



PROTECTING PARTICIPANTS IN THE PILLAR II PENSION ACCUMULATION IN UKRAINE

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ACRONYMS AND ABBREVIATIONS

AMC	Asset Management Company
APF	pension fund administrator
CMP	USAID Capital Markets Project
EU	European Union
FSAP	Financial Sector Assessment Program (FSAP)
FSR	State Commission for Regulation of Financial Services Market
FX	Foreign Exchange
GDP	Gross Domestic Product
IAS	International Accounting Standards (included in IFRS)
IFAC	International Federation of Accountants
IFRS	International Financial Reporting Standards
IMF	International Monetary Fund
IOPS	The International Organization of Pension Supervisors
IOSCO	International Organization of Securities Commissions
IPO	Initial Public Offering
ISA	International Standards of Auditing
JSC	Joint Stock Company
MD&A	Management Discussion and Analysis
MLSP	Ministry of Labor and Social Policy
MOF	Ministry of Finance
MOU	Memorandum of Understanding
NAS	Ukrainian National Accounting Standards
NBFI	Non-Bank Financial Institutions
NBU	The National Bank of Ukraine
NDU	National Depository of Ukraine
NE	non-entrepreneur
NPF	Non-state pension funds
OTC	Over-the-Counter
PAYGO	pay-as-you-go pension system
PFTS	PFTS Stock Exchange, Persha Fondova Torgova Systema (First Securities Trading System)
PFU	Pension Fund of Ukraine
PTAP	Programmatic Technical Assistance Partnership
SCSSM	State Commission for Securities and Stock Market
SSC	Single Social Contribution
UAH	Ukrainian Currency – Hryvnia
UCITS III	Undertakings of Collective Investment in Transferable Securities Directives
UE	Ukrainian Exchange
UFB	Ukrainian Stock Exchange
UICE	Ukraine Inter-Currency Exchange
UIT	Unit Investment Trusts
USAID	U.S. Agency for International Development

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Any remaining errors and omissions are the sole responsibility of the authors. The author's views expressed in this publication do not necessarily reflect the views of the USAID or the United States Government.

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I. EXECUTIVE SUMMARY

Protecting the pensions of Ukrainian citizens in the implementation of Pillar II Accumulation Pension System will pose one of the most complex and important issues in Ukraine. The development of the system will shift the responsibility for paying a significant share of the state organized pension from the government to privately managed asset pools and will reduce the tax paid to the government-run Solidarity System by almost 20 percent. The accumulation of funds in the Pillar II system by some estimates could reach approximately 10 percent of the GDP in the next ten years. The impact this will have on the financial system and the well being of Ukraine's older citizens cannot be overstated.

Current proposals would require participants in Pillar II to assign their contributions to a privately managed fund, similar to the Pillar III Non-state Pension Fund (NPF), for investment in the financial markets. However, the current market conditions and regulatory structure are not sufficiently developed to fully protect participants in the Pillar II system if the current amendments to the Law on Mandatory State Pension Insurance are enacted.

Nonetheless, if the decision to go forward with the Pillar II Accumulation System is made, the existing provisions Law on Mandatory State Pension Insurance for a tightly controlled and conservative investment model should be retained. However, the implementation of the Pillar II Accumulation Pension System which is currently in the law should be delayed until the capital markets in Ukraine provide a sufficiently deep and diversified market that can be used to invest the pension funds.

Pillar II is premised on such a deep and efficient capital market, but the Ukrainian market has not reached that level of development. The primary investment of Pillar III NPFs under current conditions is bank accounts. It is hard to justify fees for pension service providers that can reach almost 10 percent for investing in bank accounts. Other investment instruments are not sufficiently available in the Ukrainian market. There is a significant lack of medium and long term government bonds and the corporate bond market has suffered a serious drop in confidence due to large bond defaults and an illiquid market. The domestic equity market has drawn little interest from asset managers and, due to currency controls, NPFs effectively cannot invest in foreign securities. The development of the Ukrainian capital markets will probably happen only over a long period of time.

The protections for participants built into the Pillar III system, whose experience was required as a condition for Pillar II implementation, are inadequate to protect their contributions. Consequently, allowing the Pillar III system to manage the Pillar II funds could put the Pillar II participants' contributions at risk. First, the governance of NPFs lacks safeguards such as fiduciary duties for NPF Board members and Board member expertise in investment, accounting and financial matters. The Boards of Administrators also lack specialized experience, particularly in the area of accounting. Finally, there is no Code of Ethics for the pension fund industry to guide its activity.

The Law on Non-state Pension Provision (Law on NSPP) permits conflict of interests in the operation of NPFs. The investment policy of a corporate NPF is permitted to include the securities of founders of the fund up to a limit of ten percent of the total value of fund assets initially and five percent after five years of operation. Intermediaries do not appear to be sufficiently independent of the other service providers of the funds. Most importantly, the ultimate beneficial owners of the funds and their service providers can be hidden and the regulatory authorities don't have the power to obtain the identities.

The safekeeping of fund assets and segregation of the assets by the custodian of a NPF needs to be improved. The custodian, as the primary protection entity for fund participants, must have additional powers to fully protect the participants. Its role should be enhanced to include reviewing

the instructions of administrators and AMCs to ensure that they are in line with fund policy and it should review the NAV calculation, including NAV per unit, to ensure that it meets the legal provisions relating to the calculation, including the determination of fair value of the assets of the fund. The legal provisions for the segregation of assets need to be amended to further protect the assets from misuse and loss during bankruptcy or other events which could affect the title to the assets.

Disclosure for fund participants is also weak. The accounting practices in Ukraine are still not up to international standards and thus the valuation of assets in the portfolio and the financial statements of the pension funds themselves may not accurately reflect the true financial condition of the funds. Recent amendments to the disclosure regulation for pension funds do not contain all of the information that a current and prospective participant would need, such as more detailed discussion of the fund manager's background in investments and a discussion and analysis by management of the fund's operations and challenges in likely market conditions.

Sales practices are significantly under regulated. Registration and testing of sales people, as well as the development of an effective oversight system are critical for participant protection.

There are a significant number of NPFs that are not active, despite receiving authorization to conduct operations. This may be due to the severe downturn in the market, but their ability to adequately carry out their duties is also in question. Administrators of NPFs need higher capitalization requirements to ensure healthy, functioning administrators, as well as greater expertise on their Boards.

Similarly, the capitalization of AMCs also needs to be set higher. Critically, there are no risk management regulations for management of NPF assets. Both the administrator and AMC should have risk management procedures and specific personnel designated to implement them. The use of portfolio limits as a risk management tool is not flexible and the limits are frequently breached in extreme market conditions. A risk-based approach to investing would provide for a more modern and effective risk management mechanism.

The regulatory structure for NPFs must also be enhanced. The regulatory agencies need significant capacity building in staff, equipment and training in order to handle the large number of pension funds. The FSR's authorization powers need to be increased to allow it to conduct full "fit and proper" evaluations of NPF Board members and senior managers and the entities that service the NPFs. The investigative powers of the regulatory agencies need to be broadened and the available sanctions also need to be widened to allow them to act more swiftly in emergency situations. Sanctions for violations by natural persons are too low and need to be increased.

Of particular importance is the need for FSR's intervention powers to be increased in cases of liquidation of funds and the bankruptcy of service providers under its supervision. The power to appoint a temporary administrator needs to be enhanced and permit the FSR to make a determination if a temporary administrator is immediately needed and then to appoint the administrator. It also needs to have the internal resources to act as a temporary administrator in the event that a third party administrator cannot be found. This is critical to providing participants with the confidence that they can safely put their money in NPFs.

II. AN OVERVIEW OF PRIVATE PENSION FUNDS AND CAPITAL MARKETS IN UKRAINE

2.1 The Growth in the Non-state Pension Fund Sector

This Report will examine the current conditions of the financial market and the regulatory structure which governs Pillar III funds to determine if there is adequate protection for the Pillar II funds in the existing Pillar III Non-state Pension Fund System (NPFs). Due to space constraints, it will only concentrate on the most important issues.

It will be helpful to start with the history and functioning of the NPFs and the projections for the development of the Pillar II system. The growth in the pension population over the next 40 years will be relatively stable. See Table 1.

Table 1: Number of pensioners (all categories except military personnel)

	2008	2009	2010	2015	2020	2025	2030	2035	2040	2045	2050
Calculations of the Institute of demography and social researches of NASU (millions)	13.2	13.2	13.3	13.5	13.6	13.6	13.6	13.1	13.6	13.7	13.5
Calculations of Research institute of labor and employment (millions)	13.2	13.2	13.2	13.3	13.4	13.3	13.1	13.0	13.0	13.0	12.6

The government has attempted to find ways of reducing the cost of the pensions to the state budget. The development of the three pillar model pension system would, in theory, alleviate a large part of the pension expense by transferring the cost to private pension funds. The Pillar III voluntary pension funds created through Non-state Pension Funds (NPFs) have already been implemented and were to be used as a pilot project for the Pillar II Accumulation Fund. NPFs have grown since the passage of the Law on Non-State Pension Funds came into force in January 2004. Open NPFs have grown the fastest since inception and make up the largest type of NPF in terms of numbers of participants and assets under management. However, Corporate NPFs have shown the largest gain in the value of assets over 2007-2008. See Table 2.

Table 2: Growth of Funds by Types of NPFs

Year	Open NPF			Corporate NPF			Occupational NPF			Total		
	Number of funds	Number of participants	Amount of Assets	Number of funds	Number of participants	Amount of Assets	Number of funds	Number of participants	Amount of Assets	Number of funds	Number of participants	Amount of Assets
2005	42	72,145	17,650	8	8,540	8,824	4	7,678	4,875	54	88,363	31,349
2006	63	160,514	62,044	10	13,510	33,878	6	19,311	22,713	79	193,335	118,634
2007	75	244,182	158,562	13	13,183	62,370	8	21,322	46,898	96	278,687	267,830
2008	87	435,191	325,131	14	23,596	221,021	9	23,724	66,083	110	482,511	612,235

Source: www.dfp.gov.ua; www.ssmc.gov.ua; Assets in thousands of UAH

The Pillar II accumulation fund system imposes a mandatory tax on participants. These funds are to be invested in the private sector in order to increase the returns that the pensioners can receive from their pensions. The amount of the tax will increase over the years after implementation to a maximum of 7% of salaries of participants. Assuming implementation in 2009, Table 3 shows the increase in the tax in the following six years.

Table 3: Increase in Pillar II Contribution Rate

Year	Pillar II Contribution Rate	Mandatory Pillar II Contributions (bl \$)	Cumulative Contributions (bl \$)	Percent of Real GDP
2009	2%	0.7	0.7	0.5%
2010	3%	1.3	2.0	1.4%
2011	4%	2.0	4.0	2.8%
2012	5%	2.7	6.7	4.7%
2013	6%	3.3	10.0	7.0%
2014	7%	4.0	14.0	9.9%

In 2008 Dollars with wages and GDP assumed to grow at 5.5%

The maximum tax for both the Pillar I Solidarity System and the Pillar II Accumulation System will be 9%. However, over time the 7% contribution will shift from Pillar I to Pillar II with a resulting decrease of approximately 20% in the amount of the pensions that will be paid by the government guaranteed Pillar I system. Pillar II will invest the money from the 7% in the Ukrainian financial market to get the returns to pay for Pillar II. The amount of money involved is staggering, amounting to almost 10% of projected GDP.

In the current Law on Mandatory State Pension Insurance, the Pillar II Accumulation System, when it is implemented, will be governed by a board, administered by the PFU, and managed by asset managers chosen through an open bid. The open bid mechanism will also be used to choose a custodian for the Accumulation Fund. One of the draft amendments to the Law on Mandatory State Pension Insurance would change this system and allow the Pillar II money to be directed to the Pillar III system and require mandatory contributors to choose among the Pillar III funds which would be authorized to set up Pillar II funds for the investment of their mandatory payments.

An indication of the confidence that Ukrainian citizens have in Pillar III funds as a mechanism for providing for their old age security can be seen by comparing the NPFs with the non-pension collective investment schemes in Ukraine. Non-pension investment funds (referred to as Collective Investment Institutions or CIIs in Ukraine) were created in Ukraine in 2003, after the adoption of the Law “On Collective Investment Institutions” (Unit and Corporate Investment Funds) by the Parliament of Ukraine in 2001.

By 2008 the value of CIIs was eight times greater than the value of non-state pension funds. See Table 4.

Table 4: Growth of Collective Investment Institutions (CII)

	2004	2005	2006	2007	2008
Total number of CII	105	284	519	834	1167
Total number of CII reached the normative minimal assets value*	--	165	401	577	888
Total number of CII excluding venture funds	29	66	109	120	207
Assets of CII, bln. UAH	1.9385	6.9038	17.1452	46.1622	63.5492
Net Assets of CII, bln. UAH	1.5227	4.8980	13.9263	38.7347	53.0117
Assets of CII excluding venture funds, bln. UAH	--	0.44881	1.3734	4.1593	4.5644
Net Assets of CII excluding venture funds, bln. UAH	0.1161	0.4003	1.1769	3.1199	4.0540

Source: www.uaib.com.ua *The normative of minimal assets value specified by articles 10 and 20 of the Law of Ukraine “On Collective Investment Institutions”.

The extremely large discrepancy between the NPFs and CIIs is surprising given the tax benefits associated with the NPFs. This has been explained by a number of people as the result of the difficulty in withdrawing money from the NPFs, the long term nature of the NPFs and a degree of investee skepticism as to the adequacy of regulation and safety of the NPFs. The discrepancy can be interpreted as a significant lack of willingness on the part of Ukrainian citizens to use the NPF structure as mechanism for accumulating and investing their pension savings. This lack of willingness should be taken into account in designing a Pillar II pension system.

2.2 Development of the Capital Markets

Pillar II, like Pillar III NPFs, rely on a healthy, deep, liquid and competitive capital market in order for their investments to return a sufficient profit to pay for pension payouts from the fund. Therefore, it will be useful to examine the history and structure of the Ukrainian capital market to see what financial instruments are available for investment and what the quality of the instruments is.

2.2.1 Growth of the Capital Markets in Ukraine

The growth of the capital markets as measured by market capitalization shows a significant increase in 2004-2007 and then a leveling off during the beginning and through the global financial crisis. Even so, the relation of market capitalization to Gross Domestic Product is still low at 19.08% in 2008. See Table 5. While the reported market capitalization of the PFTS is currently UAH 182 billion (approx. US\$ 22.7 billion), the “free float” (amount of securities available for trading) is probably less than 10% of that; some market participants have estimated 3-5%.

Table 5: Growth of market cap of equities on PFTS, bln. UAH

	2004	2005	2006	2007	2008
Mkt Cap of PFTS	71,078	147,092	222,846.1	564,648	181,281.5
GDP	344,822	441,452	544,153	720,731	949,864
%	20.6	33.32	40.95	78.34	19.08

Source: www.pfts.ua

The number of public securities registered with the SSMSC has declined significantly from 2004 to 2005, while the value of the issues has increased markedly. See Table 6. This probably reflects the consolidation and winnowing-out of public companies, many of which became public during the mass privatization efforts over the last fifteen years.

Table 6: Registered issues of securities 2003-2008, bln. UAH

	2004	2005	2006	2007	2008
Number of issues	1,705	1,435	1,419	1,292	1,161
Value of issues	28.34	24.185	43.54	49.97	46.14

Source: www.ssmc.gov.ua

The value of registered bond issues spiked in 2007 and the number of issues has stayed roughly even over the last several years. See Table 7.

Table 7: Registered corporate bond issues 2004-2008

	2004	2005	2006	2007	2008
Number of issues	230	509	800	991	912
Total amount of issues, mln.UAH, <i>Including:</i>	4106.59	12748.3	22070.8	44480.5	31346.3
<i>Banks</i>	217.93	2564.73	4994.0	18869.4	7115.94
<i>Insurance companies</i>	112.0	41.9	85.0	50.64	97.5
<i>Other companies</i>	3776.66	10141.65	16991.8	25560.5	24132.9

Source: www.ssmc.gov.ua. Annual reports

The financial crisis has had a significant impact on the bond market, particularly the bonds issued by banks. These are frequently considered to be the most profitable and secure bond issues; however the financial crisis may have changed that evaluation and significantly reduced a pool of relatively profitable debt instruments for investment by pension funds.

