

Draft
*Submitted by People's
Deputy of Ukraine
I.M. Prasolov*

LAW OF UKRAINE

On Derivatives

Section I

GENERAL PROVISIONS

Article 1. Scope of Application of the Law

1. This Law shall establish the definition and classification of derivative financial instruments, the requirements to the issue and circulation of such derivatives, to derivative trade organizers and derivative traders, to term contracts clearing institutions as well as the principles of state regulation and supervision of said entities.

Article 2. Definition of Terms

1. For the purposes of this Law, the terms are used herein in the following meanings:

1) Circulation of derivatives — acquisition, change or termination of the rights and obligations under derivatives in keeping with the procedure established by this Law;

2) Specialized exchange – a commodities, agrarian, currency or other exchange (excepting a stock exchange) licensed to perform term contracts trade organizing in keeping with the procedure set in the legislation.

Article 3. General Provisions on Derivatives

1. Derivatives – financial instruments certifying an agreement between parties to establish rights and obligations in relation to an underlying asset in the form of term contracts and derivative securities.

2. Derivatives include term contracts and derivative securities.

3. Term contracts include the following:

- Futures contracts (futures);
- Option contracts (options);
- Forward contracts (forwards);
- Swap contracts (swaps).

4. Derivative securities include the following:

- Option certificates;
- Stock warrants.

5. The Securities and Stock Market State Commission shall have the right to specify other types of derivatives.

The relevant decisions by the Securities and Stock Market State Commission shall come into force no earlier than on January 1 of the year following the year of the promulgation.

6. Underlying asset – securities, commodities, currency, term contracts, interest rates, inflation rate, official statistical information, environmental indices, material, nonmaterial, financial or other assets (basic variables), amounts calculated based on one or a number of indicators specified in this Section and on the basis of prices (price levels) on which the liabilities depend of both parties or either of the parties to an agreement, which shall constitute a term contract.

Section II

TERM CONTRACTS

Article 4. General Provisions on Term Contracts

1. A term contract — an agreement which specifies that it is a term contract and which shall establish one or several of the following obligations:

1) An obligation of a party or parties to the contract to pay cash amounts, including in a situation when the other party's claims depend upon a change in the underlying asset price, amount or rate. At the same time, said contract may also provide for an obligation of both parties or either of the parties to the contract to transfer the underlying asset or an obligation to execute a term contract to the other party;

2) Obligation of both parties or either of the parties based on the terms specified at the time of the contract execution in case of a claim preferred by the other party to buy/sell an underlying asset or execute a term contract;

3) Obligation of one party to transfer an underlying asset into the ownership of the other party within the term set forth in a specification (if such specification is not available - within the term specified in such contract) and the obligation of the other party to accept the specified assets and pay them.

Article 5. Circulation of Term Contracts

1. Option contracts (options) and future contracts (futures) shall be executed solely on a term contract trade organizers.

2. Term contracts shall be executed on a term contracts trade organizer provided that this term contracts trade organizer has registered with the Securities and Stock Market State Commission a document, which, in compliance with this Law, establishes standard terms for such contracts (hereinafter referred to as specifications).

Article 6. Requirements to Specifications

1. Securities and Stock Market State Commission shall establish the procedure for registration of specifications and amendments thereto.

2. Specification shall be registered separately for each type of term contract for each underlying asset.

3. Specification of a term contract which determines the terms of its settlement shall specify the following:

The name of a term contract and the rules for generating the code (denomination) of a term contract;

The type of a term contract;

The underlying asset of a term contract;

Batch: the number of units of underlying asset of a term contract;

Procedure for determining the first and the last day of trades when a given term contract may be executed;

Procedure for determining the amount of liabilities under a term contract;

Procedure for discharging liabilities under a term contract;

Grounds of and procedure for termination of liabilities under a term contract;

Liability of parties for the failure to fulfill obligations under a term contract;

Procedure of amending Specification of a term contract and that of the respective amendments coming into effect.

4. Specification of an option except for the information specified in Part 3 of this Article must contain a date or a period of time during which claims to discharge liabilities under the option contract may be preferred.

5. Specification may provide for more than one underlying asset.

6. Term contracts trade organizer shall have a right to include other conditions into specification unless they contradict the requirements of the legislation.

