

The impact of direct regulation tools on the protection of the interests of a private investor in the USA, China and Russia (on the example of brokerage)

Ainur A. Biktashev, Doctoral Student, Masaryk University, Brno, Czech republic; Doctoral Student, HSE University, Moscow, Russia.

Abstract

The main objectives in regulating brokerage activities are to ensure the interests of brokers' clients while minimizing the regulatory burden. At the moment, direct tools for protecting interests, including the mechanism of interaction between agents, are actively developing into a mechanism for interacting with the flow of household assets in the securities market of Russia. However, its effectiveness is questioned by the expert and professional community.

The considered experienced regulator in this area, a developed financial market has a developed financial market.

Based on the results of the analysis of regulation in the United States and China, it was established that they used tools of both direct and indirect regulatory impact. Despite the differences in regulation in both cases, the emphasis in regulation is placed on indirect measures of influence. Direct bans on access to financial instruments for certain categories of the countries under consideration are not applied. The use of such measures is carried out with insufficient quality, which reduces the effectiveness of such measures.

Keywords: regulation of brokerage activities; brokerage activities; protection of investors; smart regulation; optimization of the regulatory load.

Research problem

The presence of a developed financial market is the key to stable economic growth in the country. Thanks to it, the availability of funding sources, the preservation and attraction of capital to the country's economy, investment and augmentation of funds by the population are ensured. It is the financial market that could become a driver for overcoming the 2020 crisis, which would contribute to both the growth of the manufacturing sector and an increase in the well-being of the population. Therefore, the regulation of the financial market is an important aspect of the activities of public authorities.

The main organizations through which individuals and legal entities have access to the securities market are brokers. To date, there are about 60 normative acts in the field of regulating the work of brokers. At the same time, the scientific and professional community regularly declares about the imperfection of the existing regulation. This thesis is confirmed in practice by the trend of a constant decline in official income of brokers, as well as the facts of a significant number of cancellations of licenses for brokerage activities for violations (Figure 1). At the same time, in such cases, clients of brokers often do not receive the deposited funds, since the clients' funds are not insured (as is the case with bank deposits). An illustrative example is how the clients of the Trust bank, who purchased credit notes (for a total of about 20 billion rubles), turned out to be unprotected during bank reorganization. And the clients of the MFC company (mainly individuals) lost their securities in the amount of at least 200 million rubles. as a result of illegal debiting of securities from their **accounts**.

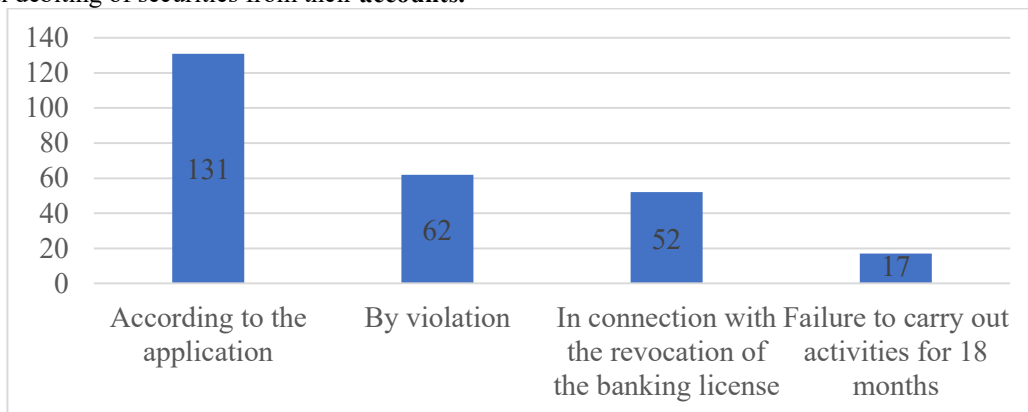


Figure 1. Structure of grounds for cancellation of brokerage licenses in 2017-2019

Source: compiled by the author on the basis of the Register of canceled licenses of professional participants in the securities market.

Accordingly, the most important value of brokerage regulation is the protection of investors' funds. At the same time, protection should not create unnecessary costs that will reduce the benefits of investing in the securities market. Thus, the documents on the strategic development of the financial market¹ that are currently being implemented noted the need to optimize regulation in order to reduce the burden on supervised organizations. In

¹ The strategy of economic security of the Russian Federation until 2030, approved by the Decree of the President of the Russian Federation dated May 13, 2017 No. 208.

The main directions of development of the financial market of the Russian Federation for the period 2019–2021 // Bank of Russia. - 2019.

addition, the trend of the “regulatory guillotine” currently being implemented by the state has affected the regulation developed by the Bank of Russia, which is also now considering the possibility of eliminating unnecessary requirements.

At the same time, due to the sharp increase in the number of citizens investing in securities in 2020–2021, the regulator proposed a new measure to limit investor risks². According to the proposed changes in the regulation of brokers, it is proposed to limit the investment opportunities of unqualified investors. Despite the fact that the investor qualification tool is used at the moment, along with a set of other direct regulation measures, the proposed model requires more complex qualification assessment procedures, and also narrows the list of tools available to an unqualified investor³. The development and discussion of these changes resulted in a wave of criticism from representatives of SROs in the financial market and experts in this field⁴. Within the framework of this criticism, the redundancy of directive regulatory measures and the possibility of using softer instruments within the framework of regulation are noted.

In the context of the lack of protection of retail investors by the existing regulation, the desire to reduce the regulatory burden, as well as the need for economic growth and support for investment by the population in the financial market, the problem of insufficient quality of regulation that ensures the protection of brokers' clients becomes more obvious.

This problem, which lies within the framework of legal and law enforcement interaction between the state and business, also has a theoretical aspect. In regulation theory, the “smart regulation” approach is aimed at solving the problem of improving regulation in order to eliminate market gaps while maintaining sufficient freedom of activity for its participants. For this, the approach proposes to develop and implement regulations based on the principles of transparency and flexibility, as well as analytical methods of justification⁵. At the same time, the approach does not provide an understanding of whether direct regulations always result in a planned impact, how different regulatory instruments and their combinations can affect one subject of regulation, which regulatory instruments are the most effective, taking into account the costs they entail for market participants?

