

To: **Bucharest Stock Exchange**
Financial Supervisory Authority

Current report according to Article 99 (s) of the Code of the Bucharest Stock Exchange Market Operator, Title II, Issuers and Financial Instruments

Important events to be reported:

Financial Supervisory Authority's response to the complaint filed against its refusal to endorse all the amendments to the Fund's Constitutive Act and Investment Management Agreement

Franklin Templeton Investment Management Ltd. United Kingdom Bucharest Branch ("FTIML Bucharest Branch/ the Fund Manager"), in its capacity of sole administrator and fund manager of the Fund, would like to inform shareholders and investors of the following:

- As previously reported, the Financial Supervisory Authority ("FSA") refused to endorse all the amendments to the Fund's Constitutive Act and Addendum no. 3 to the Investment Management Agreement of the Fund, which were approved by the shareholders on 25 April 2013. The Fund Manager filed an official complaint against the related FSA's decisions no. 28 and 29 of 12 August 2013 ("Complaint").
- On 13 November 2013, the Fund Manager received FSA's decision no. 997 issued on 6 November 2013, whereby FSA rejected the Complaint.
- The Fund Manager notes that although FSA admits that decisions no. 28 and 29 of 12 August 2013 do not contain the argumentation which led to their issuance (with the Complaint being grounded on this aspect), it did not annul them. In fact, Decision no. 997/6 November 2013 only offers the argumentation which should have been included in the challenged decisions no. 28 and 29 of 12 August 2013.

Please find attached the full text of the decision no. 997/6 November 2013. This report will be published on the webpage of the Fund in the "Investor Reports" and "GSM Information" sections.

Report date:
14 November 2013

Name of the issuing entity:
S.C. Fondul Proprietatea S.A.
(the "Fund")

Registered office:
78-80 Buzesti St.,
7th floor, district 1,
Bucharest, postal code 011017

Phone/fax number:
Tel.: + 40 21 200 9600
Fax: + 40 21 200 9631

**Sole Registration Code with
the Trade Register Office:**
18253260

**Order number in the
Trade Register:**
J40/21901/2005

Subscribed share capital:
RON 13,778,392,208

Paid share capital:
RON 13,413,137,586

**Regulated market on which
the issued securities are
traded:**
Bucharest Stock Exchange

Given that the amendments to the Constitutive Act, the IMA and subsequent addenda are approved by the Fund's shareholders, the Fund Manager will carefully consider further steps that may be appropriate and will update investors of any further material developments.

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

Grzegorz Maciej KONIECZNY

Legal Representative

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ROMANIA
FINANCIAL SUPERVISORY AUTHORITY
FINANCIAL INSTRUMENTS AND INVESTMENTS
SECTOR
DEPARTMENT FOR COMPLAINTS AND INVESTOR PROTECTION
OFFICE FOR COMPLAINTS AND NOTICES

Registered with Financial Supervisory Authority, General Register Office, Output no. A/9620, 8 November 2013, SI-DCI

Registered with S.C. FONDUL PROPRIETATEA S.A., Input no. 2688/13 November 2013

To

SC FONDUL PROPRIETATEA SA
78-80, Buzeşti Street, 7th floor,
1st District, 011017, Bucharest

In attn. to Valeria Nistor – Legal manager

Dear Madam,

Further to your addresses 733/12.09.2013, registered at the Financial Supervisory Authority under no. A/11484/12 September 2013, please find enclosed, in original, the Decision of FSA no. 997/6 November 2013 for solving the complaint files by you against FSA Decisions 28-29/12.08.2013.

Respectfully,

HEAD OF DEPARTMENT
Oana Stefanoiu
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Seal: Financial Supervisory Authority, Romania

**FINANCIAL SUPERVISORY AUTHORITY
FINANCIAL INSTRUMENTS AND INVESTMENTS SECTOR**

DECISION No. 997 / 6 November 2013

On the grounds of the provisions of art. 1 paragraph (1) and (2), of art. 2 paragraph (1) letter a) and letter d), art. 6, paragraphs (1) and (3) and of art. 7 paragraph (2) of the G.E.O. no. 93/2012 regarding the establishment, organization and functioning of the Financial Supervisory Authority, as amended by GEO no. 12/2013, approved with amendments and supplements by Law no. 113/2013, with further amendments and supplements and on the grounds of article 7 para. (1) of Law no. 554/2004 regarding the on administrative disputed claims,

There was analysed the complaint filed by Fondul Proprietatea SA against FSA Decisions 28-29/12.08.2013.

Based on the analysis there were found the following:

By letter no. 733/12.09.2013, registered with FSA FIIS A/11484/12 September 2013, Fondul Proprietatea SA, through legal representative filed a complaint against FSA Decisions 28-29/12.08.2013.

The request of SC Fondul Proprietatea SA has as subject the partial revocation of FSA Decisions 28-29/12.08.2013 from the perspective of their annexes and the issuance of a positive endorsements with respect to all the amendments of the Constitutive Act of SC Fondul Proprietatea SA, as they were approved by EGM decisions no. 1-7 and no. 11-13 / 25.04.2013, as well as to the Addendum no. 3 to the Management Agreement executed on 25.02.2010 between SC Fondul Proprietatea SA and Franklin Templeton Investment Management Ltd United Kingdom (FTIML), as approved by OGM Decision no. 3/25.04.2013.

On the other hand, at point II.1.(xv) of the argumentation of the complaint the plaintiff mentioned that the revocation of the endorsements and their annexes in the form that were issued and issuance of new positive endorsements regarding all the amendments of the Constitutive Act of SC Fondul Proprietatea SA and Addendum no. 3 to the Management Agreement would fully solve its requests.

In fact,

1. Through FSA Decision no. 38/12.08.2013 the following were decided:

“Art. 1 Approval is hereby granted in relation to the amendments made to the Constitutive Act of S.C. Fondul Proprietatea S.A., in accordance with the Resolutions of the Extraordinary General Meeting of Shareholders dated the 25th of April 2013, with the amendments laid down in the Appendix, which is an integral part of this Approval, except for the amendment set forth in art. 7, paragraph (1) of the Constitutive Act.

Art. 2 The Financial Supervisory Authority will approve the amendment laid down in art. 7, paragraph (1) of the Constitutive Act only after the expiry of the period stipulated in art. 208, paragraph (1) of the Company Law no. 31/1990, as republished, with further amendments and supplements.

Art. 3 S.C. Fondul Proprietatea S.A. will submit for approval on occasion of the next Extraordinary General Meeting of Shareholders, the Constitutive Act amended in accordance with the Appendix to this Approval”.

2. Through FSA Decision no. 39/12.08.2013 the following were decided:

“Art. 1 Approval is hereby granted in relation to the amendments made to the Management Agreement entered on the 25th of February 2010 by S.C. Fondul Proprietatea S.A. and Franklin Templeton Investment Management Ltd United Kingdom – Bucharest Branch, in accordance with the Addendum no. 3/17th of May 2013 concluded by the two parties based on the Resolution of the Ordinary General Meeting of Shareholders no. 3/25th of April 2013, with the amendments laid down in the Appendix which forms an integral part of this Approval.

Art. 2 S.C. Fondul Proprietatea S.A. will submit for approval on occasion of the next Ordinary General Meeting of Shareholders, the addendum no. 3/17th of May 2013, in accordance with the Appendix to this Approval.”

Based on the analysis performed by the specialised department,

Based on the Romanian Parliament Decision no. 60/05.11.2013 and the FSA Council Decision approved during the meeting of 6.11.2013,
The following individual decision is issued:

DECISION

Art. 1 The complaint filed by SC Fondul Proprietatea SA against FSA Decisions 28-29/12.08.2013 is partially admitted, in the sense that the reasoning of the plaintiff regarding the lack of argumentation of this individual decisions is valid.

Art. 2 The FSA Decisions no. 28-29/12.08.2013 are supplemented with the annex that is part of this decision.

Art. 3 This decision becomes effective on the date of servicing thereof to S.C. Fondul Proprietatea S.A. In case that above mentioned company cannot be contacted this decision will be effective on the date of its publication in the electronic version of FSA bulletin.

Art. 4 The specialised departments within Financial Instruments and Investments Sector should ensure the communication of this decision and its publication in FSA bulletin.

**President,
DAN RADU RUŞANU**

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Stamp: Financial Supervisory Authority, Romania

Based on the analysis performed by the specialised department there were found the following:

Grounds of the complaint:

The plaintiff mentioned the following argumentation in supporting the complaint filed against FSA Decisions 28-29/12.08.2013:

1. (pct. II.1 of the complaint) **The FSA Decisions no. 28-29/12.08.2013 are illegal because affects the prerogatives of shareholders related to the exertion of their rights over the shares held in SC Fondul Proprietatea SA.**

The Plaintiff reasons that the amendments that were object of endorsement were censored directly through the two annexes, which contain amendments other than those adopted by SC Fondul Proprietatea SA's shareholders in OGM and EGM , on one hand, and ignore part of the amendments proposed by the shareholders, on the other, the authority insisting on keeping the old provisions.

