ИССЛЕДОВАТЕЛЬСКАЯ СТАТЬЯ

Как усовершенствовать категоризацию розничных инвесторов с целью обеспечения их защиты?

Георгий Денисович Травин[a]
а ПАО «Сбербанк»[1]

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Аннотация: Для регулирования доступа розничных инвесторов на фондовый рынок в Российской Федерации используется их деление на квалифицированных и неквалифицированных. За последние два года эта сфера претерпела значительные регуляторные изменения и продолжает адаптироваться к специфике российского рынка ценных бумаг в ответ на новые вызовы. В статье рассматриваются установленные в Российской Федерации категории инвесторов, доступные им для инвестирования финансовые продукты, особенности допуска к операциям с отдельными категориями продуктов. Проводится анализ регуляторной политики, направленной на достижение одновременно таких целей, как защита розничных инвесторов и стимуляция развития рынка ценных бумаг. В статье предлагается обеспечить соответствие возможностей инвестора в первую очередь его знаниям и опыту, а также ограничить возможность потенциальных злоупотреблений со стороны брокеров. Отмечается, что требование принятия осознанных инвестиционных решений закономерно предъявлять ко всем инвесторам в равной степени, а организацию тестирования инвесторов в силу очевидного конфликта интересов нельзя делегировать брокерам, к этому процессу необходимо подключить независимые организации.

Ключевые слова: розничные инвесторы, категоризация инвесторов, Банк России, брокеры, санкции
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How can we improve the categorization of investors to ensure their protection?

Georgy D. Travin[a]
a PJSC "Sberbank"[2]

RESEARCH ARTICLE

Abstract: In the Russian Federation, to regulate the access of retail investors to the stock market, they are divided into the groups of qualified and non-qualified investors. This sector has experienced substantial regulatory changes in the last two years and is still adjusting to the specific features of the Russian securities market in response to new challenges. The article considers the categories of investors established in the Russian Federation, financial products available for investment, and peculiarities of admission to operations with certain categories of products. The paper analyzes the regulatory policy aimed at achieving such goals as retail investor protection and the development of the securities market. The author suggests ensuring that the investment opportunities are matched with investor's knowledge and experience, as well as limiting the possibility of brokers' potential abuse. It is noted that the requirement to make informed investment decisions should be applied to all investors equally, and the organization of investor testing due to the obvious conflict of interests cannot be delegated to brokers, independent organizations should be involved in this process.

Keywords: retail investors, investor categorization, Bank of Russia, brokers, sanctions
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1 Личное мнение автора, выраженное в настоящей статье, не является позицией ПАО «Сбербанк».

2 The author's opinion expressed in this article does not represent the position of PJSC "Sberbank".

Introduction

The number of retail investors in the domestic securities market, as well as the share of their operations in the total volume of trading, is growing steadily. The reasons are the restrictions imposed by the Bank of Russia and the inevitable withdrawal of several major players[3]. Both the Russian President[4] and the Chairman of the Bank of Russia[5] have recognized the significance of retail investors for the Russian economy and the need to provide a suitable protection level for them. Currently, the regulator is actively working in this direction, but there are some challenges to be resolved [Travin, 2021. P. 53].

The criteria to qualify investors on the securities market and grant them access to financial instruments are provided in the Federal Law «On the Securities Market» of April 22, 1996, No. 39-FZ (the «Securities Market Act» or SMA). Federal Laws No. 306-FZ of July 31, 2020, and No. 192-FZ of June 11, 2021, substantially revised these criteria. The current version of the law divides individuals engaged in investing in the securities market into three groups: a) simple non-qualified; b) non-qualified who have successfully passed the certification; and c) qualified.

Simple non-qualified investor

The status of a simple non-qualified investor is granted to any individual opening a brokerage account; they have access to the minimum number of investment instruments. They are listed in Article 3.1 of the SMA, considering the specifics established in Article 11 of Federal Law No. 192-FZ of June 11, 2021. These provisions include reference norms to the regulations adopted by the Board of Directors of the Bank of Russia to implement the provisions of the law: July 23, 2021[6]; December 23, 2021[7]; March 31, 2022[8]; and April 14, 2022[9].

