Equal Treatment of Shareholders and Protection of Their Rights

Good corporate governance, especially protection of shareholders' rights, is crucial for attracting capital. Ukrainian enterprises are in extreme need of additional cash resources for modernizing production and expanding into new markets. The two potential sources of desperately needed cash are loans from creditors and capital investments. Effective corporate governance and protection of shareholders' rights help to assure the availability of both sources of funds.

Suppliers of capital are more willing to make loans or provide investment when their rights are clearly stated and effective remedies are available in the event of violations. When, by contrast, applicable legislation and/or company by-laws allow management or controlling shareholders to derive material benefits from company activities at the expense of creditors and investors, neither loans nor investments are likely to be forthcoming. Therefore, the economic growth of the developing Eurasian countries depends upon providing for and guaranteeing the rights of creditors and investors.

Fair and equal treatment of all holders of common shares is one of the key principles of effective corporate governance. (In developing countries, it may be expedient to prohibit issuing different types of common shares with different sets of rights, although this is allowed in many developed countries). Among the specific rights that should be guaranteed equally to all shareholders are: the right to receive dividends; preemptive rights to purchase additionally placed shares; the right to obtain adequate information on a company's activities; the right to participate in the general shareholders meeting, including adequate disclosure in advance of all materials necessary to make informed decisions and the right to receive a proportionate share of a company's property, after payment of creditors, in the event of its liquidation.

An extremely important prerequisite for attracting investment is ensuring that all shareholders, domestic (internal) and foreign, government and private, are treated equally, irrespective of the state policy on foreign investment.

In Ukraine today, the State often demands and receives preferential treatment as a shareholder, which is unacceptable from a corporate governance point of view. Such demands for favored treatment may be observed at the highest levels of policy formulation as well. An example is the Feb. 3, 1999 letter of the State Tax Administration to the Cabinet of Ministers of Ukraine entitled "On Payment of Dividends on the State's Stake in Joint Stock Companies to the Budget". Authors of the letter

expressed their dissatisfaction with the fact that general shareholder meetings sometimes decide not to allocate profit for payment of dividends. The letter also identifies oblasts where representatives of regional offices of the State Property Fund supported the decision of the general shareholder meeting to invest profits back into the company instead of paying dividends on the State's shares to the budget. To ensure timely and consistent payment of dividends to the budget, the State Tax Administration offered to define short time periods for paying dividends on all State shares. This shortsighted position has a number of negative consequences. It tramples on two important principles of good corporate governance that are necessary to attract investment. It elevates the State from being one among many equal shareholders to a privileged position. The STA's position also overrides the principle that the general shareholder meeting, as the highest body of the enterprise, has the discretion to decide how to allocate profits, and whether and when to pay dividends.

At this point in the Ukraine's economic development, most companies need to modernize production and develop new markets. By diverting profits into dividends, the State deprives enterprises of the funds necessary to survival and growth, thus sacrificing the future to the present.

At the same time, it sometimes happens that the State's acts as a shareholder in ways that violate the rights of other investors. For instance, the State twice caused disruptions of the general shareholder meeting of OJSC "UkrNafta." First, the State representative failed to appear at the meeting in summer 1998. Second, on June 21, 2000, on the eve of the general shareholder meeting, the Cabinet of Ministers issued a Resolution replacing the chairman of the management board of the National JSC "Naftogas Ukrainy." The statutory fund of the latter company had 50% plus one share of OJSC "UkrNafta," making it the controlling shareholder. Both the old and the new chairmen of the management board of the National JSC "Naftogas Ukrainy" showed up at the "UkrNafta" general shareholder meeting to represent the interests of the State. Before the information was received about the Resolution of the Cabinet of Ministers, the dismissed chairman of "Naftogas Ukrainy" was registered as the State's representative. After the meeting had begun, the Cabinet of Ministers action was announced. Controversy then erupted over who should be considered a plenipotentiary representative of the National JSC "Naftogas Ukrainy." Debates continued for the whole day, but no consensus was reached[1].

[1] The examples given in these materials are taken from mass media reports and representatives of the Securities and Stock Market State Commission (hereafter-the SSMSC), shareholders, and other stock market participants, as well as from other sources which we consider reliable.

Violation of the Principle of Equal and Equitable Treatment of Shareholders

Share dilution takes place when companies issue shares to managers or favored investors at below market value, thus diluting other shareholders' interests. Share dilution results in an investor's percentage ownership of a company shrinking, while the value of the overall company increases by a much smaller percentage.

