

LEGAL MEANING OF AN INVESTMENT INTERMEDIARY IN THE SECURITY MARKET IN UZBEKISTAN

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Abstract

The securities market as one of the components of the financial system. The role, essence and significance of the investment intermediary on it. Services provided by an investment intermediary.

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The main sectors that make up the financial system of any country, along with the banking system, is also the securities market. The securities market is a powerful source of attracting investments, thanks to which the accumulation of funds of the state, the population, various enterprises and organizations and their distribution to various sectors of the economy. It contributes to the efficient allocation of capital resources in the economy. Without it, investors would spend an enormous amount of time and resources searching for individuals, companies and governments offering suitable investment opportunities. Similarly, the recipients of investments will have to spend significant resources looking for sources of capital. It is through the mechanisms and instruments of the securities market that the national economies of developed countries attract a significant part of the resources for their development. Therefore, the advanced, developed countries of the world, such as the USA, Germany, Japan and others, have well-functioning and developed stock market systems that allow them to attract temporarily free cash and other funds from the population, enterprises, organizations and the state itself and direct them to finance the development of their national economies.

In the securities market, in accordance with the Law of the Republic of Uzbekistan "On the securities market" - the main legal document in the regulation of the securities market, capital is raised and redistributed through the issuance, placement and circulation of securities. Thus, there is an interaction between consumers of capital and investors, where consumers of capital can receive funds from a large number of various sources, and sometimes even by combining them, while investors - a wide range of objects in which they can invest. In addition to them, professional participants in the securities market also operate on the stock market. These are investment advisors, investment funds, trustees of investment assets and organizers of over-the-counter securities trading and investment intermediaries. The named types of professional activity in the securities market can only be carried out by legal entities consisting of at least 2 employees and with a permit (license) for such activity from the state. In general, the law does not define the concept of professional activity in the securities market, it is given only in the form of a simple enumeration of the types of activities related to professional types in this

market, which we listed a little earlier. Professor Tatyannikov singled out the features possessed by professional participants in the securities market. In particular, participants:

- specialize in the provision of services related to the issuance, circulation,
- redemption of securities;
- are client-oriented organizations;
- redistribute the risks associated with securities;
- work on the basis of reimbursable contracts;
- Are business entities¹.

Let us dwell directly on investment intermediaries, without which it is impossible for investors to enter the securities market, since the latter can conduct various operations with securities, whether it be buying, selling, or others, only with the help of these representatives of professional participants. Thus, in the scientific literature, the concept of "investment intermediary" is defined by various definitions. In the circle of domestic scientists and professors, it is interpreted as an organization that provides services to investors in placing funds on the financial market and to issuer companies in attracting financial resources.

The Regulation of the Republic of Uzbekistan dated February 7, 2002 "On the activities of an investment intermediary in the securities market" defines an investment intermediary as a professional participant in the securities market, carrying out transactions and operations with securities on behalf of the client, on behalf and at the expense of the client. The legislator emphasizes that activity in the securities market is characterized only for this market, it is separated from the work of other markets - commodity, currency, insurance, etc.

Investment intermediary provides certain services in the securities market. They are divided into the following:

1. Brokerage services

2. Dealer services

3. Underwriting services

4. Market maker services

In accordance with the Regulations of the Republic of Uzbekistan dated 07.02.2002 "On the activity of an investment intermediary in the securities market", the activity of making civil law transactions with securities, as well as the activity of concluding agreements that are derivative financial instruments, is a brokerage activity². As a member of the stock exchange, the broker concludes exchange transactions on behalf of the client and at his expense. It should be noted here that not only an investor can be a broker's client, but also an issuer, for example, in the case of placement of securities. The Regulation of the Republic of Uzbekistan dated 07.02.2002 "On the activity of an investment intermediary in the securities market" lists the services of a broker, which include the purchase or sale of securities, accounting for rights to securities, as well as additional services at the request of the client that are within the competence of the broker. As to V.P. Chizhik, S.E. Elkin and N.M. Kalinina (2014), the scope of the broker's activities includes 1) intermediary services for the conclusion and execution of

¹ Securities market: textbook / [V. A. Tatyannikov, E. A. Razumovskaya, T. V. Reshetnikova, Yu. V. Kuvayeva, M. I. Lvova]; under total ed.

