

COMMODITY EXCHANGE LAW

I. BASIC PROVISIONS

Scope

Article 1

This Law governs the activities, operating conditions and organisation of commodity exchanges; internal oversight of trading and the Exchange Court of Arbitration; guarantee funds; investment firms operating in the commodity exchange and commodity pools; abusive practices in the commodity market; and oversight of implementation of this Law.

Definitions

Article 2

The terms used throughout this Law have the following meanings:

- 1) 'Commodity exchange' means the operator of the market in standardised market products, i.e. commodities and derivatives;
- 2) 'Transaction' means an individual transaction entered into in the commodity exchange;
- 3) 'Clearing and settlement' means the calculation and collection of mutual receivables and payables due under transactions;
- 4) 'Standardised market products' means products traded in the commodity exchange standardised as to the manner of trading, scope, deadline and manner of payment, i.e. all major elements of a contract, excepting only price;
- 5) 'Commodities' means standardised market products due to be delivered up to five working days following the date the transaction is entered into;
- 6) 'Derivatives' means standardised market products due to be delivered later than five working days following the date the transaction is entered into;
- 7) 'Listing' means a list of standardised market products traded in the commodity exchange;
- 8) 'Authorised Exchange Officer' means an individual full-time staff member of a commodity exchange who serves as an intermediary in transactions in the commodity market;
- 9) 'Margin accounts' means cash accounts of members of derivatives clearing and settlement facilities intended to contain cash deposits to ensure protection against the risk of changes to prices of standardised derivatives before they become due;
- 10) 'Initial margin' means the amount of cash deposited in the margin account required by the commodity exchange for any transaction in the derivatives market;
- 11) 'Minimum margin' means the minimum cash amount that a member of a derivatives clearing and settlement facility must hold in its margin account, as required by the commodity exchange;

- 12) 'Investment services and activities' means the receipt and transmission of standardised market product sale and purchase orders; execution of orders on behalf of clients; trading on one's own behalf; portfolio management; and provision of investment advisory services;
- 13) 'Supplementary investment services' means services provided in relation to investment services, such as safeguarding and administering standardised market products on behalf of clients, including safeguarding instruments and associated services, such as administering cash and collateral; approving loans to investors so that they are able to enter into transactions involving one or multiple standardised market products where the lending company is party to the transaction; foreign currency operations related to the provision of investment services; investment-related research and financial analysis or other general recommendations relating to transactions involving standardised market products, etc.;
- 14) 'Insider information' means information regarding particular facts that is not publicly available and that may substantially affect the price of any standardised market product, particularly information obtained through taking part in Government policy-making, or in the course of judicial, administrative, or other proceedings.

Purpose

Article 3

The purpose of this Law is to regulate and organise an equitable, transparent, and efficient market in standardised market products and to safeguard the integrity of this market.

Application

Article 4

Legislation governing the capital market shall apply to tasks of commodity markets insofar as not regulated by other regulation, and particularly as regards:

- 1) Requirements for approving the operation of commodity exchanges as the operator of the market in standardised market products, as well as requirements with respect to operating transparency and mandatory record-keeping and reporting;
- 2) Admittance of standardised market products to trading, as well as the temporary suspension of trading and exclusion of standardised market products from trading;
- 3) Shares in the equity of companies and control of such shares;
- 4) Conflict of interest and requirements as to staffing, organisation, and equipment;
- 5) Shareholders of commodity exchanges and their respective shares in the equity of exchanges;
- 6) Other issues of importance for the operation of commodity exchanges not specifically governed by this Law.

Form of Incorporation of Commodity Exchanges

Article 5

Commodity exchanges shall be legal entities incorporated as joint-stock companies, as provided for under legislation governing business entities, and must be domiciled in Serbia, be in possession of operating licences issued by the Securities Commission ('the Commission') and meet the other requirements stipulated under this Law.

Legal Name

Article 6

[1] The legal name of a business entity incorporated as a commodity exchange shall contain the designation ‘commodity exchange’ [*robna berza*] or any other expression that allows its being a commodity exchange to be determined with certainty.

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[2] It shall be prohibited to use the designation ‘commodity exchange’, or any other expression that misleadingly indicates an entity may be a commodity exchange, as part of the legal name of an entity that is not commodity exchange within the meaning of this Law.

Documents Adopted by Commodity Exchanges

Article 7

[1] Commodity exchanges shall adopt their Articles of Incorporation, Articles of Association, and other general documents as provided for by law.

[2] Rules of commodity exchanges shall contain rules regarding:

- 1) Membership;
- 2) Listing;
- 3) Trading;
- 4) Clearing and settlement;
- 5) Exchange Court of Arbitration;
- 6) Reporting and confidentiality;
- 7) Fee schedule;
- 8) Guarantee fund;
- 9) Other matters.

[3] The Securities Commission (‘the Commission’) shall approve the documents referred to in Paragraph [1] of this Article, or any amendments thereof, within 30 days of receiving such proposed documents.

[4] Where the Commission does not issue the approval referred to in Paragraph [3] of this Article by the statutory deadline, approval shall be deemed to have been granted.

