

Object of Information Administrative Services in the Ukrainian Stock Market

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Abstract. At the current stage, the Ukrainian stock market is far from stable. Financial stability is the guarantee and basis of sustainable development. It is expedient to study the stock market's problems in Ukraine in light of the prospects of European integration and the need to achieve sustainable development. So, this article examines the nuances of determining the object of information administrative services. Current legal regulations connected to the information rights in the stock market need clarification because of their role as sustainability drivers. This study separates the information-connected administrative services from the list of administrative services provided by the National Securities and Stock Market Commission. The scientific novelty of the presented results consists in identifying the object of information administrative services – the personalized information about legitimising the entity's activities in the stock market. The methodological basis of this study was the provisions of the theories of the stock market, financial law and sustainable development.

Keywords: sustainable development, stock exchange, securities, information relations, secrecy, inside.

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1. INTRODUCTION

1.1. *Relevance of the study*

Considering the regulations governing administrative services, we can argue that without transparent and understandable mechanisms for managing relations in the financial sphere of the state, the building and sustainable development of all economic sectors would be not only limited but simply impossible. In this respect, the issue of providing high-quality and transparent administrative services in the stock market of Ukraine becomes critical. Furthermore, considering the development in Ukraine of a market economy, civil society, the implementation of the principle of minimal regulation of economic processes with the performance of other areas of development of the modern state, a necessary component of administrative services relations is to guarantee access of persons - parties to concerns - to information, as well as precise legal regulation of the provision of information administrative services in the stock market of Ukraine. Considering the preceding, in terms of our study, the role of information as an object of administrative services, which are provided in relations arising in the stock market of Ukraine, becomes quite clear.

1.2. *Analysis of recent research and publications*

Ukrainian scientists have long studied information relations, legal regulation and related issues. To date, there are different directions in their scientific works. Thus, general theoretical issues of the concept and characteristics of restricted information as a distinct type of information are covered in the works of such scientists as: V.Yu. Baskakov (2011), O.O. Zolotar (2022), V.A. Lipkan, L.I. Kapinus (2013), A.I. Marushchak (2007) and others. The study of legal regulation of inside information in the stock market of Ukraine is carried out by: A.A. Nashynets-Naumova (2016), I.V. Sorbat (2012, 73-76), V.V. Saienko (2002), I.P. Shulha (Mihus) (2010, 36-40), S. Shevchenko et al. (2022) and others.

Foreign scientists study the role of information and communication technologies in the social and economic development of

society in general and specific spheres of society's life. In particular, they draw attention to the role of information services in the structure of technology, business, public administration and their relationship with social and economic development (Roztockı, 2019). The issues of information technology as an object of management activity are also studied, focusing on the determination of information systems implemented in the public administration of individual countries, as well as the study of their capabilities, advantages and challenges in their application in public administration (Ziemba, 2014). In addition, scientists are studying the issues of information assessment and the need to plan the provision of information services while maintaining their transparency and accessibility (Marchand, 2007). Recently, studies have focused mainly on the interdependence of the influence of information and information technologies on the growth and efficiency of the stock market (Faghani, 2013), as well as how significant the impact of public information is on the stock market (Mitchell, 1994). Regarding special studies of information in the stock market, foreign scientists study features of inside information as the primary type circulating in the stock market (Fischel, 1982); the efficiency of legal state regulation of insider trading in the example of the United Kingdom (Lambe, 2012); the of legislative regulation on reducing information risk and increasing the role of investors in trading (Kwabi, 2021); gossip as the content of inside information in the Chinese (Zhang, 2017) and Turkish securities markets (Kiyamaz, 2001).

The analysis of Ukrainian publications shows that domestic scientists on specific problematic issues partially discuss the matters of information-connected administrative services. Foreign articles are mostly multidisciplinary. A characteristic feature of foreign studies is that the problems of legal regulation of information in the stock market are discussed along with the topics of economics, sociology, management, and social and economic development. Despite a relatively rich assortment of scientific research on the legal regulation of information in the stock market, the issue of the object of information administrative services in the securities market remains not clearly understood.

This article aims to improve the efficiency of legal regulation of the provision of information administrative services in the stock market of Ukraine. *The objective* is to analyze the doctrinal and regulatory conditions on the role and characteristics of objects of information administrative services.

2. RESULTS

2.1. *The concept of information circulating in the stock market*

Ukrainian legislator defined the concept of information in the general sense as “...any details and/or data that can be stored on tangible media or displayed in electronic form” (National Securities and Stock Market Commission, 2013). The concept of information in the sector-specific legislation governing the circulation of information in the stock market is defined as “...information to be placed in the Public Information Database on the Securities Market received from the disclosure entities following the requirements of the law” (Cabinet of Ministers of Ukraine, 2011). In the stock market of Ukraine, there is information in circulation that has two legal regimes: 1) unrestricted information; 2) restricted information.