The “Behavioral Public Administration” approach also speaks about the problem of improving the quality of public administration while reducing the burden on regulated objects⁶. He suggests taking into account the behavior of people when making decisions by the authorities. The measures of state influence implemented within its framework (called “nudging”) do not establish direct requirements, but only stimulate certain behavior. Its supporters appeal to the fact that regulatory goals are achieved without undue burden on the business. However, proposing this alternative instrument of indirect regulation, the approach does not take into account the costs incurred by the business from such measures, and also does not answer the question whether it is always possible to replace instruments of direct regulation with indirect measures?

The solution of the described problem contributes to both the solution of these theoretical issues and the improvement of regulation in practice. At the moment, due to the slowdown in economic growth, the population is interested in the possibility of saving and increasing capital using financial market instruments. The market participants themselves are also interested in the formation of transparent and inexpensive “rules of the game” in which legal and profitable functioning would be possible. The readiness of society for such changes is evidenced by the discussion that unfolded around proposals to restrict access to the market for unqualified investors. The opposition to this initiative showed brokers' unwillingness to put up with diminishing job opportunities, and the population - with the deprivation of access to financial services.

All brokers (including small ones, for which the costs of the regulatory burden may be most noticeable) will benefit from solving the problem of the quality of regulation of investor protection. In addition, citizens are interested in solving the problem, who will have the opportunity to understandably and safely invest funds, as well as the Bank of Russia, which will be able to reduce the costs of permanent total control over the activities of brokers.

In order to address the lack of quality regulation of brokers' client protection, it is necessary to answer the questions about the impact of existing and proposed direct regulatory instruments on the protection of retail investors and are there more effective regulatory instruments?

To answer these questions, it was necessary to test the following hypotheses:

H1: The current and proposed direct broker regulations are helping to enhance investor protection.

² According to the Moscow Exchange, in 2020 the number of clients with brokerage accounts increased 2.4 times: from 3.9 million to 9.5 million; according to NAUFOR, the volume of funds of private clients in the stock market in 2020 increased by 1.8 times: from 3.4 trillion rubles to 6 trillion rubles.

³ The State Duma of the Russian Federation adopted in the second reading the draft law on the protection of unqualified retail investors // Bank of Russia. - 2020. (URL: <https://www.cbr.ru/press/event/?id=6918>).

⁴ The Central Bank will restrict investors' access to risky assets for two years // Vedomosti. – 2020. (URL: <https://www.vedomosti.ru/economics/articles/2020/12/27/852665-ogranichit-investoram>)

⁵ Gunningham N., Grabosky P., Sinclair D. Smart regulation // REGULATORY THEORY: Foundations and Application. – 1998. – P. 133-148.

⁶ Grimmelikhuijsen S., Jilke S., Olsen A.L., Tummers L. Behavioral Public Administration: Combining Insights from Public Administration and Psychology // Public Administration Review. – 2017. – № 1. – P. 45-56.

This assumption is based on the “smart regulation” approach, however, it proposes to analyze the impact of already implemented regulation measures. The focus of this approach is the regulatory burden of the planned measures. Evaluation of the hypothesis will justify the need to take into account not only the load, but also the provision of the regulation goal, and will also allow us to establish the quality of the existing regulation.

H2: alternative mechanisms of behavioral influence on brokers in order to protect the interests of their clients are less effective than tools of direct regulation.

This assumption is based on the Behavioral Public Administration approach, which says that behavioral regulation always leads to a decrease in workload. Testing the hypothesis will allow us to evaluate this statement, as well as to determine the feasibility of developing measures of indirect regulation. Для решения проблемы недостаточного качества регулирования защиты клиентов брокеров необходимо ответить на вопросы о том, какое воздействие оказывают имеющиеся и предлагаемые прямые инструменты регулирования на защищенность розничных инвесторов и есть ли более эффективные инструменты регулирования?

Literature review

The study of regulation in the science of public administration has existed since the moment of its isolation from other social disciplines. A new round of research work was launched with the emergence in 1998 of the theoretical approach of smart regulation, in which particular cases of regulation were studied in various contexts. Assessing the impact of regulatory instruments and finding the most effective ones is often the subject of public administration researchers. At the same time, the problems studied by the authors and the hypotheses being tested sometimes correlate with those proposed by us in this work.

The most frequently considered hypothesis in the framework of such works is the main hypothesis of our study H1 about the lack of regulation of the goals for which they were developed or are being developed. Moreover, these works can be divided into groups in accordance with the method on the basis of which the hypothesis is tested.

The first group of researchers confirms their assumptions using verification methods. Thus, domestic researchers Abramov A.A., Radygin A.D., Chernova M.I., as well as E. Jones and A. Zeitz⁷ use econometric regression models in their works to assess the compliance of the applied regulation with country factors. Larionova I.V. to assess regulation also considers statistical data, but not without the use of econometric models. In the studies reviewed, these methods are used to assess the overall regulation model, rather than specific measures / decisions. At the same time, verification methods are applicable to test hypothesis H1, however, due to the limited availability of data on the research topic, their application seems inappropriate.

Another group of studies uses falsified methods to test the hypothesis (most often case studies). At the same time, as in the case of the verification method, the authors often consider the regulation model as a whole. Thus, the assessment of the regulation model and its individual components is carried out by Spendzharova A.⁸, Quaglia L.⁹, Lall R.¹⁰, Baker A.¹¹. All these studies confirm the inconsistency of the applied regulatory models with the goals of their implementation.

Also, on the basis of the case study, compliance with the goals from the development of individual regulations is assessed. Authors such as Kastner L.¹², Finlayson A.¹³, Lall R.¹⁴ talk about the inconsistency of regulation with its goals. At the same time, P. Gibbon¹⁵ in his work on the basis of surveys reveals that in some cases the goals of regulation can be achieved even if it is increased. And in the work of A. S. Makarova¹⁶, the achievement of the goals of the implemented method of indirect regulation for most of the indicators under consideration is noted. At the same time, consideration of cases most often involves consideration of specific

⁷ Jones E., Zeitz A. O. Regulatory Convergence in the Financial Periphery: How Interdependence Shapes Regulators' Decisions // *International Studies Quarterly*. – 2019. – Т. 63. – №. 4. – P. 908-922.