II. ACTIVITIES OF COMMODITY EXCHANGES

1. GENERAL REQUIREMENTS

Primary Tasks of Commodity Exchanges

Article 8

Commodity exchanges shall perform the following tasks:

- 1) Standardising and developing standardised market products;
- 2) Creating and keeping listings;

- 3) Bringing together the various interests of third parties for the purchase or sale of standardised market products, or facilitating their coming together, as provided for under binding market rules, in a manner that leads to entry into contracts regarding standardised market products admitted to trading;
- 4) Clearing and settling transactions within separate organisational units of commodity exchanges;
- 5) Safeguarding and disclosing information on the demand for and supply and market prices of standardised market products, as well as other information of importance for trading in standardised market products, both before and after transactions are executed, and as provided for under this Law and byelaws of the Commission;
- 6) Establishing and enforcing, as provided for under byelaws and approvals of the Commission:
 - (1) Membership requirements;
 - (2) Requirements for the admission of standardised market products to trading, exclusion of such products from trading, and suspension of trading in such standardised market products;
 - (3) Requirements for trading in standardised market products listed;
 - (4) Oversight of trading in standardised market products to prevent and detect market abuse;
 - (5) Procedures for disciplining parties to trading that act in contravention of this Law, byelaws of the commodity exchange and byelaws of the Commission;
 - (6) Procedures for resolving disputes between parties to trading in standardised market products listed; and
 - (7) Other tasks as provided under their Articles of Association, rules, and other byelaws.

Additional Tasks of Commodity Exchanges

Article 9

Commodity exchanges may also perform the following additional tasks:

- 1) Improving the promotion and development of the commodity market in Serbia;
- 2) Selling and licensing market data;
- 3) Educating participants in the commodity market;
- 4) Other tasks that fall within the remit of commodity exchanges as provided for by law.

Activities Not Allowed for Commodity Exchanges

Article 10

[1] A commodity exchange may not trade in standardised market products, except where Authorised Exchange Officers represent clients and act on their behalf in the commodity market.

[2] Neither a commodity exchange nor any manager of a commodity exchange may provide advice on the selection of an investment firm or choice of market products.

Membership in Commodity Exchanges

Article 11

[1] Investment companies meeting requirements provided for under this Law and in possession of an authorisation by the Commission to trade in a commodity exchange may be members of a commodity exchange.

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[2] Admittance shall be granted upon the signing of a membership agreement with the commodity exchange and payment of membership dues.

[3] In addition to members of a commodity exchange, the Republic of Serbia and the National Bank of Serbia may also trade in a commodity exchange.

Listing

Article 12

The Commission shall issue prior approval to the admittance to trading of any individual standardised market product traded in the commodity exchange following an application from a commodity exchange for the listing of such commodity or derivative.

Fee Schedule

Article 13

[1] A commodity exchange fee schedule shall set:

- 1) Commission charged by the commodity exchange for transactions entered into in the commodity exchange;
- 2) Fee charged by the commodity exchange to members of clearing and settlement facilities for commodities clearing and settlement services;
- 3) Fee charged by the commodity exchange to members of clearing and settlement facilities for derivatives clearing and settlement services;
- 4) Clearing and settlement facility membership fee;
- 5) Commodity exchange membership fee;
- 6) Other fees for licensing and sale of market information;
- 7) Fees for performing additional tasks referred to in Article 9[4] of this Law.

[2] The commodity exchange shall be required to notify users of its services of the adoption or amendment of its fee schedule at the latest seven days before the entry into force of any such schedule.

[3] Fees charged by authorised exchange officers may not be lower than the lowest fee charged for the same service by any investment company in the same commodity exchange.

2. COMMODITY MARKET

Standardisation Criteria

Article 14

Standardisation criteria (e.g. quality of commodities; delivery parity; quantity, etc.) for the listing of commodities shall be set by the commodity exchange in accordance with its rules. Page | 6

Traders and Clients in the Commodity Market

Article 15

- [1] Commodities shall be traded through Authorised Exchange Officers and investment firms.
- [2] Authorised Exchange Officers shall trade in the commodity market as intermediaries for and on behalf of their clients.
- [3] Any and all legal entities and sole proprietors domiciled in Serbia may appear as clients of Authorised Exchange Officers.
- [4] Any and all entities domiciled in Serbia and abroad may appear as clients of investment firms in the commodity market.

Commodities Clearing and Settlement

Article 16

- [1] Commodities clearing and settlement shall be handled by a special organisational unit of the commodity exchange, which shall be set up and shall operate as provided for under this Law.
- [2] The clearing and settlement facility of a commodity exchange shall perform the following tasks:
 - 1) Clearing and settlement of commodities transactions;
 - 2) Management of the commodity market guarantee fund, as provided for under this Law;
 - 3) Other actions related to the commodity market, including activities required for the accomplishment of tasks from within its remit.
- [3] In performing clearing and settlement transactions in the commodities market, the commodity exchange shall act as an independent agent on behalf of a party acting as principal.
- [4] Commodity exchange rules shall govern commodities clearing and settlement in greater detail.

Membership in Commodities Clearing and Settlement Facilities

Article 17

- [1] Investment firms and clients of Authorised Exchange Officers may be members in commodities clearing and settlement facilities.

[2] Admittance to commodities clearing and settlement facilities shall be granted upon the payment of membership dues and deposit of security into the commodity market guarantee fund in the amount and under the conditions set by commodity exchange rules and this Law.

[3] Transactions shall be cleared and settled in the commodity market at the level of each individual member.