Article 7. Futures Contract (Futures)

1. A futures contract (futures) — an exchange agreement which provides for obligations of either of the parties to the contract to pay cash amounts periodically or a lump sum pursuant to the terms of this contract's specification.

A futures contract (futures) may also provide for:

1) An obligation of a party to a futures contract to transfer an underlying asset to the other party including by means of concluding the underlying asset buy/sell or delivery contract between a party (parties) under the futures contract and a person (persons) in whose favor the futures contract has been executed.

2) An obligation of parties to a futures contract to conclude an agreement which is a term contract and constitutes an underlying asset.

2. A futures contract shall be settled in keeping with its specification by delivering the underlying asset and its cash payment and/or by way of cash settlements between the parties to the contract without delivery of the underlying asset.

Article 8. Option Contract (option)

1. An option contract (option) — an agreement under which one party has an obligation, upon the demand of the other party, to pay cash amounts periodically or a lump sum pursuant to the conditions envisaged by specification.

An option contract may provide for:

1) An obligation of a party to a contract on the terms specified at the time of the contract execution, upon a demand of the other party, to buy or sell the underlying asset including by execution of the underlying asset buy/sell or delivery contract between a party (parties) and/or a person (persons) in whose favor the option contract was executed;

2) An obligation of a party to a contract in case of demand of the other party to conclude a contract which is a term contract and constitutes the underlying asset.

2. An option contract, except for the conditions stipulated in Part 1 of this Article, may also provide for an obligation of either of the parties to pay cash amounts periodically as envisaged by the specification.

3. An option contract shall be exercised in keeping with its specification in case of one party's claim by the other party's delivery of the underlying asset or its cash payment and/or by way of cash settlements between the parties to the contract without delivery of the underlying asset.

Article 9. Forward contract (forward)

1. A forward contract (forward) – an agreement on delivery under which a seller (provider) shall undertake to transfer the underlying asset in property of the acquirer within the established timeframe in the future, in keeping with the envisaged terms, and the acquirer shall undertake to accept the underlying asset within the specified timeframe paying the price defined by the contract for it.

2. All forward terms shall be specified by the parties to the contract in the course of concluding this contract.

3. Forwards shall be concluded and shall circulate outside trade organizers of term contracts.

4. Obligations under the forwards shall be fulfilled exclusively through delivering the underlying asset.

5. Parties to the forward shall have a right to refuse to exercise it or to reassign a claim under such contract to another person given the consent of the other party to the contract.

Article 10. Swap contract (swap)

1. A swap contract (swap) — an agreement providing for an obligation of both parties or either party to a contract to pay money amounts periodically or as a lump sum pursuant to conditions of this contract specification. Therewith the obligations of either of the parties to the contract to pay money amounts shall be determined in accordance with the contract terms based on different underlying assets or different amounts of the underlying asset (rules for determining the underlying asset amounts envisaged in the specification).

A swap contract (swap) may also provide for:

1) Obligations of either of the parties to the contract to pay money amounts based on various underlying assets or different amounts of the underlying asset (rules for determining the underlying asset amounts envisaged in the specification). For this purpose the obligation of a party to the contract to pay money amounts may be determined based on the fixed amount of the underlying asset set by the contract;

2) An obligation of one party to transfer currency into the ownership of the other party and the obligation of the other party to accept the currency and pay it and also an obligation of the other party to transfer currency into the ownership of the first party in accordance with conditions envisaged by the specification of this contract.

2. A swap contract except for the conditions established in Part 1 of this Article may also provide for:

An obligation of both parties or either of the parties to the swap contract to transfer securities, currency or commodity, which is an underlying asset, to the other party including by execution of a foreign currency buy and sell contract or a commodity delivery contract between a party (parties) to the swap contract and/or a person (persons) in whose favor the swap contract was concluded.

An obligation of parties to a swap contract to execute another term contract which is an underlying asset of this swap contract.

3. A swap contract shall be settled in keeping with its specification by way of the underlying asset delivery and its cash payment and/or cash settlement between the parties to the contract without delivery of the underlying asset.

Section III DERIVATIVE SECURITIES

Article 11. Option certificates

1. Option certificate – a derivative security that certifies the right of its holder to acquire an option certificate (acquisition option certificate) from its issuer or to sell (purchase option certificate) of the underlying asset to the issuer in the dates and on the terms specified in the derivative securities issue prospectus and provides for an option certificate premium.