⁸ Spendzharova A. Regulatory cascading: Limitations of policy design in European banking structural reforms // *Policy and society*. – 2016. – № 3. – P. 227-237.

⁹ Quaglia L. The politics of state compliance with international “soft law” in finance // *Governance*. – 2019. – Т. 32. – №. 1. – P. 45-62.

¹⁰ Lall R. Timing as a source of regulatory influence: A technical elite network analysis of global finance // *Regulation & Governance*. – 2015. – Т. 9. – №. 2. – P. 125-143.

¹¹ Baker A. Restraining regulatory capture? Anglo-America, crisis politics and trajectories of change in global financial governance // *International Affairs*. – 2010. – Т. 86. – №. 3. – P. 647-663.

¹² Kastner L. ‘Much ado about nothing?’ Transnational civil society, consumer protection and financial regulatory reform // *Review of International Political Economy*. – 2014. – Т. 21. – №. 6. – P. 1313-1345.

¹³ Finlayson A. Financialisation, financial literacy and asset-based welfare // *The British Journal of Politics and International Relations*. – 2009. – Т. 11. – №. 3. – P. 400-421.

¹⁴ Lall R. From failure to failure: The politics of international banking regulation // *Review of International Political Economy*. – 2012. – Т. 19. – №. 4. – P. 609-638.

¹⁵ Gibbon P. An analysis of standards-based regulation in the EU organic sector, 1991–2007 // *Journal of Agrarian Change*. – 2008. – Т. 8. – №. 4. – P. 553-582.

¹⁶ Makarova A. S. et al. Environmental performance assessment of the chemical industries involved in the Responsible Care® Program: Case study of the Russian Federation // *Journal of Cleaner Production*. – 2019. – Т. 222. – P. 971-985.

regulations established by the state, and it is somewhat difficult to consider the direction of regulation using this method.

The third group of studies examining the compliance of the regulation result with the goals of its application is based on the method of system-logical analysis. Wolff J.¹⁷, Rixen T.¹⁸ and Baker A.¹⁹ use this method to consider the global level of regulation. In individual cases, on the basis of a system-logical analysis, certain aspects of regulation are investigated. The works of Abbott K. W., Levi-Faur D., Snidal D.²⁰, as well as Bernstein S., Ven H.²¹ are aimed at this. In general, the method of system-logical analysis, in our opinion, is applicable to assess the achievement of the objectives of regulation to protect the rights of investors by considering the existing results of the implementation of sets of regulatory instruments.

Less common, but still the object of study in an extensive series of works, is the hypothesis of an increase in the quality of regulatory impact due to the replacement of direct regulation tools. Studies that look at hypotheses similar to our H2 hypothesis can also be grouped according to the research methods used.

The first group of studies is distinguished by the use of a combination of verification and falsification methods to test hypotheses. Almost all works classified in this group use the analysis of statistical data (including the use of econometric tools), as well as comparison of cases, in addition, in some cases, methods of interviews and legal analysis are added. Such studies include the works of Pastushenko E.N., Zemtsova L.N., DeMenno M.²², Grossman E., Woll C.²³, Redert B.²⁴, Abbott K. W., Snidal D.²⁵, Horner R.²⁶ The work of Franssen L., Burgoon B.²⁷ was also prepared on the basis of econometric methods. At the same time, the main tool for assessing the impact in the listed studies is the analysis of statistical data. In addition, the problems considered by the authors, as a rule, are large-scale and general, and not specific and precise, as in our study, therefore it is logical to use a falsified method in the work.

The second group of studies looking at the impact of regulatory changes on the actual regulatory impact relies on fraudulent methods of proof. The case analysis method is the basis for the works of C. Dunlop et al.²⁸, Overdevest C., Zeitlin J.²⁹, Browne J.³⁰, Stellinga B., Mügge D.³¹, Mennillo G., Roy S.³², Baker A.³³.

In addition, many studies are carried out on the basis of a combination of case study and comparative studies. This methodology is used to evaluate regulatory models in general Quaglia L.³⁴, Stellinga B.³⁵ At the same

¹⁷ Wolff J. Fighting risk with risk: solar radiation management, regulatory drift, and minimal justice // *Critical Review of International Social and Political Philosophy*. – 2019. – P. 1-20.

¹⁸ Rixen T. Why reregulation after the crisis is feeble: Shadow banking, offshore financial centers, and jurisdictional competition // *Regulation & Governance*. – 2013. – T. 7. – №. 4. – P. 435-459.

¹⁹ Baker A. Macprudential regimes and the politics of social purpose // *Review of international political economy*. – 2018. – T. 25. – №. 3. – P. 293-316.

²⁰ Abbott K. W., Levi-Faur D., Snidal D. Theorizing regulatory intermediaries: The RIT model // *The ANNALS of the American academy of political and social science*. – 2017. – T. 670. – №. 1. – pC. 14-35.

²¹ Bernstein S., van der Ven H. Best practices in global governance // *Review of International Studies*. – 2017. – T. 43. – №. 3. – P. 534.

²² DeMenno M. Banking on burden reduction: how the global financial crisis shaped the political economy of banking regulation // *Journal of banking regulation*. – 2019. – P. 1-28.

²³ Grossman E., Woll C. Saving the banks: The political economy of bailouts // *Comparative Political Studies*. – 2014. – T. 47. – №. 4. – P. 574-600.

²⁴ Redert B. Stakeholder Mobilization in Financial Regulation: A Comparison of EU Regulatory Politics over Time // *JCMS: Journal of Common Market Studies*. – 2020. – P. 1-19.

²⁵ Abbott K. W., Snidal D. Hard and soft law in international governance // *International organization*. – 2000. – P. 421-456.