Termination and Suspension of Membership

Article 18

[1] The membership of a member of a commodities clearing and settlement facility shall terminate:

- 1) Upon the permanent revocation of its operating licence, where the member is an investment firm;
- 2) Where the member has failed to meet its obligations with the clearing and settlement facility, either substantially or continuously;
- 3) Where other conditions are met as provided for under the rules of the commodity exchange.

[2] The commodity exchange may suspend membership in a clearing and settlement facility, as provided for under its rules, for up to five days.

Omnibus Account

Article 19

[1] To ensure the uninterrupted operation of its commodities clearing and settlement facility, the commodity exchange shall be required to open a special-purpose omnibus account with the commercial bank handling all cash operations related to transactions in the commodity market.

[2] Monies in the omnibus account shall be managed by the commodity exchange.

3. DERIVATIVES MARKET

Traders and Clients

Article 20

[1] Trading in the derivatives market shall be open to members of the commodity exchange.

[2] Any and all entities domiciled in Serbia or abroad may appear as clients of investment firms in this market.

Derivatives Clearing and Settlement

Article 21

[1] The derivatives clearing and settlement facility, set up as a special organisational unit of a commodity exchange, shall perform the following tasks:

- 1) Keeping records of derivatives;
- 2) Keeping records of derivatives in accounts of members of the commodity exchange and in accounts of members of the derivatives clearing and settlement facility;

- 3) Keeping records and managing accounts of members of the commodity exchange and members of the derivatives clearing and settlement facility;
- 4) Registering third-party interests in derivatives;
- 5) Keeping electronic records of derivatives;
- 6) Managing cash accounts of members of the commodity exchange and members of the derivatives clearing and settlement facility;
- 7) Clearing and settlement of derivatives transactions and establishing the balances of accounts receivable and payable of members of the commodity exchange and members of the derivatives clearing and settlement facility;
- 8) Maintaining a list of codes denoting types of derivatives;
- 9) Assessing tax on the transfer of derivatives, as provided for under law;
- 10) Managing the derivatives guarantee fund, as provided for under this Law;
- 11) Performing other actions related to derivatives, including activities required for the accomplishment of tasks from within its remit.

[2] Commodity exchange rules shall govern derivatives clearing and settlement in greater detail.

Membership in Derivatives Clearing and Settlement Facilities

Article 22

[1] Investment firms that are members of the exchange may be members of derivatives clearing and settlement facilities.

[2] Admittance to derivatives clearing and settlement facilities shall be granted upon the payment of membership dues and deposit of security into the derivatives guarantee fund in the amount and under the conditions set by commodity exchange rules and this Law.

Accounts Held by Members of Derivatives Clearing and Settlement Facilities

Article 23

[1] The commodity exchange shall manage margin and cash accounts of members of the derivatives clearing and settlement facility.

[2] Margin and cash accounts shall be opened and maintained with the National Bank of Serbia.

[3] Derivatives and cash of members of the commodity exchange in accounts managed by the commodity exchange in the derivatives market shall not be deemed assets of the commodity exchange; they may neither be part of its bankruptcy or liquidation estate nor subject to enforced collection.

[4] The commodity exchange shall adopt rules to govern the manner and conditions of managing accounts held by members of the derivatives clearing and settlement facility, as provided for under legislation governing payment operations.

Termination and Suspension of Membership

Article 24

[1] The membership of a member of a derivatives clearing and settlement facility shall terminate:

- 1) Upon the permanent revocation of its operating licence;
- 2) Where such member does not meet criteria for membership in the derivatives clearing and settlement facility;
- 3) Where the member has failed to meet its obligations with the derivatives clearing and settlement facility, either substantially or continuously, or has failed to adhere to other general byelaws of the commodity exchange.

[2] The commodity exchange may suspend membership, as provided for under its rules.

III. COMMODITY EXCHANGE OPERATING AND ORGANISATIONAL REQUIREMENTS

1. SPECIAL LICENSING REQUIREMENTS

Minimum Cash Portion of Capital Stock

Article 25

[1] The minimum cash portion of the capital stock of a commodity exchange shall amount to RSD 30 million.

[2] The cash portion referred to in Paragraph [1] of this Article must be paid in full into a temporary bank account, set up especially for the purpose of licensing the commodity exchange, on the day that the application with the Commission for licensing the commodity exchange is made.

2. CONFLICT OF INTEREST, STAFFING, ORGANISATION AND EQUIPMENT

Conflict of Interest

Article 26

Employees of a commodity exchange may not simultaneously serve as general managers or members of supervisory boards of, nor may be employed by, investment firms, commodity pools or other business entities taking part in trading in the commodities or derivatives market.

Authorised Exchange Officers

Article 27

[1] Any commodity exchange may utilise authorised exchange officers if doing so does not prevent members of the commodity exchange from operating.

[2] Where a commodity exchange utilises authorised exchange officers, it must employ at least three such officers in possession of licences referred to in Article 42[2] of this Law.

[3] The commodity exchange shall be required to ensure functional autonomy and operational independence of Authorised Exchange Officers in their capacity as intermediaries in transactions in the commodity market.

[3] Authorised Exchange Officers shall be required to act as intermediaries for and on behalf of clients in a professional and conscientious manner, and in doing so to adhere to the rules of the commodity exchange.

[4] The commodity exchange must possess the human resources necessary for the uninterrupted operation of its commodities and derivatives clearing and settlement facilities.

