- (b) that trading by clients using this service is properly monitored and
- (c) that appropriate risk controls prevent trading that may
  - 1. create risk to this investment firm itself,
  - 2. create or contribute to a disorderly market,
  - 3. be in contrary to the MAR<sup>52</sup>), or
  - 4. be in contrary to the rules of the trading venue.

(2) Direct electronic access which does not fulfil the requirements of subsection (1) is prohibited.

(3) An investment firm which provides direct electronic access to the trading venue is responsible for ensuring that clients using the service comply with

- (a) the requirements of this Act, its implementing regulation and directly applicable EU regulations in the field of financial market activities<sup>2)</sup> and
- (b) the rules of the trading venue.

(4) An investment firm that provides direct electronic access to the trading venue monitors the transactions of clients using the service and in order to identify

- (a) infringements of trading venue rules,
- (b) the emergence of an exceptional market situation and
- (c) conduct that may involve market abuse and to report it to the CNB or to another supervisory authority of an EU member state.

(5) An investment firm that provides direct electronic access to the trading venue must have a written agreement with each client regarding the essential rights and duties arising from the provision of that service and that under the agreement the investment firm remains responsibility in accordance with the requirements of this Act.

#### Section 17h

##### **Duties towards supervisory authorities in relation to direct electronic access**

(1) An investment firm which provides direct electronic access to the trading venue shall notify this fact without undue delay to the CNB and the supervisory authority of another EU member state which has authorised the trading venue operator at which that investment firm provides direct electronic access.

(2) An investment firm which provides direct electronic access to the trading venue shall report to the CNB on a regular or ad-hoc basis at the request of the CNB

- (a) a description of the systems and controls referred to in Section 17g(1) and
- (b) evidence of the application of the systems and controls referred to in Section 17g(1).

(3) The CNB shall communicate without undue delay the information obtained according to subsection (2) on the request of the supervisory authority of another EU member state which has authorised the operator of the trading venue to which the investment firm concerned provides direct electronic access.

(4) An investment firm which provides direct electronic access to the trading venue arranges for records to be kept in relation to the matters referred to in Section 17g and subsection (1) and 2 and ensures that those records are sufficient to enable the CNB to monitor compliance with the requirements of this Act.

#### Section 17i

### **Clearing services and related organisational requirements**

(1) An investment firm that acts as a general member of a clearing system offers a clearing service to other persons

- (a) establishes, maintains and applies effective systems and controls to ensure that clearing services are restricted to persons who are suitable and meet clear criteria and
- (b) requires those other persons to meet the appropriate requirements in order to reduce its own risks and risks to the market.

(2) An investment firm that acts a general member of a clearing system offers a clearing service to other persons must have a binding written agreement with each client regarding the essential rights and duties arising from the provision of the service.

### **Chapter 4**

### **Cancellation, change of scope of business activity or transformation of an investment firm and transfer, security interest or usufructuary lease of an investment firm's business enterprise**

#### Section 18

### **Cancelling or changing the scope of an investment firm's business activity**

(1) If the general meeting of the investment firm decides to cancel the company with liquidation or to amend the articles of association, the investment firm is obliged to notify this fact to the CNB without delay after the decision of the general meeting. If the shareholders of an investment firm, in case of a limited liability company, decide to terminate a company with liquidation or to change a memorandum of association or a change of the scope of business, the investment firm is obliged to report to the CNB this fact without delay after decision of the members. The same duty has investment firm even if the general meeting of the limited liability company decides so.

(2) As from the date of entry of an investment firm into liquidation or from the date of change of its scope of business, the person who has entered into liquidation or changed the scope of business may not provide investment services and, if not a bank, can only issue the client's assets and settle its claims and debts arising from the investment services provided; the person is considered as an investment firm until settlement of such receivables and debts. By entering into liquidation or by changing the scope of the business, the authorisation to act as an investment firm ceases to exist.

(3) In the event of a change in the scope of the business due to a change in the scope of the authorisation (Section 144) or as a result of the registration of another business activity or the change in its scope according to Section 6a, 6b and 7, the provisions of subsection (2) shall not apply.

## Section 19

### **Transformation of an investment firm**

(1) The merger of an investment firm, the division of an investment firm, the change of the legal form of an investment firm, the transfer of the business assets of an investment firm to its member, or the transfer of another person's assets to an investment firm authorisation of the CNB is required. Before the issuance of the decision, the CNB shall also request the supervisory authority which exercising supervision on a consolidated basis over the consolidated group of which the non-bank investment firm is a member, as well as the other supervisory authorities to which the matter relates unless the decision cannot be postponed or such consultation could endanger the purpose of the decision; in that case, it shall inform the supervisory authorities concerned without undue delay after the decision has been issued.

(2) An application for authorisation according to subsection (1) may be submitted only electronically.

(3) The application for authorisation according to subsection (1) shall contain, in addition to the requirements laid down by the Administrative Procedure Code, the data and documents necessary for the assessment of the consequences of the merger, division, change of legal form or transfer of business assets.

(4) The details of the application for authorisation according to subsection (1), including the attachments proving fulfilment of the conditions according to subsection (1), its format and other technical specifications shall be specified in an implementing regulation.

(5) A merger of an investment firm with a non-investment firm is not admissible. This does not apply to the merger of an investment firm which is authorised only to provide an investment service according to Section 4(2)(d) with a management company authorised to manage the client's assets under another law; the provisions of subsections (1) and (2) shall apply *mutatis mutandis*.

(6) The provisions of subsections (1) to (3) shall not apply to an investment firm which is a bank. In this case, it is proceeding according to the Act regulating the activities of banks.

## Section 20

### **Transfer, security interest or lease of a trading venue to an investment firm**

(1) An authorisation of the CNB shall be required to conclude a contract for the transfer, security interest or usufructuary lease of an investment firm's business enterprise or fraction of such a business enterprise which would mean a substantial change in the activity of the investment firm. The provisions of Section 19(1), second sentence, shall apply *mutatis mutandis*.

(2) An application for authorisation according to subsection (1) may be submitted only electronically.

(3) The application for authorisation according to subsection (1) shall contain, in addition to the provisions laid down in the Administrative Procedure Code, the data and documents necessary for the assessment of the consequences of the transfer, security interest or usufructuary lease of an investment firm's business enterprise or fraction of such business enterprise.

(4) The details of the application for authorisation according to subsection (1), its format and other technical specifications shall be specified in an implementing regulation.

(5) The provisions of subsection (1) shall not apply to an investment firm which is a bank.

## TITLE III

### PROVISION OF INVESTMENT SERVICES IN THE TERRITORY OF EU MEMBER STATES



## Chapter 1

### Providing investment services by an investment firm in another EU member state

#### Section 21

(1) An investment firm intending to provide investment services in another EU member state (hereinafter referred to as the “host state”) through a branch shall report to the CNB thereof in advance. The provision of investment services in a host state through a tied agent who has a residence, is domiciled or hosted in that host state shall be regarded, for the purposes of this Act, as a provider of investment services through a branch.

(2) The notification referred to in subsection (1) shall include

- (a) the host state in which the branch is to be located,
- (b) a business plan including, in particular, the investment services to be provided in the host state and information on whether these activities are to be performed through a tied agent,
- (c) organisational arrangements of the branch,
- (d) the address of the branch to which information and documents may be required,
- (e) details of the head of the branch.

(3) If the CNB has no objection to the location of a branch of an investment firm in the host state, it shall, within 3 months from the date of delivery of the notification referred to in subsection (1), inform the supervisory authority of the host state of the information referred to in subsection (2) and inform it of the terms of granting refunds from the Guarantee Fund of Investment Firms. The CNB shall, without undue delay, inform the investment firm of the publication of the data of the host state's supervisor.

(4) An investment firm may start providing investment services in the host state as soon as it receives notification from the host supervisory authority that it has received data from the CNB according to subsection (2) or after expiry of 2 months from the date when the supervisory authority of the host state receives from the CNB the data referred to in subsection (2).

(5) If the CNB does not consider the location of a branch of an investment firm in the host state to be appropriate due to the organisational arrangement or financial situation of an investment firm in relation to a business plan of a branch, it shall notify within 3 months from the date of delivery of the notice referred to in subsection (1) to the investment firm the decision not to disclose to the supervisory authority of the host state the information referred to in subsection (2). It is not admissible to appeal against this decision.

(6) An investment firm with a branch situated in the territory of the host state shall report to the CNB any change in the facts referred to in subsection (2)(b) to (e) not later than one month before the day of its implementation; if an investment firm cannot meet this deadline for objective reasons, it shall notify the change without undue delay. When assessing changes, subsections (3) or (5) shall apply *mutatis mutandis*. The CNB shall notify this change of supervisor of the host state without undue delay.

(7) The CNB shall, without undue delay, inform the supervisory authority of the host state of any change regarding the conditions for granting of compensation from the Guarantee Fund of Investment Firms.

(8) The procedure set out in subsections (1) to (7) shall not apply to an investment firm which is a bank; for a management company authorised to manage standard funds or equivalent foreign funds or an equivalent foreign person carrying out any of the activities according to Section 11(1)(c) to (f) or according to Section 11(6)(a) of the law governing management companies and investment funds shall apply.

#### Section 22

(1) An investment firm who intends to provide investment services in the host state without location of a branch shall notify this to the CNB.

(2) The notification referred to in subsection (1) shall include

- (a) the host state in which an investment firm intends to provide an investment service,
- (b) a business plan including, in particular, the investment services the investment firm intends to provide, information on whether a tied agent will be used to provide investment services.

(3) The CNB shall, within one month from the date of receipt of the notification according to subsection (1), transmit the information provided in this notification to the host state supervisor.

(4) An investment firm may start to provide investment services in the host state as soon as the supervisory authority of that state has received notification from the CNB according to subsection (1).

(5) An investment firm which provides an investment service in the territory of the host state shall report to the CNB any change in the facts referred to in subsection (2)(b). The CNB shall notify this change of supervisor of the host state without undue delay.

(6) The procedure set out in subsections (1) to (5) shall not apply to an investment firm which is a bank; for a management company authorised to manage standard funds or equivalent foreign funds or an equivalent foreign person carrying out any of the activities according to Section 11(1)(c) to (f) or according to Section 11(6)(a) of the law governing management companies and investment funds shall apply.

#### Section 22a

(1) An investment firm may be a participant in a foreign regulated market, either through the use of access abroad or through its branch. Participation of an investment firm on a foreign regulated market is not considered the provision of investment services in the country in which the foreign regulated market has its registered office.

(2) An investment firm may be a participant in a settlement system based in another EU member state.

#### Section 23

The CNB shall, without undue delay, inform the supervisory authority of the host state of the withdrawal of the authorisation to act as an investment firm.

### Chapter 2

#### **Provision of investment services by a foreign person authorised by the supervisory authority of another EU member state in the territory of the Czech Republic**

#### Section 24

##### **Provision of investment services through a branch**

(1) To a foreign person authorised by the supervisory authority of another EU member state to provide investment services (hereinafter referred to as the “home state”) and intending to provide investment services in the Czech Republic through a branch, the CNB shall

- (a) send without delay information that it has received from the supervisory authority of its home state the details of the intended investment services provided by that person in the Czech Republic,

(b) communicate within 2 months from the date on which it received information from the supervisory authority of the home state regarding the intended provision of investment services in the Czech Republic, information duties and rules for dealing with clients.

(2) A foreign person authorised by the supervisory authority of another EU member state to provide investment services may begin to provide investment services in the Czech Republic through a branch from the day on which a foreign person was informed by the CNB of the information duties and rules of dealing with clients or upon expiry of the time limit referred to in subsection (1)(b).

(3) The CNB shall inform the foreign person providing investment services in the Czech Republic according to subsection (2) of any change in information duties and rules of negotiations with clients.

(4) The procedure under subsections (1) to (3) shall not apply to a foreign person acting under the law regulating the activities of banks.

(5) A foreign person who provides investment services in the Czech Republic according to subsection (2) or a foreign person established in another EU member state which is authorised to provide investment services in the Czech Republic under the law regulating the activities of banks,

- (a) is obliged to keep a journal of an investment firm according to Section 13; the records are kept in relation to the investment services provided by that person through a branch,
- (b) fulfils the reporting duties of an investment firm according to this Act within the scope of Section 16(3) and Section 16(4)(a) to (c) and discloses the data according to Section 16b; information according to Section 16(3) and Section 16b shall be disclosed in respect of the investment services provided by that person through a branch or, as the case may be, in relation to clients who provide such investment services,
- (c) provides investment services with professional care similarly according to Section 15(1); for the clients of this foreign person Sections 2a to 2d shall apply *mutatis mutandis*,
- (d) fulfils the duties laid down in Articles 14 to 26 of the MiFIR,
- (e) keeps the documents and records in the manner provided for in Section 17 and
- (f) fulfils the conditions according to Section 14a (2).

(6) The provision of investment services through a tied agent domiciled or residing in the Czech Republic is considered for the purposes of this Act as the provision of investment services through a branch.

#### Section 24a

(1) A branch of an investment firm authorised to provide investment services according to Section 4(2)(c) or (h), or a branch of a foreign investment firm with a registered office in another member state that is authorised to provide investment services for the trading of financial instruments on its own account or for the subscription or placement of financial instruments under a subscription commitment, may be designated by the supervisory authority of the member state on whose territory the branch operates as significant in accordance with EU law (hereinafter referred to as the “significant branch”).

(2) The CNB shall inform the supervisory authority of the home state of the foreign investment firm about its intention to designate a foreign investment firm's branch as a significant one. Where such a branch of a foreign investment firm is a member of the EU investment firm group [Section 151(1)(q)], a member of the European financial holding company group [Section 151(1)(u)] or a member of the European leasing bank group according to the Act governing banks, the CNB informs of its intention to designate such a branch as a major consolidating supervisor over such a group; the consolidating supervisor means, for the purposes of this Act, the consolidating supervisor referred to in Article 4(1)(41) of the CRR. At the same time, the CNB shall communicate to the authority the reasons which lead to the designation of a foreign entity's branch as significant in view of the criteria set out in subsection (3).

(3) In order to designate a branch as significant, the CNB shall take into account, in particular,

- (a) the likely impact of the suspension or closure of the operations of a foreign investment firm whose branch could be identified as significant, of market liquidity or of the activity of payment or settlement systems in the Czech Republic,
- (b) the size of the branch and its importance for the financial system of the Czech Republic in terms of the number of its clients.

(4) The CNB shall endeavour to ensure that its decision to designate a foreign investment firm's branch is reached in agreement with the supervisory authority referred to in subsection (2) within 2 months from the date on which the CNB informed the latter of its intent in accordance with subsection (2). If no such agreement has been reached, the CNB shall decide to designate a foreign investment firm's branch office as significant within 4 months from the date on which it informed the supervisory authority referred to in subsection (2) or within the same period, notify that authority that it has withdrawn from that intention. It shall take account of the opinion of that body.

(5) If the CNB decides to designate a branch of a foreign investment firm as significant, it shall inform the supervisory authority referred to in subsection (2) in writing without undue delay. The CNB shall at the same time communicate the reasons for the designation of the branch as significant.

(6) The CNB may apply to the EBA for a settlement of the dispute in accordance with a directly applicable EU regulation governing EBA, if:

- (a) the supervisory authority referred to in subsection (2) fails to consult the CNB with a liquidity recovery plan for a foreign investment firm operating in the Czech Republic through a major branch, or
- (b) the CNB disagrees with the proposed liquidity recovery plan.

#### Section 24b

(1) The CNB is competent to sign an agreement to designate a branch of an investment firm to be significant if that investment firm performs business through that branch in another member state and supervisory authority of the host State has informed the CNB of the intention to designate that branch as significant and has given her the reasons which led to this intention in accordance with EU law. Section 24a(4) shall apply *mutatis mutandis*.

(2) Where an investment firm provides investment services in a host member state through a significant branch, the CNB shall communicate to the competent supervisory authorities of the host State the information specified in Section 152(2)(c) and (d), the results of the review and evaluation process according to Section 135b, provide them with reports on the group's risk assessment according to Section 152b(2) and, in cooperation with the supervisory authorities of the host state, perform the tasks referred to in Section 152a(1)(c). The CNB shall further inform the supervisory authorities of the host state of the remedial measures it imposes on the investment firm if the decision is significant for that branch.

(3) If the CNB discovers unfavourable developments in an investment firm which provides investment services in the host state through a major branch, it shall without undue delay inform the relevant central banks of the European System of Central Banks and the public authorities under the conditions laid down in the law regulating the supervision of the capital markets in the member states affected by this development.

(4) Where an investment firm provides investment services in a host member state through a major branch, the CNB shall set up a college of supervisors (hereinafter referred to as the "college") to perform the tasks referred to in subsections (2) and (3) and in Section 135a. The establishment and operation of the college shall be based on written arrangements according to Section 152a(8), prepared by the CNB after consultation with the supervisory authorities referred to in subsection (2). The members of the college shall be the CNB and the supervisory authorities of the host States in which the investment firm provides investment services through a major branch. Section 152c(4) and (5) shall apply *mutatis mutandis*.

(5) The duties set out in subsections (2) to (4) shall be exercised by the CNB after having agreed to designate a branch as significant under subsection (1) or after having been substantially informed by the competent supervisory authority of the host state of the designation of an investment firm's affiliate.

(6) Where an investment firm carries on business in the territory of another member state through a significant branch, the CNB shall consult the supervisory authority of that member state with a liquidity recovery plan of the investment firm provided that there is a liquidity risk that could have a significant impact on the currency of the host state.

## Section 25

### **Provision of investment services without location of a branch**

(1) A foreign person authorised by the supervisory authority of another EU member state to provide investment services may provide investment services, for which it has such authorisations of its supervisory authority of the home state, in the Czech Republic without location of a branch in the Czech Republic in compliance with the EU legislation, temporarily or occasionally, if it is not investment services provided to professional clients pursuant to Section 2a, to whom investment services can be provided in this way even permanently. The CNB shall inform this person without undue delay that it has received data from the supervisory authority of the home state concerning the intended provision of investment services by this person in the Czech Republic.

(2) A foreign person authorised by the supervisory authority of another EU member state to provide investment services may start to provide investment services in the Czech Republic without location of a branch from the date on which the CNB receives data related to provision of services by that person in the Czech Republic from the supervisory authority of the home state or after the expiry of one month from the date when the data was received by the supervisory authority of the home state.

(3) The procedure under subsections (1) and (2) shall not apply to a foreign person acting under the law regulating the activities of banks.

(4) Where a foreign person authorised by the supervisory authority of another EU member state to provide investment services intends to provide investment services in the Czech Republic through tied agents who are not domiciled or resident in the Czech Republic, the CNB may request the supervisory authority of the home State to provide a list of such tied agents. This list may be published by the CNB on its website.

## Section 25a

A foreign person authorised by the supervisory authority of another EU member state to provide investment services may be a participant in a regulated market, either through the use of foreign access or through its branch. The participation of this person in the regulated market is not considered the provision of investment services in the Czech Republic.

## Section 26

### **Information duty in relation to the EBA**

The CNB shall transmit to the EBA data gathered to compare the remuneration systems and procedures established by other investment firms on

- (a) the number of persons whose incomes are at least equal to EUR 1 million broken down by reference to their duties and the field of activities of the investment firm,
- (b) the main components of wages, bonuses, performance-based remuneration over a longer period of time, and the special retirement benefits of the persons referred to in letter (a).

## Section 27

### **Cooperation between the supervisory authorities of the EU member states**

(1) In exercising supervision, the CNB shall cooperate with the supervisory authorities of other EU member states, in particular those in whose territory the investment firm has a branch or a foreign investment firm providing investment services in the Czech Republic through a branch.

(2) The CNB shall provide the supervisory authorities referred to in subsection (1) with all information on the shares of the investment firm and the management of such investment firm or foreign investment firm providing services in the Czech Republic through branches which may facilitate the protection of financial stability, the supervision of these or the review of the conditions for the issue of an authorisation or permit. The CNB also provides all information that may facilitate the supervision of an investment firm or a foreign investment firm providing services in the Czech Republic through a branch, in particular information on liquidity, solvency, capital ratios, restrictions on large exposures and other factors which may affect the degree of systemic risk posed by an investment firm, administrative, accounting and internal control mechanisms.

(3) As part of the cooperation referred to in subsection (1), the CNB may apply to the supervisory authorities of other EU member states for the information referred to in subsection (2).

(4) The CNB shall without delay provide the supervisory authority of another EU member state in whose territory an investment firm provides its services through a branch any information related to the supervision of compliance with the liquidity requirements under Part Six of the CRR or its implementing regulation and with supervision on a consolidated basis under Part Ten of this Act where such information is relevant to ensure the protection of the common interests of clients or investors of the investment firm or financial stability in that member state. The CNB shall without delay inform the competent supervisory authority when the liquidity of an investment firm is at risk or if there is reasonable suspicion that the liquidity of the investment firm will be jeopardized. In such case, the CNB shall communicate to the competent supervisory authority information on the liquidity recovery plan, the manner of its implementation and the measures taken in this respect. The CNB shall, at the request of the supervisory authority of another EU member state in whose territory the investment firm provides services through its branch, disclose how the information received from the investment firm has been taken into account.

(5) If the liquidity of a foreign investment firm which provides services in the Czech Republic through its branch has been jeopardized and the home supervisory authority does not take the necessary measures, the CNB may, after having informed the supervisory authority concerned and the EBA, take measures to ensure protection of the common interests of clients or investors of the investment firm or financial stability in the Czech Republic.

(6) The CNB may apply to the EBA for a settlement of a dispute under a directly applicable EU regulation on EBA if it disagrees with the measures adopted by the supervisory authority of another EU member state in whose territory an investment firm provides services through a branch.

(7) The CNB may inform the EBA if the supervisory authority of another EU member state rejects a request from the CNB to cooperate, in particular to provide information, or fails to provide the requested information within a reasonable time.

## TITLE IV

### **PROVIDING THE MAIN INVESTMENT SERVICES IN THE CZECH REPUBLIC BY A FOREIGN PARTY HAVING THEIR REGISTERED OFFICE OR HEAD OFFICE IN A STATE WHICH IS NOT EU MEMBER STATE**

## Section 28

(1) In the case of a foreign person registered by the European Supervisory Authority (European Securities and Markets Authority)<sup>32)</sup> (hereinafter referred to as the “ESMA”) in a register kept according to Article 48 of the MiFIR, a foreign person established or having its registered office in a state which is not an EU member state may provide capital and ancillary investment services in the Czech Republic only through a branch under an authorisation granted by the CNB.

(2) Subsection (1) shall not apply to the provision of an investment service to a client requesting such provision on his own initiative. This does not entitle a foreign person under subsection (1) to offer other products or services to that client.

#### Section 28a

(1) The CNB shall grant an authorisation to provide investment services through a branch upon request of a foreign person according to Section 28(1) if the following requirements are met:

- (a) the registered office and head office of that person is in the same State,
- (b) that person has good repute,
- (c) the funds that this branch has or will have at its disposal have a transparent and non-discriminatory origin and that branch has or will have at its disposal at the latest at the date of commencement of operations funds at a level allowing the proper provision of investment services in the Czech Republic through this branch,
- (d) the holders of qualifying holdings are only persons who have good repute and do not raise a reasonable concern in this respect that there may be a violation of the law on money laundering and terrorist financing or that such a violation has already occurred,
- (e) the close connection of that person with another person does not prevent or hinder the effective exercise of supervision under this Act; in case of close connection with a person who has its registered office or head office in a state which is not an EU member state, the law of that state and the manner of its application, including the enforceability of the right, shall not prevent the effective exercise of supervision under this Act,
- (f) the business plan of that branch
  1. defines and covers the planned scope of activity of this branch,
  2. is based on real economic calculations and
  3. determine the activities the exercise of which it intends to entrust to another, including information as to whether and to what extent it intends to employ members of staff, investment intermediaries and tied agents,
- (g) this branch has or will have the material, personnel and organisational prerequisites for this provision of investment services to fulfil its business plan and the fulfilment of its duties under this Act, at the latest on the commencement date of its activities to the extent to which it intends to provide investment services in the Czech Republic, In particular in the area of client negotiation rules and rules for the sound and prudent provision of investment services, including
  1. organisational arrangements,
  2. the control of persons through whom they will exercise their activities, and
  3. ensuring that persons through whom they will carry out their activities of this branch, are fully entitled with the good repute and the necessary knowledge, skills and experience,
- (h) the person in the management of this branch fulfils the requirements according to Section 10, with the exception of Section 10, subsection (1),
- (i) that person meets the requirements set out in Section 133,
- (j) that person is authorised to provide investment services which he intends to provide in the Czech Republic through that branch, granted by the supervisory authority of the State in which that person has its registered office and its registered head office,
- (k) the provision of investment services by that person is subject to supervision by the supervisory authority referred to in letter (j), taking into account the recommendations of the OECD's Financial Action Task Force,

- (l) the CNB and the supervisory authority referred to in letter (j) have agreed to exchange information necessary for the exercise of supervision under this Act,
- (m) the state referred to in letter (a) has concluded with the Czech Republic an agreement that complies with the principles set out in Article 26 of the Model Tax Convention of the OECD on Income and Property and which provides for the exchange of information in tax matters,
- (n) in case of an authorisation to provide the main investment service referred to in Section 4(2)(f),
  - 1. the rules of trading in the MTF meet the requirements under Section 69(2)(a),
  - 2. the access rules to the MTF fulfil the requirements under Section 69(2) B) and
  - 3. the rules governing admission of financial instruments to trading in an MTF meet the requirements under Section 69(2)(c),
- (o) in case of an authorisation to provide the main investment service referred to in Section 4(1) G),
  - 1. rules of trading in an OTF fulfil the requirements under Section 73f(1) and,
  - 2. rules governing admission of financial instruments to trading in an OTF fulfil the requirements under Section 73f(1)(c),
  - 3. rules for access to the OTF meet the requirements under Section 73f(1)(d),
  - 4. more detailed explanation why the OTF will not correspond to a regulated market, an MTF or a systematic internaliser, and cannot function as such,
  - 5. detailed description of applying its own judgment when operating an OTF, in particular when the instructions given within an OTF can be cancelled and when and how 2 or more client orders in the OTF will be paired,
  - 6. explanation of trading by pairing instructions on your own account.

(2) An application under subsection (1) may be submitted only electronically.

(3) The application referred to in subsection (1) shall contain, in addition to the provisions laid down in the Administrative Procedure Code, also data and documents proving the fulfilment of the conditions referred to in subsection (1).

(4) The details of the requirements of the application according to subsection (1), including the attachments proving fulfilment of the conditions according to subsection (1), its format and other technical specifications shall be specified in an implementing regulation.

(5) The CNB shall decide on the application under subsection (1) within 6 months from the date on which the application has been submitted if it has the prescribed requirements and is not defective.

(6) The CNB shall state in the operative part of the decision on granting the authorisation according to subsection (1) which investment services a foreign person is entitled to provide according to Section 28(1) and in relation to which financial instruments and whether it is entitled to receive funds or financial instruments of clients. The authorisation must include at least one main investment service.

#### Section 28b

(1) A foreign person according to Section 28(1) shall continuously fulfil the requirements set out in Section 28a(1).

(2) The foreign person according to Section 28(1) shall report to the CNB, without undue delay after it has occurred, of any significant change in the facts on the basis of which it obtained the authorisation according to Section 28a(1).

(3) The foreign person referred to in subsection (1) shall, to the extent to which he provides investment services in the Czech Republic through a branch, complies *mutatis mutandis* with the duties imposed by this Act on the investment firm, in particular the duties under Section 10 (2) to (7) and Sections 10a, 12 to 14b, 15 to 17i, 69 to 73a and 73d to 73k.



(4) Articles 3 to 26 of the MiFIR for the foreign person referred to in subsection (1) shall apply *mutatis mutandis*.

## TITLE V

### INVESTMENT INTERMEDIARY

#### Section 29

##### **General provisions**

(1) An investment intermediary is a person authorised by the CNB to provide only the main investment services referred to in Section 4(2)(a) or (e).

(2) An investment intermediary may not receive funds or financial instruments from clients in connection with the provision of investment services.

(3) An investment intermediary shall be entitled to provide the main investment services referred to in Section 4(2)(a) or (e) only in relation to

- (a) units in collective investment undertakings issued by collective investment funds or equivalent foreign investment funds,
- (b) units in collective investment undertakings issued by qualified investor funds or equivalent foreign investment funds,
- (c) government bonds issued by the Czech Republic,
- (d) mortgage covered bonds or
- (e) bonds for which a prospectus or an equivalent document has been issued.

(4) An investment intermediary may, in the provision of the main investment service referred to in Section 4(2)(a) or (e) to give instructions only to an investment firm, a bank, a management company, a manager of a collective investment fund or of an equivalent foreign investment fund managed under the authorisation of the CNB or a self-governing collective investment fund.

#### Section 30

##### **Requirements for an investment intermediary**

(1) The CNB shall grant an authorisation to operate an investment intermediary at the request of a commercial company or the founder of a commercial company before the date of its entry in the Commercial Register if the following conditions are met:

- (a) the registered office and the head office of that company is or should be in the Czech Republic,
- (b) this company has good repute; this condition shall not be considered if the company is not yet incorporated in the Commercial Register,
- (c) the initial capital of that company is of a transparent and non-discriminatory origin and that company has or will have, at the latest at the commencement date of its business, equity capital at an amount which allows the proper performance of the business of the investment intermediary,
- (d) the holders of qualifying holdings are only persons who have good repute and do not raise a legitimate expectation that there may be a violation of the law on money laundering and terrorist financing or that such a violation has already occurred,
- (e) the close connection of that company with another person does not prevent or hinder effective supervision of the investment intermediary; in case of close connection with a person who has its registered office or a head office in a state which is not an EU member state, the law of that state and the manner in which it is enforced, including the enforceability of the right to prevent effective supervision of the investment intermediary,

- (f) the business plan of that company
  1. defines and covers the planned scope of activities of the investment intermediary,
  2. is based on real economic calculations and
  3. defines the activities which it intends to delegate to another, including information as to whether and to what extent the employees and tied agents intend to use them,
- (g) this company has or will have at the latest at the commencement date of its activity to the extent to which it intends to perform the activity of the investment intermediary, the material, personnel and organisational prerequisites for the proper performance of the investment intermediary's activity, fulfilment of its business plan and fulfilment of the duties of the investment intermediary, especially in the areas of client negotiation rules and the prudent provision of investment services, including
  1. organisational arrangements,
  2. checks on the persons through whom he acts as an investment intermediary, and
  3. ensuring that the persons through whom an investment intermediary exercises its activities are fully entitled, trusted and have the necessary knowledge, skills and experience,
- (h) the management body of this company and its members meet the requirements set out in Section 10 and
- (i) that company is or will be insured under Section 31 at the latest on the date of commencement of business.

(2) The CNB shall grant an authorisation to operate an investment intermediary upon request of a natural person if the following conditions are met:

- (a) the place of residence, registered office and head office of such person is or should be in the Czech Republic,
- (b) that person is fully entitled, trusted and professionally competent,
- (c) the business plan for that person
  1. defines and covers the planned scope of activities of the investment intermediary,
  2. is based on real economic calculations and
  3. defines the activities which it intends to delegate to another, including information as to whether and to what extent the employees and tied agents intend to use them,
- (d) that person has, or will have, material, personnel and organisational prerequisites for the proper performance of the business of the investment intermediary in order to fulfil its business plan and fulfilment of the duties of the investment intermediary, in particular at the date of commencement of business to the extent that it intends to perform the activity of the investment intermediary, especially in the areas of client negotiation rules and the prudent provision of investment services, including
  1. an organisational arrangement including measures to ensure proper and prudent management and due consideration of client interest and market integrity, taking into account that it will not meet the requirement of Section 10(1)
  2. checks on the persons through whom he acts as an investment intermediary, and
  3. ensuring that the persons through whom it is acting as an investment intermediary are fully entitled, trusted and have the necessary knowledge, skills and experience,
- (e) that person is insured or will be insured at the latest on the date of commencement of his activity, according to Section 31,
- (f) that person has established a data box of a self-employed persons; in the case of an request by a natural person who is not yet an entrepreneur, this person shall request the establishment of a data box of a self-employed persons without undue delay, no later than 30 days from the date of entry into force of the investment intermediary authorisation, and
- (g) the person is not a member of the management body of a person according to Section 29(4).

(3) An investment intermediary shall continuously fulfil the conditions set out in subsection (1) or (2).

(4) An investment intermediary shall report to the CNB, without undue delay after it occurs, of any significant change in the facts on the basis of which it obtained an authorisation to operate.

(5) An investment intermediary shall report to the CNB

- (a) the nature and extent of the services provided,
- (b) any instructions received and transmitted,
- (c) the financial position and the results of operations.

(6) The implementing regulation specifies the details, form, manner, structure, periodicity and deadlines for fulfilment of the information duty according to subsection (5).

#### Section 30a

##### **Application procedure**

(1) An application according to Section 30(1) and (2) may be submitted only electronically.

(2) The application according to Section 30(1) and (2) shall contain, in addition to the requirements laid down in the Administrative Procedure Code, also data and documents proving the fulfilment of the conditions according to Section 30(1) or (2).

(3) The details of the application, including annexes proving the fulfilment of the conditions according to Section 30(1) or (2), its format and other technical specifications shall be specified in an implementing regulation.

(4) The CNB shall take a decision on the application according to Section 30(1) and (2) within 3 months from the date of filing of the application, which has the prescribed requirements and contains no errors. If this is necessary for an adequate exam of the application, the CNB may extend the deadline by up to three months by resolution.

(5) In the operative part of the decision on the authorisation of the investment intermediary, the CNB shall indicate which main investment services an investment intermediary is authorised to provide and in relation to which financial instruments.

#### Section 30b

##### **Duration of the authorisation to act as an investment intermediary**

(1) The authorisation to operate as an investment intermediary shall be valid until the end of the calendar year following the calendar year in which the decision to grant such authorisation became final.

(2) The authorisation to operate as an investment intermediary shall be extended for an additional 12 months by payment of the administrative fee. The CNB shall confirm to the investment intermediary payment of the administrative fee without undue delay.

(3) The method of payment of the administrative fee shall be published by the CNB in a manner allowing for remote access.

(4) An authorisation to act as an investment intermediary shall expire

- (a) after the expiry of the period of authorisation referred to in subsection (1), unless the renewal under subsection (2) occurs,
- (b) death of a natural person,
- (c) disappearance of a legal person,
- (d) by granting authorization to an investment intermediary to operate as investment firm; or
- (e) by revoking the authorisation to operate as an investment intermediary (Section 145).

### Section 30c

#### **Imputability of the unlawful act of the investment intermediary and the tied agent of the investment intermediary**

(1) The unlawful act committed by the investment intermediary against the client in his/her activity commits the investment intermediary, even though he acted on behalf of the person referred to in Section 29(4); however, if the person referred to in Section 29(4) of the investment intermediary has inappropriately chosen or oversight of the investment intermediary, he shall guarantee the fulfilment of his duty to pay damages. The provisions of Section 2914 of the Civil Code do not apply.

(2) The unlawful act committed by the tied agent of the investment intermediary against the client in their activity commits an investment intermediary, even if the tied agent acted on behalf of the person referred to in Section 29(4); however, if the person referred to in Section 29(4) has inappropriately chosen or oversight the investment intermediary, it shall guarantee the fulfilment of his duty to pay damages. The provisions of Section 2914 of the Civil Code do not apply.

### Section 31

#### **Compulsory insurance of the investment intermediary**

An investment intermediary must be insured for the whole period of its activity in the event of duty to compensate the client for damages caused by breaching some of the duties of the investment intermediary stipulated by this Act.

- (a) with an indemnity limit of at least CZK 13 500 000 for each insured event and at least CZK 20 250 000 in case of accumulation of more than one insured event in one calendar year, and
- (b) with the insured person's participation in compensation for the damage incurred, if agreed in the insurance policy, not more than 10 % of the sum that the insured person is obliged to pay.

### Section 32

#### **Similar fulfilment of duties of an investment firm**

(1) For investment intermediaries, Sections 10 and 10a shall apply *mutatis mutandis*, with the exception of Section 10(4)(c) and Section 10(5) and (6), which shall not apply.

(2) An investment intermediary carries out the activity properly and with prudence. In order to ensure prudent performance, the investment intermediary shall establish, maintain and apply the management and control system. For the management and control system of an investment intermediary, Section 12a shall apply *mutatis mutandis*, with the exception of Section 12a(1)(d)(3) and Section 12a(1)(l), (n) and (p) which shall not apply. In relation to Section 12a(1)(c) operational risk is taken into account by the investment intermediary; other risks are taken into account only if they have a significant impact on their activities.

(3) For an investment intermediary, Section 12bb shall apply *mutatis mutandis*.

(4) An investment intermediary keeps in electronic form the records of the instructions received and handed over regarding the financial instruments and records of the contracts related to the provided investment services. An investment intermediary shall also keep records and documents in a similar manner according to Section 17, including the records held in the records defined in the first sentence. For this purpose, the investment intermediary is authorised to lead the client's birth figures.

(5) An investment intermediary may be represented only by its member of staff or his tied agent when dealing with a client or a potential client in the provision of investment services. For investment

intermediaries, Sections 14, 14a(2) and 14b shall apply *mutatis mutandis*. The provisions of Section 14a (2) shall not apply to a person who, within the scope of providing investment services, deals exclusively with persons referred to in Section 2a (1) or (2) or in Section 2b.

(6) An investment intermediary shall provide investment services with professional care. The provision of investment services by an investment intermediary with professional care means, in particular, that the investment intermediary acts in a qualified, honest and fair manner and in the best interests of the client. For the investment intermediary, the provisions of Part Three, Title II, Subchapter 5, governing negotiations with clients shall apply *mutatis mutandis*, with the exception of Sections 15(1) and (2), 15b and 15l to 15r. For the purposes of Sections 2a(3), 2b, 2c and 2d, an investment intermediary is regarded as being an investment firm.

(7) The implementing regulation specifies the requirements and manner of keeping the records in accordance with subsection (4).

## TITLE VI

### TIED AGENT

#### Section 32a

#### **General provisions**

(1) For the purposes of this Act, a tied agent is the one who is authorised by the entry into list according to Section 32c(4) for a principal

- (a) to arrange and, where appropriate, conclude transactions relating to the main investment service referred to in Section 4(2)(a) or (i), if he is a principal for the purpose of providing them,
- (b) to provide the investment service specified in Section 4(2)(e), or
- (c) to promote the investment services which it is authorised to provide.

(2) A tied agent shall perform the activities referred to in subsection (1) exclusively for one principal on the basis of a contract concluded in writing.

(3) A principal may be only

- (a) an investment firm,
- (b) an investment intermediary,
- (c) a management company authorised to exercise any of the activities referred to in Section 11(1)(c) to (f) of Act No. 240/2013 Sb., on Management Companies and Investment Funds, as amended, for another, or
- (d) a foreign person who provides investment services in the Czech Republic through a branch.

#### Section 32b

#### **Termination of representation**

(1) A principal shall be obliged to immediately terminate the contractual commitment according to Section 32a(2) if he finds that the tied agent does not meet the conditions stipulated by this Act for the activity of the tied agent and cannot be remedied without undue delay; this commitment ceases by a delivery of a statement to the tied agent.

(2) A tied agent shall immediately terminate the contractual commitment according to Section 32a(2) if he ceases to fulfil the conditions set out in this Act for the activity of a tied agent and cannot be remedied without undue delay, the delivery of the notice to the represented party is void. The tied agent may not exercise activities under Section 32a(1) until the remedy.

(3) A principal is obliged to report to the CNB without undue delay that the contractual commitment according to Section 32a(2) has ceased.

#### Section 32c

##### **Registration to the list**

(1) The CNB, on the basis of the notification according to Section 32d filed by the principal, shall register a tied agent in the list under subsection (4), if

- (a) a person intending to perform such activity is not one of the persons referred to in Section 32a(3), a member of staff or a tied agent of one of the persons referred to in Section 32a(3) nor a person with a qualifying holding in one of the persons referred to in Section 32a(3) and
- (b) the information given in the notification enables the persons identified in the notification to be identified in the relevant base register.

(2) The CNB shall place a tied agent on the list of tied agents referred to in subsection (4) without delay and no later than 5 working days from the date of delivery of the notification.

(3) The CNB shall immediately inform the principal of the registration of a tied agent on the list of tied agents according to subsection (4) or failure to register and the reason for such failure to register the CNB electronically; Parts Two and Three of the Administrative Procedure Code shall not apply.

(4) The following shall be published in the list of tied agents of the persons referred to in Section 32a(3), including the following changes to the tied agent:

- (a) data relating to the tied agent, with the exception of the birth number,
- (b) data relating to the principal, with the exception of the birth figures,
- (c) the activities referred to in Section 32a(1) which it is authorised to exercise and in respect of which financial instruments,
- (d) the date of the authorisation of the activity and the duration of the authorisation to operate,
- (e) the date of expiry of the authorisation for the activity and its reason,
- (f) an overview of the fines imposed and the enforceable remedies imposed by the CNB,
- (g) the date on which the decision on the insolvency takes effect, and
- (h) the date of the legal person's entry into liquidation.

(5) Whoever acts in trust of the entry in the list referred to in subsection (4), the person to whom the registration relates cannot argue that the registration does not correspond to the facts, with the exception of the information referred to in subsection (4)(g) and (h).

#### Section 32d

##### **Tied agent notification**

(1) The principal may announce as tied agent only the person who has his domicile or residency in the territory of the Czech Republic.

(2) The notification referred to in subsection (1) may be submitted only through the electronic application of the CNB for the registration of entities.

(3) The notification referred to in subsection (1) shall contain, in addition to the particulars provided for by the Administrative Procedure Code, also

- (a) details of the person who intends to perform the tied agent's activities,

- (b) information on the fulfilment of the conditions laid down by this Act for the performance of tied agent activities, and
- (c) the activities referred to in Section 32a(1) to be authorised by the tied agent and in respect of which financial instruments.

Section 32e

**Document storage**

Documents proving the fulfilment of the conditions stipulated by this Act for the activity of a tied agent shall be kept by the represented for the duration of the listing on the list according to Section 32c(4) and for at least 5 years from the date of its cancellation.

Section 32f

**Changing entries made in the list**

(1) A principal in respect of data relating to his tied agent, he shall promptly report to the CNB the change in the data entered in the list according to Section 32c(4), as well as the change in the data on

- (a) fulfilment of the conditions stipulated by this Act for the performance of the tied agent's activity,
- (b) insolvency decision, or
- (c) entry into liquidation.

(2) The duty referred to in subsection (1) shall not apply to changes to the data entered in the base registers as reference data.

(3) The notification according to subsection (1) shall be submitted through the electronic application of the CNB for registration of (legal) entities. The document shall be accompanied by documents proving the facts contained therein.

(4) The CNB shall be obliged to make changes to the data included in the list according to Section 32c(4) within 5 working days of becoming aware of the change if the change is not a reason to withdraw the tied agent's authorisation.

Section 32g

**Establishing and duration of tied agent's authorisation**

(1) The authorisation for the tied agent's activity arises through the registration of a tied agent on the list according to Section 32c(4).

(2) If the person is notified as a tied agent with more than one representative, he shall be listed by the CNB in the list for the first principal, who has notified it.

(3) The tied agent's authorisation shall be valid until the end of the calendar year following the calendar year in which the listing was made.

(4) The tied agent's authorisation shall be extended for an additional 12 months by payment of the administrative fee. The CNB shall confirm to the person the payment of the administrative fee without undue delay.

(5) A principal simultaneously with the payment of the administrative fee shall notify to the CNB through the electronic application of the CNB for the registration of (legal) entities to which persons are authorised to extend on the basis of the paid administrative fee.

(6) The manner of payment of the administrative fee shall be published by the CNB in a manner allowing for remote access.

#### Section 32h

##### **Expiry of authorisation**

(1) The tied agent's authorisation shall cease to exist because of

- (a) the death of a natural person,
- (b) the winding-up of a legal person,
- (c) a notice of termination of the tied agent's activity,
- (d) the termination of the duty under Section 32a(2) between the tied agent and the principal,
- (e) the extinction of all authorisation to act represented by this Act, to which representation is concerned,
- (f) the expiry of the duration of the authorisation, unless there is an extension of the authorisation according to Section 32g(4), or
- (g) the withdrawal of such authorisation.

(2) The tied agent shall submit the notification according to subsection (1)(c) through the principal. If he does not provide the necessary co-operation, the tied agent may file a notification separately.

(3) The notification referred to in subsection (1)(c) shall be submitted through the electronic application of the CNB for the registration of entities.

#### Section 32i

##### **Withdrawal of tied agent's authorisation**

(1) The CNB may withdraw the tied agent's authorisation if:

- (a) the tied agent ceases to fulfil the conditions set out in this Act for the performance of the tied agent's activities,
- (b) the remedy imposed did not lead to correction,
- (c) the tied agent repeatedly or seriously breaches the duty laid down in this Act or in a directly applicable EU regulations in the field of financial market activities<sup>2)</sup>,
- (d) the tied agent violates the condition or duty set forth in an enforceable decision issued under this Act, or
- (e) the tied agent has been placed on the list according to Section 32c(4) on the basis of false or misleading information.

(2) Tied agent and the principal shall be the participants in the procedure for withdrawal of the tied agent's activity.

(3) The CNB may inform the public, in an appropriate manner, of the withdrawal of the tied agent's right to act, after the decision on the authorisation has been withdrawn.

#### Section 32j

##### **Representation of a tied agent**

A tied agent may only be represented by a member of staff in dealing with a client or potential client in the provision of investment services.

#### Section 32k



### **Duties of the principal**

A principal shall ensure that the tied agent

- (a) meets the conditions laid down in this Act for the performance of the tied agent's activities, including the conditions laid down in Section 14a(2)
- (b) does not accept funds or financial instruments of clients,
- (c) discloses to the clients and prospective clients details of the principal, when performing the activities referred to in Section 32a(1),
- (d) communicates to clients and prospective clients information about the activities referred to in Section 32a(1) which it is authorised to perform and in respect of which financial instruments, when performing the activities referred to in Section 32a(1), it
- (e) does not perform the activities referred to in Section 32a(1) in a way that jeopardizes compliance with the legal duties of the represented, in particular the duties under Section 15(1),
- (f) performs activities other than those mentioned in Section 32a(1) in a way that jeopardizes the proper performance of the activities referred to in Section 32a(1).

## **PART THREE**

### **PUBLIC AUCTION OF TRANSFERABLE SECURITIES**

#### Section 33

(1) Public auctions of securities may be held only by an investment firm authorised to provide the investment service referred to in Section 4(2)(b) or a foreign person authorised to provide this investment service (hereinafter referred to as the “auctioneer of securities”).

(2) The public auction of securities shall be governed by the law governing public auctions, unless this Act stipulates otherwise.

(3) The rules for the organisation of the public auction of securities shall be regulated by the auctioneer of securities by its rules of auction.

(4) The rules of auction and any amendments thereof shall be approved by the CNB. If the CNB fails to send the applicant, within 30 days of the date of receipt of the application for approval of the rules of auction or the amendment of the decision on the application, the rules of auction or their amendment have been approved. If the application procedure is interrupted, this period is not running.

(5) In the case of an involuntary public auction of transferable securities, an expert valuation report according to the law regulating the performance of the expert's activity must be prepared in order to determine the price of the object of the auction; if the lowest bid does not exceed CZK 100 000, the expert's opinion of the price of the item of the auction can be replaced by a note on the price estimation of the subject of the auction according to the law regulating the public auctions. The auctioneer of securities shall publish an expert valuation report or an estimate of the price on his website for at least one year. The auctioneer of securities shall send an auction notice containing the price of the auction item within the time limits set by the law governing the public auction to the CNB.

(6) If the subject of a public auction of securities is a book-entry security, the person keeping the register of book-entry securities shall register the transfer of the security to the auctioneer of securities at the moment of the knock down to the final bidder on the basis of a confirmation of acquisition of the property upon the order of the auctioneer of securities or the final bidder. In the case of a security, the auctioneer of securities shall mark the transfer of the security to the auctioneer of securities at the moment of the knock down to the final bidder on the basis of the acquisition of ownership.

(7) If the subject public auction of securities is the bearer securities and the auctioneer of securities does not know the owners of these securities, the auctioneer of securities shall not be obliged to send to the owners an auction notice and other documents.

(8) An involuntary public auction of securities may also be carried out,

- (a) if the petitioner proves that the security owner is late in taking over, submitting or surrendering a security despite being advised of the possible sale of the security at auction, or
- (b) if a claim secured by a security interest is not fulfilled properly and in due time.

(9) The CNB shall disclose to the auctioneer of securities at the central address:

- (a) business name, legal form, registered office and identification number if it is an investment firm and the name, address and location of its organisational unit in the Czech Republic if it is a foreign person,
- (b) an indication of the authorisation to organise public auctions of securities, and
- (c) the day of its establishment.

(10) The provisions of this Part shall apply *mutatis mutandis* to types of financial instruments other than securities unless otherwise provided by the nature of the matter.

## **PART FOUR**

### Section 34

#### **CERTAIN PROVISIONS REGARDING THE PROSPECTUS**

##### **Responsibility for the content of the prospectus**

(1) The person who drew up the prospectus and the guarantor, if it is stated in the prospectus and has guaranteed the accuracy of the information, is responsible for the accuracy and completeness of the information provided in the prospectus. If more than one person has drawn up the prospectus together, each of those persons shall be responsible for the content of the prospectus. The prospectus must contain information on the persons responsible for drawing up the prospectus correctly and their statement that, to the best of their knowledge, the information contained in the prospectus is correct and that no facts have been concealed which could alter the meaning of the prospectus.

(2) The person referred to in subsection (1) shall be responsible for the accuracy of the information provided in the prospectus's summary in accordance with the directly applicable European Union regulation on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market<sup>66)</sup>, only if the prospectus's summary is misleading or inaccurate when interpreted together with other parts of the prospectus, or if the summary of the prospectus, when interpreted together with other parts of the prospectus, does not contain the required information.

(3) The persons referred to in subsection (1) shall be responsible for the accuracy and completeness of the information given in the registration document or the universal registration document if such document is an integral part of the approved prospectus.

(4) If this Act uses the term "prospectus", it means a prospectus in accordance with the directly applicable European Union regulation governing the prospectus to be published in public marketing or admission to trading on a regulated market<sup>66)</sup>.

### Section 35

### **Reporting mechanism**

(1) A person that is subject to obligations or prohibitions under the directly applicable European Union regulation on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market<sup>66)</sup>, unless he is a investment firm, an organizer of a regulated market or data reporting service provider, implements, maintains and applies a reporting mechanism of a breach or imminent breach of this directly applicable regulation, Section 12i (1) shall apply mutatis mutandis.

## **PART FIVE**

### **MARKETS IN FINANCIAL INSTRUMENTS**

#### **TITLE I**

#### **MARKET OPERATOR**

##### **Section 37**

#### **General provisions**

(1) A market operator is a legal person authorised to operate a regulated market on the basis of an authorisation granted by the CNB.

(2) A regulated market may only be operated in the Czech Republic by a market operator.

