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**DECREE**  
**of Národná banka Slovenska**  
**of 23 August 2011**

**on criteria for the definition of liquid financial assets on details about transferable securities and money market instruments embedding derivatives and about index-replicating common funds**

In accordance with Article 88(4) of Act No 203/2011 Coll. on collective investment (hereinafter the "Act"), Národná banka Slovenska stipulates as follows:

**Article 1**  
**Subject matter**

This Decree stipulates:

a) criteria for the definition of the following:

1. liquid financial assets as referred to in Article 88(1) of the Act,
2. transferable securities as referred to in Article 3(f) of the Act,
3. money market instruments as referred to in Article 3(s) of the Act;

b) details about the definition of the following:

1. transferable securities and money market instruments embedding derivatives as referred to in Article 100(6) of the Act,
2. common funds whose investment policy consists of replicating the composition of a recognised stock or debt securities index as referred to in Article 90 of the Act;

c) the use of techniques and instruments in accordance with Article 100(2) of the Act.

**Liquid financial assets**

**Article 2**

The reference in Article 88(1) of the Act to liquid financial assets in which the assets of a standard common fund may be invested shall be understood as a reference to assets which do not compromise the ability of the management company to comply with the obligation under Article 13 of the Act to redeem unit certificates at the request of a unit holder without undue delay and which fulfil other requirements laid down in Articles 3 to 10 of this Directive.

**Article 3**

(1) The reference in Article 2 to liquid financial assets shall be understood, with respect to transferable securities referred to in Article 3(f) of the Act, as a reference to transferable securities which fulfil the following criteria:

a) the potential loss which the common fund may incur with respect to holding these transferable securities is limited to the amount paid for them; in the case of transferable securities that have only been paid for in part, the potential loss is limited to the amount still to be paid for their acquisition;

b) their liquidity does not compromise the ability of the management company to comply with the obligation under Article 13 of the Act to redeem units at the request of a unit holder;

c) reliable valuation is available for them as follows:

1. in the case of transferable securities admitted to or dealt in on a regulated market as referred to in Article 88(1)(a) to (d) of the 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. in the case of other transferable securities as referred to in Article 88(1)(i) of the Act, in the form of a valuation on a periodic basis which is derived from information from the issuer of the security or from investment research;<sup>1)</sup>

d) appropriate information is available for them as follows:

1. in the case of transferable securities admitted to or dealt in on a regulated market as referred to in Article 88(1)(a) to (d) of the Act, in the form of regular, accurate and comprehensive information to the regulated market on the security or, where relevant, on the portfolio of the security,

2. in the case of other transferable securities as referred to in Article 88(1)(i) of the Act, in the form of regular and accurate information to the management company on the security, or, where relevant, on the portfolio of the security;

e) they are negotiable;

f) their acquisition is consistent with the management company's investment objectives or investment policy, or both, for the common fund pursuant to the Act and the fund rules;

g) their risks are adequately captured by the risk management process referred to in Article 100(1) of the Act and their impact on the common fund's global exposure to its investments is monitored continuously in accordance with Article 100(1) of the Act.

(2) For the purposes of points (b) and (e) of paragraph 1, and unless there is information available to the management company that would lead to a different determination, transferable securities which are admitted to trading or dealt in on a regulated market in accordance with Article 88(1)(a) to (c) of the Act shall be presumed to satisfy the criteria laid down in paragraph 1(b) and (e).

(3) Liquid financial assets as referred to in Article 2 of this Decree shall be taken to include the following:

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

a) transferable securities in closed-ended funds that are foreign collective investment undertakings constituted as investment companies or as unit trusts, provided that these securities fulfil the following criteria:

1. they fulfil the criteria set out in paragraph 1,
2. they are subject to corporate governance mechanisms applied to companies,
3. where asset management activity is carried out by another entity on behalf of the closed-end fund, that entity is subject to national regulation for the purpose of investor protection;

b) unit certificates in closed-ended funds, or similar securities in closed-ended foreign collective investment undertakings, provided that they fulfil the following criteria:

1. they fulfil the criteria set out in paragraph 1,
2. they are subject to corporate governance mechanisms at least equivalent to those applied to companies referred to in the second point of subparagraph (a),
3. they are managed by an entity which is subject to national regulation for the purpose of investor protection;

c) transferable securities other than those under subparagraph (a) or subparagraph (b), provided that they fulfil the following criteria:

1. they fulfil the criteria set out in paragraph 1,
2. they are backed by, or linked to the performance of, other assets, which may differ from the liquid financial assets referred to in Article 88(1)(a) to (h) of the Act.

