

**On Approval of the Procedure for Investigating Cases of Incompliance with the Securities Market Legislation and Imposing Sanctions**

**Ordinance of the Securities and Stock Market State Commission No2**

**January 9, 1997**

**Registered with the Ministry of Justice of Ukraine at No 10/1814 on January 27, 1997**

*(As amended by the Securities and Stock Market State Commission Resolutions No 27 dated January 13, 2001; No 341 dated November 6, 2001; and No 412 dated December 19, 2002)*

For the purpose of placing responsibility over legal entities, individuals and company officials who are securities market participants for incompliance with the State Regulation of the Securities Market in Ukraine and the Securities and Stock Exchange Laws of Ukraine, and with the purpose of determining the procedure for consideration of cases regarding violations of the securities market legislation and sanctions application, I **HEREBY ORDER**:

1. Approve the Procedure for Investigating Cases of Incompliance with the Securities Market Legislation and Imposing Sanctions (attached).
2. Legal Division (V. Maydybura) shall ensure state registration of the present Ordinance and the Procedure for Investigating Cases of Incompliance with the Securities Market Legislation and Imposing Sanctions with the Ministry of Justice of Ukraine.
3. Enforcement and Legal Work Department (M. Burmaka) shall provide clarifications on the Procedure enforcement to the officials of the SSMSC and its regional offices regarding the application of the above Procedure.
4. I will undertake the responsibility for supervision of this Ordinance performance.

**SSMSC Chairman**

**O. Mozhovyi**

**APPROVED**

by the Securities and Stock Market Commission Ordinance No 2 as of January 9, 1997 (version of the Securities and Stock Market State Commission Ordinance No 27 dated February 13, 2001) registered with the Ministry of Justice of Ukraine at No 243/5434 as of March 16, 2001

**RULES**

**Investigating Cases of Incompliance with the Securities Market Legislation and Imposing Sanctions**

(In the entire Procedure, the “enforcement division” language has been replaced by the “authorized division of the Commission central office” language declined respectively, in conformity with the Securities and Stock Market State Commission Resolution No 341 dated November 6, 2001)

## **Section 1. General Provisions**

1.1. The Rules of consideration of cases regarding violations of the securities market legislation and sanctions application (Rules hereinafter) have been prepared in line with the Laws of Ukraine On State Regulation of the Securities Market in Ukraine and Securities and the Stock Exchange; the Code of Ukraine on Administrative Violations; Decree by the President of Ukraine On the Securities and Stock Market State Commission No 142/97 dated 14.02.97 (amended), and other laws and regulations.

The Procedure sets forth the procedure and the timeframe for consideration by the Securities and Stock Market State Commission and its regional offices of cases on violations of the securities market legislation committed by individuals, officials and companies.

1.2. The Procedure has been drafted in order to force the securities market participants comply with the securities market legislation, protect the securities market participants' rights, facilitate good-faith competition on the securities market, and to supervise transparency of the securities market through timely application of sanctions in cases where violations of the securities legislation occur.

1.3. The cases regarding violations committed in Ukraine shall be considered in keeping with this Procedure.

1.4. The goal of violation cases proceedings is timely, full and impartial clarification of circumstances in each case, settlement of the case in full conformity with the effective legislation, enforcement of the respective resolution and determination of reasons and circumstances that cause the violation, and prevention of violations.

1.5. In cases where the signs of a violation have been discovered, the Commission and its regional offices, within the scope of their powers, shall take all measures necessary for determining the fact of the violation, documenting it, and timely application of the sanctions provided for by the legislation.

1.6. Hereby, the enforcement division in the Commission's regional office shall be deemed the respective division of the Commission's regional office.

1.7. Hereby, the Commission's division or its regional office division in charge of regulating the respective sector on the securities market shall be deemed a specialized division.

1.8. The cases regarding violations shall be considered by the Commission's and its regional offices' authorized employees (authorized employees, hereinafter) only, within the scope of powers they are entitled to by the allocation of responsibilities or a written instruction.

1.9. When considering a case the authorized employees shall be obliged to take all measures required by the legislation for a comprehensive, complete and impartial investigation of the case facts.

1.10. In cases where the effective legislation violations occurred whose consideration is beyond the scope of the Commission's and its regional offices' powers the authorized employee shall send the case materials to the government agencies authorized to settle the case.

1.11. A legal entity may encounter charges regarding the violation no later than three years after the violation occurred. In cases where the violation continues, such timeframe is limited to three months from the date of discovery. This does not concern violations subject to the application of fines.

1.12. A fine may be imposed on an individual or an employee no later than two months after the date of violation, or no later than two months from the day the violation was discovered for a continuing violation.

1.13. A resolution on the case shall be legitimate and well-grounded. The resolution shall be based only on the evidences investigated in the course of the case consideration.