##### **Section 38**

#### **Requirements on a market operator**

(1) The CNB shall grant an authorisation to the business of a market operator at the application of a commercial company or a founder of a commercial company before the date of its incorporation in the Commercial Register, if the following conditions are met:

- (a) that company has or will have the legal form of joint stock company or limited liability company,
- (b) the registered office and corporate office of that company is or will be in the Czech Republic,
- (c) this company has good repute; this shall not be considered if the company is not yet incorporated in the Commercial Register,
- (d) the initial capital of that company amounts to the minimum amount of EUR 730 000, is of transparent and non-discriminatory origin, and the company has or will have, at the latest at the commencement date of its business, its own capital of a size permits proper conduct of the business of a market operator,
- (e) only persons suitable for the sound and prudent management of the market operator,
- (f) close links of that company with another person do not prevent or hinder effective supervision of the market operator; where close links exists between that company and a person who has its registered office or a corporate office in a state which is not EU member state, the law of that state and the manner in which it is enforceable, including the enforceability of the right, must not prevent effective exercise of supervision of the market operator,
- (g) the business plan of that company
  1. defines and covers the types of business envisaged,
  2. is based on real economic calculations and
  3. defines the activities which it intends to delegate to another person, including information whether it intends to employ members of staff,

- (h) the rules governing trading on a regulated market meet the requirements under Section 62, the rules governing admission of financial instruments to trading on a regulated market meet the requirements under Section 56 and the rules governing access to the regulated market meet the requirements under Section 63,
- (i) this company has or will have at its disposal, at the latest on the commencement date of the business the material, personnel and organisational prerequisites to the extent to which it intends to perform the activity of the market operator for the proper conduct of business of the market operator activity, allowing its business plan, the rules governing trading in the trading venue, the rules governing admission of financial instruments to trading in the trading venue and the rules governing access to the trading venue to be fulfilled and to ensure compliance with its duties, including
  1. organisational arrangements,
  2. supervision over the persons through whom market operator acts as a market operator, and
  3. ensuring that the persons through whom market operator acts as a market operator have full legal capacity, good repute and have the necessary knowledge, skills and experience,
- (j) in the case of a limited liability company, it has a supervisory board and the supervisory board has such powers as the supervisory board of a joint stock company under the Act on Commercial Companies and Cooperatives (Business Corporations Act),
- (k) the management body of this company and its members meet the requirements under Section 10,
- (l) in the case of an authorisation to provide the main investment service referred to in Section 4(2)(f)
  1. the rules governing trading in the MTF meet the requirements under Section 69(2)(a),
  2. the rules governing admission of financial instruments to trading in an MTF fulfil the requirements under Section 69(2)(c) and
  3. the rules governing access to the MTF meet the requirements under Section 69(2)(d) and
- (m) in the case of an authorisation to provide the main investment service referred to in Section 4(1)(g)
  1. the rules governing trading in an OTF comply with requirements under Section 73f(1)(a),
  2. the rules governing admission of financial instruments to trading in an OTF comply with requirements under Section 73f(1)(c),
  3. the rules governing access to the OTF meet the requirements under Section 73f(1)(d),
  4. there is a detailed explanation why the OTF does not correspond to and cannot operate as a regulated market, MTF, or a systematic internaliser,
  5. there is a detailed description as to how discretion when operating an OTF will be exercised, in particular when an order to the OTF may be retracted and how two or more client orders will be matched within the OTF,
  6. there is explanation of its use of matched principal trading.

(2) An application referred to in subsection (1) may be submitted only electronically.

(3) The application referred to in subsection (1) shall contain, in addition to the items stipulated by the Administrative Procedure Code, also data and documents proving compliance of the conditions according to subsection (1).

(4) The details of the requisites of the application, including the attachments proving compliance with the conditions according to subsection (1), its format and other technical specifications shall be specified in an implementing regulation.

(5) In the pronouncement part of the decision to grant an authorisation the CNB shall specify whether the market operator is authorised to operate an MTF or the OTF and, where applicable, that the market operator is authorised to provide data reporting services.

(6) The market operator shall comply at all times with the conditions under subsection (1).

(7) A market operator notifies the CNB, without undue delay, upon any significant change in the facts on the basis of which it obtained an authorisation to operate.

(8) For the market operator Section 10 and 10a shall apply *mutatis mutandis*.

## Section 39

### **Ancillary business activity of of the market operator**

(1) An ancillary business activity may be performed by a market operator only after its registration with the CNB.

(2) An ancillary business activity of a market operator may consist only in the provision of services related to the financial market or the commodity market, in particular in

- (a) in the activities of a commodity exchange under another law,
- (b) in the provision of other services on the financial market under other laws,
- (c) in activities relating to the organisation of a regulated market or the operation of an MTF or an OTF,
- (d) in educational activities.

(3) The market operator may furthermore carry on business activities consisting of activities directly related to the management of own assets.

(4) The CNB shall register the applicant's ancillary business activities and shall send the applicant a registration certificate without undue delay.

(5) An application for registration of ancillary business activities of the market operator may be submitted only electronically.

(6) The application referred to in subsection (5) shall contain, in addition to the items stipulated by the Administrative Procedure Code, also data and documents proving compliance of the conditions according to subsection (2).

(7) The details of the requirements of the application according to subsection (5), its format and other technical specifications shall be specified in an implementing regulation.

(8) Where the exercise of ancillary business activity prevents the proper organisation of a regulated market, the operation of the MTF or the effective exercise of supervision over that market operator, or where the application does not meet the conditions set out in subsection (2), the CNB may

- (a) refuse registration, or
- (b) limit the scope of the ancillary business activities or, where appropriate, determine the conditions to be met by the market operator prior to commencement of each of the registered activities or to be met on an ongoing basis.

(9) In the case of decision on the registration of ancillary business activities referred to in subsection (3), the CNB will reject the registration, unless the reasons for special consideration are given for the purpose of registration of this ancillary business activity, the CNB shall assess, in particular, whether the registration of this ancillary business activity will contribute to the improvement of the quality of investment services, the refusal of registration would cause considerable damage to the market operator or or shall assess the scope, complexity and nature of such ancillary business activity. In the decision to register ancillary business activity referred to in subsection (3), the CNB may limit the scope of the registered activity or, where appropriate, determine the conditions to be met by the market operator prior to the commencement of each of the registered activities or to be met on an ongoing basis.

## Section 40

The subject of the market operator's business may be only the activities specified in the authorisation to operate the regulated market or registered by the CNB according to Section 39.

#### Section 41

(1) A market operator operates a regulated market with the professional care. Section 15(1) applies *mutatis mutandis* to the market operator operating an MTF or OTF.

(2) In particular, operation of a regulated market with the professional care means that the market operator acts in a qualified, honest and fair manner and in the best interests of the participants in a regulated market it operates, in particular, fulfils the obligations set out in this section and proceeds in accordance with the trading rules, the rules for the admission of financial instruments to trading and the rules on access.

(3) The market operator shall not, in the EU regulated market it operates,

- (a) execute client orders against proprietary capital, or
- (b) engage in matched principal trading.

#### Section 42

A representative of the CNB may participate in the general meeting of the market operator. The market operator who holds a general meeting shall report in writing to the CNB in advance.

#### Section 43

##### **Nomination committee**

The market operator, who is significant in terms of its size, internal organisation and the nature, scope and complexity of its activities, shall establish a nomination committee. Section 12g shall apply *mutatis mutandis*.

#### Section 44

##### **Cancelling or changing the scope of the market operator's business**

(1) If the market operator's general meeting decides to dissolve the company with liquidation or decides to amend its articles of association and this amend consists of a change in the object of the business, the market operator shall notify any such decision to the CNB without delay. If the market operator is limited liability company and its' members or the general meeting decides to dissolve the company with liquidation or decides to amend a memorandum of association or a deed of foundation and this amend consists of a change in the object of business, the market operator shall notify any of this decision to the CNB without delay.

(2) Starting from the date of entry into liquidation or starting from the date of a change in the objects of the market operator, the market operator shall not operate the business of the regulated market or to operate an MTF or OTF and is only allowed to settle its claims and debts arising from these activities; until the settlement of claims and debts, such person is considered to be the market operator. By entering into liquidation or by changing the object of the business, the authorisation to operate a market shall be extinguished.

(3) Section 39(2) shall not apply in cases of a change in the object of business as a result of a change in the scope of an authorisation to operate the market by market operator issued according to Section 38 or as a result of the registration of another business activity or its change in a scope.

#### Section 45

##### **Transformation of the market operator**

(1) The merger of the market operator, the transfer of the business assets of the market operator to its members, the change of the legal form of the market operator or the transfer of the business assets of the market operator to its members or the transfer of another person's business assets to the market operator shall be authorised by the CNB.

(2) An application for the authorisation according to subsection (1) may be submitted only electronically.

(3) The application for the authorisation according to subsection (1) shall contain, in addition to the provisions of the Administrative Procedure Code, the data and documents necessary for the assessment of the consequences of the merger, the change of the legal form or the transfer of the business assets.

(4) The detailed requirements of the application for authorisation according to subsection (1), its format and other technical specifications shall be specified in an implementing regulation.

(5) The division of a market operator or its merger with a person who is not a market operator or an operator of a settlement system is not permitted.

#### Section 46

##### **Transfer, security interest or usufructuary lease of a market operator's business enterprise**

(1) An authorisation of the CNB shall be required to conclude a contract for the transfer, security interest or usufructuary lease of a market operator's business enterprise or fraction of such a business enterprise, which would mean a substantial change in the activity of the market operator.

(2) An application for an authorisation according to subsection (1) may be submitted only electronically.

(3) The application for authorisation according to subsection (1) shall contain, in addition to the provisions laid down in the Administrative Procedure Code, the data and documents necessary for the assessment of the consequences of the transfer, security interest or usufructuary lease of an market operator's business enterprise or fraction of such business enterprise.

(4) The details of the application for authorisation according to subsection (1), its format and other technical specifications shall be specified in an implementing regulation.

#### Section 47

##### **Acquisition, increase and loss of qualifying holdings and control of the market operator**

(1) The consent of the CNB is required to acquire or increase a qualifying holding in a market operator, or to become person controlling a market operator. Sections 10b to 10d shall apply *mutatis mutandis* to such consent and to the application for such consent.

(2) The details of the application for consent according to subsection (1), its format and other technical specifications shall be specified in an implementing regulation.

(3) Provisions of Section 10e shall apply *mutatis mutandis* to the loss or reduction of a qualifying holding in a market operator.

(4) The market operator shall publish on its website information on the persons that have qualifying holdings in a market operator or controlling the market operator and the market operator shall also publish on its website the size of their holdings,

(5) The time-limits, the form and the manner of publishing such data shall be specified in an implementing regulation.

## Section 48

### **Operational requirements for the market operator**

(1) The market operator is obliged to

- (a) establish procedures that will allow to detect and address any adverse effects on the activity of the regulated market or its participants that might arise from a conflict of interests between the market operator or its members and the proper functioning of the regulated market,
- (b) establish the risk management procedures to which it is subject; in particular, to introduce appropriate measures to identify all significant risks to its operation and effective measures to limit such risks,
- (c) establish policies and procedures to ensure the proper operation of its trading venues and other systems, including the adoption of effective measures against the disruption of the system and emergency situations,
- (d) establish rules for trading on a regulated market for fair and orderly trading and for establishing objective criteria for the efficient execution of orders,
- (e) establish measures allowing proper and timely settlement of transactions,
- (f) establish measures preventing market abuse,
- (g) maintain equity capital at least equal to EUR 730 000,
- (h) have sufficient financial resources to ensure the orderly functioning of the market having regard to the nature and extent of the transactions concluded on the market and the range and the nature of the risks to which it is exposed.
- (i) establish measures for the regular monitoring and monitor whether
  1. the participants of an organised regulated market follow the rules for trading on a regulated market and rules governing access to a regulated market regulated market,
  2. the financial instruments admitted to trading on a regulated market fulfil the conditions for admission to trading on a regulated market provided for in this Act (Section 56) and the rules for the admission of financial instruments for trading on a regulated market and the conditions for accepting a security for trading on an official stock exchange (Section 65),
  3. issuers of transferable securities admitted to trading on a regulated market shall perform the reporting duties set out in 118, 119, 119a, 119b, 120 to 120c and 123 and in the directly applicable European Union regulation on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market<sup>66)</sup>,
  4. a person who subsequently applied for admission of a financial instrument on a regulated market without the consent of the issuer shall perform the reporting duties according to Section 121b,
  5. there is no act that can be considered as behaviour prohibited by the MAR<sup>52)</sup>,
- (j) regularly monitor trading on its organised regulated market, including the cancelled orders, and assess whether or not there is a breach of the rules for trading on a regulated market, an emergency situation on the market or an act that may be considered as behaviour prohibited by the MAR<sup>52)</sup>,
- (k) establish procedures to enforce compliance with the duties under the rules for trading, the rules for admission of financial instruments to trading, and the rules governing access, for participants and the issuers of financial instruments admitted to trading on the market operator's regulated market, to the market operator's regulated market and including the possibility of imposing penalties for breach of those rules,
- (l) control and enforce compliance by investment firms with the requirements of the binding agreements according to Section 50g(1),
- (m) enable the participants of an regulated market operated by the market operator to access the information referred to in letter (i)(3),
- (n) establish measures to protect participant's property rights, in particular in the event of an insolvency of the market operator, when the market operator dispose with the participant's property in a regulated market or in the MTF operated by the market operator,



(2) A market operator conducts its activities orderly and prudently. To ensure prudent performance, the market operator shall establish, maintain and apply a governing and supervisory system. For the governing and supervisory system of the market operator, Section 12a shall apply *mutatis mutandis*.

Section 48a

**Reporting mechanism**

The market operator shall establish, maintain and apply a mechanism for reporting similarly according to Section 12i(1).

Section 49

The market operator shall immediately report to the CNB

- (a) a significant infringements of trading rules or an emergency situation in a regulated market it operates,
- (b) a reasonable suspicion that a conduct may indicate behaviour that is prohibited under the MAR<sup>52</sup>,
- (c) a violation of the reporting duties of the issuer of transferable securities admitted to trading on a regulated market operated by them, whose conduct the market operator is obliged to monitor,
- (d) a violation of the reporting duties of the person stipulated in Section 48(1)(i)(4) whose conduct the market operator has to monitor,
- (e) a reasonable suspicion of a violation of this Act by a person authorised to trade on a regulated market,
- (f) a system disruptions in relation to a financial instrument.

Section 50

**Reporting duties of the market operator**

(1) The market operator reports to the CNB

- (a) no later than four months after the end of the accounting period, its annual report and the consolidated annual report under the Act on Accounting, if required to draw up this report, including audited financial statements by this Act.,
- (b) no later than 1 month after the end of the calendar quarter, the economic results on the last quarter.

(2) The market operator shall, upon reporting to the CNB, publish the reports and the data according to subsection (1) on its website without undue delay.

(3) The market operator shall publish the rules for trading, the rules for the admission of financial instruments to trading and the rules governing access, in the current version on its website.

(4) The market operator shall also report to the CNB further information about the participants, the conditions, the course and the trading results on the organised market it operates, the financial instruments admitted for the trading on the organised market it operates, and their issuers, and the provided services that are necessary for the conduct of the supervision.

(5) The market operator shall report to the CNB without undue delay

- (a) any changes in the facts on the basis of which it was granted an authorisation to operate as a market operator,
- (b) a loss of an authorisation under another law to perform another activity which has been registered according to Section 39.

(6) The market operator shall report to the CNB changes to the rules for trading, the rules for the admission of financial instruments or the the rules governing access without undue delay after their approval.

(7) The market operator shall report to the CNB about the content of the agreements according to Section 50g(1).

(8) The implementing regulation specifies the content of the reporting duties stipulated in subsections (1) and (4) and the time-limits, the form and the method of setting out how these obligations shall be fulfilled.

#### Section 50a

(1) A market operator shall ensure to have in place efficient systems, procedures and arrangements in the market it operates to ensure that its trading venues

- (a) are resilient,
- (b) have sufficient capacity to deal with peak order and message volumes
- (c) are able to ensure orderly trading under conditions of severe market stress,
- (d) are fully tested to ensure that the conditions under (a) to (c) are met, and
- (e) are subject to effective business continuity arrangements to ensure regularity and continuity of its services if there is any failure of its trading systems.

(2) A market operator shall ensure to have in place effective systems, procedures and arrangements to reject orders that exceed pre-determined volume and price thresholds or are clearly erroneous.

(3) Upon request by the CNB, the market operator shall make available to the CNB data relating to the order book or give the CNB access to the order book so that it is able to monitor trading.

#### Section 50b

##### **Suspension and restriction of trading on a regulated market**

(1) A market operator shall ensure that it is able to temporarily suspend or restrict trading on the market it operates if there is a significant price movement in a financial instrument on that market or a related market during a short period of time and, in cases of a special consideration, to be able to conduct or enforce the cancellation, variance or correction of a specific transaction.

(2) The market operator shall ensure that the parameters for the suspension or restriction of trading referred to in subsection (1) are calibrated in a way which,

- (a) takes into account
  1. the liquidity of different asset classes and sub-classes,
  2. the nature of the market model of that market, and
  3. types of participants in this market, and
- (b) is sufficient to avoid significant disruptions to the orderliness of trading.

(3) The market operator shall report to the CNB on the parameters of the suspension or restriction of trading according to subsection (1) and their substantial change in an appropriate manner.

(4) The market operator, which is substantial regarding a liquidity of a particular financial instrument, puts in place, maintains and applies appropriate systems and procedures to suspend or restrict trading according to subsection (1) to ensure that it will notify the CNB in a timely manner in order for the CNB to

- (a) coordinate a market-wide response, and
- (b) determine whether it is appropriate to suspend trading on other trading venues on which the financial instrument is traded until trading resumes on the original trading market.

#### Section 50c

### **Algorithmic trading venues**

(1) The market operator shall ensure that efficient systems, procedures and arrangements are put in place in an organised market it operates, to ensure that algorithmic trading venues cannot create trading conditions or contribute to the creation of such conditions that are disruptive to the proper functioning of the market and to manage any trading conditions which do arise from such algorithmic trading venues and are disruptive to the proper functioning of the market,, including systems to limit the ratio of unexecuted orders to transactions that may be entered into the system by the participant, to be able to slow down the flow of orders if there is a risk of its system capacity being reached and to limit and enforce the minimum tick size that may be executed on the market.

(2) A market operator shall ensure to create conditions requiring participants to carry out appropriate testing of algorithms under Section 73m.

(3) A market operator shall ensure that its rules on co-location services are transparent, fair and non-discriminatory.

(4) A market operator shall ensure that it is able to identify, by means of flagging from participants, orders generated by algorithmic trading, the different algorithms used for the creation of orders and the persons initiating those orders. That information shall be provided to the CNB upon request.

#### Section 50d

### **Direct electronic access**

A market operator that allows participants direct electronic access,

- (a) shall establish effective systems, procedures and arrangements in a market operated by the market operator to ensure that only participants, who are the EU investment firms in the securities or credit institution referred to in Article 4(1)(1) of the CRR,
- (b) shall ensure that appropriate criteria are set and applied regarding the suitability of the participants to whom such access may be provided and that the participant shall retain responsibility for orders and trades executed using that service,
- (c) shall set appropriate standards regarding risk controls and thresholds on trading through such access,
- (d) is able to distinguish and if necessary to stop orders or trading by a person using direct electronic access separately from other orders or trading by the participant, and
- (e) shall establish measures to suspend or terminate the provision of direct electronic access by a participant to the client in the case of non-compliance with this section.

#### Section 50e

### **Fees**

(1) A market operator shall ensure that the fee structures, , including execution fees, ancillary fees and any rebates are transparent, fair and non-discriminatory and that they do not create incentives to place, modify or cancel orders or to execute transactions in a way which contributes to trading conditions that distorts proper functioning of the regulated market or market abuse. Any rebates shall be granted in exchange for market making obligations in individual shares or a suitable basket of shares.

(2) The market operator shall adjust its fees for cancelled orders according to the length of time for which the order was maintained and calibrate the fees to each financial instrument differently.

#### Section 50f

### **Tick sizes**

(1) A market operator shall adopt tick size regimes in shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments and other financial instrument as set out in a directly applicable EU regulation implementing Article 49 of Directive 2014/65/EU.

(2) The tick size regimes referred to in paragraph 1 shall adapt the tick size for each financial instrument appropriately, and shall be calibrated to reflect the liquidity profile of the financial instrument in different markets and the average bid-ask spread, taking into account the desirability of enabling reasonably stable prices without unduly constraining further narrowing of spreads.

(3) For the purposes of this Act, the following definitions should apply:

- (a) “certificate” means a certificate referred to in Article 2(1)(27) of the MiFIR,
- (b) “ETF” means an investment fund or a foreign investment fund of which at least one share class in collective investment undertakings is traded throughout the business day on at least one trading venue and with at least one market maker which takes action to ensure that the price of its units on the trading venue does not vary significantly from its current value.

### **Section 50g**

(1) An investment firm pursuing a market making strategy on the regulated market shall have a written agreement with the market operator.

(2) A market operator shall establish, maintain and apply procedures ensuring conclusion of agreements between the market operator and a sufficient number of EU investment firms. Such agreements shall require EU investment firms to post firm quotes that correspond to market conditions, with the result of providing liquidity to the market on a regular and predictable basis. The market operator shall fulfil this requirement where such a requirement is appropriate to the nature and scale of the trading on the regulated market it operates.

(3) The agreement referred to in subsection (1) shall include at least:

- (a) the obligations of the EU investment firm in relation to the provision of liquidity and where applicable any other obligation arising from participation in the agreement referred to in subsection (2), and
- (b) any incentives in the form of rebates or otherwise offered by the market operator to an EU investment firm so as to provide liquidity to the market and, where applicable, any other rights accruing to the EU investment firm as a result of participation in the agreement referred to in subsection (2).

### **Section 51**

#### **Access to settlement systems**

(1) For the purpose of the settlements of financial instruments, the market operator shall allow the participants of a regulated market operated by the market operator to select a settlement system, a central counterparty, a clearing house and a clearing system of its choice, if there is a connection between the regulated market and the selected settlement system, a central counterparty, a clearing house and a clearing system allowing proper and timely settlement of such transactions without unreasonable costs. This is without prejudice to the provisions of Titles III, IV and V of EMIR.

(2) The usage of a settlement system other than that customary for the relevant regulated market according to subsection (1) requires the prior consent of the CNB. The CNB shall give its consent to a participant in a regulated market in case that technical conditions for settling claims and debt from the transactions with financial instruments in a settlement system that is other than the customary settlement system, do not prevent the regular functioning of financial markets.

## Section 52

The CNB may restrict or prohibit a market operator to use a settlement system, a central counterparty, a settlement agent or a clearing house from another EU member state to settle all or only selected transactions in financial instruments concluded on the regulated market operated by the market operator, if it is necessary for a proper functioning of the regulated market; While doing so, the CNB shall take into account whether the conditions laid down in Section 51(1) are fulfilled. This is without prejudice to the provisions of Titles III, IV and V of EMIR.

## Section 53

The designation “*regulovaný trh*” (in English: “regulated market”) or “*burza cenných papírů*” (in English: “stock exchange”) or similar designation in conjunction with financial instruments may only be used by the market operator of an EU regulated market in its business.

## Section 54

### **Permanent arbitration court of the market operator**

(1) The market operator may establish a permanent arbitration court.

(2) The permanent arbitration court has a jurisdiction in disputes arising from transactions on a regulated market operated by the founder and in disputes arising from the settlement of such transactions as well as in trade disputes arising from the MTF operated by the founder and in the disputes arising from the settlements of the MTF operated by the founder. The permanent arbitration court has also jurisdiction in disputes arising from the commodity trades and disputes arising from other trades on the financial market if such trades result from an another business activity of the founder registered by the CNB under Section 39. If agreed by the parties, the permanent arbitration court may have also jurisdiction in disputes arising from other transactions in financial instruments or commodities, in disputes on the capital market business, the money market, market of the supplementary pension savings, the insurance market and the market of the supplementary pension insurance,.

(3) The proceedings before the permanent arbitration court shall be governed by the law governing arbitration and the enforcement of arbitral awards<sup>9)</sup>. The rules of procedure and decision-making, the method of appointment of arbitrators, their number, the organisation of the permanent arbitration court, the schedule of arbitrators' fees, the rules on costs of the proceedings and other issues related to the activities of the permanent arbitration court and its economic security are regulated by the statute and rules of the permanent arbitration tribunal.

## TITLE II

### TRADING ON A REGULATED MARKET

#### Chapter 1

#### **General provisions**

## Section 55

(1) A regulated market is the market for financial instruments operated by a market operator in accordance with the authorisation of the CNB, where the trading is on a regular basis, and which has defined rules for the admission of financial instruments, rules for trading on a regulated market and rules governing access to a regulated market that complies with this Act.

(2) The EU regulated market is a regulated market and market for financial instruments similar to a regulated market which is listed in the list of regulated markets of an EU member state.

(3) The foreign regulated market is an EU regulated market which is not a regulated market.

#### Section 56

##### **Conditions for admission of financial instrument to trading on a regulated market**

(1) The conditions for admission of financial instruments to trading on a regulated market are specified in this Act. Any other conditions or reporting duties of the issuer than those set out in this Act may be set up by the market operator in the rules for admission of financial instruments to trading on a regulated market.

(2) Only a financial instrument that has been allocated an (ISIN) international securities identification number and that has the prerequisites for fair, orderly and effective trading may be admitted to the regulated market. These conditions must be ensured by the market operator in the rules for admission of financial instruments to trading on a regulated market.

(3) In the case of transferable securities, the market operator shall further ensure that only the freely negotiable financial instrument is admitted to trading on a regulated market, and it shall be ensured in the rules for the admission of financial instruments to trading on a regulated market.

(4) In the case of financial instruments referred to in Section 3(1)(d) to (l) the market operator shall further ensure that only the financial instrument referred to in Section 3(1)(d) to (l) is admitted to trading on a regulated market and that such financial instrument allows proper pricing and the appropriate method of settlement, and it shall be ensured in the rules of the admission of financial instruments to trading on a regulated market

(5) A financial instrument may be admitted to trading on a regulated market without the consent of the issuer.

(6) The market operator shall without undue delay inform the issuer of a financial instrument that he has accepted his issued instrument to trading on a regulated market organised by that market operator according to subsection (5).

(7) The issuer of transferable securities admitted to trading on a regulated market according to subsection (5) shall not be obliged to report the reporting duties regarding the regulated market.

#### Section 58

##### **Transaction concluded on a regulated market**

Transaction concluded on a regulated market under the rules for trading on a regulated market cannot be cancelled by the market operator, except for the procedure according to Section 50d (1)(d). An error in an execution of order to trade on the regulated market shall not result in the invalidity of such order.

#### Section 59

##### **Registration of units in collective investment undertakings on a regulated market**

(1) A unit in collective investment undertakings that is not admitted to the trading on an EU regulated market may be registered on a regulated market for the purpose of publishing its value.

(2) The terms and conditions for the registration of a unit in collective investment undertakings and the method of determining its value shall be determined by the market operator in the rules for the admission of financial instruments to trading on a regulated market.

## Section 60

### **Delisting a security from trading on a regulated market**

(1) The issuer, who has decided to delist the participating securities from trading on a regulated market, shall forthwith

- (a) report this decision to the CNB and the market operator on whose regulated market is the security admitted to trading, and
- (b) publish this decision on its website.

(2) The issuer referred to in subsection (1) shall send the market operator a request for the delisting of the security from trading on a regulated market without undue delay after all duties under the law governing the legal relations of the commercial companies and the cooperatives have been fulfilled. In the mandatory public draft contract for the purchase of the participating securities under the law regulating the legal relations of the commercial companies and cooperatives, the fulfilment of debts to shareholders arising from the public draft contract shall be considered as fulfilment of the obligation. The annex to the request consists of a decision to delist a security from trading on a regulated market in accordance with the law regulating the legal relations of the commercial companies and cooperatives and a document certifying that this fact has been notified to the CNB and the document regarding fulfilment of all obligations arising from the law regulating the legal relations of the commercial companies and cooperatives.

(3) Where the foreign legal system provides for a similar obligation in case of a foreign issuer as set out in subsection (1), the issuer shall send to the market operator the document regarding fulfilment of these obligations before the delisting a security from trading on a regulated market.

(4) The market operator shall delist a security from trading on a regulated market without undue delay upon receipt of the request under subsection (2) with all its annexes.

(5) The market operator shall notify forthwith the central securities depository, a foreign central securities depository or a foreign central securities depository that has been authorised to act or has been recognized under the CSDR<sup>51)</sup> and which issues the relevant issue, and the CNB, of its delisting of a security from the regulated market.

(6) Where the participant securities have been disposed by law, the market operator shall ensure the termination of the trading of such securities on a regulated market.

## Section 61

### **Suspension, resumption and removal from trading**

(1) A market operator shall suspend or remove from trading a financial instrument which no longer complies with the rules for the admission to trading on a regulated market pursuant to this Act, the rules for admission of financial instruments to trading on a regulated market, or the rules for trading on a regulated market or no longer complies with the reporting duties regarding this financial instruments resulting from this Act and the rules for admission of financial instruments to trading on a regulated market, unless such suspension or removal would be likely to cause significant damage to the investors' interests or the orderly functioning of the market.

(2) The market operator that has decided according to subsection (1), shall also follow the same rules as referred to in Section 3(1)(d) to (k) for derivatives whose values relate to that financial instrument which is

the subject of the decision according to subsection (1) where necessary to support the objectives of the decision according to subsection (1). The market operator shall also follow the same rules *mutatis mutandis* in relation to derivatives in the event of a resumption of trading in a financial instrument, whose trading on a regulated market was suspended.

(3) A market operator shall publish and communicate the decision according to subsection (1) or (2) to the CNB. Similarly, the market operator shall proceed if it resumes trading in a financial instrument that was suspended according to subsection (1) or (2).

## Section 62

### **Rules for trading on a regulated market**

A market operator shall establish and comply with transparent rules for trading on a regulated market, specifying in particular, the structure of the regulated market it operates and the rules for entering into transactions with financial instruments on a regulated market.

## Section 63

### **Rules governing access to a regulated market**

(1) A market operator shall establish and comply with transparent rules governing access to a regulated market and such rules shall set out objective criteria for such access.

(2) The rules governing access to a regulated market specify the duties of the regulated market participants arising from the administration and structure of the regulated market, rules for trading on a regulated market and the rules for the clearing and settlement of transactions concluded on the regulated market.

(3) The rules governing access to the regulated market shall further establish the professional standards imposed on the persons who are employed or used by investment firms and foreign persons, authorised by the foreign supervisory authority to provide investment services that are participants in this market for their activity on the regulated market, and the rules governing access of persons referred to in subsection (4)(b).

(4) A regulated market participant may be

- (a) an investment firm and a foreign person authorised by a foreign supervisory authority to provide investment services, or
- (b) another person who:
  1. has good repute and is professionally qualified,
  2. has a sufficient level of trading ability and competence,
  3. has appropriate organisational prerequisites and
  4. has sufficient financial resources, particularly with regard to guarantee the adequate settlement of transactions.

(5) A market operator shall report regularly to the CNB changes in the list of participants of its regulated market. Deadlines, content, form and method of reporting are specified in an implementing regulation.

(6) The rules governing access to a regulated market shall allow an access from abroad a foreign person with the authorisation from a foreign supervisory authority to provide investment services,

(7) A market operator of a foreign regulated market may introduce technical and organisational measures in the Czech Republic that will allow the participants of such regulated market, whose registered



office or domicile is in the Czech Republic to have access to such regulated market operated by such market operator. The CNB may request the supervisory authority of the market operator to provide information about such participants in such regulated market.

(8) A market operator of the regulated market established in the Czech Republic shall report to the CNB the EU member state in which intends to introduce technical and organisational measures to enable participants whose registered office or domicile is in another EU member state, to have access to such regulated market. The CNB shall report this information within one month to the competent supervisory authority of that EU member state. The CNB shall, at the request of the supervisory authority of that EU member state, report information about such participants.

## **Chapter 2**

### **Official stock exchange**

#### **Section 64**

A market operator may operate as a part of a regulated market an official stock exchange that meets the conditions set out in this Act (Section 65).

#### **Section 65**

##### **Conditions for accepting a security for trading on an official stock exchange**

(1) A market operator may only accept shares or bonds for trading on the official stock exchange if

- (a) the conditions laid down in Section 56 and in the directly applicable European Union regulation on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market<sup>66)</sup>,
- (b) the legal status of the issuer of such shares or bonds is in accordance with the law of the State in which the issuer is domiciled,
- (c) the rate of the share or its expected rate, multiplied by the number of shares issued, reach an amount in CZK equal to at least EUR 1 million; if the expected rate cannot be determined by an estimation, the equity capital of the issuer of the shares must at least be equal to the stated amount; the condition for the lowest amount may not be met if the issuer has already issued shares of the same class and these shares have been admitted to trading on a regulated market on which an admission to trading is sought or if the smooth trading of those shares is assured,
- (d) the total nominal value of the bond issuance amounts to at least EUR 200 000 in Czech crowns; the condition of the lowest total nominal value need not be fulfilled if the smooth trading of these bonds is assured,
- (e) the issuer of those shares or bonds has published the financial statement, in accordance with the act regulating accounting, for at least three consecutive financial years preceding the accounting period in which the application for admission of a security is admitted to a trading on a regulated market; the condition concerning the publication of the financial statement for a three consecutive accounting periods may not be fulfilled if the issuer exists less than 3 years according to the record in the relevant register, and the acceptance of shares or bonds for trading on the official stock exchange is in the interest of the issuer or investors, and if the investors have sufficient information necessary to assess the issuer and the security,
- (f) such shares or bonds meet the requirements of the law of the State under which they were issued,
- (g) the transferability of such shares or bonds is not excluded or limited; shares may also be admitted to trading on an official stock exchange if their transferability is limited solely by the requirement of the consent of the company body and if their admission to trading does not interfere with trading on that market,

- (h) the issue price of those shares or bonds is fully repaid; the issue price need not be fully repaid if it is permitted by another law and if there is seamless trading with them and if the prospectus explicitly states that the issue price has not been repaid and the measures taken in connection with it are stated,
- (i) at least 25 % of the shares that shall be admitted to trading on the official stock exchange are owned by the public of the EU member states or, if at least such percentage of shares guaranteeing seamless trading on the official stock exchange is owned by the public of the EU member states; this is not necessary if
  1. the ownership of shares owned by the public of EU member states will be ensured only since their trading on that market and a market operator will consider that the required ownership by the public of EU member states will be achieved within a short period of time after the admission of shares to trading,
  2. shares of the same issuer and the same class are admitted to trading on an analogous official stock exchange of a state which is not an EU member state, and where such volume of the shares will be owned by the public as to guarantee seamless trading on the official stock exchange,
- (j) the application for admission to trading applies to all bonds of the same issue or to all shares of the same class; a request for admission to trading may not include shares held for the purpose of controlling the issuer or shares that cannot be traded on a contractual basis for a certain period of time, unless there are no disadvantages for investors arising from trading with only a part of the shares of the same class; the fact that an application for admission to an official stock exchange relates only to a proportion of shares of the same class must be expressly stated in the prospectus together with the statement of reasons,
- (k) shares or bonds that are certificated securities shall be printed in accordance with the requirements imposed on the printing of certificated securities in accordance with the law of the state in which the issuer is established,
- (l) the issuer of such shares or bonds is a person established in a state which is not an EU member state and such shares or bonds have not been admitted to trading on the official stock exchange in the state in which the issuer has its registered office and corporate office or in the state in which is the largest share of such shares nor bonds owned by public, and the market operator of the regulated market on which the admission is sought is convinced that the reason for non-admission to trading is not the protection of investors,
- (m) they are convertible or exchangeable bonds, preferential bonds, or bonds with warrants that shall be exchanged for shares, and shares of the same class are already admitted to trading on the official stock exchange, or all information necessary to assess the value of such shares is available to investors,
- (n) the issue of such shares or bonds has been issued as securities or as book-entry securities and all its pieces have the same nominal value and the same identification number according to the International Securities Identification Number (ISIN) system,
- (o) the market operator is not aware of any circumstances that could lead to damage an investor, to threaten to their interests or to threaten important public interests if these shares or bonds are admitted to trading on the official stock exchange.

(2) Securities representing shares may be admitted to trading on an official stock exchange if:

- (a) the issuer of the shares who represents a security meets the conditions set out in subsection (1)(b) and (e) and performs for the represented shares the reporting duties of the issuer of shares admitted for trading on an official stock exchange,
- (b) they meet the conditions laid down in subsection (1)(f), (g), (i) to (k) and in subsection (4),
- (c) the shares represented by the security fulfil the condition laid down in subsection (1)(c).

(3) Where the subject to an application for admission to trading on an official stock exchange are securities which carry the right to acquire securities representing a share in a company having its registered office in another EU member state and which are admitted to trading on an official stock exchange of the country in which the issuer is established, the market operator shall, before deciding on the application, request the opinion of the authority that decided to admit such securities to trading.

(4) If the shares or bonds are subscribed on the basis of a public offering, the trading of such shares may be commenced only after the subscription period specified in the public offering has expired; this does not apply if the time limit has not been set.

(5) The conditions for admission of securities for trading on the official stock exchange set forth in subsection (1)(b) to (f), (h), (i) and (l) to (o) shall not apply to the government bonds issued by the Czech Republic, an EU member state or a member state of the Organisation for Economic Co-operation and Development, municipal bonds or bonds issued by entities governed by international law.

#### Section 65a

The issuer of shares that have been admitted to trading on an official stock exchange for shares and that are newly issued and of the same class as shares the issuer had issued before and that have been admitted to trading on the official stock exchange for shares, shall, within one year from the date of issue, submit an application for admission to trading on this market unless it is admitted without request.

#### Section 66

### **Acceptance of a security for trading on an official stock exchange**

The market operator is obliged to report to the applicant, within 6 months from the date of receipt or supplementation of the application for admission of a security for trading on the official stock exchange, whether the security is accepted for trading on the official stock exchange.

## TITLE III

### TRADING IN A MULTILATERAL TRADING FACILITY

#### Section 69

(1) A “multilateral trading facility” (MTF) is a market for financial instruments operated by an investment firm, a market operator or a similar foreign entity with an authorisation by a supervisory authority of another EU member state to provide investment services or to operate EU regulated markets, which has set the rules governing admission of financial instruments to trading in MTF, the rules governing trading in MTF, the rules governing access to MTF which comply with this Act or with a similar provision of the law of another EU member state.

(2) The operator of MTF establishes, maintains and applies

- (a) transparent rules for fair and orderly trading and for establishing objective criteria for the efficient execution of orders,
- (b) technical and organisational arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with risks of systems disruption,
- (c) transparent rules for the admission of financial instruments to trading in a MTF which,
  - 1. lay down objective criteria for determining the financial instruments that can be traded under that system and
  - 2. may also specify disclosure requirements for issuers of financial instruments admitted to trading in that system or persons who have applied for the admission of a financial instrument for trading in a MTF without the issuer's consent,
- (d) transparent and non-discriminatory rules, based on objective criteria, governing access to an OTF, and publishing the rules on its website; for access to the OTF, the provisions of Section 63(4) and (6) apply *mutatis mutandis*,
- (e) technical and organisational arrangements to identify clearly and manage the potential adverse consequences for the operation of the MTF or for the members or participants and users, of any conflict of interest between the interest of the MTF, their owners or the investment firm or market operator operating the MTF and the sound functioning of the MTF,
- (f) arrangements and procedures to manage the risks to which it is exposed and to mitigate those risks and

(g) technical and organisational arrangements to facilitate the efficient and timely finalisation of the transactions executed under MTF.

(3) The MTF operator is required to have available sufficient financial resources to facilitate its orderly functioning, having regard to the nature and extent of the transactions concluded on the market and the range and degree of the risks to which it is exposed.

(4) The MTF operator ensures that the system has least three materially active members or users, each having the opportunity to interact with all the others in respect to price formation.

(5) The operator of MTF is obliged to ensure to the participants of the MTF which it operates an access to publicly available information on financial instruments admitted for trading in a MTF.

(6) A financial instrument may be admitted to trading in a MTF without the issuer's consent.

(7) The issuer of a financial instrument admitted to trading in a MTF according to subsection (6) is not subject to any duty with regard to that MTF.

(8) An operator of MTF established in another EU member state may provide technical and organisational arrangements in the Czech Republic so as to facilitate access to and trading on MTF by persons and entities with its registered office or domiciled in the Czech Republic. The CNB may request the supervisory authority of the MTF operator to provide information on the participants of this MTF with its registered office or domicile in the Czech Republic.

(9) An operator of MTF with its registered office in the Czech Republic shall report to the CNB in which EU member state intends to provide technical and organisational arrangements so as to facilitate access to and trading on MTF by persons and entities with its registered office or domiciled in another EU member state. The CNB shall, at the request of the supervisory authority of that EU member state, notify details of the participants in the MTF with its registered office or domiciled in that EU member state.

(10) The operator of MTF shall provide the CNB upon request

- (a) a description of the functioning of the MTF,
- (b) a description of any links to or participation by a trading venue or a systematic internaliser owned by this operator of MTF, and a description of the direct or indirect share of the registered capital or of the voting rights and
- (c) a list of participants in this MTF.

## Section 70

### **Access to settlement systems**

(1) An operator of MTF shall take the necessary measures to effectively settle the transactions executed under MTF and shall inform MTF participants about its rights and duties and the rights and duties of participants in securing the settlement of trades concluded on an MTF.

(2) The CNB may restrict or prohibit an operator of MTF from using a settlement system, a central counterparty, a settlement agent or a clearing house from another EU member state to settle all or only selected transactions in financial instruments concluded on this MTF. Such restriction or prohibition must be necessary for the proper functioning of this system; the CNB shall take into account in such decision whether the circumstances referred to in Section 49 have occurred.

## Section 71

(1) An operator of MTF shall be obliged to establish measures for a regular monitoring of

- (a) the compliance by its participants with its rules for trading on an MTF provided for in Section 69(2)(a) and whether there is no conduct that can be considered as a prohibited behaviour by the MAR<sup>52</sup>),
- (b) the financial instruments admitted to trading in this MTF fulfil the rules for the admission of financial instruments to trading in an MTF provided for in Section 69(2)(c).

(2) An operator of MTF shall regularly monitor the trades on this MTF and shall assess whether there is an infringement of the rules for trading on an MTF, or an emergency situation on the market or a conduct that may be considered as a prohibited behaviour by the MAR<sup>52</sup>).

(3) The operator of MTF shall report to the CNB forthwith

- (a) a significant infringement of the rules for trading on an MTF or an emergency situation on the market,
- (b) a reasonable suspicion of a conduct which may be regarded as prohibited behaviour by the MAR<sup>52</sup>),
- (c) a reasonable suspicion of an infringement of this Act by a person authorised to enter into a contract in the MTF.
- (d) a trading venue disruptions in relation to a financial instrument.

(4) An operator of MTF shall also report to the CNB further information about the participants, the conditions, the course and the trading results of the trading venue operated by such operator of MTF, the financial instruments admitted to trading in the system operated by such operator of MTF and their issuers and the services provided that are necessary for the conduct of supervision. An operator of MTF shall also report to the CNB information on the content of agreements according to the Section 50g (1).

(5) The details, deadlines, form and the method of sending the information according to subsection (4) shall be specified by the implementing regulation.

#### Section 72

An operator of MTF shall not, in the MTF it operates,

- (a) execute client orders against proprietary capital and
- (b) engage in matched principal trading.

#### Section 73

(1) Trade concluded in an MTF according to rules for trading on an MTF must not be cancelled by the MTF operator. An error in the trading order at the time of the trade in an MTF shall not be invalidated.

(2) The Sections 50a to 50e, 50f (1) and (2) and 50g shall apply *mutatis mutandis* for the MTF operators.

(3) The operator of the MTF is obliged to control and enforce the compliance with obligations arising from agreements pursuant to Section 50g (1) by investment firms.

#### Section 73a

### **Suspension, resumption and removal from trading**

In order to suspend trading in a financial instrument, to resume trading in a financial instrument and to remove a financial instrument from trading in an MTF, Section 61 shall apply *mutatis mutandis*.

## TITLE IV

### THE SME GROWTH MARKET

#### Section 73b

(1) The SME growth market means a MTF that is registered as an SME growth market in the list of SME growth markets maintained by the CNB or a supervisory authority of another EU member state. SME growth markets are also listed in the SME growth market list by ESMA. The designation “SME growth market” (in Czech: “*trh malých a středních podniků*”) or an equivalent or interchangeable designation may be used only in relation to the SME growth market.

(2) The CNB shall enter an MTF in the list of SME growth markets at the request of the operator of the MTF if the following conditions are met:

- (a) this system operator has its registered office or its or the corporate office in the Czech Republic,
- (b) at least 50 % of the issuers whose financial instruments are admitted to trading on the MTF are small and medium-sized enterprises,
- (c) appropriate criteria are set for initial and ongoing admission to trading of financial instruments of issuers referred to in letter (b) on the MTF,
- (d) on initial admission to trading of financial instruments in this MTF there is sufficient information published to enable investors to make an informed judgment about whether to invest in these financial instruments, either in the form of
  1. a prospectus, if it is necessary to make them available for a public offer made in connection with the initial admission of a financial instrument to trading on that MTF, or
  2. an appropriate admission document,
- (e) issuers referred to in letter (b) or persons acting on their behalf shall report on a regular basis adequate financial data, in particular the audited annual reports and the consolidated annual reports,
- (f) issuers referred to in point(21) of Article 3(1) of the MAR referred to in letter (b), the persons discharging managerial responsibilities within such issuers according to Article 3 (1) (21) of the MAR and persons closely linked to these issuers according to Article 3(1)(26) of the MAR shall fulfil the requirements of the MAR,
- (g) the information concerning the issuers referred to in letter (b) that is published obligatorily have to be stored and publicly disseminated, and
- (h) the system operator has established, maintained and implemented effective systems and controls aiming to prevent and detect market abuse under the MAR.

(3) The operator of an MTF, which is registered in the list of SME growth markets maintained by the CNB, shall continuously fulfil the conditions set out in subsection (2).

(4) For the purposes of this Act, a “small and medium-sized enterprise” means an issuer that had an average market capitalisation of less than EUR 200 000 000 on the basis of end-year quotes for the previous three calendar years.

#### Section 73c

(1) Effective regulations, systems and procedures that ensure fulfilment of the requirements under Section 73b(2), and that the condition under Section 73b(2)(b) must be fulfilled in each calendar year, are part of the management and control system of the operator of an MTF, that is included in the list of SME growth markets.

(2) Where a financial instrument of an issuer is admitted to trading on one SME growth market, the financial instrument may also be traded on another SME growth market only where the issuer has been informed and has not objected. In such a case, the requirements of this latter SME growth market that are not applicable for the original SME growth market shall not apply to the issuer.

(3) The CNB shall delete the MTF from the list of SME growth markets, if

- (a) the operator of that system requests, or
- (b) the requirements of Section 73b(1), (2) or (3) are not met.

## TITLE V

### ORGANISED TRADING FACILITY

#### Chapter 1

#### General provisions

##### Section 73d

(1) An “organised trading facility” (OTF) is a market for financial instruments,

- (a) which is not an EU regulated market or an MTF,
- (b) where only bonds, structured finance products, greenhouse gas emission allowances and derivatives are traded, and
- (c) which is operated in accordance with this Act or with similar provisions of the law of another EU member state.

(2) Only a person authorised to operate an OTF by the CNB or by a supervisory body of another EU member state shall operate an OTF.

(3) An operator of an OTF shall not execute client’s orders in an OTF against the proprietary capital of the operator of an OTF or from any entity that is part of the same group or legal person as the operator of an OTF.

(4) Only where the client has consented to the process, the operator of an OTF may engage in matched principal trading in

- (a) bonds,
- (b) structured finance products,
- (c) emission allowances, or
- (d) derivatives, with the exception of those derivatives to which an obligation to be cleared under Article 5 of EMIR applied.

(5) An operator of an OTF shall establish arrangements ensuring compliance with the requirements set out in Section 2(1)(w) on matched principal trading according to Subsection (4).

(6) An operator of an OTF may engage in dealing on own account other than matched principal trading according to subsection (4), only with regard to sovereign debt instruments for which there is not a liquid market.

(7) For the purposes of this Act, the following definitions should apply:

- (a) “liquid market” means a market for a financial instrument or a class of financial instruments, where there are ready and willing buyers and sellers on a continuous basis, assessed in accordance with the following criteria, taking into consideration the specific market structures of the particular financial instrument or of the particular class of financial instruments:
  1. the average frequency and size of transactions over a range of market conditions, having regard to the nature and life cycle of products within the class of financial instrument,

2. the number and type of market participants, including the ratio of market participants to traded financial instruments within a given product,
  3. the average size of spreads between the buying and selling price, if available,
- (b) “public debt instrument” means a debt instrument issued by
1. the EU,
  2. an EU member state, including a ministry, a governmental organisation or a special purpose vehicle of the member state,
  3. in the case of a federal or federal EU member state a member of a federation or federal state,
  4. a special purpose vehicle for several EU member states,
  5. an international financial institution, such as the European Stabilization Mechanism, established by two or more EU member states, which has the purpose of mobilising funding and provide financial assistance to the benefit of its members that are experiencing or threatened by severe financing problems , or
  6. the European Investment Bank.

#### Section 73e

(1) A market maker in an OTF may be an EU investment firm which,

- (a) is distinct from that operator of an OTF, and
- (b) does not have a close connection with this operator of an OTF.

(2) An operator of an OTF shall not systematically internalize a financial instrument that is traded on this system.

(3) The operator of an OTF shall ensure that the OTF is not connected

- (a) with a systematic internaliser in a way which enables interaction between orders in that system and orders or quotes in such an internaliser, and
- (b) with another OTF in a way which enables the interaction of the orders in those systems.

(4) An operator of an OTF shall provide the CNB upon request

- (a) a description of the functioning of this OTF,
- (b) a description of any links to trading venues or systematic internalisers owned by that operator, including a description of the direct or indirect shareholding or voting rights, and
- (c) the list of participants of this OTF.

(5) An operator of an OTF located in the Czech Republic shall report to the CNB the EU member state in which it intends to introduce technical and organisational measures to enable persons domiciled or residing in another EU member state to have access to this OTF. The CNB shall, at the request of the supervisory authority of that EU member state, report details of the participants in this OTF with its registered office or place of residence in that EU member state.

(6) An operator of an OTF located in another EU member state may introduce technical and organisational measures in the Czech Republic to enable persons domiciled or residing in the Czech Republic to have access to this OTF. The CNB may ask the supervisor of the operator of an OTF for information about the participants in this OTF with its registered office or domicile in the Czech Republic.

#### Section 73f

### **Organisational requirements**

(1) The operator of the OTF establishes, maintains and applies



- (a) transparent rules for fair and orderly trading and for establishing objective criteria for the efficient execution of orders,
- (b) technical and organisational arrangements for the sound management of the technical operations of the facility, including the establishment of effective contingency arrangements to cope with risks of systems disruption,
- (c) transparent rules for the admission of financial instruments to trading in an OTF which,
  - 1. lay down objective criteria for determining the financial instruments that can be traded under that system and
  - 2. may also specify disclosure requirements for issuers of financial instruments admitted to trading in that system or persons who have applied for the admission of a financial instrument for trading in that system without the issuer's consent, and
- (d) transparent and non-discriminatory rules, based on objective criteria, governing access to an OTF, and publishing the rules on its website; for access to the OTF the provisions of Section 63(4) and (6) applies *mutatis mutandis*.

(2) The operator of OTF ensures that the system has least three materially active members or users, each having the opportunity to interact with all the others in respect to price formation.

(3) The operator of OTF is obliged to ensure to the participants of the OTF which it operates an access to publicly available information on financial instruments admitted for trading in the OTF.