2.2.2 Market Activity

Market activity on the two major exchanges shows a very weak market for blue chip stocks. The trading on the Primary Market is negligible and most trading in 2008 is in debt securities. See Tables 8 and 9. Corporate debt made up the largest type of instrument for trading.

Table 8: Trading Volume on PFTS by type of instrument

Type of securities	2005		2006		2007		2008	
	Amount, mln. UAH.	% of total trading turnover	Amount, mln. UAH.	% of total trading turnover	Amount, mln. UAH.	% of total trading turnover	Amount, mln. UAH.	% of total trading turnover
Primary market								
Equities (SPF Auction)	27.55	0.19	48.29	0.17	15.5	0.05	0.6	0.00
Corporate bonds	52	0.36	57.98	0.21	--	--	2.89	0.01
Options	0.03	0.00	--	--	--	--	--	--
Equities	--	--	--	--	--	--	--	--
Secondary market								
Corporate bonds	6,438.02	44.42	11,870.70	42.97	17,384	55.20	21,482.06	46.52
Treasury notes	3,878.50	26.76	8,443.24	30.56	2,089	6.63	10,801.80	23.39
Equities	3,306.51	22.82	5,924.76	21.45	10,080	32.01	13,047.34	28.26
Municipal bonds	667.8	4.61	988.06	3.58	739	2.35	589.91	1.28
CII Securities	121.99	0.84	291.9	1.06	481	1.53	250.14	0.54
Bills of exchange	--	--	--	--	--	--	--	--
Other securities	--	--	--	--	--	--	--	--
Total volume of trades, bln.UAH.	14,492.40	100.00	27,624.93	100.00	31,491	100.00	46,174.74	100.00
Average daily volume of trades, bln. UAH	57.74		113.22		129.1		187.70	

Source: www.pfts.ua. Annual reports

Table 9: Trading volume in 2007-2008 on Ukrainian Stock Exchange (UFB)

Financial instrument	2007		2008	
	Amount, mln. UAH.	% of total trading turnover	Amount, mln. UAH.	% of total trading turnover
Equities	57.24	67.51%	17.48	15.26%
Corporate bonds	14.48	17.08%	46.16	40.30%
Derivatives	13.07	15.41%	50.25	43.87%
Investments certificates	-	-	0.65%	0.57%

Source: www.ukrse.kiev.ua

Significantly, there is a lack of medium to long term government debt available for investment in the market. This debt is frequently the most secure investment in the market and would be a significant part of pension fund portfolios. However, the lack of these instruments significantly reduces the ability of pension funds to diversify their portfolios. Even more importantly, the development of a market for medium and long term government debt is needed to develop a yield curve that can be used as a benchmark for pricing of other debt instruments.

As of December 31, 2008 the total outstanding Hryvnia denominated government bonds was UAH 33.5 billion. Prior to the current financial crisis, the government relied on the Eurobond market (as did many corporations). There are US\$6.2 billion in foreign currency bonds outstanding. During the full year 2007, the government only issued US\$ 700 million (equivalent) in Hryvnia denominated bonds as compared to US\$ 1.2 billion in Eurobonds. Through September 2008, the government actually withdrew domestic bonds by issuing UAH 1,067 million less in Hryvnia denominated bonds than were retired by maturity. Since September 30, Ukraine (like nearly all emerging markets) has been shut out of the Eurobond market.

2.2.3 Capacity of the Capital Market to Absorb Pillar II Pension Assets

A review of the recent history of asset allocation for NPFs gives a striking indication of the available investments and ability to diversify a portfolio under current market conditions. The largest part of the aggregate portfolio in 2006 was corporate bonds at 40.97% which declined to 22.6% in 2008. Corporate bonds were replaced by bank deposit accounts which on aggregate went from 35.76% in 2006 to 56.3% in 2008. See Table 10. In fact, in 2008, nine out of the forty-four funds disclosing their fund data in the mass media pursuant to law were placing over 90% of their assets in bank deposits. See Annex III.¹

Table 10: Aggregate Asset Allocation by year

Assets	2005	2006	2007	2008
Bank Deposits Accounts	70%	35.76%	38.6%	56.3%
Securities with the yield guaranteed by the Cabinet of Ministers of Ukraine	0.0%	1.58%	1.5%	3.6%
Securities with the yield guaranteed by Rada of AR Crimea, local Radas as set forth by the legislation, local loan bonds	0.5%	1.09%	1.3%	1.1%
Corporate bonds issued by residents of Ukraine	10.5%	40.97%	23.8%	22.6%
Shares of Ukrainian issuers	7.1%	12.11%	25.0%	9.0%
Mortgage securities	0.0%	0.02%	0.2%	0.1%
Real-estate objects	0.0%	0.91%	0.9%	1.0%
Bank metals	1.6%	3.23%	2.7%	3.7%
Other assets (cash and equivalents, accounts receivable, corporate rights of Ukrainian and foreign enterprises in other securities, etc.)	10.4%	4.32%	5.9%	2.7%

Source: www.dfp.gov.ua

According to market participants, a large reason for the decrease in the use of corporate bonds is the perception of their low quality due to their illiquid character and the number of significant corporate bond defaults that have occurred over the last several years. See Annex IV for a list of recent significant corporate bond defaults. Although not a large percentage of the market, these defaults have seriously shaken the confidence of the market in relatively “safe haven” investments.

Equity investments dropped from 25% in 2007 to only 9% in 2008 of the aggregate portfolio. Some market participants have argued that the markets’ lack of equity instruments is due to the financial crisis and the lack of demand for the instruments. Therefore, it is possible that a number of entities who “went private” would return to the market, along with new IPOs, if there was increased demand for financial instruments as a result of the implementation of the Pillar II Pension phase. The argument however is not appropriate for pension investments. Pension investments should be in seasoned, well capitalized securities of companies with a good track record of performance. The money should not be placed in speculative IPOs which would be issued just to take advantage of the new assets in pension funds which would be available for investments.

The increase in bank deposits as a part of the NPF portfolios is a clear indication that the existing asset managers could not find sufficient suitable equity or debt instruments to invest in. The fact that the ability to withdraw bank deposits in numerous banks has been delayed for a period of time by the government has only exacerbated the perception of a lack of safe and secure investments in the financial markets for citizens who wish to provide for their pensions.

¹ The data in Annex III is frequently filled in with a “0”. Significantly, fourteen of the NPFs who disclosed their fund information in the mass media pursuant to law show in Annex III no assets of any nature. This is the result of the lack of reporting by NPFs and their service providers, which either indicates that they are not providing the FSR and public with required information or that they are not operating. Notwithstanding the lack of reporting, the funds and their service providers continue to be registered to do business. This Report does not have an answer as to why this situation is allowed to continue but it does result in insufficient data being provided to the public as required by law.

2.2.4 Lack of Investment in International Instruments

Article 47.2(5) of the NPSS Law, implemented by Resolution 560 of the SSMSC² permits the AMC to add to the portfolio of an NPF “shares of foreign issuers traded on the regulated stock markets and listed on one of such stock exchanges as the New York Stock Exchange, London Stock Exchange, Tokyo Stock Exchange, Frankfurt Stock exchange or NASDAQ Trade-and-Information System.” However, currency exchange restrictions effectively prohibit such investments due to the extensive application process for exchanging currency and the long delays in finally obtaining approval which can take several months. Few sellers or buyers are willing to wait this long to complete a securities transaction.

III. THE CAPACITY OF THE PILLAR III PENSION SYSTEM TO ABSORB ASSETS ACCUMULATED UNDER PILLAR II IN LIGHT OF CURRENT REGULATORY AND MARKET CONDITIONS

3.1 Pension Fund Governance

A Non-state Pension Fund (NPF) is a not-for-profit legal entity which can have one of three types: open-end, corporate or occupational. The NPF is created by Founders. There can be one Founder or multiple Founders. The only governing body of the NPF is the Board of the fund. The Founders oversee the Board and review its performance once a year, unless an extraordinary meeting is called.

3.1.1 Appointment of Members of Fund Board

The Board of an NPF is comprised of five or more members. The members of the Board are elected by the Founders. The number of representatives that each founder may delegate to the NPF Board is set out in the Charter of the NPF or resolution of the founders meeting, Article 13.3, Law on NSPP.

Once the decision is made as to the creation of the Board, the Administrator of the NPF (or the founders’ representatives before the Administrator is hired) sends the composition of the Board to the FSR for approval. In order to obtain the approval of the FSR to act as a board member, the board members must meet certain qualifications. Article 13.2, Law on NSPP requires that the members of the Board:

- 1) are capable;
- 2) correspond to the qualification requirements, prescribed by the State Commission for Financial Services Markets Regulation of Ukraine and the statute of pension fund;
- 3) have no convictions for intentional crimes;
- 4) were not, during the last seven years, the leaders of legal persons, recognized as bankrupts or subject to procedure of the forced liquidation in a period, when this person occupied the leading position; and
- 5) are not related persons of other members of the fund’s Board.

However, there is no regulation requiring the disclosure of the criteria that the Founders use to select the Board members that meet the basic qualifications in Article 13.2.

² See Item 2.2(5) of Regulation “On the Requirements for Composition and Structure of NPF Assets for Entities that Perform Professional Asset Management for Institutional Investors” implemented by SSMSC Resolution 560, dated December 10, 2003.

The FSR has issued Resolution 137 setting forth the elements of qualification required by subsection (2) above which include passing an examination to demonstrate knowledge about the pension fund legislation, industry and a degree of experience and education:

- (a) complete higher education and overall length of service of not less than 10 years, or
- (b) either complete higher economic or juridical education and overall length of service of not less than 5 years.

3.1.2 Evaluation and Removal of the Members of the Fund Board

The evaluation of the Board members is done at the annual meeting of the Founders or at an extraordinary meeting, if necessary. There is no statutory or regulatory methodology for making an evaluation of a Board member as to performance, however Article 13.5 of the Law on NSPP provides a laundry list of reasons why a board member's authorities could be terminated.

In addition to the evaluation of the Founders, under Article 13.5 (10) of the Law on NSPP a board member may lose his position if 25% of the participants request the member's withdrawal or request a reelection which he does not win. This procedure for this request is not laid out in the law or regulations, but as a practical matter the requesting participants would have to provide their own evaluation with supporting documents to the Founders.

FSR Resolution No. 169, items 1.6-1.7, provides that the administrator shall inform the FSR when a board member is terminated due to failure to meet the requirements of Article 13.5 of the Law on NSPP.

3.1.3 Independence of the Fund Board

The only specific independence requirement for Board members is that they cannot be affiliated persons of other members of the Board, Article 13.2(5) of the Law on NSPP. In addition, Article 44.1 of the Law on NSPP would apply to Board members since it specifically prohibits a custodian bank from being affiliated with an NPF or an affiliated person of the NPF such as a board member. However, it appears that a Board member of a NPF could be an affiliated member of an AMC or an intermediary that is providing services to the NPF. Board members also can be affiliated person of and appointed by a Founder.

3.1.4 Duties of the Fund Board

Under Article 14 of the Law on NSPP, the Board has the following non-delegable duties. It:

- 1) reports about activity of pension fund during the meetings of founders of fund;
- 2) registers in the FSR amendments to the pension schemes of fund, coordinated with founders;
- 3) approves the investment declaration and amendments to it;
- 4) elects the head and secretary of fund's Board from a number of members of the Board;
- 5) enters on behalf of pension fund into agreements with an administrator, company of assets management or other person, which has a right to carry out the assets management for the pension fund, custodian, and auditor of pension fund;
- 6) reviews reports about activity of the administrator, asset manager, custodian and takes decision as regards to these reports;

- 7) approves information about the financial state of the pension fund, which is subject to disclosure in compliance with the procedure prescribed in the Law on NSPP, and considers an auditor's opinion;
- 8) executes control over the proper use of the assets of the pension fund;
- 9) examines the matters in controversy, which arise between the pension fund and its participants and (or) contributors;
- 10) takes decisions as regards to other issues, attributed by the charter of the pension fund to the competence of the board of the fund.

Although the Law on NSPP sets forth the general functions and duties of the Board, it does not create specific, enforceable fiduciary duties for individual board members in their dealings with the pension fund and its participants. As a result the members of the Board are not kept to the highest standard of care for the participants.

3.1.5 Capacity of the Fund Board

The FSR Resolution No. 137, Minimum Qualification Requirements for Board Members and Specialists in NPF Administrators, requires that the Board members pass an examination to obtain a certificate of competency to show they have a comprehensive knowledge of the current legislation, regulatory documents on the non-state pension provision as well as basic requirements on the formation and functioning of the non-state pension funds. To show this they must pass the examination and obtain a certificate of competency as an expert with regard to activities of the non-state pension funds.

There is considerable question as to whether these requirements are sufficient. The Board members only need to have knowledge of the activities of the Board. There is no requirement that the Board have one or more members who are experts in the operation of the financial markets, investment experts, or accounting experts. It is entirely possible that one or more Board members would have no financial market experience at all. However, the duties of the Board set forth above require that the Board have a great deal of expert, professional knowledge of the capital markets. Board members must evaluate investment strategy, evaluate asset managers and custodians, and review audit reports, among other duties. Article 10 of the Law on NSPP addresses this issue by requiring a Board which lacks investment expertise to hire an investment consultant, paid by the founders. Nonetheless, the Board needs to evaluate the advice of the consultant. Turning over its financial oversight responsibilities to an outside consultant not only diminishes the Board but fails to address the Board's fiduciary responsibilities to contributors, a basic standard of good governance. The experience and educational requirements need to be increased to require that at least one member of the Board is a financial expert, one is an investment expert and one an accounting expert in order for the Board to fulfill its responsibilities.

Finally, the Board does not have its own secretariat. The Administrator for the NPF that the Board has hired provides the organizational and technical support for the Board. However, the Board has as one of its duties the oversight of the administrator. This oversight can only be carried out if the Board has at least a minimal staff devoted to its activities.

3.1.6 Role of the Participants in Fund Governance

The Board of a pension fund is elected and monitored by the Founders and the FSR. However, the participants have a voice in management of the fund. Under Article 15.1(5) of the Law on NSPP, at least 10% of participants can request a board meeting and implicitly can set the agenda for the meeting. Similarly, under Article 16.1 of the Law on NSPP, 10% of the participants can demand an

extraordinary meeting of the founders, again with an implicit right to set the agenda for the meeting. Finally, Article 13.5(10) of the Law on NSPP provides that 25% of the participants can request the removal or reelection of a board member. It does not appear that these powers are used often by the fund participants in practice, since the information on the NPF participants is confidential and obtaining a list for purposes of meeting the required 25% is not possible.

3.1.7 Setting the Fee Structure for Fund Service Providers

The fee structure for NPFs is established by contract entered into between the Board of the NPF and the service provider. The fees are paid from the assets of the NPF. There are statutory maximum amounts as to the fees that can be charged a fund. The fees vary by the type of service provider:

- a. NPF Administrator – 5% for corporate or professional funds and 6% for open funds of total pension contributions paid in favor of all participants in 12 months;
- b. NPF Asset Manager – the total fee shall not exceed 4.2% of the arithmetic mean of NPF NAV over 12 months (or 0.35% per month)
- c. NPF Custodian - the sum total of annual fees shall not exceed 0.5% of the average annual value of NPF assets held by a custodian.