Share dilution has been one of the most widespread violations of shareholders' rights in Ukraine for several years. The case of OJSC "Dniproshina" generated the most controversy inside and outside Ukraine (see Attachment), but similar cases continue to occur.

The Law of Ukraine "On Business Associations" declares that existing shareholders have the preemptive right to purchase shares of additional issues. However, the law does not provide any mechanism for guaranteeing the exercise of that right. Nor does it specify that the right is granted to enable all shareholders to preserve their percentage stakes in the statutory fund of the company. Joint stock company managers often take advantage of the Law's ambiguity to interpret the right in a way that places one shareholder in a more advantageous position at the expense of the others. (For example, the charter of Open JSC "Dniproshina" gave founding shareholders a privileged position compared to the other shareholders. See Attachment.)

The law also prescribes a maximum period for open subscriptions (6 months), without providing any minimum period. As a result, it has become a common practice in Ukraine to limit subscription periods for new issuances to very short time periods, which makes it difficult for shareholders exercise their preemptive rights. For example, OJSC "Levada" (Kharkiv oblast) conducted subscription in a remote country district for just two days. Similarly, OJSC "Stirol" proposed an additional issuance with a one-day open subscription period. (See Attachment.) At present, the SSMSC has no legal grounds to refuse to register share issues based on the fact that subscription periods are extremely short or take place in remote, inconvenient locations, even though such circumstances appear designed to prevent shareholders from exercising their preemptive rights.

Some attempts have been made to resolve these problems without waiting for changes in the governing statutes. In May 2000, the SSMSC issued an Explanation of shareholders' preemptive rights, and later drafted a Regulation "On the Procedure for Increase (Decrease) of the Statutory

Fund of Joint Stock Companies" recently adopted at the SSMSC sitting[2]. The draft Regulation not only describes shareholders' preemptive rights, but also establishes a two-stage procedure for conducting an open subscription period. The first stage must last at least 15 days, giving shareholders more time to exercise their preemptive rights. Companies will not be able to ignore the SSMSC Regulation clarifying and protecting shareholders' preemptive rights because it has the force of law. The SSMSC also has the right to issue warnings and order violations of the Regulation corrected. Failure to comply may be sanctioned. Passage of the draft Regulation by the SSMSC will provide important protections to shareholders against dilution of their stakes.

A variety of creative ways have been developed to deprive <u>shareholders of the right to participate meaningfully in the general shareholder meeting</u>: notice of the general meeting is not provided to all shareholders or is provided too late; materials necessary to make informed decisions about matters on the agenda are not provided in a timely fashion (usually, the company says the materials are not ready, a condition that lasts until the meeting itself); shareholders' representatives are excluded from participating in the general meeting for flimsy reasons (in one case, the excuse given was that the date in the proxy was written in numbers, not in words; sometimes, companies demand that shareholder representatives produce a proxy certified by a notary, based on a requirement included in the notice of the general meeting; the Law "On Business Associations," however, allows proxies to be certified by the management board or the registrar). Sometimes, shareholders convening an extraordinary general meeting violate the rights of other shareholders. For instance, the State, 69 percent shareholder of State Joint Stock Energy Company "KharkivOblEnergo," attempted to hold a general shareholder meeting to change the composition of the company's board. The State published a notice of the meeting that said where and when it would be held, but failed to specify the purpose and agenda, preventing other shareholders from submitting proposals to the agenda.

Although the law requires that a general meeting be held, as a rule, at the location of a joint stock company, exceptions to the rule frequently occur. Holding a general meeting in another oblast or country is one way to exclude direct participation of certain shareholders, particularly of minority ones. (Recently, a general shareholder meeting of Open JSC

[2] This Regulation is to undergo the state registration with the Ministry of Justice of Ukraine.

"Khersonsky Combinat Khleboproduktov" was held in Budapest. As a result, the State, a 25 percent shareholder, was not represented.[3]

<u>A whole series of violations of the principle of equal treatment of shareholders occurs because Ukraine's legislation lacks the concepts of "affiliated person of the company" and "interested person transactions", and does not require disclosure of information on one's affiliation and interest in the transactions concluded by a company.</u>

Joint stock companies' ownership of stakes in each other's statutory funds (cross ownership), as well as circular ownership, where a company de facto owns its shares and de jure their owner is another legal entity, in which that company is a participant, have become frequent.