Under the circumstances, the annexes of FSA's Decisions challenged set limitations to the ownership right of Fondul Proprietatea's shareholders in respect of the shares held, thus depriving of effects the resolutions adopted by them in GSMs, contrary to the provisions of Art. 44 para. (1) and Art. 136 para. (5) of the Constitution, which set the protection of ownership rights – which is guaranteed, and the State's obligation to ensure inviolability of private property. The interferences with the will of a commercial company represent violations of the fundamental principles contained by the European norms and expressed in the jurisprudence of European Courts , that prevails (the European Convention for Human Rights, and the European Court of Justice and the ECHR's jurisprudence, as well as in the Treaty on the Functioning of the European Union ("TFEU")).

The right of FSA to endorse is limited to the provision of art. 15 para. (3) of NCS Regulation no. 4/2010 and within the limits of the fundamental objectives assigned to it under Article 2 of NSC's Statute; supervisory authority has not mentioned any legal provision in force that was not respected by the amendments, the decisions appealed being considered as running counter to the objective referring to the promotion of confidence in financial instrument markets and in financial instrument investments. FSA exceeds its general prerogatives aimed at supervising, the decisions and the annexes enclosed being issued without a valid legal ground, in a discretionary manner, and based on opportunity considerations.

Quoting from legal doctrine, the plaintiff mentioned that the principle of the legality needs to be observed avoiding the exes of power; the administration cannot do that everything that is not explicitly forbidden; it should do only what it is explicitly allowed. The public authorities has to act in compliance with the European principle of proportionality or an interference with the fundamental rights of the company's shareholders is an extremely serious consequence of an administrative document, which is not reasoned and is not justified from the perspective of the administrative action's finality. It is considered thus that there may be situations where public servants may act by abusing of power, not necessarily by breaching prohibitive norms, but simply by disregarding fundamental principles of public law, constitutional provisions or by making an interpretation based on political commands.

Law no. 297/2004 stipulates under Art. 2, paragraph 5 a series of explicit prerogatives of FSA which may interfere with the scope of competence of the management bodies of companies subject to supervision, without the authority being able to subrogate against them. These prerogatives should be treated as exceptions from the observance of the ownership right of the shareholders, otherwise becoming an abuse of power/authority of the institution. Invoking the Court of Appeal Decision no. 393/7.03.2005, which validated the prerogative of NSC to convey the GSM, setting aside from the prerogative of changing the president of the board – which is the prerogative of the shareholders, the plaintiff is of opinion that NSC is exceeding its prerogatives and is abusively substituting the management of the company, basically imposing the text of the amendments which are to receive the endorsement of the authority.

In supporting the complaint, SC Fondul Proprietatea SA mentioned also the applicable European and the international case laws (ECJ and HRC decisions) whereby similar state interferences in the function of the private companies have been repeatedly sanctioned, the courts reasoning that maintaining by the state of preferred shares ("golden shares") in commercial companies hinders the free movement of capital. The plaintiff is at opinion that the interference of an authority of Romanian State within the exercise of exclusive rights by shareholders, in a situation where the state did not hold even formally any special right , is an obvious conduct contrary to the Adherence Treaty (AT) and TFEU stating that Romania has fully assumed European *aquis*, including thus all regulation regarding free "movement of

capital”, term which under the EC Directive no. 88/361/EEC regarding the implementation of article 67 of Treaty, especially includes direct investments in the form of participation to a company by holding shares and the possibility to effectively attend to its management and control, but portfolio investments as well.

The existence of special rights in favour of the state may have a discouraging effect regarding the direct investments and portfolio investments, such an interference being likely to be sanctioned by ECHR pursuant to article 1 of Additional Protocol no. 1 of the Convention (regarding the protection of ownership over assets term which includes the shares and related rights from this participation).

For these reasons the plaintiff considers that it is not admissible for amendments approved by a paramount majority by the Fund’s shareholders to depend, in fact, on the Romanian State’s discretion, through the endorsement of FSA – being not endorsed, so discretionarily rejected, without a legal basis. FSA may exert its competences only within its legal limits and without discriminating Fondul Proprietatea against any other similar company, as it may not subrogate, in any case, against the will of the company’s shareholders.

2. (pct. II.2 of the complaint) **The FSA Decisions no. 28-29/12.08.2013 are illegal because do not contain any justification, as legal base or in fact**

FSA Decisions 28-29/12.08.2013 do not contain any justification, even though Fondul Proprietatea filed, together with the letters 382/09.05.2013 and 450/29.05.2013, as amended by better registered with FSA under no. A/3181/30.05.2013, A/3492/03.06.2013, A/6989/16.07.2013 and A/7661/25.07.2013, according to the request of clarifications issued by specialized department, both the resolutions of the EGSM and the OGSM, through which shareholders approved the amendments filed for endorsement, and comparative tables justifying the amendments approved in respect of the Constitutive Act and of Addendum no. 3 of the Management Agreement.

The letters mentioned above were filed supplementary to the previous correspondence to the FSA – the requests of prior endorsement of the amendments to the Constitutive Act and the Addendum no. 3 being filed by the Fund with NSC / FSA through letters no. 43/21.03.2013 and 44/21.03.2013; a correspondence on this topic to which the plaintiff claims that it did not received an answer was filed with NSC in 2012, the challenged decisions being delivered only on 12.08.2013.

Factual and legal reasoning represents a general obligation, valid for any EU document. This requirement is set by Article 253 of the Treaty of European Communities and by Article 162 of EUROATOM, which requires a clear and unequivocal reasoning by the institution issuing the document, and non-observance of this reasoning requirement represents a breach of the basic issuing procedure. The plaintiff showed the practice of ECHR that decided that the notion of „fair trial,” in the sense of Article 6 of the Convention, requires an internal jurisdiction that justified its decision briefly to examine effectively the essential issues that are subject to its assessment, sanctioning states for having breached such obligation .

Also, the plaintiff mentioned the European jurisprudence and our supreme court of justice as well as the constitutional provisions for the free access to justice, defence right, and the obligation of the public authorities to ensure the correct information of citizens on public affairs and on personal interest matters, for proving that the lack of the reasoning of the individual administrative act represents grounds for their illegality especially that in the circumstances that there are issued by an authority having a wide decision power, the reasoning of the administrative act represents a warrant against discretionary power and allows the court to distinguish between the act issued by abuse of power and that adopted in the limits granted to the public authorities by the law.

The complaint is partially grounded.

A. As regards to the argumentation of plaintiff with respect to the infringement of the shareholders rights related to the exercise of their rights over the shares held in SC Fondul Proprietatea SA by issuing FSA Decisions no. 28-29/12.08.2013:

The FSA intervention over the texts approved by shareholders during the EGM and OGM held on 25.04.2013 does not limit the property right and related rights of shareholders or to abusively ignore the amendments adopted by them and was meant to serve the following:

- To protect the shareholders’ interests (please see the proposal to keep all duties and obligations of Board of Nominees), and to ensure the transparency and correct and full information of shareholders of Fondul Proprietatea SA (to this end it was maintained the requirement for

detailed presentation of expenses, it was introduced the obligation that the shareholders votes delivered by mail to be sent with a delivery receipt and not by a simple letter and it was maintained the requirement that each minutes to have attached in addition to the documents regarding the convening the lists of presence and the power of attorneys for shareholders representatives);

- To ensure the observance of legal provisions in force (e.g. art. 12 para. (1) and (2) of Law 247/2005 – as regards to the appointment of the Fund Manager by the GSM, the appointment which should be conducted based on an international tender organised by a tender commission whose attributions are set by the Government and not by the Board of Nominees as the shareholders of SC Fondul Proprietatea SA approved during the GSM of 25.04.2013; the full replacement with the Constitutive Act of “business plan” with the “activity programme”, document stipulated by art. 111 para. (2) letter e) of Law no. 31/1990; the observance of the term provided by article 208 para (1) of the Law no. 31/1990 with respect to the endorsement of the share capital decrease);
- The observance of secondary legislation applicable to SC Fondul Proprietatea SA (Article 224 para. (4) of NSC Regulation no. 15/2004 regarding the attributions, duties of Board of Nominees: “*For concluding the administration contract in case of an investment firm which is not self managed, and also for verifying the unrolling of this contract, the general shareholding can appoint representatives, elect censors or can make up specialized commissions in compliance with the provision of the Law no. 31/1990 R*”), as well as the individual acts issued by the regulator (see art. 2 of Decision no. 38/26.09.2012 regarding the costs of the evaluation of portfolio unlisted participations by independent valuers, which are in the responsibility of SC Fondul Proprietatea SA, respectively the Decision 48/22.01.2013 for rejecting the endorsement of Addendum no. 2 to the Investment management Agreement, addendum mentioned as annex to the Management Agreement).

