Implementation of the Measures against Market Abuse with Financial Instruments Act

Promulgated, SG No. 76/30.09.2016, effective 30.09.2016, amended, SG No. 105/30.12.2016, effective 30.12.2016, amended and supplemented, SG No. 95/28.11.2017, effective 1.01.2018, SG No. 15/16.02.2018, effective 16.02.2018

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*Note: An update of the English text of this Act is being prepared following the amendments in SG No. 77/18.09.2018, effective 1.01.2019

Text in Bulgarian: Закон за прилагане на мерките срещу пазарните злоупотреби с финансови инструменти

Chapter One
GENERAL PROVISIONS

Article 1. (1) This Act shall govern the implementing measures of 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 (OJ, L 173/1 of 12.6.2014), hereinafter referred to as "Regulation (EU) No. 596/2014", and its implementing instruments.

(2) Market abuse shall be insider dealing, unlawful disclosure of inside information and manipulation of the market in financial instruments.

Article 2. This Act is aimed at prevention and detection of market abuse involving financial instruments.

Article 3. (1) (Previous text of Article 3, SG No. 15/2018, effective 16.02.2018) In addition to this Act, Regulation (EU) No. 596/2014 and its implementing instruments shall also apply to market abuse involving financial instruments.

(2) (New, SG No. 15/2018, effective 16.02.2018) The Financial Supervision Commission shall adopt an ordinance for the factors to be considered by the persons entitled to do market research when they disclose information within a market study to assess whether the information constitutes inside information, on the measures these persons should consider if inside information is disclosed thereto in order to comply with Articles 8 and 10 of Regulation (EU) No. 596/2014, and on the records such persons shall keep in connection with the compliance with Articles 8 and 10 of Regulation (EU) No. 596/2014.

Article 4. (1) The Financial Supervision Commission, hereinafter referred to as the "Commission", and the Deputy Chairperson of the Commission in charge of the Investment Activity Supervision Division, hereinafter referred to as the "Deputy Chairperson", shall supervise the compliance with this Act, Regulation (EU) No. 596/2014 and its implementing instruments, and shall be competent authorities within the meaning of Article 22 of Regulation (EU) No. 596/2014.

(2) (Amended, SG No. 95/2017, effective 1.01.2018, SG No. 15/2018, effective 16.02.2018) Upon a proposal of the Deputy Chairperson, the Commission shall exercise the powers of a competent authority under Articles 13, 19, paragraph 9, Articles 24 – 26, 29, 30, paragraph 2, letters (d), (e), and (f), and Articles 33 and 34 of Regulation (EU) No. 596/2014.

(3) The Deputy Chairperson shall exercise all powers of a competent authority under Regulation (EU) No. 596/2014, except for those conferred on the express competence of the Commission.

(4) All notifications and cases of provision of information to the competent authority, envisaged in Regulation (EU) No. 596/2014, shall be addressed to the Deputy Chairperson.

Article 5. Closing transactions contrary to the prohibitions under Articles 14 and 15 of Regulation (EU) No. 596/2014 shall not result in their invalidity.

Chapter Two
REPORTING OF INFRINGEMENTS OF THIS ACT AND OF REGULATION (EU) No. 596/2014 AND ITS IMPLEMENTING INSTRUMENTS

Section I
Provision of Information to Individuals Reporting Infringements

Article 6. The Chairperson of the Commission shall designate by an order officials from the Investment Activity Supervision Division, responsible for:

1. provision to any interested person of information regarding the procedures for reporting infringements of this Act, Regulation (EU) No. 596/2014 and its implementing instruments, and taking measures thereon;

2. receiving reports of infringements and their follow-up;

3. maintaining contact with the person who reported the infringement, where such person has revealed his/her identity.

Article 7. (1) The Commission shall publish in a separate and easily identifiable and accessible section of its website information regarding the procedure for the receipt of reports of infringements.

(2) The information under Paragraph (1) shall cover:

1. communication channels for the receipt of reports of infringements and for contact with the officials referred to in Article 6, including information regarding:

(a) contact telephone numbers, stating explicitly whether the conversations are recorded;

(b) e-mail and mailing addresses for contact with the officials referred to in Article 6, which are secure and ensure confidentiality;

2. the procedures referred to in Article 15 and the confidentiality regime applicable to the reports of infringements in accordance with Article 10;

3. the procedure for protecting the individuals who have submitted reports of infringements and work under employment relationships;

4. explanation of the protection of individuals within the meaning of Article 9 (1).

Article 8. Each individual shall be entitled to submit a report of infringement of this Act, of Regulation (EU) No. 596/2014 and of its implementing instruments, both where an infringement has been committed and in case of reasonable doubt that an infringement has been committed or is imminent.

Article 9. (1) An individual, who has submitted a report or provided other information of an infringement of this Act, of Regulation (EU) No. 596/2014 and of its implementing instruments in breach of any restriction on disclosure of information imposed by any legislative, regulatory or administrative provision or by contract, shall not incur liability of any kind in connection with information provided pursuant to this chapter.

(2) Persons who operate in the field of financial services must set out in rules adopted by their governing bodies appropriate procedures for reporting by their employees of infringements of this Act, Regulation (EU) No. 596/2014 and

its implementing instruments.

Section II
Receipt of Reports

Article 10. (1) Reports of infringements shall be received and measures for following-up of such reports shall be undertaken via special communication channels, which shall satisfy the following requirements:

1. be separated from the general communication channels of the Commission, including those usually used by the Commission for internal communication and communication with third parties;

2. be designed, created and managed in a way that ensures the completeness, integrity and confidentiality of information and prevents the access by unauthorised officials and employees of the Commission's administration to such information;

3. enable the storage of information recorded on a durable medium in order to conduct further investigations;

4. provide opportunities for:

(a) reporting of infringements in writing, in electronic form or on paper;

(b) oral reporting of infringements over the telephone, regardless of whether it is recorded or not;

(c) holding meetings with the officials referred to in Article 6.

(2) (Amended, SG No. 95/2017, effective 1.01.2018) The Commission shall ensure that the information specified in Article 7 (2) is provided to the person prior to receiving the report it intends to submit, or at the latest at the time of receipt of such report. Where a report of infringement is submitted by e-mail or by post, it is assumed that the obligation under the first sentence is fulfilled with the publication of information pursuant to Article 7 on the website of the Commission.

Article 11. (1) Each received report of infringement shall be entered into a register kept by the officials referred to in Article 6.

(2) The Deputy Chairperson shall immediately send confirmation that he/she has received a written report of infringement to the postal or electronic address specified by the person submitting the report, unless the person has expressly requested otherwise or if the Deputy Chairperson has reason to believe that such confirmation could entail a risk of disclosure of the identity of the person submitting the report.

Article 12. (1) Where a telephone line, conversations over which are recorded, is used to report infringements, orally submitted reports shall be documented in any of the following manners:

1. audio recording of the conversation on a durable medium allowing extraction;

2. full and accurate minutes of the conversation prepared by an official referred to in Article 6.

(2) In the cases under Item 2 of Paragraph (1), where the individual submitting the report has disclosed his/her identity, the official referred to in Article 6 shall provide him/her with the opportunity to check, correct and agree with the minutes of the conversation by signing them.

Article 13. Where a telephone line, conversations over which are not recorded, is used to report infringements, orally submitted reports shall be documented in full and accurate minutes of the conversation prepared by an official referred to in Article 6. In the cases where the individual submitting the report has disclosed his/her identity, the official referred to in Article 6 shall provide him/her with the opportunity to check, correct and agree with the minutes of the conversation by signing them.

Article 14. (1) Where an individual requests a personal meeting with an official referred to in Article 6 to report an infringement, full and accurate minutes of the meeting shall be prepared and stored on a durable medium allowing

extraction. The meeting can also be documented by an audio recording of the conversation on a durable medium allowing extraction.

(2) In the cases under Paragraph (1), where the individual submitting the report has disclosed his/her identity, the official referred to in Article 6 shall provide him/her with the opportunity to check, correct and agree with the minutes of the meeting by signing them.

Article 15. The Rules of the Commission under Item 1 of Article 13 (1) of the Financial Supervision Commission Act shall set out procedures for work with reports of infringements, including:

1. the opportunity to submit reports of infringements anonymously;

2. the procedure for considering reports of infringements;

3. the type, contents and time periods for giving feedback on the results from the report of the infringement, which a person submitting the report could expect after the reporting;

4. the confidentiality regime applicable to reports of infringements, including a detailed description of the circumstances in which the confidential data of an individual, who has submitted a report, can be disclosed in accordance with Articles 27, 28 and 29 of Regulation (EU) No. 596/2014.

Section III
Additional Measures for Protection

Article 16. (1) The Commission shall make the necessary arrangements to ensure that each report of infringement received by means other than the communication channels referred to in Article 10 is forwarded without amendments the officials referred to in Article 6 via the communication channels referred to in Article 10.