This fixed fee structure has resulted in heavy fees levied against NPFs. Annex V shows the fees for a set of NPFs in Ukraine. (As in other Annexes, the number of reporting NPFs varies and does not constitute the full number of NPFs licensed.) In this set of thirty-one out of forty-four NPFs, the average fee charged the fund is 11.52%. This is the result of very high fees in the eleven most expensive funds which are all over 5% annual fee for all service providers combined. One fund even charged 88% of the assets in fees, of which the lion's share was 59.5% for asset management. Given the nature of the investments of NPFs in the current environment where most are invested in banks, 11.52% is an unusually high amount and there is no justification for 88%. See Annex III for NPF asset allocation in 2008.

Annex VI sets out the fee structure in many Eastern European countries for their Pillar III pension funds. As can be seen, the fees are much lower. There is no limit in many cases on asset management fees, but most of the countries allow the asset manager to charge a percentage of investment returns of the fund which can go up to approximately 2% of the net asset value of the fund. Performance-based fee structures have been traditionally considered very risky for funds since it puts pressure on the fund manager to take higher risks in the hope of increasing his income from higher returns for the fund. This has often led to disastrous consequences. Nonetheless, it is one method of reducing the amount of NPF funds that are used to pay for asset managers and other service providers.

The current system is clearly broken where the total fees are equal to or greater than the gains (if any in the current environment) of the fund. The FSR should consider lowering the maximums for the fees or introducing performance based fee structures, or both, with the understanding that more supervision will be needed to police the performance based fees that will be charged NPFs.

3.2 Fund Administrator

3.2.1 Characteristics of the Fund Administrator

As of September 1, 2009 there were 47 administrators of NPFs included to the State Registry of Financial Institutions. However, records on the FSR website show only 35 active administrators. Approximately 29 asset managers are also registered as administrators of NPFs. For a list of the Administrators and the NPFs they service, see Annex II. Although the list of funds in Annex II is

drawn from official sources and published sources, it appears that at least ten NPFs have no assets or are not reporting their financial condition. It is not clear why official sources have continued to list them in light of their failure to report information or lack of activity and assets.

3.2.2 Duties of Fund Administrator

Article 21.6 of the Law on NSPP sets forth the duties of the NPF Administrator

- 1) to carry out personified registration of participants of pension fund in accordance with this Law and other normative legal acts;
- 2) to conclude pension agreements on behalf of pension fund;
- 3) to provide realization of pension payments to the participants of fund in cases, foreseen by this Law;
- 4) to provide the custodian with orders as regards to the transfer of funds for payment of expenses, which is carried out at the expense of pension assets in accordance with the article 48 of this Law;
- 5) to provide the pension fund with agency and advertising services, related to his activity;
- 6) to provide information, in accordance with the conditions of the agreement and this Law;
- 7) to prepare reports in accordance with the requirements of this Law and other normative legal acts; conduct book-keeping and submit the financial statements of pension fund to the relevant agencies of executive power (FSR) and the board of the pension fund.

The primary duty of the administrator is to keep the personified records of the participants and other record keeping of the fund. It also coordinates the activities of the other service providers for the NPFs. In terms of the protection of the participants, it has the important job of handling sales activities and advertising for the NPF.

3.2.3 Capacity of the Fund Administrator

Directors and executive members of the staff of an Administrator have largely the same educational requirements and experience levels as fund Board members and pass an examination to show their knowledge of the pension industry and financial markets. The administrator must oversee and conduct the book-keeping and accounting, but no one on the administrator's board is required to have an accounting background to provide oversight to the chief accountant of the administrator.

FSR Resolution 118, regarding the licensing of administrators, section 2.1.8 requires that the professional administrator (in addition to members of its executive and controlling bodies) must have at least three qualified employees (including the head of the structural unit charged with the personalised registration of fund participants), and two qualified employees for each separated unit (including the manager of the separated unit). These individuals must also pass an examination.

FSR Resolution 118, section 3.2, provides that the administrator must have proper technical equipment and information systems for the personalised registration of pension fund participants. Changes in the information systems must be reported to the FSR.

Notwithstanding these formal requirements, meetings with industry participants indicated that the level of expertise and experience in many administrators is low which resulted in a number of weak funds with few assets or participants.

3.2.4 Internal Operations

3.2.4.1 Internal Controls

Although FSR Resolution 118 regarding the licensing of administrators provides in Section 3.3 that the administrator have internal procedures for operation, there is no regulation providing for internal controls over how the internal procedures and legal requirements are being followed. Absent such internal controls the administrator has no means of verifying the accuracy of its reporting, the proper execution of its internal rules and its compliance with governmental regulations. This problem is very acute when the Administrator and AMC are the same entity.

3.2.4.2 Risk Management

There is no requirement in the Law on NSPP or in the regulations which addresses the issue of risk management by the administrator. The administrator conducts all record keeping and internal accounting. In addition, it authorizes all payments to the custodian. It is in a unique position to evaluate the economic and political environment in which the NPF operates. However, there is no requirement or standards for the conduct of risk management by the administrator.

3.2.4.3 Audits of Internal Controls and IT Systems

The Administrator must have proper technical equipment under FSR Resolution 118, Section 3.2, and any time the software is changed, the FSR must be notified. FSR Resolution 1101 sets forth the FSR requirements for the IT hardware and software. The annual audits of the Administrator should include audits of the IT system and its capacity for operations and conformity with FSR standards. In addition, such an audit should also cover the internal controls of Administrators when they are mandated by regulation, or even if they are only voluntarily in place. The periodic on-site inspections of the Administrator by the FSR should also cover these areas.

3.3 Codes of Ethics and Fiduciary Duties

None of the laws or regulations related to NPFs requires a Code of Ethics for NPFs, the entities that service them or the natural persons who work on their behalf. There are no governance principles or, indeed, fiduciary obligations for these individuals to guide them in their operation of the NPFs and provide a framework for their ethical obligations to the NPFs and the participants in them. This lack of a general framework works to decrease participant confidence in the NPFs as a safe, secure mechanism for providing for their income in their retirement. Such a Code could be developed and promulgated by the pension fund industry or it could be embedded in the law in the form of fiduciary duties that the NPFs Board and the entities servicing the funds owe to the participants.

The existing requirement in Article 21.4 of the Law on NSPP that the administrator shall act in the interests of fund participants only covers administrators and thus does not go far enough in creating such a general ethical framework for the other entities related to the pension fund and their affiliated persons. However, the SSMSC Resolution 1227, Section IV 1.2, requirement that an asset manager act in the interests of the institutional investor (in this case a pension fund) that it services does create a broad-based framework for asset managers. Although by referring only to “maximum income” instead of “maximum performance,” it may unduly limit the scope of the objectivity of the asset manager.

Finally, the general fiduciary duties for all of the market participants in the relevant laws and regulations are not strong enough to deter related parties to a fund from taking advantage of the fund and participants. These legal provisions must be strengthened.

3.4 Conflicts of Interest and Related Parties

3.4.1 Ownership Structures

One of the biggest problems in ensuring that the conflicts rules are enforced is the ability to identify the ultimate owners of the various entities that are related to the NPF, such as the bank/custodians, asset managers and administrators. Work is underway to create the legal framework to obtain such information and it should be supported as much as possible.

Although the administrator and AMC are supposed to be independent of the custodian under the law and regulations, the intermediary is not specifically banned from being related to one of these entities. The custodian and AMC cannot act as the intermediary, but it is not clear that a subsidiary of the custodian or AMC could not act as the intermediary of a pension fund. This can create a serious conflict and pose a significant risk to the fund and its depositor investors. The fees paid to the intermediary could be uncompetitive and the securities purchased by the intermediary could be at disadvantageous prices to the fund. The intermediaries should be forbidden from being affiliated with any of the fund's service entities.

The Law on NSPP prohibits some of the entities which provide services to a pension fund from being affiliated with each other, such as the requirement that a custodian have no such affiliations. However, the Law on NSPP is very uneven and not complete when it deals with the affiliated persons of the service providers. On the face of the Law, an affiliated person of a custodian can be affiliated with the administrator or AMC. The Law needs to be amended to uniformly forbid affiliated persons of entities servicing the pension fund from being related to other such entities. This would prevent cross control or influence between the entities servicing a pension fund which could work to the detriment of the participants.

Finally, the independence of the Board is put in jeopardy since its administrative work and support is done by the fund administrator which is an entity supervised by the Board. This could lead to breaches of confidentiality or the limitation of information given to the Board for its monitoring and review purposes. Although having the administrator act as the secretariat of the fund Board is obviously a cost reduction measure, the Board of the NPF needs its own staff to handle its confidential activity.

3.4.2 Related Party Transactions

The existing regulatory structure permits a number of conflicts of interests that need to be dealt with as discussed above. There is also one conflict in the area of related party transactions. Generally, pension funds cannot buy securities issued by related parties, with one very important exception. Corporate Funds can purchase securities issued by the Founders of the pension fund, as specified in Articles 47(3) and 49(2) of the Law on NSPP. This could lead to considerable abuse and the establishment of pension funds for the purpose of funding a vehicle for purchasing founder's shares. This exception should be eliminated.

3.4.3 Oversight over Conflicts of Interest

If the functions of Administrator and AMC are conducted by the same entity, one of the elements of the checks and balances of the fund structure will be eliminated. Since there will be one less entity looking out for the participants, the Board of the NPF must be very active in overseeing the Fund's activity in order to avoid conflicts of interest by the AMC/Administrator and to ensure that the NPFs investment policy is being followed and is resulting in good performance. In particular, the Board of the NPF will need to verify that the internal controls of the AMC/Administrator are being effectively implemented. During the course of the development of this report a number of industry participants remarked that the pension fund Boards generally tended to be passive in oversight of

the funds. The Board's oversight over the activity of the AMC/Administrator will need to be more active and intense to insure that the Boards are actively fulfilling their role as an overseer of a fund's activity.

3.5 Disclosure and Transparency

Ukraine significantly improved information disclosure to participants in Non-state Pension Funds (NPF) with the promulgation of the amendments to FSR Resolution No. 3100 on Information Disclosure on Non-state Pension Fund Activity which were effective on January 1, 2009. The amendments to Resolution No. 3100 do not go far enough in providing participants with critical information about the NPF. The lack of IFRS accounting standards also affects the accuracy of the reporting as discussed in more detail in Section 3.9.

3.5.1 Background and Experience of Managers

Under Annex I Section 2 and 3 of FSR Resolution No. 3100, basic data that is disclosed on the persons, legal or natural, who are founders, will depend on the type of fund; corporate data on the service providers of the NPF such as administrators, asset managers and custodians is also required. There is no data on the identity of individuals who are the controlling executives of the service providers, the identity of the ultimate owners of the service providers, nor any biographical information on the natural persons who are founders or who are members of the fund Board. The experience of these Board members in the financial sector is unclear and a participant cannot evaluate their background, education, and work history to determine their competence for their jobs. In addition, there is no disclosure as to the ultimate owners of these corporate entities and their inter-connection, if any.

3.5.2 Management Discussion and Analysis

The disclosed information also lacks any requirement for the managers of the fund to provide a section which describes the fund's performance in the current market environment. The commonly termed management's discussion and analysis should include the risk/reward targets that the Board and management have set for the fund to fulfill the Investment Policy Declaration. This discussion, in plain language, could be based on the annual analysis made by the Board of investment performance required to be made in Article 10.3 of the Law on NSPP. This type of discussion in common language is critical for the average participant to understand and evaluate the fund.

3.5.3 Risk Disclosure

The investment policy declaration is not required to be distributed to participants and neither is it required to be published. What is required to be published is only the asset allocation limits and the actual assets of the fund. However even this information does not contain any risk disclosure or evaluation of the investment policy. In addition, it does not contain a risk evaluation of the current portfolio of the fund in existing and anticipated market conditions. The risk tolerance of participants is critical to their investing decisions and they cannot make a risk assessment without a risk disclosure by management on an on-going basis.

3.5.4 Performance

The amendments to FSR Resolution No. 3100 on information disclosure also deals in detail with the reports that NPFs needed to make to the regulators and the public. These amendments also significantly improved the information to be given to participants and the general public. However, the Resolution left out several significant elements of information that are needed to keep a participant informed on a current basis as to the activity of the NPF. For example, the NAV per unit is published in the press once a year and shall be disclosed on the FSR website quarterly.

Otherwise, the NPFs are required to provide the regulators with the value of the unit NAV on a quarterly basis which contains the unit NAV for each month of the quarter. Under Resolution 3100, NPFs are required to publish the NAV per unit on an annual basis. Also, they are required to disclose the change in the value of a NPF's unit, as well as the NAV per unit, in the interim between the reports made at the end of the reporting year of the NPF. It is not clear that the NAV calculation or the NAV per unit calculation are made in accordance with international standards and whether it is universally applied for all NPFs and NPF participants. The more accurate reporting would require the regular disclosure of the unit NAV so that participants could make their own calculation as to the performance of the NPF.

In addition, another element that was left out of the Resolution No.3100 has to do with the time periods which are used to measure the performance of the fund. Comparative performance statistics should be specified: one year, two years and five years to avoid the “cherry-picking” of short term spikes in the markets which could make the fund appear to be performing better than it is.

3.6 Sales, Marketing and Distribution

3.6.1 Advertising Regulation

Article 53(7) of the Law on NSPP forbids an advertiser:

- 1) to use incomplete or unreliable information on services of the non-state pension provision, which is provided by this advertiser;
- 2) to use the comparative advertising with the purpose of unfair competition by pointing out of defects in activity of persons, which carry out similar professional activity of the non-state pension provision, regardless of whether such information on defects corresponds to reality;
- 3) to give a forecast or guarantee of profits growth of participants of the non-state pension provision;
- 4) to give gifts (winnings) or give the promise on provision of gifts (winnings) to the potential participants and depositors of pension funds or take some other encouraging measures, which can influence the choice of this or that pension fund by his potential participant (by a depositor).

Although it is useful to have a general prohibition against incomplete or unreliable information, more specificity is generally necessary to cover the common form of deceptive or fraudulent advertising. This provision in the law is merely repeated in the FSR Resolution 187 Section 1.5 on the approval of promotional materials. Moreover, the language in such prohibitions is also usually couched in terms of “deceptive advertising” rather than “unreliable information”. The regulation should be amended to elaborate on the meaning of “unreliable information” instead of just repeating the provision in the law. Otherwise the Law on NSPP should be amended so that it is written in a clearer, more precise manner or the regulation which implements it should be clearer and precise as to what is permitted and what is prohibited.

The advertising provisions also do not deal with many of the problems that come from the ownership of the entities that service a NPF by conglomerates. For example, it does not forbid “ties-ins” or “forced selling” where a sales person requires the participant to purchase other financial products in order to participate in the pension fund. Another problem is the sale of other private pension plans by the same sales person who offers an NPF. The sales person may offer the private plan, even though the NPF has more advantageous terms. The law should be amended to take care of these situations.

Just as importantly, the advertising regulation does not deal with the situation of a sales person disparaging the warnings in the advertisement as being unimportant or unnecessary. Such verbal “vitiation” of the sales literature can effectively negate the provisions regarding risk warnings and

cautionary language in the written sales literature. The law should be amended to prohibit such activity.

3.6.2 Regulation of Sales People

3.6.2.1 Qualification of Sales People

Sales persons of administrators selling NPFs have an agency contract with the administrator which must be disclosed to the FSR. However, these individuals do not need to pass an exam or prove their competence to the regulatory authorities. The “agency persons” conducting the sales must be brought within the regulatory environment. They should be examined and qualified for their positions.

3.6.2.2 Supervision of Sales People

Sales people should be subject to specific rules regarding sales conduct which are monitored by the administrator with whom they have a contract. Records of sales activity should be maintained which enable a regulator to conduct an oversight examination to determine compliance with the rules. The regulations for sales persons should be amended for provide for such supervision.

3.6.2.3 Liability of Sales People

Article 54(6) of the Law on NSPP provides that:

“Persons, providing agency services to the pension funds, bear responsibility for improper realization of powers, provided to them in accordance with the provisions of agreement, concluded with them and pursuant to the law.”