The legal regime of information with the so-called unrestricted access can include information that does not have special legal protection or restrictions on the collection, use or distribution, as well as disclosed information and information with public access. Thus, the first legal regime, which, as a rule, is not explicitly distinguished since it is common for the circulation of information in a state with a democratic political regime and a valid principle of freedom of speech, is named as such conditionally in contrast to the legal regime of restricted information. Nevertheless, in general, restricted information is in circulation in the securities market, so in this study, we will focus more on this type of information.

In the science of law, there is no single definition of the term “restricted information”. A.I. Maruschak gives the definition of restricted information in this form: “Restricted information is the details of a confidential or secret nature, the legal status of which is provided for by the legislation of Ukraine, which are recognized as such in accordance

with established legal procedures and access to which is limited by the owner of such details” (Marushchak, 2007). Also, V.Yu. Baskakov gives his own definition of this term. The author considers that restricted information “is the details and/or data that can be stored on tangible media or displayed in electronic form, access to which is limited by its owner or bona fide user (power entity, individual or legal entity) in accordance with the legislation of Ukraine due to their special value for them on legal grounds” (Baskakov, 2011). Commenting on the existing definitions, other scientists correctly point out various shortcomings of these definitions, and pay attention to the fact that most of the wordings do not cover information that is not in a tangible form, for example, presented orally and/or stored on sound carriers (Lipkan, 2013). Since our objective is not to study the peculiarities of the definition of the terms of restricted information, we will focus on the definition provided by V.Yu. Baskakov, since it is the most neutral and there are no objections against it.

In turn, restricted information includes three types of legal regimes, namely: 1) official; 2) inside; 3) secret. These legal regimes also apply to information in circulation in the stock market of Ukraine.

2.2. *Types of information in the stock market*

1) The first type of restricted information is official information, which, as a result of amendments made to the legislation of Ukraine, has acquired the concept of “confidential information that is the property of the state”. Such amendments took place following the Decree of the Cabinet of Ministers of Ukraine “On Amendments to Certain Decrees of the Cabinet of Ministers of Ukraine on Access to Information”, and a special instruction determines the procedure for using official information carriers.

The definition of the concept of “confidential information” has long been the subject of scientific research by Ukrainian scientists. Representatives of the national legal sciences express different opinions on how exactly confidential information should be defined. At the same time, they distinguish

quite different types of information in terms of content and sphere of circulation, which, according to the authors, may fall under the signs of confidentiality. These most often include official secrecy, the secrecy of private life, professional secrecy, commercial secrecy, and secrecy of investigation and legal proceedings (Kormych, 2004). V.A. Lipkan understands confidential information as “...information about a person that is not subject to disclosure and access to it is limited by the individual person or legal entity itself (which legally owns such information), and its dissemination is possible only at their request in accordance with conditions stipulated by them. The exercise of these rights may be limited by law” (Lipkan, 2013, 47).

Other scientists do not separate the concepts of secrecy and confidential information. Thus, S.M. Parshin understands confidential information as information to which access is restricted and privileged information as information that is protected by law to prevent its dissemination, as well as reflecting the most important interests of a limited circle of entities, thereby identifying it with secrecy (Parshin, 2006, 8). O.O. Zolotar says that confidential information is information exclusively from private entities and provides two main features of it. First, the information must be known only to a specific private entity. Therefore it is not publicly known. Second, the owner of the information decides at his/her own discretion to restrict access to it or decide on the time and method of its dissemination (Zolotar, 2022).

Information that falls under the legal regime of confidential information is regulated at the legislative level. But the legislator, as well as scientists, still does not have a consensus on the definition of the concept of confidential information. Thus, the Laws of Ukraine “On Information” and “On Access to Public Information” establish the definition of the concept of confidential information as information about an individual person, as well as information “...access to which is limited by an individual person or legal entity, except for power entities, which may be disseminated in the manner determined by them, at their will, in accordance with the conditions provided for by them.” In contrast to these laws, the Law of

Ukraine “On State Statistics” defines confidential information as “...statistical information that refers to restricted information and is in the possession, use or management of an individual respondent and is disseminated solely with his/her consent in accordance with the conditions agreed with him/her”.

It is worthy of note that these definitions have both common features and those that distinguish them. The main features of the concept of confidential information, including in the definition of the legislator, coincide with those named by scientists. First, the legal regime of restricted access to such information means limiting its dissemination in any way. Second, the information must actually be in the possession, use and management of an individual person or legal entity. Third, such information is subject to dissemination only upon their will (consent) on the conditions determined by them. The only difference can be considered the fact that the Law of Ukraine “On Information” contains provisions that such information can be disseminated in other cases provided for by the law. This note complies with the provisions of sector-specific laws governing the delivery of information administrative services in the stock market of Ukraine.

