Romania RIA Knowledge Transfer and Capacity Building Program

Annex 1

Phase II

- Applying RIA to an existing regulation(*) -

Proposed Existing Regulation

CNVM Regulation no. 14/2006 modifying CNVM Regulation no. 2/2006 on regulated markets and alternative trading systems

Proposing Authority

National Securities Commission

(*)= Template for RIA execution based on Draft Impact Assessment Guidelines prepared by CESR, CEBS, CEIOPS

Authority: National Securities Commission

Proposed Regulation:

CNVM Regulation no. 14/2006 modifying CNVM Regulation no. 2/2006 on regulated markets and alternative trading systems

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Step 1 – Identification of the problem (1)

i) Was there a significant market failure and/or regulatory failure and what was its nature?

As the set level of capital was not likely to be reached by B, one of the market operators before the imposed deadline, it could be anticipated that the possible failure would affect market and investment confidence, as well as financial soundness standards, which are among CNVM main objectives.

Externalities may also occur, but it is difficult to assess them, since the domestic capital market is still in an early development stage and no failures have occurred so far.

One of the reasons for setting a minimum capital level was the need for having information available for investors, that cannot be provided without a minimum level of resources of the market operator, the main provider of specialised information.

Step 1 – Identification of the problem (2)

ii) If no intervention or further intervention would have taken place, would the market have corrected the failure by itself in the short term?

No, in the absence of a new regulation, the market would not have corrected the failure by itself. However, in the short term, the market has been functioning with the same efficiency without intervention. Apparently, in the short term, the existing regulatory framework was incurring costs, without tangible benefits. It was feared that market failure might show later, in the medium term, so a regulatory intervention was deemed necessary.

Step 1 – Identification of the problem (3)

iii) Has regulatory intervention improved the situation in a way such that the benefits obtained are larger than the costs generated?

After the new regulation came into force, a first step of capital increase could be achieved, and there are indications that the performance of B is improving. This may be assessed in terms of:

- quality (the spread is narrowing and hence the liquidity is increasing, more investors being attracted to perform hedging);
- quantity (a spectacular increase in the trading volumes was reported during Q3 and Q4, especially in the futures market); and
- variety (the capital increase has encouraged research and innovation; new instruments were designed and offered to the public, such as futures on gold.)

Concepts of step 1 are explained further in *Impact Assessment Guidelines*, at pp. 20-25, Appendix 2 p. 48

Step 2 – Development of main policy options (1)

i) Please illustrate how the option to "do nothing" would have looked like?

The "do nothing" option would have been equivalent to wait for market operators to report reaching the prescribed high capital level by Jan. 1, 2007 (Romania's admission date to EU), at the latest. Most likely, this target could not have been attained by B, also given the provision that the majority voting rights should belong to shareholders-intermediaries. That provision was preventing potential investors, other than intermediaries, from contributing more capital. It is likely that, sooner or later, possibly after enforcing sanctions for non-compliance with existing regulations, an intervention would have been necessary to allow B to continue functioning.

Step 2 – Development of main policy options (2)

ii) Please illustrate the option that has been implemented in the Regulation

Regulation 14/2006, amending Regulation 2/2006 changed two of its provisions:

- keeping the rule according to which the majority voting rights shall be hold by intermediaries, yet allowing intermediaries to hold less, provided an adequate change in the articles of incorporation of the market operators is approved by the Shareholders Meeting, and thus opening the way for raising capital from investors, other than intermediaries; and
- allowing market operators to reach the set capital by three yearly steps (€750 000; €2M; €5M), by end-2008.

Step 2 – Development of main policy options (3)

iii) In case that option(s) additional to that one implemented in the Regulation were considered, please illustrate the alternative policy option(s)

Another option that was considered was a different amendment of Regulation 2/2006, as follows:

• allowing intermediaries to hold less than the majority voting rights, if an adequate change in the articles of incorporation of the market operators is approved by the Shareholders Meeting, thus opening the way for investors, other than intermediaries, as for the adopted option; and, unlike that option

• allowing market operators to reach a lower set capital, but sooner, only by two yearly steps (€750 000; €2M), by end-2007.

This option could be adopted as a general rule, to be applied to all market operators, or as a waiver from the already set rule, for operator B.

Step 3 – Definition of policy objectives (1)

i) **General objectives** (*examples include a- financial stability, b- the proper functioning of markets, and c- consumer protection)*

The fundamental objectives of C.N.V.M., as set by its legal statutes, are:

• to set and maintain the framework required for the development of regulated markets;

• to **promote confidence in regulated markets** and investments in financial instruments;

• to provide operator and investor protection against unfair, abusive and illegal practices;

• to **promote the adequate and transparent functioning** of regulated markets;

• to prevent fraud and market manipulation and ensure the integrity of regulated markets;

• to establish standards for financial strength and fair practices on regulated markets;

• to take adequate measures to prevent systemic risk on regulated markets;

• to prevent situations of asymmetric information and unfair treatment of investors and their interests.

Step 3 – Definition of policy objectives (2)

ii) **Specific objectives** [*examples (which link respectively to the general objective examples above) include a- capital adequacy provisions that align the economic and regulatory capital of banks and investment firms, b- disclosure regimes, and c- conduct of business rules*]

• to set capital standards for market operators in line with similar standards set by supervision authorities in other Member States, that could reasonably be achieved, given the financial strength of elligible investors;

• to enable market operators to have resources to comply with more demanding disclosure requirements arising from EU regulations becoming mandatory for domestic firms after accession.

Step 3 – Definition of policy objectives (2)

iii) **Operational objectives** [*examples (which link respectively to the specific objective examples above) include a- specific rules relating to the use of credit evaluation models, b- rules on the publication of prospectuses, and c- rules setting out specific terms of business requirements*]

• reaching a first prescribed capital level by market operators before end-2006 (€750 000), easier to attain if the firms decide to implement statutory changes allowing a wider range of investors;

• ensuring compliance with European transparency requirements in force for Romania as early as January 1st, 2007.

Concepts of step 3 are explained further in *Impact Assessment Guidelines*, at p. 27

Step 4 – Analysis of impacts (Consumers - 1)

i) **Costs to consumers** (Please think about the incremental costs incurred by customers after the regulation was enacted in comparison with the baseline before the enactment)

- Direct/compliance/indirect costs:

- Fixed/variable costs:

- One-off/on-going costs:

Concepts of cost assessment are explained further in *Impact Assessment Guidelines*, at pp. 31-32 and in Appendix 3

Step 4 – Analysis of impacts (Consumers - 2)

ii) **Benefits to consumers** (Please think about the incremental benefits obtained by consumers after the regulation was enacted in comparison with the baseline before the enactment)

Concepts of benefit assessment are explained further in *Impact Assessment Guidelines*, at pp. 33-34 and in Appendix 4

Step 4 – Analysis of impacts (Regulated firms - 1)

i) **Costs to regulated firms** (Please think about the incremental costs incurred by regulated firms after the regulation was enacted in comparison with the baseline before the enactment)

- Direct/compliance/indirect costs:

- Fixed/variable costs:

- One-off/on-going costs:

Concepts of cost assessment are explained further in *Impact Assessment Guidelines*, at pp. 31-32 and in Appendix 3

Step 4 – Analysis of impacts (Regulated firms - 2)

ii) **Benefits to regulated firms** (Please think about the incremental benefits obtained by regulated firms after the regulation was enacted in comparison with the baseline before the enactment)

Concepts of benefit assessment are explained further in *Impact Assessment Guidelines*, at pp. 33-34 and in Appendix 4