Thus, FSA did not exceed its powers by requesting some amendments to provisions already approved by shareholders, but it acted in accordance to its scope of protecting shareholders' interests and supervision of the observance of the legislation in force applicable to SC Fondul Proprietatea SA.

Moreover, by Decisions no. 28-29/12.08.2013 there were not imposed by FSA some amendments in a discretionary mater, but it was imposed that the proposed amendments to be debated by the shareholders within the GSM and proposed to be voted for.

In conclusion, FSA did not breach the shareholders will by rejecting the amendments adopted in the GSM but requested that they are corrected in order to be aligned to the applicable legal framework and correct information of shareholders.

We note in the following, point by point, the reasons for which Decision no. 28-29/12.08.2013 and their annexes were issued:

I. Annex to the FSA Decision no. 28/12.08.2013 – regarding the Constitutive Act:

1. Art. 12, paragraph (2), letter d):

“d) to appoint the Fund Manager on the basis of the outcome of the selection made subsequent to a tender for appointing the Fund Manager and to revoke its mandate ;”

Argumentation: FSA decided to maintained the current wording considering that the organisation of the international tender for the appointment of the Fund Manager by the Board of Nominees as approved in the EGM of 25.04.2013 breaches the provisions of art. 12 para. (1) and (2) of Law no. 247/2005 according to which *“The Fund Manager will be selected after international tenders, while it management regulation, as well as the competence of the tender commission will be determined by Government decision. The management company will be appointed with the observance of the provisions of Law no. 297/2004 regarding the capital market, with the subsequent amendments and completions, and of the regulations issued by the National Securities Commission in applying it.”*

2. Art. 14, paragraph (10):

“(10) The documents referring to the conveying, the attendance lists, as well as, as the case may be, the powers of attorney of the representatives of the shareholders shall be attached to each minutes.”

Argumentation: For a better recording of the manner under which the votes were casted in the GSM it was considered necessary that each GSM minutes to have enclosed the power of attorneys of the

shareholders representatives, reason for which the maintaining of the current wording of point 10 was proposed.

3. Art. 14, paragraph (19):

“(19) The votes of the shareholders will be sent electronically or by letter with receipt acknowledgement to the headquarters of Fondul Proprietatea, in a clear and precise form, containing the mention “for”, “against” or “abstained” in relation to each issue subject to approval, for which the shareholder intends to cast a vote.”

Argumentation: Considering the necessity of having a confirmation from shareholders that their votes delivered by mail were received by SC Fondul Proprietatea SA, FSA proposed the amendment of para. 19 of art. 14 by inserting the obligation that the shareholders votes delivered by mail to be sent with a delivery receipt and not by a simple letter, as it is the current wording of the Constitutive Act.

4. Art. 17, paragraphs (4), (5) and (11):

“(4) Receives from the Fund Manager for analysis the annual report and the management and business policy of Fondul Proprietatea and presents an opinion to the Fund Manager and to the general meeting of the shareholders”.

“(5) Receives from the Fund Manager, for analysis, the yearly income and expenditure budget and the activity programme before it is submitted to the approval of the general meeting of the shareholders and presents an opinion to the Fund Manager and to the general meeting of the shareholders”.

“(11) Monitors the following, based on information and reports received from the Fund Manager:

- the list of all portfolio investments and percentage breakdown by each investment type;*
- a list of major transactions occurring in the Fondul Proprietatea portfolio for the period under review;*
- the total profit of the portfolio and comparison of profit with the appropriate benchmark;*
- comparison of return on the portfolio with the portfolio objective;*
- the extent of compliance with the investment policy statement, any variations and actions taken to correct variations;*
- the performance evaluation report,*

all the above with the purpose of drafting and presenting, any time is requested by the shareholders, but in any case at least once a year, to the general meeting of the shareholders, a report regarding the monitoring activity performed”.

Argumentation: Considering the attributions of the Board of Nominees according to article 224 para. (4) of NSC Regulation no. 15/2004 (*“For concluding the administration contract in case of an investment firm which is not self-managed, and also for verifying the unrolling of this contract, the general shareholding can appoint representatives, elect censors or can make up specialized commissions in compliance with the provision of the Law no. 31/1990 R”*), and for ensuring the proper performance of the activity by the members of this board, to the fulfilment of its purpose, it was proposed the maintaining in the Constitutive Act of all the attributions of the Board of Nominees set by the current Constitutive Act. In accordance with art. 12 para. 2 letter j) of the Constitutive Act *“to establish the annual income and expenditure budget and to approve the activity programme for the following financial year”*.

Considering that in para. (5) that was object of amendment it was considered that *“business plan”* can be replaced with *“activity programme”*, paper that is regulated by Law no. 31/1990 R, at art. 111 para. (2) letter e):

“(2) Besides the debate of other issues on the agenda, the general meeting shall be obliged:

[...]

e) to determine the income and expenditure budget and the activity program for the next financial year, as the case may be;”

According to the comments mentioned above it was considered that the current text of para. (11) should be maintained.

5. Art. 19, paragraph (3):

“(3) The mandate of the Fund Manager is of 4 years. 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 fulfillment of all relevant formalities for the authorization and legal completion of such appointment”.

Argumentation: It was considered that the text should be reworded to be in line with the comments from art. 12 letter d).

6. Art. 21, paragraph (3), letter (vii):

“(vii) proposes for the prior approval of the Board of Nominees and further, of the general meeting of the shareholders, of the yearly income and expenditure budget and activity programme”.

Argumentation: It was considered that the replacement of “business plan” with “activity programme” is needed for being in line with art. 12 para. (2) letter j) and in order to use the same terms as Company Law no. 31/1990.

II. Annex to the FSA Decision no. 29/12.08.2013 – regarding the Addendum of the Management Agreement

1. Point 6.1, letters (vi) and (vii):

“(vi) preparing an annual report on the management and the business policy of Fondul Proprietatea, to be presented to the Board of Nominees for approval prior to its submission to the general meeting of the shareholders;

(vii) proposing for the prior approval of the Board of Nominees and further, of the general meeting of the shareholders, of the yearly income and expenditure budget and activity programme of Fondul Proprietatea;”

Argumentation: it was proposed to maintain the annual report regarding the business policy and the replacement of “business plan” with “activity programme”, paper mentioned in art. 111 para. (2) letter e) of Law no. 31/1990, for being in line with the proposal for art. 17 para. (5) of the Constitutive Act .

2. Point 9:

“9. Fund Manager remuneration and expenses

The Fund Manager’s remuneration for its services under this Management Agreement is established according to the requirements in the Regulation for Organizing the Tender, the Tender Book and the final offer formulated following the negotiations.”

Argumentation: Through NSC Decision no. 48/22.0.2013 it was rejected the request of FTIML to modify the Investment Management Agreement according to Addendum 2 of the agreement , addendum that brought an annex to the agreement. By this it was proposed to eliminate the references to the Fund Manager’s fee according to the attachment of the agreement ruling the additional fee and as a consequence, maintaining the current text of art. 9.

In fact the amendment of the Management Agreements requested by the legal representative of SC Fondul Proprietatea SA referred, between others, to adding a new annex to the agreement, Annex 2, according to which FTIML would receive an additional fee during 2012-2014, for obtaining the money in order to allow the Fund to pay additional distributions to shareholder by:

- special dividends (additional distribution representing the gross special dividends);
- purchases of own shares for cancelling the shares (additional distribution representing the acquisition price of the own shares purchased);
- share capital decreases using reductions in nominal value of shares (additional distribution represented by the amount distributed to shareholders);
- other distributions of assets (securities and other non-cash assets) the additional distribution representing the value of those assets.

Through NSC Decision no. 48/22.0.2013 it was rejected the request of SC Fondul Proprietatea SA for the following reasons:

“- the obligations assumed by FTIML and the obligations regarding the investment policy of the Fund, and the fees paid for managing it (the fee structure based on the fixed fees, and the performance fees) must be respected by it after its appointment, during the mandate as Sole Director, according to the final offer submitted by FTIML during the international tender, based on which it was appointed as Fund Manager of SC Fondul Proprietatea SA;

- the additional fee representing a fee of the Fund Manger mentioned in Addendum 2 of the Management Agreement concluded on 25.02.2010 between SC Fondul Proprietatea SA and Franklin Templeton Investment Management Ltd United Kingdom Bucharest Branch, signed

based on OGM Decision no. 7/04.04.2012, is not established in accordance with the Regulation for organising the international tender for appointing the Fund Manager, as approved by Government Decision no. 1514/2008;

- *paying special distributions by special dividends as a result of selling securities does not respect the objectives assumed by Franklin Templeton Investment Management Ltd United Kingdom Bucharest Branch when file the proposal during the selection of the Fund Manager of SC Fondul Proprietatea SA, according to the Tender Book (Annex 3, Chapter III, The objectives of the portfolio from the Investment Policy Statement) as approved by Government Decision no. 1514/2008.”*

According to the letter registered with NSC under no. 4302/02.02.2013 SC Fondul Proprietatea SA, legally represented filed a complaint against NSC Decision no. 48/22.0.2013 asking for the recalling of this decision and for issuing of a positive endorsement regarding the amendments of the Management Agreement concluded on 25.02.2010 with Franklin Templeton Investment Management Ltd United Kingdom Bucharest Branch, according to Addendum 2 signed based on OGM Decision no. 7/04.04.2012. In the argumentation of the complaint filed against NSC Decision no. 48/22.0.2013, the plaintiff mentioned that the provision of the Government Decision no. 1514/2008 that mentioned the condition to modify the Constitutive Act of the Fund by a Government Decision it was implicitly repealed by Law no. 142/2010 for approving the GEO no. 51/2007 for the acceleration of the compensation process resulted from abusively nationalised assets. Thus, in the opinion of plaintiff, that legal provision totally stated the status of private commercial company of SC Fondul Proprietatea SA, entity that is not under Romanian State control anymore and can decides it proper destiny.

