



**FMI**

---

**Financial Markets International, Inc.**  
**USAID Financial Markets and Corporate Governance Advisors**

34/33 Ivana Franka St., Kyiv, 01030, Ukraine  
Tel.: 380 44 246-5597, 462-0589/91/92/93/95, fax: 246-5598

---

**USAID Contract Number OUT-PCE-I-00-99-00010-00**  
**Task Order No. 803**

A

**Program for Development of the  
Ukrainian Securities Market in 2001-2005**

This Program was Developed by the

**Strategy Group for Development of the  
Ukrainian Securities Market**

With Support from  
The United States Agency for International Development  
and  
Financial Markets International, Inc.

**December 2000  
Kyiv**

## Preface<sup>1</sup>

The "Strategy Group for Development of the Ukrainian Securities Market" was created to respond to public and private sector actors involved with the securities market who had for some time voiced concerns that the market was evolving too slowly and without sufficient direction. Thus, the Securities and Stock Market State Commission (SSMSC), the United States Agency for International Development (USAID) and Financial Markets International, Inc. (FMI) formed the Strategy Group and initiated its work at a roundtable on June 27, 2000. Participants of the Strategy Group included high-level officials from the Presidential Administration, Verkhovna Rada, and Government of Ukraine, along with self regulatory organizations, professional securities market participants and international donor organizations. Between June 27 and December 13, 2000, participants of the Strategy Group met at eight roundtables, all well attended with animated and constructive dialogue. Strategy Group members also met in many smaller drafting sessions to produce the final product.

In addition to the Program you have before you, the Strategy Group prepared a proposed Presidential Decree based on the Program and entitled "Main Directions of Ukrainian Securities Market Development in 2001-2005." The Strategy Group also prepared a draft Cabinet of Ministers Resolution entitled "Measures to Implement the Program for Development of the Ukrainian Securities Market in 2001-2005." The group worked closely throughout with officials from the Presidential Administration and Cabinet of Ministers on the form and substance of these documents to build support for their adoption.

The process has been the key to the success of this initiative. The Program represents a truly collective effort with broad input. In particular, the private sector was well represented, spoke up consistently throughout the deliberations, and participated actively in drafting and providing written comments. The Securities Commission chaired each roundtable and approved each step of the process. At the final presentation on December 13, 2000, a Presidential Administration official strongly endorsed the grassroots effort behind the Strategy Group as a model for constructive private and public sector cooperation to solve Ukraine's problems and bring about further market reform. He vowed his best efforts to have the proposed Presidential Decree adopted and the Program implemented.

This Program represents a well-conceived, comprehensive plan to develop Ukraine's securities market over the next five years. If state officials and private sector market participants actively work together to implement the measures herein, the securities market should become a vibrant source of capital for promising companies and an effective mechanism to improve corporate governance and corporate performance in Ukraine.

Hugh C. Patton  
Chief of Party, Ukraine Project  
Financial Markets International, Inc.  
Project funded by USAID

---

<sup>1</sup> The Preface appears in the English translation only.

## **Participants of the Strategy Group**

(Alphabetical order in Cyrillic version)

S. Biryuk, Securities and Stock Market State Commission  
Z. Borisenko, Antimonopoly Committee of Ukraine  
M. Vasina, Cabinet of Ministers of Ukraine  
M. Vasylyn, Secretariat of the Verkhovna Rada of Ukraine  
M. Volkov, Securities and Stock Market State Commission  
O. Vraneshych, NCH Advisors, Inc.  
V. Geyets, Institute for Economic Forecasts  
A. Golovko, Securities and Stock Market State Commission  
V. Gorbatenko, IFC  
V. Gryb, Tekt Investment Company  
E. Grygorenko, Central Administrative Board on Economic Policy Issues, Presidential Administration  
T. Doroshenko, Ministry of Finance of Ukraine  
I. Zhadan, State Property Fund of Ukraine  
L. Zabarilo, State Tax Administration of Ukraine  
I. Zaria, PFTS Association  
V. Zasiadchuk, Ministry of Economy of Ukraine, Agency on Bankruptcy Issues  
I. Zub, Science and Expert Department of the Verkhovna Rada Central Office  
V. Ivchenko, National Depository of Ukraine, SSMSC  
V. Kazadarova, Western NIS Enterprise Fund  
O. Kiy, Professional Association of Registrars and Depositories  
O. Kaptsov, Investment Group Sigma Bleyzer  
A. Kachurina, Investment Group Sigma Bleyzer  
I. Kovalenko, Ministry of Economy of Ukraine  
V. Kovtyukh, Ukrainian Association of Investment Business  
A. Kotenko, Wood&Company  
D. Leonov, Ukrainian Securities market Development Institute  
V. Lisovy, Association of Ukrainian Securities market Participants  
J. Lupenko, Presidential Administration  
J. Lysenkov, Association of Ukrainian Banks  
D. Markov, Ukrainian Interbank Currency Exchange  
A. Mikhnev, World Bank Representative Office  
O. Mozgovy, Securities and Stock Market State Commission  
S. Moskvyn, People's Deputy of Ukraine  
A. Otchenash, AvtoAliance Financial Group  
O. Polokhailo, State Committee of Ukraine on Regulatory Policy and Entrepreneurial Issues  
A. Prygozhina, World Bank Representative Office  
O. Romashko, Securities and Stock Market State Commission  
D. Sapunov, Comex-Brok Custody  
A. Sachivko, State Property Fund of Ukraine  
I. Seletsky, PFTS Association  
I. Selivestrov, Ukrainian Interbank Currency Exchange  
T. Synelnichenko, Presidential Administration  
G. Surovtsev, Ukrainian Stock Exchange

O. Taranov, Institute for Strategic Problems of Economy  
O. Tripolsky, Cabinet of Ministers of Ukraine  
V. Ulianov, National Depository of Ukraine  
A. Fedorenko, KINTO Investment Company  
E. Fedorov, National Bank of Ukraine  
V. Feshchenko, National Security and Defense Council  
V. Kharitsky, Cabinet of Ministers of Ukraine  
M. Shvetsov, Interregional Securities Union Depository (MFS)  
V. Shcherban, Professional Association of Registrars and Depositories  
O. Shytria, State Tax Administration of Ukraine  
S. Jurgelevich, UEPLAC, TACIS  
D. Tarabakin, Dragon Capital

---

The Strategy Group expresses its gratitude to the United States Agency for International Development (USAID) and its contractor Financial Markets International, Inc. (FMI) for assistance in organization of this effort and preparation of the Program.

**USAID:** Hugh Haworth, Viktor Stetsenko

**FMI:** Charles Seeger, Hugh Patton, Olexander Boiko, Nancy Gordillo, Oksana Vasilenko, Tetiana Gurko, Anatoliy Yefimenko, Veronika Kolesnik, Tetiana Kotukhova, Ljubov Pavliukh, Natalia Pauk, Volodymyr Pospolitak, Mykhailo Roiko, Vitaliy Chernenko, Tetiana Uzhun.

Special thanks also to FMI translators and administrative personnel in Kyiv.

**TO: President of Ukraine  
Verkhovna Rada of Ukraine  
Cabinet of Ministers of Ukraine  
Securities market participants**

## **APPEAL**

**by the Participants of the Strategy Group for Development  
of the Ukrainian Securities Market**

Ukraine's national interests require creation of an efficiently functioning national securities market that supports the process of investment and the success of market reforms. The dominate feature of the current securities market in Ukraine is that it primarily services distribution and re-distribution of corporate ownership during privatization and post-privatization. Ukraine needs a liquid, reliable, transparent and efficient securities market that facilitates achievement of Ukraine's national interests and enhances its economic sovereignty. For this purpose, it is necessary:

- to further investments into the real sector of the economy;
- to create an efficient system for protection of the rights and lawful interests of investors;
- to create a system of financial institutions and financial instruments that will attract both internal and external sources of investment;
- to develop a reliable, modern system for executing transactions and recording securities ownership rights;
- to promote concentration and centralization of trading in Ukrainian corporate securities on the organized market on the basis of competition and innovation;
- to implement an efficient system of organized trading that will serve as a reliable indicator of the market value of Ukrainian securities;
- to create conditions that will enhance the competitiveness of the Ukrainian securities market and its orderly integration with international capital markets;
- to prevent the transfer of trading and recordkeeping of ownership of Ukrainian securities to overseas securities markets; and
- to harmonize state policy in the securities market with monetary and credit policies, and budget and tax policies for the purpose of development of the Ukrainian securities market.

The SSMSC together with FMI and USAID initiated the work of the Strategy Group for Development of Ukrainian Securities Market at a roundtable on June 27, 2000 entitled "New Perspectives and Ways of Further Development of the Securities Market in Ukraine." Participants include representatives of state agencies, professional securities market participants and international donor organizations.

This draft "**Program for Development of the Ukrainian Securities Market in 2001-2005**" is the result of the Strategy Group effort.

Participants of the Strategy Group hope that this Program will promote discussion of the pressing issue of Ukrainian securities market development by representatives of all branches of power and will result in real action through approval of the Main Directions of Securities Market Development in 2001-2005 by the President of Ukraine and approval of the measures to implement this Program by the Cabinet of Ministers of Ukraine. The participants of the Strategy Group also urge that the Verkhovna Rada of Ukraine legislatively support the initiatives outlined in this Program.

# Program for Development of the Ukrainian Securities Market in 2001-2005

## Table of Contents

Introduction .....	1
1. Competitiveness of the Ukrainian Securities Market .....	4
2. Tax Incentives for Securities Market Development .....	6
3. Investor-Related Policy .....	9
4. Issuer-Related Policy .....	15
5. Development of Securities Market Infrastructure .....	18
6. Information Transparency in the Securities Market .....	23
7. Training Specialists on Issues Related to the Securities Market and Corporate Governance .....	26
8. An Efficient Market Regulation System. ....	28
9. Development of Legislation Regulating the Ukrainian Securities Market ..	35
10. Mechanism for Implementation of the Program .....	39
Abbreviations .....	40
Unfamiliar Terms .....	41
Measures to Implement the Program for Development of the Ukrainian Securities Market in 2001-2005 .....	42

## **Introduction**

The main trends in development of international securities markets that will determine the further destiny of the Ukrainian securities market are as follows:

- a) globalization of worldwide capital markets, and creation of global trading and clearing and settlement systems for servicing international capital markets;
- b) technologization of capital markets due to an increasing use of new information and financial technologies;
- c) universalization of the activity of financial institutions able to render their clients a full range of financial services, including services in the securities market;
- d) institutionalization, meaning an increase in the role of institutional investors -- insurance companies, pension funds, collective investment institutions -- in making financial investments;
- e) internationalization and "regionalization" of securities market regulation associated with globalization of markets; and
- f) deregulation of financial markets to counteract to their transfer to offshore zones.

Direct foreign investment into the countries of Central and Eastern Europe has been increasing during the last three years, although this region receives only 3 per cent of global investment. In 2000, direct foreign investment will exceed \$1 trillion, including over \$200 billion into developing countries.

### **The Current Situation in the Ukrainian Securities Market**

Soon after gaining independence, Ukraine began to pay attention to the development of its securities market. The laws "On Securities and the Stock Exchange," "On Business Associations," "On Privatization of State Property," and "On Privatization Securities" were passed. In 1991, the first organized market -- the Ukrainian Stock Exchange -- was created. The Presidential Decree "On Investment Funds and Investment Companies," issued in 1994, was a further important impetus to market development. Presidential Decree No. 446 "On the Securities and Stock Market State Commission," dated June 12, 1995, established a Ukrainian agency to regulate the securities market. In 1995, the Verkhovna Rada adopted the "Concept for Functioning and Development of the Ukrainian Securities Market," which laid out a general model for the securities market and principles of its functioning. In the course of five years, development of the securities market has been carried out in accordance with this document.

During this time, fundamental changes have occurred in the Ukrainian securities market:

- the main elements of securities market infrastructure were created;
- the legal framework for securities market regulation was expanded considerably due to passage of the Laws of Ukraine "On State Regulation of the Securities Market in Ukraine" and "On the National Depository System and Specific Features of Electronic Circulation of Securities";
- as a result of privatization, dozens of thousands joint stock companies were created;
- a collective investment industry was formed to service the process of mass privatization;
- local government bodies issued municipal bonds; and
- the foundation was laid for the protection of investors' rights.

The major factors that have had an impact on creation and development of the Ukrainian securities market are:

- the fact that market infrastructure was formed with a view to servicing privatization, and not development of the securities market itself;
- excessive orientation of state policy towards only strategic investors along with preservation of the state stake in the statutory funds of joint stock companies;
- excessive segmentation of Ukrainian securities market regulation and creation of a superfluous regulatory structure;
- delays in conducting large-scale pension reform, which in turn has delayed increase of the capitalization of the Ukrainian securities market;
- absence of a coordinated policy regarding development of securities market legislation; and
- the crisis in world financial markets.

At the current stage, the Ukrainian securities market is not efficient and is characterized by low market capitalization, and insufficient transparency and liquidity. Most securities transactions are completed outside of the organized market. Such a situation in the market does not create incentives for domestic and foreign investors to invest into Ukrainian securities.

In developing a civilized investment process in the economy of Ukraine, further market reforms are impossible without creation of an efficiently functioning securities market that fully provides for realization of Ukraine's national interests.

### **Objectives and Tasks relating to Ukrainian Securities Market Development**

The main goal for the functioning and further development of the Ukrainian securities market should be accumulation of investment resources and their direction toward restoration and further growth of production in Ukraine.

