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Improving emergency regulation of the Bank of Russia in the sphere of brokerage activities

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Introduction

Relevance of the study

One of the key elements of successful economic development in countries for decades has been the presence of an efficiently functioning and developed financial market. It provides investors with the opportunity to effectively save and increase their assets, while also enabling the state and private companies to attract capital. Brokerage firms play one of the most crucial roles in the financial market.

A distinctive feature of regulating the brokerage services market is the sensitivity of citizens to issues that affect their financial interests. Key requirements for investment include the profitability and accessibility of financial services. At the same time, an essential value for investors, especially individual ones, is the protection of their funds.

Thus, regulation in this area, considering the aforementioned investor priorities, must balance between opposing goals. On the one hand, the regulator must ensure the reliability and transparency of brokerage organizations, which often leads to a significant regulatory burden on them. On the other hand, the regulatory costs imposed on brokers should not be excessive, as they may be passed on to clients or result in the unavailability of competitive financial products, thereby reducing investors' potential returns. Only by coordinating both directions can a stable and long-term involvement of the population in the investment process and the growth of the financial market be achieved, all else being equal.

This principle is embedded in the objectives of the Bank of Russia, which became the mega-regulator of the Russian financial market in September 2013. According to Article 3 of the Federal Law No. 86-FZ of 10.07.2002 “On the Central Bank of the Russian Federation (Bank of Russia),” the goal of the mega-regulator is to develop and ensure the stability of the financial market. Accordingly, it is tasked with providing regulation that not only protects investors but also avoids excessive and unjustified regulatory burdens. However, in practice, there is an issue of insufficient regulatory efficiency concerning brokers. Overall, the need to reduce the

administrative burden in the financial market was highlighted as early as December 4, 2014, in President Vladimir Putin's address to the Federal Assembly of the Russian Federation.¹ However, the scope of regulation has continued to expand since 2014. From the moment the mega-regulator was established within the Bank of Russia until the present, it has issued 49 regulatory acts introducing new requirements for brokerage activities. Moreover, a much larger set of regulatory acts, adopted prior to the creation of the mega-regulator, remained in force and were updated, further increasing the regulatory burden. Additionally, despite Russia's implementation of the "regulatory guillotine" reform, the Bank of Russia's regulations were excluded from the general framework of the reform at the last minute (in November 2019). Although the mega-regulator undertook a similar effort to streamline existing regulations, the requirements for brokers were not significantly reduced.

This is reflected in strategic documents. For instance, the need to improve regulation in the financial sector, particularly regarding brokers, is highlighted in the "Main Directions for the Development of the Financial Market of the Russian Federation for 2022 and the Period of 2023 and 2024" as well as the "Strategy for the Development of the Financial Market of the Russian Federation until 2030."

Thus, the need to address the issue of regulatory quality in the brokerage industry persists. Notably, this has been unanimously emphasized for several years not only by all self-regulatory organizations (SROs) in the financial market that unite brokers but also by experts in the field², even before the onset of the crisis periods examined in this dissertation.

As is well known, brokers are the primary entities through which individuals and legal entities gain access to the securities market. In this dissertation, "brokers" refer to a range of organizations that engage in intermediary activities in the financial

¹ President Vladimir Putin's Message to the Federal Assembly dated December 12, 2013 // Rossiyskaya Gazeta. – 2013.

² Kostina A.A., Minina T.I. Features of factors of inefficient regulation of investment activity in Russia // Chronoeconomics. - 2018. – No. 3. – pp. 105-109.

Guznov A.G., Rozhdestvenskaya T.E. Public law regulation of the financial market in the Russian Federation / A.G. Guznov, T.E. Rozhdestvenskaya. – Yurait Publishing House, 2019. – 500 p.

market under a broker's license, though they may also hold licenses as depositories or asset managers. This definition is broader than the regulatory definition of "broker." This assumption is justified by the fact that most brokers provide comprehensive services to clients (including custody services and asset management), and the regulatory measures applied to these activities significantly impact the condition and operations of the company, making it impossible to exclude or isolate their influence.

