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Regulation on the supervision of the Central Securities Depository, approved by the Decision of the Executive Board of the NBM no.158 of 11 July, 2018

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EXECUTIVE BOARD
OF THE NATIONAL BANK OF MOLDOVA

DECISION
no. 158 of 11 July 2018

on the approval of the Regulation on the supervision of the Central Securities Depository

REGISTERED:
By the Ministry of Justice
of the Republic of Moldova
under no. 1344 on 19 July 2018

Pursuant to Article 5 par. (1) (f), Article 11 par. (1), Article 27 par. (1) (c) and Article 49² of the Law no. 548-XIII of 21 July 1995 on the National Bank of Moldova (republished in the Official Monitor of the Republic of Moldova, 2015, no. 297-300, art. 544), with the subsequent amendments and completions; Articles 17, 23-24, 26 of the Law no. 234 of 3 October 2016 on the Central Securities Depository (Official Monitor of the Republic of Moldova, 2016, no. 343-346, art. 711), the Executive Board of the National Bank of Moldova

RESOLVES:

1. To approve the Regulation on the supervision of the Central Securities Depository, as laid down in the Annex hereto.
2. The Central Securities Depository shall ensure the application of the Regulation approved under this Decision from the date of entry into force of the decision of the National Bank of Moldova on the start of operation of the Central Securities Depository pursuant to Art. 19 of the Law no. 234 of 3 October 2016 on the Central Securities Depository.

CHAIRMAN
OF THE EXECUTIVE BOARD
OF THE NATIONAL BANK OF MOLDOVA

Sergiu CIOCLEA

Annex
to the Decision of the Executive Board
of the National Bank of Moldova
no. 158 of 11 July 2018

REGULATION
on the supervision of the Central Securities Depository

CHAPTER I

General provisions

1. This Regulation is drawn up pursuant to Article 5 par. (1) (f), Article 11 par. (1), Article 27 par. (1) (c) and Article 49² of the Law no. 548-XIII of 21 July 1995 on the National Bank of Moldova and Articles 17, 23-24, 26 of the Law no. 234 of 3 October 2016 on the Central Securities Depository (hereinafter – Law no.234/2016).
2. Supervision of the activity of the Central Securities Depository (hereinafter referred to as the Central Depository) shall be performed by the National Bank of Moldova based on the reports and information submitted by the Central Depository under the Law no. 234/2016, as well as under this Regulation and / or through inspections to be conducted at the Central Depository's headquarters.
3. The terms and expressions used in this Regulation shall have the meanings provided in the Law no. 548-XIII of 21.07.1995 on the National Bank of Moldova, Law no. 234/2016, and the Law no. 183 of 22.07.2016 on Settlement finality in payment and securities settlement systems.

CHAPTER II

Obligations of the Central Depository

4. The Central Depository shall submit to the National Bank of Moldova (hereafter NBM) on a daily basis (but no later than 10:00 am):
 - 1) reports and information on all clearing and settlement operations that were carried out on the previous business day, to enable the NBM to perform the assessment of the systemic risk generated by the systemic clearing and settlement systems;
 - 2) the report on any operational incidents that occurred on the previous operational day and affected the good performance of any basic services provided, the measures taken to resolve them and their results;
5. The Central Depository shall notify the NBM immediately, but no later than the next business day following the event, on:
 - 1) any violation of the Central Depository's regulations and procedures committed by its participants, as well as any remedial measures taken;
 - 2) any operational changes affecting the Central Depository's activities or its IT connectivity, presented in form of a report;
 - 3) any cases of conflicts of interest identified and the way they were resolved.
6. At the NBM's request, the Central Depository shall present the minutes of the General Shareholders' Meetings held.
7. Quarterly, within 20 business days after the end of each quarter, the Central Depository shall submit to the NBM the following information:
 - 1) financial statements for the previous quarter;
 - 2) information on the number and types of participants, issuers and the accounts opened by them;
 - 3) the ISIN number, type and quantity of securities held and / or processed by the Central Depository.
8. The Central Depository shall submit to the NBM annually, by April 30, the following information and documents:
 - 1) the report on the activity carried out by the Central Depository, which shall include at least the following:
 - a) organisational chart and functional structure;
 - b) outsourced activities and services;
 - c) internal control system;
 - d) measures taken to ensure compliance with regulations, cyber security of accounts, registration of asset transfers as well as to combat money laundering and terrorist financing;
 - e) relevant risk management;
 - 2) audited financial statements of the Central Depository;
 - 3) information on civil, administrative, or any other judicial or extrajudicial proceedings involving the Central Depository, the entity that outsourced the Central Depository's activities or services or the capital market infrastructure entities it is connected with;
 - 4) information on any risky operations identified by the Central Depository, any substantial modification made to its Activity Recovery Plan, the recovery factors and instruments;
 - 5) information on any formal claims, which were received by the Central Depository during the reference period;
 - 6) information on internal inspections and audits performed by the Central Depository during the reference period;
 - 7) information on the number, type and extent of reconciliation issues identified by the Central Depository, both internally and in its relationship with participants, regulated markets or multilateral trading systems;

