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MEASURES TO COUNTER UNFAIR TRADING PRACTICES IN FOREIGN COMMODITY EXCHANGE MARKETS

Khachaturova K.I.

Head of the Department of Legal Support of Commodity and Derivatives Markets
of the Legal Department of the Saint Petersburg International Mercantile Exchange (SPIMEX), JSC;
Postgraduate Student, Autonomous Non-Commercial Organization V.A. Musin Research Center
for the Development of Energy Law and Modern Legal Science
E-mail: kseniakhachaturova@gmail.com

Abstract. Currently, one of the reasons for the increase in fuel prices at trading on exchanges is the use of unfair exchange practices by trading participants, which has been repeatedly emphasized by the Russian Ministry of Energy and the Federal Anti-Monopoly Service. The concept of "unfair trading practices" is not enshrined at the level of statutes and regulations of the Russian Federation, and therefore, exchanges determine actions that relate to such practices at their own discretion, which entails, in particular, regulatory risks for exchanges, and may negatively affect the market as a whole. This article analyzes foreign practice in terms of the level of enshrinement of types of unfair practices: the legislative and/or local level, as well as analyzes the types and criteria of unfair practices in order to further analyze the implementation of foreign experience in Russian laws or local instruments of exchanges. As a result of a comparative legal analysis, it was revealed that in each jurisdiction there is regulation of unfair practices both at the legislative level and at the level of trading rules, their types and criteria are established, which allows us to conclude that the regulation of unfair behavior in stock trading is an area in which the participation of both an exchange and the state is required, including in terms of establishing criteria and types of such behavior.

Keywords: legal regulation of commodity exchange markets, participants' legal status, trading practices, unfair behavior.

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МЕРЫ ПРОТИВОДЕЙСТВИЯ НЕДОБРОСОВЕСТНЫМ ТОРГОВЫМ ПРАКТИКАМ НА ЗАРУБЕЖНЫХ БИРЖЕВЫХ ТОВАРНЫХ РЫНКАХ

Хачатурова К.И.

Начальник отдела правового сопровождения срочного и товарного рынков
Юридического управления АО "Санкт-Петербургская Международная
товарно-сырьевая биржа";
аспирант, АНО "Научно-исследовательский "Центр развития энергетического права
и современной правовой науки имени В.А. Мусина"
E-mail: kseniakhachaturova@gmail.com

Аннотация. В настоящее время одной из причин роста цен на топливо на биржевых торгах является применение участниками торгов недобросовестных биржевых практик, что неоднократно подчеркивали и Минэнерго России, и ФАС России. Понятие "недобросовестные биржевые практики" не закреплено на уровне нормативных правовых актов Российской Федерации, в связи с чем биржи самостоятельно определяют действия, которые относятся к таким практикам, что влечет, в частности, регуляторные риски для бирж и может негативно отразиться на рынке в целом. В данной статье проанализирована зарубежная практика в части уровня закрепления видов недобросовестных практик (законодательный и/или локальный уровень), а также проанализированы виды и критерии недобросовестных практик с целью дальнейшего анализа для имплементации зарубежного опыта в российское законодательство либо локальные акты бирж. В результате сравнительно-правового анализа выявлено, что в каждой юрисдикции присутствует регулирование недобросовестных практик как на законодательном, так и на уровне правил торгов, установлены их виды и критерии, что позволяет сделать вывод о том, что регулирование недобросовестного поведения на биржевых торгах является областью, в которой требуется участие не только биржи, но и государства, в том числе в части установления критериев и видов такого поведения.

Ключевые слова: правовое регулирование биржевых товарных рынков, правовое положение участников, торговые практики, недобросовестное поведение.

