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D E C R E E

of the National Bank of Slovakia

of 1 April 2008

executing certain provisions of the Collective Investment Act

Pursuant to Article 116(2)(b) of Act No. 594/2003 Coll. on collective investment and on amendment and supplementation of certain laws, as amended (hereinafter referred to as the “Act”), the National Bank of Slovakia stipulates as follows:

Article 1

Subject of regulation

This Decree stipulates:

- a) details on what is understood to be
 - 1. liquid financial assets, as referred to in Article 44 of Act,
 - 2. money market instruments, as referred to in Article 5(o) of Act,
 - 3. transferable securities and money market instruments embedding derivatives, as referred to in Article 49(7) of Act,
 - 4. index-replicating mutual funds, as referred to in Article 46 of Act,
- b) method of use of techniques and instruments, as referred to in Article 49(3) of Act

L i q u i d f i n a n c i a l a s s e t s

Article 2

The reference in Article 44 of Act to liquid financial assets shall be understood as a reference to assets listed in Section 44(1) of Act which do not compromise the ability of the management company to comply with the obligation to redeem unit certificates upon request of a unit holder under Article 42 of Act and which fulfil other criteria under Article 3 through 10.

Article 3

(1) The reference in Article 2 to liquid financial assets shall be understood, with respect to transferable securities, as a reference to financial assets under Article 5(e) of Act which fulfil the following criteria:

- a) the potential loss which may be incurred with respect to holding those instruments in the mutual fund is limited to the amount of costs incurred in connection with their acquisition; as for the financial instruments which are only partly redeemed, the potential loss is limited to the amount to be invested in the acquisition of a financial instrument,
- b) liquidity of financial instruments does not compromise the ability of the management company to comply with the obligation to redeem unit certificates upon request of a unit holder without undue delay under Article 42 of Act,
- c) reliable valuation¹ is available for financial instruments as follows:
 - 1. for transferable securities admitted to or dealt in on a regulated market as referred to in Article 44(1)(a) through (d) of Act, in the form of accurate, reliable and regular prices which are either market prices or prices made available by valuation systems independent from issuers,
 - 2. for other transferable securities as referred to in Article 44(1)(i) of Act, in the form of a valuation on a periodic basis which is derived from information from the issuer of the security or from competent investment research²,
- d) appropriate information about financial instruments is available as follows:

¹ Regulation of the Ministry of Finance of the Slovak Republic No. 611/2003 Coll. on the method of valuating securities, money market instruments, and derivatives held in a mutual fund

² Article 71o(2) of Act No. 566/2001 Coll. on securities and investment services and on amendment and supplementation of certain laws (the Securities Law), as amended by Act No. 209/2007 Coll.

1. for transferable securities admitted to or dealt in on a regulated market as referred to in Article 44(1)(a) through (d) of Act, in the form of regular, accurate and comprehensive information to the market on the security or, where relevant, on the portfolio of the security,
 2. for other transferable securities as referred to in Article 44(1)(i) of Act, in the form of regular and accurate information which concerns the security or, where relevant, on the portfolio of the security,
- e) financial instruments are negotiable,
- f) acquisition of financial instruments is consistent with the orientation and objectives of the management company's investment strategy for the mutual fund's assets under the Act and the fund rules,
- g) risks associated with financial instruments are adequately captured by the risk management process used in the management of the open-ended fund's assets, and their impact on the overall risk associated with the investment of the open-ended fund's assets is monitored continuously under Article 49(1) of Act.
- (2) The criteria referred to in paragraph 1(b) and (e) shall be presumed to be fulfilled with respect to transferable securities admitted to or dealt in on a regulated market under Article 44(1)(a) through (c) of Act; this is not applicable if there is information available to the management company at the time of assessing the criteria under paragraph 1 that would lead to a different determination.
- (3) Liquid financial assets as referred to in Article 2 shall be taken to include, with respect to transferable securities, the following:
- a) securities of closed-ended foreign investment companies or closed-ended foreign investment funds (trust), provided that
1. they fulfil the criteria set out in paragraph 1,
 2. they are subject to corporate governance mechanisms applied to companies,
 3. the entity engaged in the management of investments on behalf of a closed-ended foreign investment company or on behalf of a closed-ended foreign investment fund (trust) is subject to national regulation for the purpose of investor protection as is applicable in the country in which such entity resides,
- b) units of closed-ended funds or similar securities of closed-ended foreign mutual funds, provided that
1. they fulfil the criteria set out in paragraph 1,
 2. they are subject to corporate governance mechanisms which are at least equivalent to those applied to companies as referred to in point (a) of the second indent,
 3. they are managed by an entity which is subject to national regulation for the purpose of investor protection as is applicable in the country in which such entity resides,
- c) other transferable securities, provided that
1. they fulfil the criteria set out in paragraph 1,
 2. they are backed, or linked to the performance of, other assets, which may differ from those referred to in Article 44(1)(a) through (h) of Act.
- (4) For purposes of paragraph 3(b) of the second indent, corporate governance mechanisms are equivalent to those applied to companies if there exists the fund rules or a similar document which grants the unit holders the right
- a) to co-participate in deciding on important areas of the management of the mutual fund or the foreign mutual fund, including change to the management company of the mutual fund or to the foreign management company of the foreign mutual fund, change to the fund rules or a similar document granting rights to the unit holders, change to the investment strategy, merger or termination of the mutual fund or the foreign mutual fund,
- b) to monitor the implementation of the investment strategy.
- (5) Where a financial instrument covered by paragraph 3(c) contains an embedded derivative component as referred to in Article 10, the requirements of Article 49 of Act shall apply to that component.

