



No. 13681/29.11.2018

To: **Bucharest Stock Exchange**
Financial Supervisory Authority
- Financial Instruments and Investments Sector

CURRENT REPORT

According to Law no. 24/2017 and FSA Regulation no. 5/2018

Report date: 29.11.2018

S.I.F. Transilvania S.A.

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Tax registration code: RO3047687

Order number in the Trade Register: J08/3306/92

Registration number in the NSC Register: PJR 09 SIIR/080004

LEI Code (Legal Entity Identifier): 254900E2IL36VM93H128

Subscribed and paid-in share capital: RON 218,428,666.40

Regulated market on which the issued securities are traded: Bucharest Stock Exchange (ticker: SIF3)

Important event to be reported: Considerations on the request to convene the Extraordinary General Meeting of Shareholders

SIF Transilvania informs the shareholders and investors that on November 13, 2018 a group of shareholders holding together 5.000045% of the company's share capital, composed of Mrs. Alexe Antigona, Mrs. Cociu Maria Alexandra, Mrs. Frăţilă Irina Elena, Alexa Business & Investments S.R.L. and Mrs. Frăţilă Mihaela, requested the convening of the extraordinary general meeting of shareholders with the following items on the agenda: (i) *Approval of the delegation of the risk management function, in accordance with art. 19 paragraphs (1) and (2) of Law 74/2015 and the European Regulation 231/2013. The request is based on the complexity of the risks and the diversity of the portfolio of assets managed by SIF Transilvania S.A.,* (ii) *Empowering the Supervisory Board of SIF Transilvania S.A. to select the delegate and to conclude the contract for the delegation of the risk management function,* (iii) *Empowering the designated person to carry out the formalities for the registration and publication of the resolutions of the shareholders general meeting and* (iv) *Setting the record date for the identification of the shareholders who are subject to the effects of the resolutions of the shareholders general meeting.*

The Company's Executive Board analysed the shareholders' request by reference to the provisions of Law 31/1990, Law 24/2017 and Law 74/2015 and concluded that the request does not fall within the provisions of art. 119 of Law 31/1990 and art. 92 of Law 24/2017, as it does not contain provisions falling within the powers of the extraordinary general meeting of shareholders.

This conclusion is motivated by the fact that the management of the company, both in terms of the organizing of the activity management and performance of the management act, belongs exclusively to the Company's Executive Board.

The risk management activity is a very important part of the current management of the company which is the exclusive competence of the Executive Board; under these circumstances, the decisions on the manner of the exercise of the risk management activity belong exclusively to the Executive Board, this being the first reason to support the fact that the shareholders' proposals do

not fall within the powers of the extraordinary general meeting of shareholders, as this is not a proposal to amend the Company's Articles of Incorporation.

In fact, without this goal being explicitly presented, the shareholders' request tends to indirectly amend the following:

- (i) the AIFM's organization and functioning, as compared to the form authorized by the FSA, by delegating one of the two main activities (risk management) without considering the qualitative criteria of delegation, with the inducement of the risk that SIF Transilvania turn into a "letter-box entity", without no longer being able to be considered an AIFM - within the meaning of the provisions of art. 82 of the EU Regulation 231/2013;
- (ii) SIF Transilvania's corporate governance and the documents/decisions which would require preliminary authorization from the FSA,

given that these powers are granted exclusively to the Executive Board by law and by the Articles of Incorporation.

The manner in which the risk management activity is exercised is an operation of legality within the Company's management activity which belongs exclusively to the Executive Board which runs the company under the supervision of the Supervisory Board, without such a decision having to be subject to the approval of the extraordinary general meeting, under the applicable regulatory framework.

SIF Transilvania is an internally managed AIFM, according to the FSA Authorization no. 40/15.02.2018, considering the following regulations:

Art. 5 par. (1) of Law 74/2015 stipulating that *"...AIFMs authorised in accordance with this law shall meet the conditions for authorisation at all times."*

Art. 5 par. (2) of Law 74/2015 stipulating that *"The main activities which may be carried out by AIFMs when managing AIFs are as follows:*

- a) portfolio management;*
- b) risk management."*

The goal of the request to convene the extraordinary general meeting of shareholders with the proposed agenda does not aim at streamlining the activity because, when authorizing SIF Transilvania as an internally managed AIFM, the FSA has taken into consideration both the complexity of the risks and the diversification of the portfolio managed by SIF Transilvania, as well as the management of these activities directly by the company, both in terms of letter a) and letter b) of art. 5 par. (2) of Law 74/2015 above mentioned.