Option certificate premium – the price paid by the option certificate buyer to the seller for the right acquired under this certificate.

2. Acquisition option certificate issuer is a legal entity – the holder of the underlying asset of such a certificate or a legal entity which concluded a contract of commission or a contract of agency.

3. Specifics of the issue of option certificates by governmental bodies shall be established by the Cabinet of Ministers of Ukraine.

4. Option certificates may exist exclusively in a non-documentary form.

5. Placement and circulation of option certificates shall be accomplished only after registration of the issue of option certificates and the prospectus of their issue by the Securities and Stock Market State Commission in accordance with the procedure established by it.

6. Specifics of the issue and circulation of the option certificates whose underlying asset is currency values shall be established by the Securities and Stock Market State Commission as agreed with the National Bank of Ukraine.

Article 12. Stock warrants

1. A stock warrant – a derivative security which shall be placed by a public stock joint company and which shall give to its holder the right to purchase securities (common shares or bonds) of the issuer of the above stock warrant in the dates and at the price specified in the derivative security issue prospectus.

2. The issuer shall have the right to issue a stock warrant provided the issue of common shares or bonds which are the underlying asset is registered.

3. Fulfillment of obligations of the issuer under the stock warrant shall be provided by redemption of common shares or bonds from the holder (holders) of the underlying asset in the amount provided for by the terms of the stock warrant issue which amount shall be blocked on a securities account of the stock warrant issuer opened with the custodian.

4. Stock warrants may exist exclusively in a non-documentary form.

5. The procedure of registration of the stock warrant issue and the stock warrant issue prospectus shall be established by the Securities and Stock Market State Commission.

Article 13. Circulation of derivative securities and their ownership record keeping

1. Circulation of derivative securities shall be accomplished on the stock exchanges which obtained a license of the Securities and Stock Market State Commission to carry out professional activities on the stock exchange – activities on the organization of trade on the stock market.

2. Record keeping of derivative securities ownership shall be maintained according to the securities legislation.

Section IV

REQUIREMENTS TO DERIVATIVES MARKET PARTICIPANTS

Article 14. Derivatives market participants

1. Derivatives market participants are:

term contract trade organizers and derivatives securities trade organizers;

term contract brokers, derivatives securities brokers;

clearing institutions;

securities derivatives issuers;

other professional stock market participants – securities depositories, securities custodians.

2. Derivatives market participants shall be obliged to comply with obligatory capital adequacy ratios of own funds, other indicators and requirements which limit the risks of derivatives transactions established by Ukraine's legislative acts.

Derivatives traders shall also be obliged to comply with mandatory capital adequacy ratios of own funds as established by a derivatives trade organizer.

Article 15. Requirements to term contract trade organizers

1. Eligible to act as a term contract trade organizer shall be a stock exchange or a specialized exchange which has been licensed by the Securities and Stock Market State Commission to perform professional stock exchange activities – activities of organizing stock trading in the stock market.

2. The term contract trade organizer shall be obliged to publish and submit the following information to the Securities and Stock Market State Commission:

- 1) a list of the trade participants allowed to execute term contracts on the exchange;
- 2) a list of term contracts under which trading is carried on, and their specifications;
- 3) volume of trading in term contracts;
- 4) other information specified by the Securities and Stock Market State Commission.

3. The Securities and Stock Market State Commission shall establish a procedure and forms of submission of information indicated in Part 2 of this Article and exercise control over disclosure of information by the term contract trade organizer.

4. The term contract trade organizer shall be obliged to develop and approve the rules of trading in term contracts in accordance with the established procedure.

5. The rules of trading in term contracts shall consist of the procedure of:

organizing and performing trades in term contracts;

clearing and settlement under term contracts (in case of clearing and settlement by the term contract trade organizer);

right of admission of members of the term contract trade organizer and other persons specified by the legislation to trading in term contracts;

accomplishment of measures to reduce risks of default under term contracts;

disclosure of information on the term contract trade organizer and its publication;

settlement of disputes between members of the term contract trade organizer and other persons entitled to take part in trades in term contracts in accordance with the legislation;

exercise of supervision of compliance with the rules of the term contract trade organizer by members of the term contract trade organizer other persons entitled to take part in trades in term contracts in accordance with the legislation;

imposition of sanctions for violating the rules of the term contract trade organizer;

6. The Securities and Stock Market State Commission shall be entitled to set forth additional requirements to the rules of trading in term contracts.