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In connection with the amendments introduced to Federal Law No. 325 dated November 21, 2011 "On On-Exchange Trading" [1], the Bank of Russia is entitled to restrict the performance of actions (transactions, operations) by individual trading participants or prohibit the performance of certain actions (transactions, operations) by all trading participants, in particular if trading participants' and/or their clients' actions (transactions, operations) pose a threat to the Russian financial market stability, trading participants' and/or their clients' rights and legitimate interests. There are no criteria whereby the occurrence of such a case is assessed in statutes and regulations, regulator's statutory instruments and its explanations.

With regard to the commodity market, in order to ensure transparency of on-exchange trading in the commodity market in 2019, the Bank of Russia proposed commodity exchanges to develop and approve a Code of Conduct for Commodity Market Trading Participants [2], while the content of such a Code and criteria for "ethics" in statutes and regulations, regulator's statutory instruments and its clarifications are still missing. Currently, commodity exchanges, together with the professional community, define the concept of "professional ethics" (fair behavior), the content of the Code (for example, types of unfair behavior), and also establish criteria for fair/unfair behavior.

The absence of guidelines enshrined at the regulatory level entails multiple risks both for the market as a whole and for trading participants and exchanges. For example, the absence of criteria for unfair behavior in the commodity exchange market may result in the commodity exchange market destabilization, in particular, the failure to ensure non-discriminatory access to commodity, price volatility, significant losses for trading participants and their clients, as well as loss of their reputation.

In connection with the above, it is proposed to conduct a study of foreign laws and the experience of the largest commodity exchanges (for the study and analysis, the largest global commodity exchanges are selected, on which both spot trading and trading in derivative contracts the underlying asset of which is a commodity are performed) in terms of determining criteria for unfair behavior, types of such behavior, and also analyze the level at which the types and criteria of such behavior are enshrined.

GREAT BRITAIN

Legal and Regulatory Framework. At the legislative level, there is practically no description of trading practices prohibited for use in trading on exchange. Thus, the Financial Services and Markets Act does not contain a description of the above practices, however, the types of such practices can be found in different handbooks of the regulator, the UK Financial Conduct Authority (hereinafter the “Authority”).

According to the Authority’s Handbook [3], in order for the Authority to perform the functions of overseeing exchanges and protecting investors’ rights, the Authority evaluates the exchange’s rules and procedures for, in particular, the existence of the following prohibitions in its rules:

— unfair trading practices;

— intentional communication or intentional publication of false information on trading;

— existence of a prohibition on the following actions: entering into transactions in which damages are unlawfully claimed on a party to a contract; entering into transactions with the intent to create a false or misleading appearance of trading activity; engaging in cross-trades for dishonest or illegal purposes; performance of transactions which was agreed upon in advance and the agreement on entering thereinto was reached improperly; performing transactions with the intent to facilitate or conceal potential market abuses; performing transactions in which one party does not intend to settle the transaction or liquidate its positions.

Besides, the requirements for the proper behavior of almost all entrepreneurs supervised by the Authority are defined, in particular, in the Authority’s Handbook, which establishes principles for business [4]. The principles that must be observed include integrity, qualifications and due diligence, and compliance with proper standards of market conduct. In this regard, companies should reasonably assume at the time of performing actions whether they will violate these principles. This is a test for a reasonable assumption or a condition of predictability, however, this test is not the main one according to which a violation of these principles is determined. The Authority explains that the principles can be followed in different ways. At the same time, where the behavior is lower than expected by Authority, it is reasonable for the business entity to expect consequences for the chosen behavior, even though such behavior is widespread in the market [5].

According to the Authority’s letter dated January 11, 2023 [6], some brokers hire people who did not follow proper standards of conduct at their previous job. This means that the control carried out by the firm does not correspond to effective risk management. In order to avoid such practices, as well as practices of unfair behavior of traders, expressed in extracting benefits when performing client transactions, it is recommended, firstly, to review the remuneration system, one of the components of which is non-financial, in particular, the behavior of traders; and secondly, companies need consider regulatory requirements when hiring new certified employees and maintain risk records when adverse information is reported on such employees. Firms cannot expect leniency from the Authority if the consequences of violations have affected the market integrity through the employment of persons to whom disciplinary measures have been applied elsewhere before and firms have not taken additional control and supervision measures in this respect.