- 8) the shareholders' structure of the Central Depository, indicating for each shareholder the number and type of shares held, including the percentage of voting shares held;
- 9) the list of contracts concluded by the Central Depository. The information on the contracts must include at least the following: the number and date of the contract, the entity with which the contract was concluded, the object of the contract, the terms and conditions of the delivery of services, the price and the payment terms;
- 10) all decisions taken by the General Shareholders Meetings, the meetings of the Supervisory and Executive Boards with regard to the depositing, registration, clearing and settlement of securities.

9. At least annually, the Central Depository has to test the security and continuity of its IT systems and infrastructure, as well as of non-IT infrastructure services and systems that are of particular importance for the provision of depositing, registration, and settlement services.

10. Tests shall be performed by a third party or by a specialised department / subdivision of the Central Depository, provided that the latter is a distinct and independent unit, not controlled by the department / subdivision responsible for the development and implementation of the IT systems and infrastructure.

11. The results of these tests shall be submitted to the NBM not later than 31 December of the reporting year, along with the list of measures taken or proposed to be taken by the Central Depository to eliminate identified malfunctions.

CHAPTER III

Supervision of the Central Depository

12. NBM shall examine, at least yearly, the contracts concluded by the Central Depository, the strategies, processes and information systems implemented by the Central Depository, to assess compliance with the Law no. 234/2016 as well as the risks to which the Depository is or might be exposed.

13. The Central Depository's activity shall be inspected, at least yearly, by the NBM's employees or by a team composed of the employees of the NBM and the National Commission of the Financial Market.

14. The NBM shall be entitled to examine accounts, registers, records and other documents, in written or electronic form, in order to verify the Central Depository's compliance with applicable legal provisions or with the NBM's regulatory acts.

15. To carry out its tasks, the NBM shall be entitled to require the Central Depository to submit relevant information and data, whereas the Central Depository shall be obliged to submit them within the deadlines set by the NBM.

CHAPTER IV

Remedial measures. Sanctions.

16. In the event of the Central Depository's failure to comply with the applicable legal provisions or with the NBM's regulatory acts, the NBM shall be entitled to require the Central Depository to take necessary actions or measures to remedy the situation.

17. At the NBM's request, the Central Depository shall have to prepare, approve and submit to the NBM the Activity Recovery Plan, to ensure the continuity of the Central Depository's activity. The NBM shall specify the deadline of submission, the form of presentation, as well as its minimum content requirements for the Plan.

18. In exercising its powers under the Law no. 234/2016 and this Regulation, the NBM shall be entitled to provide recommendations to the Central Depository, its participants or entities, which outsourced the Central Depository's activities and services, in order to ensure compliance with applicable legal provisions or the NBM's regulatory acts.

19. The NBM shall be entitled to apply the following sanctions to the Central Depository, its participants or entities, which outsourced the Central Depository's activities and services, in case of violation of applicable legal provisions or of the NBM's regulatory acts:

- 1) warning;
- 2) reprimand;
- 3) prohibition to execute specific transactions or instructions;
- 4) prohibition to engage in certain activities;
- 5) dismissal or suspension of a person from his / her office;

6) prohibition to provide specific services.

20. Whenever applying the above-mentioned sanctions, the NBM shall consider all relevant circumstances, including, as appropriate:

- 1) the severity and duration of the breach, by establishing any aggravating or attenuating circumstances;
- 2) the degree of responsibility of the person who committed the breach;
- 3) the financial capacity of the person who committed the breach;
- 4) the scale of profits gained or losses avoided by the person who committed the breach, or of the third party's losses resulting from the breach, insofar as they can be determined;
- 5) the level of cooperation of the person who committed the breach;
- 6) any previous violations of the person who committed the breach.

See also

Tags

regulation ^[1]

on the supervision of the Central Securities Depository ^[2]

no.158 of 11 July ^[3]

2018 ^[4]

11.07.2018 ^[5]

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