This distinctly leaves the impression that it is the “agency persons” conducting sales who are liable to participants for sales misrepresentations and not the administrators with whom they have a contract for providing the sales services. However, the agency persons or companies may not have the financial resources to make participants whole. In fact, this provision reduces the incentive of an administrator to supervise the activities of the sales people for the funds they administer. The law should create liability for agency persons conducting sales but it should not insulate the administrator from its responsibilities to oversee the sales activity of the agency persons. The law should be amended to clarify that the administrator has liability for the conduct of its agency persons conducting sales and promotions.

Moreover, the standard of liability for sales activity should be based on the prohibitions against fraud and improper sales practices must be set forth in the Law on NSPP and in the contract that the agency persons conducting sales have with an administrator. The Law on NSPP should contain a fraud and improper sales practice standard for liability that is applicable to all persons promoting the pension fund, regardless of their contractual relationship with the administrator.

3.7 Asset Management

3.7.1 Multiplicity of Regulators for AMCs of NPFs

Although the SSMSC authorizes asset managers for pension funds, both the SSMSC and FSR regulate the activity of asset management for pension funds, resulting in differing regulations for the same activity, particularly when one entity wants to act as both an administrator and an asset manager. An asset manager must have an initial capitalization of 300,000 Euro under Article 39.2(1) of the Law on NSPP and Chapter 1(3) of SSMSC Resolution 341 if it only wants to be an asset manager for NPFs. On the other hand, if an administrator wants to be asset manager under

Article 39.2(2) of the Law on NSPP and Chapter 1 Section 3 of SSMSC Resolution 341, it must have 500,000 Euro in capital and it must maintain a capitalization of 300,000 Euro. In the reverse, this differs from Article 27.3 of the Law on NSPP and Section 2.3 of FSR Resolution 118 which is weaker and requires that an asset manager only have 300,000 Euro in capitalization and maintain a capitalization of 200,000 Euro to act as an administrator for an NPF. Consequently, companies can engage in regulatory arbitrage since it is more advantageous and requires less capital to get an asset management license from the SSMSC and then get a license to be an administrator from the FSR.

Fortunately, both FSR and SSMSC regulations have the same requirements for the number of officers and employees that need to be assigned to the unit that handles NPFs and the general qualifications are the same.

Only a small number of licensed asset management companies also have a license to act as an asset manager for a pension fund. See Table 11. This is most likely a reflection of the smaller size of pension funds as compared to collective investment institutions. For a list of Asset Managers, the NPFs whose assets they manage and the NPFs which they administer see Annex I. This data is derived from the FSR website and published sources such as the newspaper “Ukrayina Bisnes Revyu.” Nonetheless there are a number of NPFs for which information is missing, even though it should be public. This means that the NPFs are either closed or are not submitting the information required by the law.

Table 11: Number of AMCs

	2005	2006	2007	2008
Number of asset management companies with relevant license	159	229	342	386
Number of asset management companies which have agreements with NPFs included in the above number	25	42	44	58

Official statistical data of SSMSC (<http://www.ssmc.gov.ua>).

3.7.2 Risk Management

SSMSC Resolution 1227, Section 4, 1.2, regarding asset management activities provides that the asset manager must:

Act in the interests of the institutional investor (set up the investment portfolio in accordance with the investment declaration for the purposes of obtaining the maximum income at the lowest possible risk taking into account conditions specified in the asset management contract, the situation on the securities market, the counterparty choice risk, and other risk factors).

There are no specific requirements in the Resolutions of the FSR or SSMSC that the administrator or AMC establish a risk management department or methodology for reviewing the portfolio of NPFs to determine the level of risk that the portfolio securities carry, their conformity with the Investment Declaration or if they are prudent and in the best interests of participants.

Risk management is handled in the pension fund system by setting limits on the allocation of a fund's assets into different categories or classes of financial instruments. However, even within these limits, risk analysis needs to be conducted in order to allocate the fund's assets in a manner that reduces the risk to the participant in line with the Investment Declaration.

Using a fixed allocation strategy established in the regulations also limits the ability of asset managers to adapt to changing market conditions. This can result in a riskier portfolio than required by the investment strategy or in the violation of the portfolio limits, as can be seen in Annex III where the asset managers for 17 out of 44 NPFs disclosing fund information in the mass media exceeded the percentage of assets that could be placed in bank deposits.

3.7.3 Investment Strategy

Article 49.1 of the Law on NSPP and SSMSC Resolution 560 on the composition and structure of assets managed by AMCs provides the limits of investment in various classes of financial instruments by pension funds as follows:

- securities of one issuer (except for securities guaranteed by the Government) up to 5% of total assets,
- claims on banks up to 40% of total assets whereas claims on one bank cannot exceed 10% of total assets,
- central government securities up to 50% of total assets,
- local government securities up to 20% of total assets,
- foreign issuers' securities up to 20% of total assets
- corporate bonds issued by Ukrainian issuers up to 40% of total assets,
- stocks issued by Ukrainian entities up to 40% of total assets,
- mortgage instruments up to 40% of total assets,
- real estate up to 10% of total assets,
- bank metals (de facto gold) up to 10% of total assets,
- other assets not prohibited but not specified in the Law up to 5%.

In fact, the portfolios of the funds frequently breach these limits, which has been particularly true after the beginning of the financial crisis. A World Bank study provided the following analysis for the end of 2007:

Table 12: Estimated Breaches of Investment Limits as of End September 2007

Asset class	Breach over limit in % [Number of Funds in Non-compliance and (Joined Market Share of Funds that Breached the Limit)]			
	Up to 1%	1-3%	3-5%	5% +
Domestic corporate bonds	0	0	0	1 (18.6%)
Bank deposits	1 (0.2%)	0	0	8 (1.2%)
Domestic stocks	0	1 (5.9%)	1 (0.0%)	1 (0.1%)
Other assets	2 (0.3%)	1 (5.0%)	5 (31.5%)	5 (1.8%)
Gold	1 (6.2%)	0	0	0
Municipal bonds	0	0	0	0
Real estate	0	0	0	0
Domestic government bonds	0	0	0	0
Mortgage securities	0	0	0	0
Foreign stocks	0	0	0	0
Foreign corporate bonds	0	0	0	0
Foreign government bonds	0	0	0	0

World Bank Report 2007

The breaches continued into 2008, based on published reports by the pension funds. See Annex III. Of the 44 companies whose statistics are available, 15 of the 44, or 34% violated the asset allocation rules. The most common violation was in the area of bank deposits. This demonstrates that the absolute cap on certain types of investments did not provide adequate risk management during the crisis. While limitations on the amount of a fund's assets that can be put into the securities of a single issuer should be maintained, the cap on the type of securities has not proven to be effective or enforceable. Asset managers should be able to invest based on their risk analysis system which is reviewed and approved by the regulatory authorities. This could result in investment in types of investments that go outside the boundaries set by the asset allocation requirements of SSMSC Resolution 560.

3.7.4 NAV

Article 47(6) of the Law on NSPP states that the administrator and asset manager are responsible for calculating and determining the NAV and for accounting and crediting pension assets. The calculation of the NAV and NAV per unit has not been calculated in accordance with international standards.

3.7.4.1 Multiple Regulations

Similar to the establishment and operation of an AMC for pension funds, both the FSR and SSMSC regulate the calculation of the net asset value of a pension fund. FRS Resolution 1660 provides that the Administrator along with the entity managing an NPF's assets is responsible for calculating the net asset value and unit net asset value of the NPF. However, to date the SSMSC is the regulatory body that has issued a regulation regarding the manner in which the calculation is made by an AMC in SSMSC Resolution No. 339 on Asset Valuation for NPFs. Under SSMSC Resolution 339, the administrator and AMC calculate the gross NAV on a monthly basis and the AMC transmits the information on composition, structure and value of assets to the SSMSC on a monthly basis. The Administrator transmits the information on the gross NAV quarterly with a monthly breakdown pursuant to SSMSC Resolution 339 Annex 2. The FSR has approved amendments to the regulation to provide for the net asset calculation per unit for NPFs, which became effective January 1, 2010.

3.7.4.2 Time Interval for Calculation

Under SSMSC Resolution 339, the calculation for the NAV of a NPF is done only once a month and not on a daily basis. This works to the disadvantage of any participant who invests during the interval period of the monthly calculations. Other prospective depositors/investors can arbitrage the fund by waiting to see what the value of the fund will be at the end of the period before they invest and only invest if the fund is going up in value. Participants who invest during the month will not be able to avoid a decline in the value of their investment.

Accurate, daily NAV calculations are needed to give participants accurate information as to the status of their accounts and to give them confidence that their contributions are being properly managed and monitored for their benefit. This is the basic international practice and daily per unit NAV determines the amount of units that the participant purchases when he deposits money into the fund and is used to determine the value of the participant's account on a daily basis. This daily interval should be implemented in the NPF system immediately.

Some industry members appear to be objecting to daily calculation on the grounds that a daily calculation is too difficult and costly. Given the structure of the portfolios set out above, this is not a credible argument. The calculation of accrued income on debt instruments and bank deposits is straight forward. Moreover, good policy would require that participants have fully transparent and up-to-date information about the status of their pension fund account in order to create the confidence in the market that comes from such transparency.

3.7.4.3 Disclosure of NAV

Article 53.1 of the Law on NSPP requires that information disclosed by an NPF include information on "changes in the net value of pension fund assets and net value of a unit of pension contributions to this fund." Many administrators have interpreted this to mean that the administrators are only obliged to disclose to the public the changes in NAV and not the actual values of the NAV for the disclosed periods of time. This restrictive reading does not augur well for the commitment to consumer protection on the part of many administrators.

3.7.4.4 Methodology for Calculating NAV

Finally, the accounting for the calculation of the NAV has proven to be erratic and not in compliance with common international practice. Under SSMSC Resolution 339, the expenses used in the determining the gross NAV are based on the previous month's accrued but not paid amounts, rather than the accrued expenses for the end of the month for which the calculation is made. This seriously distorts the NAV that is reported to regulators and to the public.

To deal with many of these issues, the FSR has published a proposed regulation that would calculate the unit rate of a NPF on a daily basis. However, the draft regulation appears to charge participants twice for liabilities and expenses for the fund when they purchase units. More work is needed to get this regulation in the correct format before it is enacted.

3.7.4.5 Backward Pricing

Draft requirements on NPF asset value calculation are stated in the SSMSC draft Resolution of February 20, 2009 amending the Regulation on the Procedure for Determining the Net Assets Value of a Non-State Pension Fund (Open, Corporate, and Professional). The third version of this draft Regulation with small changes was posted on the SSMSC web-site on Aug. 5, 2009. One of the main changes is that stocks and bonds of Ukrainian listed companies shall be marked to market on the day proceeding the calculation day. This method of calculation is referred to as "backward pricing." "Forward pricing" is the practice of pricing the assets and generating the NAV on each day at the end of the trading day and using the closing prices of that day for the calculation of the NAV. It is considered the best international practice because backward pricing can be used by persons to purchase units of the NPF at a price that disadvantages existing participants. Due to the difficulty of selling pension units in NPF, this problem is not as great as it would be in an open CII, but forward pricing would be the best practice.

3.7.4.6 Asset Valuation

Due to the lack of adoption of IFRS in Ukraine, as discussed further in Section 4.9 below, the method of evaluating the "fair value" of assets in a NPF portfolio will not meet international standards. This is a further argument for the prompt adoption of IFRS for public interest entities in Ukraine if pension reform is to have the confidence of the public.

3.8 Custodian

3.8.1 Characteristics of Custodians of NPFs

The custodian is the primary customer protection entity for participants in the NPFs. In addition to the external auditors, the custodian should constantly review the actions of the administrator and AMC to determine if they are in compliance with the law and fund documents and in the best interests of the participants in the NPF.

Under Article 44 of the Law on NSPP only a bank that has a license from the SSMSC can act as a custodian for a NPF. As Table 13 shows, a number of banks have received a license to act as a custodian, but only 29 have a contract with a NPF to act as the custodian of an NPF.

Table 13: Number of Bank/ custodians

	2004	2005	2006	2007	2008
Number of banks – custodians with relevant license		80	100	107	123
Number of custodians contracted to service NPFs included in above number	--	--	26	31	29

Official statistical data of SSMSC (<http://www.ssmc.gov.ua>).

3.8.2 Legal Duties of Custodian

The legal responsibilities of a custodian are set out in Article 44(3) of the Law on NSPP. The duties as set out are not strong enough to provide the level of protection necessary for participants in an NPF. First, the custodian is only obligated to check the NAV calculations of the administrator and AMC. To effectively protect the pension fund, the custodian should also determine if the methodology of the calculation is correct and if it is being applied correctly, in addition to checking the calculations made.

Second, the custodian is only obligated to carry out the instructions of the administrator and AMC to transfer funds of the NPF. The custodian is not obligated to determine if these transfers are being made pursuant to the terms of the NPF's rules and in the best interests of the participants in the NPF. The custodian must have these additional responsibilities in order to properly protect participants. It should monitor the use of pension assets set out in Article 48 of the Law on NSPP and determine whether fees are properly calculated.

Third, under Article 44(4) of the Law on NSPP, if the custodian detects that the AMC is violating the law, it must report this to the NPF's board, the NPF's Administrator and the FSR. This obligation should be broadened to include any violation by any entity, including the administrator, intermediary, agency sales persons, auditor and all entities and natural persons having dealings with the NPF.

3.8.3 Independence of Custodian

Article 44(1) of the Law on NSPP provides that the custodian cannot be an affiliated person of the NPF with which it has a custodial contract, or the administrator, asset managers, founders, auditors and affiliated persons of these entities. In addition, the custodian, under Article 44(6), cannot provide the services of intermediary to the NPF. However, as it is currently written, Article 44(1) does not appear to preclude natural persons who are affiliated with the custodian from being directors of the administrator of the NPF or its service providers. Nonetheless, this may not happen in practice.

Notwithstanding these provisions, the FSR or SSMSC do not have the authority to determine the ultimate beneficial owner of the custodian, administrator, asset managers and others, particularly if they are offshore and thus it is extremely difficult for the regulatory authorities to determine if the independence of the custodian is being preserved in actual practice.

3.8.4 Segregation of Pension Fund Assets

The multiple articles in the Law on NSPP that isolate the assets of the NPFs from those of the entities and persons associated with the NPFs are confusing and piecemeal in nature³. As a result of the patchwork of provisions, the law is susceptible to different interpretations and does not cover a number of important issues regarding the assets. As currently written, the law doesn't specifically cover the segregation of fund assets during the bankruptcy of Founders and other related parties of a NPF, even though Article 4 of the Law on NSPP states that the NPF system is operated on the basis of, among other things, the principle of segregation of pension assets. Finally, it doesn't cover the activities of an intermediary which works on behalf of a pension fund. The legal status of funds

³ Article 44(7) of the Law on NSPP provides that the custodian cannot use assets in fund account as credit resources; Article 47(5) provides that pension assets cannot be pledged as collateral [by whom]; Article 47(5) provides that the assets can only be used for purposes of Article 48 and cannot be seized for liabilities of founders and other related parties; Article 47(7) provides that pension fund assets cannot be seized or confiscated if legally obtained; and Article 48(2) provides that fund assets cannot be included in liquidation mass of custodian if it is declared bankrupt.

during the intermediation process also needs to be clarified in the Law on NSPP or other securities market related laws.

The Law on NSPP needs to clearly state the legal ownership relationships for the assets of the fund. The law needs to clearly state which entity has legal title to the assets of the NPF: the custodian, asset manager or NPF itself and how title is treated during the course of the intermediation process. The law also needs to state the legal character of the interest the participant has in the assets and the rights that are associated with that interest.

Further, the law needs to state that the assets of the NPF should be segregated in separate accounts from the assets of the custodian, the founders and other service providers of the NPF. Finally, the provision in Article 48(2) of the Law on NSPP that fund assets cannot be included in liquidation mass of custodian if it is declared bankrupt needs to be explicitly extended to all Founders and service providers of the NPF. The fact that this specific provision in the law relates only to the custodian raises the question as to whether it applies to other entities servicing the NPF.