V. A. Tatyannikova; Ministry of science and higher arr. Ros. Federation, Ural. state economy un-t. - Yekaterinburg: Ural Publishing House. un-ta, 2019. - 230 p.

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²<https://lex.uz/docs/695476>

transactions with securities; 2) services for organizing and providing access to trading; 3) analytical and information and consulting services; 4) trust management services; 5) services of a financial consultant; 6) dealer services, i.e. services to maintain prices, demand, supply and (or) trading volume; to additional they refer 1) services provided within the framework of depository activities; 2) services for margin lending, 3) services for the organization of training, etc³. T. B. Vilkova (2010) also adds depository services and services for the implementation of REPO transactions to brokerage services.

Thus, on the basis of the above opinions, the content of brokerage activity consists of the following elements:

1. Services for the conclusion and execution of transactions with securities and (or) derivative financial instruments at the expense and in the interests of clients;
2. Keeping records of the client's funds in a special brokerage account, their safety, providing reports to the client;
3. Placement of securities in the primary and secondary markets;
4. Provision of analytical, information and consulting services;
5. Assist clients in the timely and complete receipt of income on securities, including the face value upon redemption of the security;
6. Ability to provide dealer services, i.e. services to maintain prices, demand, supply and (or) trading volume. When combining 2 types of activities, priority is given to transactions carried out on behalf of clients in comparison with dealer operations of the investment intermediary itself.
7. The obligation to keep funds intended for investment in securities or received from transactions made by the broker on the basis of agreements with clients. The funds of clients held on the client account for them cannot be levied on the obligations of the broker. He is also not entitled to credit his own funds to the client account, except in cases of their return to the client and / or provision of loans to the client.
8. Possibility of providing a client with a loan in the form of financial assets and securities for the purchase and sale of securities.

For the implementation of these services between the broker and the client, a contract is usually concluded for the provision of services of an investment intermediary in the securities market. It defines only the general conditions for the interaction between the broker and the client: the model of relations, the cost of the broker's services and the procedure for settlements between the parties, the procedure for terminating the contract, the responsibility of the parties, etc. Specifically, the details of interaction are already formed according to the model of an agency agreement or a commission agreement. In case of concluding an agency agreement, in accordance with Article 817 of the Civil Code of the Republic of Uzbekistan, the attorney (broker) works on behalf and at the expense of the principal (client) performs certain actions. At the same time, it should be noted that the party to the contract will be the client and will be responsible for the execution of the transaction, the broker in this case does not acquire rights and obligations. In the case of the purchase of securities, the task of the broker is that he finds them for the client, then concludes an agreement with their owner on behalf of the client, and the client, in turn, pays their cost from his account. The same scheme works in the case of the sale of securities. For their services, the broker receives remuneration determined on contractual terms.

The next type of contract is a commission contract according to the Civil Code, namely Article 832, the commission agent, on behalf of the committent, makes one or more transactions on his own behalf, but at the expense of the committent on reimbursable terms. In the case of investment mediation, the broker

³ Chizhik V. P., Elkin S. E., Kalinina N. M. Classification of services provided by brokerage companies // Omsk Scientific Bulletin.-2014.-No. 5(132). 50-53.

acts on his own behalf and at the expense of the client. In contrast to the attorney in the commission agreement, when concluding a commission agreement, the broker is a party to the transaction and, accordingly, is responsible for the non-execution of the transaction in the interests of the client. Regardless of which of the agreements the parties choose, both the commission agreement and the agency agreement must be concluded in writing.