(4) An operator of OTF establishes, maintains and applies

- (a) effective arrangements and procedures for the regular monitoring of
  - 1. the compliance by its members or participants or users with its rules governing trading in the OTF provided for in subsection (1)(a) and
  - 2. the conduct that may indicate behaviour that is prohibited under the MAR<sup>52</sup>,
- (b) measures to systematically monitor whether the financial instruments admitted to trading in an OTF fulfil the rules for the admission of financial instruments for trading in the OTF provided for in subsection (1)(c) and
- (c) technical and organisational arrangements to identify clearly and manage the potential adverse consequences for the operation of the OTF or for the members or participants and users, of any conflict of interest between the interest of the OTF, their owners or the investment firm or market operator operating the OTF and the sound functioning of the OTF.

(5) The operator of OTF immediately informs the CNB of

- (a) significant infringements of the rules governing trading in the OTF or disorderly trading conditions,
- (b) a reasonable suspicion of indicate behaviour that is prohibited under the MAR<sup>52</sup>,
- (c) a reasonable suspicion of a breach of this Act or of implementing regulation by an executing person authorised to enter into transactions in an OTF,
- (d) a system disruptions in relation to a financial instrument.

(6) The operator of OTF notifies with the CNB further information about the participants, the conditions, the course and the results of the trading on the organised market, financial instruments admitted to trading on the organised market and their issuers and the services, where necessary for the supervision. The operator of the OTF shall inform the CNB about the content of agreements pursuant to Section 50g (1).

(7) The deadlines, the details, the form and the way of notifying according to subsection (6) shall be specified in an implementing regulation.

## Chapter 2

### Trading in an OTF

### Section 73g

(1) The execution of orders on an OTF is carried out by its operator on a discretionary basis.

(2) The operator operating an OTF shall exercise discretion only in either or both of the following circumstances

- (a) when deciding to place or retract an order on the OTF it operates, or
- (b) when deciding not to match a specific client order with other orders available in the systems at a given time, provided it is in compliance with specific instructions received from a client under Section 15l to 15n and 15r.

(3) In a trading venue where client orders crosses, the market operator operating the OTF may decide if, when and how much of two or more orders it wants to match within the system.

(4) An operator of OTF, in accordance with Section 73d(2) to (5) and Section 73e(1) to (3), may facilitate negotiation between clients in the OTF it operates so as to bring together two or more potentially compatible trading interest in a transaction, this is without prejudice to Section 73d(6).

(5) Subsections (1) to (4) shall be without prejudice to Sections 15l to 15n, 15r, 17b, 69, 70, 73f, Section 73g(6) and Section 73i.

(6) A financial instrument may be admitted to trading on an OTF without the issuer's consent. The issuer of such financial instrument is not obliged to perform information duties with regard to this OTF.

### Section 73h

(1) For suspension resumption or removal a financial instrument from trading in an OTF Section 61 shall apply *mutatis mutandis*.

(2) The Sections 50a to 50e, 50f (1) and (2) and 50g shall apply *mutatis mutandis* for the OTF operators.

(3) The operator of the OTF is obliged to control and enforce the compliance with obligations following from agreements pursuant to Section 50g (1) by investment firms.

Section 73i

**Access to settlement systems**

Operator of an OTF

- (a) shall adopt the necessary arrangements to facilitate the efficient settlement of the transactions concluded under the systems of that OTF and
- (b) shall inform its members of their respective responsibilities and the responsibilities of the operator of an OTF for the settlement of the transactions executed in that OTF.

TITLE VI

COMMON PROVISIONS

Section 73j

**Business clocks**

Trading venues and their participants synchronize the business clocks they use to record the date and time of any reportable event.

Section 73k

**Position limits for commodity derivatives**

At least once a day, the participant in a trading venue shall report to the operator of this trading venue the details of its own positions under Section 134a(1) held through contracts traded under this trading venue as well as the positions of its clients and their clients until the end client is reached.

Section 73l

**Publication of information on the quality of execution of transactions**

(1) The operator of an execution venue established in the Czech Republic shall, free of charge, publish at least annually information on the quality of transactions in financial instruments at that execution venue.

(2) The operator of a trading venue and systematic internaliser shall fulfil the duty under subsection (1) in particular in relation to financial instruments subject to trading duties under Articles 23 and 28 of the MiFIR.

(3) The information referred to in subsection (1) shall contain, in relation to each financial instrument, details of at least

- (a) price,
- (b) costs,
- (c) speed and
- (d) likelihood of execution.

Section 73m

Trading venues' participants are required to perform appropriate testing of algorithms to ensure that algorithmic trading systems cannot create or contribute to trading conditions that disrupt the orderly functioning of the market.

## **PART SIX**

### **DATA REPORTING SERVICES PROVIDER**

#### Section 74

##### **Data reporting services**

(1) The “data reporting services” are

- (a) operating of an approved publication arrangement,
- (b) operating of a consolidated tape provider,
- (c) operating of an approved reporting mechanism.

(2) The “data reporting services provider” is

- (a) an approved publication arrangement,
- (b) a consolidated tape provider or
- (c) an approved reporting mechanism.

(3) The “approved publication arrangement” (hereinafter referred to as the “APA”) is a person who, on the basis of an authorisation granted by the CNB or a supervisory authority of another EU member state, authorises the publication of reports on transactions for an EU investment firm under Articles 20 and 21 of the MiFIR.

(4) The “consolidated tape provider” (hereinafter referred to as the “CTP”) is a person authorised by the CNB or supervisory authority of another EU member state to provide the services of collecting reports on the trading of financial instruments referred to in Articles 6, 7, 10, 12, 13, 20 and 21 of the MiFIR from regulated markets, MTFs, OTFs and an APA and consolidating them into a continuous electronic live data stream providing price and volume data per financial instrument.

(5) The “approved reporting mechanism” (hereinafter referred to as the “ARM”) is a person authorised by the CNB or by a supervisory authority of another EU member state to provide the service of reporting details of transactions to competent authorities or to ESMA on behalf of investment firms.

#### Section 75

##### **Requirements for data reporting services providers**

(1) The CNB shall grant an authorisation to the business of the data reporting services provider at the request of a commercial company or a founder of a commercial company before the date of its incorporation in the Commercial Register, if the following conditions are met:

- (a) the registered office and the corporate office of that company are or will be in the Czech Republic,
- (b) this company is of good repute; this shall not be considered if the company is not yet incorporated in the Commercial Register,
- (c) the company's business plan defines and covers types of business envisaged,
- (d) the company has or will have, at the latest on the commencement date of the business the material, personnel and organisational prerequisites to the extent to which it intends to perform the activity of the reporting service provider for the proper conduct of its business enabling the fulfilment of its business

plan and the reporting duties of the data reporting services provider, in particular in the area of professional care and rules for the proper and prudent provision of data reporting services, including

1. organisational arrangements and
  2. ensuring that the persons with whom it act as a data reporting services provider are of full legal capacity, good repute and have the necessary knowledge, skills and experience,
- (e) the management body of this company and its members meet the requirements under Section 10.

(2) An investment firm or a market operator operating a trading venue may be a data reporting services provider if it files an application to the CNB to change the scope of its authorisation and proves that the conditions set out in subsection (1) are met.

(3) An application for an authorisation according to subsection (1) and an application for modification of the scope of the authorisation referred to in subsection (2) may be submitted only electronically.

(4) The CNB shall issue a decision on the authorisation of the data reporting services provider within 6 months of the submission of the application, which has the prescribed requirements and is free from defects.

(5) In the decision on the authorisation of the data reporting services provider, the CNB shall specify which of the data reporting services that data reporting services provider is authorised to provide.

(6) The data reporting services provider's authorisation granted by the CNB or a supervisory authority of another EU member state entitles the data services provider to provide such services in all EU member states.

## Section 76

### **Providing of data reporting services**

(1) The data reporting services provider shall continuously fulfil the requirements under Section 75(1). The data reporting services provider shall report to the CNB, without undue delay after it occurs, of any significant change in the facts on the basis of which it has obtained an authorisation to operate.

(2) The data reporting services provider shall provide data reporting services with professional care. In particular, the provision of data reporting services with professional care means that the data reporting services provider acts in a qualified, honest and fair manner and in the best interests of the persons to whom it provides its services, in particular, fulfils the duties laid down for the provision of data reporting services by this Act.

(3) The data reporting services provider performs its activity in a sound and proper manner. In order to ensure the sound and prudent performance of the activity, the data reporting services provider shall establish, maintain and apply the governing and supervisory system. The governing and supervisory system must be effective, coherent and proportionate to the nature, scale and complexity of the risks associated with the business model and the activities of the data reporting services provider in its entirety and in parts.

(4) The data reporting services provider shall continuously verify and periodically evaluate the integrity, adequacy and effectiveness of the governing and supervisory system in its entirety and its parts and to negotiate an appropriate remedy without undue delay.

(5) For data reporting services providers, Section 10 and 10a shall apply *mutatis mutandis*.

## Section 77

### **Information duties of the data reporting services provider**

(1) The data reporting services provider shall file to the CNB at latest 4 months after the end of the accounting period and publish on its website its annual report and the consolidated annual report according to the law regulating the accounting, which includes the financial statements or the consolidated financial statements audited by the auditor.

(2) The data reporting services provider shall file to the CNB the information and supporting documents required for the exercise of supervision, in particular on its financial situation, the results of its operations and the nature and extent of the services provided.

(3) The implementing regulation specifies deadlines for sending information and supporting documents and details on their content, form and method of sending.

#### Section 78

##### **Protection of whistleblowers**

The data reporting services provider shall establish, maintain and apply a reporting mechanism similarly according to Section 12i(1).

#### Section 79

##### **Approved publication arrangement**

(1) The governing and supervisory system of an APA consist of

- (a) a system of internal and external communication ensuring, in particular,
  - 1. an effective control of trade reports for completeness,
  - 2. an identification of obvious errors and omissions and
  - 3. a request re-transmission of any such erroneous reports,
- (b) procedures designed to manage conflicts of interest in the conduct of business, including their detection, prevention and reporting, including, when the system is a market operator or an investment firm,
  - 1. procedures to ensure non-discriminatory treatment of the information collected and
  - 2. procedures to separate different business functions of this person,
- (c) the procedures to ensure the continuous operation and to maintain its services on the financial market, in accordance with the subject matter and the business plan, in particular the procedures for maintaining sufficient resources and back-up facilities in order to offer and maintain its services at all times,
- (d) sound security mechanism in place for the processing, transmission and recording of information, including in particular
  - 1. procedures designed to guarantee the security of the means of transfer of information,
  - 2. procedures to minimise the risk of data corruption and unauthorised access, and
  - 3. procedures to prevent leakage of data before publication and
- (e) the procedures to publish the information required under Articles 20 and 21 of the MiFIR
  - 1. as close to real time as is possible on a reasonable commercial basis,
  - 2. free of charge after 15 minutes after it was published according to point 1,
  - 3. in a way which ensures fast access to the information on a non-discriminatory basis, and
  - 4. in a format that facilitates the consolidation of the information with similar data from other sources.

(2) Information referred to in subsection (1)(e) shall include, at least

- (a) the identifier or identifying features of the financial instrument,
- (b) the price at which the transaction was concluded,
- (c) the volume of the transaction,
- (d) the time of the transaction,
- (e) the time the transaction was reported,
- (f) the price notation of the transaction,

- (g) the code
  1. for the trading venue the transaction was executed on,
  2. “SI” where the transaction was executed via a systematic internaliser, or
  3. “OTC” in other cases and
- (h) if applicable, an indicator that the transaction was subject to specific conditions.

## Section 80

### **Consolidated tape provider**

(1) The governing and supervisory system of the CT consist of

- (a) procedures designed to prevent conflicts of interest in the conduct of business, including their detection, prevention and reporting, where such a system is the operator of a regulated market or an approved disclosure system,
  1. procedures to ensure non-discriminatory treatment of the information collected by that provider and
  2. procedures to separate different business functions of this person,
- (b) procedures to ensure the continuous operation and to maintain its services in the financial market, in accordance with the subject matter and business plan, in particular the procedures for maintaining sufficient resources and back-up facilities in order to offer and maintain its services at all times,
- (c) sound security mechanism in place for the processing, transmission and recording of information, including in particular
  1. procedures designed to guarantee the security of the means of transfer of information and
  2. procedures to minimise the risk of data corruption and unauthorised access and
- (d) procedures to collect the information published in accordance with Articles 6, 10, 20 and 21 of the MiFIR and consolidate it into a continuous electronic data stream and make the information available to the public
  1. as close to real time as is possible, on a reasonable commercial basis,
  2. free of charge 15 minutes after this provider has publish it according to subsection (1),
  3. in a way which ensures fast access to the information, on a non-discriminatory basis, and
  4. generally accepted formats that are interoperable and easily accessible and utilisable for market participants.

(2) Information referred to in subsection (1)(d) shall include, at least

- (a) the identifier of the financial instrument,
- (b) the price at which the transaction was concluded,
- (c) the volume of the transaction,
- (d) the time of the transaction,
- (e) the time the transaction was reported,
- (f) the price notation of the transaction,
- (g) the code
  1. for the trading venue the transaction was executed on,
  2. “SI” where the transaction was executed via a systematic internaliser, or
  3. “OTC” in other cases,
- (h) if applicable, an indicator that the transaction was subject to specific conditions,(i) if the duty to publish the information referred to Articles 6 and 20 of the MiFIR
  1. the fact that a computer algorithm within the investment firm was responsible for the investment decision and the execution of the transaction, and
  2. if the duty to publish the information referred to in Article 3(1) of the MiFIR was waived in accordance with Article 4(1)(a) or (b) of the MiFIR, a flag to indicate which of those waivers the transaction was subject to.

(3) CTP shall consolidate the information on the transactions referred to in subsection (1)(d) from all trading venues and from all APAs operated in the EU member states.

## Section 81

### **Approved reporting mechanism**

The governing and supervisory system of an ARM consist of

- (a) a system of internal and external communication that can, in particular,
  - 1. effectively check transaction reports for completeness,
  - 2. identify omissions and obvious errors caused by the EU investment firm,
  - 3. to communicate details of the error or omission to the investment firm, if such error or omission occurs,
  - 4. request re-transmission of any such erroneous reports and
  - 5. identify the errors and missing data caused by this approved mechanism for reporting transactions and correct it and transmit correct and complete transaction reports,
- (b) procedures designed to prevent conflicts of interest in the conduct of business, including their detection, prevention and reporting, where such a mechanism is a market operator or an investment firm,
  - 1. procedures to ensure non-discriminatory treatment of the information collected by the mechanism, and
  - 2. procedures to separate different business functions,
- (c) procedures to ensure the continuous operation and to maintain its services on the financial market, in accordance with the subject matter and the business plan, in particular the procedures for maintaining sufficient resources and back-up facilities in order to offer and maintain its services at all times,
- (d) sound security mechanism in place for the processing, transmission and recording of information, including in particular
  - 1. procedures designed to guarantee the security of the means of transfer of information,
  - 2. procedures to minimise the risk of data corruption and unauthorised access and
  - 3. procedures to prevent information leakage and
- (e) procedures to report the information required under Article 26 of the MiFIR as quickly as possible, and no later than the close of the working day following the day upon which the transaction took place.

## **PART SEVEN**

### **SETTLEMENT SYSTEM WITH SETTLEMENT FINALITY**

#### TITLE I

#### GENERAL PROVISIONS

## Section 82

### **Settlement system with settlement finality**

(1) The “settlement system with settlement finality” is a system,

- (a) which has at least 3 participants referred to in Section 84(1)(a) to (g),
- (b) which performs settlement [Section 83(a)] on the basis of the rules laid down,
- (c) whose participants, at least one of which has its registered office or corporate office in the Czech Republic, have agreed that the legal relationships regarding conduct of settlement between them are governed by Czech law, and
- (d) of which the existence the CNB has reported to the ESMA according to Section 90g(1) or (2).

(2) A foreign settlement system with settlement finality is a settlement system of which the existence has been notified by the competent authority of another member state to the ESMA according to the EU rulebook on settlement finality in securities settlement systems<sup>30</sup>.



(3) A settlement system with settlement finality and participation in this system are established by a contract.

### Section 83

#### **Definitions**

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

- (a) “settlement” means
  1. a settlement of mutual claims arising from transactions in financial instruments, or
  2. a fulfilment of mutual debts from transactions in financial instruments through a transfer of financial instruments or cash funds ,
- (b) “settlement order” means an instruction of a participant of a settlement system with settlement finality or a participant operator of a system interconnected according to Section 89 or an operator of a system interconnected according to Section 89, on the basis of which the settlement shall be made in accordance with the rules of the settlement system with settlement finality (hereinafter the “system rules”).
- (c) “central counterparty” means a person who, during the settlement interpose between the participants in the settlement system with settlement finality referred to in Section 84(1)(a) to (g) or (m) as their exclusive counterparty,
- (d) “settlement agent” means a person who keeps an account on which the settlement is conducted for the participants of the settlement system with settlement finality referred to in Section 84(1)(a) to (g), (i) or (m),
- (e) “clearing house” means a person who conduct the settlement by offsetting of mutual claims of the participants in the settlement system with settlement finality referred to in Section 84(1)(a) to (g), (i), (j) or (m),
- (f) “operational day” means a periodic period of time set by the system rules, during which the settlement system with settlement finality accepts and executes settlement orders and other operations related to that settlement.

### *Section 83a*

*repealed*

### Section 84

#### **Participant of the settlement system with settlement finality**

(1) A participant of the settlement system with settlement finality may only be

- (a) a bank,
- (b) a savings and credit co-operative,
- (c) an investment firm,
- (d) a foreign person whose objects of business corresponds to the activity of any one of the persons referred to in letters (a) to (c),
- (e) a legal person governed by the public law or a legal person, whose guarantor for all its debts is a public law person,
- (f) the CNB, a foreign central bank or the European Central Bank,
- (g) a legal person with a special status which is excluded from the scope of the EU regulation governing the taking-up and pursuit of the business of credit institutions<sup>31)</sup>,
- (h) an operator of a settlement system with settlement finality (Section 90),
- (i) a central counterparty,
- (j) a settlement agent,
- (k) a clearing house,

- (l) a person who performs a similar activity as one of the persons referred to in letters (h) to (k) in a payment system with payment finality, in a foreign settlement system with settlement finality or in a foreign payment system with settlement finality, or
- (m) a person other than persons referred to in letters (a) to (l) to whom it is appropriate with regard to the degree of systemic risk arising from the scope of his activities.

(2) The activities of a central counterparty, a settlement agent or a clearing house may also be exercised by several participants in the settlement system with settlement finality.

## TITLE II

### OPERATION OF A SETTLEMENT SYSTEM WITH SETTLEMENT FINALITY

#### **System rules**

##### Section 85

(1) The operator of a settlement system with settlement finality shall determine the rules of the system.

(2) The rules of the system shall at least regulate

- (a) a business name or a name of an entity, a registered office, and an identification number, if it has been allocated, of an operator of a settlement system with the settlement finality,
- (b) the terms and conditions of participation in a settlement system with settlement finality, which must be transparent and must contain objective criteria for access to a settlement system with settlement finality; persons established in another EU member state shall not be disadvantaged for reasons other than economic reasons,
- (c) the rights and duties of participants in a settlement system with settlement finality resulting from their participation in the settlement system,
- (d) the manner and conditions of guaranteeing of debts resulting from participation in the settlement system with settlement finality,
- (e) the manner and conditions for settlement, including the laying down the procedure for correcting errors occurring during a settlement,
- (f) the requirements of the settlement order, the manner and conditions for its entering into the settlement system with settlement finality,
- (g) data that a participant of a settlement system with settlement finality provides to an operator of a settlement system with settlement finality in order to fulfil its duties, and the manner how to provide such data,
- (h) the measures that the operator of settlement system with settlement finality may apply to a participant in a settlement system with settlement finality and the procedure for their application,
- (i) the timetable for the implementation of a settlement, including the timetable for the different phases in which the settlement takes place,
- (j) definition of the operational day,
- (k) the moment at which a settlement order is considered to have been received by a settlement system with settlement finality,
- (l) the moment at which a settlement order entered into a settlement system with settlement finality is considered unilaterally irrevocable and the technical conditions for securing its irrevocability,
- (m) the financial instruments and the currency in which a settlement is executed, and
- (n) rules on access to risks, including at least
  1. risks that are faced or may be faced by the settlement system with settlement finality , including systemic risk, operational risk, liquidity risk and credit risk,
  2. procedures for distinguishing, evaluation, measurement, monitoring and reporting of risks,
  3. procedures for the adoption of risk mitigation measures, including setting appropriate conditions for participation in a settlement system with settlement finality.

## Section 86

(1) The operator and other participants in a settlement system with settlement finality shall fulfil the system rules.

(2) The system rules in the current version shall be published on the operator's website and shall be made available to the public at the registered office of the operator of a settlement system with settlement finality during its office hours. If the operator of a settlement system with settlement finality establishes an establishment, the system rules shall also be made available to the public in that establishment.

## Section 87

### **Change of system rules**

(1) Changes to the system rules shall take effect at the moment of its publication unless an operator of a settlement system with settlement finality sets a later effective date. Changes to the system rules must not be published until the CNB has given its consent to this change.

(2) Only an operator of a settlement system with settlement finality is the participant in the procedure for granting the consent to change of the system rules. If the CNB fails to take a decision on the application for granting the consent to change of the system rules within one month from the date the application is received, the consent shall be granted.

## *Section 87a*

*repealed*

## Section 88

### **Irrevocability of the settlement order**

(1) A settlement order cannot be unilaterally withdrawn from the moment specified in the system rules.

(2) A decision on insolvency or a decision or other intervention by a public authority to stop or restrict a settlement, to exclude or restrict the use of financial instruments or cash funds in the account, in which the settlement is conducted or to exclude or restrict the exercise of the right to satisfaction from the collateral shall not affect

- (a) the validity, effectiveness or enforceability of a settlement order if such an order has been accepted by a settlement system with settlement finality prior to the issuance of this decision or prior to the execution of such an intervention,
- (b) the possibility to use financial instruments or cash funds, in an account, in which the settlement is conducted, of the participant of a settlement system with settlement finality, to settle his debts arising from the settlement system with settlement finality or in a system interconnected under Section 89 if financial instruments or cash funds are thus used during the operational day when the decision was made or the intervention was made, and
- (c) the validity, effectiveness or enforceability of the right to satisfaction from the collateral provided to a participant or operator of a settlement system with settlement finality or provided to a system interconnected according to Section 89.

(3) The exclusion of the effects of a decision on insolvency or a decision or other intervention by a public authority according to subsection (2)(a) shall occur even if a settlement order has been accepted by a

settlement system with settlement finality following the issuance of this decision or after the intervention has taken place, if

- (a) the settlement is executed during the operational day on which the decision was issued or the intervention has taken place, and
- (b) the issuance of this decision or the implementation of such intervention was not reported to an operator of a settlement system with settlement finality, at the time when the settlement order became irrevocable according to subsection (1), and such operator was not aware, nor should have been aware of such decision or such implementation at the time when the settlement order became irrevocable according to subsection (1); the fact that the decision on insolvency was published in the insolvency register does not of itself mean that the operator of the settlement system with settlement finality was aware or should have been aware of such decision.

(4) A decision on insolvency or a decision or other intervention by a public authority according to subsection (2) shall not have retroactive effects on the rights and duties that have arisen in the settlement system with settlement finality or in a system interconnected according to Section 89 prior to the issuance of this decision or implementation of this intervention.

## Section 89

### **Interconnection of settlement systems (netting)**

(1) An operator of a settlement system with settlement finality concludes a contract on the interconnection of systems with another operator of settlement system with settlement finality, a settlement finality payment system, a foreign settlement system with settlement finality or a foreign payment system with settlement finality permitting mutual execution of the settlement orders, a new settlement system with settlement finality shall not be established.

(2) Where possible, an operator of a settlement system with settlement finality shall ensure that the system rules and the rules of the interconnected system according to subsection (1) are coordinated in case of the moment at which the settlement order is considered unilaterally irrevocable and the moment at which such an order is considered to be accepted by the system. Unless the parties agree otherwise in the contract under subsection (1), the rules of the interconnected systems shall apply independently from each other in respect of these moments.

(3) If an operator of settlement system with settlement finality provides a collateral to the operator of the system interconnected according to subsection (1), the insolvency rights of the collateral provider are not affected by a decision on insolvency or a decision or other intervention by a public authority according to Section 88(2).

## TITLE III

### OPERATOR OF SETTLEMENT SYSTEM WITH SETTLEMENT FINALITY

## Section 90

(1) An operator of a settlement system with settlement finality is a legal entity authorised to operate a settlement system with settlement finality on the basis of an authorisation to operate a settlement system with settlement finality granted by the CNB.

(2) An operator of a settlement system with settlement finality may also provide for its participants the investment service referred to in Section 4(3)(a), if it has the authorisation to operate a settlement system with settlement finality.

(3) An operator of a settlement system with settlement finality is obliged to operate a settlement system with settlement finality with the professional care. The operation of a settlement system with settlement finality with the professional care in particular means that the operator of this system acts in a qualified, honest and fair manner and in the best interests of the participants in the settlement system operated by it, in particular fulfils the duties for the operation of the settlement system with settlement finality in accordance with this law and proceeds in accordance with the system rules.

(4) Cash funds or financial instruments that have been left in trust of the operator of a settlement system with settlement finality or provided as a collateral of a debt arising out of a settlement of transaction in financial instruments to such operator of such system, shall not be included in the assets of an operator of a settlement system. An operator of a settlement system enters in his books separately from its own assets, the assets of third parties that are under its control.

### **Authorisation to operate a settlement system with settlement finality**

#### Section 90a

(1) The CNB shall grant an authorisation to operate a settlement system with settlement finality to the applicant,

- (a) which is a joint stock company or a limited liability company,
- (b) which has its registered office and its corporate office in the territory of the Czech Republic,
- (c) which has good repute,
- (d) which has an initial capital of at least EUR 730 000,
- (e) whose initial capital is of transparent and non-discriminatory origin,
- (f) which submitted a business plan based on real economic calculations,
- (g) whose material, technical, personnel and organisational prerequisites are appropriate for the sound and prudent operation of the settlement system with settlement finality,
- (h) whose business, consisting of a business other than the operation of a settlement system with settlement finality, does not jeopardize its financial stability nor can it prevent the effective exercise of supervision over the activities of the operator of settlement system with settlement finality,
- (i) in which the qualifying holding is suitable for the sound and prudent management of the operator of a settlement system with the settlement finality,
- (j) whose close links with another person do not prevent the effective exercise of supervision over the activities of the operator of settlement system with settlement finality; where close links exist with a person governed by the law of a state which is not EU member state, such law or order of procedure may not impede the effective exercise of supervision over the activities of the operator of a settlement system with the settlement finality,
- (k) whose members of the management body have good repute,
- (l) where the members of its management body who effectively manage the activity of the settlement system with settlement finality have professional knowledge and skills and have sufficient experience with regard to the sound and prudent operation of the settlement system with settlement finality, and
- (m) which has submitted system rules that are appropriate for the sound and prudent operation of a settlement system with settlement finality and systemic risk.

(2) The CNB shall grant an authorisation to operate a settlement system with settlement finality also to an applicant who

- (a) is a legal person,
- (b) has its registered office and corporate office in another EU member state,
- (c) has good repute,
- (d) is authorised to operate a system similar to a settlement system with settlement finality, in which the legal relationship between the system's participants in the settlement process is governed by the law of another EU member state, and

(e) submitted system rules that are appropriate for the sound and prudent operation of the settlement system with settlement finality and systemic risk.

(3) An application for an authorisation to operate a settlement system with settlement finality may be submitted only electronically.

(4) The application referred to in subsection (3) shall contain, in addition to the items stipulated by the Administrative Procedure Code, also data and documents proving the fulfilment of the conditions according to subsection (1) or (2).

(5) The details of the requisites of the application, proving compliance with the conditions according to subsection (1) or (2), its format and other technical specifications shall be specified by an implementing regulation.

#### Section 90b

(1) The CNB shall issue a decision on the authorisation to operate a settlement system with settlement finality within 6 months of the submission of the application.

(2) The CNB shall approve the rules of the system in the decision to grant an authorisation to operate a settlement system with finality of settlement.

(3) The CNB shall in the decision to grant an authorisation to operate a settlement system with settlement finality determine the conditions that the operator of a settlement system must be met prior to the commencement of the activity or to be met on an ongoing basis.

(4) The operator of a settlement system with irrevocable settlement notifies the CNB, without undue delay, upon any significant change in the data specified in the application for authorisation to operate the settlement system with settlement finality or in its annexes, on the basis of which it obtained authorisation to operate.

### TITLE IV

#### INFORMATION DUTIES OF THE OPERATOR AND THE PARTICIPANT OF THE SETTLEMENT SYSTEM WITH SETTLEMENT FINALITY

#### Section 90c

(1) The operator of a settlement system with settlement finality shall report to the CNB without undue delay of

(a) the business name or name and surname of the settlement system with settlement finality, their registered office or place of residence, their identification number if assigned and, in the case of natural persons, the date of their birth and their birth registration number and on the change of such data, and

(b) a proposal for a decision to cancel, with or without liquidation, or a change in its object of business; the operator shall at the same time inform the competent authority of the operator of a settlement system with the settlement finality of such a decision.

(2) The participant of the settlement system with settlement finality shall without undue delay inform the operator of settlement system with settlement finality of the data within the scope of subsection (1)(a).

(3) The operator of the settlement system with settlement finality shall without delay inform the Participants of the settlement system with settlement finality and the system operator connected according to Section 89 of the notification according to Section 90g(4).

(4) The operator of a settlement system with settlement finality shall report to the CNB the information and background necessary for the supervision of its financial situation, the results of its management and the fulfilment of the conditions of performance of its activities. Deadlines for sending information and supporting documents, details of their content, form and method of sending shall be specified in an implementing regulation.

(5) An operator of a settlement system with settlement finality established in another EU member state is obliged to provide the CNB with the required information and necessary explanations for the purposes of assessing the fulfilment of the conditions for performing its activities.

#### Section 90d

A participant of settlement system with settlement finality upon request shall inform the person who has a legal interest therein of the settlement system with the irrevocability of the settlement in which he participates and of his rules.

#### Section 90e

A participant of a foreign settlement system with settlement finality, having its registered office in the Czech Republic,

- (a) upon request, informs the person who has demonstrated legal interest in the system and its rules, and
- (b) without undue delay, informs the CNB of its participation in this system, of an EU member state which has notified ESMA of the existence of such a system, of its registered office and of the change of such facts.

### TITLE V

#### REPORTING DUTIES OF THE PUBLIC AUTHORITIES

#### Section 90f

##### **Reporting duty of the court and other public authority**

The issuance of a decision on insolvency or the issuance of a decision or other interference by a public authority according to Section 88(2) to a participant of the settlement system with settlement finality shall report to the CNB without undue delay of the court or other public authority that has intervened. The court or other public authority shall also report to the CNB if it has issued such decisions or made similar interventions against a participant of a foreign settlement system with settlement finality which has its registered office in the Czech Republic.

#### Section 90g

##### **The notification duties of the CNB**

(1) The CNB shall notify without undue delay the ESMA of the existence of a settlement system with settlement finality, the operator of which has been authorised to operate a settlement system with settlement finality. In the notification, the CNB shall specify the operator of settlement system with settlement finality. In the event of changes in this notice, the CNB shall without undue delay inform the ESMA. If the authorisation to operate a settlement system with settlement finality has been withdrawn, the CNB shall notify ESMA of the termination of this settlement system with settlement finality without undue delay after the settlement has been completed on the basis of orders received prior to the date of withdrawal of the authorisation.

(2) The CNB may notify ESMA of the existence of a securities settlement system operating under the Act governing the status and scope of the CNB if it meets the conditions set out in Section 82(1)(a) to (c). In the announcement, the CNB states that it is the operator of this system. For this system and for the CNB in the performance of its operator's activities, the second sentence of Section 87(1) and 90a, 90b, 90c(1) and 4 shall not apply. The CNB shall withdraw the notification under the first sentence without undue delay if the system no longer complies with the conditions set out in Section 82(1)(a), (b) or (c).

(3) If the CNB receives a notification under Section 90f concerning a participant of a foreign settlement system with settlement finality which has its registered office in the Czech Republic, it shall immediately notify ESMA, the ESRB<sup>36)</sup> To the competent authority of an EU member state which has notified ESMA of this system to the ESMA.

(4) If the CNB receives notification according to Section 90f or similar notification from an authority of an EU member state regarding a participant in a settlement system with settlement finality, it shall immediately notify the operator of such system.

## **PART EIGHT**

### **REGISTER OF FINANCIAL INSTRUMENTS**

#### **TITLE I**

#### **INTRODUCTORY PROVISIONS**

##### **Chapter 1**

##### **Introductory provision**

##### **Section 91**

Book-entry securities, other than book-entry units in collective investment undertakings maintained in a separate register of financial instruments and government bonds under the Act governing the budgetary rules, may be maintained under Czech law only in the central register of book-entry securities and in the registry linked to the central register of book-entry securities.

##### **Chapter 2**

##### **Types of registers of financial instruments**

##### **Section 92**

##### **Central registry of book-entry securities**

(1) The Central Register of book-entry securities shall be a register of book-entry securities, which shall be maintained by the central securities depository or the foreign central securities depository under Czech law.

(2) Registers linked to the central registry of book-entry securities may lead

- (a) an investment firm which has the investment service referred to in the authorisation for safekeeping and management of financial instruments, including related services,
- (b) a person authorised under the law governing management companies and investment funds to execute the safekeeping of securities or the maintenance of register of the book-entry securities of the investment fund in case of the registration of investment certificates or investment or investment fund shares issued by the investment fund,



- (c) the CNB,
- (d) a foreign person whose activities correspond to that of the persons referred to in letters (a), (b) or (f),
- (e) a central securities depository, a foreign central securities depository or a foreign central securities depository that has been granted an authorisation to operate or has been recognized under the CSDR<sup>51)</sup> or a foreign person authorised to maintenance a register of financial instruments.
- (f) a bank that has the investment service safekeeping and administration of financial instruments for the client, including related services specified in the banking license.

(3) The central register of book-entry securities shall also be a register of book-entry securities maintained by the CNB in accordance with the Act governing the activities of the CNB. The CNB publishes the rules for maintenance such registers and their changes on their website.

(4) The central register of the book-entry securities shall also be the register of securities immobilised under Section 93a if such a register is maintained under Czech law by a central securities depository, a foreign central securities depository or the CNB.

### Section 93

#### **Separate register of financial instruments**

(1) Within a separate register of financial instruments may be maintained

- (a) book-entry units in collective investment undertakings,
- (b) documentary financial instruments in custody or immobilised securities,
- (c) foreign financial instruments which are in the hands of an investment firm for the purpose of providing an investment service,
- (d) financial instruments other than those referred to in letters (a) to (c), the nature of which allows them.

(2) A separate register of financial instruments may lead

- (a) an investment firm which has the said investment service in custody and management of financial instruments, including related services,
- (b) a person authorised under the law governing management companies and investment funds to execute the safekeeping of securities or the maintenance of register of the book-entry securities of the investment fund in the case of the registration of investment certificates or investment or investment fund shares issued by the investment fund,
- (c) an operator of a settlement system, if it maintains this register for the financial instruments referred to in subsection (1)(b) to (d), for which it is entitled to settle debts and debts from trades,
- (d) a bank which has a banking authorisation in the investment service custody and management of financial instruments, including related services,
- (e) a foreign person whose activity corresponds to the activity of one of the persons mentioned in letters a), b) and d) and which is authorised to provide investment services in the Czech Republic.

(3) A register linked to the separate register may lead

- (a) an investment firm which has the said investment service in custody and management of financial instruments, including related services,
- (b) the person authorised under the law governing management companies and investment funds to execute the safekeeping of securities or the maintenance of register of the book-entry securities of the investment fund in case of the registration of investment certificates or investment or investment fund shares issued by the investment fund,
- (c) the operator of a settlement system, if it maintains this register for the financial instruments referred to in subsection (1)(b) to (d), for which it is entitled to settle receivables and payables from transactions,
- (d) a bank which has a banking authorisation in the investment service custody and management of financial instruments, including related services,

- (e) a foreign person whose activities correspond to that of one of the persons referred to in letters (a), (b) and (d),
- (f) a central securities depository,
- (g) a foreign central securities depository, a foreign central securities depository which has been granted an authorisation to operate or has been recognized under the CSDR<sup>51)</sup> or a foreign person authorised to maintain a register of financial instruments.

(4) The person referred to in subsection (2) or subsection (3)(a) to (f) maintain a separate register of financial instruments or a register linked to the separate register of financial instruments in the manner prescribed by the implementing regulation. The implementing regulation further specifies requirements for organisational and technical provision of the management of such a register and the requisite of the extract from the register.

### Section 93a

#### **Special provisions on immobilised securities**

(1) If the issuer decides to immobilise under the Civil Code or the CSDR<sup>51)</sup> securities already issued, it proceeds adequately according to the laws governing the conversion of the certificated securities on book-entry securities. When depositing securities into mass custody, the issuer may also decide to replace all certificated securities returned to it or declared void by a bulk certificate or multiple bulk certificates.

(2) If the issue conditions or the CSDR<sup>51)</sup>, the issuer of the immovable security may decide to exempt all immobilised securities from safekeeping. If, at the same time, they do not decide on their assignment to the safe custody of another hideout under subsection (3) or to change their form, it shall proceed appropriately in accordance with the law governing the transformation of the book-entered security into a documentary document. The heir shall issue immobilised securities to the issuer.

(3) If the issuer decides, in accordance with subsection (2), to exempt all immobilised securities from safekeeping and to entrust them to another custodian, the original receiver is obliged to pass on to the new custodian all the supporting documents and data necessary for maintenance a separate register of immobilised securities, not later than 3 months from the date on which such a decision was notified to him in writing or on any later date set in the issuer's decision, but not before the custody agreement with the new custodian has been concluded.

(4) All new rights and duties arising from contracts related to the custody of these immovable securities concluded between the former custodian and their owners and from the contracts with the persons maintaining such immovable securities in the register linked to a separate register, to the extent that they are maintained as immobilised securities.

(5) A joint stock company whose articles of association allow it may conclude a contract for the custody of immovable shares issued by it only with the person who maintains the central register of the book-entry securities or with a foreign central securities depository which has been granted an authorisation or has been recognized under the CSDR<sup>51)</sup>, an investment firm authorised to provide investment services for safekeeping and management of financial instruments or a foreign entity with a similar subject of activity authorised to provide services in the Czech Republic. A stock company whose shares are admitted to trading on a regulated market or a MTF may conclude a contract for the safekeeping of immovable shares issued by it only with the person who maintains the central register of the book-entry securities or with the foreign central securities depository which has obtained the authorisation to operate, Was recognized in accordance with the CSDR<sup>51)</sup>.

(6) Shareholders may not demand the issuance of immobilised shares to owners from mass custody. The exclusion of immobilised shares from the holders of collective custody is permissible only if they change their form or form at the same time, or if they are simultaneously entrusted to another storekeeper by the procedure in accordance with this provision.

(7) Regarding the register of immobilised securities, the provisions governing the register of issues of book-entry securities shall be applied *mutatis mutandis*.

### **Chapter 3**

#### **Principles of maintenance of register of financial instruments**

##### **Section 94**

#### **Types of accounts**

(1) The asset account must include the data about the person for whom it is maintained and the natural person also the birth number. The asset account records at least financial instruments, separately transferable rights associated with financial instruments, security interest on financial instruments, and suspension of the holder's right to dispose of book-entry financial instruments. In addition, the data on the person entitled to exercise these rights and the data on the person who is the security interest creditor shall be recorded. The natural person authorised to exercise these rights and the natural person who is the security interest creditor is also the birth number. If a natural person has not been assigned a birth number, the date of birth is recorded. Securities also bear limitations on the transferability of the security provided by the issuer. The person who maintains the central register of the book-entry securities, with the central register and the implementing regulation [Section 93(4)], determines in detail on a separate register which data are recorded on individual types of asset accounts. The asset account is established by a contract between the person for whom this account is maintained and the person authorised to set up the account.

(2) A person who maintains a central register of book-entry securities maintains this register on the accounts of the owners or accounts of the client. If the person who maintains the central register of the book-entry securities maintains the account of the owner, he may not transfer the security subject to security interest registered in that account to the new owner without the security interest creditor's consent.

(3) A person who maintains a register linked to the central register of the book-entry securities shall maintain this register on the accounts of the owners. This person may not transfer the security subject to security interest registered in this account to the new owner without the security interest creditor's consent.

(4) A person who maintains a separate register of financial instruments maintains this register on the accounts of the owners or accounts of the clients. If this person is the account of the owner, he may not transfer the pledged security registered in that account to the new owner without the security interest creditor's consent.

(5) A person who maintains a register linked to the separate register of financial instruments maintains this register on the accounts of the owners or the accounts of the clients. Only the person referred to in Section 93(3)(e) or (g), which maintains a register linked to the separate register abroad in accordance with the foreign legal system. If a person who maintains a register linked to the separate register of financial instruments, the account of the owner, cannot transfer the pledged security registered in this account to the new owner without the security interest creditor's consent.

(6) The central registration of book-entry securities and a separate register of book-entry units in collective investment undertakings are also maintained in the register of issue. The register of issue shall record the issuer's personal data and the particulars of the securities referred to in subsection (1). Register of issue is based on a contract with the issuer. The CNB shall determine the method of maintenance the issue register in its rules published according to Section 92(3).

(7) Provisions of Section 94a(2) and (3) shall apply *mutatis mutandis* to a person who maintains a separate register of book-entry units in collective investment undertakings and a person who maintains a

register linked to the separate register of book-entry units in collective investment undertakings; the extent of the information communicated shall be determined by an implementing regulation according to Section 93(4).

#### Section 94a

##### **Register of issues of book-entry securities**

(1) A person who maintains a central register of book-entry securities maintains a register of issues of book-entry securities under a contract with the issuer.

(2) A person who maintains a central register of book-entry securities shall transfer to the issuer an extract from the register of issue upon issue or cancellation of the issue of the book-entry security or at the issuer's request; an extract from the register of issue shall contain information about the account holder on which the book-entry security is registered, the number of securities, the data on the trustee or other person entitled to exercise the rights attaching to those securities, and other data specified by the person maintaining the central register of the book-entry securities. The person who maintains the central register of book-entry securities shall also include in the extract the information he has received from the account holder in accordance with subsection (4).

(3) The central securities depository or the foreign central securities depository shall provide the CNB, at its request, with an extract from the register of issue of the bank's shares. The central securities depository, on the basis of this request, will invite through its participants all the owners of the client account to provide data on the owners of the shares registered in the client 's account and include them in the extract of the register of issue.

(4) For the purpose of extract from the register of issue, the account holder shall be obliged to communicate to the person holding the register of the book-entry securities the data on the holder of the owner's account and other data determined by the person maintaining the central register of the book-entry securities.

#### Section 95

##### **Entry into a register of financial instruments**

(1) The decisive data for the exercise of the rights connected with the book-entry financial instrument are the data recorded on the account of the owner on the closing date determined by the central securities depository or foreign central securities depository, the implementing regulation in a separate register [Section 93(4)] Papers by the CNB [Section 92(3)]. This is without prejudice to Section 99(4).

(2) The entry into the register of financial instruments shall be made on the basis of an order of the authorised person. The entry shall be made immediately upon receipt of the order unless the authorised person specifies the later date of the entry.

(3) If a person issues an order for an entry into the register of financial instruments through a participant, the participant of the person who maintains the register of financial instruments shall verify the person's right to submit the order. In other cases, the person who maintains the register is verifying the person's right to file an order for the entry into the register of financial instruments.

#### Section 95a

##### **Orders of participants**

(1) The participant of a person who maintains a central register of book-entry securities shall give this person an order to

- (a) the establishment or cancellation of an asset account,
- (b) making changes to the asset account,
- (c) an execution of the service.

(2) Without the order of the participant, the person maintaining the central register of the book-entry securities shall make the entry into a register of book-entry securities only

- (a) the issuer who has concluded a contract with the person who maintains the central register of the book-entry asset according to Section 94a(1), if it is connected with the entry into the register of issue, or
- (b) persons under Section 115(1), if authorised by another law.

## Section 96

### **Effects of the transfer of a financial instrument**

(1) Where the book-entry financial instrument is transferred to a new owner, ownership is transferred at the time of entry into the account of the client. The client account holder is required to immediately enter this change on the owner's account, but no later than the end of the day; the change shall be entered at the time of entry to the client account.

(2) If the book-entry financial instrument is converted and the change is not recorded on the client's account, the ownership transfer shall take place at the time of entry on the account of the owner; the change shall be entered without delay, but no later than the end of the day.

(3) Unless otherwise stipulated in any other law, the person to whom the book-entry security is transferred shall also be the owner of that security even if the transferor did not have the right to transfer the book-entry security; this does not apply if the person to whom the book-entry security is transferred knew or ought to have known that the transferor did not have this right at the time of the transfer. In doubt, good faith is assumed.

(4) An investment firm which has secured the transfer of a financial instrument shall immediately issue an order to enter the change resulting from the transfer to the relevant register.

(5) When a transfer of a financial instrument on a regulated market or a MTF occurs, the order for the entry of the change resulting from the transfer to the relevant register gives the market operator, the operator of MTF or the operator of a settlement system.

## Section 97

### **Suspension of the owner's right to dispose of the financial instrument**

(1) The order to enter the suspension of the owner's right to dispose of the financial instrument (hereinafter referred to as the "suspension of disposal of a financial instrument") into the register of financial instruments is given by

- (a) a market operator, a MTF operator or an operator of a settlement system, if the book-entry financial instrument is to be transferred,
- (b) the competent court, executor or administrative authority, if necessary in connection with the issue of an interim measure, an enforcement order or other judicial or administrative proceedings, or where otherwise provided by law,
- (c) the person who maintains the central register of the book-entry securities, if necessary in connection with the settlement, or other services provided,
- (d) depository of an investment fund or foreign investment fund,
- (e) a third party, if he orders the benefit to himself and has the owner's consent.

(2) The order to enter the suspension of disposal of financial instruments management shall indicate the period for which the financial instrument is suspended.

(3) Suspension of disposal of a financial instrument shall expire

- (a) upon expiry of the period for which the disposal of the investment facility has been suspended,
- (b) at the direction of the person who has given the order to enter the suspension of the disposal of the financial instrument, or
- (c) at the request of a person demonstrating his or her right to withdraw the entry of the suspension of the disposal of the financial instrument.

(4) An administrative authority or a court authorised to give an order to enter a suspension of disposal of a financial instrument according to subsection (1)(b) may also order the revocation of the disposal of the financial instrument to which the other person has ordered.

(5) During the period of suspension of the financial instrument, it is not possible to enter into the register of financial instruments the change of the owner by transferring this financial instrument or it is not possible to register the contractual lien on this financial instrument. During the period of suspension of the financial instrument, a written financial instrument maintained in a separate register cannot be released from safekeeping.

#### Section 98

#### **Correction of errors in a register of financial instruments**

(1) A person who maintains a register of financial instruments shall correct the error in his register

- (a) on the basis of an objection by the account holder, the issuer, the participant of the person who maintains the central register of the book-entry securities, the market operator, the MTF operator or the operator of a settlement system that it recognizes as legitimate,
- (b) on the basis of a final decision of a court or other authority,
- (c) on its own initiative, or
- (d) on the basis of a correction made in the register of financial instruments conducted by another person, if the person has been requested to correct the error and the claim is recognized as justified.

(2) A person who maintains a register of financial instruments shall correct the error in his register as of the date on which the error occurred in the register, unless the law or the decision of the court or other body implies otherwise. If this date cannot be determined, an error correction is made on the date the error was detected.

(3) A person who maintains a register of financial instruments shall also maintain a register of corrected errors.

(4) The person who maintains a register of the financial instruments shall send to the person on whose account the error has been corrected an extract from his account, justifying the change made, immediately after the error has been corrected.

(5) The persons who maintain a register of the financial instruments shall cooperate in order to eliminate any errors in the data contained in the register of financial instruments in the shortest possible time.

#### Section 99

#### **Extract from the register of financial instruments**

(1) A person who maintains a register of financial instruments shall issue to the account holder maintained in this register or to an issuer of a financial instrument maintained in this register an extract from the register. A person who maintains a central register of book-entry securities issues an extract to the account holder through its participant.

(2) A person who maintains a register of book-entry financial instruments shall issue to the pledging creditor at his request an extract from the register. In this extract, the book-entry financial instruments pledged in favour of the lien creditor maintained on the owner's account and any other lien on the financial instrument, including the rank of the lien, shall be stated. If an extract is issued by a participant of a person who maintains a central register of book-entry securities, the participant is at the same time a debtor or pledgee of the book-entry financial instruments in the extract and these pledged financial instruments are recorded on his account maintained by the person maintaining the central register of book-entry securities. The pledge creditor may require that person to confirm the correctness of the extract and that person is obliged to issue it without undue delay.

(3) An extract from the register of financial instruments proves the facts recorded in this register at the closing date determined by the central securities depository or the foreign central securities depository, the implementing regulation in the separate register [Section 93(4)] or the rules for maintaining the securities register by the CNB [Section 92(3)] to which it was issued and is effective against all persons unless proven otherwise.

(4) If the data on the extract from the register of issue differs from the data on the extract from the asset account, the data on the extract from the register of issue are considered decisive data.

#### Section 99a

(1) A person who maintains a register of financial instruments shall store this register and all documents relating to the data entered in this register for a period of 10 years from the end of the calendar year in which the data was entered in this register.

(2) A person who maintains a register of financial instruments shall be entitled to provide data from such and documents held according to subsection (1) without the consent of the person for whom the asset account was established only if this law or other law so provides, and In cases where he or she is making a complaint.

## TITLE II

### CENTRAL SECURITIES DEPOSITORY AND FOREIGN CENTRAL SECURITIES DEPOSITORY

#### **General provisions**

#### Section 100

(1) The central securities depository is a legal entity which

- (a) has its registered office in the Czech Republic, and
- (b) has obtained an authorisation under the CSDR<sup>51)</sup>.

(2) The foreign central securities depository is a legal entity which

- (a) does not have its registered office in the Czech Republic,
- (b) has obtained an authorisation or recognition under the CSDR<sup>51)</sup>, and
- (c) is authorised to provide services under the CSDR<sup>51)</sup> in the Czech Republic.

(3) The central securities depository's business name must bear the designation “*centrální depozitář cenných papírů*” (in English: “central securities depository”). Whoever is not a central securities depository or a foreign central securities depository shall not use the designation “*centrální depozitář cenných papírů*” (in English: “central securities depository”).

(4) The central securities depository and the foreign central securities depository shall determine the rules for the provision of information according to Section 115. These rules shall be binding on the participants of the central securities depository and the foreign central securities depository, the issuers of the book-entry financial instruments maintained in the central register and the owners or other persons authorised in relation to the financial instruments registered according to Section 202a and persons who maintain a register linked to the central registry of book-entry securities. When providing information according to Section 115(3), these rules are also binding on persons who maintain a separate register of financial instruments.