A liquid, reliable and transparent securities market must ensure realization of Ukraine's national interests, and increase its economic sovereignty, by way of:

- furthering the inflow of investments into the real sector of the economy;
- creating an efficient system for protection of the rights and interests of investors (domestic, as well as foreign);
- creating a system of financial institutions and financial instruments that will attract internal as well as external sources of investment;
- creating favorable conditions for development of collective investment institutions, including non-state pension funds;
- further developing a reliable and modern system for execution of transactions and recordkeeping of ownership rights to securities;
- further developing an efficient system of organized trading that will serve as an indicator of the market value of the securities of Ukrainian issuers;
- concentrating and centralizing trading of Ukrainian corporate securities on the organized market, on the basis of competition and innovation;
- preventing the transfer to the securities markets of other countries of trading and recordkeeping of ownership rights to Ukrainian securities;

- creating the conditions for an increase in the competitiveness of the Ukrainian securities market with its further orderly integration into international capital markets;
- harmonizing state policy with respect to the securities market with money-and-credit, currency, budget and fiscal policies in order to develop the Ukrainian securities market; and
- facilitating the servicing of internal and external state debt of Ukraine.

### **Macroeconomic Indicators Relevant to Securities Market Development**

In 2000, the nominal capitalization of the share market reached an amount equal to 24 percent of the gross domestic product (GDP). The volume of share turnover in relation to GDP exceeded the coefficient of monetization. And the market capitalization of shares circulating on the organized market reached almost 9 percent of GDP.

#### **Macro Economic Indicators of the Share Market for 2000-2005 (percent of GDP)**

	<b>2000</b>	<b>2005 (goal)</b>
<b>Nominal capitalization (value of all issued shares at nominal value)</b>	24	35
<b>Market capitalization</b>	8.6	17
<b>Volume of transactions on the market, total</b>	5	20
<b>Volume of transactions on the organized market</b>	2	12

### **Need for a Long-term Development Program**

The priority today is to set out guidelines for state policy in the securities market and to agree on a detailed program for its further development. As the experience of countries with transition economies has proven, successful development of the national market depends to a great extent on an active state policy aimed at its development.

The Program for Development of the Ukrainian Securities Market will establish the objectives, tasks and main directions for development of the market through 2005.

## **1. Competitiveness of the Ukrainian Securities Market**

The securities market of Ukraine, according to the stage of its development and the attendant risks, belongs in the same category as other markets at the initial stage of their growth. It has to compete fiercely for investment resources with other emerging securities markets. The capitalization and trading volume of the Ukrainian securities market is less than that of the markets of Eastern and Central Europe, in particular of Russia. If decisive measures on its development are not taken now, given the ongoing globalization of world markets, trading of the most attractive Ukrainian securities undoubtedly will be concentrated in Berlin, Vienna, Istanbul, Moscow, and so on.

Certain foreign stock exchanges are competing to become centers of trading in the securities of CIS countries and of the countries of Central and Eastern Europe.

The negative consequences of this process for Ukrainian trade organizers, and for the place of Kyiv as Ukraine's financial center, could be:

- mass exodus of foreign investors and financial institutions from the Ukrainian securities market after the end of cash privatization, with post-privatization re-distribution of ownership occurring on more reliable and orderly foreign securities markets; and
- further decrease in volumes on the Ukrainian securities market and its increasing provincialism.

A national securities market must be developed, and the State must involve itself in this process. Given the globalization of financial markets, Ukraine must follow a path of orderly integration with world markets, at the same time being cognizant of its national interests.

Increase in the competitiveness of the Ukrainian securities market and its orderly integration into international capital markets should become the main priorities of state policy with respect to the securities market.

### ***Short-term priorities (2001-2002)***

Reasonable state protectionism toward national institutions of securities market infrastructure.

Implement state regulatory and tax policies more favorable than in neighboring countries. If the State is unable to accelerate deregulation of financial markets and promote competitiveness, more competitive and deregulated markets will "take over" trading activity.

Simplify the procedures for "entering" the Ukrainian securities market by foreign investors.

Provide equal opportunities to securities market participants on the basis of bona fide competitiveness.

### ***Mid-term priorities (2003-2005)***

Implement international corporate governance standards.

Transform Ukrainian securities traders into fully functional, financially stable institutions rendering their clients a wider range of financial services and products.

Encourage the introduction of new financial services, financial products and instruments by the institutions of securities market infrastructure (trade organizers and direct participants of the National Depository System).

Move toward integration with the securities markets of the Eastern European countries, the Baltic states and GUUAM countries (Georgia, Uzbekistan, Ukraine, Azerbaijan, Moldova).

Regulate the processes of integration with the securities markets of the EU countries and Russia, on an orderly basis and with consideration of Ukraine's national interests.

Create a positive image for the Ukrainian securities market through international cooperation within IOSCO and other international organizations.

In the nearest years the biggest problem will be regulatory arbitrage (differences between the expenses of market participants arising from compliance with the regulatory requirements of one or another country), and, in this connection, the process of transferring markets to offshore zones in order to create markets parallel to the onshore alternative.

The economic growth of Ukraine greatly depends on the efforts of the State and market professionals with regard to concentrating the market inside the country and mobilizing financial resources for investment into the real sector of the economy.

## **2. Tax Incentives for Securities Market Development**

Tax incentives for the development of securities market infrastructure, of professional securities market activities, and of the volume of securities transactions and income on those transactions, should be viewed as an important component of state policy to increase the competitiveness of the Ukrainian securities market.

### ***Priorities (2003-2005)***

Implement a special procedure for taxation of securities transactions and income from securities, in that professional activity in the securities segment of the financial markets has specific features and differs from such types of activities as banking and insurance, in particular:

- establish a special procedure for determining financial results and declaring income on transactions in securities and derivatives, for tax purposes, for professional securities traders and their equivalent (institutional investors), different from accounting for, and declaring income on, such transactions for other securities market subjects without the status of securities traders;
- exempt from enterprise profit tax and value added tax non-commercial (not-for-profit) organizations of the securities market (trade organizers, the central depository, voluntary associations of professional participants, funds for the protection of investor rights, etc.) in order to support the functioning of securities market infrastructure whose activity is aimed at protection of the rights and lawful interests of investors, and to reduce the cost of circulation of securities and of securities recordkeeping; and
- exempt from value added tax income from the securities market activities of professional participants whose status is established pursuant to specific legislation, as well as all transactions connected with circulation of securities and derivatives.

Precisely define the object of taxation with respect to certain types of securities market operations, taking into consideration the specific features of those operations: securities issuance, securities placement, securities circulation (commercial, commission and underwriting operations), securities redemption, securities cancellation, collective investment, etc. :

- apply unified approaches to taxation of similar types of securities and other financial instruments of the securities market (shares and investment certificates; financial loans and interest free loans, etc.);
- terminate the practice of categorizing as direct investment the purchase on the secondary market by an investor (personally and by his affiliated persons) of more than 50 percent of the shares of an issuer;
- include in an issuer's income from securities issuance the amount by which the proceeds from secondary placement of securities exceeds the redemption price of such securities; and
- cancel the fee (state duty) for registration of a secondary securities issuance with respect to the amount of the new issuance that includes a previously registered issuance (paying state duty only on the value of the new securities), and cancel the fee for registration of a securities issuance if it is placed on the organized market.

Neutrality of the tax system with respect to currency policy and inflation:

- terminate the practice of tax liability arising from rate differences involved in recalculating investments (including from recalculating investments in shares received in foreign currency into the national currency);
- prohibit tax collection with respect to the indexation of fixed assets in an amount that does not exceed the official inflation rate for the reporting year; and
- exempt from taxation shares (other corporate rights) received by investors, as well as the increase in the nominal value of shares (other corporate rights), resulting from an increase of the statutory fund of a joint stock company (business association) in connection with indexation of fixed and intangible assets.

Apply income tax only to real income from securities ownership and securities transactions:

- in the event of liquidation of an issuer of securities (corporate rights), include in the expenses of an investor, for purposes of taxation, everything invested in the securities (corporate rights), and not just the nominal value of such securities (corporate rights);
- exempt from taxation income on government and municipal securities in order to avoid inefficient and often ineffective tax collection with respect to income from such securities;
- establish in the Tax Code of Ukraine privileged tax status for income of natural persons from the sale of securities acquired in exchange for privatization papers and compensation certificates, or through privileged subscription to shares, during privatization; and
- terminate the practice of arbitrary interpretation by tax agencies of contradictory or undefined legislative norms, and examine the practice of applying these norms retroactively to previous periods; interpret all unclear provisions of tax legislation in favor of taxpayers.

Terminate the practice of taxing funds (property) received through issue and placement of debt or equity securities (corporate rights) to expand business activity:

- exempt from taxation property and funds received by a company-taxpayer from investors fulfilling investment obligations pursuant to purchase and sale contracts for state-owned blocks of shares during privatization of the company; and
- eliminate tax discrimination with respect to borrowing companies when they receive long-term financial resources from legal entities and natural persons in the form of interest free loans.

Provide incentives for investors to reinvest income received (accrued) on securities:

- exempt from profit tax a companies' profit that is reinvested with increase of the statutory capital of the business association (capitalization);
- exempt from profit tax dividends paid (accrued) to legal entities and natural persons in the form of shares (units, stakes) issued by the company that accrued the dividends;

- establish in the Tax Code of Ukraine an exemption from taxation for income of natural persons invested by them into the source of such income to acquire securities (corporate rights) or to develop production; and
- exempt from taxation the growth in the nominal value of shares (corporate rights in forms other than securities) that results from increase of a business association's statutory fund through capitalization of profits.

Apply the national tax regime to non-residents' income on transactions in securities (corporate rights) and derivatives and income on them:

- apply the national tax regime to the income of non-resident investors, including with respect to payment of dividends and repatriation of income received in connection with corporate rights.

Eliminate double taxation of income with respect to securities transactions and collective investments:

- exempt from income tax collective investments of investment funds and mutual funds of investment companies;
- terminate the practice of double taxation of dividends accrued to investors in collective investment institutions and companies; and
- assign, for taxation purposes, the status of dividends to income accrued to the owners of investment certificates.

Administrative taxes and other mandatory payments based on equal application of the law:

- apply tax liens on collateral for tax debts of professional securities market participants only on specific, individually defined property (funds) owned by them, in an amount not exceeding double the amount of the debt; and implement mandatory notary certification of such tax lien;
- revoke the prohibition, which arises upon application of a tax lien, for securities traders and other non-bank financial institutions, the main activity of which is financial investment, to make direct or portfolio investments and to purchase debt securities;
- prohibit the use, to cover tax debts of banks and non-bank financial institutions, of funds and property transferred into trust management, or received on the basis of a lease (rent) agreement, or a commission or custody contract, as well as on the basis of other civil and legal contracts not envisaging transfer of ownership rights to the funds or property;
- allow forceful seizure of assets that are the subject of a tax lien for tax debts of professional securities market participants exclusively by court decision; and
- simplify the procedure for natural persons to declare income received from purchase and sale of securities (corporate rights) and derivatives.

### **3. Investor-Related Policy**

Economic growth of the State is impossible without creation of favorable conditions for investment by domestic and foreign investors.

The principal parameters that determine the investment climate and influence the amount of investment into the Ukrainian economy are:

- macroeconomic and financial stability;
- rationality of State administration, GoU policy and the policies of local governments;
- rationality of the legislation that regulates economic processes;
- enforcement;
- the stage of liberalization of the economy;
- the effectiveness of mechanisms to protect ownership rights;
- corporate governance development and information disclosure;
- the effectiveness of the tax system and the scope of taxation;
- stability of the banking system and non-bank financial institutions;
- administrative, technical, informational, and other aspects related to entering the market; and
- development of securities market infrastructure.

Improvement of the investment climate should become a priority of state policy with respect to the securities market for the period of 2001-2005.

#### **Protection of investors' rights**

Violation of investors' rights, lack of transparency, and low liquidity of the securities market are significant impediments to inflow of domestic and foreign capital.

The following wide-spread violations of investors' rights diminish confidence in the Ukrainian securities market:

- violations by issuers of the procedure for holding a general shareholders meeting;
- adoption by issuers of statutory norms that restrict the rights and interests of investors;
- violation of the procedure and terms for payment of dividends;
- non-compliance with legislation on the procedure for share placement, and violation of investors' interests during issuance of securities;
- violation of investors rights during bankruptcy, sanation, reorganization or liquidation of a company;
- late and incomplete disclosure of information on the activities of an issuer; and
- violation by infrastructure institutions of the requirements of securities market legislation.

Creation of effective system for protection of investors' rights is only possible through a combination of efforts of the legislative, executive and judiciary branches of power, public organizations, mass media, issuers and investors themselves.

### ***Short-term priorities (2001-2002)***

Establish strict control by executive agencies over compliance with legislative norms by issuers and professional securities market participants.

Lower the tax burden in the securities market to create favorable conditions for investors.

Implement, within the limits of effective legislation, mechanisms for protection of investors' rights during reorganization, liquidation, bankruptcy or sanation of issuers.

Create conditions that will allow securities market participants, within the limits of effective legislation, to combine blocks of shares and resources for joint coordinated activities.

Guarantee securities market transparency and improve the system of information disclosure to provide investors with reliable information about issuers and the value of securities in order to achieve effective capital distribution.

Implement educational programs for investors on protection of their legal rights and interests, stimulate development of investor/shareholder associations, implement training programs for judges, and establish litigation support centers.

Adopt laws of Ukraine "On Joint Stock Companies," and "On Introduction of Changes and Amendments to the Law of Ukraine 'On Securities and Stock Exchange.'"

### ***Mid-term priorities (2003-2005)***

Bring legislation on investment activities into compliance with legislation of the EU countries and with EC Directives.

Adopt relevant amendments and additions to the civil procedure, arbitration procedure, currency, banking, and tax legislation, as well as legislation regulating the securities market.