(4) For the purposes of the second point of paragraph 3(b), corporate governance mechanisms are equivalent to those applied to companies, provided that under fund rules or a similar document unit-holders have the right to:

a) participate in decisions on key areas of the management of the common fund or foreign common fund, including any decision to change the name of the management company, to amend the fund rules or similar document under which the unit-holders rights arise, to change the investment policy, or to merge or liquidate the common fund or foreign common fund;

b) monitor the implementation of the investment policy.

(5) Where a transferable security covered by paragraph 3(c) contains a derivative referred to in Article 10 of this Decree, the requirements of Article 100 of the Act shall apply to that derivative.

#### **Article 4**

(1) The reference in Article 2 to liquid financial assets shall be understood, with respect to money market instruments referred to in Article 3(s) of the Act, as a reference to the following:

a) financial instruments which are admitted to trading or dealt in on a regulated market in accordance with Article 88 (1)(a) to (c) of the Act;

b) financial instruments which are not admitted to trading or dealt in on a regulated market in accordance with Article 88 (1)(h) to (i) of the Act.

(2) The reference in Article 3(s) of the Act to money market instruments as instruments normally dealt in on the money market shall be understood as a reference to money market instruments which fulfil one of the following criteria:

a) they have a maturity at issuance of up to and including 397 days;

b) they have a residual maturity of up to and including 397 days;

c) they undergo regular yield adjustments in line with money market conditions at least every 397 days;

d) their risk profile, including credit and interest rate risks, corresponds to that of financial instruments which have a maturity as referred to in subparagraphs (a) or (b), or are subject to a yield adjustment as referred to in subparagraph (c).

(3) The reference in Article 3(s) of the Act to money market instruments as instruments which are liquid shall be understood as a reference to money market instruments which can be sold at limited cost in an adequately short time frame, taking into account the management company's obligation under Article 13 of the Act to repurchase or redeem its units at the request of any unit holder without undue delay. The sale of an instrument at limited cost shall mean a sale subject to a low fee where there is narrow spread between the buy and sell prices and the settlement period does not exceed seven business days.

(4) The reference in Article 3(s) of the Act to money market instruments which have a value which can be accurately determined at any time shall be understood as a reference to money market instruments for which accurate and reliable valuation systems, which fulfil the following criteria, are available:

a) they enable the management company to calculate the net value of the assets held in a common fund in accordance with the value at which the financial instrument in the common fund's portfolio could be exchanged between knowledgeable and 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 in the case of money market instruments which are normally dealt in on the money market for the purposes of paragraph 2 and which are admitted to, or dealt in on, a regulated market in accordance with Article 88(1)(a) to (c) of the Act, unless there is information available to the management company that would lead to a different determination.

## **Article 5**

(1) The reference in Article 2 of this Decree to liquid financial assets shall be understood, with respect to money market instruments referred to in Article 88 (1)(h) of the

Act, as a reference to instruments referred to in Article 3(s) of the Act which fulfil the following criteria:

a) they fulfil at least one of the criteria set out in Article 4(2) of this Decree and all the criteria set out in Article 4(3) and (4);

b) appropriate information is available for them, 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 of this Article;

c) they are freely transferable.

(2) For money market instruments covered by the second and third points of Article 88(1)(h) of the Act, or for those which are issued by a local or regional authority or by a public international body but are not guaranteed by a Member State of the European Union (including the Slovak Republic), or by another state which is a member of the European Economic Area (hereinafter also referred to as a "Member State") or, in the case of a federal state which is a Member State, by any 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 and the legal and financial situation of the issuer prior to the issue of the money market instrument;

b) updates of the information referred to in subparagraph (a) at regular intervals of not longer than one year and whenever a significant event occurs;

c) the information referred to subparagraph (a), verified by appropriately qualified third parties not subject to instructions from the issuer;

d) available and reliable statistics on the issue or the issuance program.

