

On the Approval of the Procedure to establish correspondent relations between the National Depository of Ukraine and foreign depository institutions for the purpose of selling blocks of shares owned by the State in the form of depository receipts on the international stock markets

Resolution of the Securities and Stock Market State Commission No 237 as of 10 November 1999

Registered with the Ministry of Justice of Ukraine on 4 February 2000 at No 69/4290

Pursuant to the implementation of item 3 of the Cabinet of Ministers Edict 1320 (1320-99-p) dated 21 July 1999 “On the sale of blocks of shares of open joint-stock companies created in the process of privatization of state-owned enterprises, in the form of depository receipts to be sold on international stock markets”, the Securities and Stock Market State Commission **HEREBY RESOLVES:**

1. To approve the Procedure of establishing correspondent relations between the National Depository of Ukraine and foreign depository institutions for the purpose of selling blocks of shares owned by the State in the form of depository receipts on the international stock markets (see attached hereto).
2. Directorate of Oversight over the Securities Market Infrastructure shall ensure State registration of this Resolution with the Ministry of Justice of Ukraine.
4. This Resolution shall come into effect as prescribed by the effective legislation.
5. Control over the fulfillment of this Resolution shall be vested with SSSMS Commissioner A.T. Holovko.

Chairman of the Commission

O. Mozhovyi

APPROVED BY:

Deputy Chairman of SPF

S. Ledomska

SPF Chairman

O. Bondar

NDU Board Chairman

O. Sharov

APPROVED

By the Resolution of the Securities and
Stock Market State Commission as of
November 10, 1999, No 237

Registered with the Ministry of Justice of
Ukraine on February 4, 2000, at No 69/4290

PROCEDURE

of establishing correspondent relations between the National Depository of Ukraine and foreign depository institutions for the purpose of selling blocks of shares owned by the State in the form of depository receipts on the international stock markets

The Procedure to establish correspondent relations between the National Depository of Ukraine and foreign depository institutions for the purpose of selling blocks of shares owned by the State in the form of depository receipts on international stock markets (hereinafter referred to as 'Procedure') has been developed in accordance with the Law of Ukraine "On the National depository system and special features of the electronic circulation of securities in Ukraine" (710/97-vr), the Law of Ukraine "On the State regulation of the securities market in Ukraine" (448/96-vr), Presidential Decree 703/99 "On the General foundation of the operations of the National Depository of Ukraine" dated 6/22/99, Cabinet of Ministers' Edict 1320 dated 7/21/99 "On the sale of blocks of shares of open joint-stock companies created in the process of privatization of state-owned enterprises, in the form of depository receipts to be sold on international stock markets"; SSMSC resolution 61 of 5/26/98 "Regulation on the depository activities" (vr061312-98); and SSMSC resolution 157 of 10/30/98 "On Servicing the placement and sale outside Ukraine of Ukrainian issuers' securities or documents that confirm the obligations proceeding from the rights certified by such securities" (z0752-98).

1. Background provisions

1.1 The terms below shall be used in this Procedure as follows:

Special depository accounts – securities accounts opened with depositories for record keeping purposes for securities deposited by the depository in another depository via correspondent relations in accordance with a relevant agreement;

Foreign depository institution – a foreign financial institution that issues depository receipts on shares of Ukrainian issuers;

Depository receipt – a document issued by a foreign depository institution in compliance with the law of a relevant state for underlying corporate shares.

1.2 Establishment of correspondent relations with foreign depository institutions shall be the exclusive responsibility of the National depository of Ukraine.