1.14. Within the scope of his/her powers, the authorized employee of the Commission or its regional office shall consider the case regarding the violation if such violation occurred in the region within its jurisdiction or the respondent is in the region within its jurisdiction at the time.

1.15. A person authorized to prepare a report on the violation may within three business days after completion of the violation report send the violation case to the Commission's regional office regulating the region where the respondent is at the time. The authorized employee shall take a decision to send the case taking into account the requirements of item 2.6 hereof. The authorized employee of the regional office whereto the case is sent shall be obliged to consider it in keeping with the effective legislation.

1.16. If a violation results from joint action by several people the cases on such violation against these individuals shall be handed over to one authorized employee upon the Commission Chairman's written instruction. The authorized employee shall consider the cases at a time.

1.17. If the respondent is a subsidiary, an office or another separated unit of a legal entity the violation case shall be raised against the legal entity and considered in the region where the separated unit is located.

1.18. The cases on the violation by legal entities may only be integrated into one process and a case on the violation by a legal entity may only be separated into a process if such actions may facilitate comprehensive, complete and impartial settlement of the case.

The authorized employee considering the case shall pass a resolution on a merger of violation cases and severance of a violation case.

## **Section 2. Authorized employees involved in consideration of the violation cases and their powers**

2.1. The following authorized employees shall consider the cases regarding violations within the scope of their powers based on the allocation of responsibilities or a written instruction:

Commission Chairman;

Commission members;

Heads of the Commission regional offices;

Commission central office employees based on a written instruction by the Commission's Chairman or the commissioners;

Employees of the Commission's regional offices, based on the written instruction of a head of the Commission's respective regional office.

2.2. The Commission's Chairman may consider all cases on violations and apply sanctions to the securities market participants as required in item 18 hereof.

2.3. A Commissioner may consider cases on violations based on the allocation of responsibilities or the Commission Chairman's instruction, and impose sanctions on the securities market participants as required in item 18 hereof.

2.4. If the Commissioner is not in place (in business trip, on vacation or on a sick leave, etc.) another Commission member or employee shall consider the case on a violation based on the Commission Chairman's or the Commissioner's instruction, respectively.

2.5. The case on a violation may be considered collectively by three Commissioners upon the recommendation of the Commissioner authorized to consider the given case, if so agreed with the Commission Chairman.

If that is the case, a decision on the case shall be approved by a simple majority.

Decision on the case shall be documented by a resolution signed by all participants to the case consideration.

2.6. The Head of the Commission's regional office shall consider cases on violations and apply sanctions against the securities market participants as set forth in items 18.1 - 18.6, 18.9 - 18.14 hereof. The sanction provided for in item 18.7 hereof shall be applied by the Head of the Commission's regional office within the scope of powers granted to him/her by the Commission.

2.7. The Commission's central office employees shall consider cases on violations based on a written instruction and apply the sanction set forth in item 18.5 hereof against the securities market participants.

2.8. The Commission's regional offices' employees shall consider cases on violations based on a written instruction and apply a sanction set forth in item 18.5 hereof against the securities market participants.

2.9. If in the process of considering a case on a violation an authorized employee of the Commission's regional office finds it necessary to apply a sanction that is beyond his/her scope of powers he/she shall send the case materials for consideration to the authorized division of the Commission's central office within three days. Within five business days from the date of receipt of the case materials, the authorized division of the Commission's central office shall hand them over to the Commissioner who is entitled to considering such case on the violation based on the allocation of responsibilities.

2.10. The Commission's Chairman shall be entitled to requesting any case processed by any authorized employee and transferring it to another authorized employee or taking it for his/her own proceeding.

### **Section 3. Proceedings for the cases regarding violations by legal entities on the securities market**

3.1. A case may only be initiated if the information is sufficient to prove the signs of a violation in place.

3.2. Any actual data obtained legitimately that prove the presence or absence of a violation may serve evidence in cases on violations.

3.3. The Commission's authorized employee shall consider a case on the violation and make a decision on such case in full conformity with the effective legislation, and assess the evidence following his/her own personal assumptions based on a comprehensive, complete and impartial investigation of all facts of the case.

3.4. A case on a violation may not be initiated and an initiated case shall be closed under the following circumstances:

the absence of a violation event;

the lack of violation signs in the action;

where the case may not be considered by the Commission or its regional offices;

the timeframes described in item 1.11 hereof terminated at the moment of considering the case on a violation;

availability of an effective resolution by the authorized employee, the Commission's resolution, a court decision or an arbitration court decision regarding the same event;

the respondent legal entity liquidated or claimed bankrupt;

the law or the regulation imposing responsibility for the violation cancelled;

the event has lost the features of a violation resulting from the legislation changes;

there is a criminal case regarding the violation effectively open against the respondent individual or the respondent employee.

3.5. An authorized employee may close the case on the violation if it is eliminated in the process of the case consideration.