Interest in the company's transactions may arise, for instance, when a company's official is a family member of an official of a potential counteragent under an agreement, or owns a substantial stake in such counteragent's statutory fund. As a result of such interest, transactions can be concluded on alienation of a company's property at prices lower than the market ones, or, vice versa, products may be bought from an interested counteragent at overcharged prices. Both result in damage to property interests of the company and shareholders, respectively. Effective legislation of Ukraine does not have a requirement that companies' officials disclose such an interest. Therefore, the charter or by-laws of a joint stock company should contain the requirement that members of the supervisory board and the management board disclose their personal interest in the company's present or potential agreements. The term and procedure for such disclosure should also be defined. If making the decision regarding company's transaction lies within the jurisdiction of the company's body of which a specified official is a member, by-laws of that company should provide that such official does not participate in the voting to decide whether to conclude such transaction.

Fairly common problems for Ukraine are asset stripping and profit skimming. Asset stripping refers to a company's transfer of assets, at below market value, to an entity affiliated with management or affiliated with a large shareholder (including the state). Shareholders are thereby deprived of the value of their investment for the purpose of insiders' self-enrichment. The term "profit skimming" ("diversion of cash flow", "non-market transfer pricing") covers a wide variety of methods a manager or large shareholders use to divert profits to their private benefit. (See example of OJSC "Rosava" in the Attachment).

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[3] In this case the situation was also complicated by the fact that not all shareholders, including the State, were informed of the general meeting in a timely manner. The meeting's purpose was to approve the results of a subscription to shares.

Absence of the due disclose of information on a company violates the right of shareholders to adequate information, and subjects some shareholders to unequal treatment and financial losses. The problem is compounded by the fact that Ukraine's Law "On Business Associations" only declares that shareholders have the right to obtain information on company activities; the law does not contain a procedure for shareholders to exercise this right. At the same time, management often deliberately conceals relevant information, or creates impediments to shareholders who try to exercise the limited rights they do have. (For instance, some managers refuse to mail shareholders materials they have a legal right to review, even when the shareholder offers to pay all costs of copying and mailing. The shareholder is forced to go to the company offices in person to review the materials.).

Opportunities for Protecting Investors' Rights

OECD principles recognize that availability of efficient, effective, non-expensive remedies for violations of shareholder rights are an important indicator of the degree to which they are protected. Confidence of minority investors increases if the legal system has mechanisms that allow minority shareholders to appeal to courts when their rights are violated.

The volume of complaints about violations of investors' rights received not only by the SSMSC, but also by law-enforcement bodies, peoples' deputies and the President of Ukraine suggest that shareholders, particularly citizens, have little confidence that the court system will provide a fair and fast solution cases. Several avenues exist for protecting shareholders' rights.

First, shareholder protections can be included in the company charter and by-laws. This is particularly important in countries with weak shareholder protections on the legislative level. A JSC charter could include, for instance, equal preemptive rights for the owners of common shares and require prior approval by the general shareholder meeting of major transactions or transactions in which a manager has a personal interest. Such measures would decrease risks to investors and creditors of share dilution, asset stripping and other violations of their rights. In order to attract investments, several Ukrainian joint stock companies have already started making such changes.

The State bodies that regulate the securities market can be a second source of protection for investors' interests. The powers that Ukraine's SSMSC has to sanction and order legal violations eliminated, and to forward materials to law-enforcement bodies, etc., may also be used to protect

shareholders' interests. Several years ago a provision was added to the Law "On Business Associations" authorizing the SSMSC to "appoint its representative for control over registration of shareholders for participation in a general meeting." This power helps to secure the right of shareholders to participate in the management of a company. It is clear, however, that the SSMSC will not be able to protect all of the several million shareholders in Ukraine's 35,000 joint stock companies in this way.

Appeals to court are a third way to provide shareholder protections. Court solutions consume time and money, and often involve certain limitations. For instance, a shareholder in Ukraine can apply to court only in case of violation of **his/her** rights. In many countries, shareholders may protect their rights **indirectly**, by bringing lawsuits against management or controlling shareholders on behalf of the company itself.[4] The Civil Code of Procedure of Ukraine requires that the right of shareholders to apply to court on behalf of the interests of a joint stock company must be provided by law. At present, such norms in the laws of Ukraine are absent. The draft Law "On Joint Stock Companies" does contain this right. The Russian Federation Law "On Joint Stock Companies" permits such "derivative" lawsuits, requiring ownership of a certain percentage of shares as a prerequisite to bringing suit.[5] Legal requirements that make ownership of a certain-sized block of shares a precondition to bringing a shareholder derivative action are justified by the fear of numerous court cases. However, investors in emerging markets are not yet very active; moreover, existing restrictions on the access to information in the registry of registered securities owners make it more difficult for shareholders to find out about each other and join forces to protect their rights.