- 1.3 Open joint-stock company shares shall be sold in the form of depositary receipts on international stock markets in accordance with the terms of an agreement between the State Property Fund of Ukraine and the placement agent selected by the State Property Fund of Ukraine (hereinafter referred to as SPF).
- 1.4 Servicing the sale of blocks of shares of open joint-stock companies created in the process of privatization of State-owned enterprises in the form of depositary receipts on the international stock markets shall be vested with the National depositary of Ukraine and shall be effected through the mechanism established in section 3 of this Procedure.
- 1.5 A foreign depositary institution shall be identified by the SPF upon the proposal of an authorized person (advisor) or of the open joint-stock company whose shares are offered for sale in the form of depositary receipts on the international stock markets.
- 1.6 Correspondent relations of NDU with a foreign depositary institution shall be established via entering into an agreement on correspondent relations. The method of the decision making and the method of compiling documentation for the establishment of correspondent relations of NDU with other depositary institutions shall be determined by the National depositary of Ukraine with consent of the State Securities and Stock Market Commission.
- 1.7 The agreement on the correspondent relations shall be executed in compliance with the requirements of the laws of the countries of registration (domicile).

2. Requirements to keeping records of ownership of shares of open joint-stock companies created in the process of privatization of State-owned enterprises when sold in the form of depositary receipts on the international stock markets

- 2.1 Records of ownership of shares of open joint-stock companies created in the process of privatization of State-owned enterprises when sold in the form of depositary receipts on the international stock markets shall be kept in compliance with the effective legislation of Ukraine and under this Procedure.
- 2.2 In the event of registered shares in the documentary form, the issuer shall perform its obligations as defined by the terms of issue of such shares on the basis of the register of owners of these shares formed by the registrar with which the issue has entered into an agreement to maintain the issue's register.
- 2.3 In the event of a non-documentary issue, the issuer shall perform its obligations as defined by the terms of issue of such shares on the basis of a consolidated register of accounts of share owners formed by the depositary with which the issue has entered into an agreement to service the shares issue.
- 2.4 Depositary receipts ownership records shall be kept in compliance with the legislation of the domicile of the issuer of the depositary receipts.
- 2.5 The obligations to depositary receipt owners as prescribed by the terms of the depositary receipts issue shall be borne by the foreign depositary institution that has issued said receipts.

3. The Procedure of servicing the sale of blocks of shares of open joint-stock companies created in the process of privatization of State-owned enterprises in the form of depositary receipts on the international stock markets

- 3.1 Following the SPF decision to sell shares of open joint-stock companies created in the process of privatization of State-owned enterprises in the form of depositary receipts on the international stock markets, said shares shall be deposited in a Ukrainian depositary and recorded at the securities account with a custodian to be selected by the SPF.
- 3.2 In order to service the sale of shares of open joint-stock companies created in the process of privatization of State-owned enterprises in the form of depositary receipts on the international stock markets, a foreign depositary institution as issuer of the depositary receipts and the Ukrainian depositary in which the relevant shares are deposited shall enter into an agreement with the NDU on correspondent relations.

3.3 The agreements on correspondent relations between NDU and the foreign depository institution as issuer of the depository receipts and between NDU and the Ukrainian depository in which the relevant shares of an open joint-stock company are deposited shall spell out the terms for the opening and maintaining special depository accounts for the shares for which said depository receipts have been issued.

3.4 The depositing in a Ukrainian depository of the shares of open joint-stock companies created in the process of privatization of State-owned enterprises in the form of depository receipts to be sold on the international stock markets as well as the execution by such a depository and the foreign depository institution of correspondent relations with NDU shall be secured by SPF following its decision on the sale of said shares.

The immobilization of said shares in a Ukrainian depository shall be performed by the custodian selected by SPF. The immobilization shall be performed in accordance with the procedure identified by the Regulation on the method of keeping records in the register of owners of registered securities approved by the SSMSC resolution 60 (vr060312-98) dated 5/26/98, and by the Regulation on depository activities approved by the SSMSC resolution 61 (vr061312-98) dated 5/26/98.

3.5 Following the SPF entering into an agreement with a placement agent on the sale of shares of an open joint-stock company in the form of depository receipts on the international stock markets, said shares shall be accounted at a special NDU depository account opened for it in the Ukrainian depository where said shares are actually deposited.

3.6 Within five (5) business days of executing the agreement with a placement agent on the sale of the shares of the relevant company in the form of depository receipts to be sold on the international stock markets, SPF shall send an order to the custodian to transfer the shares deposited in the Ukrainian depository to the special NDU depository account opened for it in this depository.