As of March 1, 2023, approximately 60 regulatory acts governing brokers' activities were in effect, each regularly amended (up to five times a year). For instance, the requirements for bookkeeping and internal accounting alone—comprising more than 20 regular forms, and many more forms submitted upon request—along with the format (XBRL, which entails significant technical and staffing costs), frequency (mostly monthly), and deadlines for reporting, place considerable financial and labor demands on organizations due to their technological complexity. As for compliance with operational requirements, while their costs may be less apparent, they can be even greater. For instance, expenses related to ensuring and monitoring compliance with licensing requirements, personnel standards, accounting systems, internal control and risk management departments, and the calculation of mandatory ratios may require the full-time employment of at least seven staff members in one company (assuming minimal brokerage activity). At the same time, in 2024, the Bank of Russia planned to develop/issue 87 priority regulatory acts (i.e., to be completed by the end of the year), of which no fewer than 10 pertain to brokerage activities. A second priority includes 199 regulatory acts. According to experts³, this is consistently one of the main reasons for high client costs and the insufficient competitiveness of financial services.

The shortcomings of brokerage regulation described above have repeatedly manifested in practice. According to data from the Bank of Russia, research by

³ Proactive supervision of the Central Bank is costly for market participants // Reuters. – 2019.

Brokers are pulling up reserves // Kommersant newspaper. – 2021.

Brokers are discussing with the Central Bank a change in the mechanism of settlements with foreigners // Vedomosti. – 2023.

academic institutions, and analytical materials from other government agencies, the majority of the population's assets are concentrated in banking organizations (in several of the largest banks). Investment through brokers, however, remains underdeveloped (despite the growth in the number of private investors in recent years). This is corroborated by the number of Russian residents investing in the financial market. In 2019, less than 1% of Russia's population had brokerage accounts, compared to 52% in the United States and 39% in Japan⁴ in the same year. Despite the growth in private investors in recent years, a study conducted by PSB, NIFI, and NAFI showed that only 10% of Russia's population considers a brokerage account as a tool for saving and investing⁵.

As a result, brokers are sometimes forced to resort to so-called "schematic operations" (transactions that are formally outside regulatory oversight but are used in practice for transferring assets or increasing the potential risks to brokers/their clients), allowing them to generate additional revenue without raising service fees. In such cases, the risks to brokers' stability and solvency increase, further deterring potential investors. Instances where investors lose money when dealing with financial organizations, where unscrupulous participants bear no responsibility, highlight the imperfections in the system for protecting investor rights⁶. For example, depositors of the Russian Trust Bank, who purchased credit notes instead of deposits between 2009 and 2014 (for a total of about 20 billion rubles), were left unprotected during the bank's restructuring after 2014. Similarly, clients of the Russian company QBF (mostly individuals) lost securities worth about 5 billion rubles due to the illegal withdrawal of securities from their accounts in 2021.

Moreover, the issue of population investment in the financial market through organizations providing "brokerage" services without the appropriate license from the Bank of Russia persists. Despite the illegality of such activities, these

⁴ The data are provided for 2019 in connection with the emergence since 2020 of spikes in investor interest (both growth and decline) in the financial market due to external events and market volatility.

⁵ Research of the Index of savings and investment activity of Russians // Promsvyazbank together with the NIFI of the Ministry of Finance of the Russian Federation and the Analytical Center NAFI. – 2023.

⁶ Selivanovsky A.S. Protection of investors' rights in the stock market: modern challenges // Economy and law. – 2014. – p. 68.

organizations, which are not bound by regulatory constraints, offer a wider range of services at lower prices, attracting investors but leaving them without adequate legal protection in case of problems. Furthermore, there is a widespread market of fraudulent "brokerage" firms that are not actually brokers but instead engage in stealing clients' funds.

Thus, in order to develop the financial market and encourage the population to engage in investment activities, it is necessary to establish regulation of brokerage activities that does not place excessive pressure on organizations while allowing them to offer attractive conditions for clients, yet still ensures the security of investments.

