

Work of the Russian securities market with foreign emitters

Success On Legal Grounds



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The beginning of 2010 was marked by the appearance of a complex of documents, regulating activity of foreign emitters on the Russian fund market.

In particular, in the beginning of 2010 the Federal Service for Financial Markets (FSFR) issued orders No10-12/пз-н from the 25 of February and No10-20/пз-н from the 23 of March.

In this connection the procedures for regulation of foreign emitters' activity have changed so much, that it is necessary to review profoundly the whole complex of regulatory acts on the above-noted kinds of activity.

Among these documents it is necessary to point out the article 51.1 of the Federal Law No 39-ФЗ *On securities market* from April 22, 1996, which was put in force by the Federal Law from 28.12.2002 No 185-ФЗ and amended by the Federal Law from 28.04.2009 No 74-ФЗ.

At the moment several general questions are fixed by this act.

First of all, cases and conditions of admission to circulation for foreign securities and requirements for foreign issuers are fixed. Beyond the list of possible foreign issuers (foreign governments, international financial institutions and foreign entities in definite governments) the legislator determines demands (valid since the 1 of February, 2008) for qualifying foreign financial instruments as securities. Only those financial instruments which were given codes ISIN and CFI of the international standards ISO 6166 and ISO 10962 are acknowledged to be securities. The exemption: promissory notes, cheques, bills of landing and analogous securities issued according to foreign law.

In the Order are also given details of documents which confirm that a foreign financial instrument was admitted a security:

- 1) Document of an organisation, which is a member of the Association of National Numbering Agencies, confirming that foreign financial instrument has been given codes ISIN and CFI in accordance with international standards ISO 6166 and ISO 10962 .
- 2) Document of a professional participant of security market conducting custody business or a foreign organisation carrying out registering rights for foreign financial instruments.
- 3) Notification for the securities regulatory body that a foreign financial instrument was admitted a security.

The Order from October 23, 2007 No 07-105/пз-н also determines requirements to participants of financial market for fulfilling operations with foreign securities, in particular:

- Professional participants of financial market during their professional activity and operations with foreign securities must obey federal laws and other regulatory acts of the Russian Federation.
- Managing companies of stock investment funds, unit investment trusts and non-governmental pension funds during investing into foreign securities must obey requirements for investing into foreign securities, determined by federal laws and other regulatory acts
- Professional participants of securities market have a right to carry out professional activities and operations with foreign securities, and managing companies of stock investment funds, unit investment trusts and non-governmental pension funds, and also non-governmental pension funds have a right to make investments into

- foreign securities only if they have document, pointed in the item 4 of the Order, or in its copy, verified according to the established procedure
- For registration and transfer of rights for foreign securities respective records concerning securities accounts are made in accordance with the rules of maintaining depository records, established by federal laws and other regulatory acts of the Russian Federation.

In the Order from October 23, 2007 No 07-105/пз-н it is specified that professional members of securities market have no right to carry out professional activities and conduct operations with foreign investment instruments, which are classified as securities according to the standards of the Provision on classification.

The conditions of admittance

- registration of the prospectus in the securities regulatory authority of the Russian Federation
- the decision by Russian stock exchange to admit the securities to trading
- if there is no restrictions for transacting of the securities within an unlimited range of persons and (or) if the securities were offered for an unlimited range of persons

Apart from the decision of Russian stock exchange, in the Russian Federation securities can be admitted due to the decision of the securities regulatory authority of the Russian Federation. In this case securities must answer the conditions: liquidity, possibility to offer them for an unlimited range of persons according to the personal law of the emitter.

In case of public offering and (or) public circulation of foreign securities in the Russian Federation the law specifies that the rights of depositaries for the securities must be registered. Depositaries must answer demands of regulatory acts of the Russian Federation and the securities regulatory authority of the Russian Federation.

Numerous lawsuits are the result of such a complicated procedure of securities circulation. For instance, the lawsuit on debt collection due to foreign securities sale/purchase agreement, which was examined by the Federal Commercial Court of the Ural region in March, 2010 (decree by FAS of the Ural region No ф09-995/10-С4 from March 24, 2010).

In claimant's opinion, the defendant had to arrange payment for purchasing a block of shares of a foreign entity. According to the decision of the court of first instance, the sale/purchase agreement did not answer the demands of the Russian legislation regulating circulation of foreign securities, which is why the obligation for the defendant *Valentina* to arrange payments was not created.