In relation with the main argument mentioned by SC Fondul Proprietatea SA the NSC repeatedly requested the plaintiff, by phone and in written to communicate the opinion of the issuer of Government Decision no. 1514/2008 regarding the application in present of the legal provisions mentioned in the Regulation for organising the international tender for appointing the Fund Manager of SC Fondul Proprietatea SA.

The representatives of SC Fondul Proprietatea SA did not respond to our request and the complaint against the NSC Decision no. 48/22.0.2013 was analysed and rejected with arguments during the administrative stage, by NSC Decision no. 374/25.04.2013 issued according to the decision of the commission issued on 25.04.2013 and published in NSC Bulletin no. 16/2013.

Even after the first administrative stage SC Fondul Proprietatea SA challenged the NSC Decision no. 48/22.0.2013 in front of Bucharest Court of Appeal – The Administrative Section, and the court has not issued a decision, the representatives of the company put on the OGM agenda the amendments of management agreement for paying an additional fee to FTIML that exceeds the fee established during the international selection that had as result the appointing as Fund Manager of the Fund.

In relation with the reasoning for rejecting the complaint of SC Fondul Proprietatea SA, as mentioned in NSC Decision no. 374/25.04.2013¹, please find them below, with the comment that there are still applicable in relation with similar argumentation used by the plaintiff against FSA Decisions no. 28-29/12.08.2013 regarding the rejecting the amendment of art. 9 of the Management Agreement.

« In relation with the amendment of the fee formula requested by Franklin Templeton, we note that:

Through the Tender Book of the tender organised for selecting the Fund Manager of SC Fondul Proprietatea SA as approved by Government Decision no. 1514/2008 it was set and asked to the candidates (Chapter 6 Fees) a certain structure of fees based on fixed fees and performance fees. According to Annex 2 of the Tender Book there are presented the financial offers that should contain the annual fees that the candidates should receive according to the Management Agreement, detailing the fixed fees and the combined fees and the formulas for them.

According to the provisions of the Investment Management Agreement concluded on 25.02.2010 between SC Fondul Proprietatea SA and Franklin Templeton Investment Management Ltd United Kingdom Bucharest Branch, clause 6 the Obligations of Fund Manager, the object of management: *“...the obligations of the Fund Manager will be at least the ones established in the Tender Book and the IPS, all of them approved by Government Decision no. 1514/ 2008 and assumed by the offer submitted*

¹ Though NSC Decision no. 374/25.04.2013 it was rejected the complaint filed by SC Fondul Proprietatea SA against NSC Decision no. 48/22.01.2013.

by the Fund Manager within the international tender for appointing the Fund Manager for Fondul Proprietatea S.A.”

In the same management agreement there is the following provision (Clause 9 Fund Manager fees and expenses):

“The Fund Manager’s remuneration for its services under this Management Agreement is established according to the requirements in the Regulation for Organizing the International Tender, the Terms of Reference and the final offer formulated following the negotiations.

As remuneration for its services under this Management Agreement, the Fund Manager shall receive a management fee in Romanian national currency – Lei, according to the Annex to this Management Agreement”.

From the clause mentioned above it results that in relation with the fees even the management agreement in force as at today rules as an obligation the observing by the Fund Manager of the obligations assumed by the Regulation for organising the tender, the Tender Book and the final offer filed as a result of the negotiations. As a consequence FTIML must respect all these obligations regarding the maintain the structure of the fees, based on a fixed fee and a performance fee. It should be mentioned that the formula of the fees as agreed in the final offer filed by Franklin Templeton was one of the main elements that point the winner, and the change of this element after it is an inequity for other competitors. The fee based on performance is a fee strongly related to the fulfilment of the investment objectives assumed by Franklin Templeton when filed the proposal for being appointed as Find Manager of SC Fondul Proprietatea SA. The additional fee mentioned by Franklin Templeton cannot be assimilated to the performance fee based on the performance of the Sole Director as long as this is not obtained as a result of the increase of the NAV following the prudent diversification of the portfolio.

Paying additional fees to Franklin Templeton in the case when SC Fondul Proprietatea SA offers additional distributions as special dividends as a result of the disinvestment of securities does not respect, in our opinion, the performance objectives assumed by Franklin Templeton when filed the proposal for being appointed as Sole Director of SC Fondul Proprietatea SA, according to the Tender Book (Annex 3, Chapter III, Portfolio objectives from the Investment Policy Statement), as approved by Government Decision no. 1514/2008, as follows:

“The overall objective of the Portfolio is to achieve stable capital growth while maintaining a prudent level of diversification. Diversification is an important objective of FP within the practical constraints of the existing market and without jeopardizing the other objectives.

The objectives of the FP Portfolio are:

- *to provide returns in excess of the performance of the Romanian economy measures over the long-run (as measured by nominal GDP growth);*
- *to achieve improved diversification over a period of 3 years (within the framework of the permitted asset allocation to invest and eligible investments);*
- *to achieve a balance between the stability of growth and overall return;*
- *after listing, to minimize the potential gap between the share price and the net asset value (NAV) of FP.*

The Fund Manager will manage the Portfolio in order to achieve these objectives in a balanced manner.

Qualitative objectives that will be set for the Fund Manager are:

- *clarity of the Fund Manager’s investment strategy and how it contributes to achieving the main Portfolio objectives;*
- *the success in diversifying the Portfolio and the type of diversification chosen (by sector, by size – small caps/large caps);*
- *the effectiveness of the engagement with the investee companies and how this brings value added to FP;*
- *the effectiveness of communication and interaction with BoN”.*

Also, we note that the sale of the assets of Fondul Proprietatea SA and distribution towards the shareholders of the money resulted from the sale, without proceeding to a reinvestment of the funds for maximizing the value of the managed assets, breaches the specifics of the activity of managing the investments of a closed end fund, namely to attract financial resources from individuals and/or legal entities, for the purpose of investing them, in accordance with the provisions of Article 2 (1) point 20 of Law no. 297/2004 regarding capital market law, as subsequently amended and supplemented.

With respect to the arguments invoked by the plaintiff, namely that the provision of Government Decision no. 1514/2008 which conditioned the amendment of the constitutive act of Fondul Proprietatea

by the approval through government decision, was implicitly repealed by Law no. 142/2010 for the approval of GEO no. 81/2007 for the acceleration of the procedure for granting compensations related to the real estate taken abusively, we note that NSC does not deny the right of the general meeting of shareholders of Fondul Proprietatea to modify the company's constitutive act or the management agreement, but any amendment must be performed within the limits and with the observance of the applicable legal provisions and the commitments assumed by the fund manager, including also the structure of the management fee.

In this context, we are of opinion that, through the amendments brought to the management agreement, Franklin Templeton Investment Management Ltd. United Kingdom – Bucharest Branch does not observe the obligations and commitments assumed in the final offer submitted during the international tender.

Also, we consider that the request of renunciation by FTIM Ltd. United Kingdom – Bucharest Branch to some of the requirements imposed through the tender book and the Regulation for organizing the international tender for the appointment of the management company, must be submitted to the compulsory consultation and expertise of the issuer of the Government Decision no. 1514/2008 through which these were approved, exclusively with respect to the obligation of maintaining the manner for determining the management fee imposed by the selection commission established based on the Decision of the Prime Minister no. 67/2008. In absence of evidences for this point, the argumentation of the plaintiff regarding the temporary character of GD 1514/2008 cannot be admitted, NSC not being able to rule with respect to the applicability in time of a legislative act issued by the Government.

In our opinion, for clarifying these aspects the plaintiff has the possibility to address to the Romanian Government for obtaining the official position of the issuer of GD 1514/2008.