3.6. Violation of the effective legislation and of this Procedure regarding preparation of a report on the violation, consideration of the case on the violation and the established timeframe shall be deemed a reason for addressing the case for a new consideration.

3.7. Consideration of the case on the violation may be postponed resulting from the need for extra evidence or the need to involve experts and (or) other people; in other cases consideration may be postponed if it is impossible to perform at the specified time.

3.8. If consideration of the case on a violation is postponed, the authorized employee shall make a decision indicating the reasons for the delay and the date for the next consideration.

3.9. Decisions on the postponement of the case consideration, termination of the proceedings regarding the case on the violation, or resumption of the case proceedings shall be sent to all participants of the case consideration within three business days.

3.10. If the case consideration is postponed, the timeframe for the case consideration shall not be interrupted.

3.11. The case proceedings shall be terminated in the following cases:

If another case is being considered by the Commission, its regional offices or other government agencies, and the decision thereon will affect the consideration outcome;

Additional examination or inspection is needed;

The lack of information on the respondent's location.

3.12. The authorized employee shall make a statement on the resumption of the case proceedings. The latter shall be resumed once the reasons for its suspension are clarified.

3.13. If the proceeding regarding the case on the violation is terminated on the basis of paragraph 4 of item 3.11 hereof, the authorized employee shall send the case materials to the authorized employee who has prepared the violation report and who shall take measures to find out the location of the respondent.

3.14. The authorized employee shall make a statement on the termination of proceedings regarding the case on the violation.

3.15. If the proceeding regarding the case on the violation is terminated the timeframe for the case consideration shall be interrupted and continued again starting with the date of the statement of the case proceedings resumption.

#### **Section 4. Initiating cases on violations against legal entities**

4.1. If violation features are discovered, the authorized employee shall issue a resolution to initiate a case immediately. If after such resolution, but before the preparation of the violation report, any circumstances are discovered described in item 3.4 hereof the authorized employee shall make a resolution on closing the case proceedings.

4.2. The case on the violation shall be opened on the day of issuing the above resolution.

4.3. The authorized employee shall prepare a report on the violation by the legal entity.

4.4. If the legal entity has committed several violations, the authorized employee shall prepare separate reports for each of the violations depending on the kind of activity and sanctions.

4.5. A violation report shall include information, such as the number, the date and the place where the report was prepared; position of the person that prepared the violation report; the first, the middle, and the last name of such person (if powers are granted based on a power of attorney the

details of such power of attorney shall be noted too); full name of the legal entity; address; EDRPOU code; banking details; contacts; description of circumstances of the violation and description of the violation itself; the law or regulation violated; explanation of the respondent or his/her representative; information on a repeated violation by the respondent; and other information necessary to settle the case on the violation.

Explanation of the respondent is the violation report component and shall be attached thereto.

4.6. If the respondent or his/her representative fails to appear in the process of the violation report preparation, it may still be prepared provided that such legal entity has been notified in a timely manner of the time and place where the violation report will be signed. If that is the case, the violation report shall be prepared on the day for which the respondent has been summoned. The violation report then shall contain a special notification saying that the respondent legal entity representative failed to appear at the violation report signing.

4.7. Once signed, one copy of the violation report shall be provided to the respondent legal entity representative. If such representative fails to appear at the event of signing, the violation report one copy of the report shall be sent along with a summons to come to the case consideration.

4.8. If in the process of inspection the authorized employee has withdrawn any documents certifying the fact of violation, the copies of such documents and a copy of the protocol regarding the documents withdrawal shall be attached to the violation report.

4.9. Withdrawal of the documents proving the violation for more than three business days shall be accompanied by preparation of protocol that indicates the date and place of preparation, the first and the last names, and position of the person that has withdrawn the documents, a complete list of the documents withdrawn with the details indicated, and the date of the documents return.

Withdrawal protocol shall be signed by the authorized person that has carried out the withdrawal, and the legal entity representative. Following the documents withdrawal, the legal entity representative is provided a copy of the withdrawal protocol.

4.10. Within three business days from the preparation date, the violation report, along with explanation from the Commission's Chairman and the legal entity representative, and the documents concerning the case, shall be sent to the authorized employee for consideration of the case on the violation.

4.11. If the violation report along with other materials concerning the case are sent to the Commission by its regional offices, such report shall be first addressed to the authorized division of the Commission's central office. Within five business days, the authorized division shall hand the materials over to the respective authorized employee in the Commission.

4.12. The authorized employee shall solve the issues specified in item 5.1 hereof, determine the date of considering the case on the violation, and issue a resolution thereon sending it to the respondent and the interested parties.

## **Section 5. Preparation of the case of the legal entity for consideration**

5.1. When preparing the case on the violation for consideration, the Commission's authorized employee shall take the following aspects into account:

Whether consideration of the given case is within the scope of his/her powers;

Whether the violation report has been prepared in compliance with the legislation;

Whether all the necessary additional materials have been requested;

Whether the claims of the persons involved in the case consideration may be satisfied.