London Metal Exchange. According to the version of the London Metal Exchange Rules and Regulations authorized by the Board of Directors dated December 11, 2023, posted on the official website of the exchange, the trading participant must comply with high standards of integrity and fair dealing, as well as comply with high standards of market conduct. Besides, trading participants must act in the best interests of their clients. The implementation of these principles consists in compliance with the requirements related to the observance of business obligations, such as integrity, fairness, professionalism, disclosures, compliance with the rules regarding the categorization of their clients, interaction with clients, management of conflicts of interest, and best execution rule.

Improper behavior (misconduct) is understood, in particular, as a violation of the trading rules by a trading participant, as well as facilitating another party to commit a violation of the trading rules, if the third party is obliged to comply with such rules; any behavior that entails or may result in the exchange suffering a loss of reputation; providing the exchange with false, misleading or inaccurate information, as well as other violations that the exchange reports through notices disclosed on the website.

Behavior that causes or may cause the exchange to lose its reputation is understood, without limitation, reference to the contracts entered into not on the London Metal Exchange as contracts entered into on this exchange (for example, by specifying this in a contract).

According to the Rules and Regulations, prohibited practices include:

— manipulation or an attempt to manipulate the market or otherwise abuse or an attempt to abuse the market or creation of an artificial market;

— entering into a transaction or an attempt to enter into a transaction or a series of transactions designed to create an artificial market whereby prices and turnover do not truly reflect the business transacted;

— wash trading (wash trading is a form of fictitious trading in which a transaction or series of transactions is performed under the guise that participants make real transactions to buy or sell, but in fact the transactions were made without the intention to take a real position in the market and without the intention to execute them, i.e. to take risks) or bogus (fictious) transactions;

— demonstration or an attempt to demonstrate that trading activity has taken place when it has not in fact occurred or misleading or an attempt to mislead Exchange staff as to the nature of any trading activity;

— intentional or unintentional creation of a disorderly market;

— trading, placing orders to trade or encourage any other person to trade in the same direction (buy or sale) as a client order with a view to realizing a profit or avoiding a loss, pursuant to any price movement brought about by such client order;

— misleading or an attempt to mislead Exchange staff as to the nature of any orders or transactions;

— manipulation or an attempt to manipulate any prices or indices set or published by the Exchange;

— an attempt to undertake, procure that another person undertakes or attempts to procure that another person undertakes any behavior that is contrary to an applicable law or regulation preventing market abuse [7].

Conclusions.

1. Practices that are prohibited for use in the process of trading on exchange can be divided into practices specified in the laws, including the regulator's handbooks, as well as other practices that are not prohibited by law, but prohibited by the exchange.

2. Some types of prohibited practices, as well as general principles of doing business, are defined as in the regulators' handbooks, which confirm the conclusion that the exchange is not a completely independent institution in relation to the identification of certain unfair trading practices. Moreover, the definition of the fair trading behavior principles is indicated quite widely both in the laws and in the exchange rules, which gives wide discretion in assessing the behavior of a trading participant.

3. There are several main criteria that are taken into account by the legislator when determining whether the practice is unfair. Such criteria include the *presence* (*in most cases*) *of a wrongful intent* on the part of the trading participant, which is expressed in the desire and opportunity to commit an action, as a rule, in order to achieve their own benefit using illegal methods (for example, the creation of an artificial market). Based on the proposed, the second criterion can be *identified*, *the use of illegal methods*. The third criterion is the achievement or an attempt to achieve *negative* (*mainly*) *consequences for the market*. Besides, when describing unfair practices in the Authority's handbook and Exchange Rules and Regulations, market conditions (current market conditions), the frequency of transactions, the size of transactions and other factors are not indicated as factors affecting the qualification of a transaction as unfair trading practices.