Article 4

- (1) The reference in Article 2 to liquid financial assets shall be understood, with respect to money market instruments, as a reference to instruments under Article 5(o) of Act which fulfil the criteria of paragraphs 2 through 4 and which
- a) are admitted to trading or are dealt in on a regulated market in accordance with Article 44(1)(a),(b) and (c) of Act,
- b) are not admitted to trading on a regulated market under Article 44(1)(h) and (i) of Act.
- (2) For purposes of Article 5(o) of Act and paragraph 1, the reference to instruments normally dealt in on the money market shall be understood as a reference to instruments
- a) that have a maturity at the issuance of up to and including 397 days,
- b) that have a residual maturity of up to and including 397 days,
- c) that undergo regular yield adjustments in line with money market conditions at least every 397 days, or
- d) whose risk profile, including credit and interest rate risks, corresponds to that of financial instruments which have a maturity as referred to in points a) and b), or are subject to a yield adjustment as referred to in point (c).

(3) For purposes of Article 5(o) of Act and paragraph 1, the reference to instruments which are liquid shall be understood as a reference to instruments which can be sold at limited costs in an adequately short time frame, taking into account the obligation of the management company to redeem the unit certificates upon request of a unit holder without undue delay under Article 42 of Act. The reference to the sale at limited costs shall be understood as a reference to the sale on which low fees are paid, low bid/ask spread exists, and the period for settlement does not exceed seven business days.

(4) For purposes of Article 5(o) of Act and paragraph 1, the reference to instruments with a value that can be accurately determined in monetary terms at any time shall be understood as a reference to instruments for which accurate and reliable valuation systems¹, which fulfil the following criteria, are available:

- a) they enable the asset management company to calculate the net value of the assets held in the mutual fund in accordance with the value at which the financial instrument from the mutual fund's portfolio could be exchanged between knowledgeable willing parties in an arm's length transaction,
- b) they are based either on market data or on valuation models, including systems based on amortised costs.

(5) The criteria referred to in paragraphs 3 and 4 shall be presumed to be fulfilled with respect to money market instruments which are normally dealt in on the money market under paragraph 2 and which are admitted to trading on a regulated market in accordance with Article 44(1)(a) through (c) of Act; this is not applicable if there is information available to the management company at the time of assessing the criteria under paragraphs 3 and 4 that would lead to a different determination.

Article 5

(1) The reference in Article 2 to liquid financial assets shall be understood, with respect to money market instruments other than those referred to in Article 44(1)(a) through (c) of Act, of which the issue or the issuer is itself supervised for the purpose of protecting investors under Article 44(1)(h) of Act, as a reference to financial instruments, provided that:

- (a) they fulfil at least one of the criteria set out in Article 4(2) and the criteria set out in Article 4(3) and (4),
- (b) appropriate information is available for these financial instruments, including information which allows an appropriate assessment of the credit risks related to the investment in such instruments, taking into account paragraphs 2, 3 and 4, and
- (c) they are freely transferable.