Process Management System

Article 28

Each commodity exchange shall be required to establish and implement a stable and secure process management system as part of its clearing and settlement facility, including:

- 1) Reliable organisational structure, oversight procedures, and operating instructions;
- 2) Efficient procedures to establish, assess, and control risk faced by the commodity exchange in the operation of its clearing and settlement facility;
- 3) Efficient internal control system and appropriate administrative, accounting, and internal audit procedures;
- 4) Appropriate procedures to prevent, detect, and resolve conflicts of interest between members of the commodity exchange and members of the clearing and settlement facility.

Bodies of the Commodity Exchange

Article 29

[1] Bodies of the commodity exchange shall be established under its Articles of Incorporation and Articles of Association, as provided for under legislation governing the incorporation of business entities.

[2] Membership in bodies of commodity exchanges shall be closed to:

- 1) Persons suffering the legal consequences of conviction;
- 2) Persons holding managerial positions in or employed by government bodies, except where the Republic of Serbia holds an interest in such bodies;
- 3) Persons serving as managing directors or members of boards of directors, or employees of, bodies or persons with qualifying holdings in other market operators licensed to operate under this Law;
- 4) Persons serving as managing directors or members of boards of directors, or employees, of investment firms or commodity pool management companies;
- 5) Persons closely associated with persons referred to in Items 1) to 5) of this Paragraph.

[2] Each commodity exchange must have at least two persons representing it as provided for under the general byelaws of that commodity exchange.

[3] The Commission shall issue prior approval of the election or appointment of managing directors or members of the supervisory board of a commodity exchange, as provided for under this Law and as stipulated in the applicable provisions of capital markets legislation.

IV. INTERNAL OVERSIGHT OF TRADING; EXCHANGE COURT OF ARBITRATION

Internal Oversight of Trading

Article 30

[1] Each commodity exchange shall oversee its members with respect to transactions in the market in standardised market products admitted to trading.

[2] In exercising oversight, the commodity exchange shall be entitled to directly inspect documents regarding affairs referred to in Paragraph [1] of this Article.

[3] The commodity exchange shall oversee Authorised Exchange Officers and their clients in the commodity market.

[4] In exercising oversight referred to in Paragraph [1] of this Article, the commodity exchange shall be entitled to directly inspect any and all members, as well as to make copies of and directly access any and all ledgers and records of such members.

[5] In exercising oversight referred to in Paragraph [1] of this Article, the commodity exchange shall act and apply measures to discipline its members as provided for under its byelaws.

[6] In exercising oversight, the commodity exchange shall be required to act equitably and apply identical measures against any and all members found to be in identical circumstances in the derivatives market, and to act equitably and apply identical measures against any and all Authorised Exchange Officers and their clients found to be in identical circumstances in the commodity market.

[7] Where the commodity exchange establishes violations or infringements of the provisions of this Law, byelaws of the Commission, or byelaws of the commodity exchange, it shall issue a decision requiring the member of the commodity exchange in question to remedy such infringements by a set deadline.

[8] The commodity exchange shall notify the Commission without delay, as required under byelaws of the Commission, of any and all major violations of the provisions of this Law or a byelaw of the Commission or of the commodity exchange perpetrated by a member of the commodity exchange.

Exchange Court of Arbitration

Article 31

[1] Each commodity exchange shall be required to establish an Exchange Court of Arbitration and to adopt a specific set of rules governing its position, organisation, composition, selection, judges, competences, financing, proceedings, expenses, and any and all other issues of importance for the operation of such court, as provided for under legislation governing arbitration.

[2] The Exchange Court of Arbitration shall have jurisdiction to adjudicate disputes arising in the commodity exchange, such as disputes between the commodity exchange and its members; between multiple members; between Authorised Exchange Officers and clients of Authorised Exchange Officers

or investment firms; as well as between the commodity exchange and clients of Authorised Exchange Officers.

[3] By being admitted to membership of the exchange, members undertake to accept the jurisdiction of the Exchange Court of Arbitration in any and all disputes referred to in Paragraph [2] of this Article.

[4] In addition to disputes referred to in Paragraph [2] of this Article, parties may agree to allow the jurisdiction of the Exchange Court of Arbitration in additional matters, as provided for under rules of the Exchange Court of Arbitration.

V. GUARANTEE FUNDS

Concept and Status

Article 32

[1] Guarantee funds shall be established for the purpose of offsetting losses that may be suffered by participants in trading in the exchange due to a transaction that is not effected, and may not be used for any other purpose. Such funds shall be used:

- 1) In the commodity market, to offset the risk of non-fulfilment by a counterparty;
- 2) In the derivatives market, to offset the risk of non-fulfilment by an investment firm.

[2] Monies of commodities and derivatives guarantee funds shall be kept in separate sub-accounts separately from the account of the exchange.

[3] Guarantee funds shall be deemed assets and shall not be legal entities.

[4] Monies in the account of a guarantee fund may not become part of any bankruptcy estate.

Rules of Guarantee Funds

Article 33

[1] Rules of commodity market guarantee funds and derivatives market guarantee funds shall be adopted by the commodity exchange with the prior approval of the Commission.

[2] Rules of guarantee funds shall define in greater detail contributions payable into the fund, manner of payment from the fund, investment of assets of the fund, and any and all other issues of importance for achieving the purpose of the guarantee fund.

[3] The commodity exchange shall be required to post the rules of the fund on its web site, as well as to make them available to any and all fund members before they pay their initial contributions into the fund.