The Federal Commercial Court or the Ural district was agree with this decision, for there was no evidence that the shares had been admitted to circulation in the Russian Federation in a legal way, therefore the agreement was concluded with violation of Russian law.

In the article 2 of the Federal law *On securities market* it is said that circulation of securities means making civil transactions leading to transfer of proprietary rights for securities.

"In accordance with the point 1 of the article 27.6 of the above-noted Law circulation of securities, issue (additional issue) is a subject to government registration, it is forbidden before full payment of securities and government registration of a report on the results of issue (additional issue) of the securities (submitting notification to a registering body), except cases stipulated by law."

According the point 1 of the article 51.1 of the Federal law *On securities market*, as revised at the moment of concluding the agreement, foreign securities, except securities by international financial organizations, are admitted for placement and circulation in the Russian Federation on the basement of international treaty of the Russian Federation or providing there is an agreement between the securities regulatory body of the Russian Federation and a corresponding body (entity) of country of a foreign issuer, and this agreement arranges their cooperation.

"Thus, circulation of unregistered foreign securities is allowed only on the regulated securities market and with the adherence to the conditions of the above-noted article."

Consider special provisions, stipulated by FSFR RF for admission foreign securities to

circulation in the RF.

FSFR RF made a list of foreign stock exchanges, listing on which is required for admission of foreign securities to trading or placement in the Russian Federation. Furthermore, there is a list of foreign entities registering rights for securities in which Russian depositaries can open accounts for registering their rights for foreign securities. This list include 22 foreign trading platforms, in particular the London, the New York, the Hong Kong, the German Stock Exchanges. The list of foreign depositaries include 62 foreign organizations.

The demands to the depositaries and to the brokers approving prospectus of foreign securities were also established.

The depository is a person acknowledged generally as a depository according to the requirements, established by the Russian legislation and having not less than 1 year of experience in this kind of activity.

The list of demands to brokers is longer. The share capital must be defined. Besides, there are demands to experience in this kind of activity, and within the specified period the broker should make placement of not less than ten securities issues.

Under the law, foreign securities are admitted for Russian market after decision of the stock exchange, according to the criteria of liquidity, elaborated by FSFR. But securities of international financial organization are admitted for circulation by decision of FSFR. In the beginning of 2010 FSFR stipulated the procedure for defining liquidity and rate of investment risk of foreign securities (The Order No 10-5/пз-н from February 9, 2010). An issuer is obliged to buy out securities at price, which deviates from estimated value not more than for 5%. There must be a Russian broker among persons who are going to buy these securities during trading on Russian stock exchange and have signed the prospectus. Besides, realization of the most part of the requirements must be carried out on the base of personal law of the foreign issuer.

The most extensional direction by the FSFR is *The procedure for registration a prospectus of foreign securities and admission of foreign securities to placement*. This regulatory act was validated by The Order No 10-20/пз-н. But it does not extend on the procedure for admission of foreign securities on the base of decision of Russian stock exchange.

As in The Order No 07-105/пз-н from October 10, 2011 FSFR establishes similar demands to securities and foreign issuers: securities must conform to a code of classification and the government of an issuer must be a member of definite international organizations.

Securities which are not listed in foreign exchanges defined by FSFR also can be placed. For this they must be offered to unlimited range of persons and must answer demands to liquidity and investment risks according to the Order of FSFR No 10-5/пз-н from February 9, 2010.

Above that, a prospectus of securities must be registered. The rights for foreign securities established on the base of depository agreement also must be registered. A foreign issuer must submit resolution which confirms that placement of securities answer the demands of personal law of a foreign issuer. In this document the following items must be: list of decisions that must be made by the authorized board of the foreign issuer and the foreign government body for foreign securities placement in the RF, the procedure for settlement of disputes connected with violation of rights of foreign securities owners.

The legislator gave a special priority to procedures for admission of foreign securities to Russian market on the base of decision made by FSFR. So he putted an accent on attraction of foreign means of international investment organizations.

Thought, according to the chairman of Committee on financial market Vladislav Resnik, the legislator also had the objective to admit Russian companies registered abroad to internal market (like *Rusal, Evraz, X5 Retail Group*). (*Kommersant*, January 26, 2010)

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