Investors at this level are assumed to have access to securities that are indirectly regulated by the Bank of Russia. This regulation occurs through issue registration for Russian securities, inclusion in quotation lists, and approval of the composition of indices for foreign securities. The absence of securities deemed to be «complex» is the primary characteristic that sets them apart from other securities.

Such an approach to regulation is grounded in the assumption that the economic substance of «simple» financial instruments, such as stocks and bonds (and the Open-end funds or ETFs that comprise them), is quite simple and understandable to everyone, as long as they are legally capable. It consists of the possibility of receiving income in the form of a dividend, coupon, or discount, the difference between the purchase price and the subsequent sale, the emergence of a loss in the form of the difference between the purchase price and the following sale, or the complete or almost complete loss of invested funds in the event of the issuer's bankruptcy.

Non-qualified investor who successfully passed the certification test

The list of financial instruments available only after certification appears in subparagraph 6 of paragraph 6.1 of the Core Standard[10]. After considering market opinion, the Bank of Russia approved a standard jointly developed by the National Association of Stock Market Participants (NAUFOR) and the National Financial Association (NFA).

This list of available assets can be divided into two groups. The first group includes basic instruments that do not meet the Bank of Russia's criteria for simple non-qualified investors. For example, bonds with credit ratings below the level set by the Bank of Russia. This group suggests that passing investor certification demonstrates an investor's willingness to accept additional risks associated with the financial status of a particular issuer but not with the complexity of the instrument itself.

The second group of assets comprises sophisticated instruments for comprehending the workings and essence of the economy, which require specialized knowledge, the availability of which is assessed through testing. It is appropriate to mention structured bonds as an example of such an instrument.

The test is usually administered by a broker in electronic format. It contains questions related to a specific financial instrument that the investor will have access to. The status assigned to the investor is only valid when conducting transactions with such financial instrument and with the particular broker. The Bank of Russia approves the list of questions, and then questions are randomly selected from this list. If the investor fails the test, they can

3 Marina Mazina: The share of private investors in stock trading on the Moscow Exchange has grown to almost 75%.RBC, May 24, 2022. https://quote.rbc.ru/news/article/628cd4209a7947528774ef57. Marina Mazina: The Central Bank recognized the dependence of the market on the behavior of retail investors. RBC.May 31, 2022. https://quote.rbc.ru/news/article/6296116d9a79473f4a0f1d27

4 Putin stated the importance of investor protection. *Izvestiya*, February 1, 2021. https://iz.ru/1119070/2021-02-01/putin-zaiavil-o-vazhnosti-zashchity-investorov; Meeting with members of the government on February 12, 2021; http://www.kremlin.ru/events/president/news/64984; Paragraph 2 «b» of the list of assignments following the meeting on economic issues; http://kremlin.ru/acts/ assignments/orders/65003

5 Nabiulina called the protection of investors' rights a priority in the Central Bank's policy. TASS, June 10, 2022. https://tass.ru/ekonomika/14881047

6 Bank of Russia. https://cbr.ru/about_br/dir/rsd_2021-07-23_2/

7 Bank of Russia. https://cbr.ru/about_br/dir/rsd_2021-12-23/

8 Bank of Russia. https://cbr.ru/about_br/dir/rsd_2022-03-31/

9 Bank of Russia. https://cbr.ru/about_br/dir/rsd_2022-04-14_38-02/

10 The core standard for protection of rights and interests of individuals and legal entities – recipients of financial services provided by members of self-regulatory organizations in the field of the financial market, incorporating brokers (as amended on December 29, 2012). http://naufor.ru/tree.asp?n=18276

try to pass the test again. If the investor fails to pass the test after several attempts (the number of attempts is not limited), but there is a need to complete a transaction, investor can still perform a transaction according to the procedure called the «right of last word». In such a case, prior to the transaction, the broker sends the investor a notice about the risks associated with completing the transactions specified in the order, and the investor sends a statement of risk acceptance in response. The amount of such a securities transaction (or the nominal value of a derivative financial instrument) may not exceed 100,000 rubles or the value of one lot or one security if it is higher than 100,000 rubles. There is a possibility of using the «right of last word» when completing transactions through different brokers, but there is no information about the spread of such practice [Molodyko, Galiakhmetova, 2022. P. 180].