(2) The Commission shall undertake relevant measures to protect the information relating to submitted reports of infringements and to protect the identity of individuals submitting reports of infringements by granting access to such information only to members of staff who need access to the data to perform their duties.

(3) The information entered in the register referred to in Article 11 shall be stored in a manner ensuring its confidentiality and security.

Article 17. (Amended, SG No. 105/2016, effective 30.12.2016) (1) (Supplemented, SG No. 15/2018, effective 16.02.2018) The individuals working under employment relationships who have submitted a notification of violation or against whom a notification of violation has been submitted have the right of protection against dismissal for misconduct in accordance with the procedure established by Article 187, Paragraph 2 of the Labour Code.

(2) The procedures for exchange of information and cooperation between government bodies involved in the protection of individuals under Paragraph 1, who have submitted reports of infringements, shall be set out in an ordinance adopted by the Council of Ministers.

Article 18. (1) Any transmission within or outside the Commission of data relating to a report of infringement shall not disclose directly or indirectly the identity of an individual who has submitted a report and/or a person with regard to which a report has been submitted, or other reference to circumstances that would allow to assume the identity of the individual who has submitted a report and/or the person with regard to which a report has been submitted, unless such transmission is in compliance with the confidentiality regime set out in Item 4 of Article 15.

(2) Where the identity of the person with regard to which a report has been submitted is not known to the public, the Commission shall take measures to ensure protection of its identity in at least the same manner that is envisaged for persons who are subject to inspections under this Act.

(3) Paragraphs (2) and (3) of Article 16 shall also apply to the protection of persons against which reports of infringements have been submitted.

Article 19. The Commission shall regularly and at least once every two years review and update the procedures specified in Article 15 and the measures specified in Article 16, taking into account the practical implementation of this Act, Regulation (EU) No. 596/2014 and its implementing instruments, the practice of other competent authorities in this area, and the market and technology development.

Chapter Three
COERCIVE ADMINISTRATIVE MEASURES

Article 20. (1) For the purpose of prevention and discontinuance of administrative offences under this Act, Regulation (EU) No. 596/2014 and its implementing instruments, prevention and elimination of their adverse effects, as well as where the exercise of the control activity by the Commission or the Deputy Chairperson is impeded or the interests of investors are jeopardised, the measures set out in Paragraphs (2) and (3) shall be applied.

(2) In the cases referred to in Paragraph (1), the Deputy Chairperson can:

1. issue mandatory prescriptions for taking specific measures needed to remove the offences, their adverse effects or the threat to the interests of investors within a time limit set thereby;

2. (repealed, SG No. 95/2017, effective 1.01.2018);

3. (repealed, SG No. 95/2017, effective 1.01.2018);

4. obligate the issuer to disclose the information under Regulation (EU) No. 596/2014 within a time limit set thereby.

(3) In the cases referred to in Paragraph (1) the Commission may issue:

1. a temporary ban of a person discharging managerial responsibilities within an investment firm or another natural person who is held responsible for the infringement, from discharging managerial responsibilities within investment firms and/or from dealing on own account;

2. in the event of repeated or systematic infringements of Article 14 or Article 15 of Regulation (EU) No. 596/2014, a permanent ban of a person discharging managerial responsibilities within an investment firm or another natural person who is held responsible for the infringement, from discharging managerial responsibilities within investment firms;

3. (new, SG No. 95/2017, effective 1.01.2018) discontinue the trade in certain financial instruments;

4. (new, SG No. 95/2017, effective 1.01.2018) demand attachment over movable property and accounts receivable and/or real estate.

(4) The Commission can withdraw the license of an investment firm for pursuance of business if the investment firm and/or individuals who are members of its management or supervisory body or control its operations have committed and/or have allowed the committing of an infringement of Articles 14 and 15 of Regulation (EU) No. 596/2014 or other gross or systematic violation of this Act or Regulation (EU) No. 596/2014.

(5) When determining the type of coercive measure, the Deputy Chairperson, respectively the Commission, shall take into account the circumstances specified in Article 31 of Regulation (EU) No. 596/2014.

(6) (Amended, SG No. 95/2017, effective 1.01.2018) The Commission may publish in its website public warnings for discontinuing of infringements which indicate the persons responsible for the infringement and the type of the infringement, while observing the Personal Data Protection Act.

(7) The Commission may propose to the Bulgarian National Bank to withdraw a bank's authorisation to pursue business as an investment firm, if the relevant entity systematically infringes the provisions of this Act, Regulation (EU) No. 596/2014 or its implementing instruments.

Article 21. (1) (Supplemented, SG No. 95/2017, effective 1.01.2018) The proceedings for imposition of the coercive administrative measures under Article 20 (2) shall be initiated on the initiative of the Deputy Chairperson, and in the cases specified in Article 20, paragraphs (3) and (4) – on the initiative of the Commission.

(2) Any notifications and communications in the proceedings referred to in Paragraph (1) shall be made in accordance with Article 61 (2) of the Administrative Procedure Code.

(3) If the notifications and communications in the proceedings referred to in Paragraph (1) are not accepted according to the procedure established by Paragraph (2), they shall be deemed completed by placing them on a specially designated place on the premises of the Commission or by publishing them on the Commission's website. The latter two circumstances shall be ascertained by a protocol drawn up by officials appointed by an order of the Deputy Chairperson.

(4) (Supplemented, SG No. 95/2017, effective 1.01.2018) The coercive administrative measures under Article 20 (2) shall be applied by a written reasoned decision of the Deputy Chairperson, and those under Article 20 (3) and (4) – by a written reasoned decision of the Commission. The person concerned shall be notified of the decision within 7 days of its pronouncement.

(5) The decision to apply a coercive administrative measure shall be subject to immediate enforcement, regardless of whether it has been appealed.

Article 22. Insofar as no special rules have been laid down in this Chapter, the relevant provisions of the Administrative Procedure Code shall apply.

Chapter Four
ADMINISTRATIVE PENALTY PROVISIONS

Article 23. (1) Any person who commits or suffers another to commit an infringement under:

1. (Amended, SG No. 15/2018, effective 16.02.2018) Article 4, paragraph 1, Article 11, Article 18, Article 19 or Article 20 of Regulation (EU) No. 596/2014 or of the instruments for the implementation of Article 4, Article 11, Article 18, Article 19 or Article 20 of Regulation (EU) No. 596/2014, shall be liable to a fine from BGN 500 to BGN 500,000, and in the event of a repeated infringement – from BGN 1,000 to BGN 1,000,000, if the act does not constitute a crime;

2. (Supplemented, SG No. 15/2018, effective 16.02.2018) Article 16 or 17 of Regulation (EU) No. 596/2014 or of the instruments for the implementation of Article 16 or 17 of Regulation (EU) No. 596/2014 shall be liable to a fine from BGN 2,000 to BGN 1,000,000, and in the event of a repeated infringement – from BGN 4,000 to BGN 2,000,000, if the act does not constitute a crime;

3. Article 14 or 15 of Regulation (EU) No. 596/2014, shall be liable to a fine from BGN 20,000 to BGN 5,000,000, and in the event of a repeated infringement – from BGN 40,000 to BGN 10,000,000, if the act does not constitute a crime;

4. (New, SG No. 15/2018, effective 16.02.2018) The ordinance under Article 3, paragraph 2, shall be liable to a fine from BGN 500 to BGN 250,000, and in the event of a repeated infringement, from BGN 1,000 to BGN 500,000, if the act does not constitute a crime.

(2) For infringements under Paragraph (1) by legal entities and sole traders, pecuniary sanctions in the following amounts shall be imposed:

1. for infringements referred to in Item 1 of Paragraph (1) – from BGN 1,000 to BGN 1,000,000, and in the event of a repeated infringement – from BGN 2,000 to BGN 2,000,000;

2. (amended, SG No. 15/2018, effective 16.02.2018) for infringements referred to in Item 2 of Paragraph (1) – from BGN 5,000 to BGN 2,500,000, and in the event of a repeated infringement – from BGN 10,000 to the higher amount between BGN 5,000,000 and 2 per cent of the annual turnover of the person according to his latest report, approved by the management body;

3. (amended, SG No. 15/2018, effective 16.02.2018) for infringements referred to in Item 3 of Paragraph (1) – from BGN 50,000 to BGN 15,000,000, and in the event of a repeated infringement – from BGN 100,000 to the higher amount between BGN 30,000,000 and 15 per cent of the annual turnover of the person according to his latest report, approved by the management body;

4. (new, SG No. 15/2018, effective 16.02.2018) for violations under paragraph 1, item 4: from BGN 500 or exceeding this amount but not exceeding BGN 1,000,000 and for a repeated violation, from BGN 2,000 or exceeding this amount but not exceeding BGN 1,000,000.