JAPAN

Legal and Regulatory Framework. In Japan, a list of unfair trading practices is provided in the Commodity Derivatives Act. Article 116 of the Commodity Derivatives Act contains a list of unfair practices, which include the following actions:

— effecting a buy/sale transaction in a commodity market, without the intention of transferring ownership of the commodity;

— engaging in wash trading in a commodity market, or engaging in trading in a commodity market while deceptively avoiding the use of one's own name;

— performing a series of transactions in a commodity market that could mislead people into believing that transactions in a commodity market are thriving or that could change the quotations in that commodity market, either independently or jointly with another person;

— performing transactions in a commodity market and making a buy/sale or other transaction with commodities, etc. with the intention of causing quotations in the commodity market to fluctuate;

— spreading information to the effect that quotations in a commodity market will fluctuate due to one's own or another party's market manipulation in connection with transactions in a commodity market;

— performing a transaction in the commodity market and intentionally creating a false representation of a material particular or a representation of a material particular that that is likely to be misleading.

The Commodity Derivatives Act (Article 118) defines that if an excessive volume of transactions is being performed or is likely to be performed in the commodity market through corner, bear raids or any other method, or an unfair amount of remuneration or contract price is formed, etc., and the Minister regulating the relevant market believes that it is required to take measures to maintain order in the commodity market and protect public interests, the Minister may issue appropriate orders for the following persons:

1) trading participants, etc. in terms of imposing restrictions on transactions in the commodity market or obtaining a power of attorney to perform transactions;

2) the commodity exchange in terms of taking measures to limit fluctuations in quotations or the volume of unsettled transactions in the commodity market in which the commodity exchange operates, changing the size of the clearing margin or performing one of the actions defined by an order of the competent ministry as something that ensures the fairness of settlements of transactions in the commodity market;

3) a clearing house in terms of changing the size of the clearing margin or performing one of the actions defined by an order of the competent ministry as something that ensures the fairness of transactions in the commodity market.

Tokyo Commodity Exchange. According to the Articles of Incorporation of the Tokyo Commodity Exchange [8], trading participants must comply with the Commodity Derivatives Act, other laws, Rules and Regulations, the Exchange's Articles of Incorporation, regulations for brokerage activities and other provisions of the Exchange, as well as observe fair and honest trading principles.

According to Article 165 of the Trading Regulations, the following actions are considered a violation of the principle of transaction fairness or non-discrimination: involvement in unfair transactions or brokerage activities; refusal to maintain reliability; involvement in actions that contradict consumer protection; involvement in negligent transactions or brokerage actions; other acts or behavior provided for by the membership rules and regulations [9].

Besides, the exchange's website provides examples of unfair practices. Such practices include, in particular, the following [10]:

1) intentional price manipulation during call auction:

— the practice of placing buy (sell) orders for the purpose of moving the contract price of a call auction while placing sell (buy) orders in advance, during and/or right before the non-cancel period, as well as right before determining the contract price of the closing auction for the day session;

— the practice of cancelling an order placed earlier, or amending price and/or quantity of an order placed in advance, for the purpose of moving the contract price of a call auction, right before the non-cancel period as well as right before determining the contract price of the closing auction for the day session;

2) intentional price manipulation during continuous trading. During continuous trading, the practice of getting an order executed by placing a buy (sell) order seemingly chasing a higher (lower) price, independently or in collaboration with other persons, for the purpose of moving the price;

3) intentional settlement price manipulation. The practice of trading independently or in collaboration with other persons, for the purpose of manipulating the settlement price (delivery price) during the settlement price calculation period;

4) fake order or spoofing. The practice of luring buy (sell) orders from other trading participants, for the purpose of pushing up/down the price, by misleadingly showing many buy (sell) orders during continuous trading without any intention to execute the buy (sell) orders, and then, right when a buy (sell) order is placed by another market participant, placing a buy (sell) order at a corresponding altered price;