As regards the plaintiff's statement in accordance to which "*NSC's decision imposes important limitations of the ownership rights to the shareholders of Fondul Proprietatea with respect to the shares they held within the Fund....*", this is not grounded as long as the provisions of NSC's Decision no. 48/22.01.2013 do not limit the right of use by the shareholders of their shares in Fondul Proprietatea, but impose the observance and maintaining of the obligations and commitments undertaken by FTIML with respect to the investment policy of the fund, as well as the fees which will be paid for its management (fee structure based on fixed fee, namely on performance ones), throughout the mandate as manager, in accordance with the provisions of the final offer submitted by FTIML during the international tender, based on which it was selected as fund manager of Fondul Proprietatea SA.

Therefore, NSC's decision does not limit the right of the company to proceed to the sale of its pecuniary assets, but only the right to change the management fee as incentive in their liquidation process.

For these reasons, we are of opinion that it is not grounded as well the plaintiff's statement that NSC's decision would breach the capital freedom of movement and represents a conduct which was sanctioned repeatedly through the decisions of ECJ and HRC.

3. Article 9.2 letter (e)

"Save as expressly provided otherwise in this Management Agreement, all costs and expenses incurred by the Fund Manager in the performance of its functions shall not be for the account of the Customer, but as the parties to this Agreement agree, shall be borne by the Fund Manager.

Customer shall bear, or shall reimburse the Fund Manager where the Fund Manager has incurred them in advance, the following expenses:

e) expenses related to the admission to trading of the financial instruments issued by Fondul Proprietatea, and any subsequent issues or offerings, expenses with intermediaries arranging the listing, expenses related to marketing and arranging presentations for the public offer to build investor interest, and expenses related to ongoing reporting and disclosure obligations applicable to an issuer admitted to trading on a regulated market;"

Argumentation: In fact, the amendments approved during the OGM of 25.04.2013 were targeting the replacement of the expenses for marketing and arranging presentations for the public offer to build investor interest, with expenses for the investor relations and public relations to the interest of Fondul Proprietatea, as well as the replacement of the expenses related to ongoing reporting and disclosure obligations applicable to an issuer admitted to trading on a regulated market with expenses related to the reporting and disclosure obligations in accordance with the legislation in force.

The expenses provided under letter a) and the following of Article 9.2 represent an exception from the rule provided by the first part of this Article, according to which all costs and expenses incurred by the Fund Manager in the performance of its functions shall not be for the account of the Customer (being already established a fee for the management of the Fund following the international tender), it was proposed the maintaining of the initial form of point 9.2 para (e) taking into consideration that, for the interest of the shareholders, it is to clearly state the categories of expenses which are to be borne by the Client, instead of generally presenting them.

4. Point 9.2, letters (f), (g), (h), (r) and (s) will be eliminated.

Argumentation: In accordance with the amendments approved during the OGM of 25.04.2013, letter (e) of the current management agreement was restructured into four elements numbered accordingly with letters (e) – (h). Due to the fact that FSA opted for maintaining the initial form of point 9.2 letter (e), it was consequently necessary to delete letters (f) – (h).

By introducing letter (r) it was intended to pass over to the Client (the Fund) the expenses related to the valuation of portfolio unlisted participations by independent valutors, with the prior approval of the Board of Nominees, within the terms set by OGM Resolution no. 22/27.06.2012.

Through NSC's decision no. 38/26.09.2012, it was endorsed the outsourcing by FTIML towards KPMG Romania SRL of the valuation activity of the participations which are not admitted to trading within the portfolio of Fondul Proprietatea, provided by Article 6 letter (b) point 3 of GEO 32/2012, in the conditions of observing the provisions of Article 33 therein.

In accordance with Article 3 of NSC's decision no. 38/26.09.2012, "*All the expenses related to the activity mentioned above shall be borne by Franklin Templeton Investment Management Ltd. United Kingdom – Bucharest Branch from the management fee it receives*". Therefore, it was proposed the deletion of letter (r) due to the fact that expenses related to the valuation of portfolio unlisted participations must be borne by the Fund Manager and not by Fondul Proprietatea, as the valuation of the portfolio is one of the specific activities of the Fund Manager, included in the notion of managing collective portfolio, provided by Article 6 letter (b) point 3 of GEO 32/2012, and for which the fund manager is already paid for.

5. Point 9.2, letter (t) will be amended and read as follows:

"o) other expenses approved by the BoN for the Customer in accordance with the Constitutive Act."

Argumentation: it was proposed the deletion of letter (s) [*other expenses with an annual value not exceeding EUR 50,000 related to the activity of Fondul Proprietatea*], and as regards letter (t) it was proposed the maintaining of the initial wording [*the current letter o) of the management agreement*], with the correspondent renumbering of paragraphs, having in mind that it is necessary to clearly state the category of expenses to be paid by the Fund, supplementary to those included in the management fee and not a simple generic presentation of them.

6. Article 19.5

Considering the elimination by the company of Article 20.2, namely the fact that the members of the Fund Manager's team were proposed through the initial offer submitted in the international tender for the appointment of the Fund Manager, it was proposed the rewording of the text of Article 19.5, as follows:

"The Fund Manager shall promptly notify the Customer in writing with respect to the change of portfolio managers, main persons responsible for the Portfolio or senior staff responsible for setting the business and investment policy of the Fund Manager.

The Fund Manager will draft yearly, within 30 days from the beginning of the calendar year, a list of portfolio managers, containing at least those proposed in the initial offer submitted during the international tender for the appointment of the fund manager of S.C. "Fondul Proprietatea" S.A. and who work within the Fund Manager, the main persons responsible for the Portfolio, and senior staff responsible for setting the business and investment policy within the Fund Manager.

In case of a need to change a Portfolio manager or the main persons with responsibilities in respect of the Portfolio, the replacement shall have identical or similar qualifications and professional experience and similar time allocation for the Customer."

B. Considering the reasons invoked by the plaintiff regarding the lack of argumentation in fact and in law of the FSA's Decisions no. 28 and 29/12.08.2013 (point II.2 of the complaint), we make the following clarifications:

Through FSA's Decision no. 28/12.08.2013 it was decided the endorsement of the amendments to the constitutive act of Fondul Proprietatea SA, in accordance with the resolutions of the extraordinary shareholders' meeting of 25.04.2013, with the amendments described in the annex to this individual act and with the exception of the amendment of Article 7 para. (1) of the constitutive act.

In fact, through this individual act, there were endorsed only two of the requested amendments, as they were approved by the shareholders of Fondul Proprietatea SA during the EGM of 25.04.2013.

In case of the other proposed amendments, part of them were rejected in full, with the current wording of the constitutive act being applicable, and partially were endorsed under the condition they are approved during the next EGM, taking into consideration the FSA's amendments described in the annex.

Also, the endorsement of the amendment of Article 7 para. (1) of the constitutive act, regarding the share capital decrease following the annulment of the bought back shares, was delayed for the observance of the two months term provided by Article 208 para. (1) of Companies' Law no. 31/1990.

Similarly, through Decision no. 29/12.08.2013 part of the amendments to the addendum to the management agreement concluded between the Fund and the sole administrator were rejected, and current wording maintained, part of them were endorsed in the form approved by the shareholders in the OGM of 25.04.2013, while the rest are to be presented to the shareholders' vote during the next GSM, in the form provided by the annex to the individual act (with the amendments proposed by FSA).

As regards the plaintiff's claim regarding FSA's omission to provide in fact and in law argumentation for the Decisions no. 28 and 29/12.08.2013, following the analysis of these individual acts it has resulted that the only legal grounds therein are related to the establishment, forming, attributions, competencies and general powers of FSA, the type of administrative acts which can be issued by FSA and maintaining the validity of those acts issued previously by the authorities which currently form the FSA, as well as the grounds based on which the amendments to the constitutive act of Fondul Proprietatea SA must be submitted for prior endorsement to the FSA².

It is noted thus that FSA's Decisions no. 28 and 29/12.08.2013 did not contain the argumentation in fact and in law, from the perspective of the amendments approved during the shareholders' meetings and rejected or reworded by FSA. The exception is provided by the postponement of the endorsement of the amendment of the constitutive act through the reduction of the share capital, which had a justification in fact and in law, as the preamble of the individual act mentions the date of publication in the Romanian Official Gazette of Fondul Proprietatea SA EGM Resolutions no. 1-7/25.04.2013 and the requirement to observe the two months term provided by Article 208 para. (1) of Companies' Law no. 31/1990.

The current legal framework does not contain a general obligation to provide argumentation for all administrative acts, this being expressly provided by only some legislative acts, such as: GD no. 2/2001 impose as mandatory elements of the minutes ascertaining a misdemeanor the description of the misdemeanor and the identification of the legal ground based on which the sanctions is established and applied, GD no. 92/2003 regarding Fiscal Procedure Code stating that it is mandatory to provide argumentation for the decisions establishing and terminating safeguarding measures, Law no. 544/2001 regarding the access to public information which provides that it is mandatory to justify the reason for which the communication of public information is denied. Even the by-laws of NSC provide under Article 9 para. (5) that "*Decisions and ordinances issued by NSC must contain the in fact and in law argumentation which led to the issuance of those respective measures*", currently being debatable whether that respective provision is still in force from the perspective of Article 6 para. (3)³ and Article 28⁴ of GEO no. 93/2012.

