

# Special Update on the Law on Insider Information and Market Manipulation

August 2010



**This Special Update discusses Federal Law No. 224-FZ "On Combating Unlawful Use of Insider Information and Market Manipulation and on Amending Certain Legislative Acts of the Russian Federation", dated 27 July 2010 (the "Law").**

The Law was signed by the President on 27 July 2010 and most of its provisions **will enter into force on 27 January 2011**. The Law seeks to improve the legal framework for combating unlawful use of insider information and market manipulation on financial and commodity markets in Russia. It also aims to enhance investor confidence and encourage the development and international competitiveness of those markets. The Law amends the Russian Criminal Code, the Administrative Code, the Securities Market Law, the Law on Commodity Markets and Exchange Trade, and the Law on Banks and Banking Activity.

## Insider Information

Currently, the legal regulation of unlawful use of nonpublic information influencing prices of securities is limited to several provisions of the Securities Market Law, which uses the term "private (or official) information" (*sluzhebnyaya informatsiya*) which is broader than insider information and relates not only to the financial market.

The Law introduces the definition of "insider information" and defines it as accurate and precise information (including information classified as commercial, official, banking secrets and other legally protected secrets) that has not been disseminated or provided, but the dissemination or provision of which may significantly affect the prices of financial instruments, foreign currency and/or commodities.

The Law sets out the information which constitutes insider information of the Russian state authorities (federal, regional and local) and the Central Bank (these include various acts and decisions of the authorities). The state authorities shall adopt their own comprehensive lists of insider information based on the Federal Service for Financial Markets ("FSFM") guidelines. Other "insiders" are to adopt their own lists of insider information based on the comprehensive list approved by the FSFM regulation.

According to the Law, the following does not constitute insider information:

- information that has become available to the general public, including by means of dissemination; and
- investigations, forecasts and evaluations in respect of financial instruments, foreign currency and/or commodities and recommendations and/or offers to perform operations with them, made on the basis of public information.

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## Insiders

The Law classifies the following persons as insiders (or persons possessing insider information):

- issuers and management companies;
- entities with a dominant position on the market;
- organizers of trades (that are Russian stock exchanges), clearing houses, depositaries and credit organizations that arrange settlements in transactions made through stock exchanges;
- professional participants on the securities market and other persons performing operations with financial instruments, foreign currency and/or commodities on behalf of their clients;
- persons having access to insider information under agreements, including auditors, appraisers, professional participants, credit organizations and insurance companies;
- persons owning not less than 25% of the votes in the superior governing body of the abovementioned entities and persons who, due to their shareholdings in the charter capital of the abovementioned entities, have access to insider information under federal laws and foundation documents;
- members of the board of directors (supervisory board) and the management board, the person exercising the functions of the sole executive body (including a corporate manager, manager or temporary sole executive body), members of the internal audit commission and corporate managers;
- persons having access to information on the submission of voluntary, mandatory or squeeze-out tender offers for share acquisitions, including persons who make such tender offers, credit organizations providing bank guarantees, and appraisers with respect to such tender offers;
- federal and regional executive bodies, local authorities, managing bodies of state extra-budgetary funds, the Central Bank, as well as their executives and officers;
- information and rating agencies, and
- individuals having access to insider information under employment and/or civil law agreements.

According to the Law, insiders must: (i) maintain a list of insiders (that is to be delivered to the relevant stock exchange and the FSFM); (ii) notify the FSFM of the operations performed with financial instruments, foreign currency and/or commodities; (iii) approve the rules for access to insider information for the purposes of protecting its confidentiality; and (iv) approve the rules for the monitoring of breaches in respect of insider information and facts of market manipulation.

Russian state authorities and the Central Bank must disclose insider information on their official websites no later than the next business day after the information becomes available/arises.

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To exercise control over compliance with the requirements of the Law, insiders must establish (appoint) a responsible internal division or a person who will report to the board of directors (supervisory board) or, in its absence, to the superior governing body of the company.

## Market Manipulation

The operative term under the Securities Market Law is "price manipulation" which is defined as acts committed by one or more persons resulting in an increase, decrease or support of the prices of securities, the supply or demand of securities, or trading volumes. However, the provisions of the Securities Market Law relating to manipulations on the securities market are not sufficient even for the securities market as they do not cover all the existing abusive market practices and cannot be applied to other financial markets and commodities.

The Law now provides for a detailed list of actions that are recognized as market manipulation, including entering into transactions that: (i) provide false or misleading indications related to offerings of financial instruments, the demand for them or their prices, or that maintain prices of one or more financial instruments on an unusual or artificial level, or (ii) use fictitious means or fraud or any other manipulation.

In addition, the Law defines actions that do **not** constitute market manipulation. In particular, these are actions focused on:

- securities' price maintenance in connection with the placement and circulation of securities and actions that are performed by participants in tenders in accordance with agreements with the issuer;
- price maintenance in connection with the buyout or acquisition of shares, redemption of investment units of closed ended investment funds in cases established by federal laws; and
- maintenance of prices, demand, bids or volume of trading in financial instruments, foreign currency and/or commodities performed by a participant in a tender in accordance with an agreement to which a trade arranger is a party.

## FSFM Functions and Powers

The FSFM has broad functions and powers and monitors compliance with the requirements of the Law, identifies breaches and issues the respective regulations in accordance with the Law. The FSFM is entitled to investigate compliance with the Law and request documents and information for carrying out such an investigation.

Moreover, the FSFM may decide to suspend or revoke an operating or other license and submit directives to the Central Bank or another licensing authority to take statutory measures, including the suspension or revocation of a license, in the event of a failure to comply with the requirements of the Law. After considering the FSFM directive, the Central Bank or the other licensing authority must report on the results of its consideration to the FSFM.

## Liability

The Law introduces new types of offences which incur criminal and administrative liability for, among others: (i) market manipulation; (ii) unlawful use of insider

information; and (iii) breaches of the requirements of the present Law.

Criminal liability for unlawful use of insider information will only be instituted **3 years after the official publication of the Law**. According to the Russian Criminal Code, the fine of RUB 300,000 – 500,000 (approximately USD 10,000 – 16,700), or in the amount of the salary or other income of the convicted person, may be imposed for a period from one to three years for market manipulation. The person may also face imprisonment of up to four years together with the imposition of a fine.

Administrative fines can be imposed for acts of unlawful use of insider information and market manipulation without a criminal element. An administrative fine for an individual amounts to RUB 3,000 – 5,000 (approximately USD 100 - 170), for an officer – RUB 30,000 – 50,000 (approximately USD 1,000 – 1,700) and for a legal entity – the amount of excess income but not less than RUB 700,000 (approximately USD 23,400).

A breach of any of the following obligations may entail administrative liability **one year after the official publication of the Law**: (i) protection of insider information against disclosure; (ii) maintenance of a list of insiders and the notification to the insiders of their inclusion on such a list; (iii) notification of the FSFM of operations performed with financial instruments, foreign currency and/or commodities, and (iv) undertaking measures to prevent, identify and curb abuses on financial and commodities markets.

Please note that the implementation of a number of the provisions of the Law remains subject to the adoption of the respective FSFM regulations.

This update is a general summary of recent legislative developments and should not be treated as legal advice. Readers should seek the advice of legal counsel on any specific question. All translations of terminology in this update are unofficial.

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