Establish effective protection mechanisms that will stimulate investors to independently protect their rights, including introduction of class actions.

Draft and adopt legislative norms that clearly define "affiliated persons" and regulate their activities.

### **Corporate Governance Development**

Corporate governance in Ukraine should further coordination between the interests of shareholders and management bodies of joint stock companies (elected and appointed) and comply with generally accepted international standards.

Currently, joint stock companies can violate shareholder rights without technically violating the provisions of company law, by means of:

- diluting shareholder stakes in the statutory fund (capital) through placement of shares among a defined circle of shareholders at a price considerably lower than the market price, and denying other shareholders the right to acquire shares of the additional issuance;
- stripping a company's assets by selling them to affiliated persons at a price lower than the market price;
- redirecting cash flows for the benefit of individual officials or large shareholders; and
- concluding transactions with a subsidiary business entity to enrich persons who control this entity and not shareholders of the parent company.

### ***Priorities (2001-2005)***

Completion, by executive agencies, of a series of organizational measures, in particular:

- provide recommendations to JSCs on inclusion in statutory and internal documents of norms providing for representation of minority shareholders in the company's management bodies through cumulative voting, as well as for prior approval by the general shareholders meeting of major transactions and of transactions in which JSCs officials or controlling shareholders have a personal interest;
- incorporation by the State Property Fund of Ukraine in the charters and internal documents of joint stock companies, in which the State has a majority ownership interest, of provisions that protect investor rights within the parameters of effective legislation;
- inform joint stock companies and shareholders -- through mass media and special education programs -- about provisions for the protection of investor rights; and
- concentration of SSMSC attention on compliance with corporate governance norms by those JSCs that have many small shareholders.

Adoption of a law "On Joint Stock Companies" that incorporates principles of effective corporate governance (including those outlined in the Organization for Economic Co-operation and Development's "Corporate Governance Principles"), including:

- protection of shareholders from dilution of their stakes in the statutory fund (capital) by requiring joint stock companies to place securities only at market value and providing owners of common shares with a preemptive right to acquire shares of an additional issuance;
- purchase and sale by a company of its own shares only at the market price in order to prevent enrichment of affiliated persons;
- protections with respect to conclusion of transactions in which an official of the company or a controlling shareholder has an interest (transactions with participation of affiliated persons);
- implementation of cumulative voting to ensure representation of minority shareholders in the management bodies of a company;

- requiring a person who acquires a control block of shares to offer to all other shareholders to buy their shares, unless the general meeting adopts a decision on waiver by shareholders of the statutory right to sell their shares to such person;
- requiring that the most important decisions are adopted by a simple or qualified majority of shareholders-owners of common shares, and not by a relative majority;
- providing a mechanism for shareholders to waive their preemptive right to acquire additionally issued shares;
- procedure for introduction of amendments and/or additions to the statutory and/or internal documents of a company;
- procedure for adoption of a decision on increase or decrease of the statutory fund (capital);
- lowering requirements for the quorum of a recurrent shareholder meeting;
- procedure for approval of the amount of dividends;
- procedure for adoption of decisions on reorganization or liquidation of a company;
- procedure for election of the supervisory board of a company; and
- procedure for approval of the company's auditor.

### **Foreign Investors**

Pursuant to the Laws "On the Regime for Foreign Investment," "On Elimination of Discrimination in Taxation of Subjects of Entrepreneurial Activity Created with Property and Funds of Domestic Origin," and "On the Procedure for Settlements in Foreign Currency," and the Decree of the Cabinet of Ministers of Ukraine "On the System of Currency Regulation and Currency Control," the national regime for investment and other business activities applies also to foreign investors, with exceptions envisaged by Ukrainian legislation and international treaties of Ukraine. The SSMSC regulates Issuance and circulation of securities in Ukraine, as well as circulation of securities of residents and non-residents. Pursuant to Commission regulations, an approval system exists for circulation of foreign securities, as well as for circulation of Ukrainian securities outside of Ukraine.

### ***Short-term priorities (2001-2002)***

Apply, in legislation, the national regime broadly to the investment activities of foreign investors.

Liberalize cash settlements on transactions in securities with participation of non-residents.

### ***Mid-term priorities (2003-2005)***

Ensure, as per the Agreement on Partnership and Cooperation between Ukraine and the European Union, approximate adequacy of laws in the following areas: company law, financial services, accounting and taxation.

Promote uninterrupted flow of investment capital into and out of Ukraine.

### **Institutional Investors**

Investment funds and mutual funds of investment companies created pursuant to the Regulation on Investment Funds and Investment Companies approved by the Decree of the President of Ukraine dated February 19, 1994 have played an important role in developing the investment process in Ukraine and in conducting mass "certificate" privatization of state property during the last five years. The main function of these institutions was accumulation of funds and privatization certificates from citizens of Ukraine and their further investment, through certificate auction centers, in shares of enterprises undergoing privatization.

Securities traders and investment companies manage the assets of investment funds in Ukraine. This situation was appropriate at the initial stage of securities market development, but now may hinder the development of collective investment institutions.

Existing investment funds and companies have completed their role as part of the mechanism for "certificate" privatization and have almost no prospects for further development. During the next few years, the majority of these institutions will be liquidated.

During the transition period when existing investment funds and mutual funds of investment companies are being liquidated or transformed, it is necessary to prevent abuses during settlements with participants of these financial institutions.

#### ***Priorities (2001-2005)***

Transform existing investment companies and funds through:

- monitoring the transformation (liquidation, reorganization, or change of type) of investment funds and mutual funds of investment companies along with quick SSMSC reaction to problems that arise during the transformation;
- development and improvement of the SSMSC normative framework on management of investment fund assets, based on international standards;
- organization by the SSMSC of training and certification of specialists on management of investment fund assets, based on international standards;
- introduction by the SSMSC of a procedure for licensing professionals that manage investment fund assets;
- implementation by the SSMSC of regulatory oversight over managers of investment fund assets;
- implementation by the SSMSC of regulatory oversight over managers of collective investment institution assets; and
- creation by professional market participants of a self-regulatory organization of investment managers of investment fund assets.

Create qualitatively new collective investment institutions, namely corporate and unit investment funds, and ensure that their activities conform to international norms and standards, in order to activate the investment process in Ukraine.

Require that management of the assets of collective investment institutions and non-state pension funds be an exclusive activity.

Adopt laws of Ukraine "On Collective Investment Institutions (Corporate and Unit Investment Funds)" and "On Non-State Pension Funds," and the relevant normative acts of state executive agencies, to envisage:

- protecting the rights and lawful interests of private investors;
- eliminating conflicts of interest between the various entities that make up the system of collective investments;
- incorporating the requirements and recommendations of international organizations in the area of collective investments;
- minimizing the internal expenses of the collective investment system born by investors; and
- influencing public opinion by exposing the target audience to positive images of new collective investment institutions.

## **4. Issuer-Related Policy**

### **Securities Issuers**

Securities issuers in Ukraine are: the Cabinet of Ministers of Ukraine (CoM), National Bank of Ukraine, local self-government bodies, enterprises, commercial banks and investment funds.

Applicable resolutions of the CoM regulate the terms of issue, circulation and redemption of government securities.

Normative acts of the SSMSC regulate issuance of securities by local governments as well as issuance and circulation of corporate securities.

Industrial enterprises and commercial banks are the most active issuers in the securities market. Shares are the most prevalent financial instrument.

The condition of the majority of joint stock companies -- the primary issuers in the securities market in the post-privatization period -- is characterized by the following:

- the main directions of companies' activities, the range of products and the quality standards remain the same as before privatization;
- obsolete management techniques and obsolete incentive systems remain in place;
- easy use of money surrogates (veksels) enables companies to maintain business activity at a minimum level, while avoiding bankruptcy;
- small shareholders are numerous, do not coordinate their activities, and thus do not have a significant influence on company activities; and
- the corporate governance culture is inadequate.

The securities market has not yet become the main vehicle for attraction of capital by joint stock companies. The primary reasons (in addition to macroeconomic) are as follows:

- lack of transparency in the financial and business activities of enterprises;
- improper corporate governance and violation of shareholder rights by management bodies of joint stock companies and owners of control blocks of shares;
- low capitalization of the securities market, which reduces investors' demand for securities of Ukrainian issuers;
- absence of a transparent pricing mechanism in the securities market; and
- absence of proper enforcement in the securities market, and numerous cases of market manipulation and fraud.

### ***Short-term priorities (2001-2002)***

Improve the corporate governance of issuers.

Ensure transparency with respect to the financial and business activities of issuers.

Create favorable conditions for issuers to attract capital in the securities market by simplifying the procedure for registration of a securities issuance.

Promote evaluation and rating of corporate governance by private agencies.

Create an effective mechanism for management of the State's shares of joint stock companies.

Initiate enterprise restructuring and/or bankruptcy for unprofitable enterprises.

Increase the effectiveness of regulatory oversight, inspections and enforcement, and elaborate measures to prevent fraud and market manipulation.

Further develop the system for training and improving the qualifications of issuers' employees.

#### ***Mid-term priorities (2003-2005)***

Draft normative acts to regulate the procedure for receipt by investors of profit from ownership of corporate rights.

Introduce into legislation a definition of "public tender" -- when an investor achieves a certain level of enterprise ownership, he shall announce a public tender at a defined price and give small shareholders the opportunity to exit their investment.

Develop an action plan to reduce the number of open joint stock companies through their transformation in other organizational forms.

Define in legislation "restructuring," "enterprise asset stripping" and "share dilution."

Implement measures to protect the rights of issuers, first of all of strategically important enterprises, monopolists, banks, collective investment institutions and insurance companies, by regulating the process of acquisition of major and controlling blocks of shares and requiring disclosure of information about the acquirer.

#### **Development of Financial Instruments to Improve Investment Opportunities**

Although a large number of joint stock companies were created as a result of privatization in Ukraine, market capitalization is small and only a limited group of securities trade on the secondary market.

#### ***Short-term priorities (2001-2002)***

Divide, in legislation, all existing market instruments into those offered for "public circulation" and others.

Increase the types of debt securities, particularly with respect to developing different types of bonds for different classes of investors, after improving the legal framework for their issue and circulation.

Enact the legislative prerequisites for securitization of assets and debt instruments of enterprises.

Introduce mortgage securities into circulation.

Increase the SSMSC's powers to regulate issue and circulation of different types and categories of financial instruments.

***Mid-term priorities (2003-2005)***

Create a market for derivatives.

Use pilot projects to accelerate the appearance of the new financial instruments.

Enact an adequate legislative basis for underwriting.

Allow local governments to issue municipal bonds for certain potentially profitable and important programs.

## **5. Development of Securities Market Infrastructure**

The institutional infrastructure of the securities market should provide for its efficient functioning, serve the national interests, and ensure the economic safety and sovereignty of Ukraine.

### **Development of the Organized Market**

Today's trading infrastructure of the Ukrainian securities market, consisting of stock exchanges and trading and information systems, primarily services the privatization and post-privatization process of distribution and redistribution of corporate ownership.

The Ukrainian securities market does not promote effective attraction and distribution of capital. As a result:

- the size of the organized market for corporate securities in Ukraine is insignificant as measured by its market capitalization and by the volume of securities transactions;
- the non-organized market substantially exceeds the organized market; and
- on the non-organized market, transactions with vekseles prevail.

Global tendencies in securities market development require concentration of trading in corporate securities on the organized market, on the basis of competition and innovation:

- trade organizers must provide an efficient trading platform, along with financial products that clients need at a price they are willing to pay.

### ***Short-term priorities (2001-2002)***

Create conditions for information exchange based on modern technologies between organized markets to provide investors with timely and complete information necessary to make investment decisions.

Concentrate trading in liquid corporate securities on the organized market.

Achieve fair pricing by improving the competitive environment.

Create an efficient system for disclosure of information about listed companies.

Organize a system for disclosure of information about the main organized market indices.

Elaborate, with the participation of SROs, measures on prevention of market manipulation, unfair trading practices, and ethical violations in the securities market.

### ***Mid-term priorities (2003-2005)***

Create conditions for transparent price formation, so that prices on the organized market become the basis for evaluation of the assets of collective investment institutions and well as the basis for taxation.

Create an efficient system to closely regulate trading involving affiliated persons, both through government regulation and self-regulation by professional market participants.

Require that transactions with large blocks of Ukrainian securities be concluded on the organized markets.

Create equal conditions for secondary market trading that apply to any trade organizer.

Create conditions for trading in shares of young growth companies (start-up companies) on the organized market.

Create conditions for trading in foreign securities on the organized market.

Implement measures for placement of securities by Ukrainian issuers on the organized market.

Develop technologies for trading in derivatives on the organized market.

Ensure that clearing and settlement of derivatives is performed by trade organizers.

Implement electronic document circulation during conclusion and execution of transactions in corporate securities; adopt unified standards and certification requirements for electronic signature and data encoding systems, suitable for any technological systems that support functioning of Ukrainian securities market infrastructure.

### **National Depository System**

Development of the National Depository System as a complete, transparent and reliable system for recording rights to securities and execution of securities transactions is a necessary prerequisite for the further development of the Ukrainian securities market. During the period of formation of the national securities market and its development to a stage that allows for realization of Ukraine's national interests, recordkeeping of ownership rights to shares of Ukrainian issuers must be performed exclusively in Ukraine.

The existing system of recordkeeping has been successful with respect to corporate rights of privatized companies. A two-level depository system, headed by the National Depository of Ukraine and a functioning depository, the "Interregional Stock Union (MFS)," services circulation of securities in non-documentary form. The current recordkeeping system, however, with respect to registered securities in both documentary and non-documentary form, requires correction and further development.

