

RUSSIA ALERT

CHANGES IN THE RUSSIAN LAWS CONCERNING LIABILITY FOR VIOLATION OF INVESTOR RIGHTS AND PRICE MANIPULATION IN THE SECURITIES MARKET

On February 9, 2009, Federal Law No. 9-FZ *On Amendment of the Russian Code of Administrative Violations to Increase Administrative Liability for Violations of the Russian Joint-Stock Company Law, Limited Liability Company Law, the Securities Market Law and the Investment Fund Law and Amendments of the Federal Law On the Securities Market to Revise the Definition and Specify the Criteria of Price Manipulation in the Security Market* (the "Law") was adopted.

The Law comes into effect as of April 12, 2009.

The primary objective of the Law is to protect investor rights in the Russian securities market. Towards this end, the Law—

- sets out more stringent sanctions for the existing administrative violations:
 - On average, administrative fines are increased more than fivefold (up to between RUR 10,000 and RUR 15,000) for officers and more than tenfold (up to between RUR 0.3 million and RUR 1 million) for legal entities for certain administrative violations, such as—
 - breach of the disclosure regulations
 - insider trading
 - price manipulations in the securities market
 - breach of the rules for convening and holding the general meetings of shareholders/participants/partners in a closed mutual investment fund.

Instead of being fined, an officer may be disqualified for a period of between one and two years.

- expands the list of persons who may be held liable for administrative violations in their capacity as officers. Such list will now include—
 - members of the board of directors
 - members of the collective executive body
 - members of the liquidation commission
 - members of the counting commissions
 - managers of entities whose business is to act as the sole executive body of other entities.
- increases the statute of limitations for imposition of administrative liability from two months to one year after the date of the respective breach.

- introduces administrative liability for—
 - breach of the legal provisions on the procedure for preparation and holding of the general meetings of shareholders/participants/partners in a closed mutual investment fund
 - breach of the legal provisions on storage of documents by companies
 - price manipulation in the securities market.
- substantially changes the definition of “price manipulation” in the securities market to include—
 - an exhaustive list of actions that amount to manipulation in the securities market, including (under certain conditions), but not limited to, the following—
 - dissemination of false or misleading information that affects or may affect the demand for and/or supply of any security, its price or trading volume
 - consummation in the organized market of transactions involving a security at a price significantly different from the prevailing price of such security on the same day, provided that the parties enter such transactions pursuant to a prior agreement
 - making matching bids for one account with the bid price exceeding the ask price with the intent to mislead market participants or investors
 - consummation by two or more trading participants of transactions void of any obvious economic substance or any obvious legal objective for at least one of such trading participants
 - multiple failures on the part of a trading participant to perform obligations under the consummated securities transactions
 - other actions.
 - indicators of any actual consequences of such actions, namely, where as a result of such actions—
 - the price of such security increases, decreases or remains unchanged
 - the demand for and/or supply of such security increases, decreases or remains unchanged, or
 - the trading volume with respect to such security increases, decreases or remains unchanged.
 - a number of exceptions whereby the actions formally qualifying as “price manipulation” are not considered as such. These exceptions include, in particular, operations with governmental securities, actions of any person aimed to benefit an issuer of securities in a public offering by stabilizing the price of such securities if there is a risk that their price may decrease, etc.

As a matter related to the adoption of the Law, it should be noted that the Russian government is currently developing a draft federal law that would amend the Russian criminal code by introducing criminal liability (including imprisonment) for price manipulation in the securities market, violations of recording procedures governing the right to own securities and wrongful restriction of securities owners’ legal rights.

CONTACT INFORMATION

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