Article 16. Requirements to the derivatives securities trade organizer

1. Only a stock exchange which obtained a license for carrying out professional activities on the stock market – activities on organization of trade on the stock market in accordance with procedure established by the legislation may be a derivative securities trade organizer.

Article 17. Requirements to the derivatives securities traders

1. Eligible to act as a derivative securities trader shall be a trader that carries out professional activities on the stock exchange – securities trading activities in accordance with the Law of Ukraine On Securities and the Stock Market.

2. A trader that carries out activities on the stock exchange – activities on trading in securities in accordance with the Law of Ukraine On Securities and the Stock Market or another entity which obtained a license for carrying out activities on trading in term contracts may be a term contract trader.

A list of the documents required for obtaining a license to trade in term contracts, a procedure of its issuance and cancellation shall be established by the Securities and Stock Market State Commission.

3. Derivatives traders shall execute derivatives transactions on their behalf both at their own expense and at the expense of their customers (the persons that use the services of the derivatives trader).

4. Derivatives traders shall not accept and carry out orders (instructions) or amend orders (instructions) of the customers involved in performing trades in derivatives without making a note of the time of receipt of such orders;

5. Derivatives traders and their related persons shall be prohibited from disclosing and/or disseminating information on the orders (instructions) or introducing changes in the orders

(instructions) of the customers involved in carrying on trade in derivatives except for the cases provided for by the Securities and the Stock Exchange Law of Ukraine.

6. Derivatives trader shall keep a separate record of cash and property received as security of fulfillment of the obligations under the derivatives.

7. Derivatives trader shall not use cash, property and income of some customers for guaranteeing or securing term contracts of other customers unless otherwise stipulated by the terms of the agreement with these customers.

8. Derivatives trader shall be obliged to *submit* a report on execution of derivatives transactions to the Securities and Stock Market State Commission in accordance with the procedure and in the dates established by it.

9. The officials of the derivatives traders that violate the derivatives legislation shall bear responsibility in accordance with the law.

SECTION V.

CLEARING OF DERIVATIVES

Article 18. Derivatives securities clearing

1. Derivative securities clearing activity shall be carried out in accordance with the procedure established by the securities legislation.

Article 19. Clearing of Term Contracts

1. Clearing activity (clearing) with regard to term contracts (hereinafter referred to as 'clearing activity') shall be an activity of providing a service of identifying the obligations to be performed under term contracts, including by way of netting or otherwise, as provided by the clearing institution regulations, and settlements, which are grounds to terminate and/or perform such obligations by means of performing the following operations:

- 1) amend the records in the clearing registries, where records are kept of funds, securities, and other activities, and the rights and obligations thereunder;
- 2) prepare documents (information) to remit funds, securities and other assets from accounts of clearing participants and/or clients of clearing participants.

The clearing registry is the in-house record keeping registry of a clearing institution opened by the clearing institution of a clearing participant to keep records of the clearing participant's obligations under his/her/its transactions, to account for funds, securities and other assets of the clearing participant for the purpose of performing the relevant obligations and for settlement purposes.

Netting is a procedure to perform obligations, in the course of which obligations admitted for clearing are terminated in full or in part by netting or otherwise, as determined by the clearing rules.

2. Clearing participants shall be persons engaged in clearing activities, term contract trade organizer, exchange participants and their customers.

3. Eligible to engage in clearing activities shall be a clearing institution that has been granted the status of a clearing institution by the procedure specified in this law.

4. When engaging in the clearing operations and performing obligations admitted to be cleared, the clearing institution may use cash clearing accounts and depo clearing accounts (hereinafter - clearing accounts).

A cash clearing account shall be a bank account opened for a clearing institution for funds to be used in performing its obligations admitted to clearing and/or funds that constitute collateral.

5. A clearing depo account shall be a depo account opened by the depository of a clearing institution to keep record of securities that may be used to perform obligations admitted to clearing and/or securities that constitute collateral.

