

STATE SECURITIES AND STOCK MARKET COMMISSION

ORDER #329
of December 23, 1996

Registered with the Ministry of Justice of Ukraine
on 26 December 1996 under No. 749/1774

ON APPROVAL OF A REGULATION OF A SELF-REGULATORY SECURITIES MARKET ORGANISATION

(With changes introduced therein as per the SSMSC Resolution

N 23 (v0023312-97) from 29.08.97

N 45 (vr045312-97) from 11.11.97

N 107 (z0788-02) from 18.03.2002

N 234 (z0508-03) from 03.06.2003

N 600 (z1417-05) from 01.11.2005)

In accordance with Article 17 of the Law of Ukraine «On State Regulation of Securities Market in Ukraine" (448/96-VR), ORDER as follows:

1. The attached Regulation of a Self-Regulatory Securities Market Organization shall be approved.
2. Enforcement Department shall cause this Order to be registered with the Ministry of Justice of Ukraine.
3. The working out of regulation on Registration Procedure of Securities Market Self-Regulatory Organization within one month shall be laid upon Enforcement Department.
4. The control over the implementation hereof shall be laid upon A. Golovko, Member of Commission.

O. Mozgoviy, Head of the Commission

APPROVED by Resolution of the State Commission for Securities and Stock Market No. 329 of December 23, 1996

REGULATION OF A SELF-REGULATORY SECURITIES MARKET ORGANISATION

(In the wording of the SSMSC Resolution N 45 (vr045312-97) from 11.11.97)

(The words "public organizations of individuals" shall be omitted on the SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

(The words "public organizations or", "permission" shall be omitted, and the word "permission" is replaced with "licence" in the relevant notes according to the SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

The Regulation on a self-regulatory securities market organization (hereinafter referred to as 'the Regulation') has been developed in accordance with Laws of Ukraine "On State Regulation of the Securities Market in Ukraine" (448/96-VR), "On Enterprises in Ukraine" (887-12), "On Citizens' Associations" (2460-12), and sets out the procedure of registration and cancellation, as well as performance of activities by a self-regulatory securities market organization, and the procedure of the exercise of the state regulation and control of its activities.

I. General Provisions

1. (Paragraph 1 of Item 1 shall be omitted on the SSMSC Resolution N 107 (z0788-02) from 03/18/2002)

Self-regulatory organization shall be established in the form of incorporation, foreseen by the legislation, act on the basis of the Statute, memorandum of association (if it is foreseen by the chosen form of incorporation) (hereafter – “constitutive documents”), as well as regulations of this organization.

2. The status of self-regulatory organization shall be obtained by associations of professional securities market participants (Paragraph 1 of Item 2 of the SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

(Sub-item “a” of Item 2 shall be omitted on the SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

(Sub-item “b” of Item 2 shall be omitted on the SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

(Sub-item “c” of Item 2 shall be omitted on the SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

The status of self-regulatory organization is granted by the State Securities and Stock Market Commission (hereinafter referred to as ‘the Commission’) to the organizations and associations, which have sufficient resources to meet obligations (sufficient number of qualified specialists, computer equipment, communication means, cash for exercising control over the compliance of its members’ activities with the legislation of Ukraine, etc.) of self-regulatory organization in respect of the development and implementation of rules, standards and requirements, issuing of licenses to persons that perform professional activities in the stock market if such powers were delegated to them, collection, summarization and analytical processing of statistical information about professional activity on the stock market, implementation of ethical codes, orders and rules of the execution of transactions with securities, securing the market participants with timely information on the changes in internal procedures, in rules of conducting activities and in legislation on securities, and all other changes relevant to it. If the Commission determines that a self-regulatory organization does not have sufficient capacities to meet statutory obligations, it may withdraw the Certificate of the Registration of an Association as a Self-regulatory Organization of Professional Securities Market Participants.