(3) In the event of non-compliance with an imposed coercive administrative measure under Article 20, those who have

committed the act and those who have allowed it shall be liable to a fine from BGN 5,000 to BGN 50,000.

(4) For infringements under Paragraph (3) by legal persons and sole traders, a pecuniary sanction in the amount from BGN 10,000 to BGN 100,000 shall be imposed.

(5) In the cases under Item 3 of Paragraph (1), the penalties specified in Item 3 of Paragraph (1) shall also be imposed on those who aid, abet and conceal a crime, taking into account the nature and extent of their involvement.

(6) Income acquired as a result of the infringement shall be confiscated in favour of the State, to the extent to which it cannot be refunded to the damaged persons.

(7) When determining the sanction under Paragraphs (1) – (5), the Deputy Chairperson shall take into account the provision of Article 30, Paragraph 2, letter (h) and the circumstances specified in Article 31 of Regulation (EU) No. 596/2014.

(8) Any person which fails to pay the imposed pecuniary sanction within one month of the entry into force of the penal decree, shall owe interest at the statutory rate for the period from the date following the expiry of the one-month period until the date of payment.

(9) (New, SG No. 15/2018, effective 16.02.2018) Where the person is a parent company or a subsidiary, the relevant annual turnover under paragraph 2, items 2 and 3 shall be the total annual turnover in the consolidated statements of the ultimate parent company for the previous year.

Article 24. (1) Written statements on ascertainment of the infringements shall be drawn up by the officials authorised by the Deputy Chairperson, and penalty decrees shall be issued by the Deputy Chairperson.

(2) The drawing up of written statements, the issue, appeal against, and execution of penalty decrees shall follow the procedure established by the Administrative Violations and Sanctions Act.

SUPPLEMENTARY PROVISIONS

§ 1. Within the meaning of this Act:

1. "Issuer" shall be a concept within the meaning of Article 3, paragraph 1, sub-paragraph 21 of Regulation (EU) No. 596/2014.

2. "Person with regard to which a report has been submitted" shall be the person, with regard to which information has been received from the individual who has submitted a report that such person has committed or intends to commit an infringement of this Act, Regulation (EU) No. 596/2014 or its implementing instruments.

3. "Individual who has submitted a report" shall be the individual who reports to the competent authority of an actual or possible infringement of this Act, Regulation (EU) No. 596/2014 or its implementing instruments.

4. "Repeated infringement" shall mean an infringement committed within one year of the entry into force of a penal decree by which a sanction was imposed for the same type of infringement.

5. "Systematic infringements" shall mean three or more administrative infringements of this Act, of Regulation (EU) No. 596/2014 or their implementing instruments, committed within a year.

6. "Report of infringement" shall be the report from the individual who has submitted a report to the competent authority regarding an actual or possible infringement of this Act, Regulation (EU) No. 596/2014 or its implementing instruments.

7. "Financial instrument" shall be a concept within the meaning of Article 3, paragraph 1, sub-paragraph 1 of Regulation (EU) No. 596/2014.

§ 2. This Act introduces the requirements of Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 on Regulation (EU) No. 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation (OJ, L 332/126 of 18.12.2015) and envisages measures for the implementation of 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.

TRANSITIONAL AND FINAL PROVISIONS

§ 3. This Act repeals the Measures Against Market Abuse with Financial Instruments Act (promulgated, SG No. 84 of 2006; amended, No. 52 of 2007 and No. 21 of 2012).

§ 4. Administrative and administrative penal proceedings initiated under the Measures Against Market Abuse with Financial Instruments Act until the entry into force of this Act shall be completed according to the hitherto effective procedure.

§ 5. Persons who operate in the field of financial services shall adopt the rules referred to in Article 9 (2) within three months of the entry into force of this Act.

§ 6. The following amendments and supplements are made to the Collective Investment Schemes and other Undertakings for Collective Investments Act (promulgated, State Gazette No. 77/2011; amended, No. 21 of 2012, No. 109 of 2013, No. 27 of 2014, No. 22 and 34 of 2015, and No. 42 of 2016):

1. In Item 1 of Article 4 (1), the text "and in the cases referred to in Article 21 (8) – of financial instruments as well" is added after the word "offering".

2. In Article 7:

(a) new Paragraphs (2) and (3) are created:

"(2) If for 6 consecutive months the average monthly net asset value of the company is below BGN 500,000, the management company shall, within 10 business days, disclose the reasons for this, the measures it will undertake to attract new investors, and the deadline within which these measures will be implemented and within which the company is expected to recover the amount of its net asset value.

(3) The disclosure referred to in Paragraph (1) shall be made on the website of the management company and by other appropriate means in view of the established means of contact with investors. The management company shall submit to the Commission a copy of the disclosed information by the end of the business day following the day of its disclosure, and information regarding the results of the measures undertaken by the 10th day of each month until the minimum amount specified in Paragraph (1) is reached.";

(b) what was previously Paragraph (2) now becomes Paragraph (4), and the text "except in the cases referred to in Article 21 (8)" is added at the end;

(c) what were previously Paragraphs (3), (4), (5), (6) and (7) now become Paragraphs (5), (6), (7), (8) and (9) respectively.

3. In Article 9:

(a) Paragraph (1) is amended as follows:

"(1) The net asset value of the common fund shall be at least BGN 500,000. Such minimum amount shall be reached within two years of obtaining the authorisation for common fund organisation and management. If the net asset value of the common fund fails to reach BGN 500,000 within the time period specified in Paragraph (1) or for 6 consecutive months the average monthly net asset value of the common fund is below BGN 500,000, the management company shall, within 10 business days, disclose the reasons for this, the measures it will undertake to attract new investors, and the deadline within which these measures will be implemented and within which the common fund is expected to recover the amount of its net asset value. The time period of 10 business days in the second sentence shall start from the expiry of the two-year period specified in the first sentence, respectively from the expiry of 6 consecutive months referred to in the second sentence.";

(b) a new Paragraph (2) is created:

"(2) The disclosure referred to in Paragraph (1) shall be made on the website of the management company and by other appropriate means in view of the established means of contact with investors. The management company shall submit to the Commission a copy of the disclosed information by the end of the business day following the day of its disclosure, and information regarding the results of the measures undertaken by the 10th day of each month until the minimum amount specified in Paragraph (1) is reached.";

(c) what were previously Paragraphs (2), (3,) (4) and (5) now become Paragraphs (3), (4), (5) and (6) respectively.

4. In Article 19:

(a) in Paragraph (1), Item 2 is repealed.

(b) in Paragraph (2), Item 1 is repealed.

5. In Article 21:

(a) new Paragraphs (8) and (9) are created:

"(8) Passively managed exchange-traded funds may issue units against a combination of financial instruments making up the index the fund has chosen to reproduce, in the relevant ratio.

(9) Units issued against financial instruments may be redeemed in exchange for a combination of the financial instruments making up the index the fund has chosen to reproduce, in the relevant ratio.";

(b) what were previously Paragraphs (8) and (9) now become Paragraphs (10) and (11) respectively.

6. In Article 23 (3) the text "income generated" is replaced with the text "earnings generated".

7. A new Paragraph (4) is created in Article 24a:

"(4) A passively managed exchange-traded fund shall include in its statute, respectively its rules, prospectus, document with the key investor information, as well as in its marketing announcements, information regarding whether it issues and redeems units in exchange for financial instruments."

8. Article 25 is amended as follows:

"Article 25. (1) The depositary as well as the members of its managing and controlling bodies may not be one and the same person or connected persons with the management company, with the members of its managing or controlling bodies, with the investment company, with the persons referred to in Article 10 or with another person performing management functions in the investment company, as well as with persons controlling the investment company.

(2) The depositary shall apply due diligence, perform its duties with integrity, fairly, professionally, independently and solely in the interest of the collective investment scheme and the unit-holders in the collective investment scheme.

(3) The depositary may not perform for the collective investment scheme or for the management company acting on behalf of the collective investment scheme any activity which could give rise to conflict of interests between the collective investment scheme, the investors in it, the management company and the depositary, unless where there is a functional and hierarchical segregation between the functions performed by the depositary for the collective investment scheme and its other functions, and if the conflicts of interests that may arise are properly identified, managed, monitored and disclosed to investors in the collective investment scheme."

9. In Article 26 (4) the text "the investment company, the management company respectively, at the expense of the common fund" is replaced with the text "the management company at the expense of the collective investment scheme".

10. In Article 27 (1) the text "The investment company, as well as" is deleted.

11. In Article 32 (1) the text "Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Implementation of the Measures against Market Abuse with Financial Instruments Act".

12. Article 34 is amended as follows:

"Article 34. Dematerialised financial instruments held by the collective investment scheme shall be registered with a depositary institution within the meaning of § 1, Item 26, letter (b) of the Supplementary Provisions of the Markets in Financial Instruments Act, and the other assets of the collective investment scheme shall be safe-kept at a depositary. Where the depositary is an investment intermediary, the funds shall be safe-kept under the provisions of Article 34, Paragraphs (2) – (4) of the Markets in Financial Instruments Act. The depositary shall make all payments at the expense of

the collective investment scheme."