²⁶ Horner R. India's Pharmaceutical Industry and the Enduring Public Regulation Challenge // *Business Responsibility and Sustainability in India*. – Palgrave Macmillan, Cham, 2019. – P. 275-304.

²⁷ Franssen L., Burgoon B. A market for worker rights: Explaining business support for international private labour regulation // *Review of International Political Economy*. – 2012. – T. 19. – №. 2. – P. 236-266.

²⁸ C. Dunlop, M. Maggetti, C. Radaelli, D. Russel. The many uses of regulatory impact assessment: A meta-analysis of EU and UK cases // *Regulation & Governance*. – 2012. – T. 6. – №. 1. – P. 23-45.

²⁹ Overdevest C., Zeitlin J. Assembling an experimentalist regime: Transnational governance interactions in the forest sector // *Regulation & Governance*. – 2014. – T. 8. – №. 1. – P. 22-48.

³⁰ Browne J. The regulatory gift: Politics, Regulation and governance // *Regulation & Governance*. – 2020. – T. 14. – №. 2. – P. 203-218.

³¹ Stellinga B., Mügge D. The regulator's conundrum. How market reflexivity limits fundamental financial reform // *Review of international political economy*. – 2017. – T. 24. – №. 3. – P. 393-423.

³² Mennillo G., Roy S. Ratings and regulation: a case of an irreversible marriage? // *Weatherhead Center for International Affairs Working Paper*. – 2014. – №. 14-0004. – 38 p.

³³ Baker A. Restraining regulatory capture? Anglo-America, crisis politics and trajectories of change in global financial governance // *International Affairs*. – 2010. – T. 86. – №. 3. – P. 647-663.

³⁴ Quaglia L. The politics of state compliance with international "soft law" in finance // *Governance*. – 2019. – T. 32. – №. 1. – P. 45-62.

time, they consider and draw conclusions regarding specific regulatory instruments Underhill G. R. D., Zhang X.³⁶, Campbell-Verduyn M. and others³⁷.

As we can see in the described studies, the method for testing the hypothesis varies. Both statistical methods and the case study method are used to substantiate hypotheses, while a separate application of statistical analysis is rarely used due to the need to substantiate it with qualitative methods. In our opinion, due to the need to take into account the experience of other industries and countries with the incomparability of statistical data, and also taking into account the consideration not of individual examples due to local characteristics, but of universal sets of measures in our study, it is advisable to use comparative analysis to test the last hypothesis.

Research methodology

Based on the results of reviewing the available research, the expediency of using the system-logical research method within the framework of the work was determined. It examines examples of successful regulation of the financial market, which contributed to the development and competitiveness of the market while ensuring the protection of investors' rights. A detailed study of the experience of regulation aimed at ensuring the protection of investors' rights allows determining the methods and tools used by the most effective regulators, as well as assessing the results of using such tools / methods.

Taking into account the formulated research hypotheses and the chosen method, technical hypotheses were determined:

H1: regulators of the most developed financial markets use direct regulation instruments to protect the interests of investors, including a mechanism for qualifying investors and restricting access to certain financial products.

H2: the successful regulation of the most developed financial markets to protect the interests of investors is due to their non-use of indirect regulation instruments.

At the same time, as noted earlier, the study is based on the provisions of the theoretical approaches of Smart Regulation and Behavioral Public Administration. According to the Smart Regulation approach, regulation should take into account the interests of the regulators and ensure that its initial goal is achieved. Taking into account the above, it was decided to be guided by the assumption that since the examples of financial markets under consideration are the most successful and large-scale, and the share of retail investors in them is significant, the regulation of protecting the interests of investors in these cases can be considered effective. At the same time, the Behavioral Public Administration argues about the advisability of using behavioral regulation tools due to the fact that any indirect impact tool requires less costs than fulfilling a direct directive requirement. Accordingly, to confirm their effectiveness, it is necessary to provide such tools with the purpose of their development. These features were taken into account when forming and testing hypotheses.

The use of verification analysis is also possible to study the problem we are considering, in the case of the availability of quantitative data collected according to a single methodology for one or comparable objects of observation. In our case, taking into account the short-term experience of regulating brokerage activities in Russia, such a study is inappropriate.

Study description

For an objective assessment of the quality and sufficiency of measures to protect clients of brokers in Russia, the regulatory measures to ensure the protection of the interests of retail investors, implemented in other countries, were considered. The USA and China were selected for consideration. The choice of these countries is due to the fact that the United States has been recognized leaders in the development and scale of the financial market for several decades, possessing well-formed and proven tools and institutions to protect brokers' clients. Thus, the percentage of the US adult population investing in financial instruments has not dropped below 50% from 2000 to the present³⁸. At the same time, the Chinese financial market acquired a large scale and significance not so long ago, but at the same time it experienced quite dynamic growth, which is still ongoing, which allows us to characterize it as developing (similar to the Russian one). The capitalization of securities of the Chinese financial market has grown more than 10 times since the turn of the century³⁹. At the same time, both countries play a significant role in the global financial market, which allows us to speak about the success of their policies for the development of the domestic financial market.

In the United States, regulation aimed at protecting clients of brokers is included in the system of government measures to protect consumers of financial services, but takes into account the specifics of the services

³⁵ Stellinga B. The open-endedness of macroprudential policy. Endogenous risks as an obstacle to countercyclical financial regulation // *Business and Politics*. – 2020. – T. 22. – №. 1. – P. 224-251.

³⁶ Underhill G. R. D., Zhang X. Setting the rules: private power, political underpinnings, and legitimacy in global monetary and financial governance // *International Affairs*. – 2008. – T. 84. – №. 3. – P. 535-554.

³⁷ Campbell-Verduyn M., Goguen M., Porter T. Big Data and algorithmic governance: the case of financial practices // *New Political Economy*. – 2017. – T. 22. – №. 2. – P. 219-236.

³⁸ Gallup Annual Economy and Personal Finance Survey // Gallup. – 2020.