3. An association, which obtained the self-regulatory organization status, may create trading and information systems, where it shall be a sole founder. (Item 3 with changes introduced therein as per SSMSC Resolution N 234 (z0508-03) from 06.03.2003)

4. The following shall be the objective of the establishment and operation of a self-regulatory organization: (Paragraph 1 of Item 4 in the wording of the SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

1) to ensure the high professional level of activities of the securities market participants;

2) to represent interests of members of a self-regulatory organization and protect their professional interests;

3) to provide for the professional training and qualification development of the specialists being members of a self-regulatory organization;

4) to inform its members about the legislation on securities and the changes introduced therein;

5) to develop and control the compliance with codes and rules of conduct, regulations and rules of the exercise of transactions with securities, requirements for the professional qualification of specialists being members of a self-regulatory organization, and other documents envisaged by

the current legislation;

6) to implement efficient mechanisms of the settlement of disputes between members of a self-regulatory organization, and the members of a self-regulatory organization and their clients;

7) to develop and implement actions in order to protect clients of members (participants) of a self-regulatory organization and other investors, and to comply with the ethical codes and rules of conduct of members of a self-regulatory organization in their relations with clients.

(Item 5 shall be omitted on the SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

5. Professional securities market participants are united in self-regulatory organizations on the types of professional activities on the securities market. Every participant of the securities market may be a member of several self-regulatory organizations according to functions, which it performs under the Certificate, or be a member of one self-regulatory organization if its regulations cover all the types of functions (types of activities), which can be performed under the Certificate.

(Item 7 shall be omitted on the SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

(Item 8 shall be omitted on the SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

(Item 9 shall be omitted on the SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

II. Requirements to the Constitutive Documents and Rules of a Self-regulatory Organization

6. Constitutive documents and regulations of a self-regulatory organization shall be set to create open and organized securities market, ensure proper behavior of its participants and proper balance of organization participants and public interests. Constitutive documents shall be in compliance with the requirements of the legislation on associations of legal entities and approved by the Antimonopoly Committee of Ukraine. (Item 6 with changes introduced therein as per SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

7. Self-regulatory organizations shall not allow the provisions in their constitutive documents, which cause:

- a) discrimination of rights of organization's members or their clients;
- b) unreasonable restrictions on access to an organization and withdrawal therefrom;
- c) restrictions, which unreasonably hinder competition between organization's members.

8. Constitutive documents of a self-regulatory organization shall include as follows:

a) provision on the procedure of assigning (electing) and resigning of management and their functional responsibilities;

b) provision on the procedure of electing and functioning of its executive branch and its jurisdiction.

9. The regulations of a self-regulatory organization shall provide for representation of interests of every of its members by the following procedures:

a) adoption, amendments to, or reconsideration of any of the self-regulatory organization's rules or provisions;

b) nomination of candidates to managerial positions, elections to the Board, as well as participation in self-regulatory organization's business administration.

(Sub-item "c" of Item 9 shall be omitted on the Resolution of SSMSC N 107 (z0788-02) from 18.03.2002)

10. The regulations of a self-regulatory organization shall contain provisions, which impose responsibility on its members to act in compliance with the Law.

11. Capital adequacy criteria for executing transactions with securities provided by the regulations of a self-regulatory organization shall be one of the conditions for acceptance into a self-regulatory organization. These criteria shall be not less than the ones established by the Commission. Same capital adequacy criteria shall be applied to every member of a particular self-regulatory organization.

12. The regulations of a self-regulatory organization shall contain requirements, which ensure clarity of information provided to the inspections, initiated by a self-regulatory organization, in order to maintain control on the part of self-regulatory organization with imposing of sanctions and applying other controlling instruments. The regulations of a self-regulatory organization shall provide for sanctions, such as warning, fines (if under agreements), temporary suspension of membership in a self-regulatory organization or exclusion thereof, which are imposed by a self-regulatory organization on its members in case of evasion or violating the requirements of thereof.

13. Sanctions imposed by a self-regulatory organization shall be relevant to the character of violations. Constitutive documents shall envision notification of a member on the intention of a self-regulatory organization to impose sanctions, in order to grant a member an opportunity to provide relevant explanations, adduce reasonable excuse, etc. A self-regulatory organization may address the Commission on a proposition to impose sanctions or to suspend or revoke a member's license for professional activities on the securities market.

14. In case of applying of sanctions by a self-regulatory organization to its member, or informing the Commission on suspension or revocation of license for professional activities on securities market, self-regulatory organization shall notify the member thereof in writing and specify about the fact of the violation, provide the reasons for the application of sanctions. Brief description of such notification shall be sent to the Commission, which shall communicate this information to the public. The requirements specified by Items 12-17 of this Regulation can also be included in the constitutive documents of a self-regulatory organization.