The National Depository System should provide for registration of rights to securities: in registries of securities owners for purposes of providing services related to corporate governance and payment of income on securities; and in securities accounts at depository institutions for purposes of circulation of emission securities on the organized market.

In this case, recordkeeping of rights to securities should be performed both by registrars and depository institutions according to a single set of rules that specify the procedure for such recordkeeping.

The National Depository System of Ukraine should protect securities owners by reducing the risks associated with circulation of emission securities and strictly regulating the distribution of risks associated with execution of transactions. The system for execution of securities transactions and registration of ownership rights should prevent fraud and other abuses, enhance guarantees of timely payment for purchased securities, and ensure a high level of safekeeping of securities.

### ***Short-term priorities (2001 - 2002)***

Create in Ukraine a single clearing depository for corporate securities, allowing professional market participants to have a majority of the votes in the depository's supervisory board, while reserving a limited right of veto for the State on issues that could threaten the national interests and economic sovereignty of Ukraine.

Grant to the central clearing depository for corporate securities the status of a financial institution with a limited license to perform necessary cash settlement functions at the National Bank of Ukraine.

Implement standards with respect to the activities of direct participants of the National Depository System for securities recordkeeping based on modern financial and information technologies.

Implement "delivery versus payment" for corporate securities transactions, including the possibility of guaranteed settlements.

Implement a mechanism to approximate "delivery versus payment" for corporate securities off-shore transactions between non-resident investors.

Simplify the procedure for immobilization of securities issued in documentary form.

Reduce excessive SSMSC requirements with respect to the form for registered security certificates.

Ensure that custodians and registrars function in cooperation with the clearing depository for corporate securities in accordance with uniform rules and within a uniform system for circulation of documents.

Impose mandatory technological consolidation of registrars that maintain registries of listed companies with the clearing depository for corporate securities, on the basis of electronic circulation of documents and electronic signature.

Impose limits on the level of any person's share in the statutory capital of a registrar, and simultaneously prohibit the owners of a registrar from owning a block of shares of an issuer whose registry is maintained by that registrar, in an amount that exceeds specified restrictions.

Create a signature guarantee system on the basis of bilateral and multilateral agreements between professional participants of the National Depository System.

### ***Mid-term priorities (2003 - 2005)***

Ensure proper functioning of the single central clearing depository for corporate securities.

Implement measures to promote formation of financially reliable domestic custodians capable of providing a wide range of custody services, including to institutional investors.

Implement measures to reduce the risks associated with securities settlement.

Institute mandatory insurance for risks associated with the primary activities of direct participants of National Depository System.

Require maintenance of back-up copies of the registry of securities owners in the central clearing depository for corporate securities, in a format that will enable restoration of the registry system in case of loss.

Authorize non-bank custodians to conduct operations with investment-related cash accounts of depositors.

Promote the policy that derivatives clearing and settlement activity should be conducted by trade organizers.

Simplify the mechanism for settlement of securities transactions to create an incentive for execution of monetary settlements in Ukraine, not outside of the country.

Stipulate in law that *registered emission securities* are securities with respect to which information on the owners is available to the issuer in the form of a registry of securities owners, and transfer or exercising of rights to which requires mandatory identification of the owner. Further stipulate that, if securities are in *documentary form*, it means that the holder can be identified on the basis of a securities certificate or, if the securities are deposited, on the basis of securities account records with a depository institution; further stipulate that if securities are in *non-documentary form*, it means that the holder can be identified on the basis of records in the registry of securities owners or, if the securities are deposited, on basis of securities account records with a depository institution.

Ensure that currency, tax, banking and securities market legislation promotes the creation of a reliable and efficient system of recordkeeping with respect to, and execution of transactions in, Ukrainian corporate securities and derivatives.

Develop a Program for Ukraine's Joining the European Central Securities Depositories Association (ECSDA), which should encompass the following fundamental principles:

- creation in Ukraine of a clearing and settlement system which, based on its organizational and technical capabilities, can be integrated with similar systems of EU countries;
- creation in Ukraine of National Standards for Settlement Systems which comply with EU Standards for Settlement Systems (SSS);
- establishment of correspondent relations between the Ukrainian central clearing depository for corporate securities and the central depositories of the European Union; and

- implementation of measures to integrate the clearing and settlement system with corresponding EU systems.

### **System of Electronic Document Circulation in the Securities Market**

Market infrastructure should provide efficient information and telecommunication support for the activities of professional market participants. A shared problem of paramount importance for further development of all sub-systems of the organized market is the need to implement electronic document circulation during conclusion and execution of transactions in corporate securities, adopt uniform standards and certification requirements for electronic signature systems, and implement data encoding suitable for use in all technological systems that support functioning of Ukrainian securities market infrastructure.

### ***Priorities (2001-2005)***

Include in the system of electronic document circulation all direct participants of the National Depository System that perform securities recordkeeping. Ensure that the system of electronic document circulation provides for closed access to information in order to prevent unlawful copying, entries, dislocation, blocking, or any other operations that result in a change of owner or that limit exercise of rights to securities.

Provide for electronic document circulation between the central clearing depository for corporate securities and trade organizers. The system of electronic document circulation should provide for closed access to information in order to prevent unlawful interference with execution of transactions in the National Depository System.

## **6. Information Transparency in the Securities Market**

A comprehensive system of disclosure of information about securities market participants is a necessary prerequisite for functioning of the market and for successful investment and professional activity in the market.

An efficient system of disclosure, capable of satisfying the market's informational needs, is still in its formation stage in the Ukrainian securities market.

The following problems exist with respect to disclosure of information in the securities market:

- the investment community has almost no access to information, or is able to access information only after it is out-of-date;
- compliance with existing disclosure requirements is time consuming and costly;
- securities market participants do not sufficiently understand the importance of systematic and comprehensive disclosure of information, which results in a lack of regular, reliable, full, and up-to-date information in the market;
- at a time when world markets have been moving toward creation of a generally accepted international system of financial reporting, which is a central component of information disclosure, Ukraine's National Accounting Standards (NAS), developed on the basis of International Accounting Standards (IAS) but taking into consideration the specific features of Ukraine, contain considerable discrepancies with IAS; and
- poor quality of auditing of issuers' financial statements.

Information disclosure in the securities market should comply with the principles of authenticity, importance, timeliness, and intelligibility.

A comprehensive system of disclosure of information about securities market participants must address:

- securities transactions on the organized and non-organized markets (prices and volumes);
- information with respect to securities offered for open sale;
- regular information on the results of financial and business activity of open joint stock companies and enterprises that have issued bonds;
- information on any financial or business activity of open joint stock companies and enterprises that have issued bonds that is likely to influence the securities' value (special information);
- information on the owners of large blocks of shares (10 per cent or more) of open joint stock companies and enterprises that have issued bonds, and on the ownership of securities by issuers' officials;
- conditions of securities listing;
- conditions for redemption of their shares by open joint stock companies and other provisions of company charters; and
- decisions of general shareholder meetings of open joint stock companies.

The SSMSC should ensure free access to information on the securities market and its participants that is required to be disclosed by law and that falls within its jurisdiction.

### ***Short-term priorities (2001-2002)***

Adoption by the SSMSC of a "Concept for Information Disclosure in the Securities Market," pursuant to this Program.

Introduction of international disclosure standards in the securities market -- International Accounting Standards (IAS) of the International Accounting Standards Committee and international standards for information disclosure of the of the International Organization of Securities Commissions (IOSCO) -- by way of:

- the SSMSC's allowing issuers to report on the basis of IAS and, most importantly, recommending IAS for listed companies;
- publishing in the official language of Ukraine the text of IAS and of IOSCO's international standards for information disclosure;
- differentiating the requirements, with respect to both frequency and composition, for regular information filed with the SSMSC by issuers, based on an issuer's position in the market;
- envisaging in SSMSC regulations the possibility of professional securities market participants, investment funds and non-state pension funds reporting on the basis of IAS;
- the SSMSC's recommending to trade organizers that their listing standards allow issuers to report on the basis of IAS;
- developing methods to transform the financial statements of different categories of market participants, starting with issuers, that have been prepared in accordance with NAS into financial statements that comply with IAS;
- making changes and additions to NAS so that they comply with IAS; and
- conducting training programs on use of IAS for issuers (starting with listed companies that have the highest trading volumes), professional market participants, investment funds and non-state pension funds.

Increase the responsibility of securities market participants and their officials, as well as of officials of regulatory agencies, for non-compliance with information disclosure requirements, and implement an efficient mechanism for imposing sanctions. These persons should be sanctioned upon failure to file information, untimely filing of information, and filing of false information.

### ***Mid-term priorities (2003 - 2005)***

Bring the normative acts of executive agencies into conformity with international disclosure standards.

Institute a requirement that listed companies, professional securities market participants and collective investment institutions comply with international disclosure standards.

Create an efficient, integrated system for collection and disclosure of information on securities market participants, in particular:

- create a network of information disclosure centers using the resources of the SSMSC, self-regulatory organizations and professional securities market participants;

- create a database on securities market participants that is updated in a timely manner by way of those participants independently entering information via remote access, and provide access to the information through the Internet;
- adopt the Law of Ukraine “On Electronic Document Circulation and Electronic Signature” in order to assure users that information entered into the database via remote access will be protected;
- have the SSMSC delegate authority to SROs to collect and disclose information on professional market participants, with SSMSC oversight over fulfillment of this delegated authority;
- shorten the deadline for issuers to publish their annual report from nine to six months of the year following the reporting year; and
- support the activities of private information and rating agencies as well as mass media that facilitate disclosure of information in the securities market.

Reform audit activity in the securities market in accordance with international accounting and audit standards:

- bring into conformity the laws “On Audit” and “On Accounting and Financial Reporting in Ukraine” with respect to public accounting and reporting;
- implement licensing of auditing firms (auditors) that audit financial statements prepared in accordance with IAS; and
- have the SSMSC exercise regulatory oversight to ensure that, while auditing the financial reporting of securities market participants and drawing up an auditor’s opinion, national audit standards are observed.

## **7. Training Specialists on Issues Related to the Securities Market and Corporate Governance**

### **Educational Policy and the Securities Market**

One of the most important preconditions for further development of the securities market is the availability of qualified specialists. The main goal of education policy with respect to the securities market and corporate governance is to establish an efficient, national system for training, retraining, and raising the qualifications of Ukrainian securities market and corporate governance specialists.

Realization of this policy will make it possible to:

- create a comprehensive, continuous program that prepares securities market and corporate governance specialists using advanced techniques and international experience in this sphere;
- raise the level of training and certification of domestic securities market specialists up to international standards;
- ensure that current and future needs of the national economy are fulfilled, in particular the need of the Ukrainian securities market for specialists having knowledge in the field of market relations and certified to conduct professional securities market activity; and
- coordinate the activities of ministries and agencies, scientific and educational establishments, business associations of professional market participants, and securities market experts with respect to training securities market specialists;

#### ***Priorities (2001-2005)***

Train specialists on two levels: basic and advanced specialized.

Include within basic training of specialists a system to allow first time university students to major in the securities market and corporate governance, as well as a system to allow those with a university degree in another area of concentration to receive a second university degree in the securities market and corporate governance.

Pursuant to Presidential Order No. 271/200-rp "On Creation of a System for Training, Retraining and Raising the Qualifications of Specialists with respect to Securities Market Concepts and Corporate Governance in Ukraine," issued August 27, 2000, develop new concentrations within existing specializations at the masters level:

- specialization "finance" -- concentration "securities market";
- specialization "jurisprudence" -- concentration "securities market and corporate law";
- specialization "international economics" -- concentration "international securities markets"; and
- specialization "microeconomics" -- concentration "corporate governance."

Conduct advanced specialized training in the appropriate educational establishments licensed by the Ministry of Education and Science, in line with existing categories of training and certification programs for specialists. The training program should be approved by the SSMSC.

The SSMCS should create a database of all certified specialists in the Ukrainian securities market in order to monitor and oversee the process of training and certifying securities market specialists, and disclose this information.

To coordinate training activities, the SSMSC should submit to the appropriate professional associations and organizations engaged in certification of specialists its proposals with regard to the content of training programs for those specialists that provide services to professional securities market participants (auditors, appraisers, etc.).

In order to systematize professional securities market activity and ensure its effectiveness, introduce detailed qualification requirements for specialists of professional securities market participants. Such qualification requirements are an integral part of licensing as a form of government regulation.

Establish the level of a specialist's knowledge by examination. Conduct specialized qualification exams by type of professional activity, in accordance with current legislation.

Establish a minimum level of qualification for each separate type of securities market specialist -- a minimum set of questions that must be answered correctly to qualify a specialist to manage or execute transactions at a professional securities market participant. Ensure that this minimum level includes questions that demonstrate a comprehensive knowledge of current legislation as well as the fundamentals of the specific type of professional activity.

Ensure that professional securities market participants receive a license from the SSMSC only if they have a sufficient number of specialists who have successfully passed the corresponding qualification exams.

Re-certify specialists not less than once in 3 years.

## **8. An Efficient Market Regulation System**

### **Principles, Objectives and Tasks of Government Regulation**

Development of the system of government regulation of the securities market, and formation of the agencies that regulate the Ukrainian securities market along with delineation of their powers and jurisdiction, occurred simultaneously with market reforms and the search for optimal methods of government regulation of the economy as a whole.

The legal basis for government regulation of the securities market was established by the Law of Ukraine "On State Regulation of the Securities Market in Ukraine," passed by the Verkhovna Rada on October 30, 1996. Pursuant to this law, government regulation of the securities market is performed by the SSMSC, which is subordinated to the President and accountable to the Verkhovna Rada. Other state agencies (the State Property Fund, Ministry of Finance, National Bank and Antimonopoly Committee), continue to regulate the activity of securities market participants within the scope of their powers established by legislation.