5.2. If the person subject to a sanction for a violation in a specific kind of activity on the securities market has not committed another violation in the same kind of activity within one year from the

date of this sanction execution, such person shall be deemed the person against which no sanction for violations have been applied.

5.3. If necessary, the authorized employee may request additional materials, opinions and other evidence whose lack makes the decision on the case impossible to be taken.

5.4. A resolution regarding consideration of the case on the violation shall be sent to the respondent and the interested parties no later than five business days before the date of the case consideration by the authorized employee.

5.5. Specialists and experts in the securities market, third parties, and SRO specialists may be involved in consideration of the cases on violations. Their written opinions and explanations related to the case may also be used.

5.6. When preparing the case for consideration, the authorized division at the Commission's central office (the respective division in the Commission's regional office) shall provide the authorized employee with the case materials and gives recommendations regarding the enforcement measures.

### **Section 6. The timeframe for proceedings in the cases of violations and the timeframe for considering cases of violations against legal entities**

6.1. The timeframe for proceedings in the cases of violations against legal entities shall be 30 calendar days from the date of the case initiated.

The authorized employee shall make a decision on imposing a fine within 10 days after he/she has received the violation report, the respondent's explanation, and the documents relating to the case. The authorized employee shall take a decision to impose other sanctions within 15 days after the receipt of the above documents.

6.2. The Commission's Chairman may extend the timeframe for proceedings for the case on the violation against a legal entity based on a motivated written claim of the authorized employee for no more than 30 calendar days.

6.3. The Commission's Chairman shall consider the motivated claim to continue the case proceedings within three business days from its incoming date.

6.4. The Commission's Chairman shall issue a resolution on the case proceedings prolongation.

6.5. The resolution on continuation of the case proceedings shall be sent to the authorized employee of the Commission and the interested parties within three business days. If the claim is dismissed the authorized employee shall be sent a written notification thereof within three business days.

6.6. If the respondent or (and) the respondent's representative is present and files a written request for consideration of the case on the violation, the authorized employee may do so immediately after preparation of the violation report.

### **Section 7. Consideration of cases on violations on the securities market against legal entities**

7.1. Cases of violations against legal entities shall be considered if the respondent manager and/or the legal entity's representative is/are present.

The powers of the respondent legal entity's representative shall be certified with a power of attorney.

If the manager or the legal entity's representative is absent, that case may only be considered if information is available about timely notification of the date and place of the case consideration and if there is no claim from the legal entity to postpone the case consideration.

7.2. If the authorized employee comes to the opinion that the legal entity's manager or representative need to be present, or if a claim for the case consideration to be postponed has been

received, the Commission's authorized employee shall issue a resolution to postpone the case consideration or to consider the case where the reasons for postponing are insufficient. The claimant shall be notified of the resolution taken.

7.3. The legal entity's manager or representative shall have the rights, such as: to be heard, to provide explanation and evidence, to file claims, and to challenge a decision of the authorized employee concerning the case.

7.4. The respondent legal entity's manager or representative, in addition to the rights specified in item 7.3, shall have the right speak his/her native language and use translation or interpretation if he/she does not speak the language in which the proceedings is conducted.

7.5. The case consideration shall start with the introduction of the authorized employee considering the case.

The authorized employee considering the case shall announce which case is subject to consideration; who the respondent is; check the powers of the parties involved in the case consideration by requesting necessary documents; inform of the details of the report on the violation on the securities market; hear the participants of the case consideration; study the evidence; consider the claim and take a resolution on the case.

7.6. The participants to the case consideration may include an employee of the authorized division of the Commission's central office (an employee of the Commission's respective regional office) and an employee of the Commission's specialized division (the Commission's regional office).

An employee of the authorized division of the Commission's central office (the Commission's respective regional office) shall provide legal assistance in compliance with the procedure for the case proceedings, participate in examining the evidence, file his/her recommendations on compliance with the legislation and decision making to the authorized employee.

A specialized division employee shall participate in studying the evidence, announce his/her opinion, ensure that the decision taken is documented properly, and notify the interested parties in of the decision taken.

7.7 When considering the case of the violation, the authorized employee shall be obliged to find out the following: whether the violation occurred, whether the legal entity is guilty thereof, whether the respondent is subject to the liability; whether any mitigating or aggravating circumstances are in place, and what these circumstances are; whether any property harm has been made; and find out other circumstances that are material for a proper case settlement.

## **Section 8. Resolution on incompliance of a legal entity on the securities market**

8.1. Having considered the incompliance case a Commission authorized person shall approve a case decision.

The case decision of the authorized person shall be executed in the form of a resolution.