The confusion that this causes can be found in the title to the assets of the NPF which are bank deposit accounts. Does the pension fund or custodian have title to these deposits? If the assets are segregated and title is held by the NPF, why are their funds temporarily frozen at a number of banks in Ukraine? More importantly, does the bank where time deposits for investment purposes are made have title to the money on deposit while the fund merely has a claim on the bank to return the money? Should money held on time deposit at a bank be treated differently than money held in a demand custodial account? If so, in what other circumstances would a NPF's assets be considered not to be segregated and to be subject to other claims or rules related to the control of the NPF's assets. Should a deposit account without deposit insurance be a permitted investment vehicle since it cannot be properly segregated as an asset of the pension fund?

The Law on NSPP needs to be amended to clearly set out the segregation of pension fund assets, the rights of the NPF to take possession of the assets, the rights of the participants to the assets in the NPF and the protection of the assets in the event of the bankruptcy of entities servicing the fund or holding the assets for investment purposes.

3.9 Accounting and External Auditors

3.9.1 Overall Quality of Financial Statements in Ukraine

During the course of the preparation of this report, it was reported that many financial institutions, including pension fund institutions, use the practice of “black audits,” or cursory audits, to meet their disclosure and regulatory requirements.

This is one of the many reasons that the overall perception of financial accounting statements in Ukrainian is that they are of very low quality according to a World Bank Report on the Observance of Standards and Codes in Accounting and Auditing.⁴ According to the Report, “the market attributes the poor perceived quality of statutory financial statements to the limited demand for financial information from third parties, strong influence of tax reporting in the absence of other demand, limited or no enforcement by the appropriate authorities, and limited capacity due to lack of understanding of and sufficient technical training in Ukrainian NAS.” On the other hand, financial statements that purported to comply with IFRS, such as those of banks, were considered to be more reliable.

⁴ World Bank, Report on the Observance of Standards and Codes, Accounting and Auditing, for Ukraine, December, 2008, Page 27

This low quality of accounting can significantly affect the ability of a pension fund to structure a secure and balanced portfolio, since the AMCs cannot accurately evaluate the quality and risk of financial instruments that are valued based on their financial statements such as equities and bonds.

Similarly, the lack of use of IFRS for the financial statements of NPFs reduces the confidence that participants have in the advertised performance and risk of a particular pension fund. Even if not mandated by the law, pension funds should voluntarily use IFRS to prepare their financial statements. NPFs are “public interest entities” and, as such, international best practice is that they should use IFRS to prepare their financial statements.

The safety and protection of participants NPFs can only be secured by financial statements produced according to IFRS and full audits by certified auditors conducted under international auditing standards.

3.9.2 Ukraine has not adopted IFRS

Ukraine has not adopted IFRS for public interest entities. Moreover, there are material differences between Ukrainian National Accounting Standards (NAS) and IFRS.⁵ A number of new IFRS standards are not covered in Ukrainian NAS, for example IFRS 7 Financial Instruments: Disclosures. One of the important differences, particularly for pension funds, is the requirement to state the ultimate beneficial owner and certain other requirements of IAS 24, *Related Party Transactions*.⁶

The development of the capital market and financial sector as a whole is dependent on accurate financial statements that investors and institutional participants in the market, such as NPFs, can rely on. IFRS should be implemented as quickly as possible, beginning with public interest entities, such as NPFs.

3.9.3 Independent External Auditor

FSR Resolution No. 86 on the management of the register of auditors provides for the creation of a register for auditors of financial institutions. However, it does not provide for a means of audit quality control reviews or of special audit procedures for financial institutions. Therefore the supervision and qualification of the auditors is left to the professional associations.

Unfortunately, the external auditors in Ukraine do not appear to be well supervised. The quality control program that has been put into place by the Chamber of Auditors Ukraine is considered to be of low quality and ineffective.⁷ The knowledge that the auditing profession currently has of IFRS and International Standards of Auditing (ISA) is also quite low and in need of significant upgrading in order for the auditors to accurately audit financial institutions such as those that service NPFs with ISA promulgated by IFAC.

3.10 Government Supervision

3.10.1 Capacity of Regulators

Based on discussions with the FSR and SSMSC, both organizations need additional resources to regulate the various participants in the pension fund sector. Additional budget, personnel, training

⁵ World Bank, Report on the Observance of Standards and Codes, Accounting and Auditing, for Ukraine, December, 2008, Pages 22-23 for a more detailed list.

⁶ World Bank, Report on the Observance of Standards and Codes, Accounting and Auditing, for Ukraine, December, 2008, Page 23.

⁷ World Bank, Report on the Observance of Standards and Codes, Accounting and Auditing, for Ukraine, December, 2008, Page 21

and equipment would be necessary to prepare the organizations for the large increase in assets moving into the capital markets as a result of the introduction of Pillar II. The FSR has significantly reorganized its internal structure and it has stated that it is co-coordinating efforts with the SSMSC to provide for more harmonized regulations for the pension fund institutions. Nonetheless, additional resources are needed.

In addition, there is a multiplicity of regulators for the institutions in the pension fund sector. The FSR and SSMSC are the significant regulators, but the Central Bank also has significant responsibilities over the pension fund system in Ukraine and the financial institutions that operate in it. Each service provider reports to its primary regulator first who then informs the FSR as to compliance problems and sanctions at asset managers and custodians. This reporting structure can create confusion and a disjointed and incomplete information flow between the regulators, particularly in regards to information flowing to the FSR which has primary responsibility for NPFs. A simplification of this structure is needed to provide a more integrated regulatory approach to the pension fund industry.

3.10.2 Authorization of Pension Fund Administrators

3.10.2.1 Capitalization

Article 27.3 of the Law on NPSS and Article 2.1.5 of the FSR Resolution 118 on the Licensing of Administrators of NPFs provides that an Administrator must have a minimum capital of 300,000 Euros to obtain a license and provides that this can drop to a minimum of 200,000 Euros during the course of its operations. An asset manager must also have a capitalization of 300,000 Euros.

The result of this low level of capitalization is that a number of administrators were authorized that did not have sufficient resources to fully administer pension funds and, indeed, a number of registered administrators are no longer active, while a number attracted a large number of depositors, but had very little assets. The result has been an excessive number of administrators for the size of the Pillar III pension fund industry. The number of administrators needs to be reduced so that the remaining administrators can operate more efficiently and with higher participant protection standards. One of the most effective ways to carry out such a consolidation is to set a higher capitalization limit for administrators which must be maintained while the administrator is in operation. Higher capitalization will also be needed for asset managers, particularly those that are also licensed to act as administrators.

3.10.2.2 Capacity of Administrators

FSR Resolution 118 governing licensing of administrators of NPFs provides that each professional administrator must have at least 3 qualified employees (including the head of the structural unit charged with personal registration of participants) and 2 qualified employees for each detached unit. Item 2.3.5 provides for same personnel requirements for AMCs. Section 3 further states that an administrator must have technical equipment and internal procedures governing its operation.

Article 5.8 provides for the refusal by the FSR to grant licenses and sets out the reasons it may do so which are based on the documents submitted in the application. However, information received during the course of this report indicates that the FSR does not feel that it has sufficient authority to refuse to grant licenses. The law does not allow the FSR to conduct an investigation to determine the truth of statements made in the application, although it can apparently verify information through the use of public sources. The FSR needs the authority to verify the capacity of the administrators and AMCs to prevent unprepared and undercapitalized entities from receiving a license to deal with pension assets.

3.10.3 Authorization of the Asset Manager

Article 39 of the Law on NSPP and SSMSC Resolution 341 on Licensing Asset Managers regulate the authorization of an asset manager to manage the funds of an NPF. Under the above legislation an asset manager that manages solely NPF assets must have 300,000 Euro in capital.

However, if an administrator wants to be an asset manager under Article 39.2(2) of the Law on NSPP it must have 500,000 Euro in capital and it must maintain a capitalization of 300,000 Euro.

3.10.4 Licensing and Qualification of Officers and Directors

Article 24 of the Law on NSPP provides for basic qualifications for officers and directors (such as no criminal convictions or management of companies that went bankrupt) and allows the FSR to set up qualification requirements. In FSR Resolution No. 183 on education, retraining, improvement of professional skill and examinations discussed in Subsection 3.10.4.2 below, the FSR requires differing basic education requirements and examinations, as well as differing levels of experience, for different levels of authority in the Administrator and AMC.

3.10.4.1 Fit and Proper

These education and experience requirements are part of the complete qualification process for officers and directors. However, there does not appear to be one of the most important parts of a “fit and proper” test for the directors and officers of an administrator and AMC – the probity determination. Candidates are correctly evaluated for criminal convictions and bankruptcy; however a general evaluation of the ethical character of the candidate should also be made regarding his character, integrity, personal associations and overall good character. Individuals may not violate the relatively basic qualification elements, but may still have associations and activity which renders them unfit to be given a position of trust, particularly over pension assets. This test has proven to be an extremely important for good regulation of financial institutions.

3.10.4.2 Education and Experience

Article 24 of the Law on NSPP states the officers and directors of the administrator must be competent, not convicted of deliberate offenses and meet FSR requirements. FSR Resolution 137 on qualification requirements for the members of boards of the non-state pension funds and experts on administration of the non-state pension funds provides for the basic formal education and experience levels for specialists. FSR Resolution 183 on education, retraining, improvement of professional skill and examinations of persons who exercise activity in financial services markets provides for the manner of training and nature of the examinations. On the face, these provisions appear to provide for a sufficient means of evaluating the quality of the Board members and qualified employees of an Administrator. However, more should be required of the Board as a whole. At least one member should have sufficient education or experience to qualify as a financial expert, and investment expert and as an accounting expert. These specific requirements should be added to the law and regulations.

3.10.5 Supervision

3.10.5.1 On-site Inspections

The ability of the FSR to conduct effective on-site inspections is the basis for effective supervision of the pension funds and entities servicing the pension funds. In general the laws and regulations related to NPFs give the FSR the authority to conduct effective inspections.

FSR Resolution 96 relating to conduct of inspections provides for the procedures by which FSR conducts on-site inspections of financial institutions that service a NPF. The procedures are straightforward. The FSR can demand documents it may need and any information for an inspection, as well as seize for a period of time those documents that prove or may prove the facts of the legal violations. The inspection team should have unfettered access to all of the records and premises of the subject of investigation and should assure that documents are originals and that any copies have not been altered.

Under Section 8 of Resolution 96 the inspection team is allowed to remove documents from the premises of the subject of the investigation which apparently includes original documents. The inspection team is also allowed to obtain written explanations to questions posed by the inspection team.

In addition to scheduled inspections, the FSR has the right to conduct inspections off-schedule and without notification to the entity that is the subject of the inspection. This is critical in dealing with problem entities for which notice of the inspection would provide an opportunity to evade regulation.

Neither the Law on Financial Services nor FSR Resolution 96 provide for sanctions for the refusal to provide information during an inspection. However, Article 41.1(2) of the Law on Financial Services provides for general sanctions for failing to give information or giving false or misleading information in the amount up to 1,000 non-taxable individual minimum income amounts⁸ and not more than one per cent of the equity of a legal entity that gives the false information. Apparently these sanctions would apply to the service entities of an NPF and their officers and Board members. It is questionable if these sanctions are severe enough to deter entities subject to inspection from violating the requirement to give information if they were involved in serious fraud. In effect, the sanctions simply act as an additional tax to be taken into consideration when calculating the profitability of conducting the fraudulent activity

3.10.5.2 Off-site Inspection

Section 2 of the FSR Resolution No. 96 provides for off-site inspections where information is requested from the subject of the investigation, but no visit to the site of the subject is made. Failure to comply with the request can provide the basis for an on-site inspection.

3.10.6 Risk-based Supervision

In order to provide for effective prudential supervision, the FSR and SSMSC would need to base their inspection systems on a risk-based model. This would require establishing a methodology for evaluating which of the entities servicing a pension fund have the highest risk of defaulting on their obligations to the funds. The crisis clearly demonstrated that the administrators, AMCs and government supervisors did not have an adequate risk based evaluation of the market. Many asset managers placed a large amount of the NPFs assets in bank accounts with banks that went into administration. A risk-based system is unique for each country and needs to be established for Ukraine.

3.11 Enforcement

3.11.1 Investigations

There is not a separate regulation for investigations. Investigations are based on FSR Resolution 96 On the conduct of inspections. The procedure for bringing a case for sanctions against an entity or

⁸ For these purposes, the non-tax minimum is 17 UAH and therefore the amount is up to 17,000 UAH..

person registered with the FSR is governed by FSR Resolution 125 on the policy for applying sanctions. Although the procedures provide a means of investigating violations of the administrative regulations of the FSR, they do not contain a number of investigative tools that would be necessary to uncover large scale fraud which would in all likelihood involve entities and persons that are not regulated by the FSR. For example the Law on NSPP and the Law on Financial Services do not give the FSR the authority to require third parties (non-supervised entities) to produce:

- 1) Financial records or statements,
- 2) Banking records,
- 3) Telephone records, or
- 4) Internet records, including e-mail.

In order to investigate a small or large scale misappropriation of assets of a pension fund or fraudulent sales practices of the fund, these investigative tools would be necessary and the law should be amended to give increased investigative techniques to the FSR.

In addition, many of the records may be located outside Ukraine in foreign jurisdictions, such as Cyprus. Article 32 of the Law on Financial Services gives the FSR the right to cooperate with foreign jurisdictions, but does not provide details on the extent of this cooperation or any limitations that would be on the cooperation (except for national security and trade secrets). Ukraine does not have an MOU with Cyprus or other important off-shore jurisdictions, through the SSMSC, FSR or other regulatory body governing investigative issues and rights to documents. It is not clear how many MOUs in this area the FSR has at the current time.

As a result, many frauds on pension funds may go undetected or unpunished due to the lack of investigative tools and resources. The continued failure of a number of NPFs to accurately disclose their fund performance indicates that the regulators are not being aggressive enough in requiring compliance with reporting requirements. This may be due to a lack of sufficient resources, but it is also an indication of a lack of will to regulate.

3.11.2 Effectiveness of Sanctions

The Law on NSPP does not contain sanctions to be applied against NPFs and the entities that service them. The sanctions provisions are contained in the Law on Financial Services in Articles 40 (administrative sanctions), and Articles 41 and 43 regarding fines.

3.11.2.1 Administrative Sanctions

Article 40 of the Law on Financial Services has a broad list of administrative sanctions that can be brought against a regulated entity, such as to:

- 1) make it incumbent upon the perpetrator to take measures for eliminating the violation;
- 2) require the convocation of a off-schedule meeting of partakers of the financial institution;
- 3) impose penalties in amounts specified in Articles 41 and 43 hereof;
- 4) suspend or invalidate the license for financial services;
- 5) suspend management of the financial institution and appoint a temporary administration;
- 6) approve the financial institution's financial stability restoration plan; and
- 7) to raise the issue of the liquidation of the institution.

These actions conform to standard international practice for imposition of sanctions by regulatory agencies against a regulated entity. Under Item 1.5 of FSR Resolution 125, these sanctions are only applied against entities and not against natural persons. It is important for the legislation to sanction natural persons who commit the violations.

3.11.2.2 Extraordinary Civil Relief

However, the sanctions in the law and regulations do not include “extraordinary” sanctions which are needed in the event of fraud or misconduct by a pension fund or the entities that provide services to it. Although Art. 40 of the Law on Financial Services and FSR Resolution 125 governing the application of sanctions gives the FSR the authority to obtain a temporary administrator, the authority does not give the FSR the power to obtain the immediate imposition of a temporary administrator, but requires that a time consuming procedure take place lasting up to 20 days. By that time, all assets could be dissipated and placed off-shore. Extraordinary civil sanctions would be needed to take care of these egregious cases of fraud and misconduct. Examples of extraordinary sanctions are:

- a) Injunctions against and orders to cease activity;
- b) Immediate freezes on the assets of a pension fund to insure that no assets are misappropriated and that assets that belong to the pension fund that have been transferred to a different financial institutions are secured and returned to the pension fund; and
- c) Restitution and return of pension fund assets obtained by the fraudsters.