#### *Sections 101 to 114*

*repealed*

### TITLE III

#### PROVIDING DATA BY A PERSON MAINTAINING A REGISTER OF FINANCIAL INSTRUMENTS

##### Section 115

(1) A person who maintains a central register of book-entry securities and a person who maintains a separate register of financial instruments shall provide the data from the register and documents which they are obliged to keep according to Section 99a(1) to

- (a) a court for the purposes of judicial proceedings,
- (b) an executor for the purposes of execution proceedings, the participant of which is the owner of a financial instrument,
- (c) investigative, prosecuting and adjudicating bodies for the purposes of criminal proceedings,
- (d) a tax administrator for the purpose of tax administration of the owner of a financial instrument,
- (e) the CNB for purposes of
  1. supervision of the financial market,
  2. banking information system according to the Act on Czech National Bank,
  3. compilation of the balance of payments of the Czech Republic,
- (f) an insolvency administrator for the purposes of insolvency proceedings, the participant of which is the owner of a financial instrument,
- (g) the Security Information Service (in Czech: “*Bezpečnostní informační služba*”) for the purposes of performing tasks according to the Act on Security Information Service,
- (h) the MoF in fulfilling the notification duty according to the Act on Selected Measures against Legitimation of Proceeds of Crime and Financing of Terrorism or the Act on Implementation of International Sanctions in order to preserve international peace and security, the protection of fundamental human rights and the fight against terrorism,
- (i) the MoF for the purpose of compilation of the government financial statistics and meeting the requirements for government deficit reporting according to the directly applicable EU regulation<sup>12a)</sup>.

(2) A person who maintains a register linked to the central register of book-entry securities shall provide to the person who maintains the central register of book-entry securities at the request of the data from the register and documents which it is obliged to store according to Section 99a(1).

(3) A person who maintains a separate register of financial instruments may provide the data referred to in subsection (1) through a central securities depository under the terms and conditions set out in a contract concluded with the central securities depository.



(4) A person who maintains a register linked to the separate register of financial instruments shall provide to the person maintaining the separate register of financial instruments on request the data from the register and documents which it is obliged to store according to Section 99a(1).

(5) The person who maintains the central register of book-entry securities and the person who maintains a separate register, when providing the data to the persons referred to in subsection (1), shall be entitled to have the costs incurred reimbursed in relation to these persons. The manner of determination of the amount of the material costs incurred and the manner of their payment shall be specified by an implementing regulation.

## **PART NINE**

### **CAPITAL MARKET AND INVESTOR PROTECTION**

#### **TITLE I**

##### **DUTY OF CONFIDENTIALITY**

###### **Section 116**

(1) A natural person who is or was an investment intermediary, a tied agent, a person with a managerial authority according to the Article 3 (1) point (25) of Regulation (EU) No 596/2014 of the European Parliament and of the Council, a mandatory administrator, a temporary administrator, and a crisis management officer under the Act governing the recovery procedures and resolution of the financial market crisis, liquidator, insolvency administrator, a partner of an insolvency administrator or an employee of a person who maintains registers of financial instruments, a regulated market organiser, an investment firm, foreign persons providing investment services in the Czech Republic through a branch, investment intermediary, tied agent, operator of a settlement system or person included in the supervised consolidated group on a consolidated basis operated by the CNB is required to maintain confidentiality of information that may be relevant for the assessment of capital market developments or significantly harm the person using the services provided on the capital market, and that has not been published.

(2) The duty of confidentiality shall continue to exist once the activities referred to in subsection (1) have terminated.

###### **Section 117**

Unless otherwise provided by law, the persons mentioned in Section 116 are exempt from duty to maintain confidentiality for the purposes of

- (a) civil judicial proceedings,
- (b) administrative judicial proceedings,
- (c) criminal proceedings,
- (d) administration of taxes and fees,
- (e) financial market supervision,
- (f) providing information to the MoF in fulfilling its duties under the Act on Combating Money Laundering and Financing for Terrorism or the International Criminal Code in order to preserve international peace and security, the protection of fundamental human rights and the fight against terrorism,
- (g) banking information system of the CNB according to the Act governing the activities of the CNB,
- (h) the balance of payments of the Czech Republic compiled by the CNB,
- (i) execution proceedings,
- (j) insolvency proceedings,
- (k) control and sanctioning by the market operator,

- (l) provision of information Security Information Service (in Czech: “*Bezpečnostní informační služba*”) in carrying out tasks pursuant to the Act regulating the activities of the Security Information Service.

## TITLE II

### INFORMATION DUTY OF THE ISSUER OF CERTAIN TRANSFERABLE SECURITIES AND OTHER PERSONS

#### Section 117a

For a convertible bond, a priority bond or similar security issued abroad which, after the transfer or exercise of the right resulting therefrom, authorises the acquisition of a share or similar security representing a holding in a company or other legal entity, for the purposes of this part of the Act shall apply the law applicable to a share or similar security representing a share in the issuer [Section 118(1)(a)].

#### Section 118

##### **Annual report of the issuer**

(1) The annual report and the consolidated annual report must be published by an issuer at the latest within 4 months after the end of the accounting period. The obliged person is an issuer of

- (a) a share or similar security representing a share in that issuer if that security is admitted to trading on an EU regulated market and the issuer has its registered office in the territory of
  1. the Czech Republic, or
  2. a State which is not an EU member state if the issuer has chosen the Czech Republic as a reference state (Section 123),
- (b) a bond or similar security representing the right to repay the amount owed by the issuer or other transferable security the value of which relates to the repayment of the amount owed by the issuer, including the securitized debt, unless the nominal value of that security is, or greater than the amount corresponding to EUR 1 000 if that security is admitted to trading on an EU regulated market and the issuer has its registered office in the territory of
  1. the Czech Republic, or
  2. a State which is not an EU member state, if the issuer has chosen the Czech Republic as the reference state,
- (c) a bond or similar security representing the right to repay the amount owed by the issuer or other transferable security whose value relates to the repayment of the amount owed by the issuer, including the securitized debt, if the nominal value of the security at the date of issue is almost equal or more than the equivalent of EUR 1 000 if that security is admitted to trading on an EU regulated market and the issuer has chosen the Czech Republic as the reference state, or
- (d) another transferable security if that security is admitted to trading on an EU regulated market and if the issuer has chosen the Czech Republic as the reference state.

(2) The issuer prepares an annual report and a consolidated annual report for the accounting period beginning in 2020 or later, in accordance with the directly applicable regulation of European Union on the uniform electronic format for reporting<sup>67)</sup>. The issuer shall ensure that the disclosed annual report and the consolidated annual report are publicly available for at least 10 years.

(3) The annual report contains the audited financial statements and the auditor's report in its full text. The consolidated annual report includes the financial statements and the consolidated financial statements audited by the auditor and the auditor's report in its full text.

(4) The annual report or the consolidated annual report shall provide investors with a true and fair view of the financial situation, business activity and economic results of the issuer and its consolidation for the past accounting period, and perspective for future developments in the financial situation, business activity

and economic result of the issuer and its consolidated group<sup>12b)</sup>. The annual report and the consolidated annual report must include

- (a) the numerical data and information on the financial situation, business activity and economic results of the issuer and its consolidated group for the past accounting period, to the extent of the numerical data and information presented in the prospectus, indicating the important factors, risks and uncertainties that have affected the financial situation, business activity or the economic results of the issuer and its consolidated group, and their impacts,
- (b) information on the principles and procedures of internal control and the rules governing the issuer and its consolidated group approach to the risks to which the issuer and its consolidated group is or may be exposed in relation to the financial reporting process; such information shall be incorporated by the issuer in the annual report or consolidated annual report as part of a separate part incorporating the information referred to in letter (j),
- (c) a description of the decision-making procedures and the composition of the statutory body, supervisory board or other executive or supervisory body of the issuer and, if established, also their committees; such information shall be incorporated by the issuer in the annual report or consolidated annual report as part of a separate part incorporating the information referred to in letter (j),
- (d) a description of the rights and duties attaching to the relevant type of share or similar security representing the share in the issuer, at least by reference to the Act governing the legal situation of the commercial companies and cooperatives and the articles of association of the issuer in case of a type of share or an equivalent foreign law and set up a similar document of the issuer if it is a type of similar security representing the share of the issuer,
- (e) a description of the decision-making procedures and the base scope of the issuer's general meeting or similar meeting of the owners of the securities representing the share in the issuer; such information shall be incorporated by the issuer in the annual report or consolidated annual report as part of a separate part incorporating the information referred to in letter (j),
- (f) the numerical data and information about all monetary and non-monetary income received for the accounting period of persons with management powers from the issuer and from persons controlled by the issuer, collectively for all members of the statutory body, collectively for all members of the supervisory board and collectively for all other persons with managerial powers,
- (g) numerical data and information on the number of shares or similar securities representing the share in the issuer, which are in ownership of persons with the issuer's controlling rights, numerical data and information on options and equivalent financial instruments whose value relates to shares or similar securities representing a share in the issuer and the contractual parties to which are listed or which are concluded for the benefit of those persons; the numerical data and information shall be aggregated for all members of the statutory body, collectively for all members of the supervisory board, collectively for all other persons with management powers; those persons shall notify the issuer of the necessary numerical data and information,
- (h) principles of remuneration of the persons with the managing authority of the issuer, names and surnames of these persons, description of their activities and related competences and decision-making powers,
- (i) a statement by the issuer's authorised persons that, to the best of their knowledge, the annual report and the consolidated annual report provide a true and fair view of the financial situation, business activities and economic results of the issuer and its consolidation for the past accounting period and perspectives for future financial situation, business activities and economic results,
- (j) information on the company's corporate governance and administration codes that are binding on it or which it voluntarily complies with, and information on where such code of conduct can be inspected; if appropriate that the issuer does not comply with some of the provisions of such code do not comply, or that the issuer does not observe any code, including explanation why the issuer does not comply with this code or provision in code; this information is incorporated by the issuer into the annual report or the consolidated annual report as its separate part,
- (k) information about remuneration charged for the accounting period by auditors in accordance with type of services, separately for the issuer and separately for the consolidated group,
- (l) in case of an issuer that as at the balance sheet date it exceeds at least 2 limit values according to Section 1b (3) under the law regulating accounting, the description of the diversity policy applied to the statutory body, the supervisory board, the board of directors or any other similar body of the issuer, taking into

account for example age, gender or education and specialist knowledge and experience, including information on the aims of this policy, how diversity policy is being implemented and what its implementation results have generated in the relevant accounting period; if the issuer does not apply a diversity policy, it shall instead explain why it does not apply this policy; this information shall be incorporated by the issuer in the annual report or consolidated annual report as part of a separate part incorporating the information referred to in letter (j).

(5) The annual report and the consolidated annual report for the issuer referred to in subsection (1)(a) they must, in a separate section, into which the issuer incorporates the information referred to in subsection (4)(j), also contain numerical data and information about

- (a) the structure of the issuer's own funds, including securities not admitted to trading on an EU regulated market and, where appropriate, the identification of different types of shares or similar securities representing the share in the issuer and the share of the registered capital of each type of share or similar securities representing the share in the issuer,
- (b) restrictions on the transferability of securities,
- (c) significant direct and indirect shares in the voting rights of the issuer,
- (d) owners of securities with special rights, including a description of such rights, (e) restrictions on voting rights,
- (f) contracts between shareholders or similar owners of securities representing a share in the issuer which may result in the weakening of transferability of shares or similar securities representing a share in the issuer or in voting rights, if known to the issuer,
- (g) special rules governing the election and dismissal of members of the statutory body and amendment of the articles of association or similar document of the issuer,
- (h) special powers of the statutory body or of the administrative board according to the law regulating the legal relations of the commercial companies and cooperatives,
- (i) significant contracts in which the issuer is a party to the contract and which become effective, will change or terminate in the event of change in the control of the issuer as a result of the takeover bid and the effects thereof, with the exception of those contracts the publication of which would be seriously damaging to the issuer; this is not limited to any other duty to publish such information under this Act or other legislation,
- (j) contracts between the issuer and members of its statutory body or employees by whom the issuer is obliged to perform in the event of termination of their duties or employment in connection with the takeover offer,
- (k) any programs under which employees and members of the company's statutory body are allowed to acquire the company's securities, options on such securities or other rights thereunder on preferential conditions, and how the rights in such securities are exercised.

(6) In the annual report and the consolidated annual report, the issuer shall, in a separate part, incorporate the information referred to in subsection (4)(j) to describe how it complies with the code of conduct for a company which is binding on it or which it voluntarily complies with, in particular in relation to topics which, according to its reasoned considerations, are of the utmost importance to shareholders.

(7) The annual report or the consolidated annual report of the issuer referred to in subsection (1), which is not required to fulfil the Act on Accounting<sup>12d)</sup>, shall contain information equivalent to that contained in the annual report under the Act on Accounting.

(8) If the general meeting or similar meeting of the owners of securities representing the share in the issuer does not approve the financial statements or the consolidated financial statements or if the judicial authority decides that the general meeting or similar assembly of the owners of securities representing the shareholding in the issuer, has approved the financial statement or the consolidated financial statement, the issuer shall publish these facts without undue delay; the information shall also specify the manner of addressing the remarks of the general meeting or similar meeting of the owners of the securities representing the share in the issuer.

(9) The issuer's statutory body referred to in subsection (1)(a) shall at annual general meeting or similar regular meeting of owners of the securities representing the share in the issuer, present to shareholders or similar owners of the securities representing the share in the issuer, a general explanatory report on the matters referred to in subsection (5)(a) to (k).

## Section 119

### **Half-yearly financial report of the issuer**

(1) Issuer under Section 118(1)(a), (b) or (c) within three months of the first six months of the accounting period shall publish its half-yearly financial report or consolidated half-yearly financial report if is obliged to prepare the consolidated financial statements and ensure that the half-yearly financial report or consolidated half-yearly financial report for at least 10 years. A half-yearly financial report or a consolidated half-yearly financial report must provide investors with a true and fair view of the financial situation, business activity and economic results of the issuer and its consolidated group for the past half-year and perspective for future financial situation, business activity and economic results of the issuer and its consolidated group.

(2) The half-yearly financial report and the consolidated half-yearly financial report shall include

- (a) the numerical data and information to the extent set out in subsections (3) and (4),
- (b) for each of the numerical data and information referred to in letter (a), data for the corresponding period of the previous year,
- (c) an auditor's report or a review report in full text if the data under letter (a) is audited by the auditor; if these data are not audited by the auditor, then information that the auditor does not verify these data,
- (d) a descriptive part which, to the extent necessary for the accurate and correct assessment of the business activity progress and economic results of the issuer and its consolidated group, includes
  1. information on the business activity and economic results of the issuer and its consolidated group for the first six months to which the half-yearly financial report or the consolidated half-yearly financial report applies, indicating the important factors and impacts that have influenced the business activities and economic results of the issuer and its consolidated group and further the disclosure of important factors, risks and uncertainties that may accompany the business activities and economic results of the issuer and its consolidated group in the next 6 months of the accounting period,
  2. in the case of an issuer referred to in Section 118(1)(a) also an inventory of related party transactions that occurred during the period covered by the half-yearly financial report or the consolidated half-yearly financial report and which have substantially affected the issuer's economic result as well as any changes in related party transactions that were disclosed in the previous annual report or the consolidated annual report of the issuer if these changes may substantially affect economic result of the issuer and its consolidated group during the period the half-yearly financial report applies,
  3. comparison with the corresponding period of the previous year, and
- (e) a statement by the entitled persons of the issuer that to the best of their knowledge of the half-yearly financial report or the consolidated half-yearly financial report, a true and fair view of the financial situation, business activity and economic results of the issuer and its consolidated group during the past half-year and perspective for future financial situation, business activity and economic results of the issuer and its consolidated group.

(3) The half-yearly financial report shall include numerical data and information within the scope of the abbreviated balance sheet, abbreviated income statement and selected explanatory notes, resulting from a directly applicable EU regulation adopting some international accounting standards of IAS for the short-term balance sheet, 34 - Interim financial reporting, which is annexed to Commission Regulation (EC) No 1126/2008. The abbreviated balance sheet and the abbreviated income statement always include items, including subtotals, equivalent to the items included in the issuer's annual report for the prior year period; if the failure to indicate the relevant item in a half-yearly financial report would be eligible to make deceptive idea to investors about property or other assets, debts or other liabilities, financial situation or economic results of the issuer, the issuer shall add to the abbreviated balance sheet or abbreviated income statement with additional explanation to this deceptive idea prevented.

(4) The consolidated half-yearly financial report shall include numerical data and information in the scope of the interim financial statement which is resulting from a directly applicable EU regulation adopting certain international accounting standards in IAS 34 - Interim financial reporting, annexed to Commission Regulation (EC) No 1126/2008.

#### Section 119a

### **Report on payments to governments**

The issuer referred to in Section 118(1) which operates in an extractive or logging of primary forest industries shall publish at least 6 months after the end of the accounting period a consolidated report containing the numerical data and information on payments to state administration bodies under the Act on Accounting. The issuer will ensure that this disclosed report is publicly available for at least 10 years.

#### Section 119b

### **Disclosure of additional information**

(1) The issuer referred to in Section 118(1)(a) without undue delay, publish any change in the rights attaching to a specific type of share or similar security representing the right to a share in the issuer. The same duty also applies in the event of a change in the rights attaching to the financial instrument issued by the issuer and with which the right to acquire shares issued or similar securities representing the right to a share in the issuer admitted to trading on an EU regulated market is connected.

(2) The issuer referred to in Section 118(1)(b), (c) or (d) shall publish without undue delay any change in the rights attaching to the transferable security referred to in Section 118(1)(b) and (c) issued, shall in particular publish information on the change in terms of issue or the document under similar terms of issue.

#### Section 119c

### **Exceptions to the duty to disclose information**

(1) The duties set out in Section 118 to 119a shall not apply to

- (a) the issuer referred to in Section 34(4)(a) and
- (b) an issuer issuing solely one of the financial instruments referred to in Section 118(1)(c) if the nominal value of such a financial instrument corresponds to at least the amount corresponding to the euro limit at the date of issue.

(2) The duties set out in Section 119 do not apply to an issuer who,

- (a) is a person referred to in Section 2a(1)(a) or (b), or by a foreign person with a similar activity whose shares are not admitted to trading on a regulated market and which issues, on a continuous or repeated basis, exclusively the financial instruments referred to in Section 118(1)(c) if their total nominal value does not exceed an amount corresponding to EUR 100 million and the issuer has not published a prospectus for such instruments in accordance with the directly applicable European Union regulation on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market<sup>66</sup>, or
- (b) originated before 1 January 2004 and issues exclusively the financial instruments specified in Section 118(1)(c) unconditionally and irrevocably guaranteed by the Czech Republic or the territorial self-governing authority of the Czech Republic.

### **Other duties of the issuer**

#### Section 120

(1) The issuer referred to in Section 118(1) shall submit without undue delay, to the CNB and to the operator of the EU regulated market on which the transferable security issued by it is admitted to trading, any proposal for a decision to reduce or increase the registered capital.

(2) The issuer referred to in Section 118(1)(a), (b) or (c)

- (a) ensures to all owners of transferable securities issued by them equal treatment which is resulting from the ownership of such securities, the same number of voting rights joined with the transferable security of the same kind is not considered as a breach of this duty,
- (b) ensures the payment of the revenue of the transferable security or other cash consideration associated with the transferable security which it has issued; the issuer pays the proceeds or other monetary performance through the designated person referred to in Section 2a(1)(a) to (c) or foreign persons with a similar activity.

(3) The issuer referred to in Section 118(1)(a), (b) or (c) at the latest on the date of publication of the notice of the general meeting or similar meeting of the owners of securities representing the share in the issuer or the meeting of the bondholders or similar meeting of the owners of the securities representing the right to repay the amount owed, or in the day of shipping the invitation for such meeting of the owners of the securities issuer shall disclosed in paper form to anyone in his registered office until the date of such a meeting of the owners of the securities or, in the case of an issuer providing information by electronic means allowing the transmission of data by wire, radio, optical or other electromagnetic means, data processing comprising data compression and data retention (hereinafter referred to as the “electronic device”), in accordance with subsection (5), shall send by electronic means a power of attorney form to represent the owner of the security on a meeting of the owners of the securities. This form shall be published by the issuer on its website at the same time.

(4) Everyone has the right to request the sending of the power of attorney form according to subsection (3) at his expense and at his own risk in paper form or by electronic means. The disclosure of the power of attorney form referred to in subsection (3) in paper form in the registered office and its disclosure on the issuer's website and the right to request its delivery in paper form or by electronic means at its expense and risk shall be owner of security of its issuer alerted in the invitation for meeting referred to in subsection (3) or to the meeting's announcement referred to in subsection (3). The issuer according to Section 118(1)(a) ensure the possibility of notifying the granting of power of attorney to representation at a general meeting or similar meeting of the owners of securities, as well as an appeal by the mandator, by electronic means.

(5) If the articles of association or similar document of the issuer referred to in Section 118(1)(a) or the terms of issue of the bond or a document similar to the terms of issue of the issuer's bond according to Section 118(1)(b) or (c) do not already include this option, then the general meeting or similar meeting of the owners of securities representing a share in the issuer in the case of an issuer according to Section 118(1)(a), or a meeting of bondholders or a similar meeting of owners of securities representing the right to repay the amount owed, in the case of an issuer according to Section 118(1)(b) or (c) may decide to provide information relating to the exercise of the rights of the owner of the security issued by that issuer by electronic means only if that issuer

- (a) does not bind the provision of information relating to the exercise of the rights of the owner of the security by electronic means to the domicile or residence of the owner of the security, the representative empowered to represent him or the persons referred to in Section 122(2)(a) to (h),
- (b) ensure effective management of the data on the security owner or the person entitled to exercise the voting rights and provide the technical conditions for the protection of processed, stored and transmitted data,
- (c) inform in a manner which convenes such a meeting of the owners of securities without undue delay of the owner of the security issued by him or of the person entitled to exercise him the voting rights to the decision of the meeting of the securities owners to provide information on the exercise of the rights of the owner of the security by electronic means, expressing his consent within a reasonable period of time, provided that, if he does not remarks within that time, its consent shall be deemed to have been given and

(d) provides any information concerning the exercise of the rights of the owner of the security by electronic means to each owner of the securities issued by him and to any person referred to in Section 122(2)(a) to (e); this does not apply to the person who has requested the issuer in writing form to send the information at its expense and its risk in paper form.

(6) The fulfilment of the conditions referred to in subsection (5) by the issuer referred to in subsection (5) shall also be ensured where the articles of association or similar document or terms of issue or similar document include the possibility to provide information on the exercise of the rights of the owner of the security by electronic means.

(7) The issuer referred to in Section 118(1)(b)(c) or (d) shall provide, within the period within which he is obliged to publish the information about the person who maintains the central register of the book-entry securities and who maintains the register of the issue, information on

- (a) the payment of the revenue of a transferable security or similar financial consideration joined with an investment paper issued by the issuer,
- (b) the convocation of the general meeting of the issuer or a similar meeting of the owners of securities representing a share in the issuer or the meeting of bondholders or similar meeting of owners of securities issued by the issuer representing the right to repay the amount owed,
- (c) changes in the rights joined to the transferable asset according to Section 119b,
- (d) other matters relating to the exercise of the rights joined to a transferable security which the issuer is required to disclose under other legislation.

(8) A person who maintains a central register of book-entry securities shall publish the information received according to subsection (7) on its website.

#### Section 120a

(1) In addition to the requirements laid down by the law governing the law of commercial companies and cooperatives or equivalent requirements of foreign legislation, the issuer shall, in case of an issuer referred in to Section 118(1)(a), make an invitation or a notification of holding of the general meeting or similar meeting of the owners of securities. This invitation contains

- (a) a notification of the rights of the owner of the security relating to attendance in the general meeting or similar meeting of the owners of securities representing the share in the issuer and an indication of the total number of shares and securities representing the share in the issuer and of the voting rights attaching thereto,
- (b) a clear and specific description of how to attend, including by a power of attorney on general meeting or a similar meeting of the owners of securities representing a share in the issuer, and voting at the general meeting or similar meeting of the owners of securities representing the share in the issuer, including information about
  1. the right to apply proposals and counterproposals to proposals the content of which is given in the invitation to the general meeting or similar meeting of the owners of securities representing a share in the issuer or in the announcement of the general meeting or similar meeting of the owners of securities representing the share in the issuer,
  2. the right to request the inclusion of a particular matter on the agenda of the general meeting or similar meeting of the owners of securities representing the share in the issuer and the time-limits related to the exercise of this right; in case the information on this right is provided on the issuer's website, it shall suffice if the invitation or notification contains information on the time-limits for the exercise of this right and the reference to the issuer's website, including the information on where the relevant information can be found,
  3. manner in which the issuer receives by electronic means a notice on the award of a power of attorney to represent the owner of a security at a general meeting or a similar meeting of the owners of securities representing a share in the issuer,



4. manner and procedure for correspondence voting or voting by electronic means, if the issuer allows such voting,
- (c) details of the manner and place where to obtain the documents referred to in Section 120b(1),
  - (d) a reference to the issuer's website, including the information where the information referred to in Section 120b(1) may be found on it.

(2) If on the agenda of the general meeting or similar assembly of the owners of securities representing the share in the issuer referred to in Section 118(1)(a) is a decision on the payment of a revenue on a security or other monetary performance joined to a security, the issuer shall publish together with a notice of holding of the general meeting or similar meeting of the owners of securities representing a share in the issuer or send it to the owners of the securities together with an invitation to the general meeting or similar meeting of the owners of securities representing the share in the issuer the proposed payment schedule or other monetary performance and details of the person through whom the revenues or other monetary performance pay. In the same way, the issuer of the security owner or its agent shall without undue delay inform the outcome of the meetings of the general meeting or similar meeting of the owners of the securities representing the share in the issuer.

(3) If on the agenda of the general meeting or a similar meeting of the owners of securities representing the share in the issuer referred to in Section 118(1)(a) is a decision to increase or decrease the registered capital, to fragment securities, to merge multiple securities into one, or to change the form or type of security, shall publish together with a notice of holding of the general meeting or similar meeting of the owners of securities representing the share in the issuer or will send the owner of the security, together with the invitation to the general meeting or similar meeting of the owners of securities representing the share in the issuer, information on the impact of such a decision on the rights of the owner. In the same manner, the issuer of the security owner or its agent shall without undue delay inform the outcome of the meeting of the general meeting or similar meeting of the owners of the securities representing the share in the issuer at this point in the negotiations.

(4) If the statutory body decides on an increase or decrease of registered capital on the basis of the authorisation of the general meeting or a similar meeting of the owners of securities representing a share in the issuer, subsection (3) shall apply *mutatis mutandis*.

#### Section 120b

(1) The issuer under Section 118(1)(a) is obliged, no later than the date of publication of the announcement of the general meeting or similar meeting of the owners of securities representing the share in the issuer or the date of sending the invitation to the general meeting or similar meeting of the owners of securities representing the share in the issuer to publish

- (a) the announcement or invitation,
- (b) any document relating to the agenda of the general meeting or similar meeting of the owners of the securities representing the share in the issuer; a document may not be published in whole or in part if it appears from a careful business consideration that its publication may cause harm to the issuer or, in case of information referred in the document, about inside information or information that is subject to commercial, banking or similar secrecy issuer or classified information under another law; if such information is concerned it shall decide the statutory body of the issuer,
- (c) the form by which a corresponding vote or vote can be made by electronic means,
- (d) a draft resolution of the general meeting or similar meeting of the owners of securities representing a share in the issuer or the opinion of the issuer's statutory body on the individual items of the proposed agenda of the general meeting or similar meeting of the owners of securities representing the share in the issuer,
- (e) a written wording of the received proposal or counterproposal of a shareholder or owner of a security representing a share in the issuer for proposals the content of which is stated in the invitation to the general meeting or similar meeting of the owners of securities representing a share in the issuer or in the

announcement of the general meeting or similar meeting of the owners securities representing a share in the issuer and

- (f) the total number of shares and securities representing the right in the issuer issued on the date of disclosure of the announcement or the sending of the invitation, as well as the total number of votes attaching to them; if the issuer has issued different types of shares and securities representing a share in the issuer, it shall indicate these separately for each type of share and security representing the right in the issuer.

(2) The issuer according to Section 118(1)(a) publish, within 15 days of the date of the general meeting or similar meeting of the owners of the securities representing the right in the issuer information about

- (a) the number of valid votes cast on each proposal, the number of shares and the securities representing the share in the issuer to which those votes are attached and the proportion of the share of registered capital or voting rights of the issuer represented by those shares and those securities representing the share in the issuer, and
- (b) the total number of valid votes cast for the proposal, against the proposal and the number of votes for which the voted abstention.

(3) The issuer referred to in Section 118(1)(a) disclose the documents referred to in subsection (1) to shareholders or owners of securities representing a share in the issuer and to publish the information referred to in subsection (2) free of charge on their website. The duty to publish an announcement or an invitation to a general meeting under the law regulating the law of commercial companies and cooperatives is not affected.

#### Section 120c

(1) The issuer referred to in Section 118(1)(b) or (c) shall to publish or send a notice of meeting of bondholders or a similar meeting of owners of securities representing the right to repay the amount owed; the issuer publishes or sends in the same manner without undue delay information on the exercise of the right resulting from the ownership of such security, the payment of the revenue, the subscription, the cancellation or the repayment of such security. This is without prejudice to the requirements laid down by other legislation on the document convening meeting of bondholders or equivalent requirements of a foreign regulation to a document convening a meeting of owners of securities representing the right to repay the amount owed.

(2) If the meeting of the owners of bonds or similar assembly of the owners of securities representing the right to repay the owed amount is to be attended only by the owners of the transferable security referred to in Section 118(1)(b) or (c) whose nominal value at the date of issue corresponds to at least the amount corresponding to the limit set in euros, such meeting of the owners or such an assembly may be held in any EU member state provided that the necessary EU member state information and conditions to enable that owner to exercise his rights.

#### Section 121

The issuer referred to in Section 118(1) while performing its duties is not allowed to

- (a) use untrue, deceptive or misleading information,
- (b) conceal important facts for investors' decision-making,
- (c) offer advantages whose reliability cannot be guaranteed,
- (d) provide incorrect information on its economic situation.

#### Section 121a

If the transferable security referred in Section 3(2)(c) is admitted to trading on an EU regulated market, duties laid down in Section 118, 119b(2), 120(1) and (5), and 121 are fulfilled by the issuer of an transferable securities which are replaced by a securities referred to in Section 3(2)(c), regardless of whether the replaced transferable securities are admitted to trading on an EU regulated market.

## Section 121b

Where an investment security has been admitted to trading on a regulated market without the issuer's consent, the duty to publish information according to this Title and Title V of this part, and Article 17(1) of the MAR, the issuer is subject to information duties under this Act or comparable information if the issuer is subject to an information duties under the legal order of another EU member state or the market operator who, has accepted an investment security for trading on a regulated market without the issuer's consent. This duty shall be fulfilled if the obligated person publishes information under Title VIII of this part without undue delay after its publication by the issuer; if the requirements on the manner and the language of publication are fulfilled, the obligated person fulfils this duty even by publication a reference to the place where the published information is available to the issuer.

## Title III

Identification of shareholders, transmission of information and facilitation of the exercise of shareholder rights

### Section 121c

#### Scope

The provisions of this Title shall apply only to shares or similar securities representing a share in an issuer with the registered office in a Member State of the European Union if they are admitted to trading on a European regulated market.

#### **Transmission of information by persons managing asset accounts**

### Section 121d

(1) A person who keeps records of financial instruments shall communicate to the issuer, upon request, data on the owner of the owner's account on which are registered securities issued by this issuer.

(2) A person who keeps a central register of book-entry securities shall submit the request pursuant to subsection (1) to persons who keep securities issued by the same issuer in a register following the central register of book-entry securities. If a person who keeps records following the central register of book-entry securities receives a request from the issuer pursuant to subsection (1), he shall submit it to the person who keeps the central register of book-entry securities.

(3) If a person who keeps a separate register of financial instruments or a register following the separate register of financial instruments receives a request pursuant to subsection (1), he shall submit it to

- (a) the owner of a customer account in which he records securities issued by the same issuer; and
- (b) a person who maintains a customer account for him on which securities issued by the same issuer are registered.

(4) The data pursuant to subsection (1) are

(a) information of the owner of the owner 's account, which are:

1. for a legal person, the name, identification number of the person and a contact address, including e-mail address, if available,
2. for a natural person, the name and contact address, including e-mail address, if available,

(b) the number of securities held by the owner of the owner 's account; and

(c) the type of share or similar security or the date from which the holder of the owner's account holds it, if the issuer requests such information.

(5) The form and scope of the issuer's request, deadlines and manner of submission of the request and information on the owner of the owner's account shall be determined by a directly applicable European Union regulation implementing Article 3a (8) of Directive 2007/36/EU of the European Parliament and of the Council.

#### Section 121e

(1) Within the period in which the issuer is obliged to publish the information, the issuer provides the person who keeps the central register of book-entry securities and who keeps the register of the issue for the issuer information pursuant to Section 120 subsection (7) or information on where this information is published for securities owners on the issuer's website. This does not apply if the issuer sends the information directly to all shareholders.

(2) If the person who keeps the central register of book-entry securities receives information from the issuer pursuant to subsection (1), he shall submit it to

- (a) the owner of a customer account in which he records securities issued by the same issuer; and
- (b) the owner of the owner's account in which he records securities issued by the same issuer.

(3) If the person who keeps the register following the central securities register receives the information referred to in subsection (1), he shall pass it on to the persons for whom he keeps securities issued by the same issuer on the owner's accounts.

(4) If a person who keeps separate register of financial instruments, or a person who keeps register following a separate register of financial instruments, receives information from the issuer or from another person who keeps register of financial instruments pursuant to Section 120 (7),

- (a) the owner of a customer account in which he records securities issued by the same issuer; and
- (b) the owner of the owner's account in which he records securities issued by the same issuer.

(5) The person who keeps register of financial instruments

- (a) communicates to the issuer information from the owner of the owner's account concerning the exercise of the rights attached to the security; or
- (b) transmits the information referred to in letter (a) to the person who keeps for him securities issued by the same issuer on customers' account.

(6) The form and scope of the information, the time limits and the manner in which they are to be transmitted pursuant to subsections (1) to (5) shall be laid down in directly applicable European Union legislation implementing Article 3b (6) of Directive 2007/36 /EU of the European Parliament and of the Council.

#### Section 121f

### **Remuneration of costs incurred in providing information**

A person who keeps register of financial instruments shall be entitled to remuneration for the fulfillment of obligations pursuant to Sections 121d and 121e only if the remuneration is non-discriminatory and proportionate to the actual costs incurred in the performance of those obligations. The person who keeps register of financial instruments shall publish the fee for individual services pursuant to Sections 121d and 121e.

#### Section 121g

### **Relation to foreign register of financial instruments**

The provisions of this Title shall apply mutatis mutandis to persons who have not a registered office in a EU member state and who hold in their register of financial instruments shares or similar securities representing a share in an issuer with the registered office in a EU member state if such shares are admitted to trading on the regulated market.

#### Section 121h

### **Storage of information**

The issuer and the person who keeps register of financial instruments shall store and process personal information obtained under this Title for a maximum period of 12 months from the date on which they become aware that no shares or similar securities issued by the issuer are held in the owner's account.

#### Section 121i

### **Confirmation of vote**

(1) The issuer shall send to the shareholder or a person authorized by him, upon request, information on whether and how the shareholder's votes were counted in the voting at the general meeting. The issuer is not obliged to comply with requests for information if the information is already available to shareholders or a person authorized by him or if he receives a request for information more than 3 months from the date of the general meeting.

(2) If the person who keeps register of financial instruments receives information from the issuer pursuant to subsection (1), he shall forward it to the owner of the owner's or customers' account on which he registers shares issued by the same issuer.

(3) In the event of voting at a general meeting or decision-making outside the general meeting using technical means, the issuer shall send to the person who voted in this way electronically information on whether his vote has been recorded.

(4) The form and scope of the information, the time limits and the manner in which they are to be transmitted pursuant to subsections (1) to (3) shall be laid down in directly applicable European Union legislation implementing Article 3c (3) of Directive 2007/36/EU of the European Parliament and of the Council.

## TITLE IV

### REMUNERATION AND SIGNIFICANT RELATED PARTY TRANSACTIONS

#### Section 121j

### **Scope**

The provisions of this Title shall apply only to the issuer referred to in Section 118 (1)(a).

#### Section 121k

### **Submission, approval and publication of remuneration policy**

(1) The issuer shall prepare a remuneration policy pursuant to Section 121l. The board of directors or the administrative board of the issuer shall submit it for approval no later than the first general meeting held after 90 days from the date of admission of the shares to trading on a European regulated market, which approves the financial statements of the issuer. If the board of directors or the administration board of the issuer does not submit the remuneration policy pursuant to the second sentence, the performance of the

function of members of the board of directors or members of the administrative board is gratuitous from the date of the general meeting pursuant to the second sentence until the date of the general meeting, which has been submitted for remuneration policy.

(2) The board of directors or the administrative board of the issuer shall submit the remuneration policy to the general meeting for approval at each substantial change or at least once every 4 years.

(3) If the general meeting of the issuer does not approve the submitted remuneration policy, the board of directors or the administrative board shall submit the amended remuneration policy to the next general meeting for approval.

(4) The issuer shall, without undue delay after the general meeting, publish the approved remuneration policy together with the date of its approval and data pursuant to Section 120b (2) on its website free of charge and shall keep it published for the period of its application.

#### Section 121l

#### **Content of remuneration policy**

(1) The remuneration policy is understandable, contribute to the issuer's business strategy, its long-term interests and sustainability, and explain how it does so.

(2) The remuneration policy shall contain, in relation to persons pursuant to Section 121m (1)

(a) a description of all fixed and variable components of remuneration, including all bonuses and other benefits in whatever form, and their relative proportion,

(b) if the issuer provides a variable remuneration component,

1. clear, comprehensive and varied criteria for the award of the variable remuneration component,

2. key indicators of the issuer's financial and non-financial performance, including, where applicable, the criteria relating to the issuer's social responsibility,

3. an explanation of how the indicators referred to in point 2 contribute to meeting the requirements of subsection (1),

4. the methods of determining the extent to which the performance indicators referred to in point 2 have been fulfilled,

5. rules for deferral periods of entitlement to a variable remuneration component or part thereof, if any, and

6. information on the issuer's right to demand the return of the variable remuneration component or its part,

(c) if the issuer provides share-based remuneration, the vesting period during which the share option cannot be exercised and, where applicable, the period during which the shares acquired as a result of the option cannot be disposed and an explanation of how the share-based remuneration contributes to meeting the requirements of subsection (1);

d) the duration of the term of office or employment relationship with persons pursuant to Section 121m (1), the period of notice, the conditions for termination of office or employment relationship, including payments associated with their termination,

e) the main characteristics of the pension benefits provided by the issuer, a description of the issuer's contributions to the supplementary pension scheme and the main characteristics of the early retirement benefit schemes offered by the issuer,

(f) information on how the pay and employment conditions of the issuer's employees have been taken into account in formulating the remuneration policy; and

(g) the decision-making process followed in determining, reviewing and implementing the remuneration policy, including measures to prevent and resolve conflicts of interest, and, where appropriate, the role of the remuneration committee or other committees.

(3) If the remuneration policy is revised pursuant to Section 121k (2) or (3), it shall contain a description and explanation of all significant changes and the manner how the outcome of the shareholders' vote at the general meeting and their views on the remuneration policy and the remuneration report have been taken into account since the most recent vote on the remuneration policy by the general meeting.

#### Section 121m

##### **Determining the amount and payment of remuneration**

(1) Unless otherwise provided by this Act, the issuer pays remuneration to members of the board of directors or the administrative board, supervisory board, statutory director, natural person who is directly subordinate to the issuer's governing body and to whom this body has delegated business management and the representatives of that person, if any, only in accordance with the approved remuneration policy.

(2) In the absence of an approved remuneration policy, the issuer shall pay remuneration to the persons referred to in subsection (1) in accordance with existing practice; The last sentence of Section 121k (1) is not affected by this.

(3) A contract on the performance of a function, other legal action or an internal regulation of the issuer regulating the remuneration of a member of the board of directors, supervisory or administrative board or statutory director shall cease to be effective in the extent in which it is in conflict with the approved remuneration policy, from the date of entry into force of the decision of the general meeting approving the remuneration policy. This does not affect the payment of remuneration for the performance of the function for the period preceding the date of entry into force of the decision of the General Meeting pursuant to the first sentence.

(4) A contract on the performance of a function, other legal action or an internal regulation of the issuer regulating the remuneration of a member of the board of directors, supervisory or administrative board or statutory director shall not have legal effects to the extent that it is in conflict with the approved remuneration policy.

#### Section 121n

##### **The derogation from the remuneration policy**

The issuer may temporarily derogate from the remuneration policy if the derogation is necessary for the long-term interests and sustainability of the issuer or for the maintenance of its business enterprise and if the remuneration policy contains procedural rules for temporary derogation and a list of rules that can be derogated from.

#### Section 121o

##### **Preparation, approval and publication of the report on remuneration**

(1) The issuer shall prepare a clear and understandable report on remuneration, which provides a comprehensive overview of remuneration, including all benefits in whatever form, awarded or due during the most recent completed accounting period to persons pursuant to Section 121m (1).

(2) A person pursuant to Section 121m (1) shall notify the issuer without undue delay after the end of the accounting period of all remuneration awarded to him or due in the accounting period for which the report on remuneration is prepared, by a person who belongs to the same group as the issuer.

(3) The board of directors or the administrative board shall submit the report on remuneration for approval no later than to the general meeting, which approves the financial statements for the accounting period for which the report on remuneration is prepared. If the general meeting does not approve the report on remuneration, the board of directors or the administrative board shall explain in the following report on remuneration how the result of the vote at the general meeting has been taken into account in preparing the new report.

(4) The issuer shall, without undue delay after the general meeting pursuant to subsection (3), publish the report on remuneration free of charge, together with information on whether the report on remuneration has been approved by the general meeting, on its website and keep it published for 10 years.

(5) The issuer may decide that the report on remuneration will be available on the website even after the expiry of the period pursuant to subsection (4); in such a case, the report on remuneration may not contain personal data of persons pursuant to Section 121m (1).

### **The content of the report on remuneration**

#### Section 121p

(1) The report on remuneration in relation to each person pursuant to Section 121m (1) shall contain

- (a) the total amount of remuneration split out by component, the relative proportion of fixed and variable remuneration, an explanation how the total remuneration complies with the remuneration policy, including how it contributes to the issuer's long-term performance, and information on how the performance criteria were applied,
- (b) an annual change in the total amount of remuneration for at least the most recent 5 accounting periods following the date of admission of the shares to trading on a European regulated market, presented in a manner which permits comparison,
- (c) information pursuant to Section 121o (2),
- (d) the number of granted and offered shares and share options and the main conditions for the exercise of the rights from the option program, including the price and date of exercise of the option, and any changes to these conditions,
- (e) information on the exercise of the issuer 's right to demand repayment of all or part of the variable remuneration; and
- (f) information on derogation from the procedure for the implementation of the remuneration policy specified in the remuneration policy pursuant to Section 121l (2)(g) and on derogation from the remuneration policy in accordance with Section 121n, including an explanation of the reason for the derogation and an indication of the specific rules of the remuneration policy from which the issuer derogated,

unless such remuneration has not been provided or is not due to the person or the issuer has not acted in this way.

(2) The report on remuneration also contains an annual change in the issuer's financial and non-financial key performance indicators and an annual change in the average remuneration of the issuer's employees who are not persons pursuant to Section 121m (1), calculated for employees with specified weekly working hours, for at least the most recent 5 accounting periods following the date of admission of the shares to trading on a regulated market, presented together in a manner which permits comparison.



(3) The report on remuneration shall not contain special categories of personal data pursuant to the directly applicable regulation of the European Union governing the protection of personal data<sup>64</sup>) or personal data relating to the family situation of persons pursuant to Section 121m (1).

#### Section 121q

The auditor shall verify whether the report on remuneration contains information pursuant to Section 121p (1).

#### Section 121r

The issuer does not provide in the issuer's annual report information pursuant to § 118 (4) (f) to (h).

#### Section 121s

##### **Material transactions concluded by the issuer**

(1) A material transaction concluded by the issuer is a contract or agreement on the basis of which

- (a) the alienation or acquisition of assets by the issuer exceeding 10% of the assets resulting from the financial statements for the accounting period immediately preceding the accounting period in which the transaction is concluded; or
- (b) an increase only debts of the issuer by debt or contingent debt exceeding 10% of the assets resulting from the financial statements for the accounting period immediately preceding the accounting period in which the transaction is concluded.

(2) Transactions with the same related party concluded in the same accounting period shall be added together for the purposes of subsection (1).

#### Section 121t

##### Concluding and approving material transactions with related parties

The issuer may conclude a material transaction with a related party only with the consent of the general meeting. In the invitation to the general meeting, the issuer shall provide information pursuant to Section 121u (1); if the exact date of the conclusion of a material transaction is not known, it shall at least indicate the period in which the transaction is reasonably expected to be concluded. In the case pursuant to Section 121u (3), the invitation to the general meeting also contains information pursuant to Section 121u (c) to (f) for each sub-transaction, which is not subject to approval by the general meeting and the total amount of transactions.

#### Section 121u

##### Disclosure of material transactions with related parties

(1) The issuer shall disclose on its website at the latest on the day of concluding a material transaction with a related party at least

- (a) information on the nature of the issuer's relationship with a related party,
- (b) name of a related party,
- (c) the subject of a material transaction,
- (d) the date of conclusion of a material transaction,
- (e) the amount of the material transaction; and
- (f) other information necessary to assess whether the material transaction is fair and reasonable from the perspective of the issuer and shareholders that are not related party.

(2) A person controlled by the issuer shall communicate to the issuer information pursuant to subsection (1) on a material transaction concluded by them with another related party of the issuer without undue delay after the conclusion of this transaction. The issuer shall disclose this information on its website without undue delay upon receipt.

(3) If the criteria of significance of the transaction are met as a result of the addition of transactions concluded with the same related party pursuant to Section 121s (2), the issuer shall disclose information pursuant to subsection (1) on each partial transaction and at the same time state the total amount of all transactions.

(4) Subsections (1) to (3) are without prejudice to the rules on the disclosure of inside information pursuant to Article 17 (1) of Regulation (EU) No 596/2014 of the European Parliament and of the Council.

#### Section 121v

##### **Exceptions to the approval and disclosure of material transactions with related parties**

(1) The provisions of Sections 121t and 121u shall not apply to a material transaction with a related party concluded in the ordinary course of business and under normal market terms.

(2) The provisions of Sections 121t and 121u shall no longer apply to material transactions

- (a) concerning the remuneration of persons pursuant to Section 121m (1) in accordance with Sections 121k to 121n,
- (b) concluded between the issuer and a controlled entity if the issuer is its sole shareholder or if no shareholder of the issuer is its related party of the issuer, and
- (c) concluded by the bank on the basis of decisions or measures of a general nature aimed at protecting its stability issued by the CNB or on the basis of decisions or measures of a general nature issued pursuant to the Act on Recovery Procedures and Resolution of the Financial Market Crisis by the relevant authority to crisis resolution.

(3) In the case of material transactions pursuant to subsection (1), the issuer's supervisory or administrative board shall regulate the internal procedure enabling regular assessment of whether the conditions pursuant to subsection (1) are met; a member of the supervisory or administrative board who is a related party of the issuer does not participate in the assessment.

#### TITLE V

Section 122

**Notification of the proportion of voting rights**

(1) A person who reaches or exceeds the share of all the voting rights of the issuer referred to in Section 118(1)(a) in the amount of 1 %, if the registered capital of the issuer exceeds CZK 500 million, or the corresponding amount in foreign currency, 3 % if the issuer's registered capital is more than CZK 100 million, or the corresponding amount in foreign currency, 5 %, 10 %, 15 %, 20 %, 25 %, 30 %, 40 %, 50 % or 75 % or reduce its share of all voting rights below these limits, it shall notify the issuer and the CNB. This notification may be in English language. The duty under the first sentence has also the person who holds the share under the first sentence of the issuer's voting rights referred to in Section 118(1)(a) at the moment when shares issued or similar securities issued by that issuer are first admitted to trading on an EU regulated market.

(2) For the purpose of fulfilling the notification duty according to subsection (1), the voting rights of the financial instruments shall also be included in the share of all the voting rights of the issuer

- (a) which are subjects of disposition of other persons acting in consent with the person referred to in subsection (1),
- (b) which the person referred to in subsection (1) is able to temporarily exercise on the basis of a contract of consideration
- (c) which have been provided as collateral to the person referred to in subsection (1), provided such person publishes a declaration that will exercise such voting rights,
- (d) to whom the person referred to in subsection (1) has a lifelong right of use,
- (e) which person referred to in subsection (1) administrates, manages or is deposited with it, unless special instructions have been given to the owner for voting,
- (f) which may carry out on behalf of the person referred to in subsection (1), another person,
- (g) which are exercised by the person referred to in subsection (1) on the basis of a power of attorney, if they are entitled to exercise such rights at their discretion and if no specific instructions concerning voting have been given to them by the principal,
- (h) by virtue of the agreement referred to in subsection (1) proving the right to acquire or the right to decide whether to acquire shares or similar securities with voting rights, or
- (i) which do not fulfil the conditions of letter (h) which relate to shares fulfilling the conditions of letter (h) and which have an economic effect similar to that of financial instruments meeting the conditions of letter (h), regardless of whether they qualify for settlement the delivery of the item to which it relates or the cash settlement.

(3) If the proportion of the voting rights referred to in subsection (1) is raised or lost by the persons acting in consent, their shares in the voting rights shall be added together for the purpose of fulfilling the notification duty; the duty of an individual person under subsection (1) shall not be affected. The duty to notify is also subject to a change in the distribution of the proportion of voting rights between persons acting in consent in the scope of the notification duty.

(4) The person referred to in subsection (1) shall notify the achievement, excess or reduction of the share referred to in subsection (1) without undue delay, but no later than within four working days of becoming aware or could aware of the facts giving rise to the notification requirement of subsection (1). That the person referred to in subsection (1) has learned of this fact no later than two working days after the day on which this occurred. Where more than one person is required to fulfil the duty under subsection (1), such persons may fulfil the notification duty by joint notification. The notification duty is fulfilled if a written notification is sent within the specified time limit.

(5) Where the power of attorney within the meaning of subsection (2)(g) be given only for the purpose of one general meeting or similar meeting of the owners of securities representing a share in the issuer, the

notification referred to in subsection (1) may be made by the principal and the agent in the form of a single notice containing information on the proportion of the voting rights held during the general meeting or similar meeting of the owners securities representing the share in the issuer, information on the proportion of the voting rights at the moment when such agent can no longer exercise the voting rights at his discretion, and the information on when that moment occurs.

(6) A failure to fulfil the notification duty referred to in subsection (1) shall not result in the invalidity of a legal act by virtue of which has acquired or increased its participation in the issuer, but the voting rights attached to the participation thus acquired shall not be exercised until the reporting duty has been fulfilled.

(7) The CNB shall publish the information notified to it according to subsection (1) and shall published the information on the level of voting rights within no more than 3 working days from the date of delivery of the notification or from the day when it becomes aware of it.

(8) The details of the notifications according to subsection (1), the form and manner of its sending shall be specified by an implementing regulation.

#### Section 122a

##### **Procedure for reporting the proportion of voting rights**

(1) The reporting duty under Section 122(1) shall also person whose share in the voting rights has increased or decreased as a result of an increase or decrease in the registered capital.

(2) The duty under Section 122(1) shall arise regardless of the fact that the person does not exercise the voting rights for any reason. As a result of the fact that the person does not exercise the voting rights, there shall be no change in the shareholding or the share of other persons in the voting rights referred to in Section 122 subsection (1).