The current stage of government regulation of the securities market is characterized by the following:

- active securities market development requires an increase in the regulatory and administrative powers of the SSMSC with respect to enforcement;
- existing legislation grants executive agencies the power to exercise considerable influence over the activities of securities market participants by adopting normative acts on issuance of securities (including municipal bonds, veksel, etc). The consequences of such executive agencies' influence may prove to be unexpected; and
- The SSMSC's budget, labor and telecommunication resources are limited, and the agency suffers from unqualified staff and constant staff turnover.

The key principles for increasing the effectiveness of government regulation should be:

- definition of the powers of the State as a whole and the distribution of those powers among individual executive agencies;
- independence of executive agencies regulating the securities market from political pressure or illegal intervention by interest groups;
- reporting by executive agency officials with respect to execution of the functions and powers granted them;
- consistency of regulation and coordination of the activities of separate executive agencies; and
- maintenance of high professional standards by the staff of executive agencies regulating the securities market.

The principle of definition of the powers of the State requires a precise determination of the functions and powers of specific executive agencies; granting those agencies precisely defined means to exercise their powers; establishing constructive interaction of executive agencies, along with a single coordination body for development of government policy with respect to the securities market; and establishing liability for both government officials and market participants.

The principle of executive agency independence requires establishment of adequate legal protection for agency employees; sufficiency of agency financing and logistical support, within socially acceptable levels; and establishment of constructive interaction with law-enforcement agencies with regard to protecting the independence of executive agency officials from illegal interference with their activity.

The principle of reporting by executive agency officials with respect to execution of their powers requires press-conferences on the situation in the Ukrainian securities market; making reports public through mass media; and establishing communications with securities market participants.

The principle of consistency in the regulatory activities of separate executive agencies requires strict compliance by these agencies with the course of economic reforms specified by the President of Ukraine, Verkhovna Rada of Ukraine, and the GoU; actions that are understandable to market participants (including the population as investors); and establishment of a procedure for participation of SROs in decisions of principal importance to the market.

The principle of maintenance of high professional standards by the staff of executive agencies regulating the securities market requires that agency employees conform to the highest professional standards and precise rules with respect to their various activities, including avoiding conflicts of interest (e.g., when buying or selling securities or exercising regulatory oversight over market participants); use information obtained in the course of exercising the powers of the State only for purposes directly stipulated by effective legislation; strictly comply with confidentiality rules when working with restricted information; prevent disclosure of information that could cause unjustified financial or reputational damage to market participants or executive agencies; and exercise government powers impartially. It is important that there be a mechanism for recusal (by analogy to judicial power) when there exists a conflict of interest in the course of exercising official duties.

The following should be the priority objectives for government regulation of the securities market:

- provide for protection of investor rights; transparency, fairness and efficiency of the securities market; and a decrease in the risks faced by market participants related to securities transactions;
- promote fair competition in the securities market, accumulation of capital by its participants, and economic growth of the nation;
- create an atmosphere of trust among domestic participants of the securities market, as well as among potential investors;
- create favorable conditions and equal opportunities for professional securities market participants satisfying precisely defined requirements to operate in the securities market;
- implement incentives to attract new participants to the securities market, and optimize securities market entry procedures;
- improve coordination between state agencies themselves, and between state agencies and SROs, with respect to securities market regulation, inspections and enforcement;
- facilitate the introduction of new types of financial instruments to the market;
- implement a unified, systematic approach to the development of securities market legislation, bringing it into compliance with EU legislation; and

- ensure transparency of information at government regulatory agencies, providing free access to the information they have available to them.

### ***Short-term priorities (2001-2002)***

Recognize the SSMSC as the main coordination agency for development of state policy with respect to the securities market.

The SSMSC should adopt a single approach to licensing and regulating banks and non-bank financial institutions in the securities market.

Optimize government regulation of the securities market and increase the effectiveness of self-regulation by decreasing the number of SROs according to the principle -- one SRO per one type of professional activity.

The SSMSC should follow a single policy in its monitoring of all professional market participants.

To accomplish the defined tasks in the sphere of government regulation, it is necessary to:

- determine an efficient organizational structure of the SSMSC as a real collegial body;
- optimize the structure, functions and powers of the SSMSC to regulate the entire non-bank financial sector;
- provide realistic financing to the SSMSC, adequate for its task of securities market development and regulation;
- introduce a procedure so that all draft normative acts that could impact the market are considered by the Consulting and Expert Council of the SSMSC and published for public comment;
- increase the licensing requirements for professional market participants and ensure ongoing monitoring of their activities;
- enhance the SSMSC's oversight over compliance with regulatory requirements; and
- involve market participants broadly in developing government policy, and ensure that the public is informed.

### ***Mid-term priorities (2003-2005)***

Improve the existing system of government regulation in order to create a more competitive Ukrainian securities market and ensure its orderly integration with international securities markets.

Optimize regulatory expenditures and their allocation to stimulate market development.

Consider expanding the SSMSC's jurisdiction to include regulation of the securities market-related professional activities of all non-bank financial institutions, and refrain from creating new state agencies for regulation of non-bank financial institutions.

Put in place a system that will allow for quick and effective anti-crisis market regulation.

Further securities market innovation, at the same time ensuring sufficient guarantees for investors.

To accomplish the defined tasks in the sphere of government regulation, it is necessary to:

- expand SSMSC powers to go to court on behalf of investors, to investigate and apply appropriate sanctions in cases involving fraud in the securities market, such as insider trading and market manipulation, and to coordinate actions with other state agencies in the area of securities market regulation;
- grant powers to the SSMSC to regulate derivatives in Ukraine;
- provide reliable protection for SSMSC employees engaged in enforcement;
- introduce a compensation system that would allow the SSMSC to hire highly qualified and experienced employees;
- focus SSMSC activities on the public market (at a minimum, exclude from its jurisdiction closed joint stock companies);
- further develop and implement rules preventing conflicts of interest in the activities of market participants;
- further develop and implement systems for risk management by market participants;
- in creating a comprehensive system of securities market regulation, eliminate overlapping regulatory authority in order to decrease the expense of regulation for all participants and the State; and
- reject the use of administrative methods to develop market infrastructure, including creation of market infrastructure institutions by the State.

### **Coordinating the Activities of the SSMSC and Other Regulatory Agencies**

The Coordination Council on the Ukrainian Securities Market under the President of Ukraine was created to coordinate the activities of state agencies with respect to the securities market. The Coordination Council includes heads of state agencies that, within their jurisdiction, exercise regulatory or administrative functions with respect to the securities market and investment activity in Ukraine. The Coordination Council is headed by the SSMSC Chairman. The composition of, and the internal rules of, the Coordination Council are approved by the President of Ukraine upon submission of the SSMSC Chairman.

The main problems in this area are as follows:

- the SSMSC is not yet legally the coordination body for government regulation in the sphere of the securities market;
- a working mechanism for coordination of SSMSC activity with that of other government regulatory agencies is absent; and
- the SSMSC has not been consulted with respect to numerous normative acts of an interdepartmental nature developed by other regulatory agencies that involve adjacent market development issues.

### ***Short-term priorities (2001-2002)***

Grant the SSMSC sufficient authority to create real mechanisms for coordination of its activity with the activities of other regulatory agencies acting in the securities market.

Strengthen the role of the Coordination Council on the Ukrainian Securities Market under the President of Ukraine.

### ***Mid-term priorities (2003-2005)***

Develop and implement an efficient system for information sharing between government regulatory agencies.

The SSMSC should establish channels of communication with international capital market regulatory agencies with respect to prevention of fraud in the securities market of Ukraine.

### **Development of Self-Regulation in the Securities Market**

The system of self-regulation by professional securities market participants is an important component of the system of market regulation. In Ukraine, creation of self-regulatory organizations became possible after adoption of the Law of Ukraine "On State Regulation of the Securities Market in Ukraine."

The State has established the legal framework for development of self-regulation in the securities market. But so far none of ten newly-created SROs have received any concrete powers. The potential to implement self-regulation defined in legislation remains unrealized by both government regulators and securities market participants.

Analysis of SRO activities in Ukraine points to the following reasons for the inability of the majority of existing SROs to carry out their regulatory functions:

- inconsistent government policy toward SROs along with problems resulting from the fact that lobbying is often combined with self-regulation in the market;
- absence of standards for SRO activity and a lack of coordination between SRO activity and the general direction of securities market development;
- lobbying by some SROs for the interests of a small group of their members, which leads to a conflict of interest between the State and the SRO and between the members of that SRO;
- insufficient resources for SROs to fully perform their functions; and
- absence of an efficient system for SRO monitoring of member activities to ensure their compliance with effective securities legislation.

The State's inconsistent policy toward SROs is demonstrated by the fact that:

- a regular analysis of the quality of SRO performance is not conducted;
- government agencies and SROs do not consult each other with respect to compliance of market participants and government officials with existing legislation;
- SROs are generally not involved in the State's inspection and oversight activities; and
- SROs do not coordinate their inspection and oversight activities with State agencies.

SROs should become an important part of the securities market regulatory fabric. The status and the authorities of SROs should be revised to expand opportunities for their involvement in effective market regulation.

### ***Short-term priorities (2001-2002)***

Increase the efficiency of self-regulation in the securities market by raising the financial and technical requirements for SROs. SRO status should be granted to associations able to:

- establish the rules with respect to members' activities that are necessary to protect the interests of investors;
- adopt rules and impose appropriate sanctions for violations;
- adopt rules and procedures to prevent violations;
- maintain a consistent policy toward SRO members in accordance with the objectives for self regulation established by legislation, SSMSC normative acts and SRO rules;
- cooperate with the SSMSC during the course of inspections of securities market participants;
- ensure that members act in accordance with high professional standards; and
- avoid the conflicts of interest that can occur when SROs obtain access to important information about market participants (whether or not members of that SRO).

SSMSC policy toward SROs should promote accomplishment of the following tasks by SROs:

- creation of an effective system of oversight over the activities of professional participants and their compliance with established rules and standards;
- promotion of business ethics rules for financial market participants;
- organization of channels of communication between regulatory agencies and market participants;
- participation in development of initiatives to prevent unfair business conduct;
- introduction of new financial instruments and technologies in the securities market;
- development of effective systems for disclosure of information about market participants, in accordance with the objectives of government regulation and the needs of investors; and
- development of recommendations with respect to members' internal compliance procedures.

The SSMSC should improve and formalize its requirements for SROs in order to increase their responsibilities, and should prevent instances of privileges and protectionism with respect to individual SROs.

The SSMSC should implement a program of ongoing oversight over execution by SROs of the powers transferred by the State, as well as over compliance by SROs with effective legislation.

SROs should abide by effective legislation with respect to collection, usage, dissemination and safe-keeping of restricted information and information that could harm SRO members and their clients, or harm the SRO itself.

***Mid-term priorities (2003-2005)***

Government regulatory agencies should gradually transfer powers to SROs, in particular the power to:

- monitor their members' activities through required reporting;
- conduct training, re-training and preliminary certification of specialists; and
- conduct pre-licensing work with potential professional market participants, in accordance with generally accepted certification methods.

## **9. Development of Legislation Regulating the Ukrainian Securities Market**

Implementation of the tasks and objectives of this Program will require passage of relevant laws and regulations.

The specific principles for securities market legislation must be elaborated in accordance with the following objectives of regulation: protection of investors' rights, and ensuring the transparency and efficiency of the market. The legislation must establish requirements for the functioning of the Ukrainian securities market that comply with international standards for legal relations in developed markets.

The main principles for securities market regulation should be:

- unification of civil law with public law methods for regulation of relations between the State and professional market participants, depending on the nature of these relations and the parties;
- free circulation of securities protected (guaranteed) by law, conditional upon compliance with the rules established by laws and regulations and controlled by the State: rules on admission of securities to the market (procedure for placement), rules pertaining to the legal status and activities of professional securities market participants, as well as the rules of the organized securities market;
- regulation of civil law relations between all securities market participants (issuers, investors, professional participants) associated with securities circulation (on the primary and secondary market), by way of elaborating the specific features of those relations in special norms;
- the system of securities recordkeeping (registration) shall allow, on particular civil law grounds, recording of property rights to securities irrespective of their form of issue;
- recordkeeping of ownership right to securities with respect to transactions on the organized market, and with respect to securities issued by joint stock companies with a large number of shareholders, shall be performed only by professional securities market participants, by special authorized entities (depository institutions and registrars);
- the system for registration of rights to securities shall ensure protection of their owners' rights from the risks that arise during securities circulation;
- government regulation of the securities market shall be effectuated by way of direct regulation of the market by norms of law, as well as by granting special powers to a regulatory agency;
- self-regulation of securities market participants shall conform with government regulation of the market;
- in order to protect the rights and interests of investors in the securities market, only securities the issuance of which has undergone state registration shall be eligible for placement on the primary market;

- the rules for disclosure of information on securities and on issuers' activities shall ensure timely access of investors and professional market participants to the information necessary to make informed decisions during conclusion or execution of securities transactions, as well as during the exercise of the rights certified by those securities;
- legislation shall define the types of professional activity in the securities market and the primary requirements for professional securities market participants to enter the market and offer such services;
- the most important norms with respect to the professional activity of securities market participants shall be clearly fixed in law;
- the activities of professional securities market participants shall be carried out under the ongoing oversight of a state regulatory agency; and
- the property rights and interests of the clients of a professional securities market participant shall be protected from the risks associated with malfeasance by the professional participant, risks associated with activities carried out by the professional participant in its own interest, and risks associated with bankruptcy of the professional participant.