6. A clearing institution shall keep an in-house record of assets of each clearing participant on their clearing accounts and report to each clearing participant. No assets on the clearing account of a clearing participant shall be repossessed due to the clearing institution debts.

Article 20. Clearing Institution

1. A clearing institution engaged in clearing of term contracts shall be a stock exchange or another entity licensed to perform clearing, this license having being obtained under the procedure established by the Securities and Stock Market State Commission.

2. A clearing institution shall not be liable for its shareholders (participants) obligations. Nether a clearing institution nor its bodies shall be subject to any sanctions restricting their rights in the event of legal violations committed by its shareholders (participants).

Participants (shareholders) shall not be liable for the clearing institution's obligations. Shareholders (participants) shall not be subject to any sanctions restricting their rights in the event of legal violations committed by the clearing institution or by other shareholders (participants).

3. The chartered capital of a clearing institution shall be paid in cash.

The requirements to the minimal regulatory capital of a clearing institution and other restrictions of its operations shall be established by the Securities and Stock Market State Commission.

4. To engage in clearing activities, a clearing institution shall have relevant equipment, in particular hardware with the required software installed, dedicated communication lines and space in accordance with the requirements set forth by the Securities and Stock Market State Commission.

5. Within three months of the date of obtaining a license to engage in clearing activities, a clearing institution, if not a stock exchange, shall enter into a service agreement with at least one term contract trade organizer.

The requirements to such service agreements shall be set forth by the Securities and Stock Market State Commission.

Failure to enter into a service agreement shall be sufficient grounds to revoke the clearing activities license.

6. The Securities and Stock Market State Commission may establish additional requirements to clearing institutions to reduce the risks of professional stock market activities.

7. The words ‘clearing activities’ and derivatives thereof shall be used exclusively by legal entities incorporated and operating in line with the provisions of this law.

8. Clearing activities shall not be combined with other stock market professional activities in the securities market, excepting the activities of stock market trade organization and term contracts trade organization.

Article 21. Clearing Rules.

1. A clearing institution shall register its clearing rules with the Securities and Stock Market State Commission (SSMSC) by the method and within the timeline established by SSMSC.

2. The clearing rules shall include:

- 1) requirements to clearing participants;
- 2) a provision that the central counterparty (CCP) is an entity engaged in clearing activities or a provision that clearing is performed without a CCP;
- 3) the procedure and terms of admitting contract obligations to clearing and the requirements thereto,
- 4) the method of clearing;
- 5) the rights and obligations of the term contract trade organizer or a clearing institution and those of clearing participants;
- 6) the method of the clearing registry record keeping and their constituent components;
- 7) the method of the clearing institution sending clearing reports to clearing participants;
- 8) the document specifying the procedure of organizing and performing internal audit;
- 9) the description of measures to reduce risk of default of failure to perform in time obligations emerging under exchange contracts on the basis of one of the risk mitigation mechanisms specified by article 25 herein;
- 10) the procedure to identify obligations to be performed under term contracts;
- 11) other provisions in compliance with this law and other legislative acts.

3. The following shall be sufficient grounds to refuse to register the clearing rules and amendments thereto:

- 1) incompliance of documents submitted for registration with the requirements of relevant legislation, including regulatory acts of SSMSC;
- 2) failure to file all documents; filing incomplete or inaccurate information;
- 3) the amount of the chartered capital being incompliant with the requirement of law.

4. The rules of clearing operations and the method of controlling the clearing activities shall be set forth by SSMSC.

Article 22. Central Counterparty

1. Acting to mitigate the risk of default to settle term contracts and to ensure performance of their obligations by clearing participants, the clearing institution may act as a central counterparty (CCP), being a buyer for each seller and a seller for each buyer under term contracts executed in the term contracts trade organizer.

2. A clearing institution acting as a CCP within term contracts shall sign an agreement with the trade organizer that organizes term contract trading, except for a situation when the trade organizer itself acts as a CCP.

3. The consequence of voiding an agreement with the CCP and of obligations thereunder being terminated in accordance with the netting results, shall be compensation of the affected party's losses by the party that was aware or was to be aware of the circumstances testifying to the presence of grounds for a contract being vitiated.

Voiding an agreement whose obligations have been terminated as a result of netting does not carry avoidance of legal transactions entered into in the process of netting.