5) front-running. When a broker received a buy (sell) order from a client, taking advantage of knowing that placing such order would increase (decrease) the market price. The broker places a proprietary buy (sell) order in the same contract month and getting

executed at the market level before placing said client order, for the purpose of executing one's own buy (sell) order at a price lower (higher) than said client order, then, place the client buy (sell) order and get it executed at the risen (fallen) price level;

6) transfer of profits. After receiving sell (buy) orders from clients during continuous trading, not placing said client orders immediately. For the purpose of getting profits on one's own proprietary transactions by using said client orders, the broker first places one's own proprietary buy (sell) order that matches with said client sell (buy) orders and getting executed, and then, place one's own proprietary sell (buy) order against said client buy (sell) orders, as to be executed at a higher (lower) price than the original transaction's contract price.

When determining intent in the application of unfair practices, the Exchange will consider that the trading participant had the intention to commit actions if the intention can be objectively recognized after considering a number of actions, etc. in general. It should also be noted that actions that violate the rules of the Exchange include actions arising from negligence.

Moreover, the Exchange monitors the following unfair behavior practices, the use of which may serve as a reason for subsequent investigation [11]:

1) submission or cancellation of an excessive number of orders, taking into account the market conditions existing at that moment, especially if such actions have created significant consequences for the market and may negatively affect the market (distort indicators);

2) cancellation of orders in a short time after submission (this practice is suspicious, since such submitted orders can be submitted without the intention of their execution);

3) transactions in which a person is both a buyer and a seller independently or jointly with another person (this behavior is suspicious because such persons may have a purpose other than making transactions, manipulating prices or creating artificial market liquidity);

4) submission of orders indicating a price significantly different from the market price at the time of submission of such an application (this behavior may cause, in particular, a significant deviation);

5) significant increase in trading volume or percentage of participation;

6) participation in the trades during the price change.

Conclusions.

1. "Prohibited" exchange trading practices can be divided into practices specified in the laws, and in respect of which the laws establish liability, as well as other practices not prohibited by law, but prohibited by the Exchange. The Trading Regulations set out both a list of unfair practices and general good faith behavior principles.

2. Based on the list of unfair practices specified in the laws and the Exchange's Trading Regulations, the following criteria can be identified that underlie the classification of actions that are unfair trading practices (similar to the UK), such as a wrongful intent (in most cases), the use of illegal methods to achieve the goal, the presence of negative consequences for the market, as a rule, significant (cause high price fluctuations, etc.). The performance of joint actions with other persons may also be one of the signs of the use of unfair practices. In Japan, the system of such signs has been identified in more detail, because in addition to the above practices, market conditions (current market conditions), the number of orders, performing a transaction together with another person, and an increase in the volume of orders are taken into account.

USA

Legal and Regulatory Framework. According to Title 7, Chapter 1, § 7 of the U.S. Code [12], the exchange must have the capacity and responsibility to prevent manipulation, price distortion, and disruptions of the delivery. Title 7, Chapter 1, § 6c of the U.S. Code establishes a prohibition on engaging in any trade, on submitting orders to buy or sell in cases established by law or trading rules; on demonstrating intentional or negligent disrespect for the orderly execution of orders during the closing period; on spoofing.

According to the Interpretive Guidance of the Commodity Futures Trading Commission (CFTC) [13], this prohibition does not apply to the use of algorithmic trading, which automatically matches the best buy/sell order price. This prohibition concerns preventing the possibility of purchasing a contract on the exchange at a price higher than the lowest available price offered for such a contract, or selling a contract at a price lower than the highest available price offered for such a contract.