Nevertheless, legal scholars and courts of law of any degree have considered constantly that the individual administrative act must contain the justification in fact and in law of the measures imposed by the issuer during the exercise of its duties, lack of these elements leading to the annulment of the act.

² Article 1 para. (2), Article 2 para. (1) letters a) and d), Article 3 letter a), Article 6 para. (1) and (3) and Article 27 of GEO no. 93/2012, Article 14 of NSC's Regulation no. 4/2010, FSA Resolution no. 54/18.06.2013.

³ Article 6 (3) Individual acts issued by FSA are authorizations, endorsements and decisions.

⁴ The provisions of this ordinance are to be supplemented with the legislation regarding the activity of the authority which ceases to exist, on a case by case basis, to the extent they do not breach the provisions of this ordinance.

The courts' reasoning, depicted also from the case law invoked by the plaintiff, derives from the provisions of Article 18⁵ of Law no. 554/2004, setting the administrative courts of law attributes to perform the legality check of the administrative acts and concludes naturally that in order for the court to perform this, it must know the reasons for which the issuer, during the fulfillment of its discretionary power, applied the solution challenged by the grieved party, and that the damage must be within the act. The argumentation represents one of the legality and validity conditions of the administrative act and represents the warranty against arbitrary and excess of power from the public authority, being imposed especially in case of the acts which suppress rights or individual legal cases.

Also, the Bucharest Court of Appeal – tax and administrative disputed claims department, considered in file no. 4291/87/2011, in which it ruled as an appeal court, the following: *“the court of first instance ruled correctly upon the illegality of the challenged decision for the reason that it did not contain the argumentation, the obligation to provide the argumentation being a legality requirement unanimously accepted both on national level, as well as European one. The argumentation of the administrative act represents a warranty against arbitrary, especially being imposed in case of the acts which suppress rights or subjective individual legal cases. The argumentation of an administrative decision cannot be limited by the competencies or legal grounds, but it must contain also factual elements allowing, on one hand, the receivers of the act to know and evaluate the grounds of the decision, and on the other, to allow the performance of the legality check⁶.”*

Furthermore, in accordance with the provisions of Article 18 para. (3) of administrative disputed claims Law no. 544/2004, *“when solving the claim, the court shall rule on the compensations for the moral and material damages suffered, if the plaintiff requested this.”*

Nevertheless, we note that, among the amendments to the constitutive acts there are some which were submitted also in the past to the capital market authority during the meeting of 27.09.2011 and with respect to which the latter ruled already through letter no. 15905/30.09.2011, in the sense of rejecting them and which, consequently, were not presented for approval during the GSM of 23.11.2011.

Also, among the above-mentioned amendments which formed the subject of previous requests, there is the share capital decrease from RON 13,778,392,208 to RON 13,538,087,407, approved by shareholders also in the GSM of 25.04.2012, with the clarification that the respective amendment was not endorsed due to the fact that, as mentioned by the company, *“the resolution was not published yet with the Official Gazette because a person blocked the registration with the Trade Registry.”*

The amendment proposals were submitted again to the analysis of the shareholders during the Extraordinary Shareholders' Meeting of Fondul Proprietatea SA of 25.04.2013, being approved by them.

In conclusion, the plaintiff's claims are grounded with respect to the insufficient in fact and in law argumentation of FSA's Decisions no. 28 and 29/12.08.2013.

**President
Dan Radu Rusanu**

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Stamp: Financial Supervisory Authority, President, Romania]

⁵ Solutions which the court can provide

(1) The Court, when solving the claim to which Article 8 (1) refers to, may, on a case by case basis, to totally or partially annul the administrative act or to issue a certificate, proof or any other document.

(2) The court is competent to rule on, besides on the situations provided by Article 1 para. (8), on the legality of the administrative acts or operations based on which the challenged act was issued. [...]

⁶Decision no. 2973/10.09.2012 issued by the Bucharest Court of Appeal - tax and administrative disputed claims department.

The reasoning used when FSA Decisions no. 28 and no. 29/12.08.2013 and their annexes were issued

I. Annex of the NSC Decision no. 28/12.08.2013 – regarding the Constitutive Act:

1. Art. 12, paragraph (2) letter d):

“d) to appoint the Fund Manager on the basis of the outcome of the selection made subsequent to a tender for appointing the Fund Manager and to revoke its mandate ;”

Argumentation: FSA decided to maintain the current wording considering that the organisation of the international tender for the appointment of the Fund Manager by the Board of Nominees as approved in the EGM of 25.04.2013 breaches the provisions of art. 12 para. (1) and (2) of Law no. 247/2005 according to which *“The Fund Manager will be selected after international tenders, while it management regulation, as well as the competence of the tender commission will be determined by Government decision. The management company will be appointed with the observance of the provisions of Law no. 297/2004 regarding the capital market, with the subsequent amendments and completions, and of the regulations issued by the National Securities Commission in applying it.”*

2. Art. 14, paragraph (10):

“(10) The documents referring to the conveying, the attendance lists, as well as, as the case may be, the powers of attorney of the representatives of the shareholders shall be attached to each minutes.”

Argumentation: For a better recording of the manner under which the votes were casted in the GSM it was considered necessary that each GSM minutes to have enclosed the power of attorneys of the shareholders representatives, reason for which the maintaining of the current wording of point 10 was proposed.

3. Art. 14, paragraph (19):

“(19) The votes of the shareholders will be sent electronically or by letter with receipt acknowledgement to the headquarters of Fondul Proprietatea, in a clear and precise form, containing the mention “for”, “against” or “abstained” in relation to each issue subject to approval, for which the shareholder intends to cast a vote.”

Argumentation: Considering the necessity of having a confirmation from shareholders that their votes delivered by mail were received by SC Fondul Proprietatea SA, FSA proposed the amendment of para. 19 of art. 14 by inserting the obligation that the shareholders votes delivered by mail to be sent with a delivery receipt and not by a simple letter, as it is the current wording of the Constitutive Act.

4. Art. 17, paragraphs (4), (5) and (11):

“(4) Receives from the Fund Manager for analysis the annual report and the management and business policy of Fondul Proprietatea and presents an opinion to the Fund Manager and to the general meeting of the shareholders”.

“(5) Receives from the Fund Manager, for analysis, the yearly income and expenditure budget and the activity programme before it is submitted to the approval of the general meeting of the shareholders and presents an opinion to the Fund Manager and to the general meeting of the shareholders”.

“(11) Monitors the following, based on information and reports received from the Fund Manager:

- the list of all portfolio investments and percentage breakdown by each investment type;*
- a list of major transactions occurring in the Fondul Proprietatea portfolio for the period under review;*
- the total profit of the portfolio and comparison of profit with the appropriate benchmark;*
- comparison of return on the portfolio with the portfolio objective;*
- the extent of compliance with the investment policy statement, any variations and actions taken to correct variations;*

- the performance evaluation report,

all the above with the purpose of drafting and presenting, any time is requested by the shareholders, but in any case at least once a year, to the general meeting of the shareholders, a report regarding the monitoring activity performed”.

Argumentation: Considering the attributions of the Board of Nominees according to article 224 para. (4) of NSC Regulation no. 15/2004 (“*For concluding the administration contract in case of an investment firm which is not self-managed, and also for verifying the unrolling of this contract, the general shareholding can appoint representatives, elect censors or can make up specialized commissions in compliance with the provision of the Law no. 31/1990 R*”), and for ensuring the proper performance of the activity by the members of this board, to the fulfilment of its purpose, it was proposed the maintaining in the Constitutive Act of all the attributions of the Board of Nominees set by the current Constitutive Act. In accordance with art. 12 para. 2 letter j) of the Constitutive Act “*to establish the annual income and expenditure budget and to approve the activity programme for the following financial year*”.

Considering that in para. (5) that was object of amendment it was considered that “*business plan*” can be replaced with “*activity programme*”, paper that is regulated by Law no. 31/1990 R, at art. 111 para. (2) letter e):

“(2) Besides the debate of other issues on the agenda, the general meeting shall be obliged:

[...]

e) to determine the income and expenditure budget and the activity program for the next financial year, as the case may be;”

According to the comments mentioned above it was considered that the current text of para. (11) should be maintained.

5. Art. 19, paragraph (3):

“(3) The mandate of the Fund Manager is of 4 years. 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 fulfillment of all relevant formalities for the authorization and legal completion of such appointment”.

Argumentation: It was considered that the text should be reworded to be in line with the comments from art. 12 letter d).

6. Art. 21, paragraph (3), letter (vii):

“(vii) proposes for the prior approval of the Board of Nominees and further, of the general meeting of the shareholders, of the yearly income and expenditure budget and activity programme”.

Argumentation: It was considered that the replacement of “*business plan*” with “*activity programme*” is needed for being in line with art. 12 para. (2) letter j) and in order to use the same terms as Company Law no. 31/1990.