Qualified investor

The largest number of instruments is available to the qualified investor, whose choice is limited only by the broker's offering. To obtain qualified investor status, a person must meet at least one of the criteria established by the SMA and specified in the Bank of Russia's Guideline No. 3629-U of April 29, 2015, «On the Recognition of Persons as Qualified Investors and the Procedure for Maintaining the Register of Persons Recognized as Qualified Investors». These criteria include wealth (amounting to 6 million rubles or a proportionate amount of assets), experience in performing transactions (amounting to 6 million rubles, made with a specific frequency during a definite period), education (confirmed by a diploma of higher economic education from an educational institution authorized to certify professional activities in the securities market), a certificate of qualification in the field of financial markets[11] or one of the international certificates: Chartered Financial Analyst (CFA), Certified International Investment Analyst (CIIA), Financial Risk Manager (FRM) and work experience (in an organization that periodically or as a regular business activity performs transactions with financial instruments).

Prospects for developing the legislation on investor qualifications from the regulator's point of view

On July 20, 2022, the Bank of Russia presented the Concept for Improving the Protection of Retail Investors[12]. The most intense public resonance arose from the idea of banning non-qualified investors from conducting transactions with foreign securities. On August 2, 2022, NAUFOR sent a letter to the Bank of Russia with several proposals to mitigate the approach proposed by the Concept, pointing to the need to gradually substitute assets from the «unfriendly» countries for assets from the «friendly» countries[13].

On August 4, 2022, the Bank of Russia published a new version of the document, partially softening its positions; however, it still included a ban on the acquisition of issuers' foreign securities from unfriendly countries[14]. The Bank of Russia's interim decision to gradually ban such assets has led to a total cessation of access to them as of January 1, 2023[15], and was subsequently replaced by Instruction No. 6347-U[16] of January 9, 2023, with similar content intended to be permanent.

Further development of categorization of investors is primarily related to Draft Law No. 496225-8, «On Amendments to the Federal Law «On the Securities Market» and the Federal Law «On Investment Funds»[17]. At the time of preparing this article, it was under consideration by the State Duma in the first reading. The proposed wording suggests (a) increasing the value of financial instruments acquired under the «right of last word» from 100,000 rubles to 300,000 rubles; (b) including the reaching of a certain level of income within a given period as an independent criterion for acquiring the status of a qualified investor; (c) within the transaction experience and wealth criteria, provide for different thresholds for the volume of transactions and wealth, depending in the first case on the level of education and in the second case on the level of education or the fact of passing additional testing;

11 This refers to qualification certificates of seven types; the list is contained in the Bank of Russia's Decree No. 4047-U of June 21, 2016, «On the types and forms of qualification certificates issued by organizations accredited by the Bank of Russia that certify stock market specialists». These certificates are issued by five organizations in Russia, two of which are higher education institutions. Their full list is available on the official website of the Bank of Russia at the following address: https://www.cbr.ru/admissionfinmarket/navigator/att/

12 The Bank of Russia presented a concept for improving the protection of retail investors. Bank of Russia, July 20, 2022. https://cbr.ru/press/event/?id=14027

13 NAUFOR official website. «NAUFOR sent to the Bank of Russia comments and proposals on the Concept of improving the protection of retail investors.» August 2, 2022. https://naufor.ru/tree.asp?n=24186

14 Financial market. New tasks in modern conditions. Document for public discussion. Bank of Russia. August 4, 2022. P. 15. https://www.cbr.ru/Content/Document/File/139354/financial_market_20220804.pdf

15 The Bank of Russia restricts the sale of securities from unfriendly countries to unqualified investors. Bank of Russia. September 6, 2022. https://www.cbr.ru/press/event/?id=14135