Dealer activity, being one of the varieties of activity of an investment intermediary, is, in accordance with Uzbek legislation, the execution of securities purchase and sale transactions on its own behalf and at its own expense by publicly announcing the purchase and (or) sale prices of certain securities with the obligation to purchase and (or) sale of these securities by the declared person carrying out such activity, at prices. The person who carries out the type of activity in question is called a dealer. The fact is that the usual purchase and sale of securities at their own expense can be carried out by other professional participants in the securities market who are granted such a right, for example, brokers, but it is precisely the dealers who are assigned the right, as Professor Makarova correctly noted, to form, announce the sale price and purchases, the minimum and maximum number of securities to be bought and/or sold, and the period during which the announced prices are valid. In the future, these prices are subject to public quotation, i.e. they are announced on the stock exchange or in the over-the-counter trading system and are available not only to dealers, but also to a wide range of investors⁴. This shows that it is the dealer who is responsible for performing an important function - maintaining the stock market, its liquidity. Liquidity refers to the ability to buy/sell an asset as quickly as possible with minimal losses. By quoting securities, the dealer, as a rule, has information about the state of the issuer. However, this information is not always available to a wide range of market participants, so the dealer has another duty - to disclose information about the issuer and advise clients on the acquisition of certain securities.

In general, persons engaged in such activities specialize in one or more types of securities, firstly, because the number of securities is quite huge and cannot be covered by any individual market participants; secondly, since the dealer is a market specialist, in order to better track the dynamics of its market price, it is wiser to focus on a specific security or group. In order to maintain the market, as mentioned above, in an active state, dealer companies must have significant capital to prevent stagnation. Banks are an example of large companies, they have the opportunity to invest solid funds in securities. Since dealers are professional participants in the securities market, they work with any of its participants, but still more interaction occurs with brokers, since they are representatives of investors. However, there are times when there is direct contact with the client, for example, during large transactions where the dealer oversees the security.

By law, the dealer must:

- act solely in the interests of clients;
- daily place orders for the purchase and sale of securities in the trading system;
- provide its clients with the best conditions for the execution of transactions;
- enter into transactions with persons who have approached him with an offer to buy or sell securities, exactly in accordance with the previously announced prices and quantities of securities, and not shy away from entering into such transactions.
- communicate to customers all the necessary information about the state of the market, issuers, bid and offer prices, risks, etc .;

At first glance, you might think that both the dealer and the broker perform intermediary functions,

⁴ Makarova V. A.

Professional activity in the securities market. Tutorial. – Department of Operational Printing of the National Research University Higher School of Economics – St. Petersburg, 2011.-27 p.

which means they are interchangeable, but this is not because they differ significantly from each other. So, from a legal point of view, a broker concludes an agency agreement or a commission agreement with a client, because he acts as a link between investors and the stock exchange, while a dealer can conclude a sale and purchase agreement because he can trade directly with the client. In addition, a dealer, unlike a broker who acts on behalf of and at the expense of the client, always makes transactions only at his own expense and on his own behalf. This implies the following difference: the broker is not a party to the transaction, this role is assigned to the client, and the dealer, on the contrary, is. If the dealer's income depends on the difference between the prices of the buyer and the seller for the same security, then the broker receives a salary in the form of a certain commission from the transaction. And undoubtedly the most important difference is that the range of powers of the dealer is wider, he is not limited to the intermediary function as a broker, but also to the implementation of securities quotes. All of them carry out the most important functions in the securities market, and each of them has his own task, which cannot be done by another, except as authorized to do so.

It is no secret that the problem of many enterprises and companies is the lack of funding. To solve it, yes, you can attract bank loans, but even there there are some nuances. Then companies think about financing through the issuance of securities. When they want to issue securities, they have 2 ways: they can organize the issue themselves or use the services of a professional, that is, an underwriter. Indeed, the law does not force the involvement of such people when issuing securities, however, from the point of view of logic, it is more reasonable to use the services of an underwriter, because the subsequent circulation of securities depends on how the issue is carried out.

The initial issue is, as it were, the starting point and undoubtedly affects the future fate of the assets. The Draft "Standard for Underwriting and Provision of Other Services Related to the Placement of Equity Securities" of the National Stock Association provides the following definition of underwriting. Securities underwriting is the activity of making civil law transactions for the placement of securities by a professional participant on behalf and at the expense of the issuer or on its own behalf and at the expense of the issuer, which may be accompanied by the assumption by the professional participant of obligations to redeem in his name and at his own expense a part or the entire volume of the placed issue of securities⁵. The relationship between the issuer and the underwriter in the process of securities placement is determined by the agreement concluded between them on the provision of underwriting services. It is especially worth noting that the underwriting activity in the stock market is not licensed, which means that the investment intermediary does not need to obtain a separate license for this.