2) The second type of restricted information is inside information. The term “inside” is translated into Ukrainian as “internal”. In particular, an insider (from the English “inside”) is any person who has access to confidential information about the state of affairs of a business entity due to his/her official position or family connections (International Organization of Securities Commissions, 2003, 22]. That is, inside information must be internal information of the company. Traditionally, inside information is understood as significant publicly undisclosed official and commercial information of the company, which, if disclosed, can affect the market value of the company’s securities (Sorbat, 2012, 164). V.V. Saienko rightly considers that inside information can be any specific undisclosed information about securities or agreements thereon, about the issuer, which is material. Material information is information that, if disclosed, could have a significant impact on the market value of

securities (Saienko, 2002, 6). In the Report of the Emerging Markets Committee of the International Organization of Securities Commission, inside information is usually understood as information that has two characteristics at once: it is non-public and material.

National legislator and scientists add a third feature to the above features – content. Thus, in the Law of Ukraine “On Capital Markets and Organized Commodity Markets”, the legislator under inside information recognizes information that has a combination of the following features: first, it is undisclosed; second, “...the disclosure of such information may have a significant impact on the value of the relevant financial instruments”; third, in terms of content, this information should be “...about the issuer, their securities or other financial instruments circulating on the organized capital market...” (Criminal Code of Ukraine, 2001). We propose to consider these three features of inside information.

Next, we should consider the feature of non-disclosure of inside information. In the administrative and financial sense, the non-disclosure of information means that such information is unpublished and not disseminated. That is, it has not been brought to the attention of an unlimited circle of potential investors. At the same time, the legislator does not consider the activities of potential investors when sounding the capital markets to be public disclosure. This is due to the fact that inside information, as a special object of information and administrative relations in the securities market, is associated with the need to ensure the information transparency of business entities as the basis for good practice in the stock market. The information openness of the stock market in a civilized society is one of the main components of successful and efficient functioning. Information transparency ensures effective decision-making by investors. And vice versa, the lack of a full range of true factual information, the absence or insufficiency of information about issuers in the public domain leads to the fact that potential investors “...reduce their investment activity, and the state does not receive funds that could work on the

domestic securities market” (Nashynets-Naumova, 2016, 73).

Inside information is disclosed. That is, it becomes public in the manner prescribed by the regulations of the National Securities and Stock Market Commission. Information is not considered inside from the moment of its disclosure when such disclosure was made in the manner prescribed by law. Information on the assessment of the value of securities and/or the financial and economic condition of the issuer is not inside information if it is formed on the basis of published information or information from other public sources that are considered open and are not prohibited by law.

A feature of the materiality of influence is that the disclosure of the content of inside information can affect the price of financial instruments, the value of companies in the stock market, and as a result, not only reduce the amount of income in general, deprive profits, but even cause losses. The Criminal Code of Ukraine does not use the concept of materiality but appeals to the concepts of “significant amount of damage” and “severe consequences”, which can be understood as an expression of the concepts of materiality in value terms. The legislator considers a significant amount (significant damage, significant loss) as such an amount (damage, loss) “...that is five hundred or more times higher than the non-taxable minimum income of citizens” (Dudorov, 2012). The legislator considers losses that exceed the non-taxable minimum income of citizens by a thousand or more times as severe consequences. O.O. Dudorov, characterizing the features of a public threat of illegal dissemination of inside information, rightly states that the use of inside information is an unfair business practice in the stock market and leads to its imbalance. This practice disrupts the stability of the stock market, disrupts the quotation mechanism (comparison of supply and demand for securities), leads to the formation of artificial prices and, as a result, to unreasonable profits, and also leads to a reduction in investment in securities (Vyslotska, 2018, 474).

A feature of the content of inside information should be actual information about the level of efficiency of the issuer’s internal work, about his/her state of the external

property and non-property business reputation, as well as other positive and negative facts of business activity. The following data can be referred to as information that contains details about the issuer: the number of members (quantitative and personnel changes) of the issuer's top management; the company reorganization in any form; establishment of a subsidiary or merger with it; provision, receipt or early repayment of a loan, etc. The following data can be referred to as information that contains details about the issuer's securities or transactions thereon: details on prepayment of interest to investors; deciding on capitalization; purchase and sale of a significant amount of securities, etc. It is worth noting that inside information can be expressed in written form - documents reflecting external and internal work (constitutional documents, agreements) and financial activities of legal entities (accounting and financial reports, etc.), as well as in oral form - reports, notices, statements, conversations of employees, management personnel, founders, authorized persons, agents of other persons who became aware of inside information.