13. In Article 35:

(a) in Paragraph (1) the text "included in a list approved by the Deputy Chairperson" is deleted;

(b) in Paragraph (2):

(aa) in the text preceding Item 1 the text "included in a list approved by the Deputy Chairperson" is deleted;

(bb) new Items (6) – (11) are created:

"6. has the infrastructure required to safe-keep the financial instruments that can be registered in a financial instruments account opened and kept by the depositary;

7. establishes adequate policies and procedures sufficient to ensure compliance by the depositary, including its management and supervisory bodies and employees, with their obligations under this Act;

8. has reliable administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective controls and safeguards for the information processing systems;

9. maintains and implements effective organisational and administrative arrangements with a view to taking appropriate action to prevent conflicts of interest;

10. stores information regarding all services, activities and transactions performed thereby; such information must be sufficient to allow the Commission and the Deputy Chairperson to exercise their supervisory powers under this Act;

11. ensures continuity and regularity in the performance of its depositary functions, using appropriate and proportionate systems, resources and procedures, including in order to carry out its business as a depositary."

(c) Paragraph (3) is amended as follows:

"(3) The members of the management and supervisory body of the investment intermediary referred to in Paragraph (2) shall at all times be of good repute and have appropriate knowledge, skills and experience.";

(d) a new Paragraph (4) is created:

"(4) The management and supervisory body of the investment intermediary referred to in Paragraph (2) shall as a whole have the required knowledge, skills and experience allowing them to understand the operations of the depositary, including the main risks.";

(e) a new Paragraph (5) is created:

"(5) Each member of the management and supervisory body of the investment intermediary referred to in Paragraph (2) and each official in the senior management staff of the intermediary shall be required to act honestly and in good faith.";

(f) what was previously Paragraph (4) now becomes Paragraph (6) and in it the text "on a timely basis" is replaced with the text "upon request and on an ongoing basis", and the word "depositary" is replaced with the text "banks designated as depositaries".

14. Article 35a is created:

"Article 35a. (1) The management company shall keep the assets of each collective investment scheme it manages in a single depositary.

(2) The relations between the management company and the depositary shall be regulated by a written contract for depositary services. The contract shall set out the terms, conditions and procedure for the provision of information between the management company and the depositary, necessary for the depositary for the performance of its functions in respect of each collective investment scheme in accordance with this Act and its implementing instruments.

(3) The depositary shall be obliged to:

1. ensure that the issue, sale, redemption and cancellation of the units of the collective investment scheme are carried out in accordance with the law and the statute, respectively with the rules of the collective investment scheme;

2. ensure that the value of the units of the collective investment scheme is calculated in accordance with the law and the statute, respectively with the rules of the collective investment scheme;

3. carry out regular reconciliation between accounts kept by the management company and the depositary in respect of the assets of the collective investment scheme, and in the cases of Article 37a – also with the accounts kept by the third party;

4. ensure that all cash in favour of the collective investment scheme, arising from transactions involving its assets, is transferred within the usual time limits;

5. ensure that the income of the collective investment scheme is allocated in accordance with the law and the statute, respectively with the rules of the collective investment scheme;

6. report at least once a month to the management company on the entrusted assets and the effected operations involving such assets, including by providing a full inventory of the assets of the collective investment scheme, by the 5th day of the following month.

(4) The depositary shall monitor the cash flows of the collective investment scheme, including check whether all payments made by investors or on their behalf and at their expense at the time of subscribing for units of the collective investment scheme have been received and accounted for in accounts, which:

1. are opened in the name of the collective investment scheme or in the name of the management company acting in the name and on behalf of the collective investment scheme, or in the name of the depositary acting in the name and on behalf of the collective investment scheme;

2. are opened with a central bank, a bank authorised under the procedure established by the Credit Institutions Act, a bank authorised in a EU Member State, or a bank authorised by a third country, and

3. are managed in compliance with Paragraph (5).

(5) The depositary shall manage the cash of the collective investment scheme by:

1. keeping records and keeping accounts in a manner that allows at any time and without delay to distinguish between the held assets of the collective investment scheme and the assets held for any other client, and the own assets of the depositary;

2. keeping records and keeping accounts in a way that ensures their accuracy;

3. carrying out regular reconciliation between accounts kept by the management company and the depositary in respect of the assets of the collective investment scheme, and in the cases of Article 37a – also with the accounts kept by the third party;

4. taking the measures required to ensure that all cash of the collective investment scheme deposited with a third party can be clearly distinguished from the cash of the depositary and this third party through individual accounts of account holders, kept by the third party, or equivalent measures achieving the same level of protection;

5. taking the measures required to ensure that the cash of the collective investment scheme in accounts with an entity specified in Item 2 of Paragraph (4) is held in an individual account or accounts separately from all accounts for keeping cash of the entity, in whose name the assets of the collective investment scheme are kept;

6. introducing proper organisation and undertaking the actions required to minimise the risk of loss or reduction as a result of abuse, fraud, mismanagement, improper keeping and storing of records, including negligence.

(6) Where cash accounts are opened in the name of a depositary, acting in the name and on behalf of a collective investment scheme, no cash of an entity referred to in Item 2 of Paragraph (4) or own cash of the depositary shall be accounted into these accounts.

(7) The financial instruments of the collective investment scheme shall be entrusted for safekeeping to a depositary, and the latter shall:

1. safe-keep all dematerialised financial instruments, registered in an account for financial instruments opened and kept by the depositary, and all other financial instruments that can be physically delivered to the depositary (financial instruments in custody);

2. ensure that all dematerialised financial instruments are registered in an account for financial instruments opened and kept by the depositary in compliance with the requirements of Paragraph (5), in individual accounts opened in the name of the management company acting in the name and on behalf of the collective investment scheme, in a manner that allows at any time to identify such instruments as financial instruments of a specific collective investment scheme.

(8) With regard to assets other than these specified in Paragraph (7), the depositary shall:

1. check whether the collective investment scheme is the owner of these assets by establishing whether the collective investment scheme is the owner based on information and documents provided by the management company and based on other evidence, if such evidence has been provided by third parties;

2. keep and update a register of the assets with regard to which it is satisfied that they are property of the collective investment scheme.

(9) The assets with regard to which the depositary is the custodian may not be used by the depositary or a third party, to which custodian functions have been delegated, for their account. Use within the meaning of the previous sentence shall mean any transaction involving assets in custody, including assignment, establishing of a pledge, sale and lending.

(10) The use under Paragraph (9) of the assets with regard to which the depositary is the custodian shall be allowed only under the following conditions:

1. it is carried out for the account of the collective investment scheme;

2. the depositary acts on the instructions of the management company acting in the name and on behalf of the collective investment scheme;

3. the use is in the interest of the collective investment scheme and of the holders of units or shares, and

4. the transaction is secured with high-quality and liquid assets, obtained by the collective investment scheme under a contract with assignment of rights.

(11) The market value of the collateral referred to in Item 4 of Paragraph (10) may not be lower than the market value of the used assets plus the premium."

15. In Article 36:

(a) Paragraph (1) is amended as follows:

"(1) The depositary shall not be liable for its obligations to its creditors with the assets of the collective investment scheme.

(b) the first sentence of Paragraph (2) is amended as follows: "In the event or bankruptcy of the depositary and/or the third party under Article 37a or an equivalent procedure pursuant to the legislation of the corresponding Member State, and in the event that a depositary bank is placed under special supervision, the assets of the collective investment scheme may not be distributed to or cashed in favour of creditors of this depositary and/or the third party under Article 37a.", and in the second sentence the text "or the temporary trustee in bankruptcy" is added after the text "trustee in bankruptcy";

(c) Paragraphs (4) and (5) are amended as follows:

"(4) At the request of the Commission or the Deputy Chairperson, the depositary shall grant access to all the information available to it in connection with the discharge of its obligations and required by the Commission or the Deputy Chairperson, respectively the competent authorities of the Member State of origin of the collective investment scheme or the management company.

(5) In the event that the depositary of a collective investment scheme originating in the Republic of Bulgaria originates in another Member State, the Commission may request from the competent authority of the Member State in which the depositary originates to provide the information it holds regarding the depositary. In the event that the Commission is the competent authority by origin of the depositary, it shall provide in a timely manner upon request the information under Paragraph (4), received from the depositary, to the competent authority of the country in which the depositary operates."

16. Article 37 is amended as follows:

"Article 37. (1) The depositary shall be liable to the collective investment scheme and to the unit-holders of the collective investment scheme for any damage caused by it or by the third party under Article 37a in the event of loss of financial assets in custody.

(2) In the event of losing any of the financial instruments in its custody, the depositary shall recover to the collective investment scheme a financial instrument of the same type or its cash equivalent without undue delay.