(3) The person referred to in Section 2a(1)(a) to (c), or a foreign person with a similar activity does not include in the voting rights according to Section 122(1) shares in the voting rights,

- (a) which relate to the trading book referred to in Article 4(1)(86) of the CRR,
- (b) if the share does not exceed the first sentence of Section 122(1), and
- (c) which does not exercise or otherwise interfere with the management of the issuer.

(4) The entity controlling other entity authorised to provide the investment service referred to in Section 4(2)(d) or a foreign person authorised by another EU member state to provide an investment service similar to the investment service referred to in Section 4(2)(d) to the share of the voting rights according to Section 122(1) does not include the shares in the voting rights that are related to the assets managed by the controlled entity, if

- (a) the controlled entity exercises the voting rights only on written order of the client, or
- (b) the controlling entity does not interfere in any way with the exercise of these voting rights.

(5) The entity controlling the manager of an investment fund or foreign investment fund to a share in the voting rights according to Section 122(1) shall not include the voting rights attaching to the assets in investment funds or foreign investment funds managed by such controlled entity, unless the controlling entity does not interfere in any way with the exercise of these voting rights.

(6) The provisions of subsections (4) and (5) shall also apply to the controlling entity which in accordance with the legal systems of a state which is not an EU member state, provides in that state a service equivalent to the investment service referred to in Section 4(2)(d), if

- (a) the legal order of that state provides that the controlling entity shall ensure that the voting rights attaching to the securities forming part of the property under management are exercised only by written order of the client or shall provide procedures to limit the possibility of conflicts of interest between the persons entrusted with the property under management and other persons,
- (b) the controlling entity does not interfere in any way with the exercise of the voting rights attaching to the securities which are part of the property under management, and
- (c) the controlled entity, in the event of a conflict of interest between itself and the controlling entity, must prioritize its interests over the interests of the controlling entity.

#### Section 122b

##### **Other conditions and requirements for reporting on the proportion of voting rights**

(1) Provisions of Section 122a(4) to (6) shall apply to the controlling entity only if such entity sends without undue delay to the CNB

- (a) information on the controlled entity according to Section 122a(4) to (6) and on supervisory authorities which are subject to supervision,
- (b) a declaration of compliance with the conditions laid down in Section 122a(4) to (6); the statement does not send if it relates exclusively to financial instruments that enable it to acquire securities within the meaning of Section 122(2)(h) or (i), and
- (c) changes in the data or statements referred to in letters (a) or (b).

(2) The controlling person, according to Section 122a(4) to (6), shall prove, at the request of the CNB without undue delay,

- (a) the controlling entity and the controlled entity have an organisational arrangement allowing the voting rights to be exercised in accordance with Section 122a(4)(b) or Section 122a(5)
- (b) where the controlling entity is a client controlled by the controlling entity or a participant in the property managed by the controlled entity, it is clear from the written documentation that their relationship is in usual contact with other clients.

(3) The issuer referred to in Section 118(1)(a) who has acquired or disposed of its own shares, by itself or through another person acting on behalf of the issuer, shall publish information that it has attained or exceeded the interest according to Section 122(1) of the first sentence of its voting rights or that it has reduced its interest in the voting rights these limits. The issuer shall publish this information within 4 working days of the occurrence of the event giving rise to that duty.

(4) The issuer referred to in Section 118(1)(a) in the information referred to in subsection (3) shall publish the total number of voting rights and the amount of registered capital in the calendar month in which its share in the voting rights has changed.

(5) For the purposes of fulfilment of the notification duty according to Section 122(1), the proportion of all voting rights of the issuer shall not include shares in voting rights from securities acquired on redemption or at price stabilization of a financial instrument under the conditions laid down by directly applicable legislation of the EU implementing the Directive (EU) on market abuse<sup>52)</sup>, unless the voting rights are exercised or the person acquiring the securities has taken over the management of the issuer.

#### Section 122c

##### **Exceptions to the notification duty**

(1) The notification duty according to Section 122(1) shall not apply to

- (a) the person for whom the notification duty has been fulfilled by the entity who controls it,

- (b) a person acquiring or disposing of the transferable securities referred to in Section 118(1)(a) for the purpose of settling transactions with such financial instruments where the time limit for their settlement is no more than 3 working days, or
- (c) a person who has in his power the transferable securities referred to in Section 118(1)(a) and the voting rights attaching to such financial instruments shall be exercised exclusively under the written order of the owner.

(2) The notification duty according to Section 122(1) shall also not apply to the market maker,

- (a) who is an investment firm or a person authorised by the supervisory authority of another EU member state to provide investment services,
- (b) if its proportion in the issuer's voting rights reaches or exceeds the threshold specified in Section 122(1) of the first sentence, or if it decrease its share below those limits,
- (c) on condition that it does not exercise influence on the issuer 's management, and
- (d) when, within the time limit specified in Section 122(4), it notifies to the supervisory authority of the issuer that it is or intends to perform the activity of the issuer's securities market.

(3)The person referred to in subsection (2) shall notify the supervisory authority of the issuer without undue delay of the termination of the activity of the market maker.

(4) The duty to notify according to Section 122(1) shall not apply to a member of the European System of Central Banks if, in performing the tasks of the European System of Central Banks, he or she exceeds the proportion of the voting rights referred to in Section 122(1), or amount of its share in voting rights decrease below these thresholds, and will not exercise these voting rights and will exceed these limits for a short period of time and in accordance with the rules governing the activities of the European Central Bank and central banks. In such cases, the notification duty does not apply to any other party to the transaction.

## Section 123

### **Choice of reference state**

(1) The issuer referred to in Section 118(1)(a)(2), Section 118(1)(b)(2), Section 118(1)(c) and (d) or subsection (4) shall choose one of the EU member states as the reference member state in which to fulfil the duties under Part Two, Titles II and V, or equivalent duties under the law of another EU member state. Only the EU member state in which that issuer has its registered office or in which the securities are issued and admitted to trading on an EU regulated market may be chosen. This option is binding for at least 3 years from the date of its execution unless the transferable security issued by that issuer ceases to be traded on all EU regulated markets.

(2) The issuer referred to in Section 118(1) shall publish the information on which EU member state will fulfil the duties under Part Two, Titles II and V or equivalent duties under the legal order of another EU member state, and at the same time notify the Czech national bank and the supervisory authority of another EU member state in which the securities are issued and admitted to trading on an EU regulated market and in which the issuer has its registered office.

(3) If the issuer referred to in Section 118(1)(a)(2), Section 118(1)(a), (b)(2) or 118(1)(c) and (d) its choice under subsection (1) within 3 months from the date of first admission of the securities issued by it to trading on an EU regulated market, it shall be deemed to have chosen as the reference EU member state in which its securities issued by it were traded for trading on an EU regulated market. If such states are more, it is deemed to have chosen each of these EU member states as the reference state until the issuer has chosen the reference member state as the only EU member state and will publish and notify its choice referred to in subsection (2).

(4) If the former reference state of the issuer referred to in subsection (1) can no longer be its reference member state, the issuer shall without undue delay choose a new reference state according to subsection (1) and publish and notify this option in accordance with subsection (2).

(5) If the issuer fails to notify its choice according to subsection (4) within 3 months of becoming aware that its former reference state according to subsection (1) can no longer be its reference state, it shall be deemed to have chosen the reference EU member state, in which securities issued by it were traded for trading on an EU regulated market. If such states are more, it is deemed to have chosen each of these EU member states as the reference state until the issuer has chosen the reference member state as the only EU member state and will publish and notify its choice referred to in subsection (2).

## TITLE VI

### Section 124

A person subject to duties or prohibitions under the MAR<sup>52)</sup>, unless it is an investment firm, a market operator or data reporting services provider, establishes, maintains and applies a mechanism to enable reporting of actual or potential infringements of the MAR similarly pursuant to Section 12i(1).

### *Sections 125 and 126*

*repealed*

## TITLE VII

### ACCESS TO REGULATED INFORMATION

#### Section 127

#### **General provisions**

(1) For the purposes of this Act, “regulated information” (in Czech: “*povinně uveřejňované informace*”) means information by the issuer or other person who has requested the admission of an investment security for trading on a regulated market without the issuer's consent or a market operator who has itself admitted the investment security for trading without the issuer's consent, shall be obliged to publish in accordance with titles II and III of this part of the Act and Article 17(1) of the MAR. Information under Section 120a(2) and (3), Section 120b(1)(a) and Section 120c(1) shall also be considered as regulated. Power of attorney form under Section 120(3), shall not be considered as regulated information as well as information according to Section 120b(1)(b) to (f) and subsection (2) in so far as it does not correspond to the regulated under first or second sentence.

(2) Regulated information shall be published by the person referred to in subsection (1) without delay, in such a way as to ensure non-preferable, easy and free of charge access; it shall also forward this information to the CNB. This person is also obliged to keep substantial data related to the obligatory published information, in particular information about the natural person who sent the regulated information for publication to the person mentioned in subsection (1), the data on the security of sending the regulated information for publication and the date and time, when the regulated information was sent for publication.

(3) The implementing regulation specifies the scope of the substantial data referred to in subsection (2), the form and manner of publication of the regulated information and the structure, form and manner of sending regulated information and information pursuant to the MAR to the CNB.

#### Section 127a

#### **Manner of disclosure of regulated information**

(1) The CNB shall disclose to the public the information sent to it according to Article 127(2) in a manner which

- (a) meets the security and reliability requirements of the origin of the information,
- (b) contains a time stamp for insertion of obligatory information,
- (c) meets the requirements for easy availability of obligatory end - user information,
- (d) enables through an electronic means transfer of information between a comparable system of other EU member states and the ESMA.

(2) The CNB shall also disclose to the public without delay, in the manner referred to in subsection (1), the notice it publishes according to Section 122(6) and information published in a state which is not an EU member state, according to the legal order of the state in which it becomes aware in the context of the exercise of financial market supervision if the disclosure of such information could be of relevance to the public in the EU.

(3) The CNB shall also disclose to the public the notifications made according to Article 19 of the MAR in the manner set out in subsection (1).

#### Section 127b

The CNB may conclude an agreement with the Committee of European Securities Regulators on the interconnection of regulated information through the electronic communications network and the administration of that network.

#### Section 127c

### **Language of the publication**

(1) The issuer referred to in Section 118(1), whose transferable security is admitted to trading on a regulated market only, shall publish the regulated information in the Czech or English language.

(2) The issuer referred to in Section 118(1), whose transferable security is admitted to trading on a regulated market and at the same time on a foreign regulated market, shall publish the regulated information in the Czech or English language and further in the English language or in a language, in which documents can be submitted to the competent supervisory authorities of other EU member states in which these foreign regulated markets have their registered office.

(3) The issuer referred to in Section 118(1), whose transferable security is not admitted to trading on a regulated market but admitted to trading on a foreign regulated market, shall publish the regulated information

- (a) in the English language or language in which documents may be submitted to the competent supervisory authorities of other EU member states in which those foreign regulated markets have their registered office, and
- (b) in Czech or English language.

(4) The issuer referred to in Section 118(1) in the case of an transferable security whose nominal value corresponds at least to the amount determined in euro or in the case of an transferable security referred to in Section 118(1)(c) and its nominal value corresponds to at least the amount corresponding to the limit set in euro at the date of issue, on condition that such transferable securities are admitted to trading on one or more EU regulated markets, publish regulated information in the Czech language or in the English language and in a language in which documents can be submitted to the competent supervisory authorities of other EU member states in which these EU regulated markets have their registered office, or in English language.

#### Section 127d



**An authorisation of an exception from fulfilment of duties for an issuer with registered office in a state which is not an EU member state**

(1) The CNB shall grant an exception from the fulfilment of the duties laid down in Section 118 to 119a, Section 120a(1)(a), Section 120c(1) or Section 122b(3) or (4) or to issuer, which has its registered office in a state which is not an EU member state and which, according to legal order of that State, performs equivalent duties if the obligated person proves to the CNB, that the duty under the legal order of a state which is not an EU member state is equivalent to the duty laid down in Section 118 to 119a, Section 120a(1)(a), Section 120c(1) or Section 122b(3) or (4). Cases where the duty under the legal order of a state which is not an EU member state is equivalent to the duty laid down in Section 118 to 119a, Section 120a(1)(a), Section 120c(1) or Section 122b(3) or (4), shall provide for an implementing regulation in accordance with EU law.

(2) The conditions under which the accounting principles deriving from the legal order of the state in which the issuer referred to in subsection (1) has registered office shall be equivalent to International Accounting Standard IAS 34 - Interim Financial Reporting, which is annexed to Commission Regulation (EC) No 1126/2008 as well as cases where these principles can be considered equivalent to international accounting standards is defined by a directly applicable EU law introducing a mechanism for determining the equivalence of accounting standards used by issuers of securities from third countries<sup>17c)</sup>.

(3) The issuer to which the CNB has granted an exception in accordance with subsection (1) shall be obliged for information which it discloses in accordance with the duty laid down under the legal order of the state in which it has its registered office and which is equivalent to that of which the CNB has granted the exception to proceed in a manner analogous to the person publish the regulated information according to Section 127(2) and Section 127c, and is obliged to report to the CNB without undue delay any change in the facts on the basis of which the exception was granted.

(4) The CNB shall inform the ESMA of the granting of an exception under subsection (1).

**TITLE VIII**

**OBLIGATIONS OF CERTAIN QUALIFIED INVESTORS AND CERTAIN OTHER ENTITIES**

**Section 127e**

**Scope**

(1) The provisions of this Title shall apply where an institutional investor owns shares or similar securities representing an interest in an issuer having its registered office in a member state of the European Union provided that they are admitted to trading on a European regulated market.

(2) The provisions of this Title shall apply where an asset manager, in the event that an asset manager provides an investment service pursuant to Section 4(2)(d) or manages investment funds and foreign investment funds in accordance with the law governing management companies and investment funds, in respect of shares or similar securities representing an interest in an issuer having its registered office in a member state of the European Union, provided that they are admitted to trading on a European regulated market.

(3) The provisions of Sections 127l to 127n shall apply to voting advisers with registered office or head office in the Czech Republic and to voting advisers with registered office or head office in a state other than a member state of the European Union operating in the Czech Republic through a branch.

**Involvement policy**

#### Section 127f

(1) The institutional investor and the asset manager shall draw up a policy of the exercising of voting rights and their further involvement in relation to the issuer (hereinafter referred to as the “engagement policy”) and shall publish it on their website free of charge.

(2) The engagement policy contains

- (a) the manner in which the investment strategy of the institutional investor regulates his engagement in relation to the issuer,
- (b) the manner in which the investment strategy of the asset manager regulates the engagement of the shareholders whose shares or similar securities it manages in relation to the issuer,
- (c) the manner in which the institutional investor or asset manager monitors significant matters concerning the issuer, in particular
  1. the issuer's business strategy,
  2. the financial and non-financial key performance indicators,
  3. the risks to which the issuer is exposed,
  4. the capital structure of the issuer,
  5. the social and environmental impacts of the issuer's activities and
  6. the manner in which the issuer is managed and administered,
- (d) the manner of communication with the issuer,
- (e) the manner of exercising voting rights or other rights associated with a security representing a share in the issuer,
- (f) the manner of cooperation with other shareholders in the exercise of voting rights and further engagement in relation to the issuer,
- (g) the method of communication with relevant stakeholders,
- (h) the procedure for resolving actual or potential conflicts of interest in connection with the engagement of an institutional investor or an asset manager in relation to the issuer.

#### Section 127g

(1) The institutional investor and the asset manager shall publish annually, free of charge, on their websites in relation to the issuer

- (a) a description of how the engagement policy has been implemented,
- (b) a general voting strategy,
- (c) information on how they voted at the general meetings of the issuer, if this voting is significant with regard to the subject of voting or the size of the share in the issuer,
- (d) an explanation of their voting at the issuer's general meeting, unless the voting does not have significant impact on the issuer's activities or their interest in the issuer is negligible; and
- (e) information on the use of the services of voting advisers.

(2) If the asset manager conducts the engagement policy, including voting at the general meeting on behalf of the institutional investor, the institutional investor shall publish a link to the asset manager's website on which the information pursuant to Subsection 1 or reasoning pursuant to Section 127h is published.

#### Section 127h

An institutional investor and an asset manager do not need to disclose information pursuant to Section 127f and Section 127g(1) if they publish sufficient reasoning for doing so.

#### Section 127i

An institutional investor and an asset manager shall apply similarly procedures to the prevention of conflicts of interest when developing the engagement policy.

#### Section 127j

##### **Investment strategy of an institutional investor**

(1) An institutional investor shall publish, free of charge on its website, how the main elements of the investment strategy

- (a) correspond to the structure and maturity of its debts, with an emphasis on long-term debts; and
- (b) contribute to the medium-term and long-term performance of its investments.

(2) If an institutional investor owns a share or similar security representing an interest in an issuer that is traded on a European regulated market and these assets are managed by an asset manager at its own discretion, the institutional investor shall publish on its website the following facts that are part of the asset management arrangement with the asset manager:

- (a) how the arrangement incentivises the asset manager to
  - 1. align its investment strategy and investment decisions with the structure and maturity of the institutional investor's debts, in particular long-term debts,
  - 2. make investment decisions on the basis of an assessment of the medium-term and long-term performance of the issuer whose securities representing the interest in the issuer it manages,
- (b) how the asset manager engages in the activities of the issuer in order to improve its medium-term and long-term performance,
- (c) the manner in which the method and period of assessment of the asset manager's activities and the remuneration for managing the assets are consistent with the structure and maturity of the institutional investor's debts, in particular long-term debts, and how they take into account the issuer's overall performance;
- (d) the manner in which the institutional investor
  - 1. supervises the costs incurred by the asset manager in connection with the turnover of the managed assets,
  - 2. sets and monitors the target turnover or spread of the target turnover of the managed assets,
- (e) the duration of this arrangement.

(3) An institutional investor shall also publish information pursuant to Subsection 2 if it invests in a security representing an interest in the issuer through an investment fund or a foreign investment fund.

(4) If the arrangement on the management of the assets of an institutional investor by the asset manager does not contain some of the facts pursuant to Subsection 2, the institutional investor shall publish on its website a sufficient reasoning as to why this is the case.

(5) An institutional investor shall update the information pursuant to Subsections 1 to 3 once a year if there is a substantial change.

(6) Instead of publication on its website, an institutional investor may include the information pursuant to Subsections 2 to 4 in its report on solvency and financial situation pursuant to the law governing insurance.

#### Section 127k

##### **Investment strategy of an asset manager**

(1) If an asset manager manages the assets of an institutional investor, which include securities representing an interest in the issuer, it shall annually notify the institutional investor of how its investment

strategy and its implementation is in accordance with the management agreement and its contribution to the medium-term and long-term performance of the institutional investor. This also applies if the asset manager manages an investment fund or a foreign investment fund through which the institutional investor has invested in securities representing an interest in the issuer.

(2) The notification pursuant to Subsection 1 shall contain information on

- (a) the main medium-term and long-term risks associated with the investment,
- (b) the structure of the investment managed by the asset manager,
- (c) the turnover of the investment and the costs incurred in connection with the turnover,
- (d) the use of voting advisers for the purposes of implementing the engagement policy,
- (e) the policy applied to the lending of securities and its use for the involvement policy, especially at the time of the general meeting of the issuer,
- (f) the fact that the investment strategy is based on an assessment of the issuer's medium-term and long-term performance, including an assessment of the issuer's non-financial key performance indicators,
- (g) conflict of interest which has arisen in connection with the implementation of the involvement policy and how to deal with it.

(3) The asset manager does not have to communicate information pursuant to Subsections 1 and 2, if it is publicly available.

### **Information obligations of the voting adviser**

#### Section 127l

(1) The voting adviser shall publish free of charge

- (a) a reference to the code of conduct which it applies for preparation of analyses, advice or voting recommendations in relation to the exercise of voting rights and information on how it applies that code, or
- (b) a sufficient reasoning for not applying the code of conduct referred to in letter (a).

(2) If the voting adviser applies the code of conduct pursuant to Subsection 1(a) and if it deviates from its provisions, it shall publish the provision from which it has deviated, explain the reasons for the deviation and publish any other measures it may have taken.

(3) The voting adviser shall publish the information pursuant to Subsections 1 and 2 free of charge on its website and shall update it at least once a year.

#### Section 127m

(1) The voting adviser shall publish at least once a year the following information concerning the preparation of its analyses, advice and voting recommendations related to the exercise of voting rights:

- (a) a basic description of the methodologies and models it uses,
- (b) the main sources of information it uses,
- (c) a description of measures to ensure quality taken, including the professional qualifications of the staff concerned,
- (d) whether and how it takes into account national market conditions,
- (e) whether and how it takes into account the requirements laid down by legal regulations and internal regulations of the issuer,
- (f) a basic description of the voting policy it applies to individual markets,
- (g) whether it communicates with the issuer and relevant stakeholders,
- (h) the scope and description of the communication pursuant to letter (g),

(i) how it prevents conflict of interest and how it resolves this conflict of interest.

(2) The voting adviser shall publish the information referred to in Subsection 1 on its website free of charge and shall keep it available for at least 3 years from the date of its publication.

(3) If the information pursuant to Subsection 1 is already available as part of the publication pursuant to Section 127l, it does not need to be published separately.

§ 127n

**Identification of conflict of interest**

The voting adviser shall inform its customers without undue delay of any actual or potential conflict of interest which may affect the preparation of its analyses, advice or voting recommendations related to the exercise of voting rights. At the same time, it informs customers about how it resolves this conflict of interest.

TITLE IX

GUARANTEE FUND OF INVESTMENT FIRMS

Section 128

**General provisions**

(1) The Guarantee Fund of Investment Firms (in Czech: “*Garanční fond obchodníků s cennými papíry*”) (hereinafter referred to as the “Guarantee Fund”) is a legal person that provides a guarantee system from which compensation is paid to the clients of an investment firm that is unable to meet its debts to its clients.

(2) The Guarantee Fund

- (a) accepts contributions from investment firms,
- (b) informs the CNB of the amount of contributions paid by individual investment firms to the Guarantee Fund for the relevant calendar year and makes this information public on its website by 30 April of the following year,
- (c) ensures verification of claims for the payment of compensation from the Guarantee Fund,
- (d) ensures the payment of compensation from the Guarantee Fund.

(3) The Guarantee Fund shall be incorporated in the Commercial Register.

(4) The Guarantee Fund is not a state fund. Guarantee Fund is not subject to insurance legislation.

(5) The Guarantee Fund is managed by a five-member administrative board, which is its statutory body. The chairman, vice-chairman and other members of the administrative board of the Guarantee Fund are appointed and dismissed by the minister of finance. Members of the administrative board of the Guarantee Fund are appointed for a period of 5 years, even repeatedly. At least 1 member is appointed from among the employees of the CNB, at the suggestion of the CNB Board. At least 2 members are appointed from among the members of the statutory body or employees of the investment firms.

(6) If a membership of a member of the Guarantee Fund’s administrative board terminates before the expiry of his term of office, a new administrative board member is appointed in his place, the term of office ending on the same date as his predecessor's term of office.

(7) A member of the Board of Directors is obliged to perform their duties with professional care.

(8) In case of a breach of the duty under subsection (7), the administrative board member compensates for the damage caused by it,

- (a) in case of an intentional act, in full amount of the damage,
- (b) in case of negligence, up to the total amount of CZK 100 000 for the entire period of their performance.

(9) Each investment firm must pay a contribution to the Guarantee Fund.

(10) The source of the Guarantee Fund assets are contributions from investment firms, administrative fines imposed on investment firms under this Act, administrative fines imposed on management companies for breach of the provisions concerning the management of client assets and proceeds from investing cash. The Guarantee Fund may also accept a loan, subsidy or repayable financial assistance.

(11) The Guarantee Fund resources may be used at

- (a) compensation arising from the inability of an investment firm to meet its duties to return client assets to clients for reasons directly related to its financial circumstances,
- (b) repayments of loans or repayable financial assistance,
- (c) reimbursement of the costs of the Guarantee Fund.

(12) For the purposes of this title, the client's assets are the funds and financial instruments that the investment firm held in connection with for the purpose of providing the investment service and the funds and financial instruments acquired for these values to the client. The second sentence of Section 2(1)(h) shall apply *mutatis mutandis*.

(13) The funds of the Guarantee Fund may only be invested in a secure manner.

(14) The manner of securing the activities of the Guarantee Fund, the method of investing the Guarantee Fund's funds and the costs of the Guarantee Fund shall be regulated in detail by the Statute of the Guarantee Fund, which shall be issued by the administrative board after prior approval by the MoF. Approval of MoF is also required for any change in the status of the Guarantee Fund.

## Section 129

### **Payment of contributions to the Guarantee Fund**

(1) The investment firm pays to the Guarantee Fund an annual contribution of 2 % of the amount of fee and commission income for the provided investment services in the last calendar year.

(2) The annual contribution shall be at least CZK 10 000, irrespective of the number of months in which the investment firm performed its activity.

(3) The contribution to the Guarantee Fund shall be payable annually until 31 March, for the previous calendar year.

## Section 129a

### **Check of payment of contributions**

(1) Immediately after the period according to Section 129(3), the Guarantee Fund shall report to the CNB the amount of contributions paid by each individual investment firm for the past period.

(2) The CNB compares the amount of contributions actually paid under subsection (1) with the amount of fee and commission income for the investment services provided in the last year ascertained on the basis of the data verified by the auditor received from the investment firm according to Section 16(1)

multiplied by the relevant percentage according to Section 129(1). If the difference is detected, the CNB will take appropriate remedial measures. The CNB notifies the Guarantee Fund of the differences identified and of the measures taken to remedy it.

#### Section 129b

(1) The investment firm, no later than the end of the calendar month following the end of the calendar year, shall submit to the Guarantee Fund information on the amount of customer assets as of the end of the last business day of the relevant year for which the Guarantee Fund, in case of not submitting by the investment firm, would provide a compensation calculated according to the Section 130 (9). The Guarantee Fund shall provide this information to the Ministry without undue delay upon receipt such information.

(2) The obligation according to the Subsection (1) shall apply to the investment firm and the foreign person according to the Section 132a (1) and a foreign person with its registered office or actual seat in the state, that is not EU member state, providing investment services in the Czech Republic.

(3) The details, form, manner and structure of the fulfillment of the information obligation pursuant to subsection (1) shall be determined by a regulation of the Ministry.

### **Provision of compensation from the Guarantee Fund**

#### Section 130

(1) The CNB notifies, without undue delay, the Guarantee Fund that

- (a) because of its financial situation, the investment firm is unable to meet its debts by returning to clients property belonging to them and is unlikely to meet its debts within one year, or
- (b) the court has made a ruling on the insolvency of an investment firm or a ruling with which has the effect of suspending clients' ability to make claims against it.

(2) The Guarantee Fund, in agreement with the CNB, promptly publish without undue delay in an appropriate manner the notification stating

- (a) that the investment firm is unable to pay its debts,
- (b) the place, method and time to submit claims for compensation and commencement of payment of compensation from the Guarantee Fund and
- (c) any other matters relating to the lodging of claims.

(3) The period for filing claims may not be less than 5 months from the date of publication of the notice referred to in subsection (2). The fact that this period has expired cannot be invoked to deny paying compensation from the Guarantee Fund.

(4) List of exclusions from the compensation from Guarantee Fund:

- (a) the Czech Consolidation Agency (in Czech: "*Česká konsolidační agentura*"),
- (b) a territorial self-governing unit,
- (c) a natural or legal person who, during the 3 years preceding the notification referred to in subsection (2)
  1. carried out an audit or participated in an audit of an investment firm whose clients are paid compensation from the Guarantee Fund,

2. has been a member of a management body of an investment firm whose clients are paid compensation from the Guarantee Fund,
  3. was a person with a qualifying holding in an investment firm whose clients are paid compensation from the Guarantee Fund,
  4. was a person related by the Civil Code to a person under points (1) to (3),
  5. was a person belonging to the same business group as an investment firm whose clients are paid compensation from the Guarantee Fund,
  6. performed an audit or participated in the audit of a person belonging to the same business group as an investment firm whose clients are paid compensation from the Guarantee Fund,
  7. was a member of the management body of a person belonging to the same business group as an investment firm whose clients are paid compensation from the Guarantee Fund,
- (d) the person in which investment firm whose clients are paid a refund from the Guarantee Fund or a person with a qualifying holding in that investment firm, has or had amount exceeding 50 % of the share capital or voting rights, at any time during the last 12 months immediately preceding the day on which the notification referred to in subsection (1) was made,
- (e) a person who, in connection with the legalization of proceeds of crime, has entrusted the proceeds of a criminal offence to an investment firm whose clients are paid compensation from the Guarantee Fund,
- (f) a person who has committed an offence that caused the inability of an investment firm whose clients are paid compensation from the Guarantee Fund to fulfil their duties towards clients,
- (g) a participant of the association according to Section 829 of Act No. 40/1964 Sb., as amended by Act No. 509/1991 Sb., or a companion of a company according to Section 2719 of the Civil Code, which was not communicated to an investment firm to be a participant of an association or a member of the company, in a demonstrable manner and before the decision on the insolvency of an investment firm or by a notification according to subsection (1)(a) was made.

(5) The Guarantee Fund shall suspend the payment of the compensation

- (a) for the client's assets which is apparent from the course of the criminal proceedings, that it may be the assets referred to in subsection (4)(e), or
- (b) for a person suspected of having committed a criminal offence which has caused the inability of an investment firm to fulfil its duties towards the client, for the duration of the criminal proceedings against that person.

(6) The Guarantee Fund shall suspend the payment of the compensation according to subsection (5) without undue delay after learning of the above facts.

(7) The Guarantee Fund provides compensation for client's assets, which could not be issued to him for reasons directly related to the financial situation of an investment firm. The amount of the compensation for the client shall be calculated, on the date on which the Guarantee Fund received notification of the CNB according to subsection (1), by summing all components of the client's assets which could not be returned to the client for reasons directly related to the financial situation of the investment firm, including its co-ownership with other clients, except for the value of funds entrusted to an investment firm which is a bank or a branch of a foreign bank and maintained by it on accounts of insured persons under the law regulating the activities of banks. The resulting amount shall be deducted from the value of the client's liabilities to the investment firm payable on the date on which the Guarantee Fund received the notification of the CNB according to subsection (1).

(8) For the calculation of the compensation according to subsection (7), the fair values of the financial instruments shall be effective as of the date on which the Guarantee Fund receives the notification of the CNB according to subsection (1). In the calculation of the compensation the Guarantee Fund may also take into account the contractual arrangement between the investment firm and the client, if they are customary, in particular the interest actually credited or other income to which the client was entitled as at the date on which the Guarantee Fund received the notification of the CNB according to subsection (1).



(9) A refund of 90 % of the amount calculated in accordance with subsections (7) and (8) shall be paid to the client, but not more than the amount in Czech crowns corresponding to EUR 20 000 per client per investment firm.

(10) Compensation from the Guarantee Fund must be paid within 3 months from the date of verification of the claimed entitlement and of the calculation of the amount of compensation. In exceptional circumstances, the CNB may, at the request of the Guarantee Fund, extend this period for a maximum of 3 months.

(11) At the request of the Guarantee Fund, the investment firm shall, upon request by the Guarantee Fund, provide the supporting evidence necessary for the calculation of the indemnity under subsections (7) and (8). If crisis management administration or temporary crisis management administration is established in the investment firm in accordance with the Act on Recovery and Resolution in the Financial Market, this duty has a person designated by the Act on Recovery and Resolution in the Financial Market. Where an investment firm has a forced administration, this duty is forcible to the forced administrator, if insolvency is declared on the assets of of the investment firm, the insolvency administrator of that investment firm is under a duty to do so. At the Guarantee Fund's request, the same duty is enforceable to a person who has such a document.

(12) The documents referred to in subsection (11) contain, in particular, the following information for each client:

- (a) the currency and amount of the funds and the type, number and unambiguous identification of the financial instruments constituting the client's assets which could not be returned in accordance with the procedure set out in Section 132,
- (b) the amount of the client's claims on the investment firm arising out of contractual provisions, in particular the interest actually credited or the other proceeds to which the client is entitled,
- (c) the amount of the offsetting claims of the investment firm in relation to the client.

#### Section 131

(1) On the moment of payment of compensation from the Guarantee Fund, the Guarantee Fund becomes the creditor of an investment firm, within the extent of the compensation paid. If the claim has already been filed for insolvency on the assets of an investment firm, the Guarantee Fund becomes at the same moment and to the same extent as the insolvency creditor of the investment firm in insolvency instead of the client. At the request of the Guarantee Fund, the insolvency administrator shall indicate this change without undue delay in the list of registered claims<sup>18)</sup>.

(2) The client's right to receive compensation from the Guarantee Fund expires no later than 5 years from the date of publication of the information specified in Section 130(2). If the client has filed his claim for compensation according to Section 130(2)(b), this deadline shall not be terminated earlier than 3 months from the date of delivery of the application to the Guarantee Fund.

(3) In the event that the Guarantee Fund's funds are insufficient for the payment of compensation with accessories or for the reimbursement of the costs of its activity, the Guarantee Fund shall obtain the necessary funds on the financial market. The Guarantee Fund ensures that the conditions under which the funds of the Guarantee Fund are provided are as advantageous to it as possible. If the Guarantee Fund does not receive financial resources on the financial market, it may, at its request, be granted subsidies or repayable financial assistance at the required amount from the state budget for special reasons.

#### Section 132

### **Returning the client's assets after the insolvency and insolvency proceedings on the assets of an investment firm**

(1) An insolvency administrator returns to clients their asset without undue delay, when the insolvency of an investment firm is declared, including revenue from client's assets. Until the client's assets is returned to the client, the insolvency administrator acts in relation to the client's assets with due diligence.

(2) If financial instruments that are mutually substitutable are not sufficient to satisfy all eligible clients, each client shall obtain a number of financial instruments that may be returned without the financial instrument being split. The insolvency administrator will monetize and give to each client a share of the money received corresponding to the extent to which the client was not satisfied by the first sentence.

(3) If the funds are not sufficient to satisfy all eligible clients, they will meet the requirements of the clients fairly.

(4) Insofar as the claim of a client cannot be satisfied by the procedure in subsection (2) or (3), it shall be deemed a claim that insolvency administrator is required to apply in insolvency proceedings under Insolvency Act<sup>20</sup>); until the extent of satisfaction of this claim is known, the claim may be applied as a conditional claim<sup>21</sup>).

(5) The insolvency administrator shall be compensated for the activities referred to in subsections (1) to (4) by the reimbursement of the cash expenses and the remuneration which are receivable for the insolvency assets; in case the insolvency assets is not sufficient for the payment of the reimbursement, it is paid by the state. The method of payment of the compensation of the reimbursement of the cash expenses and the remuneration, the maximum amount paid by the state and the method of its payment shall be specified by the implementing regulation.

#### Section 132a

(1) A management company or a foreign person authorised under Section 481 of the Act on Management Companies and Investment Funds, which is not equivalent to a self-governing investment fund, which carries out the activity specified in Section 4(2)(d) or Section 4(3)(a) is obliged to pay a contribution to the Guarantee Fund in relation to this activity and its clients are entitled to the payment of compensation under similar conditions set out in this Act for the investment firm and its clients. For the issuance of a client's assets in the event of the insolvency of such management company or foreign person, the provisions of this Act on the returning the client's asset of an investment firm applies *mutatis mutandis*.

(2) The contribution to the Guarantee Fund shall not be paid for funds and financial instruments in the assets of an investment fund entrusted to its depositary within the framework of the activity of the depositary or its prime broker within the activity of the prime broker.

#### Section 133

##### **Payment of the contribution to the Guarantee Fund by a foreign person**

(1) A foreign person authorised by the supervisory authority of another EU member state to provide investment services and which provides investment services in the Czech Republic may not participate in the guarantee scheme provided by the Guarantee Fund.

(2) A foreign person established or having its registered office in a state which is a state which is not EU member state and which provides investment services in the Czech Republic shall participate in the guarantee system provided by the Guarantee Fund under the same conditions as the investment firm. The Guarantee Fund is paid a contribution and it pays compensation for client assets entrusted to a foreign person in the provision of investment services in the Czech Republic.

#### Section 133a

### **Processing of personal data**

The Guarantee fund while processing the personal data

- (a) need not restrict the processing of personal data where the data subject denies its accuracy or objects to such processing; and
- b) may perform its activities pursuant to this Act also exclusively on the basis of automated processing of personal data; a description of the computer algorithms and the selection criteria on the basis of which such processing is carried out shall be entered by the Guarantee Fund in the records of personal data processing activities and kept for at least one year from their last use for personal data processing.

(2) A foreign person established or having its registered office in a state which is a state which is not EU member state and which provides investment services in the Czech Republic shall participate in the guarantee system provided by the Guarantee Fund under the same conditions as the investment firm. The Guarantee Fund is paid a contribution and it pays compensation for client assets entrusted to a foreign person in the provision of investment services in the Czech Republic.

### Section 134

#### **Information duty and cooperation**

(1) The investment firm informs the Guarantee Fund of its participation in a similar foreign guarantee system.

(2) The CNB shall inform the foreign guarantee system where the investment firm has affiliated the assets of its clients that the investment firm is unable to meet its duties to return clients assets to clients for reasons directly related to its financial circumstance and it is unlikely to be able to meet them within 1 year.

(3) The Guarantee Fund cooperates with a foreign guarantee system where the investment firm has the assets of its clients co-insured, especially when the compensation is provided from both of these guarantee schemes.

### TITLE X

#### POSITION AND CONTROL LIMITS FOR POSITION MANAGEMENT OF COMMODITY DERIVATIVES

##### Section 134a

(1) The CNB shall establish by a measure of a general nature, limits on the size of the net position that a person may hold at any time in commodity derivatives traded in trading venues and in economically equivalent OTC derivatives.

(2) The limits referred to in subsection (1) shall be determined on the basis of all the positions held by the person and the positions held at the level of the whole group on behalf of that person, in order to

- (a) prevent market abuse, and
- (b) support proper pricing and settlement conditions, including the prevention of market disruption, and in particular ensure the convergence between the prices of derivatives in the month of performance and the immediate prices of the underlying commodity to which the value of the derivatives applies without prejudice to the pricing of the commodity on the market.

(3) The limits referred to in subsection (1) shall not apply to positions held by, or on behalf of a non-financial entity that are objectively measurable as reducing risks directly related to the business activity of that non-financial subject if the entity so requests from the CNB.

(4) The limits under subsection (1) shall clearly determine the quantitative thresholds of the maximum size of a position in a commodity derivative that may be held by persons.

(5) The limits under subsection (1) shall be determined by the CNB, taking into account the provisions of Section 136(1)(q).

(6) In the event of a significant change in the real offer or net open positions or any other significant change in the market, the CNB, on the basis of its own findings of the real bid and open positions, shall review the limits referred to in subsection (1) and set new limits on positions with the calculation methodology developed by the ESMA.

(7) Where the limits referred to in subsection (1) are assessed by the ESMA as incompatible with the aims set out in subsection (2) and the methodology established for calculation, the CNB

- (a) adjusts the position limits in accordance with the opinion of the ESMA, or
- (b) discloses without undue delay on its website the reasons why it does not consider it necessary.

#### Section 134b

(1) If the same commodity derivative is traded in significant quantities in multi-member trading venues across states and the largest amount of the derivative is traded in a trading venue operated by a person with registered office in the Czech Republic, the CNB, by a measure of a general nature, applies to all trading of that derivative.

(2) The CNB a single limit on the position referred to in subsection (1) and any amendments thereto shall consult with the relevant operators of other trading venues in which the derivative is traded in a significant quantity.

#### Section 134c

(1) The operator of the trading venue on which commodity derivatives are traded shall apply the limits according to Section 134a(1) and Section 134b(1); the operator may as a result of this application

- (a) monitor the net open positions of persons,
- (b) have access to information, including any relevant documentation provided by persons, on the size and purpose of a closed exposure or position, information on true owners, any agreements of concerted practices and any related assets or liabilities in the underlying market,
- (c) require a person to terminate or reduce the size of a position temporarily or permanently as required by a specific case and to take unilateral appropriate measures to ensure that termination or limitation is made if the person does not fulfil the requirement, and
- (d) if necessary, require a person to temporarily return the liquidity to the market at an agreed price and in an agreed volume with the express intent of mitigating the effects of a large or dominant position.

(2) The limits referred to in Section 134a(1) and their application according to subsection (1) shall be transparent and non-discriminatory, shall state how individuals apply and take into account the nature and composition of market participants and the way they use traded derivatives.

(3) The operator of the trading venue shall report to the CNB the details of the application of the limits according to Section 134a(1) and Section 134b(1).

#### Section 134d

(1) The CNB may, in exceptional cases, lay down by measures of a general nature limits of positions which are more restrictive than the limits of positions under Section 134a(1), where such limits are justified and proportionate to market liquidity and regularity functioning of this market.

(2) If the CNB sets limits according to subsection (1), it shall disclose the details thereof on its website.

(3) The limits referred to in subsection (1) shall be valid for a maximum of 6 months from the date of their publication on the website of the CNB. Their validity may be extended by further periods, each of which shall not exceed 6 months, provided that the reasons for the restriction continue to apply. If these limits are not extended beyond the six-month period, they will automatically lapse upon expiry of this period.

(4) If the limits referred to in subsection (1) are deemed by the ESMA to be necessary to deal with an exceptional case, the CNB shall disclose a notice on its website without undue delay stating fully reasoning of these limits have been set.

## TITLE XI

### REPORTING OF POSITIONS BY CATEGORY OF POSITION HOLDERS

#### Section 134e

(1) An operator of a trading venue trading commodity derivatives or greenhouse gas emission allowances or derivatives thereof,

- (a) if the number of persons and their open positions exceeds the minimum thresholds, it shall disclose a weekly report with aggregate positions that hold individual categories of persons in individual commodity derivatives or greenhouse gas emission allowances or derivatives traded in its trading venue, long and short positions according to these categories, their changes from the previous report, the percentage of total net open positions by category and the number of persons holding positions in each category in accordance with subsection (3), and shall transmit this report to the CNB and to the ESMA, and
- (b) report at least once a day to the CNB a complete breakdown of the positions held by all persons in the business system, including the participants and their clients.

(2) An investment firm trading with commodity derivatives or greenhouse gas emission allowances and derivatives thereof shall provide at least once a day with a full breakdown of its positions acquired in commodity derivatives or greenhouse gas emission allowances or derivatives thereof traded in the trading venue and in economically equivalent OTC derivatives as well as the positions of clients and their clients up to the end client in accordance with Article 26 of the MiFIR and, if applicable, with Article 8 of the REMIT,

- (a) the supervisory authority of an EU member state which has authorised a trading venue operator where such commodity derivatives or greenhouse gas emission allowances and their derivatives are normally traded, or
- (b) where commodity derivatives or greenhouse gas emission allowances or derivatives are traded in significant quantities in multi-member trading venues across states, the supervisory authority of an EU member state which has authorised the trading venue operator where the largest quantity of the derivative is traded.

(3) The operator of a trading venue shall include the persons referred to in subsection (1)(a) by the nature of their main business activity, taking into account any valid authorisation, such as

- (a) an investment firm, a bank, a savings and credit cooperative or a similar foreign person established or having its registered office in another EU member state,

- (b) an investment fund or a foreign investment fund, distinguishing whether it is a UCITS fund or an equivalent foreign investment fund or another investment fund or foreign investment fund,
- (c) any other authorised or regulated financial institution, including an insurance company, a reinsurance company, a state contributory pension insurance institution or a similar foreign person established or having its head office in another EU member state, including institutions for occupational retirement provision,
- (d) another entrepreneur, or
- (e) the operator of an installation or aircraft required to fulfil the requirements of the Act governing the conditions for trading in greenhouse gas emission allowances or similar provisions of the law of another EU member state in the case of greenhouse gas emission allowances and their derivatives.

(4) In the reports referred to in subsection (1)(a) the number of long and short positions by category of persons, any changes since the submission of the previous report, the percentage of total open interest rate positions by category and the number of persons in each category.

(5) The reports referred to in subsection (1)(a) and subsection (2) distinguish between

- (a) positions designated as positions which, in an objectively measurable manner, reduce the risks directly associated with business activities, and
- (b) other positions.

## **PART TEN**

### **SUPERVISION AND ADMINISTRATIVE SANCTIONS**

#### **TITLE I**

#### **SUPERVISION ON INDIVIDUAL BASIS**

#### **Chapter 1**

#### **General provisions**

#### **Section 135**

#### **Persons subject to supervision**

(1) The CNB supervises the compliance with rights and duties established by this Act, its implementing regulation, the directly applicable EU regulations in the field of financial market activities<sup>2)</sup> and the conditions laid down in the decision issued according to this Act. Subjects of the supervision are:

- (a) an investment firm,
- (b) a member of the management body of a person subject to supervision under this subsection,
- (c) a person delegated by an investment firm to carry out critical or important operational functions within the scope of this delegation,
- (d) an accredited person [Section 14c(2)],
- (e) a foreign person authorised to provide investment services which provides services in the Czech Republic through a branch, in respect of the investment services provided through this branch in the territory of the Czech Republic,
- (f) an investment intermediary,
- (g) a tied agent [Section 32a(1)],
- (h) an a operator of settlement system with settlement finality operator market operator,
- (i) a data reporting service provider established in the Czech Republic,
- (j) a participant in a settlement system with settlement finality,
- (k) an operator of a settlement system with the settlement finality,

- (l) a participant in a foreign settlement system with settlement finality, having its registered office in the Czech Republic,
- (m) a person who maintains register linked to the central register of book-entry securities,
- (n) a person who maintains a separate register of financial instruments,
- (o) a person who maintains a register linked to the separate register of financial instruments,
- (p) an issuer referred to in Section 118(1) in fulfilling the duties under this Act,
- (q) a forced administrator of persons according to Section 138(1) in fulfilling the duties under Section 139(7),
- (r) a person subject to the duties or prohibitions referred to in Article 4(1), Article 5a, Article 8b, Article 8c and Article 8d of the CRA-R,
- (s) a person subject to duties or prohibitions under the SS-R<sup>42)</sup>,
- (t) a person subject to duties or prohibitions under the EMIR<sup>43)</sup> with the exception of the trade repository,
- (u) a person subject to duties or prohibitions under the CSDR<sup>51)</sup>,
- (v) a person subject to duties or prohibitions under the MAR<sup>52)</sup>,
- (w) a person subject to duties or prohibitions under the PRIIPS-R<sup>60)</sup>,
- (x) a person subject to duties or prohibitions under the SFTR<sup>61)</sup>,
- (y) a person subject to duties or prohibitions under the BMR<sup>62)</sup>,
- (z) a person subject to duties or prohibitions under the directly applicable European Union regulation governing a general framework for securitization and creating a specific framework for simple, transparent and standardized securitisation<sup>63)</sup>.
- (za) a person subject to obligations or prohibitions according to the directly applicable European Union regulation on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market<sup>66)</sup>.

(2) A subject of the supervision of the CNB shall also be a person who unlawfully exercises or offers activities under this Act.

(3) Subjects of the supervision do not concern the issuance of securities by the CNB, the maintenance of register of securities by the CNB, the operation of the settlement system by the CNB and the trading of the CNB with financial instruments and securities other than transferable securities.

#### Section 135a

(1) When exercising supervision over an investment firm providing services in the territory of another EU member state through a branch, the CNB shall take into account the information obtained by the supervisory authority of that member state through an on-the-spot check when drawing up a supervision plan according to Section 135d.

(2) The CNB, when exercising its powers under this Act and according to the CRR<sup>50)</sup> shall participate in the activities of colleges of supervisors within the framework of the European System of Financial Supervision.

(3) The CNB, when exercising its powers under this Act and according to the CRR<sup>50)</sup> shall participate in the activities of the EBA.

(4) The CNB, when exercising its powers under this Act and in accordance with the CRR<sup>50)</sup> takes into account the convergence of banking supervision tools and procedures used in the EU member states, based on the guidelines, recommendations, standards and other measures adopted by the EBA, unless it states the reasons for not doing so.

(5) The CNB may require regular provision of information necessary for the exercise of its competence and for statistical purposes from

- (a) an investment firm,
- (b) financial holding entities,

- (c) mixed financial holding companies,
- (d) mixed holding persons,
- (e) persons belonging to the persons referred to in letters (a) to (d),
- (f) persons to whom it has been delegated the performance of an activity by the persons referred to in letters (a) to (d).

(6) The CNB may carry out an inspection of the persons referred to in subsection (5), if this is necessary for the exercise of its competence; for this purpose the CNB may

- (a) require to file documents,
- (b) examine books and records and extract from them statements and descriptions,
- (c) receives written or oral explanations from the persons referred to in subsection (5), their representatives and members of staff,
- (d) obtains an oral explanation from a person other than that referred to in subsection (5), subject to the consent.

(7) The CNB may carry out on-site inspections of the persons referred to in subsection (5) and of all persons subject to supervision on a consolidated basis, if it notifies the supervisory authority concerned in advance.

## Section 135b

### **Process of review and evaluation**

(1) When exercising supervision over the activities of an investment firm that is not a bank, the CNB shall also review and evaluate whether the arrangements, strategies, procedures and mechanisms established by an investment firm to meet the requirements set out in Sections 9a, 9aj to 9au, 10, 10a, 12g to 12j, 16a, 16d, 16e, 24a, 24b, 27, 135a, 135b, 135c, 135d, Section 136(2), (5) to (7) and Sections 150 to 156, set out in the CRR<sup>50)</sup>, in Commission (EU) regulation or decision, wheatear the capital and liquidity of an investment firm ensure safe and reliable operation of the investment firm and the sound management and coverage of risks. The CNB always evaluates the risks to which the investment firm is or may be exposed, the risks that an investment firm may pose to the financial market with regard to the detection and measurement of systemic risk under Article 23 of Regulation (EU) No 1093/2010 or the recommendations of the ESRB as revealed by stress tests.

(2) The CNB shall carry out a review and evaluation in the periodicity and intensity of the size, importance and position of the investment firm in the financial market and the nature, scale and complexity of its activities, at least once a year, and to the extent specified for the investment firm in Part One, Title II of the CRR, in regulation or decision of the Commission (EU). Where the CNB waives the requirements on a consolidated basis according to Article 15 of the CRR, it shall proceed in accordance with this subsection to supervise that investment firm on an individual basis.

(3) The CNB reviews and assesses credit, market and operational risk; the review and the evaluation must be further targeted at least

- (a) at the results of stress tests carried out by an investment firm according to Article 177 of the CRR when using an internal ratings based approach (IRB Approach),
- (b) at exposures to the concentration risk and its management by an investment firm including compliance with the requirements of Part Four of the CRR and of regulation or decision of the Commission (EU),
- (c) the appropriateness, effectiveness and resilience of the residual risk management principles and procedures associated with the use of eligible credit risk mitigation techniques, as referred to in Article 4(1)(57) of the CRR, and the correctness of their application,
- (d) the extent to which the capital held by the investment firm in relation to the assets it securitized corresponds to the economic substance of the transaction, including the level of achieved risk transfer,



- (e) the exposures of the investment firm to liquidity risk, liquidity risk measurement and management, including the development of alternative scenario analyses, the management of risk mitigation factors and the effectiveness of contingency plans,
- (f) the impacts of risk spreading and the way these impacts are incorporated into the risk measurement system,
- (g) the results of stress tests carried out by the investment firm using the internal model for the calculation of the capital requirement for market risk under Part Four, Title IV of Chapter 5 of the CRR,
- (h) geographical location of the exposures of an investment firm,
- (i) the business model of an investment firm,
- (j) assessment of systemic risk.