15. Within two days of the detection of the violation of the current legislation on securities by members (participants) of a self-regulatory organization, the executive body of the organization must provide the Commission with the information about the detected violation.

16. The decision of an organization to impose sanctions to its member may be disputed in the Commission.

III. Procedure of the Registration of an Association as a Self-regulatory Organization.

(Item 21 shall be omitted on the SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

17. The Certificate can be obtained by an association of legal entities, which have their constitutive documents and regulations in compliance with the Law and Section 2 of this Regulation.

18. The Certificate is issued by the Commission.

IV. Terms and Conditions of Granting the Certificate

19. To obtain the Certificate of the registration as a self-regulatory organization, an association shall conform to the following requirements:

a. sufficiency of assets (resources) to meet statutory obligations, defined by Item 2 of this Regulation (Sub-item "a" of Item 19 in the wording of the SSMSC Resolution N 234 (z0508-03) from 03.06.2003);

b. the amount of state owned assets may not exceed 20%;

c. asset holding by the State may not exceed 50%;

d. non-state securities asset holding is not permitted for a self-regulatory organization;

20. While registering a self-regulatory organization the Commission inspects the compliance of the applicant and all the submitted constitutive documents with the requirements of this Regulation and other Acts of Law, analyses the quantity and seats of members, their professional activities, evaluates the capacity of an applicant to perform duties laid upon self-regulatory organization.

21. Refusal of the Commission to register a self-regulatory organization may be disputed by the appellant in the court.

(Item 27 with changes introduced therein as per the SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

22. Self-regulatory organization is obliged to inform the Commission about all the changes in the membership within 10 working days from the date when corresponding decision was made.

(Item 29 shall be omitted on the SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

23. If contradictions arise between regulations of a self-regulatory organization and normative acts published by the Commission after the registration of a particular organization, self-regulatory organization shall alter its documents within two months and submit them to the Commission.

V. Procedure of Submitting an Application

24. An application for the Certificate of the Registration of an Association as a Self-regulatory Organization is submitted to the State Commission in accordance with the Annex 1.

25. The following documents shall be added to the application:

a) attested copies of the Certificate of the State Registration of an Association;

b) copies of constitutive documents (Statute, articles of incorporation etc.);

c) auditor's opinion (of accounting firm) about assets structure of a self-regulatory organization, in-payment form (cash, inventories, securities, intellectual property, etc.);

d) rules of a self-regulatory organization, which shall comply with the requirements of this Regulation;

e) list of top executives in case of functioning as an association of legal entities – the details of the head and deputy heads, chief accountant, specifying: surnames, names and patronymics, positions held, levels of education, records of work, communication means (telephone and fax numbers, teletype, e-mail), statements for outstanding convictions for acquisitive crimes and official malfeasance, as well as the amerced deprivation of right to hold specific posts or to engage in specific activity;

(Sub-item "e" of Item 25 with changes introduced therein as per the SSMSC Resolution N 234 (z0508-03) from 03.06.2003)

f) statement on sanctions imposed by the State authorities on a legal entity for economic and financial violations (specifying the date of imposing sanctions) for the past 3 years by the date of submitting an application; or from the date when the authority, which imposed sanctions, was established; reasons for imposing thereof, forms and amount of sanctions, stage of execution of sanctions by the moment of submitting an application.

g) list of subjects to entrepreneurial activities registered in Ukraine, where a self-regulatory organization stands as a founder, shareholder, participant, singling out those that hold its 5% amount of stock. The list should include: enterprise code, long title of the company, location, individual shares in absolute value and percentage for every subject to entrepreneurial activities;

h) 3.5-inch floppy disc with electronic copies of said documents in a form defined by the Commission.

26. All the lists, statements, opinions submitted by an applicant shall not by term exceed two months of time limitation from the date of submitting the documents and shall be signed by the Chief Executive and certified with the seal of legal entity.

27. The applicant is responsible for validity of information, specified in the documents submitted for obtaining the Certificate.

