REPUBLIC OF MONTENEGRO
SECURITIES COMMISSION

RULES
ON DETAILED REQUIREMENTS, MANNER AND PROCEDURE OF
SUPERVISION OVER FUNCTIONING OF PENSION FUND MANAGEMENT
COMPANIES AND VOLUNTARY PENSION FUNDS

Podgorica, 07th September 2007
Pursuant to Article 59 paragraph 3 of the Law on Voluntary Pension funds (“Official Gazette of the Republic of Montenegro”, No. 78/06 and 14/07), the Securities Commission of Montenegro, on its session held on September 7th, 2007 adopts

**RULES**

on detailed requirements, manner and procedure of supervision over functioning of pension fund management companies and voluntary pension funds

I. GENERAL PROVISION

**Article 1**

The Securities Commission (hereinafter: Commission) shall supervise and control the functioning of specialized private management companies (hereinafter: management companies) and pension funds and assets of the pension fund kept by the custody.

The Rules shall regulate obligations of management companies, custody and other subjects in the procedure of supervision of its functioning, authorizations of the Commission and the procedure concerning supervision and control over the functioning of those entities.

II Supervision over the functioning

**Article 2**

In accordance with the Rules, supervision over the functioning shall consist especially of the supervision over the functioning of management companies and pension funds in regard to:

1. the application of the Laws and other regulations;
2. Keeping business books, financial reports and giving notices;
3. Publishing reports in regard to activities of the management company and pension fund, including propaganda and advertising;
4. Considering complaints of the pension fund members, and obliging the management company to remove irregularities in the functioning.

**Article 3**

Management Company shall be obliged to keep its business books and other documentation separately from the business books and documentation of the pension fund it manages.

Management company shall be obliged to keep business books and other documentation as stipulated by the laws and in a manner that ensures encompassing all events regarding certain business year and for information to be up to date, conceivable, complete and reliable.

Management Company shall be obliged to keep its business books and other documentation in the business premises in the principal place of business of the management company.
Article 4

Management Company may reproduce business books and other documentation and keep as microfilms, magnetic tapes or discs or in some other kind of electronic media.

In case referred to in the paragraph 1 of this article, Management Company shall be obliged to ensure:

1) Keeping of microfilms, magnetic tapes or discs or some other kind of electronic media in the premises detached from the premises where the originals are being kept;
2) Equipment that enables business books, reports and other documents to be transformed from the microfilms, magnetic tapes or discs or some other kind of electronic media to the paper form; and
3) Undisturbed access to microfilms, magnetic tapes or discs or some other kind of electronic media and equipment for its transformation in the paper form.

Article 5

Management Company shall be obliged to protect business books and other documentation from the theft, destroying, loosing or altering its content.

Management Company shall be obliged to keep its business books and other documentation in the time period determined by the special rules.

Article 6

Commission shall have a right to access business books and other documentation kept by the management company on its behalf and for its account, and for the name and account of the pension fund, and a management company shall be obliged to, upon written request of the Commission, submit business books and other documentation, in the manner and within the deadlines determined in that request.

Article 7

Within its supervision, Commission shall issue consent on:

1) Foundation contract and Statute of the Management company and their changes and additions;
2) Rules on Managing of Pension fund and it changes and additions;
3) Proposal of the Membership Contract in the pension fund;
4) Proposal of the Contract between Management Company and a Custody;

With the request for granting consent on the changes and additions of the acts referred to in paragraph 1 of this article, the person submitting the request submits changes and additions of these acts, with the explanation notes stating reasons for making changes or additions of these acts.
Consent on changes and additions of the acts referred to in paragraph 1 of this article Commission issues in the form of resolutions.

III. Control over the functioning

Article 8

The Commission shall control the functioning of management company and pension funds: on its own initiative, on the initiative of a member of the Commission, at the suggestion of the owner of shares of management company or the member of the pension fund, the Exchange, authorized participant on the securities market, the Central Depositary Agency or at the request of another authority.

