



ROMANIAN INVESTORS COMPENSATION FUND

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**Directorate General Internal Market and Services
Unit G3 – Securities Markets
SPA 2 03/079, B-1049
Brussels, Belgium**

Dear Sirs,

The Romanian Investors Compensation Fund welcomes the opportunity to submit views on the Call for evidence relating to the review of Directive 1997/9/EC on investor-compensation schemes (“ICSD”). In case you need additional information, the contact persons are Mr. Fanel CHIRTU – Executive Manager, email stefan.chirtu@fond-fci.ro, and Ms. Violeta IFTINCHI – Financial Expert, email violeta.iftinchi@fond-fci.ro.

Yours faithfully,

**Fanel Chirtu
Executive Manager**

A handwritten signature in blue ink, appearing to be 'Fanel Chirtu', written over a light blue circular stamp.

1) Should the operation of multilateral trading facilities be excluded from the scope of the ICSD?

2) Would it be appropriate to include in the scope of the ICSD all investment firms seeking authorisation to the provision of investment services, although their authorisation would not allow holding clients' assets?

3) Would it be appropriate to include in the scope of the ICSD all investment firms seeking authorisation to the provision of investment services, although they provide their services only to non-retail clients?

According to the Romanian legislative framework into force, all intermediaries registered for the provision of investment services on behalf of their clients, as well as the management companies which have as their regular business the management of individual investment portfolios must be members of the Fund, irrespective of their type of authorisation and the category of clients. Following the implementation of MiFID, the Fund covers all the financial services and financial instruments as they are defined by the directive.

4a) Should investors be able to claim compensation in the case of default of the third party where their assets had been deposited?

No. According to the Romanian legislative framework, the investment firm is liable for any losses of clients assets, irrespective of the third party. The establishing of due care and diligence in selecting the third party might be difficult to prove.

4b) Should investors (such as UCITS or a UCITS unit holder) be able to claim compensation for loss of assets under the ICSD in those cases where the UCITS depositary or the institution which has been mandated to safe keep the assets, fail to perform its duty?
No comments.

5) Should loss events include also any losses suffered by (retail) investors as a consequence of the violation of conduct of business rules?

No comments.

6) Do you agree with the idea that the amount covered by the ICSD should be adapted following the updating of the DGSD?

No. Although the ICSD was modelled on the DGSD, the characteristics of the members of the two schemes are different, especially regarding their financial capability. The increase of the compensation limit will rise the financial effort of the investment firms in order to support bigger contributions to the ICSs. In times of crisis, the financial burdens placed on the scheme members might trigger financial difficulties in their attempt to meet the statutory obligations to the ICS, and even their bankruptcy.

7) The ICSD does not harmonize the funding systems of the schemes. Should the ICSD provide for some general principles concerning the funding of the schemes?

No. Each Member State has its own funding model established according to the features of its financial markets and participants. The costs of harmonizing the funding schemes should be compared with the benefits.

8a) Does the legislation of the Member State you know the best provide mechanisms aimed at limiting compensation schemes' obligations over time? If yes, how many clients saw their

compensation unpaid as a result of such mechanisms?

The Romanian legislative framework does not provide restrictions on the carryover of unpaid compensation amounts to investors.

8b) Should this kind of mechanisms be prohibited?

See answer to question 8a).

9a) Should the process of recognizing the eligibility of the claim be regulated for the purposes of the ICSD?

No. The establishment of the eligibility of the claim depends not only on the ICS, but mainly on the liquidator whose activity is regulated at the national level. The regulation of this process could be possible only when the ICS is also the liquidator which will imply other consequences on the organisation, regulation and financing of these schemes.

Regarding the amount of claim, the ICSD provides in Article 2, paragraph 4 that “the amount of an investor’s claim shall be calculated in accordance with the legal and contractual conditions...”. In cases of fraud, it might be possible that the documents proving the legal and contractual obligations of the members to the investors not to be available. Consequently, it will be very difficult to establish the eligibility of claims.

9b) Should, at least, a mechanism be introduced providing for provisional partial compensation based on a summary assessment of clients' positions?

Yes, in order to ensure confidence for the investors.

9c) Irrespective of the harmonisation of their funding systems, should compensation schemes ensure that they have minimum reserve funds in order to comply rapidly with any immediate needs?

Yes. The process of collecting contributions is not always a short one and a reserve fund could ensure a more rapid payment of compensations.

10) Do you think special attention should be given to money market funds?

No comments.

11) Based on the concrete application of the ICSD do you see further issues other than the ones mentioned in the present document that might be of relevance to this analysis?

We found very useful the Report of the Joint Research Centre – „Investigating the efficiency of EU Deposit Guarantee Schemes”, drawn up in May 2008. A similar analysis could be realised for the ICSs.