Thus, for example, a violation may occur if a trading participant accumulates a large volume of a commodity (position) in the pre-closing period with the intent (or through negligence) to disrupt the orderly execution of transactions during the closing period. Violation is also possible in the case of spoofing, which includes, but is not limited to: a) submission or cancellation of orders to overload the exchange trading system; b) submission or cancellation of orders to delay the execution of another person's order; c) submission or cancellation of orders with the intent to create an artificial price movement; d) submission or cancellation of orders to create false market depth. In case of spoofing, the CFTC assumes the presence of the trading participant's intent or knowledge of the use of prohibited practices, since the trading participant had the intent to cancel the order before its execution [14].

Chicago Mercantile Exchange. The Chicago Mercantile Exchange Rulebook [15] establishes the following prohibited practices, in particular:

1) engaging in unfair trading, as well as the presence of behavior that is not typical for entrepreneurs; engaging in behavior and procedures that are inconsistent with the principle of equitable and fair trading; performing actions that are unprofitable for the well-being of the Exchange or engaging in actions that may worsen the reputation of the Exchange.

Withholding of the order (it is not allowed to withhold the order or any part of an order, for the benefit of any person other than the person for the benefit of which the order is being placed);

2) a person who submits orders in the interests of the client should not accept such an order, i.e. trade against his client's order (directly or indirectly) in his own interests (indicating his account, account in which such a person has an indirect financial interest). This prohibition is general in nature and subject to exceptions provided by law;

3) a participant should not buy (sell) a futures contract, buy (sell) a call option or sell (buy) a put option for his own account, an account in which he has a direct or indirect financial interest, in a situation where such a trading participant has been instructed by another person to buy (sell) a futures contract, buy (sell) a call option or sell (buy) a put option on the same product, regardless of the place of its execution;

4) improper use or disclosure of information. In particular, it is prohibited, directly or indirectly, to trade (or enter, cancel, or modify an order) on the basis of material nonpublic information when a trading participant knows or reasonably should have known the information was obtained or disclosed through fraud, deception, or in violation of a pre-existing duty (established by law, rule, agreement, understanding, or some other source). Besides, it is prohibited to disclose material non-public information when a trading participant knows or reasonably should have known the disclosure of the information would violate a pre-existing duty (established by law, rule, agreement, understanding, or some other source) owed to another, except when the disclosure is made to an Exchange official, a permitted government official, or is required by law;

5) simultaneous buy and sell orders for different beneficial owners;

6) wash trades are prohibited. No trading participant shall place or accept buy and sell orders in the same product and expiration month, and, for a put or call option, the same strike price, where the person knows or reasonably should know that the purpose of the orders is to avoid taking a bona fide market position exposed to market risk. Buy and sell orders for different accounts with common beneficial ownership that are entered with the intent to negate market risk or price competition shall also be deemed to violate the prohibition on wash trades;

7) no person shall prearrange or pre-negotiate any purchase or sale or noncompetitively execute any transaction;

8) all orders shall be entered for the purpose of executing bona fide transactions. No person shall enter or cause to be entered an order with the intent, at the time of order entry, to cancel the order before execution or to modify the order to avoid execution (spoofing). It is also prohibited to submit and cancel orders to overload or delay the systems of the Exchange or other market participants. Besides, prohibited practices include flipping, submitting orders or entering into transactions to cause a change in market volatility or stability (a rapid change in the direction of trade (position)).

Conclusions.

1. Prohibited exchange trading practices can be divided into practices specified in the laws, and in respect of which the laws establish liability, as well as

other practices not prohibited by law, but prohibited by the Exchange.

2. The Trading Regulations set out both a list of unfair practices and general faith behavior principles.

3. Based on the list of unfair practices specified in the laws, the following main criteria can be identified that underlie the classification of actions that are unfair trading practices, such as a wrongful intent (in most cases), the use of illegal methods (dissemination of false information), the presence of negative consequences for the market, as a rule, significant (cause high price fluctuations, etc.). At the same time, it is noted that volatility as an independent factor cannot be interpreted, since volatility can arise in the process of forming a market price. Along with these criteria, cooperation with other trading participants, a large volume of orders, the time (moment) of their submission, and the number of orders can be distinguished. Thus, multiple other factors are applied, the combination of which can lead to the recognition of the behavior of a trading participant as unfair trading practices.

