

Further Changes to Russian Securities Law Aimed at Bringing Liquidity to the Local Market

On December 29, 2012, the President of the Russian Federation signed into law Federal Law No. 282-FZ “On introduction of amendments into certain legal acts of the Russian Federation and on annulment of certain provisions of legal acts of the Russian Federation” (the “Amendments”) amending numerous federal statutes, including Federal Law of the Russian Federation No. 395-1 “On Banks and Banking Activity” dated December 2, 1990, as amended, Federal Law of the Russian Federation No. 208-FZ “On Joint-Stock Companies” dated December 26, 1995, as amended (the “JSC Law”), and Federal Law of the Russian Federation No.39-FZ “On the Securities Market” dated April 22, 1996, as amended (the “Securities Market Law”).

Below we briefly describe certain amendments related to share issuance procedure and regulation of the securities market in the Russian Federation which might be of interest to you.

JSC Law

(1) The JSC Law provides all shareholders of an open joint-stock company with preemptive rights to subscribe to the company’s shares issued in an open subscription. Before January 2, 2013, the preemptive rights period had to be not less than 20 calendar days if the price was determined after the preemptive rights period. The preemptive rights notice had to be delivered to the shareholders of record in accordance with the procedures set forth in the company’s charter. Such procedures would not necessarily involve public disclosure of the notice.

According to the Amendments, from January 2, 2013 the preemptive rights period may be reduced to eight business days if the preemptive rights notice is also publicly disclosed in accordance with Russian securities laws. The Russian securities market regulator (the Federal Service on Financial Markets, hereafter the “FSFM”) has clarified¹ that the information on the preemptive rights shall be disclosed in accordance with the current disclosure standards² that require prompt disclosure of the respective information on

¹ FSFM Information Letter No. 13-DP-03/1651 dated January 24, 2013.

² FSFM Order No. 11-46/pz-n “On Approval of the Regulation on Information Disclosure by Securities Issuers” dated October 4, 2010, as amended.

newswires and the company's site on the Internet as well as delivery of hard copies of documents on the preemptive rights upon shareholder's request and provision of hard copies thereof at the company's offices. This amendment should be useful for equity deals, as it allows to reduce the lead-in time it takes to prepare a deal.

(2) The Amendments also broaden the scope of authority of the general shareholders meeting of a joint-stock company in respect of the company's equity-related matters. Starting from September 30, 2013, a decision to list the company's shares or convertibles must be approved by the company's shareholders. According to the Amendments, this decision may be delegated to the board of directors under the company's charter, but a decision to delist the company's shares or convertibles would always need to be approved by the company's shareholders. The shareholders who vote against a decision to list or delist or abstain from voting receive buy-back rights and may tender their shares to the company at the price which shall be not less than the average-weighted price of the shares for the six months preceding the respective shareholders' decision. This amendment emphasizes the importance of a listing and delisting decisions for an issue, reflects global practice and should help reduce potential for abuse by controlling shareholders and management and address the concerns that international exchanges had when Russian issuers stipulated to them that neither shareholders nor the board had approved the decision to list on the exchange as there was no such requirement under Russian law.

Securities Market Law

(1) According to the Securities Market Law, share issuance process in Russia consists of several steps and includes (i) the shareholders' or the board of directors' decision to increase share capital and to issue shares; (ii) approval by the board of directors and registration by the FSFM of a share issuance decision and, if required, a Russian prospectus; (iii) placement of shares, including execution of agreements, payment for and transfer of shares; and (iv) registration of a share issuance report³ by, or submission of a share issuance notification to, the FSFM.

Before the Amendments, secondary market trading in new shares (including not just share transfers to buyers in the secondary market, but also signing share purchase agreements) was prohibited until the share issuance notification was filed with, or the share issuance report registered by, the FSFM (step (iv) above). Starting from January 2, 2013, the Amendments allow public secondary market trading to start after registration of a share issuance decision by the FSFM and disclosure of the respective documents and information by the issuer and before the filing of a placement notification or registration of a placement report. The limitations remain, however, that the shares may be transferred to the purchaser's account only upon payment in full and, if the issuance process involves registration of a share issuance report rather than filing a notification, only after the report is

³ The FSFM has to register or refuse registration within 14 days.

registered. Notwithstanding the limitations, the amendment should facilitate secondary market trading and help to increase liquidity in the shares, since the issuers tend to use the issuance process that involves filing a notification rather than registration of a report (see also (2) below).

(2) Before the Amendments, Russian companies often engaged Russian brokers in the public placement of their shares in Russia because this was a statutory prerequisite for the company to be eligible to submit a placement notification instead of having to register a placement report. Starting from January 2, 2013, there is no need to engage a broker and a company is eligible to submit a placement notification following the placement of its securities, if all of the following conditions are met:

- the securities are placed in an open subscription;
- the securities are paid for in cash and/or other publicly traded securities; and
- the securities are admitted to trading on a Russian exchange.

(3) Before the Amendments, as part of share registration process the FSFM assigned any securities (i) an individual code for a class of the securities of the issuer and (ii) an additional individual suffix for each issuance of securities of the same class. The suffix was annulled by the FSFM only upon the expiration of three months after the state registration of a placement report or submission of a placement notification. As a result, new shares were not fungible with the existing shares for more than three months, which in certain situations greatly affected liquidity. The Amendments provide that starting from January 2, 2013, the FSFM shall not assign a suffix and thus new securities will be fully fungible with the existing securities of the same class, provided that such securities:

- are admitted or will be admitted to trading on a Russian exchange;
- are placed in an open subscription; and
- are paid for in cash and/or other publicly traded securities.

Coupled with the amendment providing that a new share issuance that involves filing a notification rather than registration of the report may be annulled by the FSFM only before the placement of the shares has started, the removal of the suffix should solve the fungibility issue, since the new shares should be viewed as fully fungible with the outstanding shares as soon as the placement of shares begins.

(4) Finally, the Amendments provide that starting from July 2, 2013, the rules governing contents and registration procedure for a Russian prospectus shall change. Such rules are yet to be issued by the FSFM. The Amendments introduce the concept of shelf registration, providing that a Russian prospectus will consist of two parts: the main part and

a supplemental part, each of which may be registered with the FSFM separately. The Amendments also introduce the concept of preliminary review of draft share issuance documents by the FSFM. Such review may be initiated by the issuer and shall be performed by the FSFM within 30 days. If the share issuance documents passed the preliminary review and the issuer addressed the FSFM comments made during such review, the registration of the finalized share issuance documents shall take no longer than ten business days (instead of 30 days under the current rules), which should allow more flexibility and certainty in structuring and timing offerings.

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Please feel free to discuss any questions regarding this memorandum with your usual contacts at Cleary Gottlieb or any of the lawyers in the Moscow office at +7 495 660 8500.

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