

THE UKRAINIAN USAGE EFFECT OF THE FINANCE MARKET SELF-REGULATION

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Abstract

The article represents the issue of activity of self-regulatory institutions on the financial market of Ukraine. Their role in the regulation, the main types of risks and principles of activity are defined. Besides, the general recommendations concerning the settling the major problems in self-regulation have been issued.

Key words: regulation, infrastructure, rules, financial market, state institution, self-regulated organization, supervision, control.

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The amount of discussions about finance market self-regulation forms and methods and their correspondence to the real demand of the market and its participants is a demonstration of still lack of national finance market self-regulated institutions potential. Besides, a lot of problems are formed around this market. Their effect is negative especially in the field of the investors' confidence to the Ukrainian financial assets.

The growth and development of the financial market causes the real necessity of the self-regulation development. It means the market operators role increase during the development process from one side and the efficiency increase of the regulation balance between the self-regulated organizations and the state regulation institutions.

The issue of the finance market self-regulation usage effect is studied at the different levels of the state regulation. This problem is studied by state regulation specialists, market experts, and national scientists M. Burmaka, S. Moshenskiy, I. Doroshenko, S. Mishchenko, N. Shapran etc. We can also name some Russian and western scientists such as P. Lanskov, Y. Mirkin, V. Rubtsov, A. Zacharov, A. Rot, B. Born, M. Hyuyit, R. Bernard.

The article goal is to study of organizational-economic finance market regulation mechanism on the self-regulation bases, to find the main problems of the self-regulation and to make propositions about ways of their solving.

Definition and usage practice of self-regulation.

Self regulated organizations (SRO) aren't only determination of existing rules but also interests' protection. Even now it's often a separate market, the entrance of which is restricted by professional and ethics requirements, volumes of trade and capital etc. It means that self regulated organization creation is

usually trade agreement (for example, Stock Exchange is a self regulated organization according to the USA legislation; it also acts as establisher and controller of the professional rules).

Self-regulation concept is responsible to the traditions of the Common Law and appeared on the bases of the USA and the UK Administrative Law. It was the USA where 24 brokers signed the agreement about the commissions only level and benefits granting to each other during the negotiations in the field of securities trade in 1792. The state controlling methods of professional securities market participants appeared much later at the beginning of the 20th century. That's why nowadays the necessity of self regulation methods as one of the most important market regulators is not point of doubt.

But self-regulation conception is successfully used in the countries, which don't use Common Law, and in definite countries with Common Law has touched with number of problems. For example, cooperation between professional market participants and Government achieved the top levels in Japan. And this cooperation has lack of different from self regulation, though professional participants of the securities market and bank sector of Japan never had any success in establishment of the self-regulated institutions. In Thailand the self regulation was after transition period. At the beginning stock exchange was the official regulator of the capital market. Then the independent controlling institute and stock exchange again became the organization, which was organized on the participants' conditions with the function of self-regulation.

Taking into account that professional securities market participants were the first on the world finance market. The same situation was in Indonesia, where Stock exchange of Jakarta was the

Governmental organization and executed the function of the state regulator. After VALERAM being an institution which controls Stock Exchange, started to work the Stock Exchange of Jakarta became a private organization with equal participants' conditions with the function of self-regulation.

In the Latin America and Europe Stock Exchanges appeared earlier than the state capital controlling organizations. The tradition of behavior regulation at the market and practices of Stock Exchange participants had been born in the countries of these continents jet in the first professional organizations, in the guilds.

Despite of the fact that Indian Law system was founded on the English Common Law, this country had difficulties with the conception of the self regulation establishment and implementation [2].

Switzerland has old traditions of self-regulations in the finance sector. It active uses such forms as: autonomous behavior codes (for example, Assets controllers Association Codes of Switzerland and Financial Analytics Association Codes of Switzerland), self-regulation rules established by state regulator – Federal Bank Commission of Switzerland, other self-regulated authorities according to the Law. Among the outstanding examples of self-regulated organizations functions are Stock Exchange rights at establishing and providing of listing rules keeping, which are determined by Securities and Stock Exchange Law. Though, Stock Exchanges are supervised by Federal Bank Commission in Switzerland [3].

The definition of the self-regulation usage efficiency.

We can't find the ideal financial market model and its perfect mechanism of function and regulation in the World. The best of them are represented by so called "gold middle" between hard central conduction and collective regulation by professional organizations. We need take into account a lot of factors for each country. They are the level of market development and its infrastructure, traditions, participants' mentality, the confidence to regulation institutions and the amount of the definite market capital.

The individually from Government controller (but usually Government keeps the authorization and supervision authorities) and business, industries and if is suitable investors participation at the operational activity of the SRO are common SRO characteristics in most occasions. The arguments in favor of the only SRO for each kind of the professional activity are referred to disappeared self-regulated system of the Great Britain.

And otherwise the American self-regulated model in fact is accepted in Ukraine. It allows the great amount of SRO, their fixing at definite markets, competition and standards disparity.

SRO can be established according to different features. Among them are: functional feature (broker-dealer activity, investment activity, insurance activity); product feature (for example municipal, corporate securities); by fixing at definite market (Stock Exchanges and out of it ones); by serving infrastructure of definite market.