3) The third type of restricted information is secret information. V.Yu. Baskakov considers that secret information is any restricted information that has signs of state secrecy (2011, 24). Other scientists rightly consider this definition somewhat limited since the concept of secret information does not include the concepts of banking, notarial, medical or other types of secrecy, which can be both state and private. Therefore, when providing a definition of secret information, one cannot only indicate that such information contains state secrecy since it can be only one of the types (Lipkan, 2013, 50). In the light of this remark, T.Yu. Vyslotska gives a definition that is more factually accurate, i.e. secret information "...is information, access to which is restricted by law and belongs to a certain circle of persons, which became known to them in connection with their professional, official or other activities, and its infringement entails negative socially dangerous consequences in the form of damage" (2018, 8).

The concept of secret information is also enshrined in the regulations of Ukraine. In particular, the provisions of the Law of Ukraine

"On Access to Public Information" set out the definition of secret information in the following form: "Information, access to which is restricted in accordance with the provisions of the named law, the disclosure of which may harm the individual, society and the state, is considered secret. Information that contains state, professional, banking secrets, pre-trial investigation secrecy and other secrecy provided for by the law is considered secret". We deem it necessary to agree with such a wording of the definition since, indeed, most of the information is delivered to the entity in connection with its activities in a certain area. Based on the provisions of the legislation and the provisions of the scientific, and legal literature, therefore, it can be concluded that any of the named secrets can become the objects of information administrative relations of the stock market entities.

2.3. Features of information as an object of information administrative services

The above types of information take place in the relations of stock market entities as objects, but not all of them can be objects of information services. Most of the information that can be the object of information administrative services is open access information, as well as confidence information relating to separate individual data of entities-participants of the stock market. Secret information may be in possession of the entities providing administrative services, but it cannot be the object of information services in the stock market because it has a judicial disclosure regime and not an administrative one performed by the disclosure entities.

The analysis of regulations indicates that the legislation of Ukraine distinguishes two types of information services: information state (administrative) services and general-purpose services. The main feature by which the relevant ministry distinguishes these types of services is that general-purpose information services do not need to identify the subject of legal relations when they are provided. As for information state (administrative) services, these are "services, the receipt of which is established by law and provided to individual persons or legal entities by executive

authorities, institutions and organizations created by them, which are financed from the respective budgets. The provision of these services is directly related to the performance of the main functions and tasks by the authority in order to meet the information needs of consumers” (State Committee for Communications and Informatization of Ukraine., 2003). The presence of features used in providing a definition of information administrative services suggests that the object of such services is personalized information, which is provided at the request of consumer subjects to exercise their right to information.

The list of administrative services provided by the National Securities and Stock Market Commission is approved by its decision and contains an exhaustive list of administrative services. This list is not divided into types, so we single out such a type as administrative information services on the basis of the parameter of a theoretical analysis of the regulations governing the relationship of administrative services. To separately identify from the list of administrative services those that can be considered information administrative services in the stock market, a combination of the following general and special features was used. General features are the provision of services by power entities, at the request of persons exercising their subjective rights and interests, in the manner prescribed for the provision of administrative services. Special features are the powers of the power entities relating to the stock market; information has a set of three characteristics: 1) it is not inside information (disclosed in accordance with the procedure established by law); 2) it concerns individual data of stock market entities that are not entities with power; 3) it is actually legitimized. That is, information administrative services consist precisely of the legitimization of information that is provided from the Public Database of the National Securities and Stock Market Commission.

After analyzing the list of administrative services provided by the National Securities and Stock Market Commission, we have classified

information administrative services as services related to the issuance of duplicates, certificates, licenses; issuance of extracts, including from registers; replacement of certificates; exclusion of information. Examples are administrative services from the list of administrative services provided by the National Securities and Stock Market Commission under No. 19 “introducing changes to the register of audit firms that can conduct audits of professional participants in the securities market”; No. 21 “issuance of a duplicate of a securities prospectus (amendments to a prospectus) of a collective investment institution”; No. 22 “issuance of a duplicate of a certificate (temporary certificate of registration of the issue of securities (for collective investment institutions)”). Separating all other administrative services from information administrative services, it should be noted that they can be distinguished as the ratio of information about the fact (information service) and the implementation of the fact itself (permissive, registration administrative services).

3. CONCLUSIONS

Information administrative services are one of the results of the information activity of entities with power in the securities market. The object of information administrative services is information of a special type and content. That is, in terms of content, this is information obtained (collected) in connection with the existence of the stock market and the activities of the relevant issuers and professional participants in the securities market.

The peculiarity of information as an object of information administrative services in the stock market is that in some cases, such an object may be restricted information. The information that becomes the object of information administrative services acquires its own characteristics not only because of the content as such but also due to the legal regime of its use. The object of information administrative services is information about the fact of legitimization actions of the entities with power in relation to other stock market entities.

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