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Nataliya SHELUD`KO ¹

THE "NON-MARKET" STOCK MARKET: UKRAINIAN REALITIES

Objective realities of the stock market in Ukraine, powers of its regulator, the adequacy of the NSSMC regulatory practices and legislative initiatives to market realities, the state of implementation of Ukraine's international obligations and other relevant topics were discussed by scientists, experts and stock market specialists on December 18, 2019 at the round table on "The "non-market" property of the stock market in Ukraine: economic and legal components", held at the Institute of Economics and Forecasting of the National Academy of Sciences of Ukraine.

It was recognized that the targets of stock market development set in the Comprehensive Program for the Development of the Financial Sector of Ukraine until 2020 remained a banal declaration: the commitment of financial market regulators in 2015 to obtain Advanced Emerging status for Ukraine's financial market remains completely unattainable (Ukraine is not even represented in the waiting list for the worst level of FTSE classification, that is Frontier Market). In terms of the level of financial market development and stock exchanges regulation (using the calculating method of the Global Competitiveness Index), Ukraine occupies one of the last places in the world. The ratio of the value of assets of public mutual investment institutions (CIIs) and private pension funds (NPFs) to GDP fluctuates on the verge of statistical error.

Despite the impressive quantitative values of the five-year "cleansing" of the stock market, the dynamics of key qualitative indicators is in deeply depression. During the above-mentioned period, no constructive results were recorded, which would indicate market development, growth of emission activity, or attraction of investments through the NSSMC controlled instruments.

Currently, practically the entire stock market is reduced to trading in government bonds, while investors, including institutional ones, are limited in their ability to diversify their investments due to the shortage of stock instruments. Under such conditions, growing investments of financial institutions, individuals and international investors exclusively in public debt instruments in the medium term may lead to unpredictable growth of budgetary, debt-related and currency-related risks, as well as to further degradation of emission activities and the inability of the real sector companies to attract investments.

After a series of the NSSMC's incompetent actions (such as rule-making experiments on joint stock companies, profanation of squeeze-out procedures, lack of proper protection of minority shareholders, chaotic change of listing requirements, the inadequate to the development level of Ukraine's domestic stock market so-called "full implementation" of the European disclosure legislation inadequate, which had been elaborated for developed markets and public companies, without taking into account the immaturity of this country's stock market, which exclusively consists of non-public companies), Ukraine's stock market was virtually destroyed. The volume of exchange

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trading in shares in 2018 amounted to a mere UAH 1.2 billion, which is 20 times less than in 2014 and is one of the lowest in the world. The volume of registered share issues decreased in 2014–2018 by 6.5 times. Companies have completely lost any incentives to attract investments through the national capital market, as they are not interested in publicity, listing or any circulation of securities on the Ukrainian market.

The current market has no objective market pricing for the lion's share of securities issues due to inadequate requirements for stock market pricing and legal risks of trading on stock exchanges, which are caused by unclear and selective approaches in classifying transactions as having signs of manipulation.

During the term of the current NSSMC, no legislation has been adopted on the protection of the bondholders' rights, which is a prerequisite for restoring investor confidence after mass defaults on corporate bonds in 2008–2010. As a result, compared to 2014, the volume of exchange trading in corporate bonds in 2018 decreased three-fold, and the volume of emissions halved.

The current chairman of NSSMC and members of the commission consider as their main achievement the "cleansing" of the market, which was carried out through the application of discriminatory rules that do not comply with the current law, in cases of identified signs of fictitiousness and by initiating manipulation proceedings, which were characterized by inconsistency, selectiveness, biased criteria and substitution of concepts during court hearings².

The most significant reason for difficulties in drafting and adopting bills aimed at implementing EU legislation in Ukraine (in particular, the infamous project No 2284, which is the fourth attempt to implement European rules on regulated markets), seems to be the fact that the good intentions hide the introduction of rules directly contradicting the EU legislation and European principles of regulation.

The round table participants agreed that a serious problem in the process of drafting European integration bills is the lack or insufficient quality of official translations of EU directives and regulations in the field of stock market and investment funds, which can provoke both a distorted understanding of EU law at the stage of their transposition into Ukrainian law, and further legal problems in the course of their implementation in Ukraine by market participants and the regulator.

Against the background of expanding opportunities for international investors in Ukraine (almost exclusively in the government securities segment), the issues related to access of Ukrainian professional market participants, funds and other investors to the EU Common Market are not resolved and even complicated, so the integration of financial services markets is presently rather one-sided.

According to the participants of the round table, with such attitude of the NSSMC to the market, when the regulator perceives the catastrophic reduction of its size and participants as their own greatest achievement and even goal, we can expect disappearance of the national stock market as such. As a result, the migration of Ukrainian issuers to exclusively foreign capital markets will be irreversible, integration into European capital markets will not take place, the planned pension reform will face a complete lack of local instruments (except for the state ones), while the national economy

² Addendum 2. Examples of the practice of the NSSMC's law enforcement and judicial practice under paragraph 11 of part 1 of Article 11 of the Law of Ukraine "On state regulation of the securities market in Ukraine". *Capital market abuse* / ed. O.G. Koshovyi, V.M. Tertishnik, N.M. Sheludko. Dnipro: Lira, 2019. p. 464–479.

will finally lose any domestic sources of funding. Moreover, neither the previous strategy for the development of Ukraine's financial sector (until 2020) nor the currently discussed one (until 2025) contains constructive and realistic measures to overcome such trends.

According to the participants of the round table, to prevent these extremely negative expectations, it is necessary to promptly implement the following urgent measures:

1) focusing the regulator's main efforts not to information manipulations, discrediting and voluntary actions against stock market participants, but to supporting the market's development, ensuring its symmetrical integration with EU financial markets, introducing new instruments, providing regulatory incentives for Ukrainian issuers and investors, and simplifying business establishment procedures (probably via a conversion of the current composition of the NSSMC, which has compromised itself and lost market confidence);

2) compulsory involvement of experts, and representatives of the investment community and giving them a dominant role in the development of the Strategy for the Development of Ukraine's Financial Sector until 2025, other policy documents on capital market development, as well as in drafting the laws for high quality implementation of European stock market legislation.