[4] Amendments to rules of the fund shall take effect at the earliest upon the expiry of eight days from the day they are posted on the web site, except where rules of the fund provide for a longer deadline.

Members of Guarantee Funds

Article 34

Membership in the commodities or derivatives guarantee fund shall be obligatory for each member of a commodities or derivatives clearing and settlement facility.

Sources and Expenditure of Finance

Article 35

[1] Guarantee funds shall be financed from the following sources:

- 1) Contributions by fund members;
- 2) Income from investing assets of the fund;
- 3) Receivables claimed and collected by the fund from bankruptcy estates of fund members;
- 4) Voluntary contributions;
- 5) Other lawful sources.

[2] Monies held in a guarantee fund may only be used in settlement of claims in cases governed by this Law and rules of the fund.

[3] Monies held in a guarantee fund may neither be lent nor pledged.

[4] In an exception to Paragraph [3] of this Article, monies held in a guarantee fund may be invested as provided for under this Law.

Contributions to Funds

Article 36

[1] Any cash amount or other type of deposit that fund members are required to pay into the fund as provided for under rules of the fund shall be deemed a contribution to the fund.

[2] Monies referred to in Paragraph [1] of this Article shall be refunded to members of clearing and settlement facilities where they remain unpaid after all liabilities are extinguished that arise from the transactions entered into by those members.

Payment

Article 37

Monies shall be paid from a guarantee fund pursuant to rulings of the Exchange Court of Arbitration.

Investment

Article 38

Monies held in a guarantee fund may only be invested in:

- 1) Securities issued by the Republic of Serbia or the National Bank of Serbia;
- 2) Bonds or other instruments of indebtedness not issued by the Republic of Serbia or the National Bank of Serbia where underwritten by the Republic of Serbia or the National Bank of Serbia;

- 3) Interest-bearing deposits with a first-class bank.

VI. INVESTMENT FIRMS IN COMMODITY EXCHANGES; COMMODITY POOLS

1. INVESTMENT FIRMS

Scope of Activity

Article 39

[1] ‘Investment firm’ means a business entity that provides, as part of its regular activities and operations, one or multiple investment services to third parties, or professionally performs one or more investment activities related to one or multiple standardised market products.

[2] Investment services may not be provided, nor may activities related to standardised market products be performed, without a license issued by the Commission to engage in specifically listed investment firm activities.

[3] Any license to engage in activities of an investment firm must contain a list of investment services and activities, or supplementary investment services, that the investment firm in question is authorised to provide and perform.

[4] Investment firms shall be required to obtain appropriate licences, as provided for under legislation governing foreign currency operations, where they intend to provide supplementary investment services involving foreign currency operations.

Capital Thresholds

Article 40

[1] The capital threshold of an investment firm shall be set and assessed as provided for under byelaws of the Commission and may not be lower than:

- 1) RSD 14 million, for providing and performing all investment services and activities involving standardised market products, excepting only trading in standardised market products on its own behalf;
- 2) RSD 22 million, for providing services of trading in standardised market products on its own behalf.

[2] In an exception to Paragraph [1] of this Article, the Commission may issue a decision to reduce the amount referred to in Paragraph [1]1) of this Article to RSD 6 million where the investment company in question is not authorised to manage clients’ cash or financial instruments, or where it provides and performs investment services or activities relating to the receipt and transmission of sale and purchase orders involving standardised market products, or the execution of orders on behalf of clients.

[3] Any investment firm holding the larger of the two amounts referred to in Paragraph [1] of this Article shall be deemed to meet the capital requirements for providing services or performing activities requiring the smaller of the two amounts.

[4] The capital referred to in Paragraphs [1] and [2] of this Article shall be fully paid in in cash.

Staffing, Organisation, and Equipment

Article 41

[1] An investment firm may provide and perform investment services and activities provided that it meets staffing, organisational, and equipment-related requirements provided for under this Law, legislation governing the capital market, and Commission byelaws, including the requirement to possess a data processing system, and where it continuously and regularly provides and performs these services and activities.

[2] Each investment firm shall be required to employ at least two full-time staff members licensed by the Commission to provide investment services with regard to standardised market products.

[3] Where an investment firm provides and performs portfolio management and investment advisory services and activities with regard to standardised market products, at least one individual, who may be one of the staff members referred to in Paragraph [2] of this Article, must be licensed by the Commission to act as portfolio manager and investment advisor for trading in standardised market products.

[4] Any person meeting conditions for engaging in portfolio management and providing investment advisory services to other parties with regard to trading in standardised market products shall be deemed a portfolio manager for trading in standardised market products.

[5] The provision of personal recommendations to clients with regard to one or multiple transactions involving standardised market products, either at the request of a client or at the initiative of the investment firm, shall be deemed to be the provision of investment advisory services.

Licensing of Individual Investment Advisory Service Providers

Article 42

[1] The Commission shall offer training and examinations for prospective commodity exchange brokers, investment advisors, and portfolio managers.

[2] The Commission shall issue licences for activities referred to in Paragraph [1] of this Article where the applicant meets the following requirements:

- 1) Having passed the appropriate examination;
- 2) Not suffering the legal consequences of conviction.

[3] Any applicant for the licence to provide investment advisory and portfolio management services must have at least one years of professional experience, after having obtained a university degree, related to trading in a commodity exchange.

[4] The Commission shall regulate the manner of recognising licenses or authorisations for engaging in such activities that have been acquired abroad.