(3) The depositary shall not be liable for losses if it proves that they result from an external event beyond its control, the consequences of which are inevitable regardless of the measures taken to prevent them.

(4) The depositary shall be liable to the collective investment scheme and to the unit-holders for any damage suffered by

them as a result of its negligence or wilful default on the obligations of the depositary under this Act by employees of the depositary or members of its management or supervisory bodies.

(5) The delegation of powers in accordance with the procedure established by Article 37a does not exempt the depositary from its liability under Paragraphs (1) – (4). The liability of the depositary cannot be excluded or limited by agreement.

(6) Any agreement concluded contrary to Paragraph (5) shall be null and void.

(7) Unit-holders can hold the depositary liable directly or indirectly through the management company, provided that this does not result in the payment of compensations which have already been paid or in unequal treatment of unit-holders in the collective investment scheme."

17. Article 37a is created:

"Article 37a. (1) The depositary may not delegate to third parties the functions specified in Paragraphs (3) – (6) of Article 35a.

(2) The depositary may conclude a contract to delegate to a third party the functions specified in Paragraphs (7) and (8) of Article 35a, provided that the following conditions are fulfilled:

1. the functions are not delegated for the purpose of circumventing regulatory requirements;

2. the depositary can prove that an objective reason for the delegation exists;

3. the depositary has exercised due competence, care and diligence in the selection and appointment of any third party, to which it wishes to delegate part of its functions, and will demonstrate the necessary competence and diligence in the periodic review and ongoing monitoring of any third party, to which is has delegated some of its functions, and of the arrangements with such third party in respect of the delegated functions.

(3) The functions specified in Paragraphs (7) and (8) of Article 35a may be delegated by the depositary to a third party only where such third party continuously in the course of the implementation of the delegated tasks:

1. has a legal and organisational structure and expertise that are relevant and appropriate to the nature and complexity of the entrusted assets of the collective investment scheme;

2. with regard to the custodial activities specified in Item 1 of Article 35a (7), the third party is subject to:

(a) prudential regulation, including in relation to minimum capital requirements and supervision in the Member State of origin of the third party;

(b) periodic external audit, which ensures that the third party is safekeeping the financial instruments entrusted to it;

3. segregates the assets of its customers from its own assets and the assets of the depositary in a manner that allows at any time the assets to be accurately identified as assets of the depositary’s clients;

4. takes all necessary actions to ensure that in case of insolvency of the third party the assets of the collective investment scheme under his custody cannot be distributed to or cashed in favour of the creditors of the third party, and

5. complies with the obligations and adheres to the prohibitions specified in Article 25 and Article 35a, Paragraphs (2), (9), (10) and (11).

(4) Regardless of Paragraph (3), Item 2, letter (a), where the law of a third country requires that certain financial instruments be held in custody by a local legal entity and no local entity satisfies the requirements for delegation provided for in Paragraph (3), Item 2, letter (a), the depositary may delegate its functions to such local legal entity only to the extent that it is required by the law of a third country, and only as long as there are no local entities that satisfy the delegation requirements, and only when:

1. the investors in the respective collective investment scheme have been duly informed prior to making their investments that this delegation is required due to legal restrictions in the law of the third country, of the circumstances justifying the delegation, and of the risks arising from such delegation, and

2. the management company acting in the name of the collective investment scheme has given instructions to the depositary to delegate the custody of such financial instruments to a local third party.

(5) The third party can also delegate the functions specified in Paragraphs (7) and (8) of Article 35a while complying with the requirements set out of Paragraphs (2) – (4) and (7). Paragraphs (1) – (3) of Article 37 shall also apply to the

third party under the first sentence.

(6) For the purposes of this Article, the provision of services by securities settlement systems with settlement finality under Chapter Five "a" of the Payment Services and Payment Systems Act shall not be regarded as delegation of custodial functions.

(7) Within 7 days of concluding a contract with a third party, the depositary shall notify the Commission of the conclusion and the material terms and conditions of the contract."

18. In Article 51, the text "two months" is replaced with the text "6 months".

19. In Article 54:

(a) in Paragraph (7):

(aa) in Item 2 the text "fund is actively" is replaced with the text "fund is actively or passively";

(bb) Item 5 is created:

"5. information regarding the possibility of issuing and redemption of units in exchange for financial instruments from the passively managed exchange-traded funds and the conditions for this;"

(b) a new Paragraph (8) is created:

"(8) The prospectus shall also contain:

1. details regarding the current remuneration policy, which include at least a description of the method of calculation of the remuneration and incentives, the names and titles of the persons responsible for the distribution of remuneration and incentives, as well as the composition of the remuneration committee, if any, or

2. a summary of the remuneration policy and an indication of the website where details are announced regarding the current remuneration policy and the bonuses, which include at least a description of the method of calculation of the remuneration and incentives, the names and titles of the persons responsible for the distribution of remuneration and incentives, the composition of the remuneration committee, if any, and a statement that a copy of the remuneration policy will be provided in a hard copy free of charge upon request.";

(c) a new Paragraph (9) is created:

"(9) The information specified in Paragraph (8) shall also be included in the prospectus referred to in Article 53a.";

(d) what was previously Paragraph (8) now becomes Paragraph (10).

20. In Article 57:

(a) the text "and the competent authority of the Member State of origin of the collective investment scheme" is added at the end of Item 1 of Paragraph (3);

(b) a new Paragraph (11) is created:

"(11) Key investor information shall also include an indication of the website where the details are announced regarding the current remuneration policy, which include at least a description of the method of calculation of the remuneration and incentives, the names and titles of the persons responsible for the distribution of remuneration and incentives, as well as the composition of the remuneration committee, if any, and a statement that a copy of the remuneration policy will be provided in a hard copy free of charge upon request."

21. In Article 86:

(a) in Item 2 of Paragraph (1) the text "risk management" is added after the word "law";

(b) in Paragraph (3) the text "Article 24, Paragraphs (1) – (4)" is replaced with the text "Article 24, Paragraphs (1), (3) and (4)".

22. In Article 93 (1):

(a) in Item 8 the text "Measures Against Market Abuse with Financial Instruments Act" is deleted, and the text "repealed Measures Against Market Abuse with Financial Instruments Act, the Implementation of the Measures against Market Abuse with Financial Instruments Act, 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 (OJ, L 173/1 of 12.6.2014), hereinafter referred to as "Regulation (EU) No. 596/2014", is added after the text "the Markets in Financial Instruments Act";

(b) in Item 9 the text "Measures Against Market Abuse with Financial Instruments Act" is deleted, and the text "repealed Measures Against Market Abuse with Financial Instruments Act, the Implementation of the Measures against Market Abuse with Financial Instruments Act, Regulation (EU) No. 596/2014" is added after the text "the Markets in Financial Instruments Act".

23. In Item 6 of Article 100 (1) the text "Article 11 of the Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Articles 14 and 15 of Regulation (EU) No. 596/2014", and the text "the Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "the repealed Measures Against Market Abuse with Financial Instruments Act, the Implementation of the Measures against Market Abuse with Financial Instruments Act".

24. New Items 6 and 7 are created in Article 104 (1):

"6. implement and ensure adequate and effective procedures for the submission of internal signals by the employees of the management company;

7. have functioning arrangements for handling complaints received by the management company."

25. In Article 105 (1):

(a) Item 1 is amended as follows:

"1. apply due diligence, perform its duties with integrity, fairly, professionally, independently and solely in the interest of the collective investment schemes it manages and the integrity of the market;"

(b) Item 2 is repealed.

26. Article 108 is amended as follows:

"Article 108. (1) The management company shall adopt and apply a policy covering all forms of remuneration, such as salaries and other financial and/or material incentives, including benefits relating to voluntary pension and/or health insurance, paid to the following categories of employees:

1. senior management;

2. employees whose duties involve risk taking;

3. employees with control functions;

4. all other employees the remuneration of which is commensurate with the remunerations of the employees under Items 1 and 2, and whose professional activities affect the risk profile of the collective investment schemes managed by the company.

(2) The remuneration policy referred to in Paragraph (1) shall promote sound and effective risk management in the management company and shall not encourage risk-taking incommensurate to the risk profiles, rules or instruments of incorporation of the managed collective investment schemes, and shall not prejudice the discharging of the obligation of the management company to act in the best interest the collective investment scheme.