Creation and functioning of an organized securities market requires special government regulation of this market, which should provide for:

- transparency with respect to securities transactions;
- compliance with rules that ensure equality for all organized market participants;
- regulation and oversight over all organized market participants;
- protection from fraudulent competition and abuse of monopoly position;
- elimination as far as possible of price manipulation on the organized market; and
- reduction in the risk of non-performance of obligations by market participants.

An important condition if the Ukrainian securities market is to be attractive to investors is the degree of harmony of existing and future legislation of Ukraine and legislation of the European Union (regulations, directives, resolutions, recommendations and conclusions). Measures should be taken to ensure that Ukrainian legislation on companies, banking, enterprise taxation and accounting, financial services, competition, and indirect taxation is brought gradually into compliance with EU legislation. The relevant laws and regulations should be drafted by all State agencies taking into consideration the following:

1. Council Directive 68/151/EEC, March 9, 1968, on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community.
2. Council Directive 77/91/EEC, December 13, 1976, on co-ordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies within the meaning of the second paragraph of Article 58 of the Treaty, in respect of the information of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent.

3. Council Directive 78/660/EEC, July 25, 1978, based on Article 54 (3) (g) of the Treaty on the annual accounts of certain types of companies.
4. Council Directive 78/855/EEC, October 9, 1978, based on Article 54 (3) (g) of the Treaty concerning mergers of public limited liability companies.
5. Council Directive 79/279/EEC, March 5, 1979, coordinating the conditions for the admission of securities to official stock exchange listing.
6. Council Directive 80/390/EEC, March 17, 1980, coordinating the requirements for the drawing up, scrutiny and distribution of the listing particulars to be published for the admission of securities to official stock exchange listing.
7. Council Directive 82/121/EEC, February 15, 1982, on information to be published on a regular basis by companies the shares of which have been admitted to official stock-exchange listing.
8. Council Directive 82/891/ EEC, December 17, 1982, based on Article 54(3) (g) of the Treaty, concerning the division of public limited liability companies.
9. Council Directive 83/349/EEC, June 13, 1983, based on the Article 54 (3) (g) of the Treaty on consolidated accounts.
10. Council Directive 84/253/EEC, April 10, 1984, based on Article 54 (3) (g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents.
11. Council Directive 85/611/EEC, December 20, 1985, on the coordination of laws, regulations and administrative provisions relating to activities on collective investment in transferable securities (UCITS).
12. Council Directive 88/627/EEC, December 12, 1988, on the information to be published when a major holding in a listed company is acquired or disposed of.
13. Council Directive 89/298/EEC, April 17, 1989, coordinating the requirements for the drawing-up, scrutiny and distribution of the prospectus to be published when transferable securities are offered to the public.
14. Council Directive 89/592/EEC, November 13, 1989, coordinating regulations on insider dealing.
15. Council Directive 93/22/EEC, May 10, 1993, on investment services in the securities field.
16. Directive 89/667/EEC, December 21, 1989, on single-member private limited-liability companies.
17. Directive 89/666/EEC, December 21, 1989, on disclosure requirements in respect of branches opened in a Member State by certain types of company governed by the law of another State.
18. Council Directive 90/434/EEC, July 23, 1990, on the common system of taxation applicable to mergers, divisions, transfers of assets and exchanges of shares concerning companies of different Member States.
19. Council Directive 92/101/EEC, November 23, 1992, amending Directive 77/91/EEC on the formation of public limited-liability companies and the maintenance and alteration of their capital.
20. Council Directive 93/22/EEC, May 10. 1993, on investment services in the securities sphere.
21. Council Directive, June 9, 2000, on company law concerning takeover bids.

22. Recommendation of EC Commission 77/534/EEC, July 25, 1977, concerning a European code of conduct relating to transactions in transferable securities.
23. Recommendation of EC Commission 85/611/EEC, December 20, 1985, on the second sub-paragraph of Article 25(1) of the Council Directive 85/611/EEC.

Implementation of the Program requires intense legislative work, in particular, adoption of new Civil, Criminal and Tax Codes, Laws of Ukraine "On Collective Investment Institutions (Corporate and Unit Investment Funds)," "On Securities and the Securities Market," "On Joint Stock Companies," "On Circulation of Veksels in Ukraine," "On Derivative Securities," and "On Non-State Pension Funds," as well as adoption of regulations by state agencies (including the SSMSC), and rulemaking by SROs within the scope of their authority.

## **10. Mechanism for Implementation of the Program**

The "Program for Development of the Ukrainian Securities Market in 2001-2005" was adopted at their final meeting, on December 13, 2000, by the members of the Strategy Group for Development of the Ukrainian Securities Market created at the initiative of professional securities market participants, with organizational and technical support from the United States Agency for International Development.

The members of the Strategy Group appeal to the Verkhovna Rada of Ukraine to accelerate drafting and adoption of new Civil and Criminal Codes of Ukraine, the Tax Code of Ukraine, and Laws of Ukraine "On Collective Investment Institutions (Corporate and Unit Investment Funds)," "On Making Amendments and Additions to the Law of Ukraine 'On Securities and the Securities Market,'" "On Joint Stock Companies," "On Circulation of Veksels in Ukraine," "On Derivative Securities," and "On Non-State Pension Funds."

The members of the Strategy Group appeal to the President of Ukraine to approve the "Main Directions of Ukrainian Securities Market Development in 2001-2005," based on the "Program for Development of Ukrainian Securities Market in 2001-2005," and to charge the Cabinet of Ministers of Ukraine, the State Property Fund of Ukraine, the National Bank of Ukraine, and the Securities and Stock Market State Commission with taking specific actions to implement the above Program by the Government of Ukraine.

The members of the Strategy Group appeal to the Cabinet of Ministers of Ukraine to adopt "Measures to Implement the Program for Development of the Ukrainian Securities Market in 2001-2005."

The members of the Strategy Group appeal to all securities market participants and state agencies to conduct their activities taking into consideration the main provisions of the "Program for Development of Ukrainian Securities Market in 2001-2005."

## Abbreviations<sup>2</sup>

AMC	Anti-Monopoly Committee of Ukraine
CoM	Cabinet of Ministers of Ukraine
FMI	Financial Markets International, Inc.
GDP	Gross Domestic Product
GoU	Government of Ukraine (i.e., the CoM and the various ministries and agencies, but not the Presidential Administration, the Verkhovna Rada or the courts)
IAS	International Accounting Standards of the International Accounting Standards Committee
IOSCO	International Organization of Securities Commissions
JSC	Joint Stock Company
MFS	Interregional Stock Union (operational clearing depository for shares)
MinFin	Ministry of Finance of Ukraine
NAS	Ukrainian National Accounting Standards
NBU	National Bank of Ukraine
SPF	State Property Fund of Ukraine
SRO	Self Regulatory Organization
SSMSC	Securities and Stock Market State Commission
STA	State Tax Administration of Ukraine
UFPA	Ukrainian Federation of Professional Accountants and Auditors
USAID	United States Agency for International Development

---

<sup>2</sup> This table appears in the English translation only.

## Unfamiliar Terms<sup>3</sup>

Collective investment institution	General term for investment funds, investment companies, non-state pension funds, insurance companies, and other institutions that pool and invest savings
Corporate rights	Rights granted by common and privileged shares, investment certificates, and “units” of business associations other than joint stock companies (such as limited liability companies)
Depository institution	A depository or custodian
Direct participants of the National Depository System	Registrars, custodians and depositories
Emission securities	Securities that are issued, generally in large numbers with the entire issuance having the same terms. “Emission securities” includes shares, bonds, warrants, but not veksel, warehouse receipts, exchange-issued options, swaps, and so on
Professional securities market participants	Market participants engaged in professional activity that requires a license from the SSMSC
Registry of securities owners	The list of owners and nominal holders of securities maintained by a registrar or by the issuer itself
Securities market participants	Issuers, investors and professional securities market participants (including institutions of market infrastructure)
Trade organizer	A stock exchange or “trading and information system (TIS)” (a TIS is the Ukrainian term in law for a registered ECN on which securities are traded)
Veksel	Promissory notes
Verkhovna Rada	The Ukrainian Parliament

---

<sup>3</sup> This table appears in the English translation only.

**MEASURES TO IMPLEMENT THE PROGRAM FOR DEVELOPMENT OF THE  
UKRAINIAN SECURITIES MARKET IN 2001- 2005**

Program Section	Subsection	Implementation
<p><b>1. Competitiveness of the Ukrainian securities market</b></p>	<p><i>a) Reasonable state measures to facilitate development of the national securities market</i></p>	<p><u>During 2001-2002:</u></p> <p><b>Securities and Stock Market State Commission (SSMSC) and Anti-Monopoly Committee of Ukraine (AMC)</b> shall develop measures to restrict participation by foreign institutions of securities market infrastructure (trade organizers, clearing depositories and clearing and settlement institutions) in the capital of the institutions of Ukrainian securities market infrastructure (trade organizers and central clearing depository of corporate securities).</p> <p><b>SSMSC, State Tax Administration (STA), National Bank of Ukraine (NBU) and AMC:</b></p> <p>a) shall develop a long-term program of Ukrainian securities market deregulation and easing of taxation of market participants in comparison with neighboring countries;</p> <p>b) shall reconsider and amend effective normative acts to ensuring equal opportunities for securities market participants on the basis of fair competition.</p> <p><b>STA, SSMSC and NBU</b> shall develop a program for simplification of the procedures for "entering" the Ukrainian securities market by a foreign investor.</p> <p><u>During 2003-2005:</u></p> <p><b>Ministry of Finance (MinFin), SSMSC and NBU</b> shall develop and submit, in accordance with the established procedure, amendments to the effective Laws of Ukraine regarding transformation of Ukrainian securities traders into fully functional, financially stable institutions rendering investors a wider range of financial services and products.</p>

		<p><u>During 2001-2005:</u></p> <p><b>SSMSC</b> shall monitor the state of the market and shall amend effective normative acts to stimulate the introduction of new financial services, products and instruments by securities market institutions.</p>
	<p><i><b>b) Integration into the securities markets of other countries</b></i></p>	<p><b>CoM, SSMSC and NBU</b> shall develop a program of integration with the securities markets of the countries of Central and Eastern Europe, the Baltic states, and of the GUUAM group (Georgia, Uzbekistan, Ukraine, Azerbaijan and Moldova).</p> <p><b>SSMSC:</b> a) shall perform regular monitoring and once per year report to the Cabinet of Ministers on the status of the process of integration with the securities markets of the EU and Russia. b) shall annually report to the Cabinet of Ministers on the status of international cooperation within the framework of IOSCO and other international organizations.</p>
<p><b>2. Tax incentives for securities market development</b></p>	<p><i><b>Creation of a system of tax incentives with respect to the professional activities of securities market participants, transactions in securities, and income on securities</b></i></p>	<p><u>During 2001-2002</u></p> <p><b>CoM, STA and SSMSC</b> shall develop and submit, in accordance with the established procedure, for consideration by the Verkhovna Rada of Ukraine amendments to the Tax Code of Ukraine regarding: a) implementation of a special regime for taxation of transactions in securities and income from them, based on the existence of significant specific features and differences in conducting professional activities in the securities segment of the financial markets, as it is currently with such types of activities as banking and insurance; b) termination of the practice of taxing investments (including investments in corporate rights) received in foreign currency where the tax liability arises from rate differences involved in recalculating this currency into Hryvnas according to the</p>

		<p>official currency (exchange) rate of the National Bank of Ukraine;</p> <p>c) termination of the practice of taxing shares (and other corporate rights) received by investors as a result of an increase of the statutory capital of a joint stock company (business association) in an amount that does not exceed the amount of indexation of fixed assets of this company to reflect the official inflation rate;</p> <p>d) taxation with income tax only of the "real" income from securities ownership and transactions in securities;</p> <p>e) preservation of privileged tax status for income of natural persons received from the sale of securities acquired by them in the course of privatization in exchange for privatization papers, compensation certificates and in the course of privileged subscription to shares;</p> <p>f) stimulation of investors' reinvestment of profits received (accrued) from securities and from the other sources;</p> <p>g) application of the national tax regime to non-residents' income from transactions in securities (corporate rights) and derivatives and income on them, including payment of dividends and repatriation of income on corporate rights;</p> <p>h) exemption of collective investment funds from taxation;</p> <p>i) elimination of the double taxation of dividends accrued to investors on corporate rights; and</p> <p>j) assigning, for taxation purposes, the status of dividends to the income accrued to the owners of investment certificates.</p>
<p><b>3. Investor-related policy</b></p>	<p><i>a) Creation of an effective system for protection of investors' rights</i></p>	<p><u>During 2001-2002:</u></p> <p><b>CoM</b> shall accelerate submission of the draft Law of Ukraine "On Joint Stock Companies" to the Verkhovna Rada.</p> <p><b>CoM, SSMSC, Security Service of Ukraine, Ministry of Internal Affairs of Ukraine, AMC:</b></p> <p>a) shall develop a system for interaction and an action plan on ensuring compliance with effective legislation by issuers and professional securities market participants, as well as on conducting effective enforcement;</p> <p>b) shall take actions aimed at protection of investors' rights through requiring</p>