INDIA

Legal and Regulatory Framework. According to the Securities Contracts (Regulation) Act 1956, securities are understood to include commodity derivatives [16].

According to the Prohibition of Fraudulent and Unfair Trade Practices Regulations, no person shall:

— perform frauds with derivatives, including commodity derivatives, engage in fraudulent or unfair trading practices;

— use any manipulative or misleading devices in violation of the provisions of relevant laws and regulations;

— engage in any activities, practices, or business conduct that are or will be fraud or deception against any person in connection with any derivatives transactions in violation of the provisions of the relevant law or rules and regulations.

Besides, performing transactions with commodity derivatives may be considered a fraudulent or unfair trading practice if such practice includes all or any of the following:

— performing, including intentionally, any action which creates false or misleading appearance of trading with commodity derivatives;

— performing transactions with commodity derivatives that are not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such a derivative for wrongful gain or avoidance of loss;

— inducing any person to perform transactions with any derivatives to artificially inflate, maintain, depress or cause fluctuations in the prices by any means;

— performing any action or omission amounting to manipulation of the price of a derivative, including influencing or manipulating the base price or the reference price;

— deliberate publication or coercion to publish, report or coercion to report by a person dealing with derivatives, any information related to derivatives, including financial results, financial statements, regulatory approvals, which is false or which the trading participant does not consider reliable before the transaction or during the trading;

— performing a transaction with derivatives without the intent to perform it or without the intent to change the owner;

— dissemination of information or recommendations through any media, whether physical or digital, that the disseminator knows to be false or recklessly misleading and that is intended to influence or is likely to influence the decisions of investors dealing in derivatives;

— fraudulent inducement by a market participant of any person to make transactions with derivatives to increase his brokerage activities, commissions or income;

— spreading false or misleading news that may encourage selling or buying derivatives;

— mis-selling of derivatives and services in the securities market (“mis-selling” means the sale of securities or services related to the securities market by any person, directly or indirectly, by 1) making false or misleading statements, or 2) concealing or omitting material facts, or 3) concealing the associated risk factors, or 4) not taking reasonable care to ensure suitability of the securities to the buyer).

The Multi Commodity Exchange of India Limited. According to the trading rules, the term "securities" include, among other things, commodity derivatives.

Responsibility according to the rules of the exchange comes for improper behavior (misconduct), conduct unusual for entrepreneurs, unprofessional behavior, fraudulent behavior and unfair trading practices. Improper behavior includes, among other things, fraud, disrespectful, improper behavior (in the case when disrespectful behavior occurs that affects the orderly stock market or behavior that prevents the Exchange from carrying out its activities). Behavior unusual for an entrepreneur includes:

— using fictitious names;

— performing bogus transactions, the execution of which will not entail the transfer of ownership or the execution of the transaction, knowing about its nature;

— spreading rumors;

— assistance in performing a transaction to disrupt market equilibrium or contribute to a market condition in which prices will not accurately reflect the market value;

— market manipulation;

— carrying out unsecured exchange activities, i.e. the inability to execute transactions entered into.

Unfair trading practices include market manipulation, the dissemination of misleading information that encourages others to buy contracts or has the effect of maintaining or stabilizing the market price of a contract, if the participant does not attach importance to whether this information is false or true, or he knows for sure that the information is false. Besides, it is prohibited to involve other persons in frauds or deception to buy or sell contracts; perform transactions on their own behalf or in the interests of a related person, while knowing that the subscriber (director) of the company of his company will give an order to make transactions with the same commodity derivatives; delay (postpone) transfer of securities, which leads to a change in the price of the asset.

Dumping is the practice of selling a product in a foreign market at an unfairly low price (at a price lower than in the domestic market).