(3) When developing and implementing the remuneration policy referred to in Paragraph (1), the management company shall comply with the following requirements, taking into account the size and organisation of the management company and the nature, scope and complexity of its operations:

1. the remuneration policy shall be in line with the principles of sound and effective risk management and shall promote it by not encouraging risk-taking incommensurate to the risk profiles, statute, rules or instruments of incorporation of the managed collective investment schemes;

2. the remuneration policy shall correspond to the business strategy, objectives, values and interests of the management company and the managed investment schemes or the investors therein, and shall contain measures for preventing conflicts of interests;

3. the remuneration of the individuals referred to in Item 1 of Paragraph (1), having functions in the field of risk

management and compliance, shall be directly controlled by the remuneration committee, if such a committee has been established in the management company;

4. the individuals specified in Item 3 of Paragraph (1) shall receive remuneration based on the achievement of the objectives relating to their functions, regardless of the performance of the sectors these individuals control;

5. where the remuneration is performance related, its total amount shall be based on a combination of a performance assessment of the corresponding individual and of the organisational unit where he/she works or of the relevant collective investment scheme, its risk profile, and the overall performance of the management company; the individual performance assessment shall be based on financial and non-financial indicators;

6. performance assessment shall form part of an assessment process covering a period of several years, consistent with the holding period recommended to the investors in the collective investment scheme managed by the management company, to ensure that the assessment is based on longer-term performance of the collective investment scheme and its risk profile, and that the actual payment of the performance-based components of the remuneration is spread over the same period;

7. guaranteed variable remuneration shall be granted only as an exception when appointing new staff and only for the first year following their appointment;

8. the appropriate balance between fixed and variable remuneration shall be determined, and fixed remuneration shall represent a sufficiently high proportion of the total remuneration and shall allow the implementation of a flexible policy with regard to the variable remuneration components, including the possibility that variable remuneration will not be paid;

9. payments related to early termination of contracts shall reflect the performance achieved over time and shall be determined in a manner that does not encourage failure;

10. measurement of performance used to calculate variable remuneration components or pools of variable components shall include a comprehensive adjustment mechanism in order to take account of all current and future risks;

11. depending on the legal and organisational form of the collective investment scheme and its statute, rules or instruments of incorporation, at least 50 percent of the variable remuneration shall consist of units or shares in the corresponding collective investment scheme or equivalent rights of ownership, or instruments linked to shares, or equivalent non-cash instruments with incentives with the same efficiency as other instruments, and this threshold may be lower if the management of the collective investment scheme represents less than 50 percent of the overall portfolio managed by the management company;

12. the instruments referred to in Item 11 shall be subject to an appropriate retention policy designed to align incentives with the interests of the management company, the managed collective investment schemes and the unit-holders, and the retention policy shall also apply to the deferred portion of the variable remuneration referred to in Item 13;

13. not less than 40 percent of the variable remuneration shall be deferred for a period of at least three years, depending on the holding period recommended to the investors in the collective investment scheme and in accordance with the nature of the risks of the corresponding scheme; this remuneration shall be paid proportionally over time, and if the amount of the variable remuneration is particularly large, the payment of at least 60 percent of the amount shall be deferred;

14. variable remuneration, including the deferred portion thereof, shall be paid only if it is consistent with the overall financial position of the management company and is justified by the results of the organisational unit in which the individual is employed and of the relevant collective investment scheme; in the event of unsatisfactory or negative financial results of the management company or the relevant collective investment scheme, the total amount of the variable remuneration shall be considerably reduced, including by reducing ongoing compensations, reduction of amounts accrued for prior periods, or recovery of already accrued remuneration;

15. the policy with regard to retirement benefits shall be in line with the business strategy, objectives, values and long-term interests of the management company and the collective investment schemes managed by it; in the event that an employee leaves before retirement, the retirement benefit shall be retained by the management company in the form of instruments referred to in Item 11 for a period of 5 years, and when an employee reaches retirement age, the retirement benefit shall be paid in the form of instruments referred to in Item 11, which the employee shall not have the right to transfer for a period of 5 years;

16. employees shall be obliged not to implement personal strategies for reducing risk or insurance in relation to their remuneration or liability for the purpose of reducing the risk linked effects on their remuneration provided for in their contracts;

17. variable remuneration shall not be paid using instruments or methods allowing to circumvent the requirements set out in Items 1 – 16.

(4) The requirements specified in Paragraph (3) shall apply to all kinds of benefits paid by the management company, to all amounts paid directly by the collective investment schemes, including performance-based fees, and to all transfers of units or shares in collective investment schemes in favour of the individuals specified in Paragraph (1) or to any other employee whose total remuneration is commensurate to the remuneration of the individuals specified in Paragraph (1).

(5) The remuneration policy referred to in Paragraph (1) shall be adopted by the management body of the management company. Members of the management body of the management company not entrusted with management functions and having experience in the field of risk management and remuneration shall conduct periodic reviews of the compliance with the requirements specified in Paragraph (3) at least once a year, but not later than 30 days after the end of the calendar year covered by the review.

(6) The implementation of the remuneration policy shall be subject to central and independent internal review by the compliance department at least once a year, but not later than 90 days after the end of the calendar year covered by the review.

(7) Other requirements to the activities of management companies, including to the remuneration policy, the persons covered by it and its communication, to the general conditions referred to in Item 4 of Article 95 (2), to the rules referred to in Item 6 of Article 95 (2), and to the natural persons working under contracts for the management company, as well as to the capital adequacy and liquidity shall be set out in an ordinance of the Commission.

(8) Upon request, the Deputy Chairperson of the Commission shall submit to the ESMA information regarding the remuneration policies of management companies and the practices for their implementation."

27. Article 108a is created in Chapter Eleven:

"Article 108a. (1) A management company which is significant in terms of size, organisation, nature, scope and complexity of its operations or size of the managed collective investment schemes, shall establish a remuneration committee. The remuneration committee shall be established in a way that ensures a competent and independent assessment of the remuneration policy referred to in Article 108 (1) and the practice of the management company for its implementation, as well as the introduced incentives for risk management.

(2) The remuneration committee shall comprise of the members of the management body of the management company not entrusted with management functions, and one of them shall be its chairperson.

(3) The remuneration committee shall be responsible for drafting the decisions of the management body relating to remuneration, including the decisions affecting the risk of and the risk management in the management company or the managed collective investment schemes.

(4) When making decisions, the remuneration committee shall take into account the long-term interests of investors and other interested parties, and the public interest.

(5) The criteria for determining significant management companies for the purposes of the requirements for the remuneration policy shall be governed by the ordinance referred to in Article 108 (7)."

28. Item 1 of Article 120 (1) is amended as follows:

"1. a written contract with a depositary under Article 35;"

29. In Article 190 the text "Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Implementation of the Measures against Market Abuse with Financial Instruments Act".

30. In Item 6 of Article 204 (1) the text "Article 11 of the Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Articles 14 and 15 of Regulation (EU) No. 596/2014", and the text "the Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "the repealed Measures Against Market Abuse with Financial Instruments Act, the Implementation of the Measures against Market Abuse with Financial Instruments Act, Regulation (EU) No. 596/2014".

31. In Item 6 of Article 212 (1) the text "Article 11 of the Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Articles 14 and 15 of Regulation (EU) No. 596/2014", and the text "the Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "the repealed Measures Against Market Abuse with Financial Instruments Act, the Implementation of the Measures against Market Abuse with Financial Instruments Act, Regulation (EU) No. 596/2014".

32. A new Item 8 is created in Article 219 (1):

"8. have functioning arrangements for handling complaints received."

33. In Item 1 of Article 251 (1) the text "with the exception" is replaced with the text "including the requirements".

34. In Article 264:

(a) the first sentence of Paragraph (3) is amended as follows: Where it is established that a depositary pursues its activity contrary to the provisions of this Act or the instruments for its application, the Deputy Chairperson may enforce the measures specified in Item 1 of Paragraph (1), and where the depositary is an investment intermediary – also the relevant measures specified in Article 118 (1) of the Markets in Financial Instruments Act, and where the depositary is a bank, the Deputy Chairperson can propose to the Bulgarian National Bank to enforce the relevant measures under Article 103 (2) of the Credit Institutions Act.";

(b) a new Paragraph (6) is created:

"(6) When enforcing the measures specified in Paragraph (1), the Deputy Chairperson shall take into account all relevant circumstances, including, where applicable, the circumstances specified in Article 273a."