16 Directive No. 6347-U of January 9, 2023, «On securities and derivative financial instruments intended for qualified investors». Bank of Russia. March 15, 2023. https://www.cbr.ru/Queries/UniDbQuery/File/90134/2744

17 Draft Law No. 496225-8, «On Amendments to the Federal Law «On the Securities Market» and the Federal Law «On Investment Funds». State Duma of the Federal Assembly of the Russian Federation. November 24, 2023. https://sozd.duma.gov.ru/bill/496225-8

(d) establishing the need to retake the test to gain access to a financial instrument if the investor has not transacted with that financial instrument for a period of 5 years from the last transaction or if no transactions have been conducted from the date of the test[18].

The proposed version of the Directive «On Amendments to the Directive of the Bank of Russia of April 29, 2015, No. 3639-U «On Recognition of Persons as Qualified Investors and the Procedure for Maintaining the Register of Persons Recognized as Qualified Investors» suggests a gradual increase in the threshold for recognizing an investor as qualified based on the wealth criterion from 6 million rubles to 12 million rubles as of January 1, 2025, and to 24 million rubles as of January 1, 2026[19].

To regulate margin trading, the Bank of Russia is considering introducing a division of investors into clients with an initial risk level, a standard risk level, and an increased risk level. The differentiation will be made depending on the experience of leveraged transactions and the size of the assets. It will determine the maximum leverage available to such a client at the broker[20].

Findings

The idea of providing additional protection to less prosperous investors, whose situation may be more sensitive to market fluctuations as well as the inevitable financial losses in investing, seems compelling. However, all investors should be equally required to make informed investment decisions.

As for the definition of wealth as a stable financial position, the very criterion of wealth is also questionable because it ignores the source of funds and assets in the brokerage account and their proportion to other investor properties. For example, the 6 million rubles[21] required to obtain the status of qualified investor may be received as an inheritance, from the sale of an apartment, or may even be a lottery prize. In such a case, these funds will not indicate the investor's wealth, stability of financial position, or ability to assume additional risks associated with investing. Also, there is a situation when an inexperienced investor would want to place all the funds in the stock market to gain access to high-yield and high-risk complicated instruments hoping to receive easy money, playing a kind of complex market roulette and «betting on zero». This possibility persists even in light of the anticipated increase in the property threshold and the introduction of income as a separate criterion. The presence of such formal criteria makes it too easy for those without sufficient knowledge to gain access to high-risk instruments.

Furthermore, the wealth criterion falls out of the prevailing link between having knowledge of and access to a product or financial market for all three categories of investors and seems inappropriate in this context.

The position of I.A. Chebeskov, Director of the Financial Policy Department of the Ministry of Finance of the Russian Federation, illustrates this logic: he believes that in the future, investors' qualifications should be based on the knowledge of a citizen rather than on the size of their assets, so wealthy citizens should take the tests as well[22]. The proposed application of testing to the mechanism for acquiring qualified investor status is definitely a step in the right direction.

We should also mention the views of K.Yu. Molodyko and L.I. Galiakhmetova when planning investor testing, as they argue that broker testing cannot be assigned due to apparent conflicts of interest and cannot be done «externally» without significant training. It is recommended that tests only be conducted by independent organizations, such as state universities, that have no conflict of interest when it comes to testing investors. The individuals administering the tests should have gone through full-time training [Molodyko, Galiakhmetova, 2022. P. 180]. This is essential for ensuring the accuracy of test results, especially considering the overly optimistic statistics that are often presented.

Nevertheless, giving brokers the authority to grant qualified investor status presents a conflict of interest as well. Formal qualification criteria, as previously mentioned, further increase the potential for abuse for brokers, the positive economic effect of which is evident to them. The existence of a practice when a broker imposed products for qualified investors on non-qualified investors with the subsequent assignment of the necessary status for access to them figured in the case of the «Trust» bank [Selivanovsky, 2021(a). P. 81–82] and continues to be practiced to this day [Selivanovsky, 2021(b). P. 10].