In consideration of the two-tier management system, the Supervisory Board has no powers regarding the selection of the risk management representative nor to represent the company in legal relationship with third parties, hence adding another reason for which the Executive Board asserts that the request for the EGMS convening, as it has been submitted by shareholders, does not fall within the powers of the general meeting.

In addition, we mention that, in accordance with art. 19 par. (2) letter (a) of Law 74/2015, in order to delegate the risk management function to third parties, the AIFM must be able to justify its entire delegation structure based on objective reasons. But, as mentioned above, SIF Transilvania considers that there are no objective reasons justifying the risk management function delegation according to art. 19 paragraphs (1) and (2) of the above mentioned law. Besides, the request to convene the EGMS, sent to SIF Transilvania on November 13, 2018, does not state any objective reason justifying this action.

An additional impediment for not complying with the request to convene the EGMS, assuming such a request would fall under the powers of the general meeting, is the fact that the

shareholders – signatories of the request - have not indicated the entities or the list of entities subject to approval for the delegation of the risk management function, so as to observe the provisions of art. 19 par. (1) of Law 74/2015 – “.....subject to the FSA’s **prior approval...**”, art. 19 par. (2) a) “....the AIFM must be able to justify its entire delegation structure based on objective reasons” and art. 19 par. (4) – “The AIFM’s liability towards the AIF and its investors shall not be affected by the fact that the AIFM has delegated functions to a third party, or by any further sub-delegation. AIFM shall not delegate its functions to the extent that, in essence, it can no longer be considered to be the manager of the AIF and to the extent that it becomes a letter-box entity....”, as it was mentioned above.

By reference to the provisions of art. 119 par. (1) of Law 31/1990, the respective shareholders fulfilled only half of the conditions required by law, without submitting a draft resolution and without justifying the reasons for the outsourcing of a very important point in the object of activity of a self-managed AIF, the proposal not " falling within the powers of the meeting". The simple mentioning of the fact that the Supervisory Board is *empowered to select the delegate and to conclude the contract for the delegation of the risk management function* exceeds the powers of this body.

This is because, according to art. 15, par. (5) indent (v) of SIF Transilvania’s Articles of Incorporation, the Supervisory Board is the competent body to analyse the adequacy, the efficiency and the updating of the risk management system in order to efficiently manage the assets held by the Company, as well as the manner in which the risks to which the company is exposed are managed, as it has been authorised by the FSA.

Thus, this request – if not the expression of ignorance of the organizational and operational mechanisms of a company managed in a two-tier system - may fall **under the scope of the abusive exercise** of the rights deriving from the capacity of shareholder of the signatories of the convening request, that takes the form of the abuse of minority committed by Mr. Constantin Frăţilă and the persons part of the group of shareholders acting in concert with him - abuse of minority previously found and sanctioned by the court (see Current reports no. 8538/03.12.2015 and 2219/23.03.2017).

We recall that the persons requesting the convening of the general meeting of shareholders have been found by the FSA to be acting in concert in relation to SIF Transilvania, in violation of the provisions of article 286¹ of Law 297/2004, and some of them have been sanctioned by the FSA for abuses in managing some of the company’s subsidiaries.

Under these circumstances, the Executive Board considers that the request for the EGMS convening does not seek to streamline the Company’s activity as stated by the shareholders - signatories of the request - but it is the effect of the commencement of the criminal prosecution against Mr. Constantin Frăţilă and the persons mentioned in the Current report no. 5675/31.05.2018, as suspects, and also the effect of the F.S.A. Decision no. 1095/13.09.2018 on the withdrawal of the endorsement given to Mr. Constantin Frăţilă as a member of the Supervisory Board of SIF Transilvania through the FSA Notice no. 422/26.07.2017 (Current report no. 10305/13.09.2018).

The Supervisory Board of SIF Transilvania, gathered in the meeting of November 28, 2018, took note of the position of the Executive Board regarding the shareholders’ request, without giving their consent for outsourcing this activity.

Mihai Fercală
Executive President/CEO

Iulian Stan
Executive Vice President/Deputy CEO

Stefan Szitas
Member of the Executive Board/Director

Marcus Valeriu Marin
Compliance Office

This is a free translation of the Current report which was drafted in Romanian.
In case of discrepancies between the Romanian version and the English version, the Romanian version shall prevail.