8.2. The resolution consists of introductory, descriptive, motivated and operative parts.

The introductory part of the resolution indicates: the resolution number, the date and venue of proceedings; the post, name and patronymic name of the Commission authorized person who passed a resolution; the document on the grounds of which this person acts; the information on the person regarding whom the case is being considered (full name of the legal entity, its location, YEDRPOU code, bank details).

The narrative should contain a statement of the facts established during the case consideration and a reference to the statutory act whose norms are violated.

The motivated part provides references to the evidence confirming the fact of incompliance and the guilt of a legal entity, existence of the circumstances which ease or encumber responsibility or the facts which point out the absence of incompliance.

The operative part should point out the decision approved under the case with a reference to relevant norms of the legislative act which provides for responsibility for the incompliance in question.

The case resolution should contain a reference to the procedure of its appealing and it shall be signed by the authorized person who considered the case.

8.3. A resolution on incompliance shall come into force immediately after its announcement.

8.4 The authorized person shall approve one of the following decisions under the case of incompliance:

- 1) on imposing sanctions for incompliance with the securities market;
- 2) on cessation of the case.

8.5. The case decision shall be announced immediately after completing the consideration of the case of incompliance.

The resolution shall be given to the person regarding whom it is passed (about which a relevant inscription is made on the original order which is left in the case) or be sent by mail within three business days.

8.6. Within three days the Commission shall inform the National Bank of Ukraine on imposition of fines on commercial banks.

8.7. All additional materials provided during the consideration shall be attached to the case.

8.8. Within five days a copy of the resolution on incompliance which was considered at the place where the Commission is located together with all materials related to the case shall be submitted to an authorized division of the central Commission office for storing, record-keeping, supervision over compliance with legislation when considering the case and making a decision, and for control over carrying out the decision on imposing sanctions.

A copy of the resolution on incompliance which was considered at the place where a Commission regional office is located shall be submitted to an authorized division of the Commission central office for record-keeping, supervision and control within five business days.

Control over carrying out a decision on imposing sanctions by a Commission regional office shall be exercised by the head of the regional office.

8.9. Application of sanctions for violating legislation on the securities market shall not discharge a legal entity from the duty to eliminate violations of legislation.

## **Section 9. Proceedings in the cases of administrative infractions**

9.1. Any actual data obtained lawfully which testify to the presence or absence of an infraction is evidence in the case of infraction.

9.2. A Commission authorized person shall consider a case of infraction and make a case decision in exact compliance with the effective legislation and evaluate evidence according to his/her inner convictions based on a comprehensive, full and objective examination of all circumstances of the case.

9.3. A case of infraction cannot be initiated and the case initiated shall be subject to closing if there are circumstances which make proceedings in the case of administrative infractions provided for by the Code of Ukraine on administrative infractions impossible.

#### **Section 10. Initiating a case of violation of the law regarding individuals or officials**

10.1. In the event of uncovering a violation of law on the part of an individual or an official an authorized person shall draw a protocol of administrative infraction (hereinafter referred to as protocol).

10.2. The protocol shall be drawn up in one copy. The content of the protocol should meet requirements of Article 256 of the Code of Ukraine on administrative infractions. The protocol may be drawn up only in the presence of the person who committed a violation of law. The protocol shall be signed by the authorized person and the person who committed an administrative infraction. If the person who committed an administrative infraction refuses to sign the protocol, a record of this shall be made in it. Refusing to sign the protocol is not a ground to terminate the case consideration.

10.3. The protocol along with an explanation of the person and the documents related to the case shall be forwarded to an authorized person for considering the violation case.

10.4. The authorized person shall solve the issues provided for in Article 278 of the Code of Ukraine on administrative infractions, fix the date of consideration of the case of violation of law and pass a resolution which he/she shall forward to the infringer and the persons concerned.

10.5. The order of consideration of the violation case shall be forwarded to the infringer and the persons concerned not later than five business days before the date of consideration of the case by the authorized person.

10.6. When preparing the case for consideration an authorized division of the central Commission office (a relevant division of a Commission regional office) shall bring materials of the violation case to the notice of the authorized person and submit proposals regarding application of legislative norms.

#### **Section 11. Terms of violation case proceedings and terms of consideration of the violation cases regarding individuals or officials**

11.1. A violation case shall be considered within 15 days from the date of receipt of the protocol of violation and other materials of the case by an authorized person legally qualified to consider the case.

11.2. The authorized person may consider the violation case immediately after drawing up a protocol of violation if the infringer is present and there is his/her written petition.

#### **Section 12. Consideration of the cases on incompliance with the securities market regarding individuals or officials**

12.1. Cases on incompliance shall be considered in the presence of the person who is brought to responsibility.

If the person is absent, the case may be considered only if there is information on his/her timely notification of the place and time of consideration of the case and if the person has not filed an application to postpone the case consideration.

12.2. If an authorized person arrives at a conclusion that the presence of the person is necessary or if there is an application to postpone the case consideration, the Commission authorized person shall pass a resolution to postpone the case consideration or make a decision to consider the case if the reasons for postponement are not valid. The person who presented an application shall be informed of the decision taken in writing.