By the control referred to in the article 1 of these Rules, the Commission shall determine particularly:

1) Legality of the functioning of the management companies and pension funds;
2) Fulfillment of the requirements for establishing and functioning of the management companies and establishing and functioning of the custody in regard to functioning of the pension fund;
3) Accuracy of the financial reports submitted to the Commission;
4) Accuracy of the data on activities of management companies and pension funds;
5) Monitoring of keeping of assets of the pension fund, compensation and property of the securities;
6) Monitoring of fulfilling of the requirements for granting a license for performing custody activities of the pension funds assets;
7) Monitoring of appointment and changes of the custodian;
8) Monitoring of the fulfillment of the contractual obligations between custody and management company;
9) Monitoring of relatedness of the custody and management company and responsible persons of the management company;
10) Monitoring of public reporting on the value of the accounting unit;
11) Monitoring of reporting on the return of the pension fund;
12) Monitoring of keeping of individual accounts of the pension fund member;
13) Accuracy and manner of calculation of the value of the pension funds assets, calculation of the net asset value, value of the accounting unit and return of the pension fund;
14) Accuracy of the calculation of all fees;
15) Complying with the stipulated limitation on investment of pension funds assets,
16) Monitoring of transaction execution and checking of the date of acquiring and selling of the securities,
17) Monitoring of the changes of the business name, headquarters, statute of the management company and a business name of the pension fund;
18) Monitoring of the unauthorized use of the name of pension fund management company;
19) Supervision of the ceasing of business operation of the management company;
20) Supervision of the subject matter of business operations of management company;
21) Monitoring of fulfillment of the requirements for management companies for granting a license;
22) Monitoring of the status and changes in the proprietary structure of the management companies;
23) Monitoring of the number of the pension funds members;
24) Monitoring of the acquiring of the securities of other management companies and merger or take-over of management companies;
25) Monitoring of staff capacity of management companies pursuant to the law;
26) Monitoring of issuing of informative prospectus;
27) Other data regarding financial operations of the management company, pension fund and custody related to the operations of the pension funds which control is needed.

**Article 9**

The Commission shall exercise:

1. Indirect control - examining reports on the functioning of the management company and the pension funds submitted to the Commission and by obtaining information in another way; and
2. Direct control - by having an insight into the business books and other documentation in regard to the functioning of the management company, pension fund and the custody regarding operations of the pension funds.

For performing control referred to in the paragraph 1 of this Article, the Commission shall prescribe by separate decision advance payment of monthly fee.

The Commission may prescribe payment of additional fee for acquiring a right of control of annual reports on business operations of pension funds and management companies.

In case when Commission prescribes payment of the fee referred to in the paragraph 3 of this Article, the payment of such fee is a requirement for submitting of annual report on business.

Against Management Company which does not submit annual or interim report on business or on keeping of monetary assets in determined deadlines, the Commission shall take appropriate measures, including revocation of the license.

**IV. Indirect control**

**Article 10**

If the Commission, by indirect control, establishes irregularities in the functioning of the management company and pension fund, it shall issue the decision obliging the management company to correct the established irregularities within the prescribed deadline.

The management company shall be obliged to correct the established irregularities within the prescribed deadline and to inform the Commission in a written form. It shall be obliged to submit, with the answer, documentation and other evidence in order to determine whether established irregularities were corrected or not.
When the Commission determines that the established irregularities were removed, it shall make a conclusion that the management company acted in accordance with the decision of the Commission on enacting of measures and that there is no need for taking further measures.

If the management company doesn’t comply with the order of the Commission to correct irregularities, the Commission shall take adequate measures.

In the exception of the provisions of the paragraph 1 to 4 of this Article, if the established irregularities may not be averted, the Commission may take measures toward issuer in accordance with the article 19 of these Rules, immediately after such irregularities were determined.

If the measures relate to the transactions with shares of the management company or with shares of companies in the portfolio of the pension fund, the Commission shall inform on the undertaken measures the Exchange on which the shares are traded and the authorized participants.

**Article 11**

The Commission shall make a claim to an authorized organ if, the established irregularities in the functioning of the management company or pension fund are considered as criminal offences, commercial offences or violations.