The Law on NSPP and the Law on Financial Services should be amended to give the FSR these sanctions so that it can immediately deal with emergencies and fraud in pension fund activity.

3.11.2.3 Civil Monetary Sanctions Against Natural Persons

Article 43 of the Law on Financial Services creates liability for natural persons that work in Administrators. The sanctions, in the form of penalties, that can be levied against these persons are extremely low and range from 20 to 100 times non-taxable individual minimum income amount. Such low fines have not proven to be a deterrent preventing natural persons from engaging in fraudulent conduct.

There are several ways to counteract this problem. The first is to provide that all assets taken in violation of the law must be returned to the fund. Of course, to trace where these assets went, the FSR will need the expanded investigative tools mentioned above. Second, an additional penalty, a surcharge, should be added to the restitution so that the risk/reward calculation of getting caught always results in a severe risk to the person committing the fraud. A penalty which trebles (i.e. increasing by three) the amount of assets that were fraudulently taken from the fund is a severe penalty. Some jurisdictions even increase the amount ten-fold. Whatever the percentage, the penalty should be high enough to deter fraudulent behavior.

In addition, natural persons are covered by the Ukrainian Code of Administrative Violations. The provisions in the Code of Administrative Violations providing for fines as sanctions of natural persons are also weak and do not provide for a deterrent effect against violating the law in the high paying financial sector.

3.11.2.4 Criminal Sanctions

The criminal provisions in the Criminal Code do not apply to most of the common types of fraud that could be perpetrated on an NPF and its participants. This should be changed to provide meaningful sanctions for financial crimes.

3.12 Winding Up and Liquidation of Private Pension Funds

3.12.1 Voluntary Liquidation

Article 17 of the Law on NPF provides for the liquidation of an NPF. FSR has also issued guidelines on the liquidation. This procedure appears to be fairly straight forward and no complaints were made about its operation, although it may not have been fully tested yet.

3.12.2 Involuntary Administration

Article 29 of the Law on NSPP provides for the temporary appointment of an administrator, if the administrator's license is revoked and a new administrator has not been put in place by the Board within ten days. However, this provision doesn't give the FSR the authority to take over an NPF in the public interest.

Article 46 of The Law on Financial Services and State Regulation of Financial Service Markets gives the FSR the authority to appoint a temporary administrator for an NPF if, among other reasons (such as failing to honor its overdue obligations and the criminal activities of its managers), the existing administrator is regularly violating the rules and regulations of the NPF. However, this provision only applies to financial institutions which are defined as institutions that provide financial services. Consequently, it does not appear to cover the NPF itself and the board of the NPF. Nonetheless, it would apply to the administrator and other service providers.

3.12.3 Effectiveness of State Authority to Intervene in Fund Administration

Notwithstanding these provisions, the FSR was not able to appoint a temporary administrator over 3 NPFs whose boards and administrators ceased functioning as a result of the departure of all of the board members and the staff. The procedures set forth in FSR Resolution 2263 governing the temporary appointment by the FSR of NPF administrators, do not appear to be adapted to the situation where the officers and employees of an administrator simply walk away from the fund. It may well be that, due to the lack of fund assets, no prospective administrator wanted to take on the responsibility of administering a financially weak pension fund or that the FSR did not have qualified staff and equipment to take on the responsibility itself. The Law on NSPP needs to be amended to remedy any deficiencies regarding this matter and clearly authorize the FSR itself to take over the administration of a fund if it determines that it is in the best interests of the participants to do so. This amendment will need to go hand in hand with the implementation of risk based supervision so that the FSR will be able to identify early-on funds that are in distress. As mentioned earlier, the resources of the FSR will need to be augmented so that it can carry out this responsibility when necessary.

IV. REFORMS NEEDED TO IMPLEMENT PENSION REFORM IN UKRAINE

4.1 General

The Ukrainian capital market is not sufficiently developed to implement the market-based Pillar II Accumulation Pension Fund System. Its implementation should be delayed until the market develops sufficiently to absorb the large amount of Pillar II funds available for investment.

However, the pressure to go forward with the Accumulation system may result in its implementation before the market is ready. If so, the existing plan in the draft Law on Mandatory Accumulation should be followed. In addition, the Government of Ukraine should consider the issuance of medium and long term bonds, as well as permitting increased investment in foreign securities.

4.2 Specific Recommendations

Fund Governance

1. FSR regulations should be amended so that the Board of a NPF is required to have at least a member who has specialized expertise as a financial markets expert, investment expert and accounting expert.

Codes of Ethics and Fiduciary Duties

2. Fiduciary duties for Board members to a NPF and its participants should be added to the Law on NSPP.
3. The Law on NSPP should contain a Code of Ethics or the FSR should issue a resolution establishing a Code of Ethics for the pension fund industry.

Conflicts of Interest and Related Parties

4. The Law on NSPP should be amended so that a NPF is not permitted to buy a founder's securities.
5. The Law on NSPP must be amended to require that an intermediary not be an affiliated party of other NPF service providers.
6. The Law on NSPP should be amended so that the provisions on conflicts of interest cover all affiliated parties of all NPF service providers.

Disclosure

7. The FSR's disclosure regulations should be enhanced to include a more detailed description of the experience of managers and too provide more data more frequently.
8. FSR regulations should require that the AMC or administrator prepare and include a management discussion and analysis of the financial and investment activities of the NPF in the Annual Report.
9. The regulations of the FSR should be amended to require that a section on risk disclosure should be added to the information prospectus and annual report.
10. NPFs financial reports should be IFRS compliant. Even if Ukraine does not adopt IFRS, this should be done on the basis of an FSR resolution.

Sales Practices

11. Law on NSPP should be amended to require that sales persons are examined and licensed and to hold the administrator liable for their activities.
12. The Law on NSPP needs to be amended so that “forced selling,” “tie-ins,” vitiation of warning in the sales literature, and other forms of improper sales practice are forbidden.
13. FSR regulations should be amended to require specific language for a risk statement which should be added to all sales literature and advertising.

Asset Management

14. FSR and SSMSC regulations should be amended so that the capitalization of AMC of NPFs and administrators is increased and harmonized.
15. FSR and SSMSC regulations should be amended so that internal risk management policies and departments for NPFs should be required for AMCs and administrators. NPF Boards should evaluate the AMC based on its risk management department and practices when choosing to hire and retain an AMC.
16. The Law on NSPP should be amended to permit other forms of risk management than portfolio limits.
17. Currency controls should be amended to allow prompt investment in foreign securities.
18. The government should consider issuing more medium term bonds and begin issuing long term government bonds, if the budgetary environment permits, to fill the diversification objectives and needs of NPFs and other institutional investors.

Custodians and Safekeeping of Assets

19. The Law on NSPP should be amended to increase the duties of the custodian so that it can “control” the activity of a NPF with which it has a contract.
20. The accounting standards and the Law on NSPP should be changed to require the disclosure of the ultimate owner of a custodian, NPF Founder or other NPF service provider.
21. The Law on NSPP should be amended to harmonize the sections related to the segregation of assets of a NPF and provide clear provisions as to the title of NPF assets and the rights of NPF participants in the assets.

Accounting

22. The Law on NSPP must be amended to bring the calculation of NAV and NAV per unit, as well as the disclosure of this critical information in line with international practice.
23. Ukraine should adopt IFRS for public interest entities, including NPFs.

Supervision

24. The FSR’s regulation should require the establishment of internal controls for an administrator.
25. The staffing, training and equipment of the FSR and SSMSC should be enhanced. Emphasis should be placed on creating a cadre of experience examiners for NPFs and their service providers.

26. The FSR should issue “fit and proper” regulations for fund board members, administrators, AMCs and custodians.
27. The Law on Financial Services needs to be amended to broaden the authority of the FSR to collect information during onsite inspections.
28. The Law on the NSPP and Financial Services should be amended to give the FSR the authority to verify all documentation submitted as part of the application process for a license for an NPF and its service providers.
29. The Law on the NSPP should be amended to allow the FSR to set lower maximum fees for NPFs or performance-based fee structures.

Enforcement

30. The Law on NSPP needs to be amended to broaden the investigative authority of the FSR, including the ability to obtain information from third party entities and natural persons who are not registered with the FSR.
31. Law on NSPP should be amended to give the FSR the authority to obtain “extraordinary relief” such as injunctions and asset freezes.
32. The Law on Financial Services should be amended to increase the sanctions for natural persons.

Liquidation

33. Law on NSPP needs to be amended to increase the FSR’s intervention powers and capacity to appoint temporary administrators in cases of liquidations and bankruptcy by, among other things, allowing it to initiate proceedings.

ANNEX I: ASSET MANAGERS AND NPFs

List of asset management companies of NPFs (assets as of 3d Quarter 2008)

Source: www.uaib.org.ua; www.dfp.gov.ua; Newspaper "Ukrayina Bisnes Revyu"

#	Name of Asset management company	Funds under Management	Administered funds	NPFs Value of Assets, UAH	Part on the NPFs market, %
1.	Administrator of Non-state pension fund "Pensiyne zabezpechennya" Ltd	1. The First National Open Pension Fund, Open NPF 2. Marine Transport Workers Pension Fund, Open NPF	1. The First National Open Pension Fund, Open NPF 2. Marine Transport Workers Pension Fund, Open NPF	64,994,483.19	15.50
2.	"AMC-APF "Troyka Dialog Ukraine"	1. EMERIT-Ukraine, Open NPF	None; EMERIT administered by IQ-Technology AMC Ltd	64,867,279.92	15.47
3.	"Venture Investment Projects" LTD	1. Professional Pension Fund of the Independent Industry Trade Union of Power Engineering Specialists	None; Professional Fund administered by First Administrator of Pension Fund	62,808,786.53	14.98
4.	IQ Technology AMC Ltd	1. STIROL ,Corporate PF 2. Spilny Capital, NE Open NPF 3. Vzaemodopomoga, Open NPF 4. NIKA, Open NPF 5. Sviata Sofia, NE Pan Ukrainian Open NPF 6. United Open Non-State Pension Fund, NE Entity	1. STIROL,Corporate PF 2. Spilny Capital, NE Open NPF 3. Vzaemodopomoga, Open NPF 4. NIKA, Open NPF 5. Sviata Sofia, NE Pan Ukrainian Open NPF 6. United Open Non-State Pension Fund, NE Entity	26,151,732.76	6.24
5.	Administrator of PF "Ukraina-Service" Ltd	1. Ukraine, Open NPF 2. Initiativa, Open NPF	1. Ukraine, Open NPF 2. Initiativa, Open NPF	25,017,828.37	5.97
6.	OPTIMA-Capital AMC Ltd	1. Ukreximbank OJSC, NE Open NPF 2. Social Guarantees, NE Open NPF	1. Ukreximbank OJSC, NE Open NPF 2. Social Guarantees, NE Open NPF	24,445,957.06	5.83
7.	VAB Pension Ltd	1. Europe, NE Open NPF 2. Open United Labor Unions Pension Fund 3. Mining-metallurgical professional pension fund, NE Entity	1. Europe, NE Open NPF 2. Open United Labor Unions Pension Fund 3. Mining-metallurgical professional pension fund, NE Entity	19,951,948.68	4.76
8.	AMC "Stirolinvest" Ltd	1. STIROL Corporate Pension Fund	None; STIROL Corporate Pension Fund Administered by IQ-Technology AMC Ltd	17,427,815.41	4.16
9.	AMC Vsesvit LTD	1. VSI, Open NPF 2. Pokrova, Open NPF	None; VSI Open NPF and Pokrova administered by All-Ukrainian pension funds administrator Ltd	17,080,891.02	4.07
10	CapitalB AMC Ltd	1. IFD Capital, NE Open NPF 2. Corporate State Pension Fund of Ukrainian Chamber of Commerce and Industry	1. IFD Capital, NE Open NPF 2. Corporate State Pension Fund of Ukrainian Chamber of Commerce and Industry	16,767,087.97	4.00

Protecting Participants in the Pillar II Pension Accumulation in Ukraine

#	Name of Asset management company	Funds under Management	Administered funds	NPFs Value of Assets, UAH	Part on the NPFs market, %
11	Asset Manager and PF Administrator Parex Asset Management Ukraine Ltd	1. Universalnyi, NE Open PF 2. FORUM, NE Open NPF 3. Khreschatyk, Open NPF	1. Universalnyi, NE Open PF 2. FORUM 3. Khreschatyk, Open NPF 4. Ukranian Pension Union, Open NPF	10,338,465.06	2.47
12	OJSC KINTO AMC	1. Social standart, NE Open NPF 2. Dynastiya, NE Open NPF 3. Ivano-Frankivsk, NE Open NPF 4. Solidarnist, NE Open NPF 5. Garant – Pension, Open NPF	None; Garant – Pension Open NPF administered by SZI Ukraine Pension Fund Administrator; All others administered by Center of Personified Record Keeping, PF Administrator	9,103,121.21	2.17
13	OJSC Autoalliance - XXI century	1. Avtoaliyans, NE Open NPF	1. Avtoaliyans, NE Open NPF	8,629,510.94	2.06
14	"AMC "Garantiya-Invest" Ltd	1. Pharmaceutical, Open PF	1. Pharmaceutical, Open PF	8,194,619.16	1.95
15	ARTA Asset Management Ltd	1. Chornomornaftogaz, NE Corporate NPF 2. Chemist's profession non-state pension fund, NE Entity 3. ARTA, NE Open NPF	None; All funds administered by Center of Personified Record Keeping, PF Administrator	6,585,579.04	1.57
16	CJSC "AMC&APF "BrokbusinessInvest"	1. Ukrainian Pension Capital, NE Open NPF 2. Brokbusinesscapital, NE Corporate NPF	1. Ukrainian Pension Capital, NE Open NPF 2. Brokbusinesscapital, NE Corporate NPF	6,355,376.82	1.52
17	"Managing administrator of PF "Paritet" Ltd	1. PrivatFond, Open PF	1. PrivatFond, Open PF	5,554,058.30	1.32
18	Pan Ukrainian Management Company Ltd (VUK Ltd)	1. Complicity, Open PF 2. UKRAINIAN SAVINGS TREASURY, Open PF	1. Complicity, Open PF 2. UKRAINIAN SAVINGS TREASURY, Open PF	4,729,020.61	1.13
19	"AMC "Alfa-Finance" Ltd	1. National, NE Open NPF	1. National, NE Open NPF	4,611,929.97	1.10
20	AMC "Portfel Investments" Ltd	1. Dnister, NE Open NPF	1. Dnister, NE Open NPF	2,725,241.76	0.65
21	AMC EFFECT CJSC/Tekt Asset Management AMC Ltd	1. Profit, NE Open NPF 2. Socium, NE Corporate NPF	None; Profit Open NPF and Socium Corporate NPF administered by Center of Personified Record Keeping	1,873,705.38	0.45
22	Asset Manager and PF Administrator "Ukrsots-Capital" Ltd	1. Ukrsotsfond, Open PF	None; Ukrotsfond administered by Ukrotsfond, Open PF	1,839,079.40	0.44
23	"Prinkom" Prycarpattia Investment Company	1. Prycarpattia, NE Open NPF	None; Prycarpattia , Open NPF, administered by Intercomis PF Administrator Ltd	1,457,722.43	0.35
24	AMC West Investment Group Ltd	1. Socialna perspektiva IFC, NE Open PF 2. Socialna perspektiva, NE Open PF	None; both funds administered by Center of Personified Record Keeping	1,032,307.59	0.25
25	AMV APF "Active Plus" Ltd	1. Fund of Pension Savings, NE Open NPF 2. Ukrainian Pension Fund, NE Corporate NPF	1. Fund of Pension Savings, NE Open NPF 2. Ukrainian Pension Fund, NE Corporate NPF	845,708.28	0.20
26	"AMC "Magistr" Ltd	1. Europe choice, Open NPF	1. Europe choice, Open NPF	816,272.90	0.19