Churning is a broker's practice of making excessive transactions using a client account in order to increase the brokerage commission.

Conclusions.

1. India is one of the few countries in which the legislator has an independent regulation regulating unfair trade practices. These practices are also established and regulated at the exchange level.

2. Among the signs that indicate the performance of unfair practices are an intent, the use of unfair methods of implementing such practices, negative consequences, cooperation with other persons, while there are no signs such as market conditions, the history of transactions, the number and volume of orders, etc.

3. Among the listed practices, no such "popular practices" as spoofing, flipping, etc. were found.

INFERENCE

Thus, having analyzed the regulatory and exchange regulation of unfair trading practices, their criteria and types, the following conclusions can be drawn.

1. Unfair trading practices can be divided into "prohibited" practices specified in the laws, as well as other practices that are not prohibited by law, but prohibited by the exchange. This observation confirms that the government of each country attaches importance to the regulation of unfair practices, and the exchange is not a completely independent institution in relation to the identification of individual unfair trading practices.

2. Some criteria for practices that are recognized as unfair are the following:

— wrongful intent (sometimes the standard may be raised and negligence (recklessness) is taken into account) of the trading participant, which is expressed in the desire and opportunity to commit an action, as a rule, in order to achieve their own benefit using illegal methods (for example, the creation of an artificial market);

— use of illegal methods to achieve the goal (for example, the dissemination of false information);

— negative consequences for the market (mainly), for the exchange and for other participants.

Besides, given that the purpose of entering into an agreement on exchange is its execution by the parties who have a valid will to enter into such an agreement, exchanges also assess whether the trading participants' actions led to the execution of the agreement, and whether such execution was "real".

The above criteria were identified for all countries in respect of which the analysis was carried out, while in order to recognize unfair practices, a set of the above basic criteria is required. In addition to the criteria listed in Clause 2, other (additional) criteria may be taken into account, such as the size and volume of orders, market conditions, time of order submission/cancellation, etc., which indicates a comprehensive approach to assessing actions as unfair behavior in some jurisdictions.

3. Unfair behavior is possible not only for the trading participant, but also for the trader, the trading participant's representative submitting orders. The approach regulating both the behavior of a legal entity during trading and the employment policy, i.e. behavior outside of trading, seems to be the most effective and advanced, in particular in terms of risk management.

4. No classification of unfair trade practices has been identified in any jurisdiction, so, the following possible classifications are proposed:

— depending on the object of unfair practice, this is harmed in the first place, the interests of the market, the trading participant's clients or the participant himself;

— depending on the priority action chosen to change the price, spreading false information, submitting orders, for example, in large volume;

— depending on the mechanism of price change, creation of an artificial market when prices do not reflect economic reality, creation of a false trading activity, submission of a large number of orders with no intent to execute them, etc. There are many mechanisms used by trading participants, but the unifying thing is that they are all aimed at creating a false effect for the market or trading participants;

— depending on the consequences, losses, loss of business reputation, market volatility, etc.

5. Practices that are recognized by either the regulator or the exchange as unfair in all jurisdictions are: spoofing, intentional dissemination of false information; creation of an artificial market in which prices and turnover do not reflect the actual picture of the market; wash trading.

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Authors' information:
Ksenia I. Khachaturova
Head of the Department of Legal Support of Commodity and Derivatives Markets of the Legal Department of the Saint Petersburg International Mercantile Exchange (SPIMEX), JSC; Postgraduate Student, Autonomous Non-Commercial Organization V.A. Musin Research Center for the Development of Energy Law and Modern Legal Science

Сведения об авторе:
Хачатурова Ксения Игоревна
Начальник отдела правового сопровождения срочного и товарного рынков Юридического управления АО “Санкт-Петербургская Международная товарно-сырьевая биржа”; аспирант, АНО “Научно-исследовательский “Центр развития энергетиче-ского права и современной правовой науки имени В.А. Мусина”

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