Primary Approaches to Protecting Shareholders' Rights

1. Improve the legislation that regulates activity of joint stock companies

The experience in developing countries suggests that the best way to solve most of the problems of unequal treatment of shareholders and violation of their rights is by enacting effective laws. In some countries, including Ukraine, there are no modern and adequate laws regulating activities of joint stock companies. Thus, violations of shareholders' rights frequently occur that do not violate any applicable law. The Russian Federation Law

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[4] In the United States, such lawsuits, called "shareholders derivative actions," are common. The defendant in such a suit may be, for instance, the company manager, who would obviously never direct the company to sue himself.

[5] Under 5, Article 71 of the Russian Federation Law, a company or a shareholder that owns at least one per cent of common shares is entitled to sue a member of the board of directors or an executive body for damages inflicted on the company.

"On Joint Stock Companies" has been in effect since 1996, but the need for significant amendments is already apparent.

The new draft Law of Ukraine "On Joint Stock Companies," designed to protect the rights of shareholders and creditors and to create a favorable investment environment in Ukraine, is now before the Cabinet of Ministers, awaiting approval and submission to the Parliament.[6] The draft Law attempts to balance the interests of minority shareholders and a strategic investor. The draft protects minority shareholders while giving strategic investors more opportunities to restructure the company and provide more efficient management.[7] If passed, this Law will regulate the issues presently regulated by the Law "On Business Association" in much more detail. The proposed draft Law of Ukraine "On Joint Stock Companies" should be passed as soon as possible. The shareholder and creditor protections it provides would go a long way toward assisting companies in attracting desperately needed capital - from both strategic investors and from creditors. The provisions of the Law granting shareholders a wider scope of rights will also promote restructuring of joint stock companies, which is necessary for development of the nation's economy.

Among other things, the draft Law "On Joint Stock Companies":

a) contains protections against share dilution and, asset stripping;
b) defines more precisely the roles of the various bodies of a company;
c) requires that major transactions and conflict-of-interest transactions be approved by the supervisory board or, in certain cases, by the general shareholder meeting;
d) limits dividends and acquisition by the company of its shares in order to protect the interests of creditors when a company is insolvent;
e) provides for appraisal and redemption rights for shareholders that vote against reorganization, major transactions, or charter amendments that limit their rights;
f) defines shareholders' preemptive right to acquire additionally issued shares and the procedure for exercising the right;
g) prohibits placement of shares at a price lower than market price, with certain exceptions;
h) requires cumulative voting for election of supervisory board members (each shareholder is entitled to cast all his votes, calculated by multiplying

[6] Information as of October 12.

[7] If protections for minority shareholders are too strict, it may be difficult to attract strategic investors. If protections are too weak, investors will be unwilling to hold minority stakes, market liquidity will dry up, and access to capital will be decreased. A market where every investor feels that he must own 75 per cent of company shares to protect himself will be insufficient and illiquid.

the number of his shares by the number of seats on the board, for one candidate, or distributed them among several candidates);
i) contains a definition of affiliated persons and establishes the duty of disclosing information on one's affiliations and conflicts of interest;
j) grants shareholders a right to bring a derivative lawsuit for compensation of losses inflicted on a joint stock company; and
k) establishes the procedure for acquiring a control block of company shares, as well as the consequences of such acquisition.

2. Include norms that provide equal rights for shareholders and guarantees their protection in company charters and internal documents

Information in the press, seminars, direct work with companies, and work through market intermediaries, should all be used to explain to joint stock companies and their shareholders what can be done now to make companies more attractive for investors. In addition, trade organizers can refuse to list joint stock companies unless their bylaws contain provisions that protect investors' rights. In this way, investors would be assured, without having to do additional research, that necessary shareholder protections are contained in the by-laws of companies listed on a stock exchange or trading and information system (or at least listed in one of the higher tiers). These companies, in turn, would have greater opportunities to attract investments.