4. The requirements as to the capital adequacy of a clearing institution acting as a CCP shall be set forth by SSMSC.

5. SSMSC may set forth additional requirements to a clearing institution acting as a CCP.

Article 23. Guarantees of Non-interference in the Operations of a Clearing Institution.

1. There shall be no interference by the government or its officers in the functions and powers of a clearing institution, except for cases specified by law.

2. SSMSC shall be entitled to approve a decision on the appointment of a temporary administrator of a clearing institution in the event of:

- 1) two or more cases of non-compliance by a clearing institution in one year with legitimate requirements of SSMSC;
- 2) a guilty verdict against the CEO of a clearing institution due to his/her criminal actions in business or official activities;
- 3) the clearing institution or its officers concealing accounts, any assets, registers, reports or documents;
- 4) unreasonable refusal of the clearing institution to file documents or data required by law;
- 5) a petition filed by the clearing institution to appoint a temporary administrator and in other situations envisioned by law.

3. Information about the appointment of a temporary administrator shall be posted by SSMSC on the appointment date on its official web site and, within three days, in the GOU or Parliament official newspapers.

4. SSMSC shall organize, coordinate and oversee the operations of a temporary administrator and give him instructions that shall be subject to mandatory implementation.

5. Temporary administrators shall be appointed and fired by the method set established by SSMSC.

Article 24. Temporary Administrator of a Clearing Institution

1. Eligible to be appointed a temporary administrator of a clearing institution shall be:
 - an independent expert (under a contract);
 - an official of SSMSC.

Eligible to be appointed a temporary administrator of a clearing institution shall only be individuals with proper professional and moral qualities, unblemished business reputation,

economic or legal education, and experience
administrator.

required to perform the functions of a temporary

SSMSC shall have the right to fire a temporary administrator at any time for failure to act in line with the requirements set.

Compensation to the temporary administrator and specialists hired by the temporary administrator to perform the functions vested in the temporary administrator shall be paid in accordance with their labor contracts at the expense of the clearing institution, taking into account the restrictions set by law for public servants.

2. Ineligible to be appointed a temporary administrator shall be:

- 1) a person who is a creditor, a related party or a participant of the clearing institution;
- 2) a person having a criminal record, which was not expunged or removed from official record under a procedure established by law, or a person that has been charged in a criminal case.

3. A temporary administrator shall not:

- 1) accept directly or indirectly any services, gifts or other valuables from persons having an interest in any actions related to the appointment of the temporary administration;
- 2) use or permit to be used property that is not within the temporary administrator's control in his interest or in the interests of third parties;
- 3) disclose any information about the clearing activities, unless it is related to the performance of the powers of a temporary administrator.

4. Failure to perform or improper performance by the temporary administrator of his/her duties that resulted in losses by the clearing institution or by other participants of the securities market shall be sufficient grounds to terminate the performance of duties by temporary administrator and recoup in full the losses caused.

5. The powers of the general meeting, the supervisory board, the management board, and other bodies of a clearing institution shall be assigned to the temporary administrator starting from the appointment date.

All transactions entered into by the management body of a clearing institution following the temporary administrator's appointment date shall be voided.

6. A temporary administrator shall terminate his/her activities on the day the SSMSC recalls the temporary administrator.

Article 25. Measures to Reduce the Risk of Term Contract Default.

1. Measures to reduce the risk of term contract default shall be taken by the clearing institution.

2. Pursuant to performance of obligations by parties to term contracts, the clearing institution shall develop and approve a document that includes a provision on measures to be taken in order to reduce the risks of term contract defaults, including:

- 1) the procedure to determine the amount of surety and/or to create a guarantee fund.

The guarantee fund shall include cash funds and other assets transferred by trade participants for disposal by the clearing institution directly or via an organization, with which the clearing institution interacts in the process of providing clearing services under the clearing rules as a guarantee to settle term contracts;

- 2) identifying assets to be accepted as a guarantee;
- 3) the non-cash assets (if at all) valuation method and the procedure of its application;
- 4) steps to be taken if the surety (guarantee fund) is insufficient, including the terms of discontinuing (suspending temporarily) the right to trade, as well as the right of an organization taking measures to reduce the risk of term contracts default to sell (permit to sell) or dispose otherwise of funds and other assets given into its disposal by trade participants;
- 5) grounds for and method of terminating (suspending) the obligations of trade participants for failure to perform or to perform properly their obligations under term contracts, including grounds for and method of terminating said obligations on the initiative of the organization taking measures to reduce the risk of term contracts default (compulsory closure of positions);
- 6) the method of creating and using the guarantee fund and other funds to cover potential losses in case of term contract default;
- 7) other risk mitigation measures.