It would be wrong to consider securities underwriting only as the placement or guarantee of the placement of securities. According to the Regulations "On Underwriting Activities in the Securities Market", the tasks facing the underwriter are:

- ✓ General management of the process;
- ✓ Improvement of the issuer's organizational structure;
- ✓ Evaluation of market conditions to determine the most favorable moment to enter the market;
- ✓ Assistance in preparation of investment memorandum and prospectus;
- ✓ Coordination of the process of acquaintance of the company with potential investors;
- ✓ Advice on determining the volume of the issue and the share of free placement, as well as the price per share;

⁵ SRO project "National Fund Association". Standard for underwriting and delivering other services related to the placement of issuance securities. SRO project "National stock association". Underwriting and other offering services standard equity securities. Material taken from the website of the National Stock Association

- ✓ Organization and implementation of the placement procedure on the stock exchange;
- ✓ Assistance in the formation of a liquid secondary market, thereby performing the functions of a market-maker, etc.

Thus, we can conclude that underwriting is a set of services provided by a professional participant in the securities market to an issuer in connection with the issue of securities. It is no coincidence that in developed markets this type of activity is considered prestigious and highly profitable; it is carried out only by the largest, most reliable companies capable of performing all of the above functions with high quality.

An important function of an investment intermediary is market maker, since this institution is responsible for ensuring the liquidity of securities and maintaining the stability of the stock market. As you know, any exchange, whether it is a currency, stock, commodity or real estate exchange, is interested in development and prosperity, and for this, after all, the issue of ensuring the liquidity of the instruments traded on it, their purchase and sale comes to the fore. What gives liquidity? Let's try to answer this question from the opposite, what will happen if there is no this very liquidity. If, for example, demand for a certain instrument launched for exchange trading falls, the number of transactions ceases to be concluded, and those that are concluded are concluded irregularly, this indicates that it is losing its attractiveness for investors. But the most important blow is dealt to the authority of the exchange, because it was unable to ensure the launch of an instrument with a high level of liquidity, that is, with long-term investment attractiveness. If such situations are repeated in the future, then investors may question the professionalism and competence of the exchange itself. In the worst case, investors will simply stop working with such an exchange.

Therefore, in order to maintain a stable level of liquidity of an exchange instrument in the long term, a mechanism was created to manage the liquidity of circulating exchange commodities. This is nothing more than a market meeting. The fundamental task of a market maker in the stock market is to maintain the liquidity of a particular type of security, to ensure that it can be bought and sold as quickly as possible, the turnover or exchange of a security for money and back within a certain period of time without a significant gap in its price. You might now think that the dealer does the same thing, but there is a clear line that separates the dealer from the market maker. These are their tasks. The dealer is called upon to set and announce price quotes for securities, and from this follows his task to provide liquidity, because he must set such prices so that securities are bought and sold. A market maker, he does not form quotes, his task is to maintain liquidity, supply and demand through the purchase and sale of securities. In principle, they both provide liquidity, but the difference is in what ways and methods. In addition, if dealers generally maintain the liquidity of all types of securities circulating on the stock market, then the market maker is precisely illiquid or low liquid goods, because in such cases the exchange needs their help.

The market maker creates guaranteed liquidity in the market, that is, assumes the obligation to buy or sell a certain amount of shares at any time. Investors are thus more confident that they will be able to quickly sell securities without significant losses. If there is no counterparty for the transaction on the market, the shareholder can sell / buy shares to the market maker at the minimum / maximum price, and the market maker will announce a new quote lower / higher than the previous one, thereby the market will be able to gradually reach a level where other interested investors will appear. This ensures the guarantee of the transaction (no need to look for and wait for a counterparty) and the smoothness of the quote change in the absence of liquidity in the market⁶. In the Business Daily Exchange newspaper

⁶ Securities market: textbook / [V. A. Tatyannikov, E. A. Razumovskaya, T. V. Reshetnikova, Yu. V. Kuvaeva, M. I. Lvova]; under total ed.