3. Enhance the role of securities commissions in protecting shareholders' rights

Securities commissions should have the unambiguous right to appeal to court to protect the rights and interests of investors, especially minority shareholders. Market participants frequently express their objections, even fears, about increasing the role and powers of the bodies of State regulators. However, empowering the securities commission to appeal to court to protect shareholders' rights will promote development of equitable and fair markets.[8]

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[8] Article 6 of the Law "On State Regulation of the Securities Market in Ukraine," allows the SSMSC to sue in the general jurisdiction and arbitration courts to prevent violations of Ukrainian securities legislation. However, the law does not directly state that the SSMSC has the right to sue to protect the rights and interests of **other persons**. Based on this gap in the law, the Highest Arbitration Court of Ukraine dismissed an SSMSC suit against Open JSC "Lvivnaftoproduct" seeking to invalidate the decision of the general meeting of Closed JSC "Lvivnaftoproduct" to reorganize into an open JSC. The HAC decision was later reversed by decision of the HAC review panel dated June 14, 2000, on the grounds that "bringing a suit by the SSMSC is not restricted under the law."

Other impediments to SSMSC access to the courts must also be removed. One such impediment is the obligation to pay a state duty to file a suit. In Ukraine, the SSMSC, unlike the Antimonopoly Committee, is not exempted from paying the state duty on lawsuits. In addition, the existing procedure for paying the state duty is time-consuming, which increases the risk the SSMSC will miss deadlines established by the law.

4. Increase the role of SROs and other associations

Good examples of effective SROs from Russian experience include the NAUFOR Program for Protection of Rights and Legal Interests of Investors, which was started in December 1998. Intended to increase investors' confidence in the Russian stock market by protecting their interests, the Program founded the Association for Protection of Rights and Legal Interests of Investors. In Ukraine, the Association for Protection of Shareholders' Rights has been functioning since 1997, though it is not well known.

5. Unite professional stock market participants and other interested parties to improve corporate governance

The Corporate Governance and Shareholders' Rights Task Force was created in April 1998 to address corporate governance problems in Ukraine. This Task Force includes representatives of State executive power bodies, international donor organizations and participants of the Ukrainian stock markets. The Task Force has drafted regulations and explanations aimed at improving corporate governance. Many of the drafts were adopted by the SSMSC. Task Force members actively participated in drafting the proposed new Law "On Joint Stock Companies."

6. Increase the level of corporate culture both of joint stock companies' management and shareholders; educate members of supervisory boards and joint stock companies' management boards; advertise corporate governance best practices.

ATTACHMENT

1. Dnipropetrovsk-based **OJSC "Dniproshyna"** was considered one of the most attractive enterprises traded on the PFTS (over-the-counter trading system) in 1997. Its shares attracted foreign investors and it had very good growth prospects. Then, on September 10, 1997, the company's management board approved a special share issuance for insiders only. The 746,300 registered common shares that were circulated in the new issuance had a nominal value of UAH 9.16 per share. The total nominal value of UAH 6 836, 108 equaled 33 percent of the company's statutory capital. At the time of the new emission, the company's third, its shares were trading on the PFTS at more than UAH 60.00 per share. All shares were placed with the company's founders during the November 15 to December 15, 1997 subscription period. The founders paid the nominal value of the shares, not the market value. All other shareholders were denied the chance to purchase shares in the additional issuance.

The new issuance produced a strong negative reaction from securities market participants, with adverse results for the company. First, most financial intermediaries complained that the joint stock company was obliged to inform each shareholder individually and in writing about the additional issuance, and that the placement price for the new shares had to be close to the market price. On November 28, 1997 a group of shareholders owning a 26,26 percent block of shares filed a request asking the Securities and Stock Market State Commission not to register the additional share issuance. The shareholders argued that changes to the amount of the statutory capital had to be approved by the general shareholder meeting before the new issuance could be registered. In its coments regarding the sitiation at "Dniproshyna" SSMSC remarked that it would not reject issuance registration if, pursuant to the Company's Charter, approval of changes to the statutory fund lay within the powers of the Supervisory Board. (See the December 16, 1997 *Investment Paper.*) Thus, insisted the SSMSC, it had no legal grounds to refuse to register the issuance; the law did not clearly make shareholder preemptive rights mandatory, giving existingshareholders the right to acquire new shares at market value.