VI. Resolutions Resulting From the Consideration of an Application

One of the following decisions shall be made as a result of consideration of an application:

(Sub-Item "a" of Item 28 shall be omitted on the SSMSC Resolution N 234 (z0508-03) from 03.06.2002)

- a) to issue the Certificate of the Registration of and an Association as a Self-regulatory Organization;
- b) to issue the Certificate of the Registration with changes and amendments to constituting documents and rules of a self-regulatory organization as a result of change of location or name of the enterprise;

(Sub-Item "b" of Item 28 shall be omitted on the Resolution of the SSMSC N 234 (z0508-03) from 03.06.2002)

- c) to refuse in issuance of the Certificate of the Registration of an Association as a Self-regulatory Organization;
- d) to continue the validity period of the Certificate for a new period.

29. Reasons for the refusal to issue the Certificate or continue the validity period of the Certificate may be as follows:

- a) non-compliance of the submitted documents and information with the requirements of this Regulation and the current legislation;
- b) presence of invalid data in the submitted documents;
- c) presence of reasonable complaints received from the registered persons in respect of the activities of an association;

d) if a self-regulatory organization does not have sufficient resources to meet statutory obligations.

30. The reasons for refusal to issue or continue the validity period of the Certificate shall be specified in the decision thereof. The notification about the refusal to issue the Certificate providing the reasons for thereof, shall be sent to the applicant in written.

(Item 30 with changes introduced therein as per the SSMSC Resolution N 234 (z0508-03) from 03.06.2003)

31. The decision shall be made no later then 42 days from the day of receiving an application and the necessary documents.

VII. Certificate on Registration of Association as Self-regulatory Organization

32. The Certificate of the Registration of and Association as a Self-regulatory Organization is issued to the appellant in the form specified by the Annex 2.

33. The Certificate is issued for 3 years period and is in force over the whole territory of Ukraine.

34. The activity of a self-regulatory organization after the expiration of validity period of the Certificate is prohibited. The issued Certificate becomes invalid after the liquidation or reorganization of an association.

35. The Certificate is signed by the Head of the Commission or by the official person authorized by it, and certified with a seal.

36. The Certificate is registered by the corresponding number in corresponding register, maintained by the Commission. (Annex 3).

The Certificate is handed over to an association or sent by mail.

37. The Certificate is not subject to transfer for exploitation by other individuals.

37.1. The fee of 100 tax-free allowances from incomings of individuals is collected for the registration. (The Item 37.1 was added to the Provision on the SSMSC Resolution N 234 (z0508-03) from 03.06.2003)

VIII. Powers of the Commission as to the Regulation and Control of Activities of a Self-regulatory Organization

38. The Commission shall regulate and control the activities of a self-regulatory organization within the scope of the current legislation of Ukraine.

39. The Commission shall have the right:

a. to appoint a representative for the participation in the general meeting of the self-regulatory organization;

b. to put forward requirements for the operation of the self-regulatory organization within the scope of the legislation;

c. to require the self-regulatory organization to comply with the document maintenance procedure and hold documents during a period determined by the self-regulatory organization, but not less than 5 years;

d. to require the provision of the information about ongoing activities of the self-regulatory organization;

e. to undertake scheduled and off-schedule inspections of the maintenance of documents of a self-regulatory organization;

(Sub-item "f" of Item 29 shall be omitted on the Resolution of the SSMSC N 107 (z0788-02) from 18.03.2002)

f. in case of the violation by the self-regulatory organization of the legislation, constituting documents, rules or regulations, which govern its activities, to warn, to send written requests for the elimination of the detected deficiencies or violations with the obligation to notify the Commission of results, to annul the registration of the self-regulatory organization, and to apply other sanctions within the limits envisaged by the legislation. Prior to the application of sanctions, the Commission shall grant the self-regulatory organization an opportunity to provide explanations on occasion of the violation. In case of the decision to apply sanctions, the Commission shall notify the self-regulatory organization thereof in writing and specify the fact of the violation, provide the reasons for the application of sanctions, and communicate this information to the public. The decision of the Commission to apply sanctions to a self-regulated organization may be disputed at the Arbitration court;

(Subitem "h" of Item 29 shall be omitted on the SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

(Subitem "i" of Item 29 shall be omitted on the SSMSC Resolution N 107 (z0788-02) from 18.03.2002)

40. In case of violations of this Regulation as well other Legal Acts in respect of activities of a self-regulatory organization, the Commission has the right to make a compulsory fulfillment order specifying the period for elimination of the particular violations. A self-regulatory organization shall inform the Commission as to the elimination of violations. (Item 40 with changes introduced therein as per the SSMSC Resolution N 107 (z0788-02) from 18.03.2002).