**V. Direct controls**

**Article 12**

The Chairman of the Commission shall make decision on direct control over the management company or pension fund.

**Article 13**

The Commission shall perform direct control on the spot, in the offices of the management company or pension fund or other entity that is justifiably expected to provide information and facts in regard to the control, access to registers, other records, business books and other documentation relating to the subject of the control.

During the indirect control, the controllers of the Commission shall have the right, without any limitations, to copy or temporarily seize original business books, financial and other reports, announcements and other documentation, as well as to use and temporarily seize electronic and other means of communication installed within the entity controlled.

In case that controller of the Commission seize original business book, financial and other reports, announcements and other documentation, he/she shall issue confirmation on temporary seizing of documentation or electronic or other means of communication.

Confirmation referred to in the paragraph 3 of this article shall contain the list of seized documentation or electronic or other means of communication, date of seizure, signature of
the person whose documentation or electronic or other means of communication has been seized and signature of the person who have seized the documentation.

During the direct control, Commission shall be authorized to request necessary explanations from the responsible persons in the person being under the control in regard to data and facts on their business operations with the securities. Responsible persons are obliged to give needed explanations.

Statement and explanations may also be taken from the other persons employed in the controlled entity as well as from the persons who are performing business operations for the controlled entity on some other ground and who are believed to poses information of importance for investigation of the business operations.

Statement and explanations may be requested in written or it may be taken to the minute at the spot – in the business premises of the controlled person or by inviting responsible person in the Commission’s premises.

The Commission may perform control even in the case that responsible person of the controlled entity is not present during control.

If the Commission considers that the control may not be conducted without the presence of the responsible person of the controlled entity, controller of the Commission may issue an invitation to the responsible person requesting him to be present in certain time for performing of supervision.

Controlled person is obliged to ensure presence of the responsible persons in the controlled person, upon Commission’s request, in the time when the controllers are to perform the control in the business premises of the controlled person, who may give statements and explanations regarding the subject matter of the control.

**Article 14**

If the controller of the Commission is not permitted to perform the control of functioning by withholding of the possibility to search through acts, business books, excerpts from the accounts and other documentation or in any other way, controller shall record that in a minute.

Based on the minute referred to in the paragraph 1 of this article, the Commission may suspend a license of the controlled person until it enables such control.

**Article 15**

If, during the procedure of direct control, it is needed to bring a decision on issues in regard of supervision procedures or there is a need for controlled person to take some measures, the controller of the Commission may adopt a conclusion on the issues in regard of supervision procedure and order to the controlled person to perform needed actions and a deadline within which the act is to be performed.

Controller of the Commission who performs control over person being controlled may, in a form of conclusion, order to the controlled person to temporarily suspend performing of certain acts until the finalization of the supervision.
Controllers may, during the supervision, in a form of conclusion, temporarily forbid the use of business premises, equipment and other working devices. The temporary prohibition of using business premises last for a time necessary for performing of control, but not longer than 3 days as of the date of delivery of conclusion.

**Article 16**

After the direct control, the Commission shall make the record on undertaken control and shall submit it to the management company, so that they can give remarks on the spot or at the latest 3 business days following the day of termination of the direct control.

The Commission shall enter its observations into the record on the undertaken control.

The controlled person may state remarks on the record on the undertaken control when signing on the spot, or in a written form that should be submitted to the Commission within three days upon receiving the record, if it was not sign on the spot.

The Commission shall check remarks to the record, and if it is necessary in its opinion, it shall amend the record that should be submitted to the controlled person within three days upon receiving the remarks.

If the Commission doesn’t submit the amendments to the record of the controlled person in the prescribed deadline, it shall be considered that remarks were groundless.

**Article 17**

If the Commission, in its observations, establishes that there were no irregularities in the functioning of the controlled person, and when the controlled person, in the prescribed deadline, with its remarks denies observations from the minutes concerning the undertaken control and irregularities in the functioning, the Commission shall conclude that, in regard to the subject of the control, the management company abides by the rules.