The small scale and underdevelopment of the Russian financial market became particularly evident as early as 2014⁷. Foreign policy restrictions led to the withdrawal of foreign investors, which resulted in a decline in the market capitalization of the financial market. At the same time, the sanctions imposed in 2014 did not directly affect financial market participants (with the exception of restrictions on borrowing by large state-owned banks), and as a result, regulatory relief for brokerage organizations was not implemented in 2014.

However, the Russian financial market faced even greater challenges during the crises related to the COVID-19 pandemic and the actions of "unfriendly countries" in response to the military operation in Ukraine. These crisis situations—in 2020 and 2022, respectively—posed significant risks to the entire Russian financial system, and for the most part, the negative consequences were not mitigated by the regulations in place at the time of the crisis.

As a result, in both 2020 and 2022, the financial market regulator had to find prompt solutions to stabilize the situation, including reducing the burden on brokers through new (and unconventional for the Russian financial market) regulatory tools. These measures varied in legal nature and ranged from informational guidelines to mandatory (restrictive) measures.

⁷ Bitkov V.P., Mainulov K.E. The impact of sanctions on the Russian financial market // Problems of national strategy 2. – 2018. – № 3. – P. 145.

These measures were implemented through various regulatory and/or advisory documents. Due to the urgency and objectives of their introduction, it was not possible to develop, coordinate, and approve these documents through the standard regulatory procedures of the Bank of Russia. Therefore, the established procedures corresponding to the concept of "smart (quality) regulation"—such as public consultations, impact assessments, and evaluation of alternatives—were largely not applied to these norms. This shortcoming, present from the very inception of these measures, sparked discussion among brokerage organizations about the justification and effectiveness of such measures, laying the groundwork for the regulator to adjust the measures introduced⁸.

Another feature of this type of regulation was its temporary nature, designed to respond to extraordinary circumstances. Since the regulations were aimed at mitigating the negative effects of crises, most of them were introduced with a limited duration. In general, the regulatory measures adopted during the crises of 2020 and 2022 were either aimed at suspending certain regulatory requirements or introducing new temporary requirements. Given these characteristics, the regulator's actions during the crises of 2020 and 2022 can be defined as "emergency temporary legislation".

The purpose and objectives of the study

The purpose of the study is to develop scientifically grounded systematic proposals for the implementation of emergency regulation of brokerage activities applied during crisis (emergency) situations.

To achieve this goal, the following tasks have been set:

– to identify and classify models of regulation of brokerage activities on an ongoing basis and in emergency situations, as well as to systematize the main approaches to assessing the effectiveness and quality of financial organizations regulation;

⁸ Assessment of the effectiveness of anti-crisis measures of the Bank of Russia: draft report / Bank of Russia. – Moscow, 2023. – 55 c.

– to identify the mechanisms used by the Bank of Russia in the framework of emergency regulation of brokerage activities, to identify their specific characteristics, as well as to systematize and compare emergency measures of regulation of brokers in 2020 and 2022;

– to establish the results of the impact exerted on brokerage organizations by measures of emergency temporary regulation and the quality of emergency restrictive measures;

– to form proposals on the adjustment of the applied emergency measures of regulation of brokerage activities;

– to propose systemic mechanisms for the development, assessment and adjustment of emergency temporary regulatory requirements.

The object of the study is a system of temporary measures to regulate the activities of brokerage organizations.

The subject of the study is the impact of temporary regulatory requirements on the activities of brokerage organizations and the reduction of negative consequences of crises.

Characteristics of the development of the problem

Overall, the study is conducted within the paradigm of New Public Management, which suggests that in order to ensure the provision of public goods and protect societal interests under new conditions, the state must focus on its function of market regulation⁹. Within this paradigm, regulation is viewed not merely as a set of rules and requirements but as a tool for achieving socially significant public management objectives with maximum efficiency. To achieve this efficiency, regulation must be carried out in the most optimal way for the given situation.

The use of temporary regulatory measures is implemented within the frameworks of emergency legislation and temporary legislation¹⁰ (regulation with

⁹ Osborne D., Gaebler T. Catalytic government: Steering rather than rowing // Reinventing government: How the entrepreneurial spirit is transforming the public sector. – 1992. – P. 25-48.