(3) For money market instruments covered by the first point of Article 88 (1)(h) of the Act except those referred to in paragraph 2 and those issued by the European Central Bank or 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 the legal and financial situation of the issuer prior to the issue of the money market instrument.

(4) For money market instruments covered by point (1k) or point (1l) of Article 88(1)(h) of the Act, appropriate information shall consist in the following:

a) information on the issue or the issuance programme or on the legal and financial situation of the issuer prior to the issue of the money market instrument;

b) updates of the information referred to in subparagraph (a) at regular intervals of not longer 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 investment in such instruments.

## **Article 6**

The reference in Article 2 of this Decree to liquid financial assets shall be understood, with respect to money market instruments referred to in point (11) of Article 88 (1)(h) of the Act, as a reference to instruments referred to in Article 3(s) of the Act whose issuer complies with at least one of the following conditions:

- a) it is established in the European Economic Area;
- b) it is established in a member country of the Organisation for Economic Co-operation and Development (OECD) belonging to the Group of Ten;
- c) it has at least investment grade rating by a rating agency<sup>2)</sup>, or
- d) it can be demonstrated on the basis of an in-depth analysis of the issuer that the prudential rules applicable to that issuer are at least as stringent as those laid down by separate regulations or legally binding acts of the European Union.

## **Article 7**

(1) The reference in Article 2 of this Decree to liquid financial assets shall be understood, with respect to money market instruments referred to in point (3d) of Article 88(1)(h) of the Act, as a reference to instruments referred to in Article 3(s) which are issued by collective investment undertakings established in the Slovak Republic or abroad, whether in corporate, trust or contractual form, for the purpose of securitisation operations.<sup>3)</sup>

(2) The reference in Article 2 to liquid financial assets shall be understood, with respect to money market instruments referred to in point (3d) of Article 88(1)(h) of the Act, as a reference to instruments referred to in paragraph 1 of this Article which are issued with the use of banking facilities secured by a financial institution which itself complies with point (1k) or point (11) of Article 88(1)(h) of the Act.

## **Article 8**

(1) The reference in Article 2 of this Decree to liquid financial assets shall be understood, with respect to financial derivative instruments referred to in Article 88(1)(g) of the Act, as a reference to financial derivative instruments which fulfil the following criteria:

- a) their underlyings consist in one or more of the following:
  - 1. liquid financial assets as listed in Article 88(1)(a) to (h) of the Act, including financial instruments having one or several characteristics of those assets,
  - 2. interest rates,
  - 3. foreign exchange rates or currencies,
  - 4. financial indices;

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<sup>2)</sup> In accordance with Article 6(16) and Article 32 of Act No 483/2001 Coll. on banks and on amendments to certain laws as amended.

<sup>3)</sup> Article 33b(1)(a) of Act No 483/2001 Coll. as amended by Act No. 644/2006 Coll.

b) in the case of over-the-counter derivatives, they comply with the conditions set out in the second and third points of Article 88(1)(g) and with paragraph 3 of this Article.

(2) The reference to liquid financial assets referred to in Article 2 shall be understood, with respect to financial derivative instruments referred to in Article 88(1)(g) of the Act, to include instruments other than those referred to in paragraph 1 which fulfil the following criteria:

a) they allow the transfer of the credit risk of a liquid financial asset as referred to in paragraph 1(a) of this Article 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 88(1) of the Act;

c) in the case of over-the-counter derivatives (hereinafter "OTC derivatives"), they comply with the criteria laid down for such derivatives in the second and third points of Article 88(1)(g) of the Act and in paragraph 3 of this Article;

d) their risks are adequately captured by the risk management process of the management company, and by its internal control mechanisms in the case of risks of asymmetry of information between the management company and the counterparty to the credit derivative 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 to liquid financial assets in Article 2 shall be understood, with respect to OTC derivatives referred to in Article 88(1)(g) of the Act, as a reference to OTC derivatives which fulfil the following criteria:

a) they can be sold, liquidated or closed at the management company's initiative at their fair value in accordance with the third point of Article 88(1)(g) of the Act, where "fair value" refers to the amount for which an asset could be exchanged, or a liability settled, between knowledgeable, willing parties in an arm's length transaction;

b) they are valued in accordance with Article 107 of the Act.