Foreign practice may become valuable in this issue. In the U.S., the main instrument for protecting retail investors is information disclosure, which is usually accomplished through prospectus registration. In such a regulatory approach, registration of the prospectus is a

18 As well as to supplement the list of financial instruments available to a simple non-qualified investor with bonds secured by a pledge of monetary claims if their issuer is a specialized project finance company in which 100 % of the shares or stakes are owned by the Russian Federation, State Corporation «VEB.RF» or JSC «DOM.RF».

19 Draft Directive of the Bank of Russia «On Amendments to the Directive of the Bank of Russia of April 29, 2015, No. 3639-U «On Recognition of Persons as Qualified Investors and the Procedure for Maintaining the Register of Persons Recognized as Qualified Investors» (as of January 24, 2024). February 2, 2024. https://www.garant.ru/products/ipo/prime/doc/408366773/

20 Novice investors will be restricted in the amount of leverage. Bank of Russia. July 26, 2023. https://cbr.ru/press/event/?id=16962

21 The assumed 12 million rubles or 24 million rubles.

22 Ivan Chebeskov: We propose to consider introducing tests to recognize investors as qualified. October 25, 2021. https://minfin.gov.ru/ru/press-center/?id_4=37665-ivan_chebeskov_predlagaem_podumat_o_vvedenii_testov_dlya_priznaniya_investorov_kvalifitsirovannymi

barrier to screening out non-standard and, therefore, less transparent financial instruments. Although the formal presence of a registered prospectus does not always entail an understanding of its content by the investors, it allows such investors to familiarize themselves with all the information necessary to make an informed decision [Khabarov, 2015. P. 261].

Thus, having basic understanding of how a particular type of financial instrument functions, investors can independently analyze its investment attractiveness and decide on its purchase based on specific data concerning the financial instrument they are interested in.

It is inappropriate for regulators to treat investors like children by preventing them from accessing «adults-only» products [Lvova, 2020. P. 50]. Such an approach does not address the issue but merely masks it. It limits losses from transactions with financial instruments through deprivation of the possibility of conducting them, thus limiting the development of financial literacy, the financial market, and the economy as a whole. Hyper-guardianship on the part of the state disrupts the formation of internal self-control in investors, and the lack of investment alternatives deprives them of incentives to study the mechanisms of market functioning independently. A folk wisdom best illustrates this imbalance: «Give a man a fish, and he will be fed for one day; teach him to fish, and he will be fed all his life».

The system of investor protection, relying mainly on restrictive measures, also contradicts market mechanisms [Lvova, 2019. P. 85; Biktashev, 2022. P. 144–145]. When applied to the different financial products available to the investors, its main drawback is that it violates the principles of risk-reward and reliability-return ratio. The safest conservative choice is a bank deposit, which offers the investors a fixed and insurable way to invest their money. Also, there are bonds that are not insured but still offer fixed income, whose level is ranked by the credit risk. Then comes a significant jump in the degree of risk and grade of these products. When applying to a securities market manager or independently deciding to invest securities in domestic instruments that do not offer fixed income, an investor faces the extreme volatility of the Russian market. Often, it is caused by political factors and associated losses due to the lack of control instruments; in particular, the real possibility of diversification between instruments and the nature of positions on them.

In this context, we should also cite the position of the US regulator, the Securities and Exchange Commission (SEC), which notes that reasonable risk is necessary for the development of the economy as it ensures investment in areas that create new jobs, promote innovation, and provide growth opportunities[23].

23 Securities and Exchange Commission. 17 CFR Parts 230, 240 [Release No. 33-10824; 34-89669; File No. S7-25-19] RIN 3235-AM19 Accredited Investor Definition. P. 5. https://www.sec.gov/ rules/final/2020/33-10824.pdf

This suggests that the growth of the securities market ought to benefit the entire economy. However, within the government's policy framework, the desire to protect and educate the investors is opposite to the desire to protect the economy and the companies that comprise it. This refers to numerous prohibitions and restrictions imposed by the Bank of Russia, the government, and the President on disclosing information by banks, financial institutions, and public companies, including economically significant organizations[24]. Due to the lack of factual information about the instrument – which is necessary to conduct an analysis based on such knowledge – these circumstances frequently effectively deprive an investor of the opportunity to make an informed decision about how a particular type of financial instrument functions.