³⁹ Market Data From official website of China Security Regulatory Commission (URL: <http://www.csrc.gov.cn/pub/newsite/sjtj/>).

provided by brokers. In general, it is implemented within the framework of the approach of the political and administrative regulation cycle. The implementation of regulation is carried out through a system of regulations and measures of state bodies. Despite the development of the existing system, regulation is constantly being improved. This is partly due to the development of the market, the creation of new products, and the formation of new operating schemes for companies. With this in mind, investor protection regulation in the United States can be categorized as preventative and remedial.

Consumer protection measures to prevent infringement of their rights include control over products (services) and prices, licensing requirements for companies, disclosure requirements, educational resources, and activities to promote financial literacy. As we can see from the list of these measures, regulation is based not only on the classical prescriptive approach, but also on behavioral tools.

It should be noted that measures to protect investors are primarily implemented by establishing the responsibilities of financial organizations that provide services (in our case, brokers). Within the framework of price control, the normatively stipulates the obligation of financial institutions to provide services to customers on similar terms, without admitting discrimination on the basis of any physiological characteristics. With regard to services, prohibitions have been established on certain actions that are recognized by the regulator as unfair. Monitoring the provision of services by brokers includes, among other things, the obligation to ensure the protection of clients' personal data, as well as information about their transactions and financial condition⁴⁰. To do this, clients may even be given the ability to control the transfer of information about them to other persons. In addition, it is permissible to request personal data of a client only if there are appropriate grounds and in an appropriate volume. However, with regard to financial advisers, there is a duty to record information that characterizes the client in order to provide the most effective advice.

Also, the normatively stipulates the right to provide brokerage services only by persons who have the appropriate license. Licensing requirements are standard and similar to the licensing systems in most countries, so a detailed consideration of them is impractical. However, it should be noted that during licensing, broker employees are trained in ethical standards, and brokers are responsible for compliance.

It should also be noted that the protection of the rights of consumers of financial services is connected with antimonopoly regulation. In the United States, antitrust laws are particularly strong. While it serves to satisfy the interests of investors by avoiding artificial price inflations, it does not use universalization tools. In the case of using template documents and providing absolutely similar services, consumer protection would be provided to a greater extent, but would deprive them of their choice⁴¹.

As we can see, direct regulatory requirements and prohibitions do not imply huge and unjustified costs for brokers to enforce them. In addition, the content of the requirements and the procedure for their adoption ensure that the interests of interested parties are taken into account. Open discussions of initiatives, as well as more careful work with lobbying of interests, allow implementing regulation in accordance with the principles of Smart Regulation and avoiding the capture of the regulator by the market.

However, information disclosure is the main mechanism for protecting investors in the United States. In the financial market, information disclosure is the responsibility of not only brokers, but also other organizations participating in the market or issuing securities. This requirement is aimed at ensuring that the consumer has the maximum completeness of information and, on its basis, can make an informed investment decision. In addition to the normatively established list of disclosed information, there is an obligation to publish any other material information for all investors at the same time and in full. The law provides that disclosures themselves must meet certain requirements, including being unambiguous and conspicuous, in writing, and publicly available. At the same time, disclosure of information is mandatory even when purchasing financial instruments via online and mobile services. Moreover, it is precisely through the disclosure of information (hotel information / documents) that the regulatory authorities point out the policy of regulatory "pushing" investors, which forces them to make a more accurate decision. The predominant role of this tool makes it possible to characterize regulation as based on the postulates of the behavioral regulation approach.

Another important element of the system for ensuring the interests of investors is increasing the financial literacy of the population, which is also included in the tools of behavioral regulation. It is directly related to the disclosure of information, because even with the availability of information, an insufficiently competent consumer cannot benefit from it. In addition, improving financial literacy can reduce the population's exposure to financial fraud. This measure is being implemented with the involvement and funding of non-profit organizations that provide information, conduct lessons and give advice. At the same time, such organizations include large websites on the Internet that enjoy worldwide recognition⁴².

⁴⁰ Nie Y., Han X. Research on consumers' protection in advantageous operation of big data brokers // *Cluster Computing*. – 2019. – Т. 22. – №. 4. – P. 8387-8400.

⁴¹ Алифанова Е. Н., Евлахова Ю. С. Тенденции реформирования институтов регулирования национальных финансовых рынков // *Финансы и кредит*. – 2011. – №. 35 (467).

⁴² Aglietta M., Rigot S. The regulation of hedge funds under the prism of the financial crisis. Policy implications // *Recherches économiques de Louvain*. – 2009. – Т. 75. – №. 1. – P. 5-34.

Another part of the regulatory measures is corrective in nature⁴³. So at the stage of providing brokers with services, their quality is monitored. Due to the intermediary nature of brokers' activities, this measure basically neutralizes the problems of the principal-agent theory. Based on customer complaints and available sources of information, the regulator monitors unfair, misleading, fraudulent activities and can intervene in resolving a problem situation if necessary. In this case, the settlement of the disputed situation should be carried out through the court.

In addition, after the 2008 crisis, the institutions of an investor advocate and an investor ombudsman were established. The purpose of their activities is to represent the interests of investors in government agencies, which should reduce the likelihood of "capture of the regulator" by market participants (according to the theory of the same name) and the introduction of regulation that infringes upon the interests of investors.

It should also be noted that US regulations provide additional protections for certain categories of investors. Investors of the elderly and those with disabilities are prioritized. The regulators have established increased measures of responsibility for the proposal and implementation of unfair or fraudulent actions in relation to them. Another category is low-income citizens, for whom the loss of funds is even more critical. In relation to them, the possibility of preferential increase in financial literacy is provided. The third group under subsidiary protection is the youth. Young people are prohibited from offering certain products due to their age-related lack of financial literacy. Financial literacy measures are also being implemented to close this gap for youth. At the same time, in none of these cases is the right of these groups of the population to purchase certain financial products limited. In general, despite the implementation of measures with the help of some regulatory requirements, since no prohibition has been established for the investor, the nature of the impact is implemented in accordance with the theory of behavioral nudge.