V. A. Tatyannikova; Ministry of science and higher arr. Ros. Federation, Ural. state economy un-t. - Yekaterinburg: Ural Publishing House. un-ta, 2019. - 255 p. ISBN 978-5-7996-2758-4

(2018 edition), Arkady Matyashin, Deputy Head of the Department of the State Competition Committee of the Republic of Uzbekistan, expressed the position that if an investor wants to see how popular and trusted the exchange is by other investors, then first of all they pay attention to the list of its market makers explaining this by the fact that the analysis of the composition of market makers is able to provide any information regarding the exchange. Intrigued by this point of view, we, in turn, found out which market makers operate on well-known exchanges. As an example, we took the Chicago Stock Exchange and found out that the largest investment banks operate on it, such as Bank of America, Merrill Lynch, BNP Paribas, Credit Suisse, Deutsche Bank, Goldman Sachs, HSBC, JPMorgan, Morgan Stanley, Societe Generale, and UBS. This fact indicates how important it is not only to join the services of a market maker, but also to choose a professional in your field.

The activity of a market maker in the stock market is regulated by the Regulations “On the procedure for the provision by investment intermediaries of the services of an official dealer of issuers (market maker)”. Here, as well as in the case of underwriting services, an investment intermediary does not acquire a separate license; in order to perform the functions of a market maker, it must be included in the official list of market makers of the Republic of Uzbekistan. So, the above provision provides for the following operations of the market maker:

1. Making transactions solely on your own behalf and at your own expense;
2. Ensuring a two-way quotation (both for buying and for selling), which must be within the price range set by the organizer of the auction;
3. Constant maintenance of the established limits on the availability of securities and funds for each trading session;
4. Announcement of fixed starting prices for the purchase and sale of securities and conclusion of transactions based on fixed prices⁷;

As a market maker, large institutional investors usually act, for example, banks that have highly qualified stock market professionals in their staff, because their activities are rightfully considered one of the main driving forces of the stock market. Through their operations, they keep quotes within a certain range, smooth out price fluctuations, preventing emerging gaps between supply and demand, and ensure the liquidity of securities. The market maker's income is the difference between the ask (sell) and bid (buy) prices, called the ask-bid spread. He receives this amount for constantly taking risks, while in some cases acting as the only seller or buyer in the absence of a counter offer or demand from other market participants.

It is noteworthy that the institution of market-making is also used in foreign exchange, real estate exchange and others. So, according to the Central Bank of the Republic of Uzbekistan in October 2021, Kapitalbank became the first market maker on the currency exchange of Uzbekistan⁸. This fact will allow the bank to influence the balance of supply and demand in the foreign exchange market and thereby contribute to the establishment of a fair foreign exchange rate. It will also help to increase the efficiency of operations in the foreign exchange market. In the securities market, the status of a market maker was granted for the first time to the investment company HB Capital⁹. The entry of market makers into the securities market, in our opinion, will give confidence, on the one hand, to issuers when entering the stock market, since they will know that the security will be quickly sold, and on the other hand, to investors, because, knowing that there will be demand, they will be more confident and invest more often. The use of the market-making institution is especially effective in the absence or low level of demand for a particular product. So, according to words of Bakhodirp Atakhanov, Chairman of the National Association of Investment Institutions (NAII), the first reason why the exchange needs a

⁷<https://lex.uz/docs/695476>

⁸https://kapitalbank.uz/ru/press_center/news/kapitalbank-stal-pervym-marketmeykerom-na-valyutnoy-birzhe-uzbekistana/

⁹<https://www.spot.uz/ru/2022/02/08/market-maker/>

market maker or otherwise called a "liquidity provider", or an illiquidity liquidator is that it just helps, when an exchange-traded instrument is in low market demand. Another reason why the exchange cannot do without it is the formation of a constant exchange quotation for a product, without which it is impossible to determine the real market price for it.

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