		<p>disclosure of information on the owners of large blocks of shares and regulating the procedure for acquisition of large (control) blocks of shares.</p> <p><b><u>During 2003-2005:</u></b></p> <p><b>Ministry of Justice of Ukraine and SSMSC</b> shall develop and submit, in accordance with the established procedure, for consideration by the Verkhovna Rada amendments and additions to the Code of Civil Procedure of Ukraine in order to implement a mechanism for protection of rights and lawful interests of investors by way of class actions (protection of an undefined number of persons).</p>
	<p><b><i>b) Bringing corporate governance in Ukraine into conformity with international standards</i></b></p>	<p><b><u>During 2001-2005:</u></b></p> <p><b>CoM and State Property Fund of Ukraine (SPF)</b> for joint stock companies being privatized, or in which the State owns a stake in the statutory capital, shall promote the addition of norms in their internal documents aimed at:</p> <p>a) implementation of the OECD corporate governance principles, including cumulative voting during election of the supervisory board;</p> <p>b) preliminary approval by the general shareholders meeting of major transactions, as well as transactions in which officials or large shareholders of a company have a personal interest;</p> <p>c) protection of shareholders from dilution of their stakes in the statutory capital through establishment of the requirement that shares be placed exclusively at market value and owners of common shares be granted a preemptive right to acquire shares of additional issuances; and</p> <p>d) purchase and sale by a company of its own shares only at market value.</p>
	<p><b><i>c) Furthering attraction of foreign investments</i></b></p>	<p><b><u>During 2001-2002:</u></b></p> <p><b>CoM, Ministry of Economy, SSMSC, NBU</b> 1. shall reconsider and amend effective normative acts regarding:</p>

		<p>a) application of the national regime to the investment activities of foreign investors; and  b) liberalization of cash settlements on transactions in securities with participation of non-residents.</p> <p>2. shall develop and submit, in accordance with the established procedure, for consideration by the Verkhovna Rada amendments to the laws of Ukraine regarding:</p> <p>a) application of the national regime to the investment activities of foreign investors; and  b) liberalization of cash settlements on transactions in securities with participation of non-residents.</p> <p><b><u>During 2001-2005:</u></b></p> <p><b>CoM, SSMSC and NBU</b>  shall develop and submit, in accordance with the established procedure, for consideration by the Verkhovna Rada amendments to the laws of Ukraine regarding compliance with article 51 of the Agreement on Partnership and Cooperation between Ukraine and the European Union and the Member States.</p>
	<p><b><i>d) Furthering development of institutional investors</i></b></p>	<p><b><u>During 2001-2002:</u></b></p> <p><b>To recommend that the Verkhovna Rada of Ukraine</b>  speed up the passage of the Laws of Ukraine "On Collective Investment Institutions (Corporate and Unit Investment Funds)" and "On Non-State pension Funds," taking into consideration:</p> <p>1) requirements and recommendations of international organizations with respect to collective investments; and  2) minimization of the cost of the collective investment system to be born by investors.</p> <p><b>SSMSC:</b></p> <p>a) draft and improve normative acts on professional activity involving management of collective investment institution assets;</p>

		<p>b) organize training and certification of specialists in management of collective investment institution assets; and  c) develop measures to influence public opinion (relevant target audience) in order to create a positive image of the new collective investment institutions.</p> <p><b>To recommend that interested market participants</b> unite into a self-regulatory organization of investment managers of collective investment institution assets.</p>
<p><b>4. Issuer-related policy</b></p>	<p><i>a) Increasing investors' interest in the securities issued by enterprises</i></p>	<p><u><b>During 2001-2002:</b></u></p> <p><b>To recommend that the Verkhovna Rada of Ukraine</b> speed up the passage of the Law of Ukraine "On Amending the Law of Ukraine 'On Securities and the Stock Exchange'" (registration No. 4016), including -- in order to create favorable conditions for issuers to attract capital through the securities market -- simplifying the procedure currently in the draft law on registration of a securities issuance.</p> <p><b>Ministry of Economy of Ukraine, Agency for Bankruptcy Issues and SSMSC</b></p> <p>a) develop a procedure for pre-trial sanation to restructure the debts of insolvent companies; and  b) ensure that the information necessary for investors to evaluate objects of investment is available in the bankruptcy database.</p> <p><u><b>During 2003-2005:</b></u></p> <p><b>CoM and SSMSC</b></p> <p>1. Shall develop and submit to the Verkhovna Rada of Ukraine for consideration amendments to the Law of Ukraine "On Amending the Law of Ukraine 'On Securities and the Stock Exchange'" (registration No. 4016) that would provide for:  a) introduction of the notion of a "public tender offer"; and  b) introduction of the notion of asset stripping of an enterprise and a liability for such actions.</p> <p>2. Shall draft a normative act on the procedure for payment of dividends.</p>

		<p><b>SSMSC</b>          Shall adopt the procedure for registration of a share issuance during sanation that provides for an exchange of creditors' claims into debtor's shares in compliance with the Law of Ukraine "On Restoring Solvency of the Debtor or Recognizing it Bankrupt."</p> <p><u><b>During 2001-2005</b></u></p> <p><b>CoM, SSMSC and SPF</b>          shall develop and submit for consideration by the Verkhovna Rada of Ukraine, in accordance with the established procedure, amendments and additions to effective laws and draft laws being developed that provide for:</p> <ul style="list-style-type: none"> <li>a) transparency with respect to the financial and business activities of issuers;</li> <li>b) improvement the corporate governance of enterprises-issuers;</li> <li>c) further development of the system for training and improving the qualifications of the staff of enterprises-issuers;</li> <li>d) promotion of private rating agencies for corporate governance;</li> <li>e) creation of favorable conditions for issuers to attract capital in the securities market through simplification of the procedure for registration of a securities issuance;</li> <li>f) creation of an effective mechanism for management of the State's holdings in joint stock companies; and</li> <li>g) initiation of enterprise restructuring and/or bankruptcy for unprofitable enterprises.</li> </ul>
	<p><b><i>b) Development of financial instruments for improvement of investment opportunities</i></b></p>	<p><u><b>During 2001-2002:</b></u></p> <p><b>CoM and SSMSC</b>          shall develop and submit, in accordance with the established procedure, for consideration by the Verkhovna Rada of Ukraine amendments and additions to:</p> <ol style="list-style-type: none"> <li>1. The draft Law of Ukraine "On Amending the Law of Ukraine 'On Securities and the Stock Exchange'" (registration No. 4016) that would stipulate:             <ul style="list-style-type: none"> <li>a) division of all existing market instruments into those offered for "public</li> </ul> </li> </ol>

48.

		<p>circulation" and all other;  b) expansion of the list of debt securities to stimulate develop different types of bonds for different classes of investors;  c) a mechanism for transformation of accounts receivable and payable into securities; and  d) circulation of mortgage securities in the market;  2. The Law of Ukraine "On State Regulation of the Securities Market in Ukraine" to delegate to the SSMSC broad powers to define and regulate circulation of different types and categories of securities in Ukraine.</p> <p><b><u>During 2003-2005:</u></b></p> <p><b>CoM and SSMSC</b>  shall develop and submit for consideration by the Verkhovna Rada of Ukraine, in accordance with the established procedure, amendments and additions to effective laws and draft laws being developed to stimulate development of an underwriting system.</p> <p><b><u>During 2001-2005:</u></b></p> <p><b>To recommend that the Verkhovna Rada of Ukraine</b>  accelerate passage of the laws of Ukraine "On Amending the Law of Ukraine 'On Securities and Stock Exchange'" (registration No. 4016); "On Mortgage" (registration No. 2322); "On Mortgage Lending and Factoring Operations with Mortgage Notes" (registration No. 6197) and "On Derivative Securities."</p> <p><b>CoM, Ministry of Finance of Ukraine and SSMSC</b>  shall develop an action plan to assist local governments to issue municipal bonds.</p>
<p><b>5. Development of securities market infrastructure</b></p>	<p><i>a) Development of the organized market</i></p>	<p><b><u>During 2001-2002:</u></b></p> <p><b>SSMSC</b>  shall develop and adopt normative acts regarding:  a) organization of a system for disclosure of information about the main organized</p>

		<p>market indices;</p> <p>b) organization of a system of regular disclosure of information about listed companies; and</p> <p>c) protection of securities market participants by preventing market manipulation.</p> <p><b>SSMSC together with trade organizers</b> shall create conditions for information exchange based on modern technologies between organized markets to provide investors with timely and complete information necessary to make investment decisions.</p> <p><b>SSMSC and Ministry of Economy</b> shall develop a list of companies' shares that must be traded exclusively on the organized market.</p> <p><b>To recommend that self-regulatory organizations</b> develop and approve internal documents for SRO members, as well submit to the SSMSC proposals, with respect to:</p> <p>a) organization of the system of disclosure of information about transactions in corporate securities concluded on the organized markets;</p> <p>b) protection of securities market participants by preventing market manipulation, unfair trading practices and ethical violations in the securities market;</p> <p>c) implementation of a mechanism of fair pricing through improvement of the competitive environment;</p> <p>d) regular disclosure of information about listed companies.</p> <p><b><u>During 2003-2005:</u></b></p> <p><b>SSMSC</b> shall draft and adopt normative acts on:</p> <p>a) evaluation of the assets of collective investment institutions based on prices on the organized market;</p> <p>b) close regulation of trading between affiliated persons;</p> <p>c) establishment of mandatory registration in the organized market of transactions with large blocks of Ukrainian securities;</p>
--	--	--

		<p>d) conducting by trade organizers of clearing and settlement in derivatives; and  e) implementation of electronic document flow with respect to transactions in corporate securities, and adoption of unified standards and certification requirements for electronic signature systems.</p> <p><b>Trade organizers shall promote:</b></p> <p>a) creation of conditions for trading on the organized market in shares of young growth companies (start up companies);  b) creation of conditions for trading in foreign securities on the organized market;  c) creation of conditions for placement of securities by Ukrainian issuers on the organized markets;  d) creation, within the existing trade organizers, of specialized trading systems for transactions in new financial instruments; and  e) creation of conditions for development of technologies for organized trading in derivatives.</p>
	<p><b><i>b) Further development of the National Depository System</i></b></p>	<p><b><u>During 2001-2002</u></b></p> <p><b>CoM and SSMSC</b>  shall develop and submit for consideration by the Verkhovna Rada of Ukraine, in accordance with the established procedure, amendments and additions to the Law of Ukraine "On the National Depository System and Specific Features of Electronic Circulation of Securities" with respect to:</p> <p>a) creation of a single central clearing depository for corporate securities and providing professional participants with the majority of votes in the supervisory board of the depository, along with reservation of a narrow "right to veto" by the State on issues that could endanger Ukraine's national interests and economic sovereignty; and  b) imposition of restrictions on participation in the statutory capital of a registrar by any person that owns a block of shares, in an amount that exceeds specified restrictions, of an issuer whose registry is maintained by that registrar.</p>

		<p><b>CoM, NBU and SSMSC</b> shall prepare and make, in accordance with the established procedure, proposals to:</p> <ul style="list-style-type: none"><li>a) confer the status of financial institution to the central clearing depository for corporate securities;</li><li>b) implement a mechanism to regulate transactions with corporate securities pursuant to the “delivery against payment” principle, including the possibility of guaranteed payments.</li></ul> <p><b>SSMSC</b> shall draft and adopt normative acts:</p> <ul style="list-style-type: none"><li>a) on implementation of standards for direct participants of the National Depository System on recordkeeping of ownership rights to securities based on modern financial and information technologies;</li><li>b) to simplify the procedures for immobilization of securities issued in documentary form;</li><li>c) to reduce excessive SSMSC requirements with respect to the form for registered securities certificates; and</li><li>d) to ensure that custodians and registrars function in cooperation with the clearing depository for corporate securities in accordance with uniform rules and within a uniform system for circulation of documents.</li></ul> <p><b>CoM and SSMSC</b> jointly with the General Prosecutor’s Office of Ukraine, Securities Service of Ukraine, Ministry of Internal Affairs of Ukraine, AMC, and STA shall develop and approve the rules pursuant to which direct participants of the National Depository System of Ukraine are required to turn over information to the authorities, which shall clearly establish the grounds, procedures, and the scope of information to be turned over.</p>
--	--	---

**During 2003-2005:**

**CoM and SSMSC**

shall draft and submit for consideration by the Verkhovna Rada of Ukraine, in accordance with the established procedure, amendments and additions to relevant legislation to introduce mandatory insurance for direct participants of the National Depository System to cover the risks connected to their principal type of activity.

**CoM, NBU and SSMSC**

shall prepare and submit, in accordance with the established procedure, proposals regarding:

- a) improvement of currency legislation to simplify the procedure for importing and exporting capital;
- b) opening and maintaining cash accounts by trader-custodians for their clients, by trade organizers, by the central clearing depository for corporate securities for clearing and settlement activity, and by securities depositories and custodians to facilitate payment by issuers of income on securities in cash through the National Depository System.

**SSMSC**

1. Shall develop and adopt normative acts on:

- a) operation of a single central clearing depository for corporate securities in Ukraine;
- b) technological consolidation of registrars that maintain listed companies registries with the clearing depository on the basis of electronic paper-flow and electronic signature.