35. In Article 273:

(a) in Paragraph 1:

(aa) Items 1, 2 and 3 are amended as follows:

"1. Article 171 (7) and (8), Article 179, Article 182, Article 197 (1) and (6), Article 199 (12), Article 225, Article 227, Article 229 (4) and (5), and Article 232, or the implementing instruments thereof shall be liable to a fine from BGN 1,000 to BGN 4,000;

2. Article 185, Article 191 (2), Article 205 (2), Article 215, Article 218 (1) – (3), Article 219 (1), Articles 220 – 224, Article 226, Article 228 (1), Articles 233 – 237, Article 239 (1), (2) and (6), Article 240 (1), (2) and (4), Article 243, Article 244 (1) and (6), Article 245 (1) and (6), Article 246 (1) and (4), and Article 249 (1) shall be liable to a fine from BGN 4,000 to BGN 10,000;

3. Article 24b, Article 24c (2) and (3), Article 174 (1) – (4), Article 175 (1), Article 183 (1) and (3), Article 184 (1), Article 186, Article 187, Article 188 (1), Article 189, Article 190, Article 195 (3), Article 198 (3) and (6), Article 199 (3), (6), (7), (9) – (11), Article 203 (1) and (2), Article 205 (1), Article 206, Article 210, Article 211 (1), Article 216 (1) – (3), Article 229 (1) – (3), Article 230, Article 238, Article 241 (1), Article 242, Article 248 (1) and (2), Article 250, and Article 251 (1) shall be liable to a fine from BGN 10,000 to BGN 20,000;"

(bb) new Items (7) – (11) are created:

"7. Article 171 (6) and Article 197 (1), (3) and (4) shall be liable to a fine from BGN 20,000 to BGN 200,000;

8. Article 6 (4) and (5), Article 7 (2) and (3), Article 9 (1) and (2), Article 10 (5), Article 17 (2), Article 18 (1), Article 48 (3) and (4), Article 52, Article 57 (1), (5) – (10), Article 58 (2), Article 59, Article 61 (1) and (2), Article 62, Article 63, Article 65 (1) – (3), Article 78 (4) and (5), Article 79, Article 81 (2), Article 91, Article 93 (1) – (5), Article 94 (1) and (2), Article 98 (2) shall be liable to a fine from BGN 1,000 to BGN 5,000,000;

9. Article 6 (3), Article 21 (11), Article 25, Article 26, Article 34, Article 35, Article 35a, Article 36 (1), Article 37a, Article 51, Article 56 (1), Article 57 (4), Article 58 (1), Article 60 (1), Article 64, Article 67 (2) and (3), Article 69 (5), Article 71 (2), Article 72 (1), Article 75 (1) and (2), Article 77 (1) and (2), Article 78 (1) – (3), Article 80, Article 82 (1), Article 87 (2), Article 89, Article 92 (1) и (2), Article 93 (7), Article 100 (4), Article 101 (2), Article 103, Article 104 (1) and (2), Article 105 (1), Article 106 (1), (3) and (4), Article 107, Article 108, Article 108a (1) and (2), Article 109 (1), (7), (8) and (10), Article 110 (1), (5) – (8), Article 113 (2), (3) and (5), Article 114 (1), (4) and (6), Article 116 (1), Article 117 (1) – (3), Article 119 (1), (2) and (4), Article 120 (1) and (5), Article 122, Article 124 (3), Article 128 (1), Articles 130, 131, 132, Article 136 (1), (6) – (8), Article 149, Article 151 (3), Article 154 (3), Article 156 shall be liable to a fine from BGN 4,000 to BGN 5,000,000;

10. Article 4 (3) and (4), Article 7 (9), Article 21 (1), (6) and (10), Article 22 (1) – (4), Article 27 (1), Article 28 (1), Articles 29, 31, 32, Article 36 (2) – (5), Articles 38, 40, 41, Article 42 (1) – (3), Article 43 (1) and (2), Article 45 (1) – (9) and (11), Article 46 (1), Article 47, Article 48 (1) and (2), Article 49 (1) and (2), Article 53, Article 69 (1), Article 75 (4), Article 76, Article 81 (1), Article 83, Article 86 (6) – (8), Article 90 (2) – (4), (6), (9) and (10), Article 101 (1), Article 102 (1) and (2) shall be liable to a fine from BGN 10,000 to BGN 5,000,000;

11. Article 6 (2) and Article 98 (1) shall be liable to a fine from BGN 20,000 to BGN 5,000,000";

(b) new Items 7 – 11 are created in Paragraph (2):

"7. for violations under Item 7 of Paragraph 1 – from BGN 40,000 to BGN 300,000;

8. for violations under Item 8 of Paragraph 1 – from BGN 4,000 to BGN 10,000,000;

9. for violations under Item 9 of Paragraph 1 – from BGN 10,000 to BGN 10,000,000;

10. for violations under Item 10 of Paragraph 1 – from BGN 20,000 to BGN 10,000,000;

11. for violations under Item 11 of Paragraph 1 – from BGN 40,000 to BGN 10,000,000;

(c) Paragraph (3) is repealed;

(d) in Paragraph (4) the text "a financial sanction respectively," is deleted, and the text "and in the event of a repeated infringement – from BGN 20,000 to BGN 200,000" is added at the end;

(e) new Items 7 – 12 are created in Paragraph (5):

"7. for infringements referred to in Item 7 of Paragraph (1) – from BGN 50,000 to BGN 300,000, and in the event of a repeated infringement – from BGN 100,000 to BGN 500,000;

8. for infringements referred to in Item 8 of Paragraph (1) – from BGN 4,000 to BGN 5,000,000, and in the event of a repeated infringement – from BGN 10,000 to BGN 10,000,000;

9. for infringements referred to in Item 9 of Paragraph (1) – from BGN 10,000 to BGN 5,000,000, and in the event of a repeated infringement – from BGN 20,000 to BGN 10,000,000;

10. for infringements referred to in Item 10 of Paragraph (1) – from BGN 20,000 to BGN 5,000,000, and in the event of a repeated infringement – from BGN 40,000 to BGN 10,000,000;

11. for infringements referred to in Item 11 of Paragraph (1) – from BGN 50,000 to BGN 5,000,000, and in the event of a repeated infringement – from BGN 100,000 to BGN 10,000,000;

12. for infringements referred to in Paragraph (4) – from BGN 20,000 to BGN 200,000, and in the event of a repeated infringement – from BGN 50,000 to BGN 300,000."

36. Article 273a is created:

"Article 273a. (1) When determining the type and amount of the administrative penalties under Article 273, the Deputy Chairperson shall take into account all circumstances relevant to the specific case, including, where applicable:

1. the gravity and duration of the infringement;

2. the degree of liability of the person responsible for the infringement;

3. the financial condition of the person responsible for the infringement, defined based on the total financial turnover of the responsible legal entity or the annual income of the responsible individual;

4. the amount of profit gained or loss evaded by the person responsible for the infringement, and the amount of losses suffered by third parties and losses suffered by financial markets as a result of the infringement, as far as their size can be determined;

5. the degree of cooperation of the responsible natural or legal person with the competent authority;

6. previous offences committed by the responsible natural or legal person;

7. measures taken by the responsible natural or legal person after the infringement aimed at preventing a repeated infringement.

(2) For the purposes of Paragraph (1), the Deputy Chairperson shall have the right of access to tax and social security information."

37. Article 275 is amended as follows:

"Article 275. (1) The Commission and the Deputy Chairperson shall disclose in the Commission’s website each enforced

measure and each penalty imposed for infringements of the provisions of this Act and its implementing instruments. The information subject to disclosure shall include at the least information about the infringement, the infringing person, the measure enforced or the penalty imposed.

(2) Only enforced compulsory administrative measures and administrative penalties imposed by effective penal decrees shall be disclosed in accordance with the procedure established by Paragraph (1). The disclosure shall be made after the person, on which the measure has been enforced or the penalty has been imposed, is notified of the forthcoming disclosure.

(3) The Commission and the Deputy Chairperson may decide not to disclose the information specified in Paragraph (1) or to disclose it in a summarised form, if they consider that:

1. the publishing of personal data of a natural person or identification data of a legal entity, on which a sanction has been imposed, is excessive;

2. such publishing would jeopardise the stability of financial markets or would influence pending criminal proceedings;

3. such publishing would cause excessive damage to the persons involved.

(4) The disclosure referred to in Paragraph (1) shall be postponed for an appropriate period if it is likely that the circumstances specified in Paragraph (3) might lapse.

(5) The information disclosed in accordance with Paragraph (1) shall be accessible in the official website of the Commission for a period of not less than 5 years.

(6) The Commission shall notify the ESMA of each measure enforced or penalty imposed, published in accordance with Paragraph (1), simultaneously with its publication.

(7) Every year the Commission shall submit to ESMA summarised information regarding the measures enforced or penalties imposed for infringements of the provisions of this Act and its implementing instruments."

38. In § 1 of the Supplementary Provisions:

(a) in Item 27 the text "based on" is replaced with the text "in accordance with";

(b) a new Item 28 is created:

"28. A "passively managed exchange-traded fund" is an exchange-traded fund managed in accordance with the objectives and policy of the collective investment scheme, with composition and structure of the portfolio, which physically reproduce major indexes on regulated markets of Member States or assimilated regulated markets of third countries."

(c) what were previously Items 28, 29, 30, 31, 32, 33, 34, 35, 36 and 37 now become Items 29, 30, 31, 32, 33, 34, 35, 36, 37 and 38 respectively.

39. Item 5 is created in § 2 of the Supplementary Provisions:

"5. Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions (OJ, L 257/186 of 28.8.2014)."