II. Annex to the FSA Decision no. 29/12.08.2013 – regarding the Addendum of the Management Agreement

1. Point 6.1, letters (vi) and (vii):

“(vi) preparing an annual report on the management and the business policy of Fondul Proprietatea, to be presented to the Board of Nominees for approval prior to its submission to the general meeting of the shareholders;

(vii) proposing for the prior approval of the Board of Nominees and further, of the general meeting of the shareholders, of the yearly income and expenditure budget and activity programme of Fondul Proprietatea;”

Argumentation: it was proposed to maintain the annual report regarding the business policy and the replacement of “*business plan*” with “*activity programme*”, paper mentioned in art. 111 para. (2) letter e) of Law no. 31/1990, for being in line with the proposal for art. 17 para. (5) of the Constitutive Act .

2. Point 9:

“9. Fund Manager remuneration and expenses

The Fund Manager’s remuneration for its services under this Management Agreement is established according to the requirements in the Regulation for Organizing the Tender, the Tender Book and the final offer formulated following the negotiations.”

Argumentation: Through NSC Decision no. 48/22.0.2013 it was rejected the request of FTIML to modify the Investment Management Agreement according to Addendum 2 of the agreement, addendum that brought an annex to the agreement. By this it was proposed to eliminate the references to the Fund Manager's fee according to the attachment of the agreement ruling the additional fee and as a consequence, maintaining the current text of art. 9.

In fact the amendment of the Management Agreements requested by the legal representative of SC Fondul Proprietatea SA referred, between others, to adding a new annex to the agreement, Annex 2, according to which FTIML would receive an additional fee during 2012-2014, for obtaining the money in order to allow the Fund to pay additional distributions to shareholder by:

- special dividends (additional distribution representing the gross special dividends);
- purchases of own shares for cancelling the shares (additional distribution representing the acquisition price of the own shares purchased);
- share capital decreases using reductions in nominal value of shares (additional distribution represented by the amount distributed to shareholders);
- other distributions of assets (securities and other non-cash assets) the additional distribution representing the value of those assets.

Through NSC Decision no. 48/22.0.2013 it was rejected the request of SC Fondul Proprietatea SA for the following reasons:

"- the obligations assumed by FTIML and the obligations regarding the investment policy of the Fund, and the fees paid for managing it (the fee structure based on the fixed fees, and the performance fees) must be respected by it after its appointment, during the mandate as Sole Director, according to the final offer submitted by FTIML during the international tender, based on which it was appointed as Fund Manager of SC Fondul Proprietatea SA;

- *the additional fee representing a fee of the Fund Manger mentioned in Addendum 2 of the Management Agreement concluded on 25.02.2010 between SC Fondul Proprietatea SA and Franklin Templeton Investment Management Ltd United Kingdom Bucharest Branch, signed based on OGM Decision no. 7/04.04.2012, is not established in accordance with the Regulation for organising the international tender for appointing the Fund Manager, as approved by Government Decision no. 1514/2008;*
- *paying special distributions by special dividends as a result of selling securities does not respect the objectives assumed by Franklin Templeton Investment Management Ltd United Kingdom Bucharest Branch when file the proposal during the selection of the Fund Manager of SC Fondul Proprietatea SA, according to the Tender Book (Annex 3, Chapter III, The objectives of the portfolio from the Investment Policy Statement) as approved by Government Decision no. 1514/2008."*

According to the letter registered with NSC under no. 4302/02.02.2013 SC Fondul Proprietatea SA, legally represented filed a complaint against NSC Decision no. 48/22.0.2013 asking for the recalling of this decision and for issuing of a positive endorsement regarding the amendments of the Management Agreement concluded on 25.02.2010 with Franklin Templeton Investment Management Ltd United Kingdom Bucharest Branch, according to Addendum 2 signed based on OGM Decision no. 7/04.04.2012. In the argumentation of the complaint filed against NSC Decision no. 48/22.0.2013, the plaintiff mentioned that the provision of the Government Decision no. 1514/2008 that mentioned the condition to modify the Constitutive Act of the Fund by a Government Decision it was implicitly repealed by Law no. 142/2010 for approving the GEO no. 51/2007 for the acceleration of the compensation process resulted from abusively nationalised assets. Thus, in the opinion of plaintiff, that legal provision totally stated the status of private commercial company of SC Fondul Proprietatea SA, entity that is not under Romanian State control anymore and can decides it proper destiny.

In relation with the main argument mentioned by SC Fondul Proprietatea SA the NSC repeatedly requested the plaintiff, by phone and in written to communicate the opinion of the issuer of Government Decision no. 1514/2008 regarding the application in present of the legal provisions mentioned in the Regulation for organising the international tender for appointing the Fund Manager of SC Fondul Proprietatea SA.

The representatives of SC Fondul Proprietatea SA did not respond to our request and the complaint against the NSC Decision no. 48/22.0.2013 was analysed and rejected with arguments during the administrative stage, by NSC Decision no. 374/25.04.2013 issued according to the decision of the commission issued on 25.04.2013 and published in NSC Bulletin no. 16/2013.

Even after the first administrative stage SC Fondul Proprietatea SA challenged the NSC Decision no. 48/22.0.2013 in front of Bucharest Court of Appeal – The Administrative Section, and the court has not issued a decision, the representatives of the company put on the OGM agenda the amendments of management agreement for paying an additional fee to FTIML that exceeds the fee established during the international selection that had as result the appointing as Fund Manager of the Fund.

In relation with the reasoning for rejecting the complaint of SC Fondul Proprietatea SA, as mentioned in NSC Decision no. 374/25.04.2013⁷, please find them below, with the comment that there are still applicable in relation with similar argumentation used by the plaintiff against FSA Decisions no. 28-29/12.08.2013 regarding the rejecting the amendment of art. 9 of the Management Agreement.

« In relation with the amendment of the fee formula requested by Franklin Templeton, we note that:

Through the Tender Book of the tender organised for selecting the Fund Manager of SC Fondul Proprietatea SA as approved by Government Decision no. 1514/2008 it was set and asked to the candidates (Chapter 6 Fees) a certain structure of fees based on fixed fees and performance fees. According to Annex 2 of the Tender Book there are presented the financial offers that should contain the annual fees that the candidates should receive according to the Management Agreement, detailing the fixed fees and the combined fees and the formulas for them.

According to the provisions of the Investment Management Agreement concluded on 25.02.2010 between SC Fondul Proprietatea SA and Franklin Templeton Investment Management Ltd United Kingdom Bucharest Branch, clause 6 the Obligations of Fund Manager, the object of management:

“...the obligations of the Fund Manager will be at least the ones established in the Tender Book and the IPS, all of them approved by Government Decision no. 1514/ 2008 and assumed by the offer submitted by the Fund Manager within the international tender for appointing the Fund Manager for Fondul Proprietatea S.A.”

In the same management agreement there is the following provision (Clause 9 Fund Manager fees and expenses):

“The Fund Manager’s remuneration for its services under this Management Agreement is established according to the requirements in the Regulation for Organizing the International Tender, the Terms of Reference and the final offer formulated following the negotiations.

As remuneration for its services under this Management Agreement, the Fund Manager shall receive a management fee in Romanian national currency – Lei, according to the Annex to this Management Agreement”.

From the clause mentioned above it results that in relation with the fees even the management agreement in force as at today rules as an obligation the observing by the Fund Manager of the obligations assumed by the Regulation for organising the tender, the Tender Book and the final offer filed as a result of the negotiations. As a consequence FTIML must respect all these obligations regarding the maintain the structure of the fees, based on a fixed fee and a performance fee. It should be mentioned that the formula of the fees as agreed in the final offer filed by Franklin Templeton was one of the main elements that point the winner, and the change of this element after it is an inequity for other competitors. The fee based on performance is a fee strongly related to the fulfilment of the investment objectives assumed by Franklin Templeton when filed the proposal for being appointed as Fund Manager of SC Fondul Proprietatea SA. The additional fee mentioned by Franklin Templeton cannot be assimilated to the performance fee based on the performance of the Sole Director as long as this is not obtained as a result of the increase of the NAV following the prudent diversification of the portfolio.

Paying additional fees to Franklin Templeton in the case when SC Fondul Proprietatea SA offers additional distributions as special dividends as a result of the disinvestment of securities does not respect, in our opinion, the performance objectives assumed by Franklin Templeton when filed the proposal for being appointed as Sole Director of SC Fondul Proprietatea SA, according to the Tender Book (Annex 3, Chapter III, Portfolio objectives from the Investment Policy Statement), as approved by Government Decision no. 1514/2008, as follows:

“The overall objective of the Portfolio is to achieve stable capital growth while maintaining a prudent level of diversification. Diversification is an important objective of FP within the practical constraints of the existing market and without jeopardizing the other objectives.