Thus, the main instruments for protecting the rights of retail investors in the United States are information disclosure and ensuring the financial literacy of the population. This fact testifies to the construction of a regulatory system for the protection of brokers' clients on the basis of theoretical approaches of smart regulation and behavioral nudge. Mechanisms for additional protection of individual groups of consumers, requirements for the general provision of services and measures for prompt response to new cases are also used. In addition, the use of individual customer data for the provision of services on a personal basis is allowed, but only for financial advisors.

The investor protection system implemented in China is somewhat different from the American one. Direct regulatory impact on business is somewhat more widespread in the country, which is due to the lesser influence of supporters of the theory of deregulation. The main distinguishing feature of the financial market is the use of the insurance system. It is implemented through an investor protection fund, which compensates for losses incurred by clients as a result of unfair or illegal activities of licensed brokers. The fund is formed at the expense of a part of the commissions received by exchanges and other infrastructural organizations of the financial market, as well as (mostly) deductions from brokerage organizations, depending on the amount of income they receive. The main role of brokers in the formation of the fund is due to the fact that the main losses subject to compensation are the result of their activities.

The creation of an investment insurance system is due to the presence of a large number of retail investors in the Chinese financial market, as well as its high volatility. In this regard, small investors can incur losses not only due to their mistakes, but also due to the mistakes of brokers. At the same time, both the panic, leading to surges in the market, and the flight of investors, who make up a significant share of the market, will negatively affect its condition. Therefore, the regulator stabilizes the market condition using the described tool. In general, this measure also has the character of a behavioral impact, since, by reducing the risks of investors, it entails their confidence in safety and pushes them to more active investment.

At the same time, compensation from the fund is paid to both residents and non-residents. The fund management company reviews the investors' claims, satisfies them and takes measures to recover from the guilty company. Payouts from the fund are limited in size, but sufficient to meet the requirements of the average retail investor.

In addition, to protect private investors, China has developed corporate regulation in terms of the rights of minority shareholders, which also provides a positive push for investors. The owners of small blocks of shares have a number of rights that ensure their protection against dilution of their share in the company, reduction in the size of dividend payments, and removal from management of the company. Also, the normative requirements for the minimum allowable shares of shares that must be traded in the public domain. At the same time, they should not belong to the management and persons associated with it or with the owners of large blocks of shares.

If we talk about the regulation of the activities of brokers, then in relation to them there is a ban on joint accounting and storage of their own and client's assets. Thus, client funds are always kept separate, which makes it possible to simplify control over their use and safety. Thus, the regulator reduces the negative effects associated with the manifestations of the theory of information asymmetry.

At the same time, China has developed tools based on the theory of behavioral regulation. Thus, brokers and other participants in the financial market are responsible for disclosing information. As well as in the USA, this tool is quite developed in China. The disclosure requirements are quite strict. However, some information must be disclosed on a daily basis. Similar to the American experience, it is assumed that the completeness and transparency

⁴³ Crain M. The limits of transparency: Data brokers and commodification // new media & society. – 2018. – T. 20. – №. 1. – P. 88-104.

of information will allow the retail investor to have sufficient information and make an informed decision on portfolio management. In addition to the requirements for the disclosure of standard information on issuers and financial intermediaries, there are regulatory requirements for disclosure, which are clearly in the nature of "pushing" the investor to more prudent and cautious work in the financial market⁴⁴.

To reduce losses for retail investors, notification of significant changes in the price of assets is provided. In the event that during the day the price of an asset changes by more than 10%, clients should be notified of this. In addition, in such a situation, the issuer is obliged to take action to contain price changes by disclosing any available information. Also, in this situation, information about the main trading participants should be disclosed and transactions should be analyzed for collusion and manipulation of the asset price.

It also includes the labeling of assets that carry heightened risks. Thus, brokers and stock exchanges must flag the assets of issuers in relation to which there are signs of unfavorable financial condition. For such assets, price change notification should be carried out even with a smaller price change⁴⁵.

With regard to information disclosure, it should be noted that due to the possibility of non-disclosure of information by market participants due to shortcomings from the internal procedures, strict sanctions are provided for non-disclosure of established information. This fact indicates that the classical regulatory theory of regulation is also taken into account by regulators when establishing sanctions.

Another important instrument of regulatory protection of investors' rights, based on the principles of a smart regulation approach, is the standardization of the content of contracts with clients⁴⁶. In contrast to the United States, where standardization is not applied due to the need to ensure differentiation of services for the purposes of antitrust law, China actively uses this tool. It was introduced into practice relatively recently and established certain requirements for contracts on the basis of which brokers provide services to clients. This made it possible to reduce the risks of providing clients with services, the meaning of which is not transparent and which actually allow the broker to receive additional income from the clients' assets. In addition, the existence of non-standardized language allowed brokers to limit their liability or leave loopholes for high-risk transactions with clients' assets. All this reduced the security of the retail client.

The next tool for protecting investors, based on the theory of behavioral nudging, is to increase the financial literacy of citizens⁴⁷. This tool was reviewed by us as part of its implementation in the United States. However, in China it is implemented differently. To improve education, the regulator has created a special education center. However, he provides training in a classical format and in a limited scope. The scale and reach of its activities is significantly lower than in the United States. In addition, his activities cannot be called the same publicly available. However, the regulator ensures that a lot of reference information and recommendations for investors are available in the public domain. Accordingly, measures to improve the financial literacy of certain categories of citizens in the form of full-fledged training are also not being implemented. At the same time, informing the elderly and young citizens about financial risks and fraud is carried out through the media, newsletters, lectures, etc.

It is also necessary to note the regulatory measures aimed at correcting violations of investors' rights. As in the United States, they primarily neutralize the consequences of the principal-agent theory⁴⁸. In China, an instrument is being implemented to stop the provision of problematic products. In the event that regulators of unfair practices are identified, he issues a statement to terminate the identified practice to protect clients of financial institutions. At the same time, this tool is quite effective due to the obligatory execution of the regulator's statement.

To resolve disputes between a client and a broker, a pre-trial arbitration tool can be used. This instrument, implemented in accordance with the requirements of the smart regulation approach, is simpler and more efficient for clients, and the recognition of its results makes the Chinese market more attractive to foreign investors. Moreover, if it is impossible to resolve the situation out of court, it is possible to file a claim in court. A special financial arbitration court has been created to consider financial disputes. Due to its narrow specialization, the quality and efficiency of its activities are at a high level.