If the controlled person, within the prescribed deadline, doesn’t submit the remarks to the record, or if their remarks don’t deny observations of the record stating irregularities in the functioning, the Commission shall make decision on taking measures by which it shall impose against the controlled persons to take one or more measures to remove the established irregularities within the prescribed deadline.

**Article 18**

The controlled person shall be obliged to submit to the Commission, within the deadline prescribed by decision on taking a measures, documentation and evidence stating that they have removed the established irregularities.

Deadline for removing established irregularities and the duration of the measures taken shall be determined depending on the nature of the measure taken and of a established illegality, or irregularity in the operations, until the reasons for duration of the established measure are remaining.
Controlled person, during the period for removing established irregularities, may submit a request for prolongation of the period for removing irregularities.

The Commission may by a conclusion prolong the deadline for removing established irregularities. Against this conclusion the appeal may not be initiated.

When the Commission establishes that the established irregularities are removed, it shall make conclusion that the controlled acted in accordance with the decision of the Commission on taking measures and that there is no need for taking further measures towards the controlled person.

If the controlled person does not take measures as ordered by Commission for removing irregularities established by direct control, the Commission shall take measures pursuant article 19 of these rules.

In exception to the article 15 paragraph 2 of these rules and paragraph 1 to 6 of this article, if the irregularities established by direct control are irremediable by its nature, the Commission may take measures toward controlled person pursuant article 19 of these rules immediately upon establishing its existence.

**Article 19**

If the controlled person does not remove irregularities established by indirect control, or does not act pursuant Commission’s order for removing the irregularities established by on – site control, as well as in a cases when Commission deems that irregularities may not be removed due to its nature, Commission may take following measures:

1) Revoke the license of management company;
2) Warn in a written form, temporary suspend or revoke a license of the investment manager;
3) Temporary prohibition disposing of the management company’s assets;
4) Temporary prohibition of disposing of the pension fund’s assets;
5) Temporary exclusion from trading on the Stock Exchange of certain shares of the management company or shares of companies in the portfolio of the pension fund;
6) Temporarily or permanently prohibit management company to trade in certain securities in its name and for its account or in the name and for account of the pension fund;
7) Temporarily or permanently prohibit management company to manage shares in the portfolio of the pension fund;
8) Publicly disclose that the management company or pension fund, Board of Directors, Executive Director or investment manager of the management company violates the rules or standards within the framework of their activities;
9) Suggest to Board of Directors of the Management Company to terminate the appointment of a director of that entity;
10) Order to Board of Directors of the Management Company to terminate the appointment of a director of that entity;
11) Annul certain transaction with the securities;
12) Temporary prohibit disposing off securities entered in the Central registry of the Central Depository Agency;
13) Temporary postpone settlement of certain securities transaction;
14) Temporary suspend settlement of certain securities transaction;
15) Temporary prohibit disposing of monetary assets paid at the account of the Central Depository Agency for settling securities transaction;
16) Take a measure of warning, suggest monetary or other sanctions or taking a measure of suspension or revoking a license of the natural persons – investment managers of the pension fund due to the illegalities or irregularities in operations;
17) Other measures necessary for removing illegalities and irregularities in the business operations of the Management Company and pension fund.

When it deems necessary in the aim to protect investors, establish efficient market, or decrease systemic risks, the Commission may make decisions stated in item 1 of this Article immediately after it has established and stated irregularities in the record on direct control concerning the functioning of the management company or pension fund.

The Commission may make a decision on revoking the license of the management company to do business only after the implementation of the direct control. In special circumstances, the Commission may revoke the license without the direct control, if it has established that the management company, at least for 12 months, hasn’t performed activities due to which it was founded.

**Article 20**

The Commission shall make decision on taking measures stated in Article 19 of the Rules.

**VI. Controllers of the Commission**

**Article 21**

The Commission shall authorize a certain person, the controller, to implement the control stated in the Rules.

The controller shall be a person determined pursuant to the provision of the Rules governing control of business operations with securities.

**Article 22**

This Rules shall enter into force on the eight day following the day of its publication in the “Official Gazette of the Republic of Montenegro.

No: 01/1-1048/3-07
Podgorica, 07.09. 2007. godine

Chairman of the Commission
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