41. In case of repeating or gross violation of requirements of the current legislation of Ukraine and this Regulation, the Certificate shall be revoked on the decision of the Commission, and a self-regulatory organization is removed from the Register of self-regulatory organizations of professional securities market participants. (Item 41 with changes introduced therein as per the SSMSC Resolution N 234 (z0508-03) from 03.06.2003).

42. In case of violating the antimonopoly legislation of Ukraine, the Antimonopoly Committee of Ukraine has the right to involve the Commission and submit the statement for revocation of the Certificate.

43. A self-regulatory organization is notified on the revocation of the Certificate, a check is made in the Register of issued Certificates and in the register of self-regulatory organizations of professional securities market participants. The notification shall be in written with a compulsory specification of the reasons for revocation of the Certificate (with the reference to the particular Articles and Items of violated Acts of Law). (Item 43 with changes introduced therein as per the SSMSC Resolution N 234 (z0508-03) from 03.06.2003)

44. The decision to revoke the Certificate of the Registration of an Association as a Self-regulatory Organization may be disputed in the court.

(Item 29 shall be omitted on the Resolution of the SSMSC N 107 (z0788-02) from 18.03.2002)

IX. Procedure of Generating, Maintaining and Using the Register Records of the Self-regulatory Organization of Professional Securities Market Participants

45. Generating and maintaining of the Register of self-regulatory organization of professional securities market participants (hereinafter referred to as "the Register") is performed by the State Securities and Stock Market Commission.

46. The Register is an informational databank of self-regulatory organizations, which contains details, defined by this Regulation, and ensures safekeeping of information that compiles the Register and its supplying.

47. The following data (records) are introduced in the Register:

47.1. Long title of an association of professional securities market participant (hereinafter referred to as "the Association").

47.2. Enterprise code of the Association.

47.3. Number of State Registration Certificate.

47.4. Location of the Association (postal code, city, raion, street name and number).

47.5. Phone number, fax number, e-mail of the Association.

47.6. Website address.

47.7. Surnames, names and patronymics of the Chief Executive and the Chief Accountant.

47.8. If in the presence, number and date of the registration of the Association as a non-for-profit organization in compliance with the current legislation (Item 47.8. in the wording of the SSMSC Resolution N 600 (z1417-05) from 01.11.2005).

47.9. Number and date of the Certificate of the Registration of an Association as a Self-regulatory Organization issued by the Commission.

47.10. Validity period of the Certificate of the Registration of an Association as a Self-regulatory Organization.

47.11. Date of the validity period continuation of the Certificate of the Registration of an Association as a Self-regulatory Organization.

47.12. Date of enlisting the Association into the Register.

47.13. Information on the quantity of members (participants) of a self-regulatory organization by types of professional activities.

48. A statement certifying the will of the relevant legal entity to enlist a self-regulatory organization into the Register shall be the reason for enlisting a self-regulatory organization into the Register.

49. The commission performs enlisting after inspection of documents on the basis of which the record to the Register is made in compliance with the current legislation.

50. The commission shall make changes and amendments to the Register in the following cases:

- obtaining the Certificate of the Registration of an Association as a Self-regulatory Organization by the new non-for-profit association of professional securities market participants;
- revocation of the Certificate from the Association of professional securities market participants.

In all other cases the changes of information that compiles the system of the Register are entered on the basis of corresponding documents, which are submitted to the Commission by a self-regulatory organization of professional securities market participants.

51. The reasons for refusal to enlist a self-regulatory organization into the Register or making changes thereof may be the presence of invalid data in the submitted documents.

52. In case of revealing the reasons for refusal to enlist an Association or change the Register data, the Commission shall propose to a self-regulatory organization to implement actions in order to correct detected mistakes or deficiencies.

53. In case of the request of an extract of information from the Register by individual or legal entity in accordance with established procedure, the Commission shall provide the extract certifying self-regulatory organization's enlisting to the Register or absence of corresponding registration. Once a year the Commission shall publish the information about self-regulatory organizations enlisted into the Register in its official editions. (Section IX was added into the Regulation on the SSMSC Resolution N 234 (z0508-03) from 03.06.2003).