(2) For money market instruments covered by Article 44(1)(h), the second and third indents of Act, or for those which are issued by regional or local authorities or by a public international body but are not guaranteed by the Slovak Republic or by a Member State of the European Union or by a state which is a member of the European Economic Area (hereinafter the "Member State") or by a state which is not a Member State, in the case of a federal state by one of the members making up the federation, appropriate information as referred to in paragraph 1(b) shall consist in the following:

- a) information on both the issue or the issuance programme as well as on the legal and financial situation of the issuer of the money market instrument prior to the issue of the money market instrument,
- b) updates of the information referred to in point (a) at regular intervals shorter than one year and whenever a significant event occurs,
- c) information referred to in point (a), verified by appropriately qualified third parties specialized in control and verification of financial and legal documents, which is not subject to instructions from the issuer,
- d) available and reliable statistics on the issue or the issuance programme.

(3) For money market instruments covered by Article 44(1)(h)(1k) or (1l) of Act, appropriate information as referred to in paragraph 1(b) shall consist in the following:

- a) information on the issue or the issuance programme or on the legal and financial situation of the issuer of the money market instrument prior to the issue of the money market instrument,
- b) updates of the information referred to in point (a) at regular intervals shorter than one year and whenever a significant event occurs,
- c) available and reliable statistics on the issue or the issuance programme or other data enabling an appropriate assessment of the credit risks related to the investments in such instruments.

(4) For money market instruments covered by Article 44(1)(h), the first indent of Act, except those referred to in paragraph 2 and those issued by the European Central Bank or by a central bank from a Member State, appropriate information as referred to in paragraph 1(b) shall consist in information on the issue or the issuance programme or on the legal and financial situation of the issuer of the money market instrument prior to the issue of the money market instrument.

Article 6

The reference in Article 2 to liquid financial assets shall be understood, with respect to money market instruments issued or guaranteed by an entity that is subject to and complies with prudential rules which are at least as

stringent as those laid down by law of the Slovak Republic or a Member State under Article 44(1)(h)(11) of Act, as a reference to financial instruments issued or guaranteed by the issuer that is subject to and complies with prudential rules and fulfils one of the following criteria:

- a) it is located in the European Economic Area,
- b) it is located in the OECD countries belonging to the Group of Ten,
- c) it has at least investment grade rating by a rating agency³, or
- d) it can be demonstrated on the basis of an in-depth analysis of the money market instrument issuer that the prudential rules applicable to that issuer are at least as stringent as those laid down by law of the Slovak Republic or a Member State.

Article 7

(1) The reference in Article 2 to liquid financial assets shall be understood, with respect to money market instruments issued by the issuer that is a legal entity designated for financing via securitisation vehicles under Article 44(1)(h), the third indent of Act, as a reference to instruments issued by structures, whether in corporate, fund (trust) or contractual form, set up in the Slovak Republic or abroad for the purpose of securitisation operations⁴.

(2) The reference in Article 2 to liquid financial assets shall be understood, with respect to money market instruments issued by the issuer that is a legal entity designed for financing via securitisation vehicles using bank credit lines under Article 44(1)(h), the third indent of Act, as a reference to instruments for whose issuance banking facilities secured by a financial institution which itself complies with Article 44(1)(h)(1k) or (1l) of Act are used.

Article 8

(1) The reference in Article 2 to liquid financial assets shall be understood, with respect to financial derivatives under Section 44(1)(g) of Act, as a reference to financial instruments which fulfil the following criteria:

- a) their underlyings consist in one or more of the following:
 - 1. assets as listed in Article 44(1)(a) through (h) of Act, including financial instruments having one or several characteristics of those assets,
 - 2. interest rates,
 - 3. foreign exchange rates or currencies,
 - 4. financial indices,
- b) in the case the financial instrument is a derivative not admitted to trading on a regulated market, it complies with Article 44(1)(g), the second and third indents of Act.