Requirements for Managing Directors and Board Members

Article 43

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[1] Each investment company shall establish bodies as provided for under legislation governing business entities.

[2] Any person:

- 1) Not suffering the legal consequences of conviction;
- 2) Not holding a managerial positions in or employed by a government body, agency, or organisation established by the Republic of Serbia;
- 3) Not serving as managing director or member of board of directors or supervisory board of, or being employed by and having a qualifying holding in another market operator, credit institution with authorised bank, or investment, commodity investment, or voluntary pension fund management company;
- 4) Not serving as managing director or member of board of directors of, or employed by, a commodity exchange, market operator, or the Central Registry;
- 5) Not closely associated with persons referred to in Items 1) to 4) of this Paragraph;
- 6) With at least three years of professional experience related to securities or standardised market products, either at home or abroad, acquired while working with:
 - (1) An investment firm;
 - (2) A capital market or commodity exchange;
 - (3) A bank;
 - (4) An investment, commodity investment, or voluntary pension insurance fund management company;
 - (5) An insurance company;
 - (6) A government body or organisation;
 - (7) A legal entity performing activities with regard to standardised market products on behalf of the state as devolved activities,

may serve as managing director or member of board of directors, supervisory board, or executive board of an investment firm.

[3] The managing director of an investment firm must be a full-time staff member of such firm; the managing director and at least one member of the supervisory board must be in command of the Serbian language.

Appropriate Application of Capital Markets Legislation

Article 44

[1] Provisions of capital markets legislation governing investment firms shall apply, as appropriate, to investment firms operating in the commodity exchange, excepting where otherwise provided for under this Law.

[2] Existing investment firms, established under capital markets legislation, may operate as investment firms in the commodity exchange on condition that they meet the requirements provided for under this Law.

[3] The Commission shall stipulate detailed criteria and manner of providing documents and establishing compliance with the requirements of Paragraph [2] of this Article.

2. COMMODITY POOLS

Principal Characteristics of Commodity pools

Article 45

[1] ‘Commodity pool’ means a collective investment undertaking, managed by a commodity fund management company, in which money is raised and invested, primarily into various types of standardised market products.

[2] The principal activity of a commodity pool shall be trading in standardised market products in commodity exchanges at home and abroad.

[3] Any person in whose name stock or shares in a commodity pool are registered, or who enters into an agreement on managing a portfolio of standardised market products with a commodity fund management company, shall be deemed a member or client of that commodity pool.

[4] Funds may be closed-ended or private, as provided for under legislation governing investment funds.

[5] A commodity pool may freely choose the aim of its investment, which must be clearly defined in the prospectus of that commodity pool.

[6] The prospectus of a commodity pool shall be the basic document of that commodity pool serving to provide full and clear information for potential investors to base their investment decisions on.

[7] Funds shall be governed by rules adopted by their respective commodity pool management companies with the prior consent of the Commission.

[8] The Commission shall govern the establishment and operation of commodity pools in greater detail.

Legal Names of Commodity Pools

Article 46

[1] The legal name of a commodity pool shall contain the designation ‘Closed-Ended Commodity Pool’ [*zatvoreni robni investicioni fond*] or the abbreviation ‘z.r.i.f.’ or ‘zrif’.

[2] The legal name of a private fund shall contain the designation ‘Private Commodity Pool’ [*privatni robni investicioni fond*] or the abbreviation ‘p.r.i.f.’ or ‘prif’.

Commodity pool Management Companies

Article 47

[1] 'Commodity pool management company' means a business entity managing commodity pools or individual client portfolios of standardised market products.

[2] Commodity pool management companies shall be incorporated as two-tier joint-stock companies.

[3] Existing management companies, incorporated under legislation governing investment funds, may perform the activities of commodity pool management companies on condition that that they meet the requirements provided for under this Law.

[4] The Commission shall stipulate detailed criteria and manner of providing documents and establishing compliance with the requirements of Paragraph [2] of this Article.

[5] Provisions of legislation governing investment funds, business entities, and capital markets, as well as any and all other appropriate laws and byelaws, shall apply to commodity pool companies, except where otherwise provided for under this Law.

[6] The Commission shall issue operating licences to commodity pool management companies.

[7] The legal name of a fund management company must contain the designation 'Commodity Pool Management Company' [*društvo za upravljanje robnim investicionim fondovima*].

[8] It shall be prohibited to use the designation 'Commodity Pool Management Company' as part of the legal name of an entity that is not a commodity pool management company within the meaning of this Law.

Scope of Activity

Article 48

Commodity pool management companies shall:

- 1) Establish and manage commodity pools;
- 2) Manage portfolios of individual clients who enter into agreements with such commodity pool management companies regarding the management of portfolios of standardised market products;
- 3) Perform other tasks as provided for under capital markets legislation.

Capital Stock

Article 49

[1] The cash portion of the capital stock of a commodity pool management company must amount to at least RSD 20 million at its incorporation.

[2] The commodity pool management company shall be required to ensure that the cash portion of its capital stock does not at any time fall below RSD 20 million in the course of its operation.

[3] In the event that the cash portion of the capital stock of a commodity pool management company falls below the threshold referred to in Paragraph [1] of this Article, the Commission may, where justified, instruct the commodity pool management company to comply with the requirement within 60 days.

Organisational and Technical Requirements

Article 50

Commodity pool management companies shall be required to employ at least one full-time standardised market product portfolio manager.

