

**NOTE**

***Regarding point 5 on the Agenda of the Ordinary General Shareholders' Meeting  
of 22 November 2013***

***Re: The management of SC Fondul Proprietatea SA beginning with 30 September 2014***

**Description:**

The mandate of Franklin Templeton Investment Management Ltd United Kingdom Bucharest Branch as Sole Director and Fund Manager of Fondul Proprietatea expires on 30 September 2014.

Elliott Associates, a significant shareholder of SC Fondul Proprietatea SA proposed an amendment for the Constitutive Act of SC Fondul Proprietatea SA with the following content: *“The Fund Manager will call the Ordinary General Meeting of Shareholders with at least 6 months before of the termination of the duration of the mandate of the Fund Manager with the agenda of approving the extension of the mandate or the initiation of the tender organized by the Board of Nominees. If a decision was made to initiate a tender, following communication by the Board of Nominees of the results of such tender, the Fund Manager will immediately call an Ordinary General Meeting of Shareholders with the agenda of appointing the selected candidate as Fund Manager and authorizing negotiation and execution of the relevant fund management agreement and fulfilment of all relevant formalities for the authorization and legal completion of such appointment.”*

The Extraordinary General Meeting of Shareholders approved in April 2013 this amendment, and it should be in force after the endorsement of the FSA.

The FSA has not agreed with the amendment and proposed the following text:

*“The Fund Manager will call the Ordinary General Meeting of the Shareholders with at least 6 months before the termination of the duration of the mandate of the Fund Manager with the agenda of approving the extension of the Fund Manager’s mandate or the appointment of a new Fund Manager. The Fund Manager will immediately call an Ordinary General Meeting of the Shareholders with the agenda of appointing the selected candidate as Fund Manager and authorizing negotiation and execution of the relevant investment management agreement and fulfilment of all relevant formalities for the authorization and legal completion of such appointment”.*

The text proposed by the FSA raises the following problems:

- it does not expressly empower anyone to manage the selection process, to establish the regulations for international tender and the draft of investment management agreement, to manage the selection, to appoint a legal consultant and other consultants and to recommend to the shareholders the appointment of the winner of this selection process

- (logically, one may imply that the BON should do this, but this should be specified for the avoidance of doubt / legal challenge);
- even if the shareholders choose to have an international selection, the Fund Manager has the obligation to immediately call (before the selection is started) an Ordinary General Meeting of the Shareholders with the agenda of appointing the selected candidate as Fund Manager and authorizing negotiation and execution of the relevant investment management agreement;
  - the Fund will have at least three General Meetings of Shareholders for discussing and approving different measures for appointing the new Fund Manager in comparison with the initial proposal where only two General Shareholders Meetings were needed.

The Fund Manager challenged the FSA's decision.

Considering the fact that the shareholders already expressed their opinion regarding this process, and the estimated timing for it, and in order to clarify what steps may need to be taken, we propose to add to the agenda of 22 November 2013 a point regarding the management of SC Fondul Proprietatea SA beginning with 30 September 2014.

#### **Legal base:**

According to article 21 para. (3) of the Constitutive Act in force (which does not include the latest amendments of the shareholders, since the FSA has not approved them, or counter-proposals of the FSA, since the shareholders have not approved them): *"The mandate of the Fund Manager is of 4 years and is renewed automatically, if there is no adverse decision of the general meeting of the shareholders, entitled to decide on the termination of the mandate even before its regular lifespan. The Fund Manager will call the Ordinary General Meeting of Shareholders with at least 3 months before of the termination of the Investment Management Agreement having on the agenda the extension of the mandate or the appointing of a new Fund Manager. The Fund Manager will organize the Ordinary General Meeting of Shareholders before the termination of Investment Management Agreement"*.

The same clause is set by article 14.3 of the Investment Management Agreement in force.

However, considering the will of the shareholders to see that the Fund Manager will call the Ordinary General Meeting of Shareholders with at least 6 months before of the termination of the duration of the mandate of the Fund Manager with the agenda of approving the extension of the mandate or the initiation of a tender, we propose to follow the approach preferred by the shareholders even though it is not strictly legally-binding at the present time.

#### **Estimation in time:**

*(T0, T1, etc. indicate separate stages in the timeline)*

#### **Scenario 1:**

- T0: the Fund Manager calls the GSM having on the agenda the options regarding the management of SC Fondul Proprietatea SA beginning with 30 September 2014 – considering the fact that we proposed to add this on the agenda of 22 November 2013 GSM, T0 will be on 26 September 2013

- T1: shareholders approve the extension of FT's mandate as Sole Director and Fund Manager
- T2 = T1 + 90 days: the Fund Manager negotiates the replacing Investment Management Agreement (IMA) with Board of Nominees;
- T3 = T2 + 15 days: the Fund Manager proposes the replacing IMA to the shareholders;
- T4 = T3 + 45 days: the shareholders approved the replacing IMA;
- T5 = T4 + 15 days: the Fund Manager asks for FSA approval of the replacing IMA;
- T6 = T5 + 30 day: the FSA endorses the replacing IMA;
- T7 = T6 + 2 days: the replacing IMA is effective
- T7 = T0 + 252 days (more than 8 months)

Please note that we calculated this time estimation under the assumption that there are no legal cases started against the registration of the shareholders resolution and the FSA endorses the replacing IMA without comments.

