

## cover article

### **Capital Markets - a New Legal Framework Allowing for New Trading Venues. The Trading of New Financial Instruments and Issuers' Mobility**

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Law no. 24/2017 regarding the financial instruments issuers and stock market operations published in the Official Gazette of Romania, Part I, no. 213 of March 29, 2017, is based on legal provisions that initially existed in Law 297/2004 on capital market, as further amended, provisions taken further and/or amended by this new law so as to reflect the dynamics of the capital market and of the European legislation, with an aim to help investors stay more informed, to increase transparency, to improve the public tender offers' regime and the financial instruments' issuance, and to harmonize the sanctions for market abuse.

#### **New Trading Venues**

The normative act under discussion sets forth the legal framework applicable to stock market operations regarding financial instruments which have been or are to be admitted for trading on a regulated market or traded on a multilateral trading facility (MTF) or on organized trading facility (OTF) regulated by the Romanian Financial Supervisory Authority (ASF), carried out on Romanian territory, as well as to certain operations carried out on the territory of another state, as expressly mentioned in the law and the regulations for the application of such. On the other hand, this normative act considers the general legal framework that would allow for the trading of new financial instruments.

Thus, this law transposes, in addition to the regulated markets and multilateral trading facilities covered by MiFID I, the introduction of this new trading venue: the organized trading facility (OTF) envisaged by MiFID II (Directive 2014/65/EU of the European Parliament and of the Council of May 15, 2014).

OTF means a multilateral system in which there are traded bonds, structured finance products defined as per Art. 2 para. (1) item 28 of the Regulation (EU) no. 600/2014 of the European Parliament and of the Council of May 15, 2014 on markets in financial instruments, emission allowances and derivatives.

#### **Issuers' Transparency**

Law 24/2017 provides that the prerequisites for the periodical reporting, continual informing and special provisions regarding the events of the issuers whose securities are admitted to trading on a regulated market shall be similarly applicable to the issuers whose securities are admitted to trading MTF or OTF, as of January 3, 2018. The for pre and post trade transparency requirements applicable to trading venues as regards the bonds, structured finance products, emission allowances and derivatives stipulated by the Regulation (EU) no. 600/2014 of the European Parliament and of the Council of May 15, 2014 on markets in financial instruments and amending Regulation (EU) no. 648/2012 are directly applicable.

By introducing a new trading venue (OTF) and regulatory requirements for such, MiFID II improves the transparency requirements for the stock market trading activities, allowing for the identification of so-called dark pools.

As regards the shares as financial instruments, we remind the continuous informing requirements in connection with qualified holdings. Hence, in case a shareholder buys or sells shares of an issuer which are traded and to which

voting rights are attached, then the respective shareholder is under the obligation to notify to the issuer the percentage of voting rights held following such sale or purchase, in case said percentage reaches, exceeds or drops below one of the following thresholds: 5%, 10%, 15%, 20%, 25%, 33%, 50% and 75%. The voting rights are calculated based on all holdings of shares to which the voting rights are attached, even if the exercising thereof is suspended. This requirement is also extended to cover other financial instruments which grant the right to buy shares with a comparable economic effect in the sense that, in order to assess the holding threshold, the owner shall cumulate the shares with such other financial instruments.

## **New Instruments and Issuers' Mobility**

It can be noticed that by the class of transferable securities representing "bonds or other debts instruments, which are negotiable on the capital market", the inclusion is also clarified of "securitized debt".

In the case of an issuer of shares or securitized debts with a unit nominal value lower than EUR 1,000, the member state of origin is the state where such issuer is headquartered, while in case the issuer is registered in a third-party state, then the member state of origin is selected by the issuer out of the member states in which its securities are admitted for trading on a regulated market. The definition of member state of origin applies to the securitized debts issued in another currency other than Euro, under the condition that the unit nominal value is, on the date of the issuance, lower than EUR 1,000. The issuer of securitized debts of a unit nominal value higher than EUR 1,000 can select as member state of origin the member state where it is headquartered or the member state where its securities are admitted for trading on a regulated market.

According to the regulations of ASF, an issuer shall give notice of its selected member state of origin to the jurisdictional authority of the member state where it is headquartered or, as the case may be, to the jurisdictional authority of the member state of origin and to the jurisdictional authorities in all host member states.

The financial reporting requirements do not apply to the issuers who exclusively issue debts (i) admitted for trading on a regulated market and the unit nominal value of which is of at least EUR 100,000 or, for the debts expressed in another currency other than Euro, with the unit nominal value equivalent with at least EUR 100,000 on the date of the issuance or (ii) traded on MTF or OTF.

The issuer is under the obligation to make sure that all means and all information that are necessary in order to allow the shareholders or debt owners to exercise their rights are publicly available in the member state of origin, and that the data integrity is kept. The shareholders or debt owners are not restricted from exercising their rights by power of attorney in the conditions stipulated by the legislation of the state where the issuer is headquartered.

Also, the category of financial instruments is completed with greenhouse gas emissions certificates (as such instrument is defined at Art. 3 letter b) of the Government Decision 780/2006 on the greenhouse gas emissions certificates trading).

## **General Applicability of the Rules regarding Market Abuse**

The provisions regarding market abuse are applicable to the financial instruments traded on any of the trading venues, as well as to the behaviors or transactions, including offers, regarding the trading on a trading platform authorized as a regulated market for the trading of greenhouse gas emissions certificates or of other products traded based on such, including when the traded products are not financial instruments.