To reduce the term contract default risks, the clearing entity shall be entitled to set additional requirements and impose additional restrictions, including those regarding capital adequacy and financial situation of trade participants. The clearing institution shall have the right to demand from all trade participants supporting accounting and other documents, set restrictions on executing term contracts depending on the amount of their own capital, as well as set a cap (limit) on the maximal volume of obligations per trade participant.

3. Requirements to risk reduction measures, including the creation of a guarantee fund, shall be established by SSMSC.

Section VI

STATE REGULATION AND CONTROL

Article 26. Bodies performing State regulation of issuance, circulation and control (supervision) of derivatives

1. State regulation of issuance, circulation of derivatives and control over them shall be provided by the Securities and Stock Market State Commission and other state bodies within the limits specified by this and other laws of Ukraine. Special features of transactions with derivatives shall be specified by SSMSC

Section VII

FINAL PROVISIONS

1. This Law shall come into force from the date of its publication.
2. Changes shall be introduced to the following legislative acts of Ukraine:

1) article 360(3) of the Commercial Code of Ukraine (Vidomosti of the Verkhovna Rada of Ukraine 2003, ##18-22, pg.144) shall read as follows:

“3. The operations of stock exchanges shall be exclusively to organize the execution and settlement of securities and other instruments’ buy and sell contracts. A stock exchange shall not perform depository functions”.

2) article 195(3)(1) of the Civil Code of Ukraine (Vidomosti of the Verkhovna Rada of Ukraine, 2003, No. 40-44, p. 356; 2006, No. 31, p. 268) shall read as follows:

“3) derivative securities whose placement and circulation are associated with the right to purchase (sell) the underlying asset within a specified period and on the terms stipulated in the derivative securities issue prospectus”;

2) article 4(1) of the Law of Ukraine On State Regulation of the Securities Market in Ukraine (Vidomosti of the Verkhovna Rada of Ukraine, 1996, № 51, p. 292; 2006, № 31, p. 268):

item 10 shall read as follows:

“10) activities of organizing stock trading – activities of a professional stock market (stock exchange) participant on creation of organizational, technological, information, legal and other conditions for collecting and disseminating information on supply and demand, regular securities and other financial instruments trading according to the established rules, centralized execution and settlements of relevant contracts and resolution of disputes among members of the exchange”;

Add items 12 - 14 hereto to read as follows:

“12) activities of organizing trades in term contracts – operations of commodities, agrarian or specialized exchange to provide organizational, technological, information, legal and other services for collection and dissemination of information about demand and supply, to carry on regular trades in term contracts”;

13) activities of trading in term contracts – operations of a term contracts trader executing civil-law term contracts;

14) clearing activities with term contracts – activities to identify mutual obligations under term contracts and settlement thereof”.

4) in the Law of Ukraine On Securities and the Stock Exchange (Vidomosti of the Verkhovna Rada of Ukraine, 2006, # 31, pg. 268; 2009, # 49, pg. 733):

the last paragraph of article 1 shall read as follows:

“financial instruments – securities (including derivative securities), and term contracts (futures and option contracts).”;

in article 3:

add new paragraphs to section 2 following paragraph 12 to read as follows:

“option certificates;

stock warrants”.

In this connection paragraph 13 shall be deemed paragraph 15;

item 5 of part 5 shall read as follows:

“5) derivative securities – issuable securities whose placement and circulation are related to the right to purchase (sell) the underlying asset over a specified period and on the terms specified in the derivative securities issue prospectus. Derivative securities include:

a) option certificates;

b) stock warrants”.

The words “securities” used in section 5 of article 12 shall be deleted.

3. Until Ukraine’s legislation has been brought in line with this Law of Ukraine, the laws and other regulatory and legal acts shall be applied to the extent that they do not contradict this Law.

Volodymyr LYTVYN

Chairman of the Verkhovna Rada of Ukraine