12.3. An employee of an authorized division of the Commission central office (an official of a relevant division of a Commission regional office) and an official of a Commission specialized division (a Commission regional office) may take part in the case consideration.

An official of an authorized division of the Commission central office (an official of a relevant division of a Commission regional office) shall provide legal assistance in observing the procedure of the case proceedings, take part in the examination of evidence, submit his/her proposals concerning observation of legislation and approval of a decision.

An official of a specialized division shall take part in the examination of evidence, express his/her opinion, provide documentary execution of the decision approved and bring the decision approved to the notice of the persons concerned.

12.4. The cases of non-compliance regarding individuals or officials shall be considered on the basis of protocols on administrative infractions.

12.5. Penalties for committing administrative infractions shall be imposed by authorized persons according to the powers granted to them.

12.6. Proceedings of the cases of administrative infractions, consideration of the cases of administrative infractions, the procedure of imposing administrative penalties and implementing resolutions shall be provided according to requirements of the Code of Ukraine on administrative infractions.

### **Section 13. Resolution on non-compliance regarding individuals or officials**

13.1. Having considered the case of non-compliance a Commission authorized person shall make a case decision.

The case decision of the authorized person shall be drawn up in the form of a resolution.

13.2. Resolutions on imposing administrative penalties shall be passed and transferred to the infringer according to requirements of the Code of Ukraine on administrative infractions.

13.3. All additional materials which were provided during the consideration shall be attached to the case.

13.4. Within five days the resolution of non-compliance which was considered at the place of Commission location together with all materials related to the case shall be submitted to an authorized division of the central Commission office for storing, record-keeping, supervision over compliance with legislation when considering the case and making a decision, and control over implementation of the decision on imposition of sanctions.

Within five business days a copy of the resolution of non-compliance which was considered at the place of the Commission location together with all materials related to the case shall be submitted to an authorized division of the central Commission office for storing, record-keeping and supervision.

Control over carrying out a decision on imposition of sanctions by a regional Commission office shall be exercised by a head of a Commission regional office.

### **Section 14. Order on eliminating non-compliance with the effective securities legislation**

14.1. According to item 10 of the Law of Ukraine On State Regulation of the Securities Market in Ukraine an authorized person based on the results of the consideration of the case of non-compliance may issue a binding order to eliminate non-compliance with the securities legislation.

14.2. An order to eliminate incompliance may be issued by the Commission Chairman, Commissioners, heads of regional offices as well as employees of the Commission and Commission regional offices in accordance with the powers granted to them.

14.3. An order to eliminate incompliance may be issued irrespective of initiation of the case of incompliance on the securities market.

14.4. If the order to eliminate incompliance is issued based on the results of consideration of the case of incompliance, it shall be issued simultaneously with passing a resolution on the imposition of sanctions for incompliance with the securities legislation.

14.5. The order to eliminate incompliance shall be brought to the notice of the person regarding whom it is issued in accordance with the procedure provided for by item 8.5 hereof.

14.6. The order to eliminate incompliance shall contain: the serial number, the date, the place of execution; the post, the last name, name and patronymic name of the authorized person who issued the order; the date of its issuance; information on the person regarding whom the order is being issued; a statement of facts; the deadline for eliminating incompliance of the securities legislation; notification of the authorized person of the elimination of incompliance.

The order to eliminate incompliance shall be signed by the authorized person who issued it.

14.7. According to an application of the infringer the authorized person who issued the order to eliminate incompliance may make a decision to postpone the time of execution of this order which is drawn up in a new order on elimination of incompliance.

14.8. On application of the infringer or on one's own initiative the order to eliminate incompliance with the effective securities legislation may be reconsidered by the authorized person who issued the order on elimination of incompliance. Based on the results of the reconsideration of the order to eliminate incompliance the authorized person may make a decision on cancellation of the order or to leave it unaltered. Within three days a decision to cancel the order shall be drawn up by an order to eliminate the order on elimination of incompliance with the effective securities legislation which shall be forwarded to the person regarding whom it is made.

The person regarding whom the order is issued shall be informed about the results of the reconsideration of the order to eliminate incompliance.

If the Commission authorized person refuses to sustain a petition of the infringer regarding cancellation of the order, a legal entity may challenge this order at the Commission. Consideration of a claim shall be provided by the Commission within three months from the date of receipt of the complaint. The person regarding whom the decision is made shall be informed about the results of the complaint consideration.

Applying for reconsideration of the order and the complaint regarding a refusal to cancel the order shall not stop execution of the order to eliminate incompliance with the effective securities legislation.

Examination of the complaints regarding a refusal to cancel the order on elimination of incompliance with the effective securities legislation shall be conducted in accordance with the procedure established for decisions on imposing sanctions for incompliance with the securities market envisaged by item 15.3 hereof and, accordingly, the complaint and the order should contain the information established by requirements of item 15.5. hereof.