According to the world experience, the most effective practices of self-regulated principals are in the countries with long experience of financial markets existing experience. In Ukraine the self-regulated organizations abilities usage has to be connected primarily with delegation a part of costs for regulations in their favor, providing them with market monitoring function, organizing of rights usage and other aspects of detailed administration. They also have to be involved into the process of financial services consumers' rights protection and implementation of the educational programs [1].

SRO ought to correspondent to the general functional principals for their more effective mechanism of financial market regulation:

SRO has to be opened to any market participant, who wishes to be a member of the organization and are ready to follow its rules and standards;

SRO has to be able to establish of the professional rules and standards for its participants and control the following them.

SRO need to keep behavior professional standards similar to ones established for regulators, especially confidentiality and procedure justice.

The regulation efficiency at the financial sector of Ukraine is influenced by week coordination of regulation activities and not enough cooperation of professional market participants, their self-regulated organizations and unions of financial services consumers. These circumstances require huge and deep reformation of the existing national system of regulation at the financial market on the Ukrainian way for a modern regulation model. The initiative of the real self-regulated process creation in Ukraine should be on the State level, because only it unites the financial services consumers.

It is necessary to emphasize that from the theory point of view self-regulation allows the professional participants to establish and execute the most effective and the most suitable rules, because they are that who work in the industry and as a result have the needed practical background. Of course self regulation is economical appropriate because it increases the rules efficiency and releases from the expensive pressure of supervision. Besides, the participants are personally interested into the announcement of the rules during the usage of self-regulated process, when Governmental officers don't have such interest. Self regulation is also less influenced by political changes. We can make the comparative characteristics of the regulations kinds (table 1).

Table 1: The comparative characteristics of the regulations methods

Criterion	License	Self regulation
Value for the state	High (+)	Low (+)
Value for the market	Low (+)	High (+)
The level of corruption	High (+)	Low (+)
Responsibility of the controlling institution	Minimum (-)	Maximum needed (+)
Responsibility of the regulated object	Low (+)	Total (+)
The example of the system existing (world experience)	Exists(+)	Exists(+)
The terms of creation and organization	Not long (-)	Long (-)
Regulation system flexibility	Low (+)	High (+)
Correspondence to the trends of the economy development	Low (+)	High (+)
Total	3 plus	7 minus

Taking into account named above points we can single out the main risks of the self-regulated system

and to propose ways of their decreasing or elimination (table 2).

Table 2: The main risks of the self-regulated system

Risk	Way of conduction
Corruption	Collective management and informational honest, mobile and operative change of the regulator top-management
Effective control absence	Collective responsibility (reputation and material), collegial management
Absence of the professionalism	Competitiveness between SRO, collective responsibility, qualification requirements, real cleaning of the market from dilettantes as a result
Interests conflicts	Informational honest, competitiveness between SRO, Ethics and professional activity Codes поведінки
Pocket organizations	Enough amount of members and amount of subscription to the compensation fund, informational honest, competitiveness between SRO
Cartel betrothal, barrier for new members addition	Great amount and competitiveness between SRO, antimonopoly legislation

So we see that each kind of the existing risk there are several ways of decreasing in the self-regulated system. That's why the state regulators of the financial market ought to create definite model of self-regulated organisation development at this market in Ukraine.

Propositions in the field of the self-regulated organisations efficiency increase.

The increase of self-regulated organisation roles at the financial market has to be implemented in several directions. First of all it is gradual delegation of regulation rights. They are executed by state institutions of the SRO executive power, which represent whole the market of any financial services. The state system of the SRO stimulus is being created for fixing of definite requirements to professional activity of the market participants and to the controlling of its following.

In order to increase the role of self-regulated institutions and professional unions on the financial market the following points should be kept:

To influence the creation of insurance and guarantees funds with the participants of SRO. They

will provide the additional protection of investors and financial market consumers' rights.

To create consultative-expert council from the amount of ministers and departments (regulators), professional market participants and private companies of the different financial market elements; to analyse the problems of the market regulation process; to single out strength and weakness; to formulate recommendations and alternatives of the regulation.

To accept the self regulation development concept at the state level.

To realise a reform by the way of cooperation between business and government.

To monitor the implementation and the improving of the determined by practice defects.

We need to emphasis that activity of the social organisations, which unites the financial services consumers, should be supported by the State. It is necessary to make same changes in the active legislation, especially in the field of determination of self-regulated organisations, professional organisations and initiating unions of the financial services consumers' status.

Taking into account the peculiarities of the different financial market elements and nearby economy sectors, other legislation acts can determine the process of the different groups of private individuals' cooperation into the SRO. The number of SRO functions can also vary according to the definite market element.

The necessity of the financial market elements infrastructure is very needed and urgent issue. From one side, the requirements unification of the owners' rights listing corresponds to the investors' legal needs. From the other one – there is restrictions of the legislation background adopted by the Government institutions.

So, the increase of the financial market self-regulating role has to be implemented by the way of gradual rights delegation to the self-regulated organisations. The efficiency of this process should be provided by the continual dialog between social unions, financial market professional participants associations and state institutions conducting the legislation creation, law implementation, law

execution and consolidation in the field of further development of the national financial market.

The organisations should act with response from their side. They need to implement the most successful experience and to monitor their markets, taking into the account not only their own economic and reputation risks

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