

ON FIDUCIARY MANAGEMENT OF SECURITIES

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BOARD OF THE CENTRAL BANK OF THE REPUBLIC OF ARMENIA OFFICIAL CLARIFICATION

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A problem has emerged in law enforcement practice within the framework of fiduciary management of securities regarding the right of a fiduciary manager, who does not hold a license for securities portfolio management, to appear and vote at the shareholders' meeting on behalf of the shareholder. Within the scope of the study of this issue, the Central Bank, on its own initiative, has decided to address the question of whether appearing and voting at the shareholders' meeting on behalf of the shareholder by a fiduciary manager, within the framework of fiduciary management of shares or the rights evidenced by them, can be qualified as securities portfolio management, for which it is necessary to obtain a license for the provision of investment services.

Since the existing legislative norms on the issue do not distinguish fiduciary management of securities from securities portfolio management with sufficient certainty, the investment service of "securities portfolio management" defined by Article 25, Part 1, Point 5 of the Law "On the Securities Market" (hereinafter also: the Law), under certain interpretation, may sometimes be identified with the fiduciary management defined by Chapter 52 of the Civil Code of the Republic of Armenia.

Taking into account that for the regular operation and development of the securities market it is important that the rules applicable to market participants be certain, clear, and predictable, the Board of the Central Bank has decided to provide a clarification on the aforementioned issue, addressing the content of the provisions defined by Article 3, Point 30, Article 25, Part 1, Point 5, and Article 33, Part 1 of the Law.

Article 3, Point 30 of the Law defines the concept of "Securities portfolio management" as: "the management by the manager of securities, funds intended for investment in securities, as well as securities and funds received as a result of fiduciary management, which are handed over to the manager's possession, belong to the customer, and are

managed in the name of the manager for the benefit of the customer or a third party (beneficiary) designated by the customer, in accordance with the instructions given by the customer." Pursuant to Article 25, Part 1, Point 5 of the Law, securities portfolio management is considered an investment service, and pursuant to Article 33, Part 1 of the Law, the provision of investment services without a license granted in the manner prescribed by this Law (...) is prohibited, except for cases prescribed by this Law.

The Board of the Central Bank of the Republic of Armenia considers it important to address the question of what powers are granted to the fiduciary manager under the fiduciary management contract in the given situation and, accordingly, what actions the fiduciary manager performs in practice. If a shareholder of an organization hands over the shares of the organization for fiduciary management, the sole purpose of which is for the manager to appear and vote at the shareholders' meeting as the shareholder's representative instead of the shareholder, then such cases should not become the subject of regulation of the provisions of the Law relating to securities portfolio management, since the given situation implies private legal relations between the fiduciary manager and the founder, and the exercise of discretion by the fiduciary manager does not relate to the public interest. Consequently, the risks addressed by the requirements of the Law are factually absent.

Taking into account the above and based on Article 20, Point "ie" of the Law "On the Central Bank of the Republic of Armenia" and Article 42, Parts 3 and 5 of the Law of the Republic of Armenia "On Normative Legal Acts," the Board of the Central Bank of the Republic of Armenia hereby:

Officially clarifies:

The handing over of securities or the rights evidenced by them for fiduciary management without the transfer of ownership rights is not considered securities portfolio management within the meaning of Article 25, Part 1, Point 5 of the Law of the Republic of Armenia "On the Securities Market," if the fiduciary manager is only authorized to appear and vote at the shareholders' meeting instead of the fiduciary founder.

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