(section 14 is supplemented with new item 14.8 in accordance

with Commission's decision of 12.19.2002 No

412,

in this connection item 14.8 shall be considered item 14.9)

14.9. Control over execution of the order to eliminate incompliance shall be exercised by a specialized division and this is indicated in this order.

## **Section 15. Challenging a resolution of incompliance regarding legal entities, individuals or officials**

15.1. A resolution on imposing sanctions for incompliance with the securities market may be challenged at the Commission by the person regarding whom it is passed within ten days from the date of its passing. In the event of missing this term for valid reasons this term may be extended by the authorized person on application of the person regarding whom the resolution on imposing sanctions is made, and a resolution shall be passed in this regard.

Missing the term without valid reasons is a ground for a refusal to consider the claim.

15.2. Submission of a complaint at a specified date shall stop execution of the resolution on imposing sanctions for a period of its consideration before the disposition of the case.

15.3. Complaints about resolutions shall be considered:

1) about a resolution passed by a head of a Commission regional office, employees of the Commission central office and a Commission regional office – based on the decision of the Commission Chairman – by a Commissioner, the Commission Chairman or the Commission;

2) about a resolution passed by a Commissioner, the Commission Chairman or passed by three Commissioners jointly – by the Commission.

15.4. Consideration of a complaint by Commissioners, the Commission Chairman, the Commission shall be provided on presentation of an authorized division of the Commission central office.

An authorized division of the Commission central office shall prepare and submit conclusions on the merits of the complaint to the Commission, the Commission Chairman, Commissioners.

15.5. A complaint about a resolution on incompliance with the securities market should contain:

the outgoing number of the complaint (for legal entities) and the date of mailing;

the last name, name, patronymic name and the post taken up by the authorized person about whose resolution a complaint is made;

the date and number of the resolution being appealed;

the title (last name, name, patronymic name) of the person who makes a complaint;

the reasons for which the resolution is being appealed with a reference to legislation and case papers;

a list of documents attached to the complaint;

the signature and stamp of the legal entity (the signature of the person regarding whom a resolution on imposing an administrative sanction is passed).

The complaint drawn up with violation of the requirements set shall not be accepted for consideration and the appellant shall be informed of this in writing.

15.6. Consideration of a complaint on imposing an administrative sanction shall be provided within ten days from the date of its receipt according to chapter 24 of the Code of Ukraine on administrative infractions, and under complaints of legal entities – within three months.

15.7. When considering a complaint one of the following decisions shall be made:

to leave the resolution unaltered and dismiss the complaint;

to cancel the resolution and send the case for new consideration:

to cancel the resolution and close the case;

to change the resolution fully or partially, but so that the sanction would not be aggravated.

15.8. If it is established that the decision is made by the authorized person who is incompetent to solve this case, such a resolution shall be cancelled and the case shall be forwarded to another authorized person for consideration.

15.9. Within three days a copy of the decision about the complaint shall be forwarded to the person regarding whom the decision is made and to the authorized person who made the decision being appealed.

15.10. The resolution on incompliance as well as the Commission decision regarding consideration of the complaint about the resolution may be appealed in court or arbitration court in accordance with the procedure and terms established by the effective legislation.

**Section 16. Reconsideration of the resolution on imposition of sanctions for  
incompliance with the securities market regarding the legal entity because of newly-  
discovered facts**

16.1. The case resolution may be reconsidered by the authorized person who passed it because of newly-discovered facts.

Newly-discovered facts are the facts substantial for the case which the authorized person was not aware of and could not have been aware of at the time of the consideration of the case of incompliance.

16.2. The case resolution may be reconsidered according to an application of the person to whom the sanction has been applied, on the initiative of the authorized person, on presentation of an authorized Commission division of the central Commission office (of a Commission relevant regional office).

16.3. An application on reconsideration of the case because of newly-discovered facts shall be filed not later than two months from the date of establishment of the facts which give grounds for reconsidering the decision.

An authorized division of the central Commission office (a relevant division of a Commission regional office) shall file a petition on reconsideration of the resolution because of newly-discovered facts not later than 30 days after the establishment of the newly-discovered facts, but not later than one year after the resolution has been passed.

16.4. An authorized person shall verify the validity of the application or petition. Based on the results of the verification a resolution to allow or dismiss the application (petition) shall be passed. The case of incompliance shall be forwarded for reconsideration according to a resolution on allowance of the application (petition). Reconsideration shall be made in accordance with the procedure established by Section 7 hereof.

In case of groundlessness of the application (petition) a resolution to dismiss the application (submission) shall be passed.

16.5. Consideration of a complaint about a resolution on imposition of sanctions, an application for reconsideration of the resolution as well as reconsideration of the case on the initiative of the Commission shall not be given if there is information that court or arbitration court has the case or a court decision or arbitration court decision on the fact in question in their proceedings.