### **Scenario 2:**

- T0: the Fund Manager calls the GSM having on the agenda the options regarding the management of SC Fondul Proprietatea SA beginning with 30 September 2014 – considering the fact that we proposed to add this on the agenda of 22 November 2013 GSM, T0 will be on 26 September 2013
- T1: shareholders approve starting a new selection for the appointment a new sole administrator and fund manager of Fondul Proprietatea SA for the period commencing with 30 September 2014
- T2 = T1 + 15 days: the shareholders resolution is published in Official Gazette;
- T3 = T2 + 90 days: the Board of Nominees completes the selection of the new Fund Manager, negotiates the investment management agreement and the amendments of the Constitutive Act;
- T4 = T3 + 5 days: the Fund Manager calls the GSM;
- T5 = T4 + 45 days: the shareholders approve the appointment of the candidate having won the selection organized by the Board of Nominees, the execution of the investment management agreement and the amendments of the Constitutive Act;
- T6 = T5 + 15 day: the Fund Manager asks the FSA to endorse the replacement of the Fund Manager, the new IMA and the amendments of the Constitutive Act;
- T7.1 = T6 + 30 days: the FSA endorses the replacement of the Fund Manager, the new IMA and the amendments of the Constitutive Act;
- T7.2 = T6 + 30 days: the FSA endorses with comments the replacement of the Fund Manager, the new IMA and the amendments of the Constitutive Act
- T8.2 = T7.2 + 10 days: the Fund Manager calls the GSM for approving the changes proposed by FSA;
- T9.2 = T8.2 + 45 days: the shareholders approve the changes proposed by FSA
- T10.2 = T9.2 + 2 days: the replacing of the Fund Manager is effective
- T10.2 = T0 + 312 days (more than 10 months)

Please note that we calculated this time estimation under the assumption that there are no legal cases started against the registration of the shareholders resolution and the FSA endorses all documentation with comments, as CNVM did in May 2010.

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**The Fund Manager's proposal, object of shareholders' approval:**

Taking into consideration that:

- Franklin Templeton Investment Management Limited United Kingdom Bucharest Branch is interested in continuing its mandate for managing Fondul Proprietatea and believes it has the experience and capabilities gained already in these last 3 years to further promote the interests of all the Fund's shareholders
- In both scenarios presented above the time estimations (under assumptions that there are no complications) lead to the fact that at least 9 months are needed, we propose to have on the agenda of 22 November 2013 OGM the following topic – point 5 of the agenda:

**5. Approval regarding the management of SC Fondul Proprietatea SA beginning with 30 September 2014:**

5.1. The approval in principle of the extension of the mandate of Franklin Templeton Investment Management Limited United Kingdom Bucharest Branch with its headquarters in Bucharest, 78-80 Buzesti St., 7th and 8th floors, 1st District, registered with the Trade Register under no. J40/8587/2009, with Fiscal Registration Code RO 25851096, registered with the Public Register of the National Securities Commission under no. PJM05SSAM/400001 as a branch of an Investment Management Company from a Member State of European Union as sole administrator and fund manager of SC Fondul Proprietatea SA for another period/mandate of 4 years starting with 30 September 2014, in accordance with art. 19 paragraph (3) of the Constitutive Act. The list containing data regarding Franklin Templeton Investment Management Limited United Kingdom Bucharest Branch (including name, headquarters, the professional qualification, the evidence that it is registered with Trade Register, the evidence that it is registered in Public Register of CNVM, the Investment Management Agreement endorsed by CNVM under legislation in force) is published on the internet webpage of the Company and is available at the registered office and it may be consulted and completed by shareholders in accordance with the law. The draft of the replacing Investment Management Agreement to be concluded between SC Fondul Proprietatea SA and Franklin Templeton Investment Management Limited United Kingdom Bucharest Branch, proposed by the Fund Manager and subject to the endorsement of the Board of Nominees will be on the agenda of the next annual OGM.

5.2. In case that point 5.1 of the agenda is approved by the shareholders and the replacing Investment Management Agreement will not be in force until 30 September 2014, the extension of the mandate/new mandate of Franklin Templeton Investment Management Limited United Kingdom Bucharest Branch as sole administrator and fund manager of SC Fondul Proprietatea SA will be effective and exercised under the terms and conditions of the current Investment Management Agreement until the execution of the replacement Investment Management Agreement in accordance with this resolution and the relevant legal provisions.

5.3. In case that point 5.1 is not approved, the approval of starting a new selection for the appointment of a sole administrator and fund manager of SC Fondul Proprietatea SA for a mandate of 4 years, starting with 30 September 2014. The OGM empowers the Board of Nominees (i) to establish the regulations for performing international tender and selection procedure; (ii) to manage the international tender and the selection of the new sole administrator and fund manager; (iii) to hire legal, financial and any other consultants required in the international tender and selection procedure; (iv) to recommend to the shareholders the

appointment of the winner of this selection process; (v) to negotiate the draft of the agreement to be concluded with the new sole administrator and fund manager and to inform accordingly the shareholders; and (vi) to perform any other related formalities for the authorization and legal completion of the international tender and selection procedure of the new sole administrator and fund manager of SC Fondul Proprietatea SA. The Board of Nominees shall inform the shareholders on a monthly basis on the status of the selection by publishing information notes on the webpage of Fondul Proprietatea. The Board of Nominees shall inform the Fund Manager immediately after the selection is completed so that the Fund Manager calls the OGM proposing to the shareholders to vote on the candidate having won the selection organized by the Board of Nominees and the approval of the execution of the investment management agreement. The costs of the new selection will be supported by SC Fondul Proprietatea SA and the Board of Nominees will present to shareholders a report regarding the budget in relation to the international tender and selection procedure, after the selection is completed.

The Fund Manager remains on the view that proposal from point 5.1 and 5.2 of the agenda is more appropriate and recommends shareholders to vote against point 5.3 of the OGM agenda.

**Franklin Templeton Investment Management Ltd United Kingdom Bucharest Branch,  
acting as Sole Administrator on behalf of S.C. FONDUL PROPRIETATEA S.A.**