⁷ Though NSC Decision no. 374/25.04.2013 it was rejected the complaint filed by SC Fondul Proprietatea SA against NSC Decision no. 48/22.01.2013.

The objectives of the FP Portfolio are:

- to provide returns in excess of the performance of the Romanian economy measures over the long-run (as measured by nominal GDP growth);
- to achieve improved diversification over a period of 3 years (within the framework of the permitted asset allocation to invest and eligible investments);
- to achieve a balance between the stability of growth and overall return;
- after listing, to minimize the potential gap between the share price and the net asset value (NAV) of FP.

The Fund Manager will manage the Portfolio in order to achieve these objectives in a balanced manner.

Qualitative objectives that will be set for the Fund Manager are:

- clarity of the Fund Manager's investment strategy and how it contributes to achieving the main Portfolio objectives;
- the success in diversifying the Portfolio and the type of diversification chosen (by sector, by size – small caps/large caps);
- the effectiveness of the engagement with the investee companies and how this brings value added to FP;
- the effectiveness of communication and interaction with BoN⁷.

Also, we note that the sale of the assets of Fondul Proprietatea SA and distribution towards the shareholders of the money resulted from the sale, without proceeding to a reinvestment of the funds for maximizing the value of the managed assets, breaches the specifics of the activity of managing the investments of a closed end fund, namely to attract financial resources from individuals and/or legal entities, for the purpose of investing them, in accordance with the provisions of Article 2 (1) point 20 of Law no. 297/2004 regarding capital market law, as subsequently amended and supplemented.

With respect to the arguments invoked by the plaintiff, namely that the provision of Government Decision no. 1514/2008 which conditioned the amendment of the constitutive act of Fondul Proprietatea by the approval through government decision, was implicitly repealed by Law no. 142/2010 for the approval of GEO no. 81/2007 for the acceleration of the procedure for granting compensations related to the real estate taken abusively, we note that NSC does not deny the right of the general meeting of shareholders of Fondul Proprietatea to modify the company's constitutive act or the management agreement, but any amendment must be performed within the limits and with the observance of the applicable legal provisions and the commitments assumed by the fund manager, including also the structure of the management fee.

In this context, we are of opinion that, through the amendments brought to the management agreement, Franklin Templeton Investment Management Ltd. United Kingdom – Bucharest Branch does not observe the obligations and commitments assumed in the final offer submitted during the international tender.

Also, we consider that the request of renunciation by FTIM Ltd. United Kingdom – Bucharest Branch to some of the requirements imposed through the tender book and the Regulation for organizing the international tender for the appointment of the management company, must be submitted to the compulsory consultation and expertise of the issuer of the Government Decision no. 1514/2008 through which these were approved, exclusively with respect to the obligation of maintaining the manner for determining the management fee imposed by the selection commission established based on the Decision of the Prime Minister no. 67/2008. In absence of evidences for this point, the argumentation of the plaintiff regarding the temporary character of GD 1514/2008 cannot be admitted, NSC not being able to rule with respect to the applicability in time of a legislative act issued by the Government.

In our opinion, for clarifying these aspects the plaintiff has the possibility to address to the Romanian Government for obtaining the official position of the issuer of GD 1514/2008.

As regards the plaintiff's statement in accordance to which "NSC's decision imposes important limitations of the ownership rights to the shareholders of Fondul Proprietatea with respect to the shares they held within the Fund....", this is not grounded as long as the provisions of NSC's Decision no. 48/22.01.2013 do not limit the right of use by the shareholders of their shares in Fondul Proprietatea, but impose the observance and maintaining of the obligations and commitments undertaken by FTIML with respect to the investment policy of the fund, as well as the fees which will be paid for its management (fee structure based on fixed fee, namely on performance ones), throughout the mandate as manager, in

accordance with the provisions of the final offer submitted by FTIML during the international tender, based on which it was selected as fund manager of Fondul Proprietatea SA.

Therefore, NSC's decision does not limit the right of the company to proceed to the sale of its pecuniary assets, but only the right to change the management fee as incentive in their liquidation process.

For these reasons, we are of opinion that it is not grounded as well the plaintiff's statement that NSC's decision would breach the capital freedom of movement and represents a conduct which was sanctioned repeatedly through the decisions of ECJ and HRC.

3. Article 9.2 letter (e)

"Save as expressly provided otherwise in this Management Agreement, all costs and expenses incurred by the Fund Manager in the performance of its functions shall not be for the account of the Customer, but as the parties to this Agreement agree, shall be borne by the Fund Manager.

Customer shall bear, or shall reimburse the Fund Manager where the Fund Manager has incurred them in advance, the following expenses:

e) expenses related to the admission to trading of the financial instruments issued by Fondul Proprietatea, and any subsequent issues or offerings, expenses with intermediaries arranging the listing, expenses related to marketing and arranging presentations for the public offer to build investor interest, and expenses related to ongoing reporting and disclosure obligations applicable to an issuer admitted to trading on a regulated market;"

Argumentation: In fact, the amendments approved during the OGM of 25.04.2013 were targeting the replacement of the expenses for marketing and arranging presentations for the public offer to build investor interest, with expenses for the investor relations and public relations to the interest of Fondul Proprietatea, as well as the replacement of the expenses related to ongoing reporting and disclosure obligations applicable to an issuer admitted to trading on a regulated market with expenses related to the reporting and disclosure obligations in accordance with the legislation in force.

The expenses provided under letter a) and the following of Article 9.2 represent an exception from the rule provided by the first part of this Article, according to which all costs and expenses incurred by the Fund Manager in the performance of its functions shall not be for the account of the Customer (being already established a fee for the management of the Fund following the international tender), it was proposed the maintaining of the initial form of point 9.2 para (e) taking into consideration that, for the interest of the shareholders, it is to clearly state the categories of expenses which are to be borne by the Client, instead of generally presenting them.

4. Point 9.2, letters (f), (g), (h), (r) and (s) will be eliminated.

Argumentation: In accordance with the amendments approved during the OGM of 25.04.2013, letter (e) of the current management agreement was restructured into four elements numbered accordingly with letters (e) – (h). Due to the fact that FSA opted for maintaining the initial form of point 9.2 letter (e), it was consequently necessary to delete letters (f) – (h).

By introducing letter (r) it was intended to pass over to the Client (the Fund) the expenses related to the valuation of portfolio unlisted participations by independent valuers, with the prior approval of the Board of Nominees, within the terms set by OGM Resolution no. 22/27.06.2012.

Through NSC's decision no. 38/26.09.2012, it was endorsed the outsourcing by FTIML towards KPMG Romania SRL of the valuation activity of the participations which are not admitted to trading within the portfolio of Fondul Proprietatea, provided by Article 6 letter (b) point 3 of GEO 32/2012, in the conditions of observing the provisions of Article 33 therein.

In accordance with Article 3 of NSC's decision no. 38/26.09.2012, "*All the expenses related to the activity mentioned above shall be borne by Franklin Templeton Investment Management Ltd. United Kingdom – Bucharest Branch from the management fee it receives*". Therefore, it was proposed the deletion of letter (r) due to the fact that expenses related to the valuation of portfolio unlisted participations must be borne by the Fund Manager and not by Fondul Proprietatea, as the valuation of the portfolio is one of the specific activities of the Fund Manager, included in the notion of managing collective portfolio, provided by Article 6 letter (b) point 3 of GEO 32/2012, and for which the fund manager is already paid for.

5. Point 9.2, letter (t) will be amended and read as follows:

“o) other expenses approved by the BoN for the Customer in accordance with the Constitutive Act.”

Argumentation: it was proposed the deletion of letter (s) [other expenses with an annual value not exceeding EUR 50,000 related to the activity of Fondul Proprietatea], and as regards letter (t) it was proposed the maintaining of the initial wording [the current letter o) of the management agreement], with the correspondent renumbering of paragraphs, having in mind that it is necessary to clearly state the category of expenses to be paid by the Fund, supplementary to those included in the management fee and not a simple generic presentation of them.

6. Article 19.5

Considering the elimination by the company of Article 20.2, namely the fact that the members of the Fund Manager’s team were proposed through the initial offer submitted in the international tender for the appointment of the Fund Manager, it was proposed the rewording of the text of Article 19.5, as follows:

“The Fund Manager shall promptly notify the Customer in writing with respect to the change of portfolio managers, main persons responsible for the Portfolio or senior staff responsible for setting the business and investment policy of the Fund Manager.

The Fund Manager will draft yearly, within 30 days from the beginning of the calendar year, a list of portfolio managers, containing at least those proposed in the initial offer submitted during the international tender for the appointment of the fund manager of S.C. “Fondul Proprietatea” S.A. and who work within the Fund Manager, the main persons responsible for the Portfolio, and senior staff responsible for setting the business and investment policy within the Fund Manager.

In case of a need to change a Portfolio manager or the main persons with responsibilities in respect of the Portfolio, the replacement shall have identical or similar qualifications and professional experience and similar time allocation for the Customer.”