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New procedure for qualification of foreign financial instruments as securities in Russia

On 21 April 2018, the Instruction of the Central Bank of the Russian Federation No. 4561-u dated October 2017, which establishes a new procedure for qualifying foreign financial instruments that have been assigned with the security identification code (number) (ISIN code) and the international classification code of financial instruments (CFI code), as securities ('Procedure').

If foreign financial instruments are assigned with the CFI code of the value determined by the Procedure, they can be qualified as securities by a person interested in such qualification, including: a foreign issuer (a foreign company that is bound by the foreign financial instruments); owner of the foreign financial instruments; a person entitled to demand performance on the foreign financial instruments ('interested person'). For the purposes of qualification, the interested person shall perform the following acts:

- 1) establish that the ISIN and CFI codes are assigned to the foreign financial instruments;
- 2) establish availability of confirmation of the CFI code values of the foreign financial instruments based on the information or a document specified in the Procedure;
- 3) correlate the CFI code values of the foreign financial instruments with the values established by the Procedure.

If the values of the CFI code assigned to foreign financial instruments differ from those specified in the Procedure, the foreign financial instrument may be qualified as securities only by the Bank of Russia (Department of Corporate Relations ('authorised department')) based on the following documents provided by the interested person/authorised representative thereof:

- application for qualification of the foreign financial instruments as securities;
- document (a copy thereof) issued in accordance with the personal law of the foreign issuer and containing a description of the rights granted (fixed, certified) by the foreign financial instruments.

Documents for the qualification of foreign financial instruments can be submitted to the Bank of Russia (authorised department) as a hard copy or in e-form signed with an encrypted digital signature.

To qualify foreign financial instruments, the Bank of Russia within 30 days from the date following the date of receipt of the documents shall:

- establish that the ISIN and CFI codes are assigned to the foreign financial instruments;
- establish the scope of rights granted (fixed, certified) by the foreign financial instruments and correlate this scope with the scope of rights granted by securities in accordance with the legislation of the Russian Federation on securities.

If the Bank of Russia (authorised department) takes the decision to qualify foreign financial instruments as securities it shall send (serve) a corresponding notice on qualification to the applicant or authorised representative thereof within 3 business days from the date following the date of the decision.

Foreign financial instruments qualified as securities in accordance with the Procedure will be admitted to circulation in Russia as

securities of foreign issuers. Foreign financial instruments not qualified as securities cannot be offered in any form and by any means, including through advertising, to an unlimited (undefined) number of persons, as well as to persons who are not qualified investors [1].

A decision on the impossibility of qualifying foreign financial instruments as securities shall be taken on the following grounds:

- 1) mismatch of the scope of rights granted (fixed, certified) by the foreign financial instruments with the scope of rights secured by securities in accordance with the legislation of the Russian Federation on securities;
- 2) failure by the applicant (authorised representative thereof) to submit the corrected and/or missing documents for the qualification of foreign financial instruments within 30 days from the date following the date of the respective notice by the Bank of Russia (authorised department).

In the event a decision on the impossibility of qualifying foreign financial instruments as securities is taken, the Bank of Russia (authorised department) shall notify accordingly the applicant (authorised representative thereof) within 3 business days from the date following the date of the decision.

From the day of entry into force of the Procedure, the following regulatory acts shall not be effective:

- Resolution of the Federal Commission for the Securities Market No. 03-48/ps dated 24 December 2003 'On the Procedure for Qualification of Securities';
- Order of the Federal Service for Financial Markets No. 07-105/pz-n dated 23 October 2007 'On Approval of the Regulation on Qualification of Foreign Financial Instruments as Securities';
- Order of the Federal Service for Financial Markets No. 08-2/pz-n dated 22 January 2008.

[1] Article 51.1 of the Federal Law No. 39-FZ, dated 22 April 1996, 'On Securities Market'.

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