Protecting Participants in the Pillar II Pension Accumulation in Ukraine

#	Name of Asset management company	Funds under Management	Administered funds	NPFs Value of Assets, UAH	Part on the NPFs market, %
27	CJSC National Reserve AMC&APF	1. "Professional non-state pension fund for employers of power and electrical industry of Ukraine "Energoreserv", NE Entity 2. "Reserv Ternopillya", NE Open NPF 3. "Reserv Rivnenschyny", NE Open NPF 4. "Reserv Zaporizhya", NE Open NPF 5. "Reserv Dnipropetrovschyny", Open NPF 6. "Stolychnyi reserv", Open NPF 7. "Reserv Slobozhanschyny", Open NPF 8. "Chornomoskyi reserv", Open NPF 9. First Trade Union, NE Professional NPF	None; First Trade Union , NE Professional NPF, administered by Pension Reserve Administrator APF Ltd	641,976.80	0.15
28	OJSC "AMC "Rosan-Capital"	1. European Standard, NE Open NPF	1. European Standard, NE Open NPF	635,607.06	0.15
29	AMC "Business-Invest" Ltd	1. Social Support, Open NPF	None; Social Support Open NPF is Administered by All-Ukrainian Pension Funds Administrator Ltd	572,026.01	0.14
30	"AMC&APF "Opika" Ltd	1. Pensiyna Opika, Open NPF	1. Pensiyna Opika, Open NPF	514,627.08	0.12
31	Investa Securities Firm Ltd	1. Ukrainian pension contract, NE Open NPF	None; Ukrainian pension contract is administered by IQ-Technology AMC Ltd	484,159.21	0.12
32	Administrator of NPF "Pension Capital" Ltd	1. "Aval", NE Open PF 2. "Aval", NE Corporate PF	1. "Aval" NE Open PF 2. "Aval", NE Corporate PF 3. Foyil-Prestige, Open NPF	466,856.51	0.11
33	"AMC FinInvest-group" Ltd	1. Nadiya, NE Open NPF	None; Nadiya NE Open NPF is administered by Ukraina-Service APF Ltd	463,181.66	0.11
34	"AMC MAST-Invest" Ltd	1. Ukrainian Pension Union, NE Open NPF	None; Ukrainina Pension Union Open NPF is administered by Parex Asset Management Ukraine	456,665.75	0.11
35	"Dragon Asset Management" Ltd	1. Laurus, Open NPF	1. Laurus, Open NPF	309,896.46	0.07
36	AMC&APF "Delta-Capital" Ltd	1. Delta	None; Delta is administered by Ukrots-Capital	281,281.15	0.06
37	AMC&APF "Ukrainian funds" Ltd	1. Pension Fund of Ukraine Open NPF 2. Khliblyni, NE Professional NPF	1. Pension Fund of Ukraine Open NPF 2. Khliblyni, NE Professional NPF	240,494.76	0.06
38	AMC&APF Ukrsots-Capital Ltd	1. Ukrsotsfond, Open PF	1. Ukrsotsfond, Open PF 2. Opora NE Open NPF 3. Delta Open PF	n/a	n/a
39	Asset Manager SOKRAT Ltd	1. Sokrat-Maybutnye Open NPF 2. Magistral Professional NPF	None; both funds are managed by Center of Personified Record Keeping APF	n/a	n/a

Protecting Participants in the Pillar II Pension Accumulation in Ukraine

#	Name of Asset management company	Funds under Management	Administered funds	NPFs Value of Assets, UAH	Part on the NPFs market, %
40	CJSC Altera Asset Management AMC	1. Kremin Open NPF	None; Kremin Open NPF is administered by IQ-Technology AMC Ltd	n/a	n/a
41	"AMC&APF "Dovira-Capital" CJSC	1. Dovira-Ukraine, NE Open NPF	1. Dovira-Ukraine, NE Open NPF	n/a	n/a
42	OJSC "AMC&APF "Mir"	1. Open Non-state Pension Fund of Ukrainian League of Industrialists and Entrepreneurs, NE Entity	1. Open Non-state Pension Fund of Ukrainian League of Industrialists and Entrepreneurs, NE Entity	n/a	n/a
43	Directorate on Regulation of the NBU Corporate Nongovernmental Pension Fund	1. Corporate Non-State Pension Fund of the National Bank of Ukraine	1. Corporate Non-State Pension Fund of the National Bank of Ukraine	n/a	n/a
44	"Inporom AMC and APF" Ltd	1. Inprom Open Non-State Pension Fund, NE Entity	1. Inprom Open Non-State Pension Fund, NE Entity	n/a	n/a
45	AMC "Spivdruzhnist Asset Management" Ltd (SEM AMC Ltd)	1. Zoloty Vik, NE Open NPF	None; Zoloty Vik, NE Open NPF, is administered by Ukraine-Service APF Ltd	n/a	n/a
46	"FreeFlight" APF" Ltd	1. Open Pension Fund FreeFlight NPF	Open Pension Fund FreeFlight NPF	n/a	n/a
47	"AMC Foyil Asset Management Ukraine" Ltd	1. Foyil-Prestige, Open NPF	None; Foyil-Prestige is administered by Pension Capital NPF Administrator Ltd	n/a	n/a
48	"AMC and APF "Gazko Group Investments" Ltd	1. SUPPORT NE Open NPF	1. SUPPORT NE Open NPF	n/a	n/a
49	"AMC "Forward" Ltd	1. Status NE Open NPF	1. Status NE Open NPF	n/a	n/a
50	"Administrator of NPF "Pension Standard" Ltd	1. Second pension Open NPF	1. Second pension Open NPF	n/a	n/a
51	"AMC "IQ – Management" Ltd	1. Corporate Standart NE Corporate Pension Fund	None; Corporate Standart Corporate NPF is administered by IQ-Technology Ltd	n/a	n/a
52	"Administrator of pension fund MAKStimul" Ltd	1. Corporate NPF of VA Bank AG, NE Entity	1. Corporate NPF of VA Bank AG, NE Entity	n/a	n/a

ANNEX II: ADMINISTRATORS AND NPFs

List of administrators of NPFs and administered NPFs, as of December 31, 2008

Source: www.dfp.gov.ua; Newspaper "Ukrayina Bisnes Revyu"

#	Name of Administrator	Non- State Pension Fund
1.	"SZI Ukraine" Pension fund administrator CJSC	1. Garant – Pension, Open NPF
2.	Alfa-Finance AMC Ltd	1. National NE Open NPF
3.	Avtoalliance - XXI Storichchia OJSC	1. Avtoaliyans NE Open NF
4.	All-Ukrainian pension funds administrator	1. Social Support, Open NPF 2. VSI, Open NPF 3. Pokrova, Open NPF
5.	AMC&APF Activ Plus Ltd	1. Fund of Pension Savings, NE Open NPF 2. Ukrainian Pension Fund, NE Corporate NPF
6.	AMC&APF Brokbusinessinvest CJSC	1. Ukrainian Pension Capital, NE Open NPF 2. Brokbusinesscapital, NE Corporate NPF
7.	Center of personified record keeping APF	1. PROFIT, NE Open NPF 2. Social standart, NE Open NF 3. SOCIUM, NE Corporate NPF 4. Chornomornaftogaz, NE Corporate NPF 5. Dynastiya, NE Open PF 6. Ivano-Frankivsk, NE Open PF 7. Socialna perspektiva IFC, NE Open PF 8. Socialna perspektiva, NE Open PF 9. Chemist's profession non-state pension fund, NE Entity 10. ARTA, NE Open NPF 11. Poshtovyk, Corporate NPF 12. Concord Open Pension Fund NPF 13. Magistral, Professional NPF 14. Sokrat-Maybutnye, Open NPF 15. Shakhtar, Professional NPF 16. Moya pensiya, Open NPF 17. Femida, Open NPF
8.	AMC&APF Dovira-Capital CJSC	1. Dovira-Ukraine NE Open NPF
9.	Dragon Asset Management Ltd	1. LAURUS Open NPF
10.	First administrator of pension fund Ltd	1. Professional Pension Fund of Ukrainian Independent Trade Union of Power Engineering Specialists
11.	ForwardAMC Ltd	1. Status Open NPF, NE Entity
12.	Garantiya Invest AMC Ltd	1. Pharmaceutical Open PF
13.	APF IFD Capital'b Ltd	1. IFD Capital NE Open NPF 2. Corporate Non-State Pension Fund of Ukrainian Chamber of Commerce and Industry

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#	Name of Administrator	Non- State Pension Fund
14.	Innovative-industrial company on asset management and pension fund administration Ltd	1. Inprom, NE Open NPF
15.	APF Intercomis Ltd	1. Prycarpattya, NE Open NPF
16.	IQ-Technology AMC Ltd	1. STIROL, Corporate PF 3. Spilny Capital, NE Open NPF 4. Vzaemodopomoga, Open NPF 5. NIKA, Open NPF 6. Sviata Sofia, NE Pan Ukrainian Open NPF 7. United Open Non-State Pension Fund, NE Entity 8. Ukrainian pension contract, NE Open PF 9. Corporate Standart, NE Corporate NPF 10. Kremen, Open NPF 11. Emerit, Open NPF
17.	Magistr AMC Ltd	1. Europe choice Open NPF
18.	AMC&APF MIR Ltd	1. Open Non–state Pension Fund of Ukrainian League of Industrialists and Entrepreneur, NE Entity
19.	AMC&APF Opika Ltd	PENSIYNA OPIKA, Open NPF
20.	AMC Optima-Capital Ltd	1. NSCPF of JSC Ukreximbank 2. Social Guaranties NE Open PF
21.	AMC&APF Parex Asset Management Ukraine Ltd	1. Khreschatyk, Open NPF 2. Universalnyi, NE Open PF 3. Ukranian Pension Union, Open NPF 4. Forum, NE Open NPF
22.	Paritet Asset Manager Ltd	1. PrivatFond, Open PF
23.	Pension Capital NPF Administrator, Ltd	1. "Aval", NE Open Pension Fund 2. "Aval", NE Corporate Pension Fund 3. Foyil-Prestige, Open NPF
24.	AMC&APF Pension Investments Ltd	1. Pension Reserve, NE Open PF
25.	ANPF Pension standard Ltd	1. Second pension, Open NPF
26.	ANPF Pensiyne zabezpechennya Ltd	1. First National Open-ended Pension Fund, NE Open PF 2. Marine Transport Workers Pension Fund, Open NPF
27.	AMC Portfel Investments Ltd	1. Dnister, NE Open PF
28.	AMC Rosan-Capital AMC	1. European Standard, Open PF
29.	Pension Fund Administrator Ukraina-Service Ltd	1. Nadiya, NE Open NPF 2. Zoloty Vik, NE Open NPF 3. Ukraine, Open NPF 4. Initiative, Open NPF 5. Pension Capital Open PF 6. Saving Open PF

Protecting Participants in the Pillar II Pension Accumulation in Ukraine

#	Name of Administrator	Non- State Pension Fund
30.	AMC&APF Ukrainian funds	1. Khlibniy, NE Professional NPF 2. Pension Fund of Ukraine, Open NPF
31.	AMC&APF Ukrsots-Capital Ltd	1. UkrsotsFund NPF 2. Opora, NE Open NPF 3. Delta, Open PF
32.	AMC&APF Upravlinnya fondovyyh aktiviv Ltd	1. Avito, NE Open PF 2. Roksolana, NE Open PF 3. Nove Vidrozhennya, NE Open PF 4. Dobrobut, NE Open PF
33.	VAB Pension Ltd	1. Open United Labour Unions Pension Fund 2. Europe, NE Open NPF 3. Mining-metallurgical professional pension fund, NE Entity
34.	Pan Ukrainian Management Company Ltd (VUK Ltd)	1. Complicity, Open NPF 2. Ukrainian Savings Treasury, Open NPF
35.	National Bank of Ukraine	1. Corporate NPF of the National Bank of Ukraine
36.	Pension Reserve Administrator APF Ltd	1. Professional non-state pension fund for employers of power and electrical industry of Ukraine "Energoreserv, NE Entity 2. Reserv Ternopillya, NE Open NPF 3. Reserv Rivnenschyny, NE Open NPF 4. Reserv Zaporizhya, NE Open NPF 5. Reserv Dnipropetrovschyny, Open NPF 6. Stolychnyi reserv, Open NPF 7. Reserv Slobozhanschyny, Open NPF 8. Chornomoskyi reserv, Open NPF

Protecting Participants in the Pillar II Pension Accumulation in Ukraine

ANNEX III: ASSET ALLOCATION OF NPFs IN 2008

Assets allocation in 2008 disclosed in mass media according to Ukrainian legislation