Thus, considering the regulation for the protection of the rights of retail investors in China, it can be concluded that the main mechanism for protecting customers is the insurance of their assets. In addition, the use of information disclosure to protect investors is fairly well developed. Measures are also used to protect minority shareholders, standardize contracts, improve financial literacy, promptly identify dangerous financial products and arbitrate dispute resolution. These measures suggest that the regulation of the protection of the rights of retail investors is largely implemented in accordance with the approach of smart regulation using behavioral tools.

⁴⁴ Zhao M., Ke Y., Yi Y. The effects of risk factor disclosure on analysts' earnings forecasts: evidence from Chinese IPOs // *Asia-Pacific Journal of Accounting & Economics*. – 2020. – P. 1-30.

⁴⁵ Weiping H. Regulation of Information // *The Regulation of Securities Markets in China*. – Palgrave Macmillan, New York, 2018. – P. 81-124.

⁴⁶ Wei S. Conceptualizing the Regulatory Thicket: China's Financial Markets After the Global Financial Crisis. – Routledge, 2020.

⁴⁷ Liu K. Chinese consumer finance: a primer // *Frontiers of Business Research in China*. – 2020. – T. 14. – P. 1-22.

⁴⁸ Lee D. J., Bao M. Y. Private law and public regulation for investor protection in the asset management industry: aims and practices of transposing the UK model in China // *Maastricht Journal of European and Comparative Law*. – 2020. – P. 326-375.

Based on the results of considering the experience of using regulatory instruments for protecting the rights of investors in the securities market in the United States and China, we can note the existence of similar instruments and solutions. Their presence and nature are indicative of the development and implementation of regulation in the reviewed countries in accordance with a smart regulation approach. Moreover, the most developed and effective are behavioral interventions developed in accordance with the theory of the Behavioral Public Administration.

Thus, the tools implemented in both countries are information disclosure and increasing the financial literacy of the population. At the same time, the publication of information both in the United States and in China presupposes a deliberate choice of investors based on the completeness of the available data. To this end, the requirements and disclosures are often aimed at encouraging the consumer to behave in one way or another, which suggests that they are part of a regulatory nudge policy. At the same time, information disclosure works effectively only if there is sufficient education and competence in this area. The measures implemented in the United States are more extensive and targeted, but China is also increasing the volume of activities in this area.

The hallmark of investor protection in the United States is the provision of services legislation to protect customers and information about them, as well as the licensing process to educate brokers on ethical standards. Also, the specificity of investor protection lies in the presence of institutions of attorney and investor ombudsman, representing the interests of retail clients in the development of regulatory decisions.

In turn, the regulation in China is distinguished by the presence of a fund for compensation for investors' losses. This measure is the most radical and costly, but the effect of it is also the most noticeable. The practice also differs in terms of protecting the rights of minority shareholders and standardizing the terms of contracts with clients. Moreover, the regulation aimed at correcting violations of investors' rights is significantly different, which is effectively implemented in China through the mechanism of urgent termination of negative practices, as well as through high-quality resolution of disputes in an out-of-court and judicial procedure.

Thus, it can be concluded that the differences in countries are due to the domination of various theories to regulation in general, which have developed historically. Whereas in the United States regulators seek to minimize regulation in line with the theory of deregulation, China uses the classical regulatory theory of regulation. Also, it should be noted that the implementation of the Smart Regulation approach in the considered countries is somewhat different. So if the United States is aimed at achieving regulatory efficiency and maximum transparency, in China, efficiency is achieved through a wide range of measures that do not have an undue impact.

Comparing the measures taken to protect retail investors in Russia with the examples of the United States and China described above, we can note the use of similar / similar instruments. This fact is logical, since when developing measures, the regulator is described using existing successful examples, however, their actual implementation may often differ.

First of all, it should be noted that the Bank of Russia implements client protection by regulating the services provided by brokers. As noted, this practice exists in the United States. By analogy with the reviewed countries, regulations establish the need to provide services on equal terms, protect customer data, and differentiate between own and customer assets. However, unlike their experience, Russian regulation additionally introduces detailed formalized requirements for the procedure for providing services to customers and actions that are unacceptable in this case. This detailing, on the one hand, prevents separate unfair / risky actions of brokers, but on the other hand, reduces the vigilance of the regulator and opens up the possibility of camouflaging real brokers' transactions in formal compliance with the requirements. The emphasis on direct regulation is due to the work of the regulator mainly within the framework of the classical regulatory theory of regulation.

Information disclosure and literacy are also being pursued in the framework of ensuring the interests of investors in the Russian market. However, the Bank of Russia has established less stringent requirements for the volume, content and frequency of disclosed information. Moreover, the formality of requirements allows financial institutions to complicate the ability to familiarize themselves with information in every possible way, which reduces the effectiveness of its disclosure. In fact, this tool has no real impact on the actions and protection of investors. Moreover, the level of financial literacy required to use the disclosed information is also not ensured. Activities to improve financial literacy were launched by government agencies not so long ago and primarily concerns the fight against fraud, and not work in the financial market. This measure, despite its origins in the theory of nudges, is more similar to other directive regulations in terms of the nature of its implementation in Russia.

The instrument of insurance and compensation for investors' losses caused by the broker's activities is provided for in Russian legislation. However, the normatively provides only for the possibility of its use, and in fact this mechanism has not been implemented. Moreover, taking into account the facts of loss of clients' funds by brokers, as well as the already high regulatory burden that entails financial costs of brokers, at the current stage, the formation of such a mechanism may be inappropriate. The rights of minority shareholders are ensured at an average level without prioritizing their interests, which entails the preservation of certain conflict situations. However, consideration of this issue requires a separate study within the framework of corporate governance. The terms of contracts between brokers and clients are not standardized, although the regulator has established separate requirements for their content. However, they are not enough to eradicate the possibility of misleading the client and the use of his assets.