The "Sova Kapital LTD" Company filed suit in the Higher Arbitration court seeking to cancelof registration of the new issuance. The fact that the Arbitration Court ultimately ruled in favor of "Dniproshyna's" management can be seen as vindicating the SSMSC's position that the share issuance was legal. Then again, SSMSC's appearance in the court case in support of "Dniproshyna's" management may have carried some weight with the judge. The SSMSC itself may have been influenced by a

one-sentence letter from then-Prime Minister Pustovoitenko. The letter asked the SSMSC to "take care of this matter."

After the new shares were distributed to insiders, diluting the holdings of other shareholders, the price of Dniproshyna stock dropped significantly at the PFTS, and its shares became illiquid. This case negatively influenced attitudes towards the Ukrainian securities market. One well-known international newspaper, *The Financial Times,* wrote on February 2, 1998: "As a result of an additional share issuance that was done by a Ukrainian (ex-USSR republic) tire-maker the rights of minority shareholders were violated and the country's reputation in the eyes of foreign investors was undermined. Ukrainian brokers started boycotting shares of "Dniproshyna" which caused the share price to go down from UAH 75.00 at the end of 1997 to UAH 12.00 yesterday."

2. OJSC "Rosava" is Ukraine's largest Ukrainian tire-maker. Half of its output is exported. The state owns 76 percent of the shares of the Bila Tserkva-based company. Ukrainian and foreign investors own the remaining 24 percent of shares, which were purchased for investments exceeding UAH 50 million (USD 10 million). A December 14, 1999 general shareholder meeting approved the transfer Rosava's most valuable assets to a newly-established joint venture company, CJSC Rosava. (In this case, the classic approach to "restructuring" was used: the new joint venture received the "profit centers" – the main productive assets, while OJSC Rosava kept the ballast, primarily non-productive, social infrastructure facilities.) Shareholders were not informed appropriately about the proposed deal before the general meeting. The agenda contained only a reference to "approval of contracts concluded by the management."

Moreover, shareholders also failed to receive adequate information about the new joint venture after the meeting. A 51 percent block of shares is owned by an Irish company named "Tapistron, Ltd." that was founded in 1998. Very little is known about this company other than it is somehow involved in tire-production and that its selection was not based on an open tender.

Inadequate information disclosure was not the only shortcoming. Creation of the new joint venture violated the Presidential Decree "On State Privatization Program," dated February 24, 1999. This decree forbids alienation of more than 25 percent of the property of open joint stock companies before completion of the the privatization plan share offering. Moreover, the general shareholder meeting that approved the transfer of assets to the new joint venture was invalid. The SPF Chairman had cancelled the proxy of the SPF representative prior to the meeting.

Participation in the general meeting by the 75 percent block of shares owned by the State was necessary to meet the quorum requirement.

One of the shareholders subsequently filed suit in the arbitration court seeking to overturn creation of the joint venture. The court ruled in favor of the management of Rosava, upholding the transfer of assets to the joint venture. Wood & Co and other unsatisfied minority shareholders trying to avoid the possible losses had a conversation with “Rosava” Director discussing sale of their shares at the attractive price, or exchange these shares for shares of newly-created JV. Unfortunately, this proposal made by minority shareholders was rejected.

Situation with “Rosava” OJSC is very demonstrative, since while reaching the noble goal of attraction of investments, the state and the management of the company being restructured may neglect interests of creditors and outside shareholders.

3. “Concern “Stirol” (Gorlivka) is one of Ukraine’s largest chemical companies. The May 20, 2000 general shareholder meeting rejected management’s proposal to for an additional share issuance of UAH 32 550 thousand (10 percent of the statutory fund). Three private shareholders, Wood & Co., I.C. “Kinto” and “Societe General Ukraine” Bank, voted their combined 38 percent of shares against changing the Charter to increase Stirol’s statutory fund.

These shareholders said Stirol’s management had failed to provide private shareholders with adequate information in a timely fashion, including a clear and convincing reason for the additional issuance. The terms of the proposed issuance also raised numerous questions: the subscription period was to last just one day, and the results were to be approved the next day. Stirol’s management said 70 percent of the additional offering would be purchased by Stirol’s “partner, ” which turned out later to be a company named “Stirolkhiminvest” that was actively buying up Stirol shares. Other shareholders were offered only 30 percent of the additional issuance, and were required to purchase their shares at nominal value, which, at the time, was above the market price. The private shareholders blocked the additional issuance because it would havediluted the share blocks of other shareholders and redistributed shareholder capital.

The SSMSC fully supported the position of private shareholders that it was necessary to block the additional issuance.