2. Development of a program for Ukraine's joining the European Central Securities Depositories Association (ECSDA) and the Central and Eastern Europe Securities Depositories Association (CEECSDA) that provides for:

- a) creation in Ukraine of a clearing and settlement system which, based on its organizational and technical capabilities, can be integrated with similar systems of EU countries;

63

		<p>b) creation of national settlement system standards that are in harmony with EU settlement systems standards (SSS);</p> <p>c) establishment of correspondent relations between the central clearing depository for Ukrainian corporate securities and the central depositories of the EU.</p>
	<p><i>d) Development of a system for electronic paper-flow in the securities market</i></p>	<p><u>During 2001-2005:</u></p> <p><b>The central clearing depository for corporate securities shall develop and submit for approval by the SSMSC:</b></p> <p>a) measures to implement a system of electronic paper-flow between all direct participants of the National Depository System of Ukraine that perform securities recordkeeping. Such system must provide for closed access to information in order to prevent unlawful copying, entries, dislocation, blocking, or any other operations that result in a change of owner or that limit exercise of rights to securities;</p> <p>b) measures to implement electronic document circulation between the central clearing depository for corporate securities and trade organizers. The system of electronic document circulation should provide for closed access to information in order to prevent unlawful interference with execution of transactions in the National Depository System.</p>
<p><b>6. Information transparency in the securities market</b></p>	<p><i>a) Provision to all interested persons of free access to information related to the securities market and its participants, the disclosure of which is required by legislation</i></p>	<p><u>During 2001-2002:</u></p> <p><b>SSMSC</b> shall develop and approve the Concept for Information Disclosure in the Securities Market.</p> <p><u>During 2003-2005:</u></p> <p><b>SSMSC, Ukrainian Federation of Professional Accountants and Auditors (UFPAA) (by agreement) and all SROs (by agreement)</b> shall implement a comprehensive system collect and make public information</p>

		about securities market participants.
	<b><i>b) bringing transparency in the securities market up to international standards</i></b>	<p><b><u>During 2001-2002:</u></b></p> <p><b>CoM together with the Ministry of Foreign Affairs of Ukraine, Ministry of Justice and the SSMSC:</b> shall publish in official printed editions, in the official language of Ukraine, the text of International Accounting Standards issued by the Committee for International Accounting Standards (IAS) and international standards for information disclosure of the International Organization of Securities Commissions (IOSCO).</p> <p><b>SSMSC, Ministry of Finance, UFPAA (by agreement):</b> shall prepare changes and additions to those parts of the National Accounting Standards that do not comply with IAS.</p> <p><b><u>During 2003-2005:</u></b></p> <p><b>CoM, Ministry of Finance and Ministry of Justice</b> shall bring legislation and normative acts of executive power into compliance with IAS and with IOSCO international standards for information disclosure.</p> <p><b>SSMSC</b> shall require use of IAS and of IOSCO international disclosure standards.</p> <p><b>SSMSC, Ministry of Finance, UFPAA (by agreement)</b> shall develop and submit for review by the Verkhovna Rada, in accordance with the established procedure, changes and amendments to the Law of Ukraine "On Audit Activities" in order to reform audit activity in the securities market based upon International Accounting and Audit Standards.</p>
<b>7. Training of specialists on issues related to the securities market</b>	<b><i>a) Providing basic training for securities market specialists</i></b>	<p><b><u>During 2003-2005:</u></b></p> <p><b>Ministry of Finance and SSMSC</b> shall establish new concentrations within existing masters programs:</p>

55

<p><b>and corporate governance</b></p>		<p>a) specialization "Finance" -- concentration "Securities market";  b) specialization "Jurisprudence" -- concentration "Securities market and Corporate Law";  c) specialization "International Economics" -- concentration "International Securities markets";  d) specialization "Microeconomics" -- concentration "Corporate Governance."</p>
	<p><b><i>b) Providing advanced specialized training for securities market specialists</i></b></p>	<p><b><u>During 2001-2002:</u></b>  <b>The Ministry of Economy of Ukraine with participation of the SSMSC and the NBU:</b>  a) shall develop and approve programs for training securities market specialists at educational institutions licensed by the Ministry of Economy and Science;  b) shall more effectively use international aid to organize training for specialists of state agencies charged with regulation and enforcement in the securities market and with respect to corporate governance;  c) shall bring the system of training and certification of securities market specialists up to global standards.</p> <p><b>SSMSC:</b>  a) shall create a database of all certified specialists in the securities market of Ukraine and provide for free access to this database by all the interested persons;  b) shall establish detailed requirements for the specialists of legal entities that carry out professional activities in the securities market, and for physical persons that carry out such activities independently, and publish them in the official publications of the SSMSC.</p>
<p><b>8. System of effective securities market regulation</b></p>	<p><b><i>a) Government regulation of the securities market</i></b></p>	<p><b><u>During 2001-2005:</u></b></p> <p><b>SSMSC</b>  shall regularly monitor and quarterly submit to the Cabinet of Ministers an analysis of global trends in development of international securities markets, with an indication of the possible effects of such trends on the securities market of Ukraine.</p>

**During 2001-2005:**

**To recommend to Verkhovna Rada of Ukraine**

to include in the language of draft Law of Ukraine "On making changes and additions to the Law of Ukraine 'On Securities and the Stock Exchange'" (registration No. 4016) provisions that would:

- a) establish the types of professional activity in securities market and specify the principal requirements for professional securities market participants seeking to offer such services;
- b) ensure effective and consistent regulation by the SSMSC over the activities of professional securities market participants;
- c) require that trading in securities that are included in a list established by the SSMSC and the Ministry of Economy of Ukraine be carried out exclusively on the organized market (with the exception of transactions the value of which is less than the value specified by the SSMSC and the Ministry of Economy of Ukraine);
- d) provide for:
  - transparency with respect to securities transactions;
  - equality of all the participants of the organized market;
  - regulation and oversight over all organized market participants;
  - protection from unfair competition and abuse of monopoly status;
  - a reduction in the prevalence of price manipulation in the organized market;
  - a decrease in the risk of non-performance of obligations by market participants.

**SSMSC:**

- a) shall develop a procedure for including professional market participants in the process of developing state policy on the securities market;
- b) shall develop a mechanism for making public proposed draft legislation through the official publications of the SSMSC;
- c) shall update the composition of, and enhance the role of, the Advisory and Expert Council of the SSMSC;
- d) shall put in place a system that will allow for quick and effective anti-crisis market regulation.

57

		<p><b>CoM</b></p> <ol style="list-style-type: none"><li>1. shall provide for a 30 percent raise in the salaries of the Chairman and the Commissioners for execution of the functions of an "authorized person" of the Securities Commission.</li><li>2. shall provide to the Chairman of SSMSC the right to establish, in accordance with an SSMSC Resolution, a salary increase of 30 percent for execution of the functions of an "authorized person" of the Securities Commission:<ol style="list-style-type: none"><li>a) for the head of the regional offices in the Crimean Autonomous Republic, in the regions, and in Kyiv and Sevastopol;</li><li>b) for managers and specialists of the central SSMSC headquarters -- for time during which they execute the powers of an "authorized person";</li><li>c) for managers and specialists of the regional offices in Crimea, in the regions, and in Kyiv and Sevastopol -- for time during which they execute the powers of an "authorized person," as approved by the head of the regional office and confirmed by the SSMSC.</li></ol></li></ol> <p><b>CoM and SSMSC</b></p> <ol style="list-style-type: none"><li>1. shall develop and submit for consideration by the Verkhovna Rada of Ukraine, in accordance with the established procedure, amendments to the Law of Ukraine "On state protection of court officials and enforcement bodies" to grant to SSMSC employees the status of employees of enforcement bodies that carry out enforcement actions.</li><li>2. shall develop and submit for consideration by the Verkhovna Rada of Ukraine, in accordance with the established procedure, changes and amendments to the Law of Ukraine "On State Regulation of Securities Market in Ukraine" to broaden and specify the SSMSC's powers to regulate the securities market of Ukraine.</li></ol> <p><b>To recommend to the Verkhovna Rada of Ukraine</b> during development and adoption of laws that regulate activities in the securities market, to avoid unnecessary creation of new state regulatory agencies, but to focus instead on distribution (redistribution) of authority among existing agencies.</p>
--	--	--

		<p><b><u>During 2003-2005:</u></b></p> <p><b>Ministry of Justice and SSMSC</b> shall develop and propose to the Verkhovna Rada of Ukraine, in accordance with the established procedure, changes and amendments to the Civil Procedure Code of Ukraine to grant to the SSMSC the authority to file lawsuits in the interests of investors to protect their rights and legal interests.</p> <p><b>CoM and SSMSC</b> shall develop and propose to the Verkhovna Rada of Ukraine, in accordance with the established procedure, changes and amendments to the Law of Ukraine "On State Regulation of the Securities Market in Ukraine" on: a) including in the jurisdiction of the SSMSC regulation of the activities of all non-bank financial institutions with respect to professional activities in the securities market; b) granting to the SSMSC authority to regulate the derivative securities markets; c) focusing SSMSC activity on regulation of public trading in securities (at a minimum, excluding from its jurisdiction issue and circulation of shares of closed JSCs).</p> <p><b>SSMSC</b> shall develop a working plan to develop links between the SSMSC and the capital market regulatory organs of other countries in order to prevent fraud in the Ukrainian market by foreign participants.</p>
--	--	---

***b) Self-regulation in the securities market***

**During 2001-2002:**

**CoM and SSMSC**

shall develop and propose, in accordance with the established procedure, for consideration by the Verkhovna Rada of Ukraine changes and amendments to the Law of Ukraine "On State Regulation of the Securities Market in Ukraine" to provide for:

- a) mandatory membership of professional securities market participants in SROs in accordance with the type(s) of professional activity they perform; and
- b) functioning of one SRO for each type of professional activity in securities market.

**Ministry of Justice and SSMSC**

shall develop and propose, in accordance with the established procedure, changes and amendments to the Civil Procedure Code of Ukraine to delegate to SROs the power to file lawsuits in the interests of their members.

**SSMSC, NBU, SPF, STA, AMC**

shall develop procedures to ensure official submission to self-regulatory organizations of draft laws of Ukraine and regulations that could affect participants of the securities market.

**SSMSC**

in order to improve the efficiency of the self-regulatory mechanism in the securities market, shall make changes and amendments to SSMSC decision No. 23, dated 08/29/97, and to the Regulation On Self-Regulatory Organizations in the Securities Market, SSMSC Resolution No. 45, dated 11/11/97, to establish enhanced technical and financial requirements for securities market associations seeking the status of an SRO.

		<p><b><u>During 2003-2005:</u></b></p> <p><b>CoM and SSMSC</b> shall develop and submit, in accordance with the established procedure, for consideration by the Verkhovna Rada of Ukraine changes and amendments to the Law of Ukraine "On licensing of certain types of business activities " to transfer authority to license professional securities market participants to SROs.</p> <p><b>SSMSC</b> shall transfer to SROs the following authorities: a) monitoring of the activities of their members through reporting by members; b) training, further training and pre-certification of specialists; c) performance of pre-licensing of professional participants, using generally accepted mechanisms for certification of their activities.</p>
<p><b>9. Development of Ukrainian securities market legislation</b></p>	<p><b><i>a) Harmonization of Ukrainian securities market legislation with the legislation of the European Union</i></b></p>	<p><b><u>During 2001-2002:</u></b></p> <p><b>CoM, Ministry of Foreign Affairs and Ministry of Justice</b> shall publish in official publications, in the official language of Ukraine, the text of regulations, directives, resolutions, recommendations and opinions of the European Union in the part that pertains to development and operation of the securities market, and shall provide for publication of changes to these documents.</p> <p><b>CoM, SSMSC and Ministry of Justice:</b> a) shall monitor current legislation from the perspective of its compliance with EU legislation; b) shall develop and submit to the Verkhovna Rada, in accordance with the established procedure, changes and amendments to current normative acts that have the force of law (codes of Ukraine, laws of Ukraine and decrees of the CoM) to bring them into compliance with EU legislation.</p>

		<p><b><u>During 2001-2005:</u></b></p> <p><b>CoM, SSMSC, Ministry of Justice, other Ministries and Agencies</b> shall provide for development of draft laws and regulations in harmony with EU legislation.</p>
	<p><b><i>b) Speeding up development of laws governing the securities market of Ukraine</i></b></p>	<p><b><u>During 2001-2002:</u></b></p> <p><b>The Verkhovna Rada of Ukraine shall be requested</b> to intensify efforts to adopt the new civil, criminal and taxation codes of Ukraine, and the Laws of Ukraine "On Collective Investment Institutions," "On circulation of Veksels in Ukraine," "On Derivatives," "On Non-State Pension Funds," and "On Making Changes and Amendments to the Law of Ukraine 'On securities and the stock exchange.'"</p> <p><b>The Supreme Court of Ukraine and the Highest Arbitration Court of Ukraine together with the SSMSC shall be requested</b> to carry out an analysis of court practice with respect to resolving disputes in the securities market and protection of investors rights.</p>
<p><b>10. Realization of the Program for Development of the Securities Market in 2001-2005</b></p>	<p><b><i>a) Mechanism for realization of the Program</i></b></p>	<p><b><u>During 2001:</u></b></p> <p><b>The President of Ukraine shall be requested</b> to approve the "Main Directions for Development of the Securities Market of Ukraine in 2001-2005" on the basis of the "Program for Development of the Securities Market in 2001-2005" and to charge the Cabinet of Ministers of Ukraine, the State Property Fund of Ukraine, the National Bank of Ukraine, the Securities and Stock Market State Commission and the other state bodies to take specific actions to implement the Program at the state level.</p> <p><b>The Cabinet of Ministers shall be requested</b> to approve the "Measures to Implement Program for Development of the Securities Market of Ukraine in 2001-2005."</p>

		<p><b>SSMSC</b>  starting in 2001, shall inform the Presidential Administration prior to May 1 of each year on progress towards execution of the "Program for Development of the Securities Market in 2001-2005."</p>
	<p><b><i>b) Financial support for the Program's realization</i></b></p>	<p><b><u>During 2001-2005:</u></b></p> <p><b>CoM, Council of Ministers of the Autonomous Republic of Crimea, regional, district, Kyiv and Sevastopol City State Administrations</b>  as of the year 2002, during formation of draft state budget of Ukraine and the local budgets, shall provide for the cost of financing the activities related to realization of the "Program for Development of the Securities Market in 2001-2005."</p> <p><b>Ministry of Finance</b>  as of 2002, during formation of the State budget of Ukraine and determination of payments from state taxes to the budgets of the Autonomous Republic of Crimea, Kyiv and Sevastopol, shall provide for additional allocations for implementation of the "Program for Development of the Securities Market in 2001-2005."</p>