



New legislation on combating unauthorized use of insider information and market manipulation

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Federal Law No.224-FZ of the Russian Federation “On combating unauthorized use of insider information and market manipulation and on introducing amendments to certain legislative acts of the Russian Federation” was adopted on July 27, 2010 (hereinafter the “**Law**”; published in [Rossiyskaya Gazeta dated July 30, 2010](#)).

The main purpose of the Law is to strengthen protection of investors’ interests on financial and commodities markets through introducing the term “insider information” to the legislation and establishing a legal regime for its use, as well as to amend the existing regulation for the market manipulation. The Law is targeted at strengthening the protection of investors’ interests by imposing requirements toward fuller disclosure of the information affecting prices of financial instruments and goods and at creating an effective mechanism which would allow revealing and preventing violations committed with the use of insider information and market manipulation.

Law background

Participants of the financial market have been waiting for the Law to be adopted for over 10 years. The problem associated with unfair use of insider information is very important for Russia and hence the Federal Financial Markets Service (the “**FFMS**”) started developing the new law on insider information almost from the very beginning of its existence.

The FFMS spoken repeatedly of a growth in price manipulation on the Russian market but was able to prove only two cases of illegal use of insider information (Palmaris Holding Limited, Cyprus, and Richbrockerservice, Russia). At the same time, the U.S. Securities and Exchange Commission (SEC) annually investigates over 50 cases related to insider information and holds dozens of unfair market participants liable for criminal offences.

Preparation of the Law involved looking into the experience of other countries, in particular, the main foreign models of control over insider transactions and manipulation were analyzed, including the model used in the USA and Great Britain, as well as the European model recorded in the EU directives and clearly developed in the legislation of Germany.

Adoption of the Law is the main condition for Russia joining the International Organization of Securities Commissions (IOSCO) and for the FFMS joining the international memorandum of understanding.

Scope

The distinctive feature of the Law is a comprehensive solution targeted at protection against misuse by insiders and market manipulators. The Law covers both financial (including currency) and commodity markets.

Insider information

The Law defines the term “insider information” which is absent in the effective legislation and introduces a legal regime for its use.

Pursuant to the Law, “insider information” means exact and specific information which has not been disseminated or provided (including information constituting commercial, official, banking, communication secrets (pertaining to the information on postal transfers of monetary funds) and other legally protected secrets) and dissemination or provision of which may materially affect prices of financial instruments, foreign currency and/or goods (including information on issuers of the equity securities, investment fund management companies, unit investment funds and non-state pension funds, financial instruments, foreign currency and/or goods).

Insider information does not include:

- Information that has become available to the general public;
- Research, forecasts and assessments made on the basis of publicly available information associated with financial instruments, foreign currency and/or goods, as well as recommendations and/or proposals to carry out operations with the above mentioned instruments.

Definitions existing in the legislation with respect to official information, its use on the securities market and persons possessing such official information do not correspond to the essence of the insider problem and an introduction of the term “insider information” has long been overdue.

Insiders

The Law determines the circle of insiders (persons possessing insider information), including issuers and management companies, dominant business entities on certain goods markets, trade organizers, professional participants of the securities market, auditors, appraisers, credit institutions, insurance companies, information and rating agencies, individuals with access to insider information, etc.

Participants of the securities market will have to maintain lists of insiders and take measures to reveal and prevent the illegal use of insider information.

Market manipulation

Pursuant to the Law, market manipulation includes the following actions:

- Willful dissemination of information that is known to be false through mass media, including electronic mass media, Internet or otherwise, resulting in material changes in prices, demand for, offer or scope of trading with a financial instrument, foreign currency and/or product;
- Conducting operations with a financial instrument, foreign currency and/or product upon preliminary agreement between participants in the trading, and/or their employees, and/or entities at the expense or in favor of which said operations are conducted, resulting in changes in prices, demand for, offer or scope of trading, etc.

New powers of the FFMS

The Law determines a range of the FFMS's powers to reveal and prevent violations associated with use of insider information, including the right to:

- Request provision of documents and information;
- Carry out inspections, receive explanations, send administrative writs to eliminate violations;
- Suspend or cancel licenses for conducting professional activities on the securities market or for other licensable activities, etc.

The regulator has received one more significant power – access to information constituting a banking secret, and so the institution of the banking secret is in danger. In the course of the State Duma of the Russian Federation approving the bill, access to such information through a court judgment was discussed, but the final edition of the Law endowed upon the FFMS almost unrestricted powers to access the information constituting a banking secret.

Liability

The Law imposes criminal liability for illegal use of insider information. The Criminal Code of the Russian Federation establishes penalties for market manipulation in the amount from 300,000 to 1,000,000 Rubles or imprisonment for up to 7 years; and for the illegal use or transfer of insider information – penalties in the same amount or imprisonment from 2 to 6 years.

The Code of Administrative Offences of the Russian Federation introduces new elements of administrative offences, namely: illegal use of insider information, and market manipulation entails penalties in the amount from 3,000 to 50,000 Rubles and disqualification of officers for up to 2 years. Legal entities may be imposed with penalties in the amount equal to excessive income or losses which an individual, officer or legal entity avoided as a result of illegal use of insider information, but no less than 700,000 Rubles.

Separate administrative penalties are provided for violation of the Law requirements, namely: breach of obligations to disclose insider information, improper maintenance of the list of insiders, improper notifying of the FFMS by insiders, etc.

Enactment of the Law

The Law in general comes into effect starting from January 27, 2011. At present, the government bodies and market participants do not have any experience of working with insider information. A 6 month deferral allows being prepared for its application. The required bylaws will be adopted within the same period.

The Law provisions dedicated to insider information, maintenance of the list of insiders, control over operations on organized tenders, introducing liability to the Code of Administrative Offences of the Russian Federation for illegal use of insider information and market manipulation come into effect upon expiry of a year starting from the effective date of the Law.

The Law's standards introducing criminal liability come into effect only upon expiry of 3 years starting from its effective date.

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Additional information

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