Corporate Bodies

Article 51

[1] Provisions of legislation governing business entities shall apply, as appropriate, to bodies of commodity pool management companies, except where otherwise provided for under this Law.

[2] Any person not convicted, by a final and enforceable judgment, for a criminal offence against labour rights, economic interests, property, public order, legal instruments, or official duty, or for an offence involving bribery and corruption, or for an offence or infringement under legislation governing capital markets, privatisation, or the operation of insurance companies, banks and other financial institutions, may be appointed executive director or member of supervisory board of a commodity pool management company.

[3] No person:

- 1) Serving as member of a management body of, or employed by, another commodity pool management company;
- 2) Serving as member of a management body of, or employed by, a clearing and settlement facility that the commodity pool management company has an agreement with;
- 3) Closely associated with persons referred to in Items 1) and 2) of this Paragraph,

may serve as executive director or member of the supervisory board of a commodity pool management company.

[4] Executive directors and at least one-half of all members of the supervisory board must have at least three years of professional experience related to securities or standardised market products, either at home or abroad, acquired while working with:

- (1) An investment firm;
- (2) A capital market or commodity exchange;
- (3) A bank;
- (4) An investment, commodity investment, or voluntary pension insurance fund management company;
- (5) An insurance company;
- (6) A government body or organisation;
- (7) A legal entity performing activities with regard to standardised market products on behalf of the state as devolved activities

Limitations in Disposal of Assets of Commodity pools

Article 52

[1] Assets of a commodity pool shall be separate from those of the commodity pool management company, as well as from those of clearing and settlement facility members.

[2] Assets of a commodity pool may not be pledged, may not become part of the liquidation or bankruptcy estate of the commodity pool management company or a member of the clearing or settlement facility, nor may be subject to enforced collection of payables owed to any of the entities referred to above.

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Appropriate Application of Investment Funds Legislation

Article 53

[1] Unless otherwise provided for under this Law, provisions of legislation governing investment funds shall apply, as appropriate, to:

- 1) Establishment and management of closed-ended commodity pools;
- 2) Establishment and management of private commodity pools;
- 3) Establishment, activities, and operation of commodity pool management companies;
- 4) Remit of the Securities Commission;
- 5) Other issues of importance for the operation of investment funds.

[2] Members of clearing and settlement facilities, as provided for under this Law, shall perform the tasks and assume the duties of custody banks, as provided for under legislation governing investment funds.

VII. ABUSIVE PRACTICES

Fraud

Article 54

No party to a transaction in the commodity exchange or person involved with a transaction that entails the sale or purchase of standardised market products may fraudulently or through misrepresentation mislead another person, particularly by:

- 1) Knowingly recording false data or otherwise compiling or inciting the compilation of false reports, records, or statements intended for the use of another person;
- 2) Using any means, devices, or methods to defraud;
- 3) Making untrue statements by stating untrue facts or omitting to state material facts;
- 4) Taking part in any action, activity, or course of business that serves or may serve to defraud or mislead any person.

Trading Practices Not Allowed

Article 55

No person may enter into, offer, or confirm the execution of a transaction that entails the sale or purchase of standardised market products, where such transaction:

- 1) Involves the nearly simultaneous sale and purchase of the same standardised market products at a substantially similar price with the intention of avoiding market risk in contravention of accepted market practice, whereby no transfer of title actually takes place;
- 2) Is a fictitious sale or has been executed so as to result in the fixing of sale or purchase prices or gives rise to other conditions of trading in contravention of accepted market practice;
- 3) Is used to cause any price to be reported, registered, or recorded that is not a true and bona fide price, or is a price achieved in contravention of accepted market practice.

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Prearranged Transactions Not Allowed

Article 56

[1] No agreement to execute or execution shall be allowed of transactions in standardised market products admitted to trading and covered by trading orders issued in the derivatives market, outside of the commodity exchange, or outside of the scope of application of rules of the commodity exchange.

[2] The prohibition imposed under Paragraph [1] of this Article shall encompass any and all agreements to execute or execution of transactions in standardised market products that are not open and competitive and involve public bidding or offering in an appropriate physical or electronic marketplace and in the manner and by the deadline for trading in such standardised market products as governed under rules of the commodity exchange.

[3] Provisions of Paragraphs [1] and [2] of this Article shall not apply to exceptions stipulated under rules of the commodity exchange.

[4] Parties to transactions exempted under Paragraph [3] of this Article, and particularly persons tasked with their carrying out, execution, clearing or settlement, shall be required to keep specific records of such transactions and to keep documents regarding such transactions (contracts, orders, files, and any other documents).

Inappropriate Execution of Orders and Matching with Client Orders

Article 57

[1] No person may:

- 1) Fail to execute client orders as made and as soon as conditions for their execution have been met;
- 2) Submit orders to be matched with client orders that intentionally, knowingly and without prior client approval prevent the execution of orders as provided for under rules of the commodity exchange in question.

[2] Provisions of Paragraph [1] of this Article shall not prevent the simultaneous execution of sale and purchase orders for the same or approximately the same quantities of standardised market products at market prices on behalf of multiple sellers or buyers.

[3] In executing orders referred to in Paragraph [2] of this Article, market participants shall be required to apply the provisions of this Law that prohibit prearranged transactions and require special records to be maintained and documents to be kept.