Nevertheless, complete borrowing of the American approach and the assertion of the principle «forewarned is forearmed» would not be correct in the conditions of a low investment culture related to the objective need to protect the investors. Such a practice will only create an «imaginary awareness» among investors, whose knowledge is not always sufficient to analyze the risks disclosed in prospectuses or voluminous documents with a complex structure comprising specialized financial and legal information. In Russia, the regulatory approach should take a more reasoned and responsible approach, demonstrate that investors are aware of their main risks and aim to create this awareness.

24 The decision of the Board of Directors of the Bank of Russia on the list of information of non-credit financial organizations subject to disclosure according to the legislation of the Russian Federation or regulations of the Bank of Russia, which non-credit financial organizations are entitled not to disclose, and the list of information stipulated by the legislation of the Russian Federation or regulations of the Bank of Russia, which the Bank of Russia is entitled not to disclose on its official website in the information and telecommunications network Internet. April 19, 2022. https://www.cbr.ru/about_br/dir/rsd_2022-04-14_38-01/; Resolution No. 351 of March 12, 2022, «On Peculiarities of Disclosure and Provision in 2022 of Information Subject to Disclosure and Provision following the Requirements of the Federal Law «On Joint-Stock Companies» and the Federal Law «On the Securities Market» and Peculiarities of Requirements of Illegal and Market Manipulation and on Amendments to Certain Legislative Acts of the Russian Federation. http://static.government.ru/media/acts/files/1202203140028.pdf; Resolution No. 2131 of November 24, 2022, «On Amending Resolution of the Government of the Russian Federation No. 351 of March 12, 2022». http://static.government.ru/media/files/kivFJiMJR0EE4w6ipybTS3NGWtFHa2wz.pdf; Decree of the President of the Russian Federation No. 73 of January 27, 2024, «On the Temporary Procedure for Disclosure and Provision of Information by Business Companies that are Economically Significant Organizations and Certain Related Persons». January 27, 2024. http://publication.pravo.gov.ru/document/0001202401270001?index=1

Conclusion

Based on the above, we believe it would be advisable to refuse granting qualified investor status based on wealth and transaction volume criteria due to their formal nature, the conflict of interest associated with them, and the lack of connections between wealth and understanding of the risks related to financial instruments. The broker's assignment of qualified investor status based on the other criteria should be formal and rely on documents provided by the investor and issued by a third party not affiliated with the broker[25].

The conflict of interest present in the investor testing currently assigned to brokers in relation to products for non-qualified investors that are successfully tested does not appear to be critical due to the reduced risk associated with such products. However, with respect to potential testing to determine thresholds under the transaction volume and wealth criteria for the purpose of granting qualified investor status, such a conflict of interest is already associated with riskier products and should be addressed by delegating testing to independent organizations that do not have a conflict of interest and mandating investor education from such organizations prior to testing.

25 Which is not possible, for example, when a broker reviews the volume of assets placed in such broker's accounts to confirm compliance with the wealth criterion or a review of the volume of transactions executed through such broker to prove compliance with the transaction experience criterion; but, it is possible when verifying the required certificate or diploma to meet the education criterion, reviewing employment records to meet the work experience criterion, or potentially inspecting income statements to meet the income level criterion.

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ИНФОРМАЦИЯ ОБ АВТОРЕ:

Георгий Денисович Травин, ведущий юрисконсульт Правового департамента
ПАО «Сбербанк» (Российская Федерация, 117312, Москва, ул. Вавилова, 19). E-mail: travingeorgiy@yahoo.com

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INFORMATION ABOUT THE AUTHOR:

Georgy D. Travin, Lead Legal Counsel, Legal Department
PJSC "Sberbank" (19, Vavilova St., Moscow, 117312, Russian Federation). E-mail: travingeorgiy@yahoo.com

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