



## NEW REQUIREMENTS FOR MANDATORY DISCLOSURE OF INFORMATION BY PROFESSIONAL PARTICIPANTS IN THE SECURITIES MARKET

*For the attention of heads of legal departments and IT services in credit institutions and other professional participants in the securities market*

**Law firm Pepeliaev Group advises that, on 13 February 2016, the Bank of Russia published a Directive<sup>1</sup>, determining the types of information that must be compulsorily published on the official website of a professional participant, and the timeframes for such information to be published and to be accessible on the site.**

Appendix No. 1 to the Directive contains a list of information about the professional participant in the securities market that must be contained on its official website (the “compulsory information”).

Appendix No. 2 to the Directive specifies information that is advisable for the website to specify but without providing for an obligation to disclose such information (the “recommended information”).

The mega-regulator has put forward a range of requirements for the disclosure of information.

The information should be contained on all of the professional participant’s websites in the Internet. Access to the information must be open to all who wish to obtain it; in other words, access must not be conditional on a user entering any passwords or providing any personal data.

The home page of a site must contain a link to the section of the site containing the compulsory information or links to other sections of the site containing the information. The links must unambiguously testify to the content (the type or nature) of the information published in the section of the site to which the links in question will transfer users.

Moreover, the compulsory information on the site should be disclosed in chronological order, stating the date on which it was disclosed and the period for which it will remain current. It must be available round the clock for all interested persons to study, save for periods when maintenance work is being carried out. This means that the site must contain both current and out-of-date information without the possibility of deleting the latter (unless Appendix No. 1 establishes a right to delete further to the timeframe for keeping the information on the site expiring).

The requirements of the Directive also extend to professional participants that are credit institutions.

**In the list of compulsory information that must be published, it is worth particularly highlighting the following information:**

- information regarding membership of a self-regulating organisation and that organisation’s standards;
- annual accounts bearing the stamp of the tax authority along with the auditor’s report relating to them, and also any interim accounts that may have been prepared;
- a list of branches, representative offices and other separate business units that are carrying on the activity of a professional participant;
- sample contracts and statements offered to clients when services are supplied;
- information about technical faults in the professional participant’s automated systems, if such a fault has led to the operational capability of the systems being terminated or restricted, or to the professional participant being unable to carry out its activity in relation to all clients for one hour at a single stretch, indicating the date, time and reasons for termination. Such information should be disclosed within an hour from the onset of the fault.
- information about the professional participant’s material court disputes and those of its subsidiaries and dependent entities, when the decisions regarding such disputes could substantially influence the financial position or business activity of the professional participant, or the relevant subsidiary or dependent entity. For monetary claims, a dispute becomes material when the amount of the claim exceeds 10% of the professional participant’s balance sheet total.

### **PG’s comments:**

*It should be noted that, previously, such tough requirements did not apply to the websites of professional participants in the securities market and the procedure for them to disclose information. The Directive will take effect from 23 February 2016, but professional participants have a further three-month period from that date to bring their websites into line with the legislative requirements.*

<sup>1</sup> The Bank of Russia’s Directive No. 3921-U dated 28 December 2015 “On the composition, scope, procedure and timeframes for professional participants in the securities market to disclose information”.

The previous requirements that were in force are those of: chapter 7 of Federal Law No. 39-FZ 'On the securities market' dated 22 April 1996; article 7 of Federal Law No. 46-FZ 'On protecting the rights and lawful interests of investors on the securities market' dated 5 March 1999; and the Bank of Russia's Regulations No. 454-P 'On the disclosure of information by issuers of issued securities' dated 30 December 2014 regarding the disclosure of information on the securities market and the provision of information to investors.

However, these provisions did not have too much effect on the activity of professional participants. They either concerned information to be provided in connection with securities being issued or set requirements for professional participants to disclose particular information at the request of an investor.

For credit institutions, there also exists the Bank of Russia's recommendation letter No. 128-T 'On recommendations for the informational content and the organisation of credit institutions' Internet websites' dated 23 October 2009. It is now compulsory for a credit institution that is a professional participant to disclose various items of information referred to in this letter and the disclosure of which was previously regarded as 'recommended'.

### **The provisions regarding disclosure of information about technical faults deserve particular attention.**

Clients may try to assert claims against a professional participant to be compensated for losses caused by faults as a result of the information about such faults that made it impossible for a client to be provided with a particular service on the securities market through the professional participant with which the client has entered into a contract.

In the Directive at hand, no provisions are established regarding liability to comply with its requirements. However, article 15.19 of the Russian Code of Administrative Offences provides for liability for a professional participant in the securities market violating the information disclosure regime. The sanction under this article may reach RUB 1 million.

In accordance with article 39.1 of Federal Law No. 39-FZ 'On the securities market' dated 22 April 1996 and the Bank of Russia's Regulations No. 481-P 'On licensing

requirements and conditions for carrying out professional activity on the securities market ...' dated 27 July 2015, if a professional participant in the securities market violates legislation, its licence may be suspended or the licence may even be revoked altogether (if the professional participant in the securities market breaches the requirements for the disclosure of information more than once during a single year).

### **What to think about and what to do**

In connection with the above, by 23 May 2016, a professional participant must ensure that all compulsory information is disclosed on its website. If the professional participant has no website, it should create one, which contains all the necessary links and sections with the compulsory information.

Moreover, attention needs to be paid to the need to timely update the compulsory information on the website, meeting the deadlines set by the Directive. At the same time, the disclosure periods for information need to be complied with (this means the time periods during which compulsory information must be available on the website).

In our opinion, a professional participant is unlikely to find that it can cite, as a factor mitigating its liability, the technical impossibility of updating its website within the established timeframe (in relation to systems being inadequate, there being tough regulations for updating the site and so on). Taking this into account, we recommend ensuring that the relevant sections of the site containing the compulsory information can be updated promptly, for example, by expanding the list of persons authorised to take such actions, or by ensuring that priority is given to updating sections of the site containing compulsory information.

### **Help from your adviser**

Pepeliaev Group's specialists are ready to provide multifaceted support on all issues relating to the licensing and activity of credit institutions and professional participants in the securities market. They will gladly assist with bringing the activity of organisations operating on the financial markets into line with the new statutory requirements regarding the disclosure of information.

## **Contact details**



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