Abuse

Article 58

No person may take part in any transaction, trade, or business activity or relationship in a commodity exchange, or to which the rules of the commodity exchange in question apply, that:

- 1) Creates or provides untrue or misleading signals regarding supply, demand, price, or quantity of any standardised market product;
- 2) Distorts supply and demand in contravention of accepted and usual market practice;
- 3) Intentionally or with gross negligence ignores the orderly execution of transactions during the closing period;
- 4) Entails the submission of bids or offers with the intention of cancelling them before execution.

Use of Insider Information Not Allowed

Article 59

No insider information obtained in the course of one's business or discharge of official duty may be made available to any other party with the purpose of entering into transactions involving standardised market products to which such insider information relates.

VIII. OVERSIGHT

Oversight by the Commission

Article 60

[1] The implementation of this Law shall be overseen by the Commission, as provided for under this Law and legislation governing capital markets and investment firms.

[2] Commission oversight shall be carried out in accordance with a risk-based oversight plan, and must involve direct control, particularly of operations and activities that pose the greatest systemic risk as to the volume and type of trading and activity.

[3] Oversight by the Commission shall be performed by a special organisational unit thereof tasked with the oversight of commodity exchanges.

IX. PENAL PROVISIONS

Criminal Offences Affecting the Integrity of the Market

Article 61

[1] The perpetrator of an action contrary to the ban imposed by Articles 54 to 59 of this Law shall be punished by a term of imprisonment of between six months and five years. Page | 23

[2] Where a major disturbance has appeared in the market due to the offence referred to in Paragraph [1] of this Article, or where the illegal gains due to such offence exceed the sum of RSD 5 million, the perpetrator shall be punished by a term of imprisonment of between three and ten years.

Economic Offences

Article 62

[1] A fine of between RSD 1 million and RSD 3 million for an economic offence shall be imposed on:

- 1) Any legal entity trading as a commodity exchange without being duly authorised by the Commission;
- 2) Any investment firm providing investment services in relation to standardised market products without being duly authorised by the Commission;
- 3) Any commodity pool management company trading without being duly authorised by the Commission.

[2] A fine of between RSD 50,000 and RSD 200,000 shall also be imposed on the authorised officer of such legal entity for any offence referred to in Paragraph [1] of this Article.

[3] In addition to being fined the economic offences referred to under Paragraph [1] of this Article, legal entities may also be banned from performing certain activities for a period of between six months and three years; in addition, the court ruling against them may also be made public.

[4] In addition to being fined for the economic offences referred to under Paragraph [1] of this Article, company officers may also be banned from performing certain activities for a period of between six months and three years; in addition, the court ruling against them may also be made public.

Misdemeanours

Article 63

[1] A misdemeanour fine of between RSD 100,000 and RSD 2 million shall be imposed against any commodity exchange:

- 1) Failing to provide its Articles of Incorporation, Articles of Association, commodity exchange rules, and any and all other byelaws, to the Commission for prior approval (Article 7);
- 2) Performing activities not allowed under Article 10 of this Law;
- 3) Admitting to membership an entity that is not an investment firm duly authorised to trade by the Commission (Article 11);

- 4) Admitting to trading any standardised market products without the approval of the Commission (Article 12);
- 5) Managing accounts of members of clearing and settlement facilities in the derivatives market in contravention of Article 23 of this Law;
- 6) Employing persons in conflict of interest (Article 26);
- 7) Failing to ensure the functional autonomy and operational independence of authorised exchange officers (Article 27[3]);
- 8) Failing to establish or implement a stable and secure process management system (Article 28);
- 9) Appointing persons as members of its management bodies who do not meet the appropriate conditions or without the prior approval of the Commission (Article 29);
- 10) Engaging in internal oversight of trading in contravention of Article 30 of this Law;
- 11) Failing to keep guarantee fund monies in separate sub-accounts (Article 32[2]);
- 12) Using guarantee fund monies in contravention of their intended use (Articles 32, 35, and 38).

[2] A misdemeanour fine of between RSD 100,000 and RSD 2 million shall be imposed against any legal entity:

- 1) Including as part of its legal name the designation ‘commodity exchange’ or any other expression misleadingly indicating that an entity may be a commodity exchange, where such legal entity is not a commodity exchange within the meaning of this Law (Article 6);
- 2) Including as part of its legal name the designation ‘commodity pool management company’ where such entity is not a commodity pool management company within the meaning of this Law (Article 47[8]);
- 3) Disposing of assets of a commodity pool in contravention of limitations as a commodity pool management company (Article 52).

[3] The authorised officer of a legal entity shall also be fined between RSD 50.000 and RSD 150.000 for any misdemeanour referred to in Paragraphs [1] and [2] of this Article.

[4] In addition to being fined for a misdemeanour referred to in Paragraph [3] of this Article, the authorised officer may be banned from undertaking certain activities for a period of between six months and one year.

X. TRANSITIONAL AND FINAL PROVISIONS

Article 64

[1] The Commission shall be required to apply organisational measures in accordance with this Law by the date of entry of this Law into effect.

[2] The Commission shall be required to offer training and examinations for professional licenses as provided for under this Law within three months of the entry of this Law into effect.

[3] Byelaws provided for under this Law shall be adopted by the date of entry of this Law into effect.

Article 65

This Law shall enter into force eight days after its publication in the *Official Gazette of the Republic of Serbia*, and shall enter into effect upon the expiry of six months from the date of its entry into force.