(2) Liquid financial assets as referred to in Article 2 shall be taken to include, with respect to financial derivatives under Article 44(1)(g) of Act, the financial instruments which fulfil the following criteria:

- a) they allow the transfer of the credit risk of an asset as referred to in paragraph 1(a) independently from the other risks associated with that asset,
- b) they do not result in the delivery or in the transfer, including in the form of cash, of assets other than those referred to in Article 44(1) of Act,
- c) they comply with the criteria for derivatives not admitted to trading on a regulated market laid down in Article 44(1)(g), the second and third indents of Act, and in paragraph 3, provided that the instruments are the financial derivatives not admitted to trading on a regulated market,
- d) the risks associated with a credit derivative are adequately captured by the mutual fund risk management process and by the internal control system of the management company in the case of risks of asymmetry of information exchanged between the management company and the other contracting party (hereinafter the “counterparty”); the reference to the risk of asymmetry of information exchanged between the management company and its counterparty shall be understood as a reference to the risk resulting from potential access of the counterparty to non-public information on firms the assets of which are used as underlyings by credit derivatives.

(3) The reference in Article 2 to liquid financial assets shall be understood, with respect to financial derivatives not admitted to trading on a regulated market under Article 44(1)(g) of Act, as a reference to financial derivatives not admitted to trading on a regulated market, provided that

- a) they can be sold, realized or closed at a market price by initiative of the management company under Article 44(1)(g), the third indent of Act, which means that they can be sold, realized or closed within the sum for which an asset can be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction,
- b) are valued on a daily basis with due professional diligence, in a reliable and verifiable manner under Article 44(1)(g), the third indent of Act, which means that they are valued by the management company in a

³ Article 6 (16) and Article 32 of Act No. 483/2001 Coll. on banks and on amendment and supplementation of certain laws, as amended

⁴ Article 33 (1) (a) of Act No. 483/2001 Coll., as amended by Act No. 644/2006 Coll.

manner resulting in a valuation reflecting the market price as referred to in paragraph 3, which does not rely only on quotations by the counterparty and which fulfils the following criteria:

1. the basis for the valuation is either a reliable up-to-date market value of the instrument, or, if such a value is not available, a pricing model using an adequate recognised methodology,
2. verification of the valuation is carried out by:
 - 2a. an appropriate third party which is independent from the counterparty of the financial derivative not admitted to trading on a regulated market, at an adequate frequency and in such a way that the management company is able to check it, or
 - 2b. a unit within the management company which is independent from the department in charge of managing the assets and which is adequately equipped for such purpose.

(4) The reference in Article 2 to liquid financial assets shall be understood, with reference to financial derivatives under Article 44(1)(g) of Act, as excluding

- a) derivatives on commodities,
- b) derivatives whose underlying asset are indices other than those referred to in Article 9.

Article 9

(1) For purposes of Article 8(1)(a), the fourth indent, the reference to financial indices shall be understood as a reference to indices which fulfil the following criteria:

- a) they are sufficiently diversified, which means that the index is composed in such a way that price movements or trading activities regarding one component do not unduly influence the performance of the whole index; where the index is composed of
 1. assets referred to in Article 44(1)(a) through (h) of Act, its composition is at least diversified in accordance with Article 46 of Act, or
 2. assets other than those referred to in Article 44(1)(a) through (h) of Act, it is diversified in a way which is equivalent to that provided for in Article 46 of Act,
- b) they represent an adequate benchmark for the market to which they refer, in that the following criteria are fulfilled:
 1. the index measures the performance of a representative group of underlyings in a relevant and appropriate way,
 2. the index is revised and rebalanced periodically to ensure that it continues to reflect the markets to which it refers following criteria which are publicly available,
 3. the underlyings are sufficiently liquid, which allows users to replicate the index, if necessary,
- c) they are published in an appropriate manner, in that the following criteria are fulfilled:
 1. their publication process relies on sound procedures to collect prices and to calculate and to subsequently publish the index value, including pricing procedures for index components where a market price is not available,
 2. material information on matters such as index calculation, rebalancing methodologies, index changes, or any operational difficulties in providing timely and accurate information is provided on a wide and timely basis.

