

ON REMOTE PARTICIPATION BY FOREIGN PARTICIPANTS IN THE REGULATED SECURITIES MARKET

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BOARD OF THE CENTRAL BANK

OF THE REPUBLIC OF ARMENIA

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Taking into account the insufficient clarity and diverse perceptions of Article 118, Part 1 of the Law of the Republic of Armenia "On the Securities Market" (hereinafter: the Law), and specifically the concept of "market participant," as well as the fact that the Armenia Securities Exchange (hereinafter: the Exchange) has applied to the Central Bank of the Republic of Armenia (hereinafter: the Central Bank) to register amendments to the Exchange Rules relating to the participation of persons providing foreign investment services in the trading of securities organized by the regulated market operator;

Taking into account that for the development of the securities market it is important that the rules applicable to market participants be as clear as possible, the Board of the Central Bank, addressing the regulations of the Law, has decided to provide a clarification on the question of whether persons providing foreign investment services may participate in the trading of securities organized by the regulated market operator without a license granted by the Central Bank.

Pursuant to Article 118, Part 1 of the Law, "a person providing investment services has the right to become a market participant if they comply with the requirements defined by this Law, legal acts adopted on its basis, and the rules of the given market. The Operator has the right to define by its charter and market rules that only market participants may participate in trading in the market."

It does not unequivocally follow from the first sentence of the quoted part that other persons not holding a license granted by the Central Bank or persons not providing investment services cannot become a market participant. The purpose of the Article titled "Equality of participants" is to ensure equality among persons providing investment services from the perspective of excluding cases of rejecting applications to become a market participant by persons providing investment services who satisfy the defined requirements. Furthermore, taking into account the second sentence of the same part, the purpose of the given provision is not only to define who can become a market participant, but also that the regulated market operator may, by its rules, allow other persons as well to participate in trading in the market. Otherwise, the second sentence of the same part would be meaningless.

The aforementioned approach is also derived from international best practices. Specifically, pursuant to Article 53, Part 3 of EU Directive 2014/65/EU , investment firms and banks, as well as other persons who:

- have a good reputation,

- have sufficient trading capacities and experience,

- have sufficient means for execution of transactions,

When forming the position regarding the participation of persons providing foreign investment services in market trading, the Board of the Central Bank also considers it essential to observe the extent to which this stems from the objectives of securities market development. In this context, the Board of the Central Bank finds that the direct participation of persons providing foreign investment services in the trading of securities can significantly stimulate the development of the securities market by contributing to the growth of liquidity and market deepening.

On the other hand, the Board of the Central Bank emphasizes the fact that the Law provides for a licensing requirement for the provision of investment services within the territory of the Republic of Armenia. The licensing requirement for the provision of

investment services is derived from the objectives of protecting the rights and legitimate interests of investors (including consumers), ensuring the transparency, stable and efficient development of the securities market, ensuring the reliability of the securities pricing system, and reducing the systemic risks of the securities market.

Compliance with business conduct, market conduct, and prudential rules is aimed at achieving the aforementioned objectives. Therefore, the pivotal question is whether remote participation by foreign participants is consistent with the objectives prescribed by the Law.

If persons providing foreign investment services execute transactions on their own account and in their own name during trading on the regulated market, and furthermore provide investment services outside the territory of the Republic of Armenia and do not serve resident customers of the Republic of Armenia within the territory of the Republic of Armenia, then clearly no regulatory risk arises stemming from the objective of protecting the rights and legitimate interests of investors (including consumers). On the other hand, the Central Bank recognizes the importance of the role of a market participant from the perspective of ensuring market liquidity, as well as the existence of risks of market abuse and money laundering and terrorism financing (ML/FT) by remote participants. In this context, it is evident that the minimum requirements addressed toward possible risks, including the requirements of the applicable legislation of the Republic of Armenia, must be established by the regulated market operator and the Central Depository. Specifically, effective risk management mechanisms arising from participation in trading are implemented under the principles defined by the Law, which enable the management of ML/FT risks and the effective prevention and monitoring of market abuse.

At the same time, the Board of the Central Bank considers the availability of a proper supervision toolkit regarding foreign participants to be pivotal. In this regard, the Board of the Central Bank considers the participation in trading on the regulated market to be acceptable only for such persons providing foreign investment services whose supervisory authority has signed the Multilateral Memorandum of Understanding (MMoU) "Concerning Consultation, Cooperation and the Exchange of Information" of the International Organization of Securities Commissions (IOSCO).

From the perspective of supervision over the participants of the regulated market (stock exchange), the Board considers it necessary to note that supervisory functions are distributed among three bodies, namely, the Central Bank, the Central Depository, and the regulated market operator, according to the scope of competence of each. Specifically:

The Central Depository supervises the process of clearing and settlement of securities transactions, as well as the provision of services related to the custody of securities, for the purpose of detecting violations by custodians and settlement system members (Article 183 of the Law).

In turn, the regulated market (stock exchange) operator supervises pricing and the conclusion of transactions in the market for the purpose of detecting and preventing transactions concluded using inside information, price manipulation, and in violation of legal acts (Article 139 of the Law). Simultaneously, the "*Regulation on Supervision*" of the Stock Exchange defines the areas of supervision of the exchange operator (Point 6), within the framework of which the exchange operator may, among other measures, conduct disciplinary proceedings and apply disciplinary penalties (Point 7). However, the exchange operator may apply measures of disciplinary liability only in cases of *failure by the market participant or the issuer to perform the requirements defined by the rules of the operator or the contract concluded with the operator, non-payment of fines defined by the operator, or obstructing the implementation of the operator's supervisory functions* (Point 58). Regarding violations of requirements defined by law, the Operator is obliged to notify the Central Bank of such findings in the manner prescribed by the Central Bank (Article 140, Part 2 of the Law). Specifically, according to the requirement defined by Regulation 5/05, the operator shall notify the Central Bank of any violation of the requirements defined by the laws regulating the securities market by participants of the regulated market and reporting issuers within 2 working days after discovering the violation.

Consequently, within the framework of the participation of persons providing foreign investment services in the market, the regulated market operator must exercise supervision over compliance with all requirements of the applicable legislation of the Republic of Armenia and, upon detecting a violation of the requirements defined by legislation, notify the Central Bank thereof.

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

Officially clarifies:

Persons providing foreign investment services may participate in the trading of securities organized by a regulated market operator in the Republic of Armenia, if:

the persons providing foreign investment services do not offer the provision of investment services within the territory of the Republic of Armenia and do not serve customers within the territory of the Republic of Armenia, and the latter is established in the rules of the regulated market operator and in the remote participation contract;

the rules of the regulated market operator provide for mechanisms for the management of risks related to market abuse, liquidity, financial stability, and ML/FT in connection with remote participation, in accordance with the applicable legislation of the Republic of Armenia;

the regulated market operator, according to its rules, exercises proper supervision over compliance with the applicable legislation of the Republic of Armenia regarding the securities market by remote market participants within the framework of their participation in the market, and upon detecting a violation of the requirements defined by that legislation, applies measures of liability;

the rules of the regulated market operator prescribe the entry requirements for persons providing foreign investment services;

the supervisory authority of the person providing foreign investment services has signed the Multilateral Memorandum of Understanding (MMoU) "Concerning Consultation, Cooperation and the Exchange of Information" of the International Organization of Securities Commissions (IOSCO).

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Central Bank of the Republic of Armenia

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<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A02014L0065-20250117>

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