The Bank of Russia has an opportunity to promptly terminate certain negative practices. He is authorized to issue letters, the execution of which is mandatory by brokers. At the same time, according to the existing practice, due to the complexity of the internal processes of the regulator, the publication of such documents is actually not

prompt and can be extended indefinitely. In fact, this tool is used very rarely in relation to brokerage activities. As we can see, most nudging tools exist only formally. Their effective implementation is hampered by the regulator's non-perception of theories that contradict the classical normative regulation.

Also, within the framework of the regulation of the protection of investors' rights, of a corrective nature, the recently formed institution of the financial ombudsman should be noted. This institution should consider applications from clients of financial institutions in a pre-trial manner. At the same time, consideration of the client's complaint by the financial ombudsman is mandatory in order to file a claim in court. Taking into account the first results of the financial ombudsman's activities, according to which he does not take measures against financial institutions, it can be assumed that for the investor, in fact, this institution is only an additional link that does not protect his interests, but only complicates the protection procedure.

If we talk about the instrument of "qualification" of investors, then it is not used in the countries we have considered. As noted, the only case where the individual characteristics of the client are taken into account is the provision of financial consulting services in the United States. At the same time, the activities of consultants and brokers are fundamentally different. While the former have an impact on the client's asset management decisions, the latter should ensure that his order is carried out as impartially as possible. In addition, evaluating a client's investment profile and providing services in accordance with it is mandatory for trustees and consultants in Russia. In view of the above, the proposed measure to implement the qualification of clients and limit the operations that are acceptable for the client based on the results of qualification seems insufficiently justified. Moreover, taking into account the formalization of the qualification procedure, as well as the cost of its execution, it seems that the introduction of the requirement will entail brokers bypassing it. Thus, clients (probably for an additional fee) will be provided with access to the necessary operations by completing the necessary documents. At the same time, customers will incur additional costs, and their level of risk awareness and security will not increase.

This fact is confirmed by the existing procedure for recognition as a qualified investor. Although at the moment this status does not give many advantages to investors, it can be noted that there are facts of sale of documents necessary to obtain it, as well as facts of formal verification of such documents by brokers. The development of just such a measure during a period of increasing risks for private investors is due to the fact that the regulator is more accustomed and easier to apply measures of a familiar nature, based on the classical normative theory.

Thus, it can be argued that the considered examples of successful regulation in the field of investor rights protection do not allow us to conclude that it is necessary to use a tool to restrict clients' access to financial instruments based on their qualifications. In addition, the results of the study indicate an insufficiently high-quality application by the Russian regulator of tools used in foreign experience and have proven themselves. At the same time, Russian regulation emphasizes the strict prescriptive setting of norms. This fact confirms the factual rejection (with nominal use) by the regulator of the provisions of modern approaches of smart and behavioral regulation. At the same time, foreign examples of successful protection of investor rights are built not only on outright bans, but also on tools that encourage retail investors to be more cautious and prudent. It seems that at the moment the potential for the development of Russian regulation in this area lies precisely in these instruments.

Results

Based on the results of the analysis, it was found that regulation that ensures the protection of investors in developed markets includes the use of direct impact instruments. At the same time, in the cases considered, the investor qualification tool currently being used and developing in Russia is not used. Thus, we can conclude that hypothesis H1 is partially refuted. At the same time, it is necessary to understand that some of the regulations of a directive nature are mandatory for the healthy functioning of the market, both in successful and developed markets and in the Russian financial market.

This conclusion confirms the validity of the main provisions of the regulatory theory of regulation. At the same time, the results of the study show that, in general, the theory of regulatory regulation has partially lost its relevance today. As established in the course of the work, it is advisable to apply regulatory requirements and limitations of direct impact to establish the general foundations, principles and framework of activities. At the same time, in order to influence specific actions and aspects, the use of direct regulation may be ineffective.

In addition, the method of our research develops the possibilities of using the smart regulation approach. According to the results of the study, we can talk about the possibility of substantiating the effectiveness of the implemented regulation by considering the efficiency and cost of the instruments used in other states to achieve the goals of the considered regulation.

Hypothesis H2 has been disproved, since instruments of indirect influence are widely used by foreign regulators. However, despite the dominant role of instruments of indirect influence in protecting the interests of investors in developed financial markets, it is impossible to refuse from some measures of direct influence, as noted earlier. This conclusion allows us to speak about a partial refutation of the theory of behavioral regulation in terms of the non-universality of behavioral tools.

At the same time, the examples considered indicate the effectiveness and success of the application of indirect regulation in the protection of private investors. Moreover, the results of the development and functioning of the considered financial markets indicate that the applied behavioral regulations are not of a momentary nature, only postponing the investor's decision-making, unable to change the general trends, which is assumed by many

researchers of the behavioral approach. The identified provision of behavioral regulation (with its high-quality elaboration and enforcement) of global goals in the long term develops the existing provisions of the theory of behavioral regulation.

However, if the existing directive requirements in this area in Russian regulation do not lag far behind the examples considered, then such a conclusion is impossible with regard to indirect measures. The practice of ensuring the protection of investors' rights on the basis of indirect instruments in Russia is significantly inferior to successful practices. Some measures, adapted to the existing conditions, are largely implemented formally and do not give the desired result. Moreover, a number of measures available to the regulator are simply not used in the observed practice, although their application can give a significant impetus to the scaling of the financial market. Such measures relate to both the protection of retail investors on a preliminary basis and to remedy the situation.

Thus, it can be assumed that on the basis of the considered instruments, the improvement of the protection of the rights of retail investors can be carried out. At the same time, it is necessary to note the possibility of using separate instruments of direct regulation. At the same time, with regard to the currently actively developing investor qualification tool, there is no confirmation of its effectiveness in protecting brokers' clients. At the same time, with respect to indirect measures of influence, there is a significant potential for their use. In the case of their correct implementation and application, the level of protection of the interests of retail investors will be increased without a significant increase in the regulatory costs of brokers. The implementation of such a scenario contributes to the achievement of regulatory goals and, as a consequence, the development of the financial market.

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