(4) The CNB further examines and evaluates

- (a) overall liquidity risk management of the investment firm; while doing so the CNB maintains the development of sound internal methodologies and takes into account the position of investment firm on the financial markets and takes due account in the decisions made following the review and evaluation of the potential impact on the stability of the financial system in all the other EU member states concerned,
- (b) the exposure of an investment firm to the interest rate risk of an investment portfolio which, for the purposes of this Act, means a portfolio in which instruments that are not included in the trading book are classified; if, due to a sudden and unexpected change in interest rates by more than 2 percentage points or the value set out in the guidelines of the EBA, the economic value of the investment firm has fallen by more than 20 %, the CNB shall impose appropriate remedial measures,
- (c) exposures of an investment firm to the risk of excessive leverage, which for the purposes of this Act means the leverage referred to in Article 4(1)(93) of the CRR and identified on the basis of indicators of excessive levers including the leverage ratio determined in accordance with Article 429 of the CRR, in accordance with regulation or decision of the Commission (EU); while assessing the adequacy of the leverage ratio and assessing the arrangements, strategies, procedures and mechanisms introduced by an investment firm to control the risk of excessive leverage, which for the purposes of this Act means the risk of excessive leverage as referred to in Article 4(1)(94) of the CRR, the CNB will take into account the business model of an investment firm,
- (d) the governing and supervisory system of the investment firm, the corporate culture and the competence of the members of the statutory body, the members of the administrative board and the members of the supervisory board to carry out their duties; the CNB may require from the investment firm to file a discuss agenda of the statutory body, of the administrative board and the supervisory board and their committees, including the relevant supporting documents and the results of the internal and external evaluation of activities of the statutory body, the administrative board and the supervisory board.

(5) The CNB further examines and evaluates,

- (a) whether an investment firm has provided an implicit securitization support, which means a securitization under Article 4(1)(61) of the CRR; if the CNB finds that an investment firm provides an implicit securitization support in more than one case, it shall take appropriate measures reflecting the risk that the investment firm will in the future provide its securitization support,
- (b) whether adjustments to the valuation of positions or portfolios in the trading book referred to in Article 105 of the CRR, in regulation or decision of the Commission (EU) allow the investment firm to sell or shortly secure its positions without significant loss in normal market conditions; for the purposes of this Act “trading book” means the trading book referred to in Article 4(1)(86) of the CRR.

Section 135c

(1) The CNB, when conducting a review and evaluation according to Section 135b, finds that several investment firms are or may be exposed to similar risks or pose a similar risk to the financial market, it may carry out reviews and evaluations of groups of specified types investment firms in the same or a similar way. Groups of type-specified investment firms with a similar risk profile can be identified, in particular, on the basis of a systemic risk assessment under Section 135b(3)(j).

(2) In support of the review and evaluation process according to Section 135b, the CNB carries out stress tests of investment firms at least once a year. The result of stress tests can be published by the CNB.

(3) At least every three years, the CNB shall review compliance with the conditions under which the use of internal approaches was authorised to the investment firm. It focuses in particular on the quality and timeliness of the methods and procedures used, the changes in the activity of the investment firm and the use of internal approaches to new products.

(4) The CNB shall take into account the guidelines of the EBA when examining the conditions under which the investment firm has been authorised to use internal approaches.

#### Section 135d

(1) The CNB shall proceed according to a supervisory survey plan, which shall be drawn up at least once a year, taking into account the results of the review and evaluation process according to Section 135b.

(2) The CNB shall establish a supervisory survey plan according to subsection (1) in such a way as not to prevent the supervisory authority of another EU member state from carrying out on-site inspections at a branch of an investment firm carrying on business in the territory of that EU member state.

(3) The CNB supervisory survey plan includes

- (a) a list of investment firms to be subject to increased supervision following the measures referred to in subsection (4),
- (b) a plan of on-site inspections at the premises used by an investment firm, including its branches and controlled entities established in other EU member states,
- (c) information on the planned manner of performing the tasks in question and allocating resources to their assurance,
- (d) a list of investment firms for whom the results of stress tests according to Section 135b and Section 135c(2) or the outcome of the review and evaluation process under Section 135b indicate significant risks to financial health or violation of the requirements set out in this Act, by an implementing regulation, a decision issued under this Act, a measure of general nature issued according to this Act, the CRR<sup>50</sup>, a regulation or decision of the Commission (EU),
- (e) a list of investment firms representing a systemic risk to the financial market,
- (f) a list of other investment firms that the CNB deems necessary.

(4) Following the results of the review and evaluation according to Section 135b, the CNB shall, in particular, take the following measures, if necessary:

- (a) increases the number of on-site inspections at the investment firm,
- (b) ensures the permanent presence of a representative of the CNB in an investment firm,
- (c) requires additional or more frequent disclosure by an investment firm,
- (d) carries out an additional or more frequent review of an investment firm's operational, strategic or business plans,
- (e) carries out controls to monitor the selected risks to which an investment firm may be exposed.

#### Section 135e

The CNB reviews and evaluates the trading of the operator of OTF by matched principal trading on its own account to ensure that it continues to fall within the definition of such trading and that its engagement in matched principal trading does not give rise to conflicts of interest between the investment firm or market operator and its participants.

## Chapter 2

## Remedial measures and other measures

### Section 136

#### General provisions

(1) The CNB may impose on a supervised person who has violated this Act, a decision issued according to this Act or a directly applicable EU act in the field of activities on the financial markets<sup>2)</sup>, a remedial measure for the identified shortcoming corresponding to the nature of the breach and its severity. The CNB may also

- (a) order an extraordinary audit,
- (b) order the auditor to change,
- (c) suspend for a period of 5 years any activity subject to supervision,
- (d) prohibit supervised activity,
- (e) suspend the trading in financial instruments according to Section 137,
- (f) impose forced administration under Sections 138 to 143,
- (g) change the scope of the authorisation granted according to this Act according to Section 144,
- (h) withdraw the authorisation, or cancel the registration according to Section 145 or to withdraw the tied agent's authorisation according to Section 32i(1),
- (i) prohibit or suspend for a period of 10 working days the public offer of transferable securities, the trading of transferable securities on a regulated market or a MTF, or the admission of an transferable security to trading on a regulated market or in a MTF,
- (j) prohibit or suspend the promotion or announcement of a public offer or acceptance of a transferable security for trading on a regulated market,
- (k) order the replacement of a member of the management body of persons subject to supervision in accordance with Section 135(1),
- (l) publish or order publish a notice,
- (m) impose the measure referred to in
  1. Article 63(2)(a) to (c) of the Regulation (EU) No 909/2014 of the European Parliament and of the Council,
  2. Article 22(4)(a) to (c) of the Regulation (EU) No 2015/2365 of the European Parliament and of the Council,
  3. Article 24(2)(a), (b) or (d) of the Regulation (EU) No 1286/2014 of the European Parliament and of the Council,
  4. Article 42(2)(a) to (e) of the Regulation (EU) No 2016/1011 of the European Parliament and of the Council,
  5. Article 32(2)(d) of the Regulation (EU) No 2017/2402 of the European Parliament and of the Council,
  6. Article 32(1)(a)(d) to (h) and (j) to (m) of the Regulation (EU) No 2017/1129 of the European Parliament and of the Council,
- (n) publish information about the nature of the offence and the identity of the person who acted in such manner, including the identification of the person who acted for a legal person,
- (o) order the removal of a financial instrument from trading on a regulated market, in an MTF or in an OTF,
- (p) order to reduce the size of the position or exposure,
- (q) limit the ability of any person from entering into a commodity derivative by introducing limits on the size of a position any person may hold at all times,
- (r) suspend the marketing or sale of financial instruments or structured deposits, provided the conditions of Articles 40 to 42 of the MiFIR are met, or
- (s) suspend the marketing or sale of financial instruments where the investment firm has not complied with the procedure set out in Section 12a(1)(i), Section 12ba or 12bb.

(2) The CNB may, impose to an investment firm which has not complied with the duty imposed by this Act, an implementing regulation, by a decision issued according to this Act, by CRR<sup>50)</sup>, a regulation or

decision of the Commission (EU), or following the results of the review and evaluation according to Section 135b, by means of remedial measure also to

- (a) keep capital above the minimum level of capital requirements under Article 92 of the CRR and of capital requirements under this Act,
- (b) improve the arrangements, strategies, procedures and other mechanisms in order to restore or strengthen their compliance with this Act, implementing regulation, a decision issued under this Act, the CRR<sup>50</sup>, a regulation or a decision of the Commission (EU),
- (c) apply specific principles and procedures for the creation of adjustments for the assets of the investment firm and for the provision of capital requirements,
- (d) limit the distribution network, including the reduction of the number of premises,
- (e) limit the risks arising from the activities, products and systems of the investment firm,
- (f) limit the variable component of the remuneration of the persons referred to in Section 12a(1)(o), unless it is consistent with the maintenance of capital under Section 9 and 9a; in this case the investment firm determines the amount of the variable component as a percentage of the net profit or other indicator designated by the CNB,
- (g) use taxed profit as a preference to supplement reserve funds or to increase the registered capital,
- (h) submit a plan to restore compliance with the requirements of the CNB according to this Act and the CRR<sup>50</sup> and to establish it within a set deadline,
- (i) limit the distribution of profits or share profits to shareholders or holders of additional tier 1 instruments, where that prohibition does not constitute a breach of the duties of that person,
- (j) restrict, terminate or not to engage in certain transactions, operations or activities which involve an excessive risk to an investment firm,
- (k) prohibit being an active participant in trading venues, for a fixed period not exceeding six months,
- (l) withdraw a lack of action within a specified period and to refrain from repeating it,
- (m) add more frequent reporting, including information on capital and liquidity positions,
- (n) announce special liquidity requirements, including the limitation of maturity mismatches of assets and liabilities, taking into account the particular business model of the investment firm, the arrangements, procedures and mechanisms of the investment firm, in particular according to Section 12a(1)(b)(c) and to the systemic liquidity risk, which threatens the unity of the financial market of the Czech Republic,
- (o) realize an additional disclosure,
- (p) *repealed*
- (q) increase the capital to the specified amount within the stipulated period if it does not maintain the combined capital reserve according to Section 9aj(1) and the CNB does not approve the plan for the resumption of capital,
- (r) restrict a distribution of profits than according to Section 9aj(4), unless the CNB has approved a plan for the resumption of capital,
- (s) impose other remedial measure.

(3) The person to whom has the CNB impose the remedial measure according to subsection 1 or 2 informs the CNB of the remedy of the deficiency and of the manner of remedy.

(4) The CNB prohibits the person or persons acting in concert, to whom the CNB gave consent to acquire a qualifying holding or to increase a qualifying holding in the investment firm or in the market operator or a consent to become persons controlling an investment firm, a regulated market, if this person or persons ceased to fulfil the conditions for consent, exercise these voting rights or otherwise exercise significant influence over their management.

(5) The CNB may impose a measures of general nature according to subsection (2)(a), if

- (a) it identifies deficiencies in the arrangements, strategies, procedures or other mechanisms of the governing and supervisory system provided for in this Act, its implementing regulation, non-compliance with Article 393 of the CRR or deficiencies in strategies or procedures referred to in Section 9a(1) or in their application; this is valid under the conditions laid down in Section 152b(1) and (2), *mutatis mutandis*, also for a foreign investment firm [Section 151(1)(b)], which is a member of the group of European

controlling investment firm [Section 151(q)], a member of the group of European financial holding company [Section 151(1)(u)] or a member of the group of European controlling bank group according to the Act on Banks activity over which the CNB exercises supervision on a consolidated basis, in which case an increase in capital may be required above the level established by foreign law,

- (b) risks or risk components are not covered by the capital requirements laid down in this Act or the CRR<sup>50</sup>,
- (c) the imposition of other measures appears to be insufficient to achieve remedy within a reasonable time,
- (d) it is probable that failure to meet the requirements for the use of the appropriate approach will result in insufficient capital requirements,
- (e) it is probable that, while complying with the requirements of this Act or of the CRR<sup>50</sup>, risks will be underestimated,
- (f) the bank notifies the CNB according to Article 377(5) of the CRR that the stress tests result in a capital requirement that significantly exceeds its capital requirement to cover the trading book with correlation.

(6) The CNB may to the supervised person who has obtained approval to use an internal approach or an internal model for the calculation of capital requirements under Part Three of the CRR but does not meet the requirements for its use

- (a) impose to demonstrate that non-compliance with internal access or internal model requirements is irrelevant,
- (b) impose to submit a plan to restore compliance with the internal access or internal model requirements and to set a deadline for its implementation,
- (c) impose to modify the plan to restore compliance with the requirements for internal access or the internal model and set a deadline for making such adjustments, if it is unlikely that the original plan will be fully compliant or if the deadlines in the original plan are inappropriate,
- (d) restrict its consent to areas which meet specified requirements or for which compliance can be achieved within the relevant time limit,
- (e) withdraw consent to the use of an internal approach or an internal model where it is unlikely that the investment firm will be able to restore compliance within the relevant timeframe or demonstrate that the mismatch is insignificant or
- (f) withdraw approval to use the internal market risk model or impose appropriate measures to ensure its immediate improvement if the internal model indicates the large number of exceedances referred to in Article 366 of the CRR that the model is not sufficiently precise,
- (g) impose other appropriate measures.

(7) The CNB may impose on a natural person or a non-supervised legal entity that fails to fulfil the duty imposed by this Act, its implementing regulation, by the CRR<sup>50</sup> or by a regulation or a decision of the Commission (EU) to waive this infringement and to refrain from repeating it; the CNB may even

- (a) suspend the exercise of the voting rights of the shareholder or shareholders responsible for the infringement,
- (b) temporarily prohibit a member of a statutory body, an administrative body or a supervisory board of an investment firm or other responsible natural person from exercising a position in an investment firm or performing a post in a foreign investment firm,
- (c) disclose information as to who is responsible for the offence and what is its nature.

#### Section 136a

The CNB may also impose remedial measure under Section 136 or 156 if it has reasonable suspicion that a shortage of activity may occur within the next 12 months.

#### Section 136b

#### **Coercive fine**

(1) A compliance with the remedial measure or other measure according to this Act shall be enforced by the CNB by a coercive fine of up to CZK 5 million.

(2) The total of imposed coercive fines shall not exceed CZK 20 million.

(3) Revenue from coercive fines is the revenue of the state budget.

#### Section 137

(1) Unless it would significantly threaten the interests of investors or the proper functioning of the market, the CNB, by a measure of general nature, suspends from trading

- (a) all financial instruments in the trading venue,
- (b) all financial instruments in the part of the trading venue, or
- (c) a certain financial instrument in the trading venue.

(2) Unless it would significantly threaten the interests of investors or the proper functioning of the market, the CNB, by a measure of general nature, removes from trading on the market

- (a) all financial instruments in the trading venue,
- (b) all financial instruments in a part of the trading venue, or
- (c) certain financial instruments in the trading venue.

(3) The CNB issues a measure of general nature according to subsection (1) or 2 if:

- (a) large economic losses or serious threats threat to the interests of investors,
- (b) there have been major economic losses or where the interests of investors have been seriously threaten,
- (c) this has been requested by the supervisory authority of another EU member state or by the crisis management body under the Act on Recovery and Resolution in the Financial Market,
- (d) it has been informed of the adoption of a equivalent decision by the trading venue operator, in particular where the decision was due to suspected market abuse, a take-over bid or the breach of the duty to disclose internal information according to Articles 7 and 17 of the MAR, or
- (e) it has been informed of the adoption of a equivalent measure by a supervisory authority of another EU member state directly or indirectly related to a financial instrument or financial instruments referred to in subsection (1) or 2, in particular where the measure was due to suspected market abuse, a take-over bid or the breach of the duty to disclose internal information according to Articles 7 and 17 of the MAR.

(4) The CNB issues a measure of general nature if the conditions laid down in Article 458 of the CRR, Article 42 of the of the Regulation (EU) No 600/2014 of the European Parliament and of the Council or in Article 17 of the PRIIPS-R are met.

(5) In connection with the issuance of a measure of general nature according to subsection (1) or 2, the CNB may impose on the trading venue operator to review within a set period whether the conditions for removal this financial instrument from trading in the trading venue are met and to inform of the outcome the CNB.

#### **Forced administration**

#### Section 138

(1) The CNB may impose the forced administration of an investment firm which is not an investment firm according to Section 8a(1) and which is not a bank or operator of a settlement system with settlement finality with its registered office in the Czech Republic which is not a bank, the CNB may also impose forced administration of to the market operator if

- (a) the person has repeatedly or gravely breached the duty laid down by this Act or the directly applicable EU regulation<sup>2)</sup> or has breached a condition or duty set forth in an enforceable decision issued under this Act or
- (b) the interests of the persons to whom that person is providing his services are at stake and there is a risk of delay.

(2) The CNB may introduce the forced administration of an investment firm according to Section 8a(1) which is not a bank if the interests of the persons to whom that person is providing his services are at stake and there is a risk of delay.

(3) The provisions of this Act governing the introduction of forced administration of an investment firm which is not a bank shall not affect the exercise of rights and the fulfilment of duties arising from the financial collateral arrangement under the conditions laid down by the Act on financial collateral<sup>25)</sup> or equivalent conditions of foreign law, the collateral was negotiated and arose prior to the introduction of the forced administration. This is true even if the financial collateral has been settled or arose on the day of the enforcement of the forced administration, but only after the fact has occurred, unless the recipient of the financial collateral knew or should have known of such fact. The provisions of this Act regulating the introduction of forced administration of an investment firm who is not a bank also do not affect the fulfilment of the final settlement (Section 193) if the final settlement was concluded before the introduction of the forced administration.

#### Section 139

(1) The decision to introduce a forced administration includes

- (a) the reason for forced administration,
- (b) the designation and information of forced administrator,
- (c) the amount of the remuneration of the forced administrator or the method of determining and the date of maturity,
- (d) the possible limitation of the activity of the person with forced administration,
- (e) where applicable, the duties of the forced administrator, indicating the date of their fulfilment.

(2) Proceedings for the introduction of forced administration may be initiated by issuing a decision on the introduction of compulsory administration.

(3) The decision to introduce a compulsory administration is delivered to the company in which the forced administration is introduced and to the forced administrator. The decision is enforceable by delivery to the forced administrator. The appeal against this decision has no suspensive effect.

(4) The CNB makes public its decision on the introduction of the forced administration on its website.

(5) By an introduction of forced administration

- (a) the performance of the functions of the members of the statutory body shall be suspended; this is without prejudice to the right of the members of the statutory body to bring an action against the decision to introduce a forced administration under the law governing the administrative judiciary,
- (b) the authority of the statutory body passes over to a forced administrator, except for the right to bring an action against the decision on forced administration; the forced administrator submits to a person who is entitled to appeal against the decision on forced administration a copy of the available documentation from an investment firm that is not a bank, the operator of a settlement system, the market operator or the central securities depository, on a written request to the extent necessary, copies of the documentation, and he enables him to make copies and extracts of the documentation.

(6) Only the limitations of the powers of the statutory body provided by law applies to the forced administrator.

(7) Forced administrator

- (a) take immediate action to remedy the identified deficiencies in the activity of the person with a forced administration,
- (b) ensure the protection of the rights of persons using the services of the person with forced administration,
- (c) convene the general meeting of the person with forced administration so that it is held within 6 months of the introduction of the forced administration, and
  - 1. submit to it a proposal for revoking the existing and the election of new persons to those bodies that are elected by the general meeting and for drafting remedial measures the established deficiencies in the activity of the person with forced administration or
  - 2. propose the winding-up of the company.

(8) The deadline for convening the general meeting according to subsection (7)(c) the CNB may extend up to 1 year, for reasons of due consideration, on a proposal of the forced administrator.

(9) Costs related to the execution of forced administration, the remuneration of the forced administrator and the final expenses of the forced administrator shall be paid from the assets of the company in which the forced administration is established.

(10) If the company's assets are insufficient to pay the forced administrator's remuneration and reimbursement of its reimbursable expenses, the state pays it.

(11) The method of determining the reimbursement of the overdue expenses and the remuneration of the forced administrator, their maximum amount paid by the state and the method of payment shall be specified by an implementing regulation.

Section 140

(1) The performance of the forced administrator function is extinguished by

- (a) a resignation of the forced administrator,
- (b) a revocation of the forced administrator,
- (c) a termination of forced administration,
- (d) deleting the forced administrator from the list of liquidators and forced administrators, or
- (e) the death of the forced administrator.

(2) The forced administrator shall report to the CNB at least 30 days in advance of his resignation.

(3) The CNB shall revoke the forced administrator, in particular if he seriously or repeatedly breached his duties or ceased to fulfil the prerequisites for the performance of this function.

(4) The appeal against the decision on revocation of a forced administrator shall not have suspensory effect.

(5) Where the enforcement of a forced administrator is terminated in accordance with subsection (1)(a), (b), (d) and (e), the CNB appoints without any undue delay another forced administrator.

Section 141

Forced administration terminates by

- (a) the date stated in the decision of the CNB to terminate the forced administration,
- (b) the issuance of a decision on the insolvency of a company with forced administration or
- (c) the date on which the liquidator of the company with forced administration.



## Section 142

(1) The following shall be entered in the Commercial Register:

- (a) the date of introduction of the forced administration,
- (b) information on forced administrator,
- (c) a limitation of the activity of the company with forced administration,
- (d) the termination of the forced administration.

(2) The application for the incorporation in the Commercial Register of the introduction of a forced administration, the appointment of a forced administrator or the limitation of the activity of the company with forced administration shall be filed by the forced administrator without undue delay after the introduction of the forced administration.

(3) The application for the incorporation of termination of forced administration in the Commercial Register shall be filed by the forced administrator immediately after the termination of the forced administration; if the forced administrator fails to do so, it shall be filed by the statutory body of the company whose forced administration is terminated.

(4) An application for the deletion of a forced administrator from the Commercial Register and the incorporation of a new forced administrator in the Commercial Register shall be filed by the newly appointed forced administrator immediately upon receipt of the decision on his appointment.

## Section 143

Only natural persons registered in the list of liquidators and forced administrators kept by the CNB may be the forced administrator,

- (a) whose interests are not inconsistent with the interests of the person to whom the forced administration is enforced, or of the persons using his services,
- (b) who does not have a qualifying holding in, or is not closely linked with the person to whom the forced administration is enforced,
- (c) who has not carried out an audit or participated in the auditing of a person to whom the forced administration is enforced in the past 3 years.

## Section 144

### **Change of authorisation scope**

(1) The CNB may revoke the authorisation for individual activities specified in the authorisation granted according to this Act if it finds

- (a) a serious or repeated breach of the duty laid down in this Act or in directly applicable EU regulation<sup>2)</sup> or breach of the condition or duty laid down in an enforceable decision issued under this Act or
- (b) a serious or repeated failure to fulfil the requirements under which the authorisation was granted.

(2) The CNB amends the scope of the authorisation referred to in subsection (1) or amends the scope of the authorisation upon request by issuing a new decision revoking the existing authorisation and indicating a new scope of authorised activities.

## Section 145

### **Withdrawal of authorisation or consent and cancellation of registration**

(1) The CNB shall withdraw the authorisation granted according to this Act to a person,

- (a) which has been the subject of an insolvency order or the insolvency petition has been rejected because the property of such person is not sufficient to cover the costs of the insolvency proceedings,
- (b) which court or administrative authority has banned an activity, or
- (c) which requests so.

(2) The CNB may withdraw the authorisation granted according to this Act where

- (a) the person who has been granted the authorisation has not make use of the authorisation within 12 months,
- (b) the person who has been granted the authorisation has provided no activity for which authorisation has been granted for more than six months,
- (c) the authorisation was granted on the basis of false, misleading or incomplete information,
- (d) the person who has been granted the authorisation has repeatedly or seriously failed to fulfil the duty laid down by this Act or directly applicable EU regulations<sup>2)</sup> or violated a condition or duty set forth in an enforceable decision issued under this Act
- (e) there has been a change in the facts on the basis of which the authorisation was granted or
- (f) the continued duration of forced administration cannot achieve its purpose.

(3) Since the date of enforceability of the decision to withdraw the authorisation for the activity of an investment firm, that person shall not provide investment services and must return client's assets to the clients. If such a person is not a bank, it can only settle receivables and debts arising from the investment services provided. Upon settlement of these receivables and debts, such person is considered to be an investment firm.

(4) A person whose authorisation to operate a settlement system with settlement finality was withdrawn, without undue delay, notifies the participants of this system. Upon completion of settlement based on settlement orders received prior to the date of withdrawal of the authorisation, it continues to be treated as an operator of the settlement system with settlement finality.

(5) A person whose authorisation granted according to this Act was withdrawn, may apply for a new authorisation of the same kind at the earliest 10 years after the date on which the previous authorisation was withdrawn. The provisions of the first sentence not applies to the withdrawal of an authorisation at its own request or to the withdrawal of an authorisation for the reason referred to in subsection (2)(a) or (b).

(6) The CNB may withdraw the consent granted under this Act if there has been a material change in the fact on the basis of which the consent was granted.

(7) The CNB cancels the registration granted according to this Act to a person,

- (a) who has been the subject of a insolvency order or the court has rejected an insolvency petition because its assets will not be sufficient to cover the costs of the insolvency proceedings or
- (b) who has its activity prohibited by a court or an administrative authority,
- (c) about whom it learns the fact that he or she has been under another law revoked to carry out an activity that has been registered under Section 6a or Section 39, or
- (d) who requests so.

(8) The CNB may cancel registration made according to this Act, if

- (a) the person who has been registered has not make use of the registration within 12 months of the date of the registration,
- (b) the person who has been registered has provided no activity for which it was registered for more than 6 months,
- (c) the registration was made on the basis of false or incomplete information,

- (d) the person who has been registered has repeatedly or seriously infringes the duties laid down in this Act,  
or
- (e) there has been a change in the facts on the basis of which registration was made.

*Section 145a*

*repealed*

**Chapter 3**

**Supervision of the CNB in supervisory cases with elements of foreign law**

Section 146

**Supervision over the foreign person providing the main investment services in the Czech Republic**

(1) The supervision over a foreign person who has its registered office in another EU member state, who is authorised by the supervisory authority of that state to provide investment services and who provides investment services in the Czech Republic through a branch or without the location of a branch, is exercised by the supervisory authority of the home State.

(2) If a foreign person, who was established in another EU member state, who has an authorisation for the provision of investment services of the supervisory authority of that state and who provides investment services in the Czech Republic without the location of a branch, does not fulfil the duties imposed by this Act under EU legislation to an investment firm, the CNB draws attention to this fact of the supervisory authority of the home state.

(3) Where a foreign person, who has its registered office in another EU member state and the authorisation of the supervisory authority of that state to provide investment services and who provides investment services in the Czech Republic through a branch, fails to fulfil the duties imposed by this Act under EU legislation to an investment firm other than according to Section 24, the CNB shall draw attention to this fact of the supervisory authority of the home State.

(4) Where a foreign person in accordance with subsection (2) or 3, despite the measures taken by the home state supervisory authority, harms or threatens interests of investors or orderly functioning of the capital market, the CNB notifies the supervisory authority of the home state and imposes remedial measure or other measure.

(5) Where a foreign person who provides investment services in the Czech Republic on the basis of a home state authorisation through a branch fails to fulfil the duties of an investment firm to comply with under Section 24, the CNB alerts the latter and request the remedy.

(6) If a person under subsection (5) fails to remedy a situation, the CNB may impose remedial measure or other measures. The CNB shall inform the supervisory authority of the home state of the remedial measure imposed.

(7) If the remedial measures taken according to subsection (6) did not remedy, the CNB may, after informing the supervisory authority of the home state, impose further remedial measure or other measure or an administrative penalty.

Section 147

**Supervision of an investment firm providing the main investment services in another EU member state**

(1) The CNB may impose administrative penalty, remedial measures or other measure for breach of duties under EU legislation in the field of investment services supervised by the CNB, for the basis of the notifying authority of the host state, or without such notification. The CNB informs the supervisory authority without undue delay about the administrative penalty, remedial measure or other measures imposed by the CNB on the basis of the host state's supervisory authority notification.

(2) The CNB supervise under this Act the activities of an investment firm which provides investment services in the host state, in the host state's territory. In respect of the provision of services through a branch, the CNB shall not supervise the duties referred to in Section 24(5); a compliance with these duties shall be supervised by the supervisory authority of the host state under the law of that state.

#### Section 148

### **Supervision of the foreign operator of the trading venue**

(1) If a foreign person who acts as a trading venue operator in the Czech Republic on the basis of the authorisation of a supervisory authority of another EU member state fails to fulfil its duties arising from EU legislation, the CNB notifies the supervisory authority of the home state.

(2) If, in spite of the measures taken by the supervisory authority of the home state, the person referred to in subsection (1) fails to comply with its duties or threatens interests of investors or the proper functioning of the capital market, the CNB notifies the home state's supervisory authority and then imposes remedial measure or other measures.

#### *Section 149*

*repealed*

#### Section 149a

### **Supervision of a trading venue operator with the registered office in the Czech Republic operating a trading venue in another EU member state**

The CNB may impose administrative penalty, remedial measure or other measure for breach of the duties of the trading venue operator arising from EU legislation on the basis of notification by the supervisory authority or without such notification, to a trading venue operator established in the Czech Republic operating trading venue in another EU member state. The CNB informs about administrative penalty, remedial measure or other measure imposed by the CNB on the basis of the notification by the supervisory authority of another EU member state, that supervisory authority without undue delay.

#### **Section 149b**

### **Delegation of powers under the European Union regulation on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market**

Liability for damage caused by a decision or maladministration by a supervisory authority of another EU member state in the exercise of supervision instead of the CNB in an area regulated by the directly applicable EU regulation on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market<sup>66)</sup>, is considered as the liability of the state under the law on liability for damage caused in the exercise of public power.

#### *Sections 149c to 149d*

*repealed*

Section 149e

**Infringement of a duty concerning a public offer or a prospectus by a person who is not a subject of supervision by the CNB**

(1) If an issuer who applies for the admission of securities to trading on a regulated market or makes a public offer in the Czech Republic, or an investment firm or a person according to Section 24(5) or Section 28(6), when placing or selling securities, violates the duties arising from EU legislation regarding the public offer and prospectus, the performance of which is not subject to supervision by the CNB, the CNB notifies the supervisory authority of another EU member state which supervises the fulfilment of these duties and the ESMA.

(2) If the remedial measure imposed by the supervisory authority referred to in subsection (1) fails to remedy, the CNB imposes on the issuer or the person referred to in subsection (1) any remedial measure or other measure necessary to protect the interests of investors

Section 149f

**Breach of information or notification duty by a person who is not supervised by the CNB**

(1) Where an issuer of a share or similar security representing a share in an issuer, admitted to trading on a regulated market, a bond similar to a security representing the right to repay the amount owed or an transferable security the value of which is determined by repayment of the amount owed to, admitted to trading in a regulated market, or where a person who reaches, exceeds or decreases his share in any of the voting rights of such an issuer in accordance with Section 122(1) and (2) violates the information or notification duties arising from EU legislation which are not supervised by the CNB, the CNB notifies the supervisory authority of another EU member state which supervise these duties.

(2) If the remedial measure imposed by the supervisory authority referred to in subsection (1) fails to remedy, the CNB imposes on the issuer or the person referred to in subsection (1) any remedial measure or other measure necessary to protect the interests of investors.

**Chapter 4**

**Cooperation of supervisory authorities**

Section 149g

(1) For the purpose of carrying out its duties under this Act, the CNB cooperates with the supervisory authorities of other EU member states.

(2) The CNB shall render assistance to the supervisory authorities of other EU member states or its authorised persons, in particular in the area of supervision or exchange of information. The CNB shall establish, maintain and apply appropriate administrative and organisational measures to facilitate the assistance under the first sentence.

(3) If the foreign regulated market operates in the Czech Republic and its activity has become of substantial importance for the functioning of the financial instruments market and the protection of the investors in the Czech Republic, the CNB and home supervisory authority of the foreign regulated market shall, without undue delay, establish proportionate cooperation arrangements.

(4) The CNB may use its powers for the purpose of cooperation even in the cases referred to in subsection (5), where the conduct under investigation does not constitute an infringement of Czech law.

(5) If the CNB receives notification from the supervisory authority of another EU member state of a reasonable suspicion of breach of a duty arising from EU legislation in the field of financial market activities<sup>1)</sup>,<sup>2)</sup> in the territory of the Czech Republic or committed by a person subject to supervision of the CNB, the CNB takes appropriate action.

(6) The CNB cooperates with the supervisory authorities of other EU member states that supervise trading venues in which a commodity derivative is traded in significant volumes in accordance with Section 134b(1), *inter alia* by exchanging relevant data in order to enable the monitoring and enforcement of the limit under Section 134b(1).

#### Section 149h

(1) The CNB shall cooperate with the Ministry of the Environment, the Czech Environmental Inspectorate and the market operator under the Energy Act in order to ensure the acquisition of a consolidated overview of the markets for allowances for greenhouse gas emission allowances in the performance of supervision of spot and auction markets in connection with greenhouse gas emission allowances.

(2) The CNB, in relation to agricultural commodity derivatives, reports to and cooperates with the public authorities competent for the supervision, administration and regulation of physical agricultural markets under Regulation (EU) No 1308/2013<sup>58)</sup>.

(3) An agricultural commodity derivative in this Act means a derivative which relates to one of the products listed in Article 1 and Parts I to XX and XXIV/1 of Annex I to Regulation (EU) No 1308/2013.

#### Section 149i

(1) The CNB may request the supervisory authority of another EU member state to cooperate in the performance of supervision or on-the-spot verification of the person subject to its supervision.

(2) The CNB may require information and documentation from foreign participants in the regulated market; the CNB shall inform the supervisory authority of their home member state.

(3) The CNB may carry out on-the-spot verification and require information on activities performed by a foreign investment firm in the Czech Republic through a branch if it considers it relevant to financial stability in the Czech Republic.

(4) Before commencing an on-the-spot verification according to subsection (3), the CNB informs the supervisory authority of the affected state of the purpose of the verification and, after its termination, provide the supervisory authority with all information relevant to the risk assessment of the investment firm or financial stability in the Czech Republic.

#### Section 149j

(1) The CNB shall, upon request by the supervisory authority of another EU member state for supervisory co-operation or on-the-spot verification, carry out the requested activity itself or provide synergy with its supervisory authority or its appointed experts and auditors.

(2) The CNB shall, without undue delay, provide at the request of the supervisory authority of another EU member state with the requested authority any information required for the performance of the supervision of the capital market; the CNB may make the provision of information subject to the condition that the information provided may not be disclosed without its prior consent.

(3) The CNB may refuse the application for cooperation in the performance of supervision under subsection (1) or the provision of information according to subsection (2), provided that:

- (a) judicial proceedings have already been initiated in the Czech Republic in respect of the same actions and the same persons to whom the application relates or
- (b) the final judgment has already been delivered in respect of the same actions and to the same persons to which the application relates.

#### Section 149k

(1) The CNB consults the supervisory authority of another EU member state

- (a) before granting consent according to Section 10b(1), if the applicant for consent is a foreign bank, a foreign insurance company, a foreign investment firm, a foreign management company or a person controlling such person,
- (b) prior to the establishment of single position limits under Section 134b and
- (c) prior to the issuance of an authorisation for an investment firm if the applicant for the authorisation is controlled by a foreign investment firm, a foreign market operator or a foreign bank or a person who controls a foreign investment firm or a foreign bank.

(2) The CNB consults the supervisory authority of another EU member state supervising foreign banks or foreign insurance companies before granting the authorisation to an investment firm or authorisation of market operator if the applicant for authorisation is controlled by

- (a) a foreign bank or a foreign insurance undertaking, or
- (b) the same person who controls a foreign bank or a foreign insurance company.

(3) When requesting an opinion according to subsection (1)(c) and according to subsection (2), the CNB shall in particular consult when assessing

- (a) the suitability of the partners and participants and
- (b) the reputation and experience of persons who effectively direct the business involved in the management of another entity in the same group.

#### Section 149l

The CNB may apply to the ESMA for a dispute settlement between itself and the supervisory authority of another EU member state in accordance with Article 19 of Regulation (EU) No 1095/2010 if

- (a) the CNB does not agree with that supervisory authority to set single position limits according to Section 134b or to equivalent foreign law provisions,
- (b) that supervisory authority fails to comply with its request for cooperation or exchange information within a reasonable time, or rejected this request, or
- (c) that supervisory authority did not react within a reasonable time to the notification of a reasonable suspicion of a breach of the duties arising from EU legislation in the field of financial market activities<sup>1), 2)</sup>.

### Chapter 5

#### Information duty of the CNB

#### Section 149m

(1) The CNB fulfils, through the MoF, in relation to the Commission (EU), the information duties arising from the Directive (EU) on markets in financial instruments.

(2) The CNB further fulfils the information duties arising from the Directive (EU) on markets in financial instruments, in relation to the ESMA, the Agency for the Cooperation of Energy Regulators<sup>59)</sup> and to the supervisory authorities of other EU member states.

## TITLE II

### SUPERVISION ON CONSOLIDATED BASIS

#### Section 150

##### **Main provisions**

(1) Supervision on a consolidated basis under this Act means the monitoring and regulation of the risks of consolidation units comprising a non-bank investment firm in order to limit the risks that such investment firm is exposed to through his participation in consolidation unit.

(2) Supervision on a consolidated basis does not control the individual persons contained in the consolidated group and does not replace the supervision of the activities of investment firms on an individual basis under this Act or the supervision of banks and financial institutions under another law.

(3) For the purposes of a supervision on a consolidated basis, an investment firm shall be understood to mean only an investment firm under Section 8a(1) to (3).

#### Section 151

##### **Definitions**

(1) For the purposes of this Act, the following definitions should apply:

- (a) “consolidation group” means a group of a controlling investment firm, a group of a foreign controlling investment firm, a group of a foreign controlling banks, a group of a financial holding company or a group of mixed activity holding company, where a consolidated group consists at least of two companies,
- (b) “foreign investment firm” means a firm which is a resident of the foreign country where he is authorised to provide investment services in and, at the same time, is not a foreign bank,
- (c) “controlling investment firm” means an investment firm which is not a bank, the controlled or affiliated company of which is an investment firm, a foreign investment firm, a bank, a credit union, a financial institution or an ancillary services undertaking,
- (d) “financial holding company” means a company as referred to in Article 4(1)(20) of the CRR,
- (e) “mixed activity holding company” means a company as referred to in Article 4(1)(22) of the CRR,
- (f) “mixed financial holding company” means a company referred to in Article 4(1)(21) of the CRR,
- (g) “group of a controlling investment firm” means a group consisting of a controlling investment firm, its controlled and affiliated companies, which are institutions, financial institutions or ancillary services undertaking,
- (h) “financial holding company group” means a group consisting of a financial holding company and its controlled and affiliated companies, which are institutions, financial institutions or ancillary services undertaking,
- (i) “mixed activity holding company group” means a group consisting of a mixed activity holding company and its controlled and affiliated companies, which are institutions, financial institutions or ancillary services undertaking,
- (j) “affiliated company” means a company referred to in Article 4(1)(35) of the CRR,
- (k) “financial institution” means a financial institution as referred to in Article 4(1)(26) of the CRR,
- (l) “foreign controlling investment firm” means an investment firm who controls at least one investment firm which is not a bank,



- (m) “group of foreign controlling investment firms” means a group consisting of a foreign controlling investment firm and its controlled and affiliated companies, which are institutions, financial institutions or ancillary services undertaking,
- (n) “foreign controlling bank” means a foreign bank established in a member state other than an EU which controls at least one non-bank investment firm,
- (o) “foreign controlling bank group” means a group consisting of a foreign controlling bank and its controlled and affiliated persons,
- (p) “domestic controlling investment firm” means an investment firm controlling an investment firm which is not at the same time a company controlled by another investment firm, a bank, a financial holding company or a mixed financial holding company having its registered office in the Czech Republic,
- (q) “European controlling investment firm” means an investment firm controlling an investment firm or a foreign controlling investment firm who has been authorised to operate in an EU member state and which is not controlled by another investment firm, a bank or a foreign investment firm who have been authorised to pursue business in any EU member state nor are they controlled by a financial holding company or a mixed financial holding company which has its registered office in any EU member state,
- (r) “domestic financial holding company” means a company referred to in Article 4(1)(30) of the CRR,
- (s) “domestic mixed financial holding company” means a company referred to in Article 4(1)(32) of the CRR,
- (t) “European mixed financial holding company” means a company as referred to in Article 4(1)(33) of the CRR,
- (u) “European financial holding company” means a company referred to in Article 4(1)(31) of the CRR,
- (v) “responsible investment firm in a financial holding company group” means an investment firm that is not a bank controlled by a financial holding entity that does not control any bank or credit union authorised to operate in any EU member state and that has its seat
  1. in the Czech Republic,
  2. in another EU member state, unless that financial holding company also controls a foreign investment firm authorised to operate in that EU member state or a foreign investment firm with a larger balance sheet total who has been authorised to operate in another EU member state, or
  3. in a state other than an EU member state if the CNB did not exempt the financial holding company group from exercising supervision on a consolidated basis according to Section 153(6);  
if there are more than one non-bank investment firm in such a consolidation group, the responsible investment firm in the financial holding entity group is an investment firm with the largest balance sheet total,
- (w) “responsible investment firm in a foreign controlling investment firm group” means an investment firm that is not a bank controlled by a foreign controlling investment, provided that
  1. this foreign controlling investment firm has been authorised to operate in a state other than an EU member state,
  2. this foreign investment firm does not control any bank, credit union or foreign bank that has been authorised to operate in any EU member state, and
  3. the CNB did not decide, according to Section 153(6), to exercise supervision on a consolidated basis over a group of such foreign controlling investment firm; if there are more than one non-bank investment firm in such a consolidation group, a responsible investment firm in a group of foreign controlling investment firms is an investment firm with the largest balance sheet total,
- (x) “responsible investment firm in a foreign controlling bank group” means an investment firm that is not a bank controlled by a foreign controlling bank if the CNB has not waived the exercise of banking supervision on a consolidated basis under Section 153(6) over such foreign controlling bank group; if there are more than one non-bank investment firm in such a consolidation group, the responsible foreign investment firm in the foreign controlling bank group is the highest traded investment firm,
- (y) “responsible investment firm controlled by a mixed financial holding company” means an investment firm controlled by a mixed financial holding company having its registered office
  1. in the Czech Republic,
  2. in another EU member state, unless that mixed financial holding company is also controlling a foreign financial institution that has been authorised to operate in that member state, or a foreign financial institution with a larger balance sheet total that has been authorised to operate in another EU member state, or

3. in a state which is not an EU member state if the CNB has not waived the exercise of banking supervision on a consolidated basis according to Section 153(6);

if there is more than one investment firm controlled by a mixed financial holding company which is not a bank, in a consolidation group according to subsections (1) to (3), the responsible investment firm controlled by the mixed financial holding company shall mean an investment firm with the largest balance sheet total,

(z) “consolidated basis” means a consolidated basis as referred to in Article 4(1)(48) of the CRR,

(za) “institution” is a credit institution as referred to in Article 4(1)(1) and an investment firm as referred to in Article 4(1)(2) of the CRR.

(2) If the linkages within a consolidation unit are of such a nature that the controlling entity or its type cannot be identified unambiguously, the CNB may designate, in agreement with the relevant foreign supervisory authority, the controlling entity of the consolidation unit or its type. This procedure of the CNB is not an administrative procedure.

### **Exercise of a supervision on a consolidated basis**

#### Section 152

(1) Supervision on a consolidated basis shall be exercised by the CNB, unless otherwise provided in this Act or other law.

(2) When exercising a supervision on a consolidated basis, the CNB shall cooperate with foreign supervisors of banks, persons authorised to provide investment services or financial institutions and exchange information with these authorities; the CNB further provides the supervisory authorities of other EU member states, at its request, with the information necessary for the exercise of their oversight and, on its own initiative, provides those authorities with essential information that has a significant impact on the assessment of the financial situation of the foreign investment firm or financial institution in the member state concerned, such information includes, in particular,

- (a) property-law relations among members of a consolidated group, legal structure and governance, including the organisational structure of the consolidated group, including all regulated and unregulated entities, unregulated controlled entities, significant branches and controlling entities and supervisory bodies of regulated entities in the consolidated group,
- (b) the procedures for the information gathering from investment firms in the consolidation unit and the verification of such information,
- (c) developments in an investment firm or other person in a consolidation group that may seriously jeopardize the financial position of an investment firm in the consolidation group,
- (d) serious administrative penalties and remedies of extraordinary importance imposed on the investment firm according to this Act, in particular the requirement for capital increase according to Section 136(2)(a) or refusal to grant consent to use special approaches to the calculation of the capital requirement, or failure to grant consent to change of special approaches used,
- (e) financial holding companies and mixed activity holding companies as referred to in Article 11 of the CRR.

(3) The CNB shall request the supervisory authority of another EU member state supervising the person who is a member of the consolidated group to provide the information required for the exercise of supervision on a consolidated basis. It shall also request the consolidating supervisor of an European controlling investment firm to provide information regarding the approaches and methods used to fulfil the prudential rules.

(4) The CNB is authorised for the purposes of supervision on a consolidated basis

- (a) to require information and documents from the person included in the consolidated group,

- (b) to inspect the person included in the consolidation group; in respect of the foreign person subject to supervision, the start, purpose and results of the on-the-spot check shall be reported by the relevant foreign supervisory authority,
- (c) to request the competent foreign supervisory authority to carry out the inspection of the person included in the consolidation group, stating the reason for the request,
- (d) to carry out, at the request of the competent foreign supervisory authority, control of the person included in the consolidation unit; the initiation and outcome of the check shall be reported by the relevant foreign supervisory authority.

(5) The CNB may inform the EBA or the ESMA if the supervisory authority of another EU member state rejects a request from the CNB to cooperate, in particular to provide information or fails to provide the essential information requested within a reasonable time or if the supervisory authority of another EU member state does not provide information on its own initiative.

#### Section 152a

(1) Where the CNB exercises supervision on a consolidated basis over a group of European controlling investment firms, a group of European financial holding company or a responsible investment firm controlled by an EUropean mixed financial holding company, it shall, in addition to the tasks provided for by this Act, another law or the CRR<sup>50</sup>, also:

- (a) coordinate, in relation to the other supervisory authorities of other EU member states, the gathering and provision of important or necessary information,
- (b) design and coordinate, in cooperation with the competent supervisory authorities, the procedures of these authorities in the context of both normal and emergency situations in the exercise of the supervision; this activity includes the coordination and planning of the supervision of the activities of investment firms provided for in Section 9a, Section 12a(1)(b,c), Section 16, Part Eight of the CRR and Section 16b, the exercise of supervision under Section 135b and the imposition of measures according to Section 136(2) and Section 156(1) including the coordination of the exercise of supervision within the meaning of similar provisions of the law of another member state,
- (c) in cooperation with the relevant supervisory authorities and, where appropriate, with the central banks of the European System of Central Banks, which mean the central banks of the European System of Central Banks referred to in Article 4(1)(45) of the CRR, plans and coordinates the process of these authorities in preparing for unfavourable development in the investment firm and in emergencies, and the progress of these authorities in the course of unfavourable development in the investment firm in emergencies; furthermore, the CNB plans and coordinates the preparation of joint evaluations, the introduction of contingency plans, informing the public and imposing remedies of extraordinary importance within the meaning of Section 152(2)(d) and similar provisions of foreign law,
- (d) provide the supervisory authorities of the other EU member states supervising the person who is a member of such a consolidation unit on request with the information necessary for the supervision of that person, in particular taking into account the importance of that person to the financial market of that state.

(2) If the supervisory authority of another member state with the CNB in the exercise of its tasks referred to in subsection (1) does not sufficiently cooperate, the CNB may inform the EBA.

(3) The CNB may inform the EBA if the supervisory authority of another member state, in the exercise of supervision on a consolidated basis, of a group of an EUropean controlling investment firm, a group of an EUropean financial holding company or a responsible investment firm controlled by an EUropean mixed financial holding company whose member is subject to supervision by the CNB, fails to fulfil its duties corresponding to the duties under subsection (1).

(4) Where the CNB exercises supervision over a group of an EUropean controlling investment firm, a group of European financial holding company or a responsible investment firm controlled by an EUropean mixed financial holding company, and in the event of an extraordinary situation, including unfavourable development on the financial markets which may jeopardize the market liquidity and the stability of the

financial system in the member state in which a member of that group is resident or in which it operates through a major branch, significant branches under the law regulating the activities of banks or major branches under the law regulating the activities of savings and credit unions, without undue delay

- (a) to the central banks of the European System of Central Banks in the member states affected by this situation where they are relevant for the exercise of their statutory tasks, including the conduct of monetary policy and related liquidity provision, oversight of payment and clearing systems and securities settlement systems and the stability of the financial system, and
- (b) the EBA, the ESRB and the public authorities in the member states affected by this situation, responsible for the preparation of banking supervision legislation, investment firms and financial institutions, as well as the persons entrusted with the exercise of control activities by such authorities, information if relevant to them.

(5) If the CNB finds an exceptional situation, including the unfavourable developments on the financial markets that may jeopardize market liquidity and the stability of the financial system in a member state, it shall, without undue delay, inform the consolidating supervisor of the group of an EUropean controlling investment firm or a group of an EUropean financial holding company whose member is domiciled in the member state concerned or operates in that member state through a major branch, a major branch under the law regulating the activities of banks or major branches under the law regulating the activities of credit unions.

(6) If the CNB finds in the exercise of the supervision over an investment firm that an emergency situation has occurred, which could jeopardize market liquidity and the stability of the financial system in the Czech Republic, it shall inform without undue delay

- (a) the central banks of the European System of Central Banks in the member states affected by this situation where such information is relevant for the exercise of its tasks as laid down by law, including the conduct of monetary policy and related liquidity provision, oversight of payment and clearing systems and securities settlement systems and the stability of the financial system, and
- (b) public authorities in the member states affected by this situation responsible for the preparation of banking supervision legislation, investment firms and financial institutions, as well as the persons entrusted with the exercise of control activities by such authorities, where such information is of significance to them.

(7) If the CNB requires the information necessary for the exercise of supervision on a consolidated basis, of which it knows that such information has been provided to another supervisory authority by a member of the consolidation group, it shall preferably request such information from that authority.

(8) The supervision exercised by the CNB over a member of a group of an EUropean controlling investment firm or a member of a group of an EUropean financial holding company is based on written arrangements for coordination and cooperation with the consolidating supervisor over this group. Such supervisory bodies may be entrusted with the tasks of such coordination and cooperation.

(9) Where the CNB exercises supervision on a consolidated basis over a group of an EUropean controlling investment firm or a group of an EUropean financial holding company, it must have written arrangements for coordination and cooperation with the authorities supervising the members of that group. The CNB may entrust these arrangements with tasks related to such coordination and cooperation.

(10) Instead of the CNB, the supervisor of another member state exercising supervision on a consolidated basis over a group of an EUropean controlling investment firm or a group of an EUropean financial holding company responsible for the exercise of supervision in accordance with EU law<sup>29)</sup> over a member of that group with its registered office in the Czech Republic, to the extent and under the conditions laid down in an international treaty which is a part of the legal order. This international treaty shall always lay down the conditions under which the Czech Republic is entitled to a regressive charge against the supervisory authority of another member state or against the member state in whose territory that body is established if it

compensates for the loss or non-material damage caused by the latter in the exercise of supervision by an unlawful decision or maladministration. The CNB shall inform the EBA about this agreement. Supervision by the supervisory authority of another member state shall be governed by the law of the Czech Republic. Liability for damage caused by a supervisory authority of another member state by its decision or maladministration in the exercise of supervision shall be assessed in accordance with the law governing liability for damage caused by the exercise of public authority<sup>30</sup>.