#	Name	Assets																									
		Total 2008	Bank Deposits Accounts		Securities with the yield guaranteed by the Cabinet of Ministers of Ukraine		Securities with the yield guaranteed by Rada of AR Crimea, local Radas as set forth by the legislation, local loan bonds		Corporate bonds issued by Ukraine residents		Shares of Ukrainian issuers		Mortgage securities		Real-estate objects		Bank metals		Other assets (list of other assets shall be given), 5%								
			40%	60%	50%	50%	20%	80%	40%	60%	40%	60%	40%	60%	10%	90%	10%	90%	Total	Cash and equivalents		Accounts receivable		Corporate rights of Ukrainian and foreign enterprises in other securities			
UAH	%	UAH	%	UAH	%	UAH	%	UAH	%	UAH	%	UAH	%	UAH	%	UAH	%	UAH	%	UAH	%	UAH	%	UAH	%		
1	Professional Pension Fund of Ukrainian Independent Trade Union of Power Engineering Specialists	64,968,096		5,176,517	7.97	0	0	0	0	34,898,096	53.72	24,893,080	38.32	0	0	0	0	403	0	0	0	0	0	0	0	0	0
2	First National Open-ended Pension Fund	79,986,167		28,287,300	35.37	0	0	0	0	27,989,031	34.99	298,000	0.37	302,049	0.38	5,469,000	6.84	10,414,868	13.02	7,225,920	9.03	7,223,840	9.03	2,080	0	0	0
3	Europe	21,326,457		7,635,080	35.8	2,963,546	13.9	14,295	0.07	5,635,375	26.42	4,811,311	22.56	0	0	0	0	0	0	266,850	1.25	224,545	1.05	42,305	0.2	0	0
4	PrivatFond	8,134,276		7,158,038	88	0	0	0	0	267,216	3.29	0	0	0	0	0	0	709,022	8.72	0	0	0	0	0	0	0	
5	National	5,175,521		2,579,366	49.84	186,958	3.61	312,425	6.04	1,313,991	25.39	58,610	1.13	0	0	0	0	679,011	13.12	44,960	0.87	23,169	0.45	21,791	0.42	0	0
6	Vzavomodopomoga	6,434,455		2,521,638	39.19	0	0	0	0	2,552,758	39.67	1,273,997	19.8	0	0	0	0	74,560	1.16	11,503	0.18	0	0	11,503	0.18	0	0
7	Socialna perspectiva	761,556		759,495	99.73	0	0	0	0	0	0	0	0	0	0	0	0	0	2,061	0.27	0	0	0	0	0	0	
8	Corporate State Pension Fund of UCCL	738,316		732,726	99.24	0	0	0	0	0	0	0	0	0	0	0	0	0	5,590	0.76	0	0	0	0	0	0	
9	"Aval" Open Pension Fund	468,177		321,344	68.64	19,551	4.18	0	0	123,534	26.39	0	0	0	0	0	0	0	3,747	0.8	0	0	0	0	0	0	
10	Socialna perspectiva IFC	337,985		337,025	99.72	0	0	0	0	0	0	0	0	0	0	0	0	0	960	0.28	0	0	0	0	0	0	
11	Marine Transport Workers Pension Fund	105,103		105,103	100	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
12	Ukrainian pension contract	581,833		218,308	37.52	123,515	21.23	94,107	16.17	145,903	25.08	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
13	Sokrat-Maybutnye	50,222		49,672	98.9	0	0	0	0	0	0	0	0	0	0	0	0	0	550	1.1	0	0	0	0	0	0	
14	United open non-state pension fund	28,539		10,484	36.74	0	0	0	0	11,033	38.66	6,991	24.49	0	0	0	0	0	31	0.11	0	0	31	0.11	0	0	
15	Dynastiva	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
16	Foyil-Prestige	1,694		1,693	99.91	0	0	0	0	0	0	0	0	0	0	0	0	0	1,48	0.09	0	0	0	0	0	0	
17	Avito	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
18	Roksolana	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
19	Corporate Standart	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
20	Ivano-Frankivsk	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
21	Mining-metallurgical professional pension fund	367,052		104,411	28.45	104,746	28.54	11,801	3.22	132,350	36.06	0	0	0	0	0	0	0	13,744	3.74	13,744	3.74	0	0	0	0	
22	Spilny capital	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
23	Dobrobut	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
24	Chemist's profession non-state pension fund of Ukraine	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
25	Saint Sofia	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
26	NIKA	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
27	Kremen	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
28	Open United Labour Unions Pension Fund	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
29	ARTA	456,698		25,372	5.56	0	0	0	0	213,348	46.72	21,592	4.73	0	0	0	0	0	196,386	43	0	0	0	0	0	0	
30	Emerit-Ukraine	66,904,818		62,438,476	93.32	0	0	0	0	4,466,342	6.68	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
31	Pokrova	52,662		52,662	100	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
32	Concord	0		0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
33	Magistral	38,607		36,421	94.34	0	0	0	0	0	0	0	0	0	0	0	0	0	2,186	5.66	0	0	0	0	0	0	
34	"Europe choice	2,218,062		1,777,558	80.14	93,700	4.22	0	0	60,492	2.73	286,312	12.91	0	0	0	0	0	0	0	0	0	0	0	0	0	
35	PROFIT	251,192		143,084	56.96	0	0	0	0	51,504	20.5	30,175	12.01	15,095	6.01	0	0	0	11,335	4.51	0	0	0	0	0	0	
36	Social Support	661,440		348,404	52.67	0	0	28,913	4.37	142,114	21.49	68,856	10.41	0	0	0	0	73,153	11.06	0	0	0	0	0	0		
37	VSI	18,682,426		7,177,114	38.42	0	0	862,480	4.62	4,880,319	26.12	1,269,452	6.79	0	0	0	0	4,464,616	23.9	28,446	0.15	0	0	0	0		
38	UkrsotsFund	2,073,947		710,200	34.24	190,662	9.19	0	0	524,420	25.29	82,600	3.98	0	0	0	0	175,045	8.44	391,021	18.85	297,105	14.33	93,916	4.53	0	
39	SOCIUM	1,173,357		387,798	33.05	0	0	0	0	411,897	35.1	310,818	26.49	50,317	4.29	0	0	0	12,527	1.07	0	0	0	0	0	0	
40	Chornomorafogaz	6,135,662		1,958,766	31.92	0	0	0	0	3,566,296	58.12	437,939	7.14	0	0	0	0	0	172,660	2.81	0	0	0	0	0	0	
41	Fund of Pension Savings	94,805		19,557	20.63	0	0	0	0	0	71,693	75.62	0	0	0	0	0	0	3,556	3.75	0	0	0	0	0		
42	Pharmaceutical	7,263,887		3,103,829	42.73	0	0	0	0	2,236,207	30.79	1,268,237	17.46	0	0	0	0	364,751	5.02	0	0	36,142	0.5	69,720	0.96	185,000	
43	IFD Capital	16,799,630		9,675,624	57.59	0	0	3,05	512,024	3,05	2,481,088	14.77	3,856,535	22.96	0	0	0	0	274,360	1.63	0	0	0	0	0	0	
44	Social standart	9,768,570		3,419,856	35.01	0	0	0	0	3,635,211	37.21	2,611,933	26.74	0	0	0	0	0	101,570	1.04	0	0	0	0	0	0	

ANNEX IV: BOND DEFAULTS

*List of bond issuers that violated the conditions for bond issuance as of September 27, 2009*Source: http://www.uaib.com.ua/files/articles/1068/49_4.doc

#	Name of issuer	Code EDRPOU	Code ISIN	Volume of emission, UAH
1.	Roosh Ltd	32007740	UA4000006183	20,000,000.00
2.	Intertrade Ltd	30111542	UA4000014757	30,000,000.00
3.	CityCom Ltd (A series)	33104061	UA102547AA02	50,000,000.00
4.	Insakharprom-K Ltd	31068734	UA4000010102	50,000,000.00
5.	Karavan Ltd (A series)	32301835	UA102450AA07	30,000,000.00
6.	Karavan Ltd (C series)	32307835	UA4000040273	130,000,000.00
7.	Intermarket Trade Company Ltd (D series)	13827416	UA130413AD01	25,000,000.00
8.	Intermarket Trade Company Ltd	13827416	UA513827416D	25,000,000.00
9.	KreditPromBank OJSC (F series)	21666051	UA4000012876	350,000,000.00
10.	Nadra Alliance Ltd (A series)	34820698	UA4000027270	300,000,000.00
11.	Nadra Finance Ltd (A series)	35136048	UA4000014088	320,000,000.00
12.	Podillya CJSC	33143011	UA533143011A	100,000,000.00
13.	Darnitsya Reinforced Framing Plant OJSC	01373298	UA501373298G	16,038,000.00
14.	Nikopol Steel Pipes Plant CJSC (A series)	30926951	UA4000007298	50,000,000.00
15.	Nidan+ Ltd	30953330	UA4000012298	50,000,000.00
16.	Cherkassy Poultry Farm Ltd (B series)	30598924	UA23042AB04	30,000,000.00
17.	Kyiv Medpreparat OJSC (A series)	00480862	UA4000025126	30,000,000.00
18.	Sumykhimprom OJSC (A series)	05766356	UA4000013031	50,000,000.00
19.	Lutsk Automobile Plant OJSC (A series)	05808592	UA030040AA07	130,000,000.00
20.	KvizaTrade Ltd (C series)	30437110	UA4000009559	250,000,000.00
21.	Raise Company CJSC (A series)	13980201	UA4000038079	100,000,000.00
22.	Ukrgazbank AG OJSC (A series)	23697280	UA100571AA05	100,000,000.00
23.	Agromat Ltd (A series)	21509937	UA4000014963	50,000,000.00
24.	Interindustry Research and production Alliance "Progress" (F series)	31507251	UA4000012496	100,000,000.00
25.	Sumykhimprom OJSC	5766356	UA4000013031	50,000,000.00
				2,436,038,000.00
				0

ANNEX VI: COMPARATIVE FEES IN EU COUNTRIES

Comparative Fees in EU countries				
Country	Unit purchasing fee	Fund management fee	Account maintenance fee	Comments
Bulgaria	mandatory: no more than 5 % of contributions voluntary: up to 7% of contributions	mandatory: max 1 % of the asset voluntary: max. 10% of the return	0.3-0.6% of fund assets per month (or 0.36-0.72% of annual revenue)	Unit remittance fees up to cca. 13 USD
Czech Republic	No limits on costs or fees paid by the funds set by law	1.92% of net assets	No limits on costs or fees paid by the funds set by law	No limits on costs or fees paid by the funds set by law on remittance fee. No direct fees can be charged by pension funds. The participants are in the role of creditors for the pension fund and instead of fees they share jointly on all expenses and returns
Croatia	max 0.8% of contributions	asset management fee: 0.8% of net asset + max 25% of return 0.95% (start 2007)	no more than 0.1% of the managed assets	Exit fees can only be charged during the first 3 years of membership. Transaction fees and costs are charged over the fund assets.
Estonia	1.0-3.0% of unit stock value. Until 1.1.2007 there was a maximum limit on unit purchasing fee 3%. The actual unit redemption fee for all funds is 1 percent	0.75-1.88% of net fund value (annual) average) max: 1.5 % (conservative investment policy) max: 2.0 % (other investment policy) no regulatory limit in the voluntary system	Safekeeping of the members' individual accounts. The custody fee is either a flat fee ranging between 0.25%-0.30% of the assets or tiers of charges which fall as the fund grows. On the assets exceeding EEK 50-70mln (approx. EUR 3-5mln) the custody fee will fall to 0.20% of assets under management. The investor register and II pillar pension accounts are kept by the Estonian Central Depository, who charges a fee for its services, which is set by the regulator - 0.024% of assets	Unit remittance fees max 1.0% of unit stock value (all funds)
Hungary	4-5% of annual revenue without yield In 2007: max 6%, from 2008 max 5.5%, from 2009 max 4% Until 2007 there was no limit on the unit purchasing fee	0.5-1% of fund value (annual average) max 0.9 % in 2007 max 0.8 % from 2008	flat rate (130-200 HUF)	Until 2007 there was no limit on the unit purchasing fee Unit remittance fee is a % of stock value, max cca. 20 USD

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Latvia	Mandatory – none 2.5 % for second tier of the first pillar	0.75-1.52% of annual average net assets. Max is set by pension fund manager	1.25% - max 2.5% of annual payments	Unit remittance fee: 0-0.25% of annual average net assets. Max is set by pension fund manager. For the second tier of the first pillar, charges on contributions in pension schemes are capped at 2.5 % of contributions, but there is no limit to the fund management fee
Lithuania	1.19%-5.5% of contribution max 10% 10 % of the contribution (in practice: 3 %)	0.95-1.0% of fund value (annual average) two parts: fixed fee and success fee. Total annual fee is limited to 2 per cent of the net assets or 20 per cent of the total net profit		Unit remittance fee: 0.2 % once a year; 0.4 % more than once a year. Change of fund fee for the voluntary second tier of the first pillar, there is a ceiling set by the law limiting maximum administration charges to 1 % of assets and 10 % of contributions while in voluntary pension funds no limits have been foreseen
Poland	4-7% of contribution max 7% will decrease to 3.5% from 2014	0.015-0.045% of net fund value (monthly volume) 0.054% or less depending on volume of assets plus success management fee: up to 0.005% a month	The rate of return fee in Poland (called premium account fee) depends on relative fund performance and is subject to a maximum of 0.06 percent of assets per annum	Change of fund fee: 80 or 160 PLN depending on the length of membership in the fund. Switchover becomes free if a member has stayed within a fund for more than 2 years. For the second tier of the first pillar, there are direct limits on the value charges and fees, which is not the case for PPE or IKE schemes. The up-front fee is scheduled to fall to a maximum of 3.5% by 2014.
Romania	Max 2.5% of monthly contributions	Max 0.6% of net total account of the privately administered fund	None	Transfer fee applied to the participant's personal net account of max. 5% for change of fund earlier than 2 years

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Slovak Republic	1 % of member's contribution	mandatory: 0.065 % to 0.025% of assets under management of net fund value (monthly average) Max 0.075% for first three years after the pension company gets the licence) voluntary: 3% of the asset, annually	1% (monthly) of contribution	Unit remittance fee between companies, not funds!: cca. 24 USD; voluntary: 5% of asset in 5 years, 1% after. Fee for transfer of member's contribution to the Pension Management Company (PMC): 0.5 % of member's contribution. Transfer fee of payment through Social Insurance Agency to pension fund: 0.5% of contribution monthly. Change of fund fee: lump-sum 500 SKK Legislation sets a ceiling for charges in the funded second tier of the first pillar
Serbia	None	0.2-1.5% of fund value (annual average)	flat rate (0.16% from each account) max 100 SEK	
Macedonia	6.85-6.9% of the contribution	0.05% / month	Central Bank as custodian: 0.4 % of the contributions	Unit remittance fee: 0-25 EURO depending on the duration of the membership (>24 month, < 6 month) Once a month the pension companies charge a management fee as a percentage of total assets. In addition, the pension funds are charged brokerage fees on every transaction with the pension fund assets

Sources:

1. PRAXIS, 2008.
2. Central and Eastern Europe: Strategies to Address High Fees. Statlink
3. IOPS Country Profiles – CROATIA, October/November 2008
4. Pension reform in Southeastern Europe: linking to labor and financial market reforms / Robert Holzmann, Landis MacKellar and Jana Repans'ek, editors.
5. The Fee Structure of Pension Products. Estonian Experience. Paavo Põld Presentation at the INPRS Regional Meeting for the Eastern and Central European Countries. 7-8 February 2002
6. Private pension fund regulation in Lithuania. Valdemaras Katkus. Lithuanian Banking, Insurance and Finance Institute.
7. Administrative charges of private mandatory pension funds. Zoran Anusic. The World Bank Prepared for ILO Tripartite Conference on "Recent Developments on Pension Restructuring in Central and Eastern Europe" Budapest, Hungary December 2004.

ANNEX VII: LIST OF PERSONS INTERVIEWED AND DOCUMENTS REVIEWED

Persons Interviewed:

1. FSR, Chairman Suslov
2. SSMSC, Commissioner Biriuk
3. UAIB, A.A. Rybalchenko
4. KINTO Asset Management OJSC, Anatoly Fedorenko and Olena Vasilchenko
5. Sigma Bleyzer Asset Management, Oleg Ustenko and Dr. Edilberto Segura
6. Dragon Capital, Dmytro Tarabakin
7. Institute of Stock Market Development, Dmitry Leonov
8. NBU Pension Fund, Oleg Makarenko
9. PFTS, General Meeting
10. Ukrainian Exchange, Oleksiy Chukarikov and Oleg Tkachenko
11. Ministry of Labor, General Meeting
12. Ministry of Economy, Vitrenko Yuriy

Documents Reviewed:

Laws

- Law on Mandatory State Pension Insurance
- Law on Non-state Pension Provision
- Law on Financial Services and State Regulation of Financial Service Market
- Law on Securities and Stock Market
- Law on Collective Investment Institutions
- Draft Law on Introduction of Accumulation System of Mandatory State Pension Insurance

Regulations of FSR

- FSR Regulation 96, on the Conduct of Inspections, dated 10.28.2003
- FSR Resolution 125, on the policy for applying sanctions, dated 11.13.2003
- FSR Regulation 118, Regarding the Licensing of Administrators, dated 11.13.2003
- FSR Resolution 137, on Qualification Requirements for the Members of Boards of the Non-state Pension Funds and Experts on Administration of the NPF, dated 11.27.2003
- FSR Regulation 169, on Procedure for Approval of NPF Board Members, dated 12.18.2003
- FSR Resolution 183, on education, retraining, improvement of professional skill and examinations, dated 11.27.2003
- FSR Resolution 187, on the Approval of Promotional Materials, dated 12.29.2003
- FSR Resolution 1101 on the Approval of Requirements for Technical Provision and Informational Systems for Personified Record Keeping of NPF Participants, dated 06.22.2004
- FRS Resolution 1660, on Administration of NPFs, dated 07.20.2004
- FSR Resolution 2263, the Temporary Appointment by the FSR of NPF Administrators

FSR Resolution No. 3100, on Information Disclosure on NPF Activity, dated 12.16.2004

FSR Resolution No.4239, on the Management of the Register of Auditors, dated 06.24.2005

Regulations of SSMSC

SSMSC Resolution 339, on Approval of Regulation on the Procedure to Calculate NAV of NPFs (Open-ended, Corporate, and Occupational), dated 08.11.2004

SSMSC Resolution 341, on Approval of Licensing Requirements for Professional Stock Market Activity, Namely Asset Management for Institutional Investors (Asset Management Activity), dated 05.26.2006

SSMSC Resolution 560, on Approval of Regulation on Requirements to the Composition and Structure of Assets Managed by Entities that Perform Professional Activity of Managing Assets for Institutional Investors (Asset Management), dated 12.10.2003

SSMSC Resolution 1227, on Approval of Regulation on Typical Features of Asset Management for Institutional Investors, dated 11.02.2006