§ 7. The following amendments and supplements are made to the Financial Supervision Commission Act (promulgated, State Gazette No. 8 of 2003; amended, No. 31, 67 and 112 of 2003, No. 85 of 2004, No. 39, 103 and 105 of 2005, No. 30, 56, 59 and 84 of 2006, No. 52, 97 and 109 of 2007, No. 67 of 2008, No. 24 and 42 of 2009, No. 43 and 97 of 2010, No. 77 of 2011, No. 21, 38, 60, 102 and 103 of 2012, No. 15 and 109 of 2013, No. 34, 62 and 102 of 2015, and No. 42 of 2016):

1. In Article 1 (2) the text "Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Implementation of the Measures against Market Abuse with Financial Instruments Act".

2. In Article 12 (1):

(a) In Item 2 the text "Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Implementation of the Measures against Market Abuse with Financial Instruments Act";

(b) a new Item 14 is created:

"14. be the competent authority for the implementation of Regulation (EC) 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 (OJ, L 173/1 of 12.6.2014), hereinafter referred to as "Regulation (EU) No. 596/2014";"

(c) what was previously Item 14 now becomes Item 15.

3. In Article 13 (1):

(a) In Item 4 the text "Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Implementation of the Measures against Market Abuse with Financial Instruments Act";

(b) a new Item 17 is created:

"17. acting on a proposal by the sectoral Deputy Chairperson, exercise the powers relating to the implementation of Regulation (EU) No. 596/2014;"

(c) what were previously Items 17, 18, 19, 20, 21, 22, 23, 24 and 25 now become Items 18, 19, 20, 21, 22, 23, 24, 25 and 26 respectively.

4. In Article 15 (1):

(a) In Item 4 the text "Chapter Six of the Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Chapter Three of the Implementation of the Measures against Market Abuse with Financial Instruments Act";

(b) everywhere in Item 5 the number "195" is replaced with "264";

(c) In Items 6 and 7 the text "Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Implementation of the Measures against Market Abuse with Financial Instruments Act", and the text "Regulation (EU) No. 596/2014" is added after the text "Regulation (EU) No. 346/2013";

(d) letter (d) is created in Item 8:

"(d) for declaring the invalidity of agreements under Article 37 (6) of the Collective Investment Schemes and other Undertakings for Collective Investments Act.";

(e) In Item 16 the text "Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Implementation of the Measures against Market Abuse with Financial Instruments Act", and the text "Regulation (EU) No. 596/2014" is added after the text "Regulation (EU) No. 346/2013".

5. In Article 18:

(a) In Items 1 and 6 of Paragraph (1) the text "Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Implementation of the Measures against Market Abuse with Financial Instruments Act", and the text "Regulation (EU) No. 596/2014" is added after the text "Regulation (EU) No. 346/2013";

(b) In Paragraph (3) the text "Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Implementation of the Measures against Market Abuse with Financial Instruments Act", and the text "Regulation (EU) No. 596/2014" is added after the text "Regulation (EU) No. 346/2013".

6. In Item 1 of Article 19 (2) the text "Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Implementation of the Measures against Market Abuse with Financial Instruments Act", and the text "Regulation (EU) No. 596/2014" is added after the text "Regulation (EU) No. 346/2013".

§ 8. The following amendments and supplements are made to the Markets in Financial Instruments Act (promulgated, State Gazette No. 52 of 2007; amended, No. 109 of 2007, No. 69 of 2008, No. 24, 93 and 95 of 2009, No. 43 of 2010, No. 77 of 2011, No. 21, 38 and 103 of 2012, No. 70 and 109 of 2013, No. 22 and 53 of 2014, No. 14, 34, 62 and 94 of 2015, and No. 42 and 48 of 2016):

1. In Article 11 (2):

(a) in Item 8 the text "Measures Against Market Abuse with Financial Instruments Act" is deleted, and the text "repealed Measures Against Market Abuse with Financial Instruments Act, the Implementation of the Measures against Market

Abuse with Financial Instruments Act, 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 (OJ, L 173/1 of 12.6.2014), hereinafter referred to as "Regulation (EU) No. 596/2014", is added after the text "the Collective Investment Schemes and other Undertakings for Collective Investments Act";

(b) in Item 9 the text "Measures Against Market Abuse with Financial Instruments Act" is deleted, and the text "repealed Measures Against Market Abuse with Financial Instruments Act, the Implementation of the Measures against Market Abuse with Financial Instruments Act, Regulation (EU) No. 596/2014" is added after the text "the Collective Investment Schemes and other Undertakings for Collective Investments Act".

2. In Article 20:

(a) In Item 4 of Paragraph (1) the text "Articles 8 – 11 of the Measures Against Market Abuse with Financial Instruments Act or some other gross violation of this Act, the Public Offering of Securities Act, the Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Articles 14 and 15 of Regulation (EU) No. 596/2014, the Public Offering of Securities Act, the Implementation of the Measures against Market Abuse with Financial Instruments Act";

(b) in Item 4 of Paragraph (2) the text "Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "repealed Measures Against Market Abuse with Financial Instruments Act, the Implementation of the Measures against Market Abuse with Financial Instruments Act, Regulation (EU) No. 596/2014".

3. In Article 51 (6) the text "Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Implementation of the Measures against Market Abuse with Financial Instruments Act".

4. In Item 5 of Article 84 (1) the text "Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Implementation of the Measures against Market Abuse with Financial Instruments Act".

5. In the third sentence of Item 2 of § 1 of the Supplementary Provisions, the text "channels within the meaning of the Measures Against Market Abuse With Financial Instruments Act" is replaced with "channels via which information is made available to the public or through which a wide range of people have access to information."

§ 9. In § 1, Item 41 of the Supplementary Provisions of the Public Offering of Securities Act (promulgated, State Gazette No. 114 of 1999; amended, No. 63 and 92 of 2000, No. 28, 61, 93 and 101 of 2002, No. 8, 31, 67 and 71 of 2003, No. 37 of 2004, No. 19, 31, 39, 103 and 105 of 2005, No. 30, 33, 34, 59, 63, 80, 84, 86 and 105 of 2006, No. 25, 52, 53 and 109 of 2007, No. 67 and 69 of 2008, No. 23, 24, 42, 93 of 2009, No. 43 and 101 of 2010, No. 57 and 77 of 2011, No. 21 and 94 of 2012, No. 103 and 109 of 2013, No. 34, 61, 62, 95 and 102 of 2015, and No. 33, 42 and 62 of 2016) the text "Article 12 of the Measures Against Market Abuse with Financial Instruments Act" is replaced with the text "Chapter Three of 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 (OJ, L 173/1 of 12.6.2014)".

§ 10. In Article 34 (1) of the Administrative Violations and Sanctions Act (promulgated, State Gazette No. 92 of 1969; amended, No. 54 of 1978, No. 28 of 1982, No. 28 and 101 of 1983, No. 89 of 1986, No. 24 of 1987, No. 94 of 1990, No. 105 of 1991, No. 59 of 1992, No. 102 of 1995, No. 12 and 110 of 1996, No. 11, 15, 59, 85 and 89 of 1998, No. 51, 67 and 114 of 1999, No. 92 of 2000, No. 25, 61 and 101 of 2002, No. 96 of 2004, No. 39 and 79 of 2005, No. 30, 33, 69 and 108 of 2006, No. 51, 59 and 97 of 2007, No. 12, 27, 32 of 2009, No. 10, 33, 39, 60 and 77 of 2011, No. 19, 54 and 77 of 2012, No. 17 of 2013, No. 98 and 107 of 2014, and No. 81 of 2015) the text "Measures Against Market Abuse with Financial Instruments Act" is replaces with the text "Implementation of the Measures against Market Abuse with Financial Instruments Act, 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 (OJ, L 173/1 of 12.6.2014)".

§ 11. (Effective 9.08.2016 – SG No. 76/2016) The following amendments and supplements are made in § 229 of the Transitional and Final Provisions of the Act Amending and Supplementing the Judicial System Act (SG No. 62/2016):

1. A new Item 2 is created:

"2. Paragraphs 156, 158 and 195, which shall enter into force as of 1 January 2018;".

2. What were previously Items 2 and 3 now become Items 3 and 4 respectively.

§ 12. (1) Management companies and collective investment schemes shall bring their operations in line with the requirements of § 6 within three months of the entry of this Act into force.

(2) A management company, which prior to the entry of this Act into force has appointed a depositary of a collective investment scheme, which does not satisfy the requirements provided for in Item 13 of § 6, shall appoint a new depositary complying with the requirements of the Act by 18 March 2018.

§ 13. The Deputy Chairperson may approve templates of notifications and other documents in relation to the application of this Act, Regulation (EU) No. 596/2014 and their implementing instruments.

§ 14. The Commission shall give instructions on the application of this Act.

§ 15. This Act shall enter into force on the day of its promulgation in the State Gazette, except for § 11, which shall enter into force as of 9 August 2016.

This Act has been adopted by the 43rd National Assembly on 28 September 2016 and bears the official seal of the National Assembly.