(11) Instead of the supervisory authority of another member state, the CNB exercising supervision on a consolidated basis over a group of an EUropean controlling investment firm or a group of European financial holding entity is competent to exercise supervision in accordance with EU law<sup>29</sup> over a member of that group having its registered office in another member state, to the extent and under the conditions laid down in an international treaty which is a part of a legal order. The CNB shall inform the EBA about this agreement.

(12) Subsections (8) to (11) shall apply *mutatis mutandis* to the exercise of supervision on a consolidated basis over a responsible investment firm controlled by an EUropean mixed financial holding company.

#### Section 152b

(1) Where the CNB exercises supervision on a consolidated basis over a group of an EUropean controlling investment firm, a group of European financial holding company or a responsible investment firm controlled by an EUropean mixed financial holding company, it shall be competent, in agreement with the other supervisory authorities exercising supervision over members of such groups, to impose on a member of that group

- (a) remedies according to Section 136(2)(a) and (n) in the case of an investment firm or a foreign investment firm [Section 151(1)(b)],
- (b) remedies consisting in increasing the capital above the minimum level according to the law regulating the activity of the banks in a case of a bank or a foreign bank, or
- (c) remedies consisting in increasing the capital above the minimum level required by the law regulating the activities of savings and credit cooperatives in the case of a savings and credit cooperative.

(2) The CNB shall, in advance, inform the other supervisory authorities of the members of the group concerned of the intention to impose remedies according to subsection (1) and shall at the same time submit to them a report on the assessment of the risk coverage by the capital of that group and the liquidity risk assessment of that group. The CNB shall endeavour to reach an agreement under subsection (1) within 4 months from the date on which the CNB submits to the other supervisory authorities of the members of the group concerned a report on the assessment of the capital protection against risks and within one month from the day on which it submitted the liquidity risk assessment report.

(3) If the agreement referred to in subsection (1) is not reached within the time limits referred to in subsection (2), the CNB shall have the power to impose the remedies referred to in subsection (1) on the members of the group concerned supervised, even without the agreement of the other supervisory authorities of the members concerned groups. The CNB shall take into account the risk assessment of the members of that group as expressed in the opinion of the other authorities supervising the members of that group and shall send to these authorities a copy of the original of the decision.

(4) If the agreement referred to in subsection (1) has not been reached, the CNB may request the EBA, within 7 days before the expiry of the period referred to in subsection (2), to settle a dispute under the directly applicable European banking supervision regulation<sup>41</sup>. Where the CNB or the authorities supervising the members of the group concerned referred to in subsection (1) request the EBA to settle the dispute, the CNB shall suspend the proceedings for the imposition of remedies according to subsection (1) until the decision is taken by the EBA.

(5) An investment firm who is a member of a group of an European controlling investment firm, a member of an European financial holding company or a member of a group of European controlling bank under the law regulating the activities of banks or is a responsible investment firm controlled by an European mixed financial holding company, the CNB is competent to impose remedies according to Section 136(2), if an agreement between the consolidating supervisor of the group concerned and the other supervisory authorities of the members of that group is not reached within 4 months of the day on which the consolidating supervisor of the group concerned submitted to the CNB a report on the assessment of risk coverage by the capital of that group or within one month of the day when the consolidating supervisor of the group concerned submitted to the CNB a report on the liquidity risk assessment of that group. The CNB shall take into account the opinion of the consolidating supervisor on the group concerned.

(6) If the agreement referred to in subsection (5) has not been reached, the CNB may request the EBA, within 7 days before the expiry of the time limits referred to in subsection (5), to settle a dispute under the directly applicable European banking supervision regulation<sup>41</sup>). Where the CNB or the authorities supervising the members of the group or authorities exercising consolidated supervision over the group concerned request the EBA to settle this dispute, the CNB shall suspend the procedure for the imposition of remedies according to subsection (5) until a decision is taken by the European Parliament For banking.

(7) Before issuing the decision under subsection (3), the CNB may request the opinion of the EBA. The CNB shall seek this opinion whenever requested by any of the other authorities supervising the members of the group concerned. If the opinion of the EBA was requested prior to the issuance of a decision according to subsection (3) or 4, the CNB shall base its opinion unless it explains the reasons why it opposes the opinion.

(8) The CNB shall review the decision referred to in subsections (1), (3) or (5) at least once a year in accordance with the procedure set out in subsections (1), (2), (3), (5) and (7). The CNB may review these decisions on a reasoned written proposal from the supervisory authority of the member concerned groups. In such a case, the decision referred to in subsection (1), (3) or (4) may also be reviewed only in the scope of this proposal.

(9) An investment firm is required to maintain capital on an individual or consolidated basis above the minimum level if that duty is imposed by a decision issued in agreement with the CNB by an authority of another member state exercising supervision on a consolidated basis.

#### Section 152c

(1) Where the CNB exercises supervision on a consolidated basis over a group of an European controlling investment firm, an European financial holding company or a responsible investment firm controlled by an European mixed financial holding company, it shall set up a college, for the performance of the tasks referred to in Section 152a 1 to 4. The establishment and operation of the college are based on written arrangements according to Section 152a(7), prepared by the CNB after consultation with the supervisory authorities concerned. If effective, the CNB, in compliance with the confidentiality duty and other requirements laid down by EU law, coordinates cooperation with supervisory authorities of other than the member states. The establishment and activities of the colleges are without prejudice to the powers and competence of the supervisory authorities provided for by EU law.

(2) The college creates prerequisites for cooperation between the CNB and the other supervisory authorities concerned at

- (a) the exchange of information,
- (b) the application of arrangements and international treaties according to Section 152a(6) to (9), where appropriate,
- (c) establishing control plans based on the risk assessment of the group concerned in accordance with Section 135(3)

- (d) enhancing the effectiveness of supervision by limiting duplicate supervisory requirements, including the requirement to provide information according to Section 152a(5), Section 152(3), second sentence, and similar provisions of foreign law,
- (e) the uniform application of prudential rules within the group concerned, without prejudice to the powers of the supervisory authorities provided for in EU law,
- (f) planning and coordination of the activities referred to in Section 152a(1)(c) and in similar provisions of foreign law, taking into account the activities of other bodies when established for that purpose.

(3) The members of the college are

- (a) the CNB,
- (b) the authorities supervising the members of the group concerned,
- (c) host supervisors in which a member of the group concerned carries on business through a major branch, significant branches under the law regulating the activities of banks or major branches under the law governing the activities of credit unions and cooperatives,
- (d) the central banks of the European System of Central Banks, where appropriate,
- (e) supervisory authorities of other member states, if this is useful and if, in the opinion of all the supervisory authorities concerned, it protects information at least to the extent required by EU law.

(4) The CNB shall govern the meetings of the college and shall determine which members participate in the meeting or other activities of the college. It takes into account the importance of these activities for the fulfilment of their duties under Section 24b(2) and (3) as well as their importance to the members of the college. On the basis of the information available, it shall in particular take into account the possible impact on the stability of the financial system in the member states concerned, particularly in emergency situations.

(5) The CNB shall endeavour to ensure that the members of the college cooperate closely. The CNB shall inform the members of the college sufficient in advance of the meetings of the college, the agenda and the planned activities, and inform them of the conclusions reached at the meeting or other agreed activity without undue delay.

(6) The CNB shall inform the EBA of the activities of the college, even in the event of an emergency, and shall provide it with all relevant information for the convergence of supervisory tools and procedures. The provisions of Section 117 are not thereby affected.

### Section 153

(1) The CNB exercises supervision on a consolidated basis over a group of controlling investment firm. The CNB furthermore exercises supervision on a consolidated basis over a group of a foreign controlling investment firm, whose member is a responsible investment firm in a group of a foreign controlling investment firm and a group of a foreign controlling bank whose member is the a responsible investment firm in a group of the a foreign controlling investment bank. A group of controlling investment firm controlled by a domestic controlling investment firm or a parent financial holding company is subject to consolidated supervision only if a member of the group is a foreign investment firm, a foreign bank or a financial institution domiciled in a state other than an EU member state.

(2) The CNB shall exercise supervision on a consolidated basis of a group of a financial holding entity group of which a responsible investment firm in a group financial holding company is a member and of a responsible investment firm controlled by a mixed financial holding company. A group of a financial holding company controlled by a domestic controlling investment firm or a parent financial holding company is subject to supervision on a consolidated basis only if a member of the group is a foreign investment firm, a foreign bank or a financial institution established in a member state other than the EU.

(3) The CNB may

- (a) exercise supervision over a group of a financial holding company that does not meet the conditions of first sentence of subsection (2),
- (b) refrain from exercising supervision over a group holding a financial holding company that meets the conditions set out in first sentence of subsection (2),

if it agrees with the competent supervisory authority of an EU member state and if it considers the appointment of a responsible investment firm in the group of a domestic financial holding company according to the criteria established by this Act [Section 151(1)(s)] inappropriate, in particular with regard to the importance of non-bank investment firms or foreign investment firms who are members of this consolidation group for the financial market in the EU member states concerned. In that case, however, the CNB or the competent supervisory authority shall require in advance the opinion of the responsible investment firm in the group of the financial holding company or the European financial holding company that is a member of the consolidated group concerned. If the CNB proceeds under (a), it shall designate a non-bank investment firm and which will fulfil the duties of a responsible investment firm in the group of the financial holding entity. The CNB shall inform the Commission (EU) and the EBA of the agreements referred to in the first sentence.

(4) Subsection (3) shall apply *mutatis mutandis* to the exercise of supervision on a consolidated basis over a responsible investment firm controlled by a mixed financial holding company.

(5) The CNB exercises supervision on a consolidated basis over a group of a mixed financial holding company.

(6) The CNB may refrain from exercising supervision on a consolidated basis over a consolidated group if the controlling entity has its registered office in a state which is not an EU member state if the consolidated supervision is exercised over that consolidated group under the CRR<sup>50</sup>. Prior to this decision, the CNB shall seek the opinion of a foreign investment firm with a registered office in another EU member state that is a member of the same consolidated group and of the Commission (EU). If no equivalent consolidated supervision is exercised over this consolidated group, the CNB may, for a member of the consolidation group, require the establishment of a financial holding company or a mixed financial holding company in the territory of the Czech Republic or another EU member state. This procedure shall be notified by the CNB to the foreign investment firm with a registered office in another EU member state that is a member of the same consolidation group and to the European Banking Committee.

### **Duties of persons subject to supervision on a consolidated basis**

#### Section 154

(1) An investment firm which is a person referred to in Section 9a(4) and which is a member of a consolidated group subject to supervision of the CNB according to this Act shall comply on a consolidated basis with

- (a) requirements for the management and control system [Section 12(1)(a)],
- (b) strategies and procedures for evaluation and changes in internal capital (Section 9a),
- (c) requirements for operations within the consolidation group [Section 155(3)].

(2) A person included in the consolidation group shall communicate to the CNB any information necessary for the exercise of supervision on a consolidated basis, either directly, or through the controlling company, or through an investment firm forming part of this consolidated group and designated by the CNB for such purposes.

(3) Subsection (2) shall apply *mutatis mutandis* to persons who are subsidiaries pursuant to Article 4 (1) point (16) of Regulation (EU) No 575/2013 of the European Parliament and of the Council on the controlling investment firm, the foreign controlling investment firm, foreign controlling banks, financial



holding companies, mixed financial holding companies or mixed holding companies and which are not also included in supervision on a consolidated basis.

(4) Persons included in the consolidation group are obliged to allow the execution of the inspection in accordance with Section 152 and to provide the CNB with the necessary cooperation.

#### Section 155

(1) Persons included in the consolidated group shall establish appropriate control mechanisms to ensure the accuracy of the information provided for the purposes of supervision on a consolidated basis.

(2) Domestic controlling investment firm, responsible investment firm in a group of a financial holding company, responsible investment firm controlled by a mixed financial holding company, responsible investment firm in a group of a foreign controlling investment firm and responsible investment firm in a group of a foreign controlling bank shall report to the CNB in advance of the auditors who will audit the persons included in the consolidated group subject to supervision of the CNB according to this Act. The CNB may require such persons to audit the information they transmit for the purposes of supervision on a consolidated basis under this Act.

(3) An investment firm that is not a bank is obliged to duly monitor its operations with members of the same consolidation group, manage the risks associated with them and subject them to appropriate internal control mechanisms.

#### Section 155a

For a financial holding company, a mixed financial holding entity and for a natural person who controls exclusively or predominantly investment firms, foreign investment firms, banks, credit unions or financial institutions, or controls at least one non-bank investment firm and is not a mixed holding entity, Sections 10 and 10a apply *mutatis mutandis*.

#### Section 155b

(1) The CNB, when exercising supervision on a consolidated basis of a mixed financial holding company, may, after consulting the competent supervisory authorities, provide that in the exercise of such supervision it shall apply only the relevant provisions of the law governing the supplementary supervision of financial conglomerates, provided that the mixed financial holding entity is subject to equivalent requirements under this Act and the law governing supplementary supervision of financial conglomerates, in particular with regard to risk-oriented supervision.

(2) If the CNB exercises supervision on a consolidated basis over a responsible investment firm controlled by a mixed financial holding company, it may, after consulting the competent supervisory authorities, provide that in the exercise of such supervision, it shall apply only the relevant provisions of the law governing supplementary supervision of financial conglomerates, provided that this European financial holding company is subject to equivalent requirements under this Act and the law governing supplementary supervision of financial conglomerates, in particular with regard to risk-oriented supervision.

(3) The CNB shall be competent to consult on the use of only foreign legislation governing the supplementary supervision of financial conglomerates when the supervisor of an investment firm controlled by an EUropean mixed financial holding company and when invited to do so by a body executing supplementary supervision of a financial conglomerate.

(4) The CNB may, when exercising supervision on a consolidated basis, provide that in the exercise of such supervision of a mixed financial holding company it shall apply only those provisions which apply to the most significant sector under the law governing supplementary supervision of financial conglomerates,

provided that the same mixed financial holding company is subject to the equivalent requirements of this Act and of the Act governing the business of insurance undertakings, in particular with regard to risk-oriented supervision.

(5) Where the CNB exercises supervision on a consolidated basis over a responsible investment firm controlled by a mixed financial holding company, it may, in agreement with the competent supervisory authorities, provide that in the exercise of such supervision, it shall apply only those provisions which apply to the most significant sector of the law governing the supplementary supervision of financial conglomerates, provided that the equivalent requirements of this Act and of the law regulating the activities of insurance undertakings apply to that European mixed financial holding company, in particular with regard to risk-oriented supervision.

(6) The CNB is competent to agree on the use of only foreign legislation applicable to the most important sector under the rules governing supplementary supervision of financial conglomerates when the supervisor of an investment firm controlled by an EUropean mixed financial holding company and when requested by an authority exercising supplementary supervision of a financial conglomerate.

#### Section 155c

(1) The CNB shall inform the EBA about

- (a) the procedures adopted according to Section 155b(1), (2), (4) and (5)
- (b) where it applies Section 135c(1)
- (c) the functioning of the review and evaluation process under Section 135b,
- (d) the methodology used as the basis for a decision according to Section 135b(3) to (5), Section 135c(2), (3) and (4) and Section 136(2), (5) and (7)
- (e) the names of the authorities or persons to whom information may be communicated according to Section 135a,
- (f) financial holding companies and mixed financial holding companies according to Article 11 of the CRR,
- (g) the results of the review and evaluation under Section 135b if the results indicate the imminent systemic risk referred to in Article 23 of Regulation (EU) No 1093/2010 by an investment firm; this information will be provided by the CNB without undue delay,
- (h) data gathered to compare trends and remuneration procedures,
- (i) measures taken according to Section 12h(g),
- (j) authorisation to act as a non-executive member according to Section 10(5),
- (k) data collected according to Section 12h(h),
- (l) the information obtained from an investment firm on the shareholders 'or members' decision concerning the remuneration,
- (m) corrective measures imposed according to Section 136(2)(l), Section 136(7) and fines imposed for offenses under Section 165(2) and Section 176, including information on appeals against the decision imposing such administrative penalties,
- (n) the composition of the combined capital buffer and the dates from which the investment firms are subject to the duty to maintain the combined capital buffer in that composition,
- (o) recognition of the reduction of the transitional period for the counter-cyclical capital buffer introduced by another EU member state.

(2) Upon request, the CNB shall inform the EBA of all facts necessary for the performance of its tasks as set out in relevant EU regulations<sup>47)</sup>.

(3) The CNB shall inform the Commission (EU) of

- (a) financial holding companies and mixed financial holding companies according to Article 11 of the CRR,
- (b) the composition of the combined capital buffer and the dates on which investment firms are subject to the duty to maintain the combined capital buffer in that composition,

- (c) recognition of the reduction of the transitional period for the counter-cyclical capital buffer introduced by another EU member state.

(4) The CNB shall inform the ESRB of the

- (a) the composition of the combined capital buffer and the dates from which the investment firms are subject to the duty to maintain the combined capital buffer in that composition,
- (b) recognition of the reduction of the transitional period for the counter-cyclical capital buffer introduced by another EU member state,
- (c) *repealed*,
- (d) a rate of countercyclical capital stock in accordance with Section 9a(3) and a data referred to in Section 9a(7).

(5) The CNB shall inform the European Supervisory Authority (European Insurance and Occupational Pensions Authority)<sup>48)</sup> (hereinafter referred to as the “EIOPA”) of the procedures adopted according to Section 155b(1), (2), (4) and (5).

(6) The CNB shall provide the EBA with co-operation in all cases where the EBA on its own initiative contributes to the settlement of disputes between the competent authorities.

(7) The CNB uses data from the EBA's database of administrative sanctions for the assessment of the good repute of members of the investment firm's authorities.

(8) The CNB shall inform the relevant colleges of supervisors of

- (a) the composition of the combined capital buffer and the dates from which the investment firms are subject to the duty to maintain the combined capital buffer in that composition,
- (b) recognizing the reduction of the transitional period for the countercyclical capital buffer introduced by another EU member state.

## Section 156

### **Remedial measures**

(1) The CNB may in the case of a breach of this Act or of a decision issued under this Act by a person included in the consolidation group that may adversely affect the financial situation of an investment firm that is part of a consolidated group, towards to the controlling investment firm, the responsible investment firm in the a group of the financial holding company, the responsible investment firm in the group of the foreign controlling investment firm, the responsible investment firm in the group of the foreign controlling bank or the mixed holding company, and according to the nature of the breach found, to

- (a) order to remedy, within a specified time limit,
- (b) order the extraordinary audit of a person who is a part of the consolidated group at the expense of the controlling entity,
- (c) prohibit or restrict the conclusion of transactions in financial instruments with persons forming part of the same consolidation group.

(2) A person included in a consolidation group that is not an investment firm concludes transactions in financial instruments in a way that does not harm the interests of the investment firm's clients forming part of the same consolidation group and does not endanger its financial stability or undermine the transparency of the financial market.

(3) In Sections 151 to 155c the bank shall also mean a foreign bank.

## TITLE III

## ADMINISTRATIVE OFFENCES

### Chapter 1

#### Administrative offences of natural persons violating this Act

##### Section 157

(1) A natural person commits an administrative offence by failing to

- (a) cease from illegally performing activities according to this Act which require authorisation by the CNB, accreditation granted by the CNB, entry into register led by the CNB, consent of the CNB or communication by a supervisory authority of another EU member state,
- (b) cease from stating false or misleading information or by failing to state all facts in connection with an application under this Act,
- (c) cease from acting in violation of Section 10(4) as a member of the management body,
- (d) cease from acquiring a qualifying holding or a controlling interest in an investment firm or a market operator in violation of Section 10b(1) or Section 47(1),
- (e) comply with any of the reporting duties set out in Section 10e(1) or Section 47(3),
- (f) fulfil the duty to keep documents and records set out in Section 14g, Section 17(6) or Section 32(7) as a person whose authorisation or accreditation has been withdrawn or ceased to exist or as a person who is a legal successor of a person whose authorisation or accreditation has been withdrawn or ceased to exist,
- (g) fulfil any of the duties set out in Section 17c, 17d, 17e, 17f, 17g, 17h or 17i in violation of Section 17j as a person under Section 4b(1)(a), (e), (i) or (j),
- (h) perform testing of algorithms according to Section 73m as a participant in a trading venue, or
- (i) file a report according to Section 73k as a participant in a trading venue.

(2) A natural person as a tied agent commits an administrative offence by failing to terminate a contractual commitment in violation of Section 32b(2).

(3) A natural person commits an administrative offence by failing to establish, maintain or apply a reporting mechanism according to Section 124 and Section 12i(1).

(4) A natural person as a person under Section 116(1) commits an administrative offence by failing to fulfil the duty of confidentiality according to Section 116.

(5) A natural person as an issuer under Section 118(1)(b), (c) or (d) or Section 121a commits an administrative offence by failing to

- (a) fulfil any of the duties set out in Section 120 or Section 120c(1),
- (b) cease from violating the prohibition set out in Section 121, or
- (c) fulfil any of the duties related to regulated information set out in Section 127(2).

(6) An administrative fine may be imposed for an administrative offence under subsection (1) up to

- (a) CZK 150 million, or
- (b) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(7) An administrative fine of up to CZK 500 000 may be imposed for an administrative offence under subsection (2), (4) or (5).

(8) An administrative fine of up to CZK 10 million may be imposed for an administrative offence under subsection (3).

(9) A ban on business activity of up to 5 years may be imposed instead of an administrative fine or along with an administrative fine for an administrative offence under subsection (1)(b).

#### Section 158

(1) A natural person commits an administrative offence by failing to

- (a) publish an annual report according to Section 118 as an issuer under Section 118(1),
- (b) fulfil any of the reporting duties set out in Section 122(1) as a person under Section 122(1), or
- (c) fulfil any of the duties set out in Section 127(2) as a person who has applied for admission of transferable securities to trading on a regulated market without the issuer's consent.

(2) A natural person, as a forced administrator or an insolvency administrator of an investment firm, or a person who has the relevant documents in his or her possession, commits an administrative offence by failing to provide the Guarantee Fund with these documents according to Section 130(11).

(3) A natural person as a forced administrator of an investment firm, which is not a bank, a market operator, an operator of a settlement system with a settlement finality with a registered office in the Czech Republic or a central securities depository, commits an administrative offence by failing to fulfil any of the duties set out in Section 139(7).

(4) An administrative fine may be imposed for an administrative offence under subsection (1) up to

- (a) CZK 60 million, or
- (b) twice the amount of the benefit derived from the administrative offence where that benefit can be determined and where this amount exceeds the amount of CZK 60 million.

(5) An administrative fine of up to CZK 5 million may be imposed for an administrative offence under subsection (2) or (3).

### Chapter 2

#### **Administrative offences of natural persons violating a directly applicable EU regulation relating to the financial market**

#### Section 159

#### **Administrative offences of natural persons violating a directly applicable EU regulation relating to the financial market**

(1) A natural person commits an administrative offence by failing to fulfil any of the duties or by failing to cease from violating any of the prohibitions referred to in Article 4(1) or Articles 5a, 8c and 8d of the CRA-R.

(2) A natural person commits an administrative offence by failing to fulfil any of the duties or by failing to cease from violating any of the prohibitions under the SS-R<sup>42</sup>.

(3) A natural person commits an administrative offence by failing to fulfil any of the duties or by failing to cease from violating any of the prohibitions set out in the EMIR<sup>43</sup>.

(4) An administrative fine of up to CZK 10 million may be imposed for an administrative offence under subsection (1) to (3).

#### Section 159a

**Administrative offenses committed by natural persons in breach of the CSDR<sup>51)</sup>**

(1) A natural person commits an administrative offense by failing to fulfil any of the obligations or violating any of the prohibitions set out in the CSDR<sup>51)</sup>.

(2) An administrative fine may be imposed for an administrative offence under subsection (1) up to

- (a) CZK 140 million, or
- (b) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

Section 160

**Administrative offences of natural persons violating the EU regulation on market abuse**

(1) A natural person commits an administrative offence by failing to fulfil any of the duties or by failing to cease from violating any of the prohibitions referred to

- (a) in Article 14 or 15 of the MAR,
- (b) in Article 16 or 17 of the MAR, or
- (c) in Article 18, 19 or 20 of the MAR.

(2) An administrative fine may be imposed for an administrative offence under subsection (1)(a) up to

- (a) CZK 150 million, or
- (b) thrice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(3) An administrative fine may be imposed for an administrative offence under subsection (1)(b) up to

- (a) CZK 30 million, or
- (b) thrice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(4) An administrative fine may be imposed for an administrative offence under subsection (1)(c) up to

- (a) CZK 15 million, or
- (b) thrice the amount of the benefit derived from the administrative offence where that benefit can be determined.

Section 161

**Administrative offences of natural persons violating the EU regulation on markets in financial instruments**

(1) A natural person commits an administrative offence by failing to fulfil any of the duties or by failing to cease from violating any of the prohibitions set out in the MiFIR<sup>53)</sup>, or infringes a measure adopted pursuant to Articles 40 to 42 of Regulation (EU) No 600/2014 of the European Parliament and of the Council.

(2) An administrative fine may be imposed for an administrative offence under subsection (1) up to

- (a) CZK 150 million, or

- (b) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

Section 161a

**Administrative offences of natural persons violating the directly applicable European Union regulation governing a general framework for securitization and creating a specific framework for simple, transparent and standardized securitisation**

(1) A natural person commits an administrative offence by failing to fulfil any of duties or infringes one of the prohibitions set out in a directly applicable European Union regulation governing a general framework for securitization and creating a specific framework for simple, transparent and standardized securitisation<sup>63</sup>).

(2) An administrative fine may be imposed for an administrative offence under subsection (1) up to

- (a) CZK 126 650 000, or
- (b) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

Section 161b

**Administrative offences of natural persons violating the directly applicable European Union regulation governing the prospectus to be published in public marketing or admission to trading on a regulated market**

(1) A natural person commits an administrative offence by failing to fulfil any of the duties or by failing to cease from violating any of the prohibitions set out in the articles 3, 5, 6, 7 subsections (1) to (11), art. 8, 9, 10, article 11 subsections (1) or (3), article 14 subsections (1) or (2), article 15 subsection (1), article 16 subsections (1) to (3), articles 17, 18, article 19 subsections (1) to (3), article 20 subsection 1, article 21 subsections 1 to 4 or 7 to 11, article 22 subsections 2 to 5, article 23 subsections 1 to 3 or 5 or article 27 of the directly applicable European Union regulation governing the prospectus to be published in public marketing or admission to trading on a regulated market<sup>66</sup>).

(2) An administrative fine may be imposed for an administrative offence under subsection (1) up to

- (a) CZK 18 228 000, or
- (b) twice the amount of the benefit derived from the administrative offence where that benefit can be determined and if the amount of the fine thus determined exceeds CZK 18 228 000.

**Chapter 3**

**Administrative offences of legal persons and self-employed persons violating this Act**

Section 162

(1) A legal person or a self-employed commits an administrative offence by failing to

- (a) cease from illegally performing activities according to this Act which require authorisation by the CNB, accreditation granted by the CNB, entry into register led by the CNB, consent of the CNB or communication by a supervisory authority of another EU member state,
- (b) cease from stating false or misleading information or by failing to state all facts in connection with an application under this Act,
- (c) cease from acquiring a qualifying holding or a controlling interest in an investment firm or a market operator in violation of Section 10b(1) or Section 47(1),
- (d) fulfil any of the reporting duties set out in Section 10e(1) or Section 47(3),
- (e) fulfil the duty to keep documents and records set out in Section 14g, Section 17(6) or Section 32(7) as a person whose activity authorisation or accreditation has been withdrawn or ceased to exist or as a person who is a legal successor of a person whose activity or accreditation has been withdrawn or ceased to exist,
- (f) fulfil any of the duties set out in Section 17c, 17d, 17e, 17f, 17g, 17h or 17i in violation of Section 17j as a person under Section 4b(1)(a), (e), (i) or (j),
- (g) perform testing of algorithms according to Section 73m as a participant in a trading venue, or
- (h) file a report according to Section 73k as a participant in a trading venue.

(2) A legal or a self-employed person as a tied agent commits an administrative offence by failing to terminate a contractual commitment in violation of Section 32b(2).

(3) A legal person or a self-employed person commits an administrative offence by failing to establish, maintain or apply a reporting mechanism according to Section 124 and Section 12i(1).

(4) A legal person or a self-employed person commits an administrative offence by illegally using the designation “*regulovaný trh*”, “*trh malých a středních podniků*”, “*burza cenných papírů*”, or a similar designation or the designation “*centrální depozitář cenných papírů*” in violation of Section 53, Section 73b(1) or Section 100.

(5) A legal person or a self-employed person as a person under Section 116(1) commits an administrative offence by failing to fulfil the duty of confidentiality according to Section 116.

(6) An administrative fine may be imposed for an administrative offence under subsection (1) up to

- (a) CZK 150 million,
- (b) 10 % of the total annual turnover of that legal person according to the last regular financial statement or consolidated financial statement, or
- (c) twice the amount of the benefit derived from the administrative offence.

(7) An administrative fine of up to CZK 10 million may be imposed for an administrative offence under subsection (3) or (4).

(8) An administrative fine of up to CZK 500 000 may be imposed for an administrative offence under subsection (2) or (5).

(9) A ban on business activity of up to 5 years may be imposed instead of an administrative fine or along with an administrative fine for an administrative offence under subsection (1)(b).

### Section 163

(1) A legal person or a self-employed person commits an administrative offence by failing to

- (a) fulfil any of the reporting duties set out in Section 122(1) as a person under Section 122(1), or



- (b) fulfil any of the duties set out in Section 127(2) as a person who has applied for the admission of transferable securities to trading on a regulated market without the issuer's consent.

(2) A legal person or a self-employed person, as a forced administrator or an insolvency administrator of an investment firm, or a person who has the relevant documents in his or her possession, commits an administrative offence by failing to provide the Guarantee Fund with these documents according to Section 130(11).

(3) A legal person or a self-employed person, as a forced administrator of an investment firm, which is not a bank, a market operator, an operator of a settlement system with a settlement finality with a registered office in the Czech Republic or a central securities depository, commits an administrative offence by failing to fulfil any of the duties set out in Section 139(7).

(4) An administrative fine may be imposed for an administrative offence of a legal person under subsection (1) up to

- (a) CZK 300 million,
- (b) 5 % of the total annual turnover of this legal person according to the last regular financial statement or consolidated financial statement, if the amount of the administrative fine thus determined exceeds the amount of CZK 300 million, or
- (c) twice the amount of the benefit derived from the administrative offence where that benefit can be determined and where this amount exceeds the amount of CZK 300 million.

(5) An administrative fine may be imposed for an administrative offence of a self-employed person under subsection (1) up to

- (a) CZK 60 million, or
- (b) twice the amount of the benefit derived from the administrative offence where that benefit can be determined and where this amount exceeds the amount of CZK 60 million.

(6) An administrative fine of up to CZK 5 million may be imposed for an administrative offence under subsection (2) or (3).

## Section 164

### **Administrative offences of an investment firm**

(1) An investment firm commits an administrative offence by failing to

- (a) fulfil the duty set out in Section 6(3),
- (b) fulfil any of the duties related to the management body according to Section 10(3) or Section 10a(1),
- (c) carry out its activities in a sound and prudent manner according to Section 12(1),
- (d) establish, maintain or apply the governing and supervisory system according to Section 12(2),
- (e) ensure that its governing and supervisory system meets the requirements set out in Section 12a(1) or (2),
- (f) verify or evaluate the effectiveness, coherence and proportionality of the governing and supervisory system or to take remedy according to Section 12a(3),
- (g) establish, maintain or apply the procedures for the approval of a financial instrument or of significant adaptations according to Section 12ba(1),
- (h) verify or evaluate the procedures for the approval of a financial instrument or of significant adaptations or to take remedy according to Section 12ba(2),
- (i) verify or evaluate the financial instruments it offers or to take remedy according to Section 12ba(5),
- (j) fulfil the information duty set out in Section 12ba(6),
- (k) establish arrangements according to Section 12bb,
- (l) ensure maintenance of any register according to Section 12c,

- (m) delegate an activity to another person without establishing, maintaining or applying appropriate measures according to Section 12d,
- (n) establish measures to safeguard client's assets according to Section 12e(1) or (2),
- (o) ensure that its auditor submits to the CNB a report on the adequacy of the measures taken to protect the rights of the client according to Section 12e(3),
- (p) keep a journal of an investment firm according to Section 13,
- (q) ensure that its staff meets the requirements set out in Section 14,
- (r) be represented by another person according to Section 14a(1),
- (s) perform its activities through persons who meet the conditions of professional competence and good repute according to Section 14a(2),
- (t) provide investment services with professional care according to Section 15(1),
- (u) submit or publish an annual report or related information according to Section 16(1) or (2),
- (v) fulfil the reporting duty set out in Section 16(6),
- (w) keep records or documents according to Section 17,
- (x) fulfil any of the duties for algorithmic trading set out in Section 17c or Section 17d(1), (2) or (4),
- (y) store or make available records according to Section 17e when engaged in a high-frequency algorithmic trading technique,
- (z) fulfil any of the duties set out in Section 17f(1) when engaged in algorithmic trading to pursue a market making strategy,
- (za) fulfil any of the duties set out in Section 17g(1), (3), (4) or (5) or Section 17h(1), (2) or (4),
- (zb) fulfil any of the duties set out in Section 17i when offering clearing services to other persons,
- (zc) fulfil the reporting duty set out in Section 21(1) or (6) or Section 22(1) or (5),
- (zd) cease from placing the branch in accordance with the decision of the CNB according to Section 21(5),
- (ze) fulfil any of the duties set out in Section 32k(a), (b), (d), (f) or (g) as principal,
- (zf) have a contract according to Section 50g(1) when pursuing a market making strategy, or
- (zg) fulfil the duty to provide information set out in Section 134e(2).

(2) An investment firm as referred to in Article 4(1)(2) of the CRR commits an administrative offence by failing to

- (a) adopt or apply the required strategies or procedures according to Section 9a,
- (b) comply with prohibition to distribute part of the profit after tax in violation of Section 9aj(4),
- (c) establish or maintain a governing and supervisory system on a consolidated basis according to Section 12b(1),
- (d) ensure that the controlled entity establishes the required principles and procedures in violation of Section 12b(2),
- (e) ensure that the principles and procedures of the members of the consolidated group meet the requirements according to Section 12b(3),
- (f) establish any of the committees according to Section 12g(1),
- (g) remunerate a person with influence on risk according to Section 12j,
- (h) fulfil the reporting duty set out in Section 16(4), or
- (i) monitor its operations with members of the same consolidation group, manage the risks associated with them or subject them to appropriate internal control mechanisms according to Section 155(3).

(3) An investment firm also commits an administrative offence by failing to

- (a) establish, maintain or apply a reporting mechanism according to Section 12i(1),
- (b) fulfil the reporting duty set out in Section 16(3),
- (c) terminate a contractual commitment in violation of Section 32b(1) as a principal,
- (d) fulfil any of the duties set out in Section 32k(c) or (e) as a principal,
- (e) organise a public auction of securities according to Section 33 as an auctioneer of securities,
- (f) pay the contribution to the Guarantee Fund according to Section 129, or
- (g) provide the Guarantee Fund with the documents referred to in the first sentence of Section 130(11).

(4) An administrative fine may be imposed for an administrative offence under subsection (1) up to

- (a) CZK 150 million,
- (b) 10 % of the total annual turnover of the investment firm according to the last regular financial statement or consolidated financial statement, or
- (c) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(5) An administrative fine may be imposed for an administrative offence under subsection (2) up to

- (a) CZK 20 million,
- (b) 10 % of the total annual turnover of the investment firm according to its last regular financial statement or consolidated financial statement which include the items referred to in Article 316 of the CRR, or
- (c) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(6) An administrative fine of up to CZK 10 million may be imposed for an administrative offence under subsection (3).

## Section 165

### **Administrative offences of a foreign person**

(1) A foreign person as a person under Section 24 commits an administrative offence by failing to

- (a) keep a journal of an investment firm according to Section 24(5)(a) and Section 13,
- (b) publish the data according to Section 24(5)(b) and Section 16b,
- (c) provide investment services with professional care according to Section 24(5)(c) and Section 15(1) or
- (d) keep records or documents according to Section 24(5)(e) and Section 17.

(2) A foreign person as a person under Section 28 commits an administrative offence by failing to

- (a) fulfil any of the duties related to the management body according to Section 28b(3) and Section 10(3) or Section 10a(1),
- (b) carry out its activities in a sound and prudent manner according to Section 28b(3) and Section 12(1),
- (c) establish, maintain or apply the governing and supervisory system according to Section 28b(3) and Section 12(2),
- (d) ensure that its governing and supervisory system meets the requirements set out in Section 12a(1) or (2) according to Section 28b(3),
- (e) verify or evaluate the effectiveness, coherence and proportionality of the governing and supervisory system or to take remedy according to Section 28b(3) and Section 12a(3),
- (f) establish, maintain or apply procedures for the approval of a financial instrument or of significant adaptations according to Section 28b(3) and Section 12ba(1),
- (g) verify or evaluate the procedures for the approval of a financial instrument or of significant adaptations or to take remedy according to Section 28b(3) and Section 12ba(2),
- (h) verify or evaluate the financial instruments it offers or to take remedy according to Section 28b(3) and Section 12ba(5),
- (i) fulfil the information duty set out in Section 28b(3) and Section 12ba(6),
- (j) establish arrangements according to Section 28b(3) and Section 12bb,
- (k) ensure maintenance of any register according to Section 28b(3) 3 and Section 12c,
- (l) delegate an activity to another person without establishing, maintaining or applying appropriate measures according to Section 28b(3) and Section 12d,
- (m) establish measures to safeguard client's assets according to Section 28b(3) and Section 12e(1) or (2),
- (n) ensure that its auditor submits to the CNB a report on the adequacy of the measures taken to protect the rights of the client according to Section 28b(3) and Section 12e(3),
- (o) keep a journal of an investment firm according to Section 28b(3) and Section 13,

- (p) ensure that its staff meets the requirements set out in Section 28b(3) and Section 14,
- (q) provide investment services with professional care according to Section 28b(3) and Section 15(1),
- (r) submit or publish an annual report or related information according to Section 28b(3) and Section 16(1) or (2),
- (s) fulfil the reporting duty set out in Section 28b(3) and Section 16(6),
- (t) keep documents or records according to Section 28b(3) and Section 17,
- (u) fulfil any of the duties for algorithmic trading set out in Section 17c or Section 17d(1), (2) or (4) and Section 28b(3),
- (v) store or make available records according to Section 28b(3) and Section 17e when engaged in a high-frequency algorithmic trading technique,
- (w) fulfil any of the duties set out in Section 17f(1) when engaged in algorithmic trading to pursue a market making strategy according to Section 28b(3),
- (x) fulfil any of the duties set out in Section 17g(1), (3), (4) or (5) or 17h(1), (2) and according to Section 28b(3),
- (y) fulfil any of the duties set out in Section 17i when offering a clearing service to other persons according to Section 28b(3), or
- (z) fulfil any of the duties set out in Section 32k(a),(b), (d), (f) or (g) as a principal.

(3) A foreign person commits an administrative offence by failing to

- (a) fulfil any of the reporting duties set out in Section 24(5)(b) and Section 16(4)(a), (b) or (c) as a person under Section 24, or
- (b) fulfil any of the reporting duties set out in Section 28b(3) and Section 16(4)(a), (b) or (c) as a person under Section 28.

(4) A foreign person commits an administrative offence by failing to

- (a) fulfil the reporting duty set out in Section 24(5)(b) and Section 16(3) as a person under Section 24,
- (b) establish, maintain or apply a reporting mechanism according to Section 28b(3) and Section 12i(1) as a person under Section 28,
- (c) fulfil the information duty set out in Section 28b(3) and Section 16(3) as a person under Section 28,
- (d) terminate as a principal a contractual commitment in violation of Section 32b(1),
- (e) fulfil any of the duties set out in Section 32k(c) or (e) as principal,
- (f) organise a public auction of securities according to Section 33 as an auctioneer of securities, or
- (g) pay a contribution to the Guarantee Fund according to Section 133 as a person under Section 133.

(5) An administrative fine may be imposed for an administrative offence under subsection (1) or (2) up to

- (a) CZK 150 million,
- (b) 10 % of the total annual turnover of the foreign person according to its last regular financial statement or consolidated financial statement, or
- (c) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(6) An administrative fine may be imposed for an administrative offence under subsection (3) up to

- (a) CZK 20 million,
- (b) 10 % of the total annual turnover of the foreign person in accordance to its last regular financial statement or consolidated financial statement which include the items referred to in Article 316 of the CRR, or
- (c) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(7) An administrative fine of up to CZK 10 million may be imposed for an administrative offence under subsection (4).

## Section 166

### **Administrative offences of an investment intermediary**

(1) An investment intermediary commits an administrative offence by failing to

- (a) fulfil any of the duties related to the management body according to Section 32(1) and Section 10(3) or Section 10a(1),
- (b) establish, maintain or apply the governing and supervisory system according to Section 32(2) and Section 12(2),
- (c) ensure that its governing and supervisory system meets the requirements set out in Section 12a(1) or (2) according to Section 32(2),
- (d) verify or evaluate effectiveness, coherence and proportionality of the governing and supervisory system or to take remedy according to Section 32(2) and Section 12a(3),
- (e) establish arrangements according to Section 32(3) and 12bb,
- (f) keep an evidence of received and transmitted orders or evidence of agreements according to Section 32(4) and Section 13,
- (g) be represented by another person according to Section 32(5) and Section 14a(1),
- (h) performs its activities through persons who meet the conditions of professional competence and good repute according to Section 32(5) and Section 14a(2),
- (i) provide investment services with professional care according to Section 32(6) and Section 15(1),
- (j) keep records and documents according to Section 32(4) and Section 17(1) or (6), or
- (k) fulfil any of the duties set out in Section 32k(a), (b), (d), (f) or (g) as principal.

(2) An investment intermediary also commits an administrative offence by failing to

- (a) fulfil the reporting duty set out in Section 30(5),
- (b) be represented according to Section 30c in the provision of the main investment services,
- (c) terminate a contractual commitment set in Section 32b(1) as principal, or
- (d) fulfil any of the duties set out in Section 32k(c) or (e) as principal.

(3) An administrative fine may be imposed for an administrative offence under subsection (1) up to

- (a) CZK 150 million,
- (b) 10 % of the total annual turnover of the investment intermediary according to its last regular financial statement or consolidated financial statement, or
- (c) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(4) An administrative fine of up to CZK 10 million may be imposed for an administrative offence under subsection (2).

## Section 167

### **Administrative offences of an accredited person**

(1) An accredited person commits an administrative offence by failing to

- (a) organise a expert exam along with the accreditation granted,
- (b) fulfil the information duty set out in Section 14c(7),
- (c) proceed to perform expert exams according to Section 14f(1) or (2),
- (d) publish information or rules of exam according to Section 14f(4),

- (e) inform the examiner, without undue delay, of the result of a expert exam according to Section 14f(4),
- (f) issue without undue delay a certificate of successful completion of a expert exam according to Section 14f(6), or
- (g) keep documents relating to the performance of expert exams according to Section 14g.

(2) An administrative fine may be imposed for an administrative offence up to

- (a) CZK 5 million in the case of an administrative offence under subsection (1)(b), (e) or (f),
- (b) CZK 10 million in the case of an administrative offence under subsection (1)(c), (d) or (g),
- (c) CZK 20 million in the case of an administrative offence under subsection (1)(a).

## Section 168

### **Administrative offences of an operator of a trading venue**

(1) A market operator commits an administrative offence by failing to

- (a) prevent a person who does not meet the requirements of this Act from becoming a member of the management body of the market operator or from remaining a member of that body,
- (b) fulfil a duty set out in Section 38(6),
- (c) fulfil any of the duties related to the management body set out in Section 38(8) and Section 10(3) or Section 10a(1),
- (d) cease from doing business activities in violation to Section 40,
- (e) organise a regulated market with professional care according to Section 41(1),
- (f) cease from executing client orders against proprietary capital or engaging in matched principal trading in violation of Section 41(3),
- (g) establish a nomination committee according to Section 43,
- (h) fulfil any of the duties in acquiring, increasing and losing qualifying holding in a market operator set out in Section 47,
- (i) comply with any of the organisational requirements set out in Section 48,
- (j) fulfil any of the reporting duties set out in Section 49,
- (k) fulfil any of the reporting duties set out in Section 50,
- (l) ensure that its systems meet the requirements set out in Section 50a,
- (m) fulfil any of its duties in suspending or restricting trading set out in Section 50b,
- (n) comply with any of the duties in relation to algorithmic trading set out in Section 50c,
- (o) fulfil any of the duties in relation to direct electronic access set out in Section 50d,
- (p) ensure that the fees set by it meet the requirements set out in Section 50e,
- (q) fulfil any of the duties in relation to tick sizes according to Section 50f,
- (r) establish, maintain or apply procedures according to Section 50g(2),
- (s) allow the participants of the regulated market to choose another settlement system according to Section 51(1),
- (t) comply with any of the restrictions or any of the prohibitions of the CNB under Section 52,
- (u) cease from admitting to trading on a regulated market a financial instrument in violation of Section 56 or 57,
- (v) fulfil any of the duties to suspend or resume trading in a financial instrument or to remove a financial instrument from trading on a regulated market set out in Section 61,
- (w) establish or comply with the rules for trading on a regulated market or the rules for entering into transactions with financial instruments on a regulated market according to Section 62,
- (x) establish or comply with the rules for access to the regulated market according to Section 63,
- (y) fulfil any of the reporting duties set out in Section 63,
- (z) ensure the synchronization of business clocks according to Section 73j,
- (za) fulfil any of the duties relating to regulated information set out in Section 127(2) as a person under Section 127(1),
- (zb) apply any of the limits set out in Section 134a(1) or Section 134b(1) contrary to Section 134c, or
- (zc) fulfil any of the reporting duties set out in Section 134c(3) or Section 134e.

(2) An operator of MTF commits an administrative offence by failing to

- (a) establish, maintain or apply the rules of the measures or procedures according to Section 69(2),
- (b) have sufficient financial resources according to Section 69(3),
- (c) have a system with at least 3 active participants according to Section 69(4),
- (d) provide participants with access to data according to Section 69(5),
- (e) fulfil the information duty set out in Section 69(10),
- (f) take the necessary measures to settle the deals or to inform the participants according to Section 70(1),
- (g) fulfil the restrictions or any of the prohibitions of the CNB according to Section 70(2),
- (h) monitor or evaluate transactions according to Section 71(2),
- (i) fulfil the notification duty set out in Section 71(3),
- (j) fulfil the information duty set out in Section 71(4),
- (k) execute the instruction of a participant or trades by pairing instructions on its own account according to Section 72,
  
- (l) ensure that its systems meet the requirements pursuant to Section 73 (2) and Section 50a,
- (m) fulfil any of its obligations in the suspension or restriction of trading pursuant to Section 73 (2) and Section 50b,
- (n) fulfil any of the obligations pursuant to Section 73 (2) and Section 50c in algorithmic trading,
- (o) fulfil any of the obligations in providing direct electronic access pursuant to Section 73 (2) and Section 50d,
- (p) ensure that the remuneration determined by him meets the requirements pursuant to Section 73 (2) and Section 50e,
- (q) fulfil any of the listing obligations pursuant to Section 73 (2) and Section 50f,
- (r) introduce, maintain or apply procedures pursuant to Section 73 (2) and Section 50g (2),
- (s) fulfil any of the duties in suspending or resuming the trading of a financial instrument or its exclusion set out in Section 73a and 61,
- (t) ensure the synchronization of the trading hours according to Section 73j,
- (u) apply any of the limits set out in Section 134a(1) or Section 134b(1) contrary to Section 134c, or
- (v) fulfil any of the information duty set out in Section 134c(3) or Section 134e,

(3) An operator of OTF commits an administrative offence by failing to

- (a) perform instructions from clients according to Section 73d(3),
- (b) trade by pairing instructions on its own account according to Section 73d(4),
- (c) fulfil the requirements of Section 2(1)(q) when trading by pairing instructions on its own account according to Section 73d(5),
- (d) trade on own account according to Section 73d(6)
- (e) carry out systematic internalisation according to Section 73e(2),
- (f) ensure that the OTF is not connected according to Section 73e(3),
- (g) fulfil the information duty set out in Section 73e(4),
- (h) establish, maintain or apply the rules or measures according to Section 73f(1),
- (i) have a system with at least 3 active participants according to Section 73f(2),
- (j) provide participants with access to the data according to Section 73f(3),
- (k) monitor or evaluate transactions according to Section 73f(4),
- (l) fulfil any of the reporting duties set out in Section 73f(5) or (6),
- (m) fulfil any of the duties in trading in an OTF set out in Section 73g,
- (n) fulfil any of the duties in suspending or resuming the trading of a financial instrument or its exclusion set out in Section 73h (1) and Section 61,
- (o) ensure that its systems meet the requirements pursuant to Section 73h (2) and Section 50a,
- (p) fulfil any of its obligations in the suspension or restriction of trading pursuant to Section 73h (2) and Section 50b,
- (q) fulfil any of the obligations pursuant to Section 73h (2) and Section 50c in algorithmic trading,

- (r) fulfil any of the obligations in providing direct electronic access pursuant to Section 73h (2) and Section 50d,
- (s) ensure that the remuneration determined by him meets the requirements pursuant to Section 73h (2) and Section 50e,
- (t) fulfil any of the listing obligations pursuant to Section 73h (2) and Section 50f,
- (u) introduce, maintain or apply procedures pursuant to Section 73h (2) and Section 50g (2),
- (v) provide for settlement of transactions or inform the participants of the OTF according to Section 73i,
- (w) ensure the synchronization of trading hours according to Section 73j,
- (x) apply one of the limits set out in Section 134a(1) or Section 134b(1) contrary to Section 134c, or
- (y) fulfil any of the information duty set out in Section 134c(3) or Section 134e.

(4) An operator of OTF commits an administrative offence by failing to establish, maintain or apply a reporting mechanism according to Section 48a and 12i(1).

(5) An administrative fine may be imposed for an administrative offence under subsection (1), (2) or (3) up to

- (a) CZK 150 million,
- (b) 10 % of the total annual turnover of the trading venue operator according to its last regular financial statement or consolidated financial statement, or
- (c) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(6) An administrative fine of up to CZK 10 million may be imposed for an administrative offence under subsection (4).

## Section 169

### **Administrative offences of a data reporting services provider**

(1) A data reporting services provider commits an administrative offence by failing to

- (a) fulfil any of the duties set out in Section 76(1),
- (b) provide data services with professional care according to Section 76(2),
- (c) perform the activity properly or prudently according to the first sentence of Section 76(3),
- (d) establish, maintain or apply the governing and supervisory system according to the second sentence of Section 76(3),
- (e) verify or evaluate the integrity, adequacy and effectiveness of the governing and supervisory system or take remedy according to Section 76(4),
- (f) fulfil any of the duties related to the management body set out in Section 10(3) or Section 10a(1) according to Section 76(5),
- (g) fulfil any of the information duty set out in Section 77,
- (h) have a governing and supervisory system which meets the requirements set out in Section 79, 80 or 81, or
- (i) fulfil the duty to consolidate information set out in Section 80(3) as a CTP.