**Section 17. Reconsideration of the resolution on imposition of sanctions for incompliance  
with the securities market against a legal entity in the exercise of supervisory powers**

17.1. Supervision over validity of the resolutions passed by the Commission employees, authorized persons of regional Commission offices shall be exercised by Commissioners according to the allocation of their responsibilities and by an authorized division of the Commission central office.

The legality and validity of the resolution may be checked in the exercise of supervisory powers at a Commission session.

17.2. Application for reconsideration of the resolution in the exercise of supervisory powers regarding the case of incompliance shall be filed not later than three months from the date of receipt of the resolution passed to by an authorized division of the Commission central office.

17.3. Based on the results of reconsideration of the decision of the case of incompliance in the exercise of supervisory powers one of the following decisions shall be made:

- to leave the resolution unaltered;
- to change the resolution completely or partially;
- to cancel the resolution and close the case proceedings;
- to cancel the resolution and remit the case for new consideration.

17.4. The subject of noncompliance and a Commission authorized person who passed the resolution shall be informed about the results of the reconsideration.

### **Section 18. Sanctions applied against participants of the securities market for noncompliance with legislation**

Application of the following sanctions is envisaged for participants of the securities market for noncompliance with legislation:

Against legal entities:

18.1. In accordance with the effective legislation a fine in the amount of up to 10,000 individual nontaxable minimums or in the amount of up to 150% of the income (return) obtained which is obtained as a result of these actions – for issue and placement of unregistered securities by legal entities.

18.2. A fine in the amount of up to 5,000 individual nontaxable minimums – for activities of legal entities on the securities market without a special permit (license) obtaining of which is provided for by the effective legislation.

18.3. A fine in the amount of up to 1,000 individual nontaxable minimums – for the failure to submit, untimely submission or submission of deliberately inadequate information.

18.4. A fine in the amount of up to 500 individual nontaxable minimums – for evasion of legal entities from execution or untimely execution of orders, decisions on eliminating noncompliance with the effective securities legislation.

18.5. Caution – for violating requirements of securities legislation, Commission's regulations by a participant of the securities market.

18.6. Suspension of placement (sales) and circulation of securities of one or another issuer for a period of up to one year – for violating requirements of securities legislation and the Commission's regulations.

18.7. Suspension of a license to engage in professional activities on the securities market for a period of up to one year - for violating requirements to securities legislation and the Commission's regulations.

18.8. Revocation of a license to engage in professional activities on the securities market - for violating requirements of securities legislation and the Commission regulations if there are grounds provided for by the effective legislation.

18.9. Suspension of trading on the stock market - for violating requirements of securities legislation, the charter and (or) rules of the stock exchange until such noncompliance has been eliminated.

18.10. Suspension or termination of access of securities to the stock exchange or trading in them on any stock exchange, suspension of clearing and conclusion of securities sale trades for a certain period - for violating requirements of securities legislation.

To individuals or officials:

18.11. A fine in the amount from 50 to 100 individual nontaxable minimums – for performing operations on issue of securities for circulation or placement of the securities not registered according to the effective securities legislation by an individual or an official of a legal entity.

18.12. A fine in the amount from 50 to 100 individual nontaxable minimums – for performing operations on the securities market without a special permit (license), whose obtaining is provided for by the effective legislation.

18.13. A fine in the amount from 20 to 50 individual nontaxable minimums – for the failure to submit, untimely submission or submission of deliberately inadequate information to the Commission by an individual or an official of a legal entity if submission of this information is stipulated by the effective legislation.

18.14. A fine in the amount from 20 to 50 individual nontaxable minimums – for evasion from executing the Commission orders by an individual or an official of a legal entity.

## **Section 19. Execution of resolutions to impose sanctions for noncompliance with the securities market legislation**

19.1. A fine should be paid by an infringer not later than 15 days from the date of receipt of the resolution by it.

In case of appealing this resolution a fine should be paid:

not later than 15 days from the date of notice of the complaint dismissal;

not later than 15 days from the date of receipt of the decision based on the results of consideration of the complaint if the decision envisages payment of a fine.

19.2. Legal entities shall pay fines by a non-cash transfer from their current accounts to specially opened budget accounts.

Natural persons shall pay fines in accordance with the effective legislation of Ukraine.

19.3. Notice of the payment of a fine shall be sent to an authorized division of the Commission central office (a relevant Commission regional office) within five business days.

19.4. In case of nonpayment of the fine by the infringer in the terms established by item 19.1 hereof the fine is collected judicially.

19.5. When imposing sanctions on a legal entity in the form of suspension of its license the date by which the license is suspended shall be indicated in the decision. The license shall be considered renewed as from that day.

**G. Kurilov**

**Head**

**Enforcement Department**