(2) Where the composition of assets which are used as underlyings by financial derivatives in accordance with Article 44(1)(a) through (h) of Act does not fulfil the criteria set out in paragraph 1, those financial derivatives shall, where they comply with the criteria set out in Article 8(1), be regarded as financial derivatives whose underlying instrument is a combination of the assets referred to in Article 8(1) (a), the first and third indent.

Article 10

Transferable securities and money market instruments embedding derivatives

(1) The reference in Article 49(7) of Act to transferable securities embedding a derivative shall be understood as a reference to financial instruments which fulfil the criteria set out in Article 3(1) and which contain a component which fulfils the following criteria:

- a) by virtue of that component some or all of the cash flows that otherwise would be required by the transferable security which functions as host contract can be modified according to a specified interest rate, financial instrument price, foreign exchange rate, index of prices or rates, credit rating or credit index, or other variable, and therefore can vary in a way similar to stand-alone derivatives,
- b) its economic characteristics and risks are not closely related to the economic characteristics and risks of the host contract,
- c) it has a significant impact on the risk profile and pricing of the transferable security.

(2) Money market instruments which fulfil at least one of the criteria set out in Article 4(2) and the criteria set out in Article 4(3) and (4) and which contain a component which fulfils the criteria set out in paragraph 1 shall be regarded as money market instruments embedding a derivative.

(3) A transferable security or a money market instrument shall not be regarded as a transferable security or money market instrument embedding a derivative where it contains a component which is contractually transferable independently of the transferable security or the money market instrument. Such a component shall be deemed to be a separate financial instrument.

Article 11

Index replicating mutual funds

(1) The reference to index replicating mutual funds shall be understood as a reference to open-ended funds, provided that the investment strategy, as laid down in the fund rules of the open-ended fund, is to replicate the composition of the recognized stock or debt securities index (Article 46 of Act) and provided that the criteria of paragraphs 2 through 5 are fulfilled.

(2) The reference to the replication of the composition of the recognized stock or debt securities index (Article 46(1) of Act) shall be understood as a reference to the replication of the composition of underlying assets of the index, including the use of derivatives or other techniques and instruments as referred to in Article 49(3) of Act and Article 12.

(3) The reference (Article 46(2)(a) of Act) to an index composed of a sufficient number of shares or bonds and issuers thereof shall be understood as a reference to an index which complies with the risk diversification rules of Article 46(1) of Act.

(4) The reference (Article 46(2)(b) of Act) to an index which represents with sufficient accuracy the overall price movements on the market to which it applies shall be understood as a reference to an index whose provider uses a recognised methodology which does not result in the exclusion of a major issuer of the market to which such index refers.

(5) The reference (Article 46(2)(c) of Act) to an index which is published in the same way as are the prices of its constituent shares and bonds shall be understood as a reference to an index which fulfils the following criteria:

- a) it is accessible to the public,
- b) the index provider is independent from the management company managing the respective index-replicating mutual fund; the index provider that is independent from the management company managing the respective index-replicating mutual fund shall be taken to include the index provider forming part of the economic group which is the same as that of the management company, provided that effective arrangements for the management of conflicts of interest are in place.

Article 12

Method of using techniques and instruments

In using techniques and instruments relating to transferable securities and money market instruments for the purpose of efficient management of investments in the open-ended fund, as referred to in Article 49(3) of Act, one shall follow the procedure

- a) which is economically appropriate and cost-effective,
- b) which is entered into for one or more of the following aims:
 1. reduction of risks,
 2. reduction of costs,
 3. generation of additional capital or income for the open-ended fund with a level of risk which is consistent with the risk profile of the open-ended fund and the risk diversification rules laid down in Article 45 of Act,
- c) in respect to which the risks associated with the use of techniques and instruments are adequately captured by the risk management process of the respective open-ended fund under Article 49(1) of Act.

Common and final provisions

Article 13

The legal acts of the European Communities specified in the Annex hereto are hereby transposed.

Article 14

This Decree shall become effective as at 1 July 2008.

p.p. **Viliam Ostrozlik** m.p.

**Annex
to Decree No. 125/2008 Coll.**

**LIST OF TRANSPOSED LEGAL ACTS
OF THE EUROPEAN COMMUNITIES**

Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards the clarification of certain definitions (OJ L 79, 20.3.2007, p. 11-19).