(2) The data reporting services provider commits an administrative offence by failing to establish, maintain or apply a reporting mechanism according to Section 78 and Section 12i(1).

(3) An administrative fine may be imposed for an administrative offence under subsection (1) up to

- (a) CZK 150 million,
- (b) 10 % of the total annual turnover of the data reporting services provider according to its last regular financial statement or consolidated financial statement, or
- (c) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.



(4) An administrative fine of up to CZK 10 million may be imposed for an administrative offence under subsection (2).

#### Section 170

##### **Administrative offences of an operator and a participant of a settlement system with settlement finality**

(1) An operator of a settlement system with settlement finality commits an administrative offence by failing to

- (a) publish an amendment to the rules according to Section 87(1),
- (b) fulfil the notification duty set out in Section 90b(4), or
- (c) fulfil the notification duty set out in Section 90c(1).

(2) An operator of a settlement system with settlement finality established in the Czech Republic commits an administrative offence by failing to

- (a) operate a settlement system with settlement finality of professional care according to Section 90(3),
- (b) fulfil the information duty set out in Section 90c(3), or
- (c) fulfil the notification duty set out in Section 145(4).

(3) A participant of a settlement system with settlement finality commits an administrative offence by failing to fulfil the disclosure duty set out in Section 90c(2) or 90d.

(4) An administrative fine may be imposed for an administrative offence up to

- (a) CZK 10 million in case of an administrative offence under subsection (1)(c), (2) or (3),
- (b) CZK 20 million in case of an administrative offence under subsection (1)(a) or (b).

#### Section 171

##### **Administrative offences of legal persons and self-employed persons who maintain a register of financial instruments**

(1) A legal person or a self-employed person maintaining register of financial instruments commits an administrative offence by

- (a) failing to keep a register or documents set out in Section 99a,
- (b) failing to provide the data set out in Section 115(1), or
- (c) violating the obligation set out in Section 121d or Section 121e(2), (3), (4) or (5).

(2) A natural or legal person maintaining a separate register of financial instruments or a person who maintains a register linked to the separate register of financial instruments commits an offense by not maintaining such a register in the manner specified by an implementing regulation issued according to Section 93(4).

(3) An administrative fine of up to CZK 10 million may be imposed for an administrative offence under Subsection (1)(a) or (b) or Subsection (2).

(4) An administrative fine of up to CZK 1 million may be imposed for an administrative offence under Subsection (1)(c).

#### Section 172

### **Administrative offences of some issuers of financial instruments**

(1) A legal person or a self-employed person as an issuer under Section 118(1) or Section 121a commits an administrative offence by failing to

- (a) publish an annual report or a consolidated annual report according to Section 118,
- (b) publish the half-yearly financial report or the consolidated half-yearly financial report according to Section 119,
- (c) publish a report according to Section 119a, or
- (d) disclose information according to Section 119b or Section 122b(3) or (4).

(2) A legal person or a self-employed person as an issuer under Section 118(1) or Section 121a also commits an administrative offence by failing to

- (a) fulfil any of the duties set out in Section 120, 120a, 120b or 120c,
- (b) comply with any of the prohibitions set out in Section 121, or
- (c) fulfil any of the duties related to the regulated information set out in Section 127(2).

(3) A legal person as an issuer under Section 118(1)(a) also commits an administrative offence by

- (a) failing to provide information set out in Section 121e(1), or
- (b) violating the obligation set out in Section 121k(4), Section 121o(4), Section 121u(1), Section 121u(2), second sentence, or Section 121u(3).

(4) A legal person or a self-employed person as an issuer under Section 127d(1) or Section 121a commits an administrative offence by failing to

- (a) disclose the information in the manner according to Section 127d(3), or
- (b) fulfil the notification duty according to Section 127d(3).

(5) An administrative fine may be imposed for an administrative offence under subsection (1) of a legal person up to

- (a) CZK 300 million,
- (b) 5 % of the total annual turnover of this legal person according to its last regular financial statement or consolidated financial statement, if the amount of the administrative fine thus determined exceeds CZK 300 million, or
- (c) twice the amount of the benefit derived from the administrative offence where that benefit can be determined and where this amount exceeds the amount of CZK 300 million.

(6) An administrative fine may be imposed for an administrative offence under subsection (1) of a self-employed person up to

- (a) CZK 60 million, or
- (b) twice the amount of the benefit derived from the administrative offence where that benefit can be determined and where this amount exceeds the amount of CZK 60 million.

(7) An administrative fine of up to CZK 1 million may be imposed for an administrative offence under subsection (2), (3) or (4).

### Section 173

### **Administrative offences of legal persons and self-employed persons included in the consolidation unit**

(1) A legal person or a self-employed person included in the consolidation unit commits an administrative offence by failing to

- (a) fulfil the information duty set out in Section 154(2),
- (b) create adequate control mechanisms according to Section 155(1), or
- (c) fulfil the notification duty or duty to provide an audit of information set out in Section 155(2).

(2) An administrative fine of up to CZK 10 million may be imposed for an administrative offence under subsection (1).

#### Section 173a

##### **Administrative offences of an institutional investor and of an asset manager**

(1) An institutional investor commits an administrative offence by

- (a) not drawing up or not publishing the engagement policy set out in Section 127f, or
- (b) violating the obligation set out in Sections 127g or 127j.

(2) An asset manager commits an administrative offence by

- (a) not drawing up or not publishing the engagement policy set out in Section 127f, or
- (b) violating the obligation set out in Section 127g.

(3) An administrative fine of up to CZK 1 million may be imposed for an administrative offence under Subsection 1 or 2.

#### Chapter 4

##### **Administrative offences of legal persons and self-employed persons violating a directly applicable EU regulation on financial market**

#### Section 174

(1) A legal person or a self-employed person commits an administrative offence by failing to fulfil any of its duties or by failing to cease from violating any of the prohibitions referred to Article 4(1), Article 5a, Article 8c and Article 8d of the CRA.

(2) A legal person or a self-employed person commits an administrative offence by failing to fulfil any of its duties or by failing to cease from violating any of the prohibitions set out in the SS-R<sup>42</sup>.

(3) A legal person or a self-employed person commits an administrative offence by failing to fulfil any of its duties or by failing to cease from violating any of the prohibitions set out in the EMIR<sup>43</sup>.

(4) An administrative fine of up to CZK 10 million may be imposed for an administrative offence under subsection (1), (2) or (3).

#### Section 175

##### **Administrative offences of legal persons violating the EU regulation on prudential requirements for credit institutions and investment firms (CRR)**

(1) A legal person commits an administrative offence by failing to fulfil any of its duties or by failing to cease from violating any of the prohibitions set out in the CRR<sup>50</sup>.

(2) An administrative fine may be imposed for an administrative offence under subsection (1) up to

- (a) CZK 20 million,
- (b) 10 % of the total annual turnover of that legal person under its last regular financial statement or consolidated financial statement, which includes the items referred to in Article 316 of the CRR, or
- (c) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

#### Section 176

#### **Administrative offences of legal persons and self-employed persons violating the EU regulation on improvement of settlement of securities transactions in the EU and on central securities depositories (CSDR)**

(1) A legal person or a self-employed person commits an administrative offence by failing to fulfil any of duties or by failing to cease from violating any of the prohibitions set out in the CSDR<sup>51</sup>.

(2) An administrative fine may be imposed for the administrative offence under subsection (1) of a legal person up to

- (a) CZK 550 million,
- (b) 10 % of the total annual turnover of that legal person under its last regular financial statement or consolidated financial statement, or
- (c) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(3) For an administrative offence of a self-employed person under subsection (1) an administrative fine of

- (a) up to CZK 140 million may be imposed or
- (b) twice the amount of the benefit derived from the administrative offence where that benefit can be determined may be imposed.

#### Section 177

#### **Administrative offences of legal persons and self-employed persons violating the EU regulation on market abuse (MAR)**

(1) A legal person or a self-employed person commits an administrative offence by failing to fulfil any of duties or by failing to cease from violating any of the prohibitions

- (a) under Article 14 or Article 15 of the MAR,
- (b) under to in Article 16 or Article 17 of the MAR, or
- (c) under to in Articles 18, 19 or 20 of the MAR.

(2) An administrative fine may be imposed for an administrative offence under subsection (1)(a) of a legal person up to

- (a) CZK 450 million,
- (b) 15 % of the total annual turnover of that legal person under its last regular financial statement or consolidated financial statement, or
- (c) thrice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(3) An administrative fine may be imposed for an administrative offence under subsection (1)(a) of a self-employed person up to

- (a) CZK 150 million, or
- (b) thrice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(4) An administrative fine may be imposed for an administrative offence under subsection (1)(b) of a legal person up to

- (a) CZK 75 million,
- (b) 2 % of the total annual turnover of that legal person under its last regular financial statement or consolidated financial statement, or
- (c) thrice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(5) An administrative fine may be imposed for an administrative offence under subsection (1) of a self-employed person up to

- (a) CZK 30 million, or
- (b) thrice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(6) An administrative fine may be imposed for an administrative offence under subsection (1)(c) of a legal person up to

- (a) CZK 30 million, or
- (b) thrice the unjustified benefit obtained by committing the administrative offence, if the amount of the unjustified benefit can be ascertained.

(7) An administrative fine may be imposed for an administrative offence under subsection (1)(c) of a self-employed person up to

- (a) CZK 15 million, or
- (b) thrice the amount of the benefit derived from the administrative offence where that benefit can be determined.

#### Section 178

#### **Administrative offences of legal persons and self-employed persons violating the EU regulation on markets in financial instruments (MiFIR)**

(1) A legal person or a self-employed person commits an administrative offence by failing to fulfil any of the duties or by failing to cease from violating any of the prohibitions set out in the MiFIR<sup>53</sup>, or infringes a measure adopted pursuant to Articles 40 to 42 of Regulation (EU) No 600/2014 of the European Parliament and of the Council.

(2) An administrative fine may be imposed for an administrative offence under subsection (1) up to

- (a) CZK 150 million,
- (b) 10 % of the total annual turnover of the legal person under its last regular financial statement or consolidated financial statement, or
- (c) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

#### Section 179

#### **Administrative offences of legal persons and self-employed persons violating the EU regulation on disclosure of key information on structured retail investment products and insurance products with investment component (PRIIPS-R)**

(1) A legal person or a self-employed person commits an administrative offence by failing to fulfil any of duties or by failing to cease from violating any of the prohibitions under Article 5(1), Article 6, Article 7, Article 8(1) to (3), 9, 10(1), 13(1), (3) or (4), 14 or 19 of the PRIIPS-R.

(2) An administrative fine may be imposed for the administrative offence under subsection (1) of a legal person up to

- (a) CZK 138 650 000,
- (b) 3 % of the total annual turnover of that legal person under its last regular financial statement or consolidated financial statement, or
- (c) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(3) An administrative fine may be imposed for an administrative offence under subsection (1) of a self-employed person according to subsection (1) up to

- (a) CZK 19 411 000 or
- (b) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

#### Section 180

#### **Administrative offences of legal persons and self-employed persons violating the EU regulation on transparency of trades providing financing and re-use (SFTR)**

(1) A legal person or a self-employed person commits an administrative offence by failing to fulfil any of duties or by failing to cease from violating any of the prohibitions

- (a) under Article 4 of the SFTR,
- (b) under Article 15 of the SFTR, or
- (c) under Article 24(3) of the SFTR.

(2) An administrative fine may be imposed for an administrative offence under subsection (1)(a) of a self-employed person up to

- (a) CZK 135 100 000,
- (b) 10 % of the total annual turnover of that legal person under its last regular financial statement or consolidated financial statement, or

- (c) thrice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(3) An administrative fine may be imposed for an administrative offence under subsection (1)(b) of a legal person up to

- (a) CZK 405 300 000,
- (b) 10 % of the total annual turnover of that legal person under its last regular financial statement or consolidated financial statement, or
- (c) thrice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(4) An administrative fine may be imposed for an administrative offence under subsection (1)(a) or (b) of a self-employed person up to

- (a) CZK 135 100 000 or
- (b) thrice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(5) For an administrative offence under subsection (1)(c) an administrative fine of up to CZK 1 million may be imposed.

#### Section 181

#### **Administrative offences of legal persons and self-employed persons violating the EU regulation governing indexes that are used as reference values in financial instruments and financial contracts or to measure the performance of investment funds (BMR)**

(1) A legal person or a self-employed person commits an administrative offence by failing to fulfil any of duties or by failing to cease from violating any of the prohibitions

- (a) under Article 11(1)(d) or Article 11(4) of the BMR, or
- (b) under Articles 4 to 10, Article 11(1)(a), (b), (c) or (e), (2) or (3), Articles 12 to 16, 21, 23 to 29 or 34 of the BMR.

(2) An administrative fine may be imposed for an administrative offence under subsection (1)(a) of a legal person up to

- (a) CZK 6 782 500,
- (b) 2 % of the total annual turnover of that legal person under its last regular financial statement or consolidated financial statement, or
- (c) thrice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(3) An administrative fine may be imposed for an administrative offence under subsection (1)(b) of a legal person up to

- (a) CZK 27 130 000,
- (b) 2 % of the total annual turnover of that legal person under its last regular financial statement or consolidated financial statement, or
- (c) thrice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(4) An administrative fine may be imposed for an administrative offence under subsection (1)(a) of a self-employed person up to

- (a) CZK 2 713 000 or
- (b) thrice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(5) An administrative fine may be imposed for an administrative offence under subsection (1)(b) of a self-employed person up to

- (a) CZK 13 565 000 or
- (b) thrice the amount of the benefit derived from the administrative offence where that benefit can be determined.

## Section 182

### **Administrative offences of legal persons and self-employed persons violating the EU regulation governing securitisation**

(1) A legal person or a self-employed person commits an administrative offence by failing to fulfil any of duties or infringes one of the prohibitions set out in a directly applicable European Union regulation governing a general framework for securitization and creating a specific framework for simple, transparent and standardized securitisation<sup>63</sup>.

(2) An institutional investor who has been instructed to fulfill obligations by another institutional investor pursuant to Article 5 (5) of Regulation (EU) 2017/2402 of the European Parliament and of the Council shall commit an administrative offence by failing to comply with any of those obligations.

(3) An administrative fine o may be imposed for an administrative offence of a legal person according to subsection (1) or (2) up to

- (a) CZK 126 650 000,
- (b) 10% of the total annual turnover of that legal person under its last regular financial statement or consolidated financial statement, or
- (c) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(4) An administrative fine may be imposed for an administrative offence of a self-employed persons according to subsection (1) up to

- (a) CZK 126 650,000,
- (b) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

## Section 183

### **Administrative offences of legal persons and self-employed persons violating the directly applicable European Union regulation governing the prospectus to be published in public marketing or admission to trading on a regulated market.**

(1) A legal person or a self-employed person commits an administrative offence by failing to fulfil any of duties or infringes one of the prohibitions set out in the articles 3, 5, 6, article 7 subsections (1) to (11), articles 8, 9, 10, article 11 subsections (1) or (3), article 14 subsection (1) or (2), article 15 subsection (1), article 16 subsection (1) to (3), articles 17, 18, article 19 subsections (1) to (3), article 20 subsection (1), article 21 subsection (1) to (4) or (7) to (11), article 22 subsection (2) to (5), article 23 subsection (1) to (3) or (5) or article 27 of the directly applicable European Union regulation governing the prospectus to be published in public marketing or admission to trading on a regulated market<sup>66</sup>.



(2) An administrative fine o may be imposed for an administrative offence of a legal person according to subsection (1) up to

- (a) CZK 130 200 000,
- (b) 3% of the total annual turnover of that legal person under its last regular financial statement or consolidated financial statement, or
- (c) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

(3) An administrative fine may be imposed for an administrative offence of a self-employed persons according to subsection (1) or (2) up to

- (a) CZK 18 228 000, or
- (b) twice the amount of the benefit derived from the administrative offence where that benefit can be determined.

### *Sections 184 to 191*

*repealed*

## **Chapter 5**

### **Common provisions on administrative offences**

#### Section 192

(1) Administrative offences under this Act shall be investigated by the CNB.

(2) Income from administrative fines imposed on investment firms according to this Act is the income of the Guarantee Fund; this income is regarded to be a public budget income for the purposes of managing its payment. Administrative fines imposed on investment firms are collected and enforced by the customs office.

## **PART ELEVEN**

### **SPECIFIC PROVISIONS CONCERNING THE DIRECTLY APPLICABLE EU REGULATIONS**

#### Section 192a

(1) The CNB is in the Czech Republic

- (a) the sectoral competent authority according to the CRA-R<sup>49)</sup>,
- (b) the competent authority according to the SS-R<sup>42)</sup>,
- (c) the competent authority in the area of trade repository according to the EMIR<sup>43)</sup>,
- (d) the competent authority according to the CRR<sup>50)</sup>,
- (e) the designated authority according to the CRR<sup>50)</sup>,
- (f) the competent authority according to the CSDR<sup>51)</sup>,
- (g) the competent authority according to the MAR<sup>52)</sup>,
- (h) the competent authority according to the MiFIR<sup>53)</sup>,
- (i) the competent authority according to the PRIIPS-R<sup>60)</sup>,
- (j) the competent authority according to the BMR<sup>62)</sup>,
- (k) the competent authority according to the directly applicable European Union regulation governing a general framework for securitization and creating a specific framework for simple, transparent and standardized securitisation<sup>63)</sup>.

- (1) the competent authority according to the directly applicable European Union regulation governing the prospectus to be published in public marketing or admission to trading on a regulated market<sup>66)</sup>.

(2) In relation to government bonds issued by the Czech Republic and credit default swaps for these bonds, the CNB shall exercise its powers under Articles 13(3), 14(2) and 20 to 24 of the SS-R upon prior approval by the MoF.

#### Section 192b

#### **CCP's authorisation to operate**

(1) The CNB is the competent authority for the authorisation of CCPs according to the EMIR<sup>43)</sup>.

(2) An application for authorisation to operate a CCP may be submitted only electronically.

(3) The application according to subsection (2) shall contain, in addition to the provisions of the Administrative Procedure Code, also data and documents proving the fulfilment of the conditions for the granting of the authorisation.

(4) The details of the application in accordance with subsection (2), its format and other technical specifications shall be specified in an implementing regulation.

### **PART TWELVE**

#### **CLOSE-OUT NETTING ARRANGEMENTS**

#### Section 193

(1) Close-out netting arrangement is an arrangement of a contract negotiated under Czech or foreign law,

- (a) which can be substantiated in writing or, where appropriate, by a recording which permits reproduction in an unaltered form,
- (b) which relates to the claims of the contracting parties, including the attachment of such claims which may be secured by financial security under the law governing financial collateral<sup>26)</sup> and to claims, including the attachment of such claims, resulting from financial collateral or similar legal relationship under foreign law, and
- (c) where, in the event of an occurrence that has been settled on in advance, there is a extinction and replacement of the debts corresponding to the claims referred to in (b) or a setting-off the claims which have not yet matured and, if necessary, matured, according to (b) such that the result will be a single claim of one contracting party and the corresponding amount of the other contracting party's debt.

(2) The method of valuation of claims according to (b), the moment at which such valuation must be carried out and the manner and period of performance of the resulting single claim shall be the subject of the close-out netting arrangement and shall not be contrary to the practices of the relevant financial market.

(3) A decision or other act of a court or administrative body which affects the rights of third parties and has been taken in order to maintain or remedy the financial situation of any of the contracting parties or prohibit or restrict the execution of certain transactions or the transfer of funds by one of the contracting parties does not affect the close-out netting arrangement if such close-out netting arrangement was concluded before the decision or other action was taken.

(4) Subsection (3) shall not apply to the effects of acts connected with an opening of insolvency proceedings, the entry into liquidation or the imposition of forced administration, or the application of crisis

management measures or depreciations and conversions of depreciable equity instruments under the law governing recovery and resolution of the financial market or equivalent foreign legislation; the exclusion of these effects is regulated by other laws.

## **PART THIRTEEN**

### **COMMON, TRANSITIONAL AND FINAL PROVISIONS**

#### Section 194

The provisions of this Act on securities shall also apply also to book-entry securities, unless it is excluded by their nature or this Act.

#### Section 194a

The provisions of Section 10(3), Section 12 to 12bb, 15 to 15k, 15o to 15r, Section 17(1) and 128 to 192 shall apply *mutatis mutandis* to an investment firm, a bank or a savings or credit cooperative when it sells structured deposits or provides advice on them.

#### Section 195

Where this act refers to an EU member state, it also means the other states forming the European Economic Area.

#### Section 195a

(1) The provisions of Sections 119c(1), 120c(2) and 127c(4) shall also apply to the issuer of an transferable security whose nominal value corresponds to the amount of at least 50 000 EUR at the date of issue in the case of securities admitted to trading on an EU regulated market no later than 31 December 2010. In the case of securities admitted to trading on an EU regulated market after 31 December 2010 but no later than 14 July 2011, the provisions shall apply to the issuer only by 30 June 2012.

(2) If provisions of this Act or a regulation implementing this Act stipulate something other than provisions of the Civil Code governing the administration of property of others, this Act or a regulation implementing this Act shall apply.

(3) The provisions of Sections 1401, 1415(1) and 1432 to 1437 of the Civil Code do not apply to individual activities that an investment service involves, unless otherwise agreed by the parties.

#### Section 195b

(1) The CNB shall grant a non-financial counterparty that meets the conditions of Article 10(1) of EMIR or becomes an investment firm after 2 January 2018 an exemption from the clearing duty set out in Article 4 of EMIR and the application of the risk mitigation techniques set out in Article 11(3) of EMIR in respect of the derivatives referred to in Section 3(h) relating to coal or oil traded in an OTF and which must be settled by delivery of the underlying asset.

(2) The exemption provided for in subsection (1) may be set until no later than 3 January 2021.

(3) The exemption procedure under subsection (1) shall be initiated at the request of a non-financial counterparty or an investment firm. The CNB shall notify the ESMA of the decision to grant an exemption.

(4) The non-financial counterparty in the calculation of positions under Article 10 of EMIR shall not include the derivatives referred to in Section 3(1)(h) which are covered by an exemption granted under subsection (1).

#### Section 196

(1) Where this Act requires the disclosure of information in the territory of the Czech Republic, such information shall be disclosed in the Czech language, unless otherwise provided in this Act. The CNB may, upon an exam of specific circumstances, allow certain information to be published in English.

(2) When publishing information on a website, such information must be published in this way for at least 3 years, unless otherwise provided in this Act.

(3) If this does not jeopardize the proper verification of the fulfilment of the prerequisites for the decision, the CNB may, in proceedings for an application under this Act

- (a) make it possible to replace the annex by a sworn statement, or
- (b) not require the submission of an annex; a declaration on such a case may be made by the administrative authority on its official notice board even for an indefinite number of proceedings in the future.

(4) The documents prepared in a foreign language shall be submitted to the CNB in the original version and at the same time in an officially certified translation into the Czech language. The CNB may allow the submission of a document in a foreign language only in the original language or in English. The CNB may make a statement on the use of the option according to the previous sentence on its official notice board even for an indefinite number of persons or proceedings in the future. The CNB shall, in the form of an official notice on its website, determine for an indeterminate number of persons or proceedings whether and which documents can be submitted in English.

#### Section 197

For the purposes of this Act, a person whose current activity gives the precondition for the proper performance of activities under this Act is considered to have good repute.

#### Section 198

##### **List of forced administrators and liquidators**

(1) The CNB shall maintain a list of persons who may be appointed as a forced administrator or liquidator of a market operator, an operator of a settlement system, a central securities depository and an investment firm who is not a bank. ,

(2) The CNB shall record in the list of persons mentioned in subsection (1), the person who so requests and who possess the complete legal capacity, have good repute and necessary expertise, skills and experience and have not been removed from the list for the last 5 years. CNB shall record the foreign person only if this person is authorised to act as a person referred to in subsection (1) in another EU member state.

(3) An application for entry in the list of persons referred to in subsection (1) may be submitted only electronically.

(4) The application according to subsection (3) shall include, in addition to the provisions laid down by the Administrative Procedure Code, data and documents proving the fulfilment of the conditions under subsection (2).

(5) Details of the requirements of the application proving the fulfilment of the conditions under subsection (2), its format and other technical specifications shall be specified in an implementing regulation.

(6) The authorisation to carry out activities according to subsection (1) shall also arise through the expiry of the time limit and in the manner provided for in Section 28 to 30 of the Act on the free movement of services.

(7) The CNB shall remove from the list of persons referred to in subsection (1) the person who:

- (a) has, without serious reasons, abdicated the role of forced administrator into which he has been appointed by the CNB,
- (b) has seriously or repeatedly breached the duties arising from the office of the forced administrator, into which he has been appointed by the CNB,
- (c) has ceased to fulfil the requirements for inclusion in this list,
- (d) has requested to be removed from the list, or
- (e) has died.

(8) An administrative decision shall be made on non-inclusion on the list or removal from the list.

#### Section 198a

##### **Information published by the CNB**

(1) The CNB publishes on its website

- (a) updated versions of the legislation governing the prudential rules of the investment firms on an individual and consolidated basis and the related official communications of the CNB; this is without prejudice to the provisions of the Act governing the manner of promulgation of the legislation,
- (b) information on how to exercise the choice or discretion of the EU member states and their supervisory authorities under EU law in the legislation referred to in letter (a),
- (c) information on the approach and methods of the CNB in the exercise of supervision according to Section 135b,
- (d) aggregate statistical data on compliance with prudential rules by investment firms in the Czech Republic, including the number and nature of remedial measure or fines adopted in accordance with this Act,
- (e) agreements on a change of the competent supervisory authority on a consolidated basis supervising a financial holding entity group in accordance with Section 153(3), and the information on the change of a competent supervisory authority supervising a member of the group of European controlling investment firm or a member of an EUropean financial holding company according to Section 152a(8) and (9),
- (f) without undue delay the decision on the imposition of a measure according to Section 136(1)(m) or fines according to Section 164(3)(c) and information on the lodging of administrative action and other remedies against such decisions and on their outcome; the decision shall be published in a manner consistent with Article 62(1) of CSDR.

(2) The information referred to in subsection (1) shall be published and regularly updated by the CNB on its website so that it can be compared with the same kind of information published by the capital market supervisors in other EU member states.

#### Section 198b

(1) The authorisation for the activity of the market operator in relation to the financial instruments mentioned in Section 3(1)(g) to (i), shall be also granted by the CNB to the commodity exchange, which otherwise fulfils the prerequisites for granting the authorisation; the commodity exchange may operate a regulated market or operate an MTF or an OTF only in relation to those financial instruments. In the case of a commodity exchange, deposits and other funding provided by the founder or members of the commodity exchange are considered to be own funds; the rule for the supervisory board of the market operator, which is a limited liability company, shall apply *mutatis mutandis*.

(2) Trading rules, adoption rules, rules governing access and other rules regarding the regulated market and the MTF are not covered by the status of the commodity exchange.

(3) The activity of the commodity exchange shall be registered by the CNB on its own motion in accordance with Section 38 on the date on which the decision to authorise the activity of the market operator becomes final. Other business activity of the commodity exchange can be registered only under the conditions stipulated in Section 39 and in another law.

(4) The CNB and the competent supervisor of a commodity exchange shall cooperate in authorisation and supervision of the commodity exchange that performs or intends to perform the activity of the market operator. An authorisation shall be issued after the mutual agreement.

## Section 199

### **Implementing legislation**

(1) The MoF shall issue a regulation according to Section 115(5) and Section 129b(3).

(2) The CNB shall issue a regulation according to Section 7(5), Section 9aj(6), Section 9ar(5), Section 12f, Section 12g(3), Section 12i(3), Section 13(3), Section 14h, Section 15(7), Section 16(7), Section 16a(10), Section 16b(2), Section 19(4), Section 20(4), Section 28a(4), Section 30(6), Section 30a(3), Section 32(7), Section 38(4), Section 39(7), Section 45(4), Section 46(4), Section 47(2), Section 47(5), Section 50(8), Section 63(5), Section 71(5), Section 73f(7), Section 77(3), Section 90a(5), Section 90c(4), Section 93(4), Section 94(7), Section 115(5), Section 122(8), Section 122b(6), Section 127(3), Section 127d (1), Section 132(5), Section 139(11), Section 192b(4) and Section 198(5).

(3) If the CNB has to set period or periodicity by a regulation according to subsection (2), the CNB shall set such period or periodicity to the extent necessary for effective supervision under this Act; this does not apply to periods or periodicity whose length or frequency is determined by EU law.

(4) The government regulation specify thresholds expressed in euros for the purposes of Section 35(2)(c) and (d), Section 36(2), Section 36g(5), Section 119c(1)(b), Section 120c(2) and Section 127c(4) according to EU law.

(5) The CNB may adopt measures of general scope on the basis of, and within the limits of, the CRR<sup>50)</sup> or a MiFIR<sup>53)</sup> where according to these directly applicable regulations the competent authority may grant an exemption or adjust the use of the specified rules to investment firms or other persons specified according to its type in these directly applicable regulations or a group of investment firms specified according to its type.

(6) The draft of measures of general scope according to this Act and measures of a general scope according to this Act shall be published by the CNB only in a manner allowing a remote access.

(7) Measures of general scope according to Section 134a, 134b, 134d and 137 shall be adopted by the CNB without proceedings regarding a draft of measures of general scope and may take effect from the moment of the publication.

### **Transitional and final provisions**

## Section 200

(1) The authorisation to perform the activity of an investment firm according to Act No. 591/1992 Sb., on Securities, as amended by Act No. 89/1993 Sb., Act No. 331/1993 Sb., Act No. 259/1994 Sb., Act No. 61/1996 Sb., Act No. 152/1996 Sb., Act No. 15/1998 Sb., Act No. 70/2000 Sb., Act No. 307/2000 Sb., Act

No. 362/2000 Sb., Act No. 239/2001 Sb., Act No. 259/2001 Sb., Act No. 501/2001 Sb. and Act No. 308/2002 Sb., the decision of the Constitutional Court published under No. 476/2002 Sb. and Act No. 88/2003 Sb. (hereinafter referred to as the “existing Act”) shall be deemed to be an authorisation for the activity of an investment firm under this Act to the extent of the investment services specified in the authorisation.

(2) The Guarantee Fund of Investment Firms under the existing Act shall be a Guarantee Fund under this Act; claims for the payment of compensation from the Guarantee Fund under the existing law remain valid. The average value of client assets under Section 129 shall be calculated commencing on July 1, 2004.

(3) An authorisation to establish a branch of a foreign investment firm under the existing Act shall be an authorisation to provide investment services through an organisational unit under this Act.

(4) An authorisation for the activity of a broker under the existing Act shall be an authorisation to pursue the activity of a broker according to this Act, within the scope of the professional specialization of the broker as specified in the authorisation.

(5) An authorisation to organise an over-the-counter market under the existing Act shall be an authorisation to organise an over-the-counter market under this Act, to the extent as specified in the authorisation.

(6) An authorisation to establish a stock exchange according to the existing Act shall be an authorisation for the activity of the stock exchange according to this Act, to the extent as specified in the authorisation.

(7) An authorisation to settle transactions in financial instruments under the existing Act shall be an authorisation to operate a settlement system according to this Act, to the extent as specified in the authorisation.

(8) A registration according to Section 45a of the existing Act shall be a registration of an investment intermediary under this Act.

(9) An authorisation to print certificated securities in accordance with the existing Act shall be an authorisation for printing of security certificate according to this Act.

(10) On the day following the date when the central depository takes over the register of book-entry securities maintained by the Securities Centre according to the existing Act, the authorisation for the maintenance of a part of the register of the Securities Centre as well as the performance of its other activities according to the existing Act shall be terminated.

(11) Consent to the election or appointment of a member of the board of directors of an investment firm according to the existing Act shall be the consent to the performance of the office of a director of an investment firm under this Act.

(12) A director, who is now newly subject, according to this Act, to the obligation to acquire prior consent to the discharge of his office shall apply for the Securities Commission’s consent within 6 months of this Act becoming effective; if he does not apply for the consent within this period of time or if the Securities Commission does not grant its consent, the authorisation to perform the office shall expire.

(13) Consent to the acquisition of a holding in an investment firm under the existing Act shall be an agreement to acquire a holding in an investment firm under this Act.

(14) The approval of the auction rules of an investment firm under the existing Act shall be the approval of the auction rules under this Act.

(15) A prospectus for a security approved under the existing Act shall be a prospectus of a security approved under this Act.

(16) An abridged security prospectus approved under the existing Act shall be a prospectus of a security approved under this Act.

(17) Forced administration imposed under the existing Act, that was not terminated before the entry into force of this Act, shall be considered a forced administration under this Act.

(18) The authorisation to publish only financial statements or only consolidated financial statements under the existing Act shall be the authorisation to publish only the financial statements or only the consolidated financial statements under this Act.

(19) Registered securities under the existing Act are listed securities under this Act.

#### Section 201

(1) An investment firm is obliged to bring its status into compliance with this Act by 31 December 2004.

(2) The Stock Exchange is obliged to bring its status into compliance with this Act by 31 December 2004.

(3) The operator of off-exchange market (in Czech: "*mimoburzovní trh*") is obliged to bring its position into compliance with this Act by 30 June 2005.

(4) The operator of the settlement system shall be obliged to bring its status into compliance with this Act by 31 December 2004.

(5) A person obliged to fulfil the capital adequacy on a consolidated basis shall be obliged to bring its capital adequacy into compliance with this Act no later than 31 December 2006.

(6) The investment firm shall publish the data referred to in Section 16a(5)(a) to (c), for the first time by 1 September 2014 for the immediately preceding accounting period (financial year), under the conditions and in the manner specified in Section 16a.

#### Section 202

(1) Until the central securities depository takes over the register of book-entry and immobilised securities maintained by the Securities Centre,

- (a) the provisions of this Act governing the activities of the central securities depository shall not apply,
- (b) the Securities Centre shall maintain a register of the book-entry and immobilised securities, registers of the Securities Commission's decisions and fulfils the reporting duties according to the existing law,
- (c) the identification number according to the international numbering system for the identification of securities shall be allocated by the Securities Commission under the existing law,
- (d) the Securities Centre is subject to supervision of the CNB.

(2) The Czech Republic acting through the MoF shall transfer the registers of the Securities Centre to the central securities depository for a fee. The amount of the fee is determined on the basis of the valuation of an expert in the field of economics, pricing and valuation with the appropriate specialization, on the basis of an agreement between the MoF and the central securities depository.

(3) The Czech Republic acting through the MoF shall transfer the Securities Centre's registers, except for the records of decisions issued by the Securities Commission and the register of reporting duties to the



central securities depository without undue delay after the conclusion of a contract between the Czech Republic and the central securities depository on the transfer of such registers,. The contract of transfer of registers must be concluded no later than 2 months after the date on which the central securities depository receives an authorisation for its activity.

(4) On the day on which the central securities depository takes over the registers of the book-entry and immobilised securities maintained by the Securities Centre and starts to carry out its activities according to this Act, the Securities Centre shall cease to perform its activity under the existing laws. The announcement on this date will be announced by the Ministry in the Collection of Laws and International Treaties.

(5) The rights, obligations and liabilities of the Securities Centre shall not pass on to the central securities depository.

(6) An error in the register of book-entry and immobilised securities, which the central securities depository takes over from the Securities Centre, shall be corrected by the central securities depository according to this Act. State liability for damages is not thereby affected.

(7) An issuer of book-entry securities listed in the register maintained by the Securities Centre as at the date when the central securities depository takes over that register shall enter into an agreement pursuant to Section 94(9) for each issue of book-entry securities. The issuer shall enter into such agreement no later than 1 month from the date when the central securities depository starts to perform its activities pursuant to this Act. If the issuer fails to enter into the agreement within this time limit, the central securities depository shall not be obliged to issue an extract from the register of issues to the issuer or to make an entry in the register of issues at its request. Within the same period of time, the central securities depository shall assign an (ISIN) international securities identification number to each issue of financial instruments which it has taken over into its register and which has not yet been assigned an (ISIN) international securities identification number.

(8) The central securities depository shall open discussions on the conclusion of an agreement pursuant to subsection (7) no later than 1 month from the date when the authorisation to perform its activities comes into force. If the central securities depository fails to open discussions on the conclusion of the agreement within this time limit, the time limit within which the issuer is, pursuant to paragraph 7, obliged to enter into such agreement shall be extended to 6 months. In such case, the central securities depository shall open discussions on the conclusion of an agreement pursuant to Section 94(9) without undue delay after starting to perform its activities pursuant to this Act.

(9) An issuer of book-entry units of an open-ended unit trust listed in the part of the Securities Centre register maintained under authorisation from the Securities Commission by another legal person may, with the consent of that legal person, notify the Securities Centre and the Securities Commission that such units will henceforth be listed in a separate register of financial instruments to be maintained by the person who hitherto maintained the relevant part of the Securities Centre register. On the date of delivery of the notification of the issuer of book-entry units to the Securities Centre, or on a later date as specified in such notification, the relevant part of the Securities Centre register shall be converted into a separate register of financial instruments maintained by the person who hitherto maintained the relevant part of the Securities Centre register. The issuer may make the notification pursuant to this provision no later than by the date of transfer of the Securities Centre register to the central securities depository.

(10) An issuer of book-entry units of an open-ended unit trust that is directly registered by the Securities Centre may notify the Securities Centre and the Securities Commission that these units will continue to be maintained in a separate register of financial instruments, maintained by the person designated by the issuer of these units that is authorised under this Act to maintain a separate register. The Securities Centre shall transmit to the person designated by the issuer an exact pursuant to Section 113(2) *mutatis mutandis*. As from the time such extract is made out, the Securities Centre may not make any entry in its register concerning the units referred to in such extract. As at the date of receipt of the extract, the Securities Centre shall cancel the registration of the security in its register and registers of units shall become a separate

register under this Act. On the day following the takeover of the extract of the issue, the securities shall be entered in the asset accounts and into the register of issues in a separate register. The issuer may make a notification under this provision no later than by the date of the transfer of the Securities Centre's registers to the central securities depository.

(11) If the Securities Centre proceeds according to subsection (1)(b), the provisions of Act No. 591/1992 Sb., on Securities, in the version in force until 30 April 2004, on the registration of suspension of the exercise of the right to security on the order of the issuer shall not apply.

#### Section 202a

(1) The following services shall be provided by the central securities depository for owners of financial instruments whose accounts held in the Securities Centre's central securities depository have been taken over by the Securities Centre according to Section 202 and which have not yet concluded a contract with a participant of the central securities depository:

- (a) maintaining a register of financial instruments on the asset account to the extent stipulated by this Act,
- (b) issuance of an extract from the register of financial instruments at the request of the account owner,
- (c) the entry of the change in the asset account in the case of transfer of financial instruments to the asset account maintained by the participant of the central securities depository.

(2) In addition to the accounts referred to in subsection (1), the central securities depository shall provide the following services:

- (a) the entry of a change in the register of issue on the basis of the issuer's request,
- (b) the entry of the creation or termination of a security interest that is created of more than the mere contract,
- (c) the entry of the creation or termination of the suspension of the right of the owner to exercise its right to dispose of the financial instrument where the suspension order is given by a person according to Section 97(1)(a) to (d).

(3) The services referred to in subsections (1) and (2) shall be provided by the central securities depository for remuneration. The central securities depository has the security interest on the financial instruments registered on the relevant asset account, to secure its mature claims created in connection with the provision that ensures these services.

#### Section 202b

(1) The Securities Centre will commit an administrative offence by maintaining a register of book-entry and immobilised securities, maintaining a register of decisions of the Securities Commission and of the CNB or fulfilling reporting duties if it [Section 202 (1) (b)] violates the duties provided by the existing law.

(2) A fine of up to CZK 20 million shall be imposed for an administrative offence under subsection (1).

(3) Provisions of Section 192(1) to (4) and (6) shall apply *mutatis mutandis* to the administrative offence under subsection (1).

#### Section 203

(1) Proceedings for imposing remedial measures or sanctions, imposed before the effective date of this Act, shall be completed according to the existing law. Remedial measure or sanctions shall be imposed in accordance with the law.

(2) The violation of the existing law or the violation of the decision of the Securities Commission issued under the existing law shall be assessed in accordance with the existing law.

(3) The procedure for granting the authorisation, the registration procedure or the approval procedure commenced before the effective date of this Act shall be completed in accordance with this Act; the time-limits that have started under the existing law have been renewed since the effective date of this Act.

(4) The procedure for the award of a concession on a quality assessment of a financial instrument and a participant in a capital market (rating) commenced before the date of entry into force of this Act shall cease on the date of the entry into force of this Act.

#### Section 204

As from the date of entry into force of this Act, the Securities Commission shall notify the Commission (EU) of the list of regulated markets authorised by the Securities Commission. The annex to the notification is the internal rules of the regulated markets.

#### Section 204a

The data referred to in Section 16a(5)(d) to (f) shall be provided by the internationally designated globally systemically important institution to the Commission (EU) under confidentiality regime that applies to information and under the conditions and in the manner specified in Section 16a, for the first time by 1 September 2014 for the immediately preceding accounting period.

#### Section 204b

(1) For the purposes of Section 9ag(3) and (4), the rate of 3 % shall apply instead of 5 % until 31 December 2014.

(2) For the purposes of Section 9ar, the capital buffer for globally systemically important institutions for the year

- (a) 2016 is 25 % of the capital reserve determined according to Section 9ar,
- (b) 2017 is 50 % of the capital reserve determined according to Section 9ar,
- (c) 2018 is 75 % of the capital reserve determined according to Section 9ar.

#### Section 204c

The CNB may lay down, by means of a measure of a general scope, the conditions, criteria, requirements or procedures referred to in Article 124(4)(a), Article 150(3), Article 153(9), Article 181(3)(a), Article 182(4)(a), Article 197(8), Article 221(9), Article 312(4), (b) and (c), Article 316(3), Article 318(3), Article 363(4)(a) and (c) Article 382(4)(a), Article 426, Article 440(2) and Article 443 of the CRR.

#### Section 205

The following Acts and Regulations are hereby repealed:

1. Act No. 214/1992 Sb., on the Stock Exchange,
2. Act No. 251/2000 Sb., amending Act No. 214/1992 Sb., on the Stock Exchange, as amended,
3. Regulation No. 88/1993 Sb., on the details of the technical execution of publicly tradable securities,
4. Regulation No. 82/2001 Sb., laying down the minimum requirements for the prospectus of a security and a short prospectus for a security,

5. Regulation No. 105/2001 Sb., on the reporting of transactions in financial instruments concluded outside the public market,
6. Regulation No. 305/2001 Sb., on broker exam,
7. Regulation No. 375/2001 Sb., amending Regulation No. 88/1993 Sb., on the details of technical execution of publicly tradable certificated securities,
8. Regulation No. 17/2002 Sb., laying down the form, deadline and manner of publication of exchange rate of the capital market instruments,
9. Regulation No. 178/2002 Sb., on more detailed rules for the fulfilment of the obligation to report a share in voting rights,
10. Regulation No. 466/2002 Sb., laying down more detailed rules for the organisation of the internal operation of an investment firm and more detailed rules for dealing with securities in relation to clients,
11. Regulation No. 467/2002 Sb., on the scope of professional trading activities of a broker performing securities through a broker and on the types of specialized brokerage,
12. Regulation No. 468/2002 Sb., amending Regulation No. 305/2001 Sb., on Brokerage Test,
13. Regulation No. 64/2003 Sb., on the capital adequacy of an investment firm which is not a bank or a branch of a foreign bank,
14. Regulation No. 73/2003 Sb., on reporting the capital adequacy of an investment firm which is not a bank or branch of a foreign bank.

## Section 206

### **Application**

This Act shall take effect on the date the Treaty of Accession of the Czech Republic to the EU enters into force.

Zaorálek

Klaus

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### **Footnotes:**

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<sup>1)</sup> Directive 97/9/EC of the European Parliament and of the Council of 3 March 1997 on investor-compensation schemes. Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, as amended by Directive 2009/44/EC and 2010/78/EU of the European Parliament and of the Council. Directive 2001/34/EC of the European Parliament and of the Council of 28 May 2001 on the admission of securities to official stock exchange listing and on information to be published on those securities, as amended by Directives 2003/6/EC, 2003/71/EC, 2004/109/EC and 2005/1/EC of the European Parliament and of the Council. Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, as amended by Directives 2008/22/EC, 2010/73/EU, 2010/78/EU and 2013/50/EU of the European Parliament and of the Council.

Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, as amended by Directive 2013/50/EU of the European Parliament and of the Council.

Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, as amended by Regulation (EU) No 909/2014 of the European Parliament and of the Council and by Directive 2016/1034 of the European Parliament and of the Council.

2)

Regulation (EC) No 1060/2009 of the European Parliament and of the Council of 16 September 2009 on credit rating agencies, as amended by Regulation (EU) No 513/2011 and No 462/2013 of the European Parliament and of the Council and as amended by Directive 2011/61/EU and 2014/51/EU of the European Parliament and of the Council.

Regulation (EU) No 236/2012 of the European Parliament and of the Council of 14 March 2012 on short selling and certain aspects of credit default swaps, as amended by Regulation (EU) No 909/2014 of the European Parliament and of the Council.

Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended by Directive 2014/59/EU of the European Parliament and of the Council, as amended by Commission Delegated Regulation (EU) No 1002/2013 and as amended by Regulation (EU) No 575/2013 and No 600/2014 of the European Parliament and of the Council.

Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012.

Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC.

Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012.

Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPs).

Regulation (EU) 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012.

Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014.

Regulation (EU) 2017/2402 of the European Parliament and of the Council of 12 December 2017 laying down a general framework for securitisation and creating a specific framework for simple, transparent and standardised securitisation, and amending Directives 2009/65/EC, 2009/138/EC and 2011/61/EU and Regulations (EC) No 1060/2009 and (EU) No 648/2012.

Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC.

<sup>2a)</sup> Directive 2002/92/EC of the European Parliament and of the Council of 9 December 2002 on insurance mediation.

<sup>2b)</sup> Section 27(2) and (3) of Act No. 38/2004 Sb., on Insurance Intermediaries and Independent Loss Adjusters and on amendment to the Trades Licensing Act, as amended by Act No. 57/2006 Sb.

<sup>3)</sup> Section 14 of Act No. 15/1998 Sb., on Supervision of the Capital Market and amending and supplementing other laws, as amended by Act No. 308/2002 Sb., Act No. 257/2004 Sb. and Act No. 57/2006 Sb.

<sup>6)</sup> Act No. 93/2009 Sb., on Auditors, as amended.

<sup>7)</sup> Section 2(2) of Act No. 280/2009 Sb., the Tax Code.

<sup>8)</sup> Commission Regulation (EC) No 809/2004.

<sup>9)</sup> Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC.

<sup>12a)</sup> Council Regulation (EC) No 3605/93 of 22 November 1993 on the application of the Protocol on the excessive deficit procedure annexed to the Treaty establishing the European Community.

<sup>12b)</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual accounts, consolidated accounts and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC.

- <sup>12d)</sup> Section 21(1) and (2)(a), (b) and (d) and Section 4 of Act No. 563/1991 Sb., on Accounting, as amended.
- <sup>17c)</sup> Commission Regulation (EC) No 1569/2007 of 21 December 2007 establishing a mechanism for the determination of equivalence of accounting standards applied by third country issuers of securities in accordance with Directives 2003/71/EC and 2004 of the European Parliament and of the Council/ 109/EC.
- <sup>18)</sup> Section 189 of the Insolvency Act.
- <sup>20)</sup> Insolvency Act.
- <sup>21)</sup> Section 173(3) of the Insolvency Act.
- <sup>24)</sup> Article 23 of Directive 2001/24/EC of the European Parliament and of the Council of 4 April 2001 on the reorganisation and winding up of credit institutions.  
Article 7 and 8 of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements.
- <sup>25)</sup> Act No. 408/2010 Sb., on Financial Collateral Arrangements.
- <sup>26)</sup> Section 2(a) and Section 6(1) of Act No. 408/2010 Sb., on Financial Collateral Arrangements.
- <sup>27)</sup> For example, Section 28(1)(a) to (c) of Act No. 87/1995 Sb., on Savings and Credit Cooperatives and on certain related measures and on the supplementation of the Act of the Czech National Council No. 586/1992 Sb., on Income Taxes, as amended, in Act No. 100/2000 Sb., Act No. 280/2004 Sb., Act No. 57/2006 Sb. And Act No. 120/2007 Sb., Section 43(1) of Act No. 42/1994 Sb., on Supplementary Pension Insurance with State Contribution and on amendments to some Acts related to its implementation, as amended by Act No. 170/1999 Sb., Act No. 36/2004 Sb. and Act No. 57/2006 Sb.
- <sup>29)</sup> Art. 115 of Directive 2013/36/EU of the European Parliament and of the Council.
- <sup>30)</sup> Art. 10 of Directive 98/26/EC of the European Parliament and of the Council.
- <sup>31)</sup> Art. 2 of Directive 2006/48/EC of the European Parliament and of the Council, as amended by Commission Directives 2007/18/EC and 2010/16/EU.
- <sup>32)</sup> Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing an European Supervisory Authority (European Securities and Markets Authority).
- <sup>36)</sup> Regulation (EU) No 1092/2010 of the European Parliament and of the Council of 24 November 2010 on EU macro-prudential oversight of the financial system and establishing an European Systemic Risk Board.
- <sup>41)</sup> Art. 113 of Directive 2013/36/EU of the European Parliament and of the Council.
- <sup>42)</sup> Regulation (EU) No 236/2012 of the European Parliament and of the Council.
- <sup>43)</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council.
- <sup>44)</sup> Art. 40(1)(40) and 458(1) of the CRR.
- <sup>46)</sup> Art. 25 of Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing an European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.
- <sup>47)</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council.  
Directive 2013/36/EU of the European Parliament and of the Council. Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing an European Supervisory Authority (European Banking Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC.
- <sup>48)</sup> Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing an European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Decision Commission 2009/79/EC.
- <sup>49)</sup> Regulation (EU) No. 1060/2009 of the European Parliament and of the Council.
- <sup>50)</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council.
- <sup>51)</sup> Regulation (EU) No 909/2014 of the European Parliament and of the Council.

- <sup>52)</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council.
- <sup>53)</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council.
- <sup>56)</sup> Commission Delegated Regulation (EU) No 604/2014 of 4 March 2014 supplementing Directive 2013/36/EU of the European Parliament and of the Council with regard to regulatory technical standards with respect to qualitative and appropriate quantitative criteria to identify categories of staff whose professional activities have a material impact on an institution's risk profile.
- <sup>57)</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council.
- <sup>58)</sup> Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013 establishing a common organisation of the markets in agricultural products and repealing Council Regulations (EEC) No 922/72, (EEC) No 234/79, (EC) No 1037/2001 and (EC) No 1234/2007.
- <sup>59)</sup> Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009(EU) establishing an Agency for the Cooperation of Energy Regulators.
- <sup>60)</sup> Regulation (EU) No 1286/2014 of the European Parliament and of the Council.
- <sup>61)</sup> Regulation (EU) 2015/2365 of the European Parliament and of the Council.
- <sup>62)</sup> Regulation (EU) 2016/1011 of the European Parliament and of the Council.
- <sup>63)</sup> Regulation (EU) 2017/2402 of the European Parliament and of the Council.
- <sup>66)</sup> Regulation (EU) 2017/1129 of the European Parliament and of the Council.
- <sup>67)</sup> Commission Delegated Regulation (EU) No 815/2018 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format.