3.7 The shares shall be transferred to the special NDU depository account opened in the Ukrainian depository where said shares are deposited, on the basis of the order to transfer the shares for the custodian selected by SPF and of the order to accept said shares from the administrator of the special NDU depository account.

3.8 Securities shall be credited to the NDU on the special depository account of the foreign depository institution and recorded as locked (restricted for circulation) until the execution of the terms of the agreement between SPF and the placement agent with regard to completion of settlements for such shares.

The manager of the special NDU depository account to record the shares for which depository receipts have been issued shall be SPF of Ukraine. Under the terms of the agreement with the placement agent on the sale of the shares of the relevant company in the form of depository receipts to be sold on the international stock markets, SPF shall carry out the responsibilities of the manager [of such an account] until the complete settlement of payment for said shares. After all the settlements for said shares have been completed, NDU shall credit said shares to the special depository account of the foreign depository institution as restricted for circulation upon receipt of the relevant order from the SPF of Ukraine.

4. State regulation and control over the record keeping of shares of Ukrainian issuers for which depository receipts have been issued

4.1 Under the effective Ukrainian legislation, the State regulation and control over the record keeping by NDU and by other depository institutions of Ukraine of shares of Ukrainian issuers for which depository receipts have been issued shall be performed by the State Securities and Stock

Market Commission (hereinafter – SSMSC) in compliance with the Law of Ukraine “On the State regulation of the securities market in Ukraine” (448/96-vr).

4.2 For the purpose of organizing the monitoring over the sale of shares open joint-stock companies created in the process of privatization of State-owned enterprises to be sold in the form of depositary receipts on the international stock markets, SPF, after entering into an agreement with the placement agent on the sale of said receipts on the international stock markets, shall file with SSMSC the following information on the relevant joint-stock company:

the requisites of the issuer whose shares it has been decided to sell on the international stock markets in the form of depositary receipts:

- the complete name of the issuer;
- the taxpayer’s YEDRPOU code of the issuer;
- the issuer’s location according to the State registration certificate;
- information on the issue of shares for the State-owned portion of which a foreign depositary institution as issuing depositary receipts:
- the data from the registration certificate of the issue (the certificate number; the date of issue; and the name of the issuing body);
- the nominal value of one share;
- the number of shares in said issue;
- the amount of the block of shares owned by the State and subject to sale in the form of depositary receipts on the international stock markets (as percentage of the amount of the statutory capital of the company; the number of such shares, and the total nominal value of the block of said shares);
- information on the placement agent with whom the SPF has entered into an agreement to sell corporate shares on the international stock markets in the form of depositary receipts:
complete name; location
according to the State registration certificate; YEDRPOU
code (for non-resident legal entities – ID from the registration certificate or an extract from the trade, bank or court register of the legal entities place of domicile); information on
the permission to engage in the activities of issuance and circulation of securities (permission
number; date of issue; name of the issuing authority; and the expiry date); (for non-resident
legal entities, indicated shall be the data on the license (permit) issued in a foreign country).

4.3 For the purpose of organizing control over compliance with this Procedure and with the Ukrainian legislation on record keeping of shares of open joint-stock companies created in the process of privatization of state-owned enterprises, in the form of depositary receipts to be sold on international stock markets, NDU shall, when keeping records of such shares in a special depositary account of a foreign depositary institution, file with SSMSC the following information:

- information about the foreign depositary institution with which NDU has established correspondent relations to account shares that are owned by the State and for which the foreign depositary institution issues depositary receipts: -
complete name;
- country of registration (domicile);
- location according to the registration data; -
- information on the State-owned shares accounted by NDU on a special securities account of the foreign depositary institution on which said foreign depositary institution has issued depositary receipts:

- the data from the registration certificate of the issue (the certificate number; the date of issue; and the name of the issuing body);
the number of shares. -

4.4 Other government agencies shall be entitled to perform control over compliance with the method of keeping records of shares of Ukrainian issuers on which depositary receipts have been issued, but solely within the powers accorded to such government agencies by the effective legislation.

SIGNED:

V. Lisovyi
Head
SSMSC Department for Securities Market Infrastructure Oversight