(4) The reference in Article 2 to liquid financial assets shall be understood, with respect to financial derivatives referred to Article 88(1)(g) of the Act, as excluding the following:

a) derivatives on commodities;

b) derivatives on financial indices other than those indices referred to in Article 9 of this Decree.

## **Article 9**

(1) For the purposes of the fourth point of Article 8(1)(a), financial indices shall mean indices which fulfil the following criteria:

a) they are sufficiently diversified, in that the index is composed in such a way that the index price movements or trading activities regarding one component do not unduly influence the performance of the whole index, and where the index is composed of:

1. assets referred to in Article 88(1)(a) to (h) of the Act, its composition is at least diversified in accordance with Article 90 of the Act, or

2. assets other than those referred to in Article 88(1)(a) to (h) of the Act, it is diversified in a way which is equivalent to that provided for in Article 90 of the 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 or 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 such a way that:

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 or accurate information are provided on a wide and timely basis.

(2) Where the composition of assets which are used as underlyings by financial derivative instruments in accordance with Article 88(1)(a) to (h) of the Act does not fulfil the criteria set out in paragraph 1 of this Article, those financial derivatives shall, where they comply with the criteria set out in Article 8(1) of this Decree, be regarded as financial derivatives on a combination of the assets referred to in points (1), (2) and (3) of Article 8(1)(a).

## **Article 10**

### **Transferable securities and money market instruments embedding derivatives**

(1) The reference in Article 100(6) of the 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) of this Decree and which contain a derivative which fulfils the following criteria:

a) by virtue of that derivative 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 vary in a way similar to a stand-alone derivative;



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 as referred to in Article 100(6) of the Act which fulfil at least one of the criteria set out in Article 4(2) of this Decree and all the criteria set out in Article 4(3) and (4) and which contain a derivative which fulfils the criteria set out in paragraph 1 of this Article shall be regarded as money market instruments embedding a derivative.

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

### **Article 11** **Index-replicating common funds**

(1) The reference in Article 90 of the Act to replicating the composition of a stock or debt securities index shall be understood as a reference to 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 100(2) of the Act and Article 12 of this Decree.

(2) The reference in Article 90 to an index whose composition is sufficiently diversified shall be understood as a reference to an index which complies with the risk diversification rules of Article 90(1) of the Act.

(3) The reference in Article 90 of the Act to an index which represents an adequate benchmark 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 it refers.

(4) The reference in Article 90(2)(c) to an index which is published in the same manner as the prices of its constituent shares or 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 that manages the index-replicating common fund; this point shall not preclude index providers and the management company managing the index-replicating common fund from forming part of the same economic group, provided that effective arrangements for the management of conflicts of interest are in place.

### **Article 12** **The use of techniques and instruments in accordance with Article 100(2) of the Act**

The reference in Article 100(2) of the Act to techniques and instruments which relate to transferable securities and which are used for the purpose of efficient portfolio management of a standard common fund in accordance with Article 100(2) of the Act shall be understood as a reference to techniques and instruments which fulfil the following criteria:

- a) they are economically appropriate in that they are realised in a cost-effective way;
- b) they are entered into for one or more of the following specific aims:
  - 1. reduction of risk,
  - 2. reduction of cost,
  - 3. generation of additional capital or income for the standard common fund with a level of risk which is consistent with the risk profile of standard common fund and the risk diversification rules laid down in Article 89 of the Act;
- c) their risks are adequately captured by the risk management process of the respective standard common fund in accordance with Article 100(1) of the Act.

### **Common and final provisions**

#### **Article 13**

This Decree transposes provisions of the legally binding act of the European Union which is specified in the Annex hereto.

#### **Article 14**

This Decree shall enter into force on 15 September 2011.

**Jozef Makúch**  
**Governor**

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**LIST OF TRANSPOSED LEGALLY-BINDING ACTS OF THE EUROPEAN UNION**

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).