¹⁰ Regulatory measures that expire on a certain date, determined in advance when the measures are put into effect, without additional legislative action.

an expiration date), and it aligns with other "experimental" modes (mechanisms) of "smart regulation," such as sunset legislation (sunsetting), regulatory sandboxes, test and learning, regulatory relief, and others.

It appears that the application of such temporary regulatory measures fits within the frameworks of adaptive regulation and collaborative regulation theories. The works of adaptive regulation theorists McGarity T.O.¹¹, Drury J.W.¹², Gaudet L.M., Marchant G.E.¹³, Chaffin B.C., Gosnell H., Cosens B.A.¹⁴, Stephens A., Pregelj L., Smith A., Hine D.¹⁵, Benneer L.S., Wiener J.B.¹⁶ state the need to take into account current conditions when regulating avoiding ossification of the control system. At the same time, such proponents of this model as Arnold C.A.¹⁷, Matei A., Antonovici C.G., Savulescu C.¹⁸, Дегтярев М.В.¹⁹, Сидоренко Э.Л.²⁰, Трунцевский Ю.В.²¹ note that when regulations are changed on short notice—without following the standard procedures applied during the development of regulation under normal conditions (e.g., consideration of alternative options, cost-benefit analysis, public consultations) – the risks increase that the resulting regulations may fail to achieve their goals, be inefficient, and/or become costly to implement.

¹¹ McGarity T.O. Some Thoughts on «Deossifying» the Rulemaking Process // *Duke Law Journal*. – 1992. – Т. 41. – № 6. – P. 1385-1462.

¹² Drury J.W. Sunset Laws: A Passing Fad or a Major Development? // *Midwest Review of Public Administration*. – 1977. – Т. 11. – № 1. – P. 61–64.

¹³ Gaudet L. M., Marchant G. E. Administrative law tools for more adaptive and responsive regulation / *The Growing Gap Between Emerging Technologies and Legal-Ethical Oversight*. – 2011. – P. 167-182.

¹⁴ Chaffin B.C., Gosnell H., Cosens B.A. A decade of adaptive governance scholarship: synthesis and future directions // *Ecology and Society*. – 2014. – Т. 19. – № 3.

¹⁵ Stephens A., Pregelj L., Smith A., Hine D. Adaptive Regulation for Digital Health: Enhancing Australia's Regulation System. – Melbourne: MTPConnect. – 2021. – 71 p.

¹⁶ Benneer L.S., Wiener J.B. Adaptive Regulation: Instrument Choice for Policy Learning over Time. – Draft Working Paper. – 2019. – 37 p.

¹⁷ Arnold C.A. Adaptive Water Law // *Kansas Law Review*. – 2014. – Т. 62. – P. 1043–1090.

¹⁸ Matei A., Antonovici C.G., Savulescu C. Adaptive Public Administration. Managerial and Evaluation Instruments // *Lex Localis – Journal of Local Self-Government*. – 2017. – Т. 15. – № 4. – P. 763–784.

¹⁹ Degtyarev M. V. The latest regulatory technologies and tools: definition and classification // *Law and the State: theory and practice*. – 2021. – №. 12 (204). – Pp. 180-183.

²⁰ Sidorenko E.L. Adaptive possibilities of Russian law in the context of digital transformation // *Public Service*. – 2020. – vol. 22. – No. 2. – pp. 56-63.

²¹ Truntsevsky Yu.V. The law as a code and precision law in the perspective of ratification // *Journal of Foreign Legislation and Comparative Jurisprudence*. – 2021. – vol. 17. – No. 1. – pp. 49-67.

The works of supporters of the theory of collaborative regulation Aigbogun O., Ghazali Z., Razali R.²², Talias M.²³, Scott C.²⁴, Eggers W.D., Turley M., Kishnani P.²⁵, Haines F.²⁶ note the need for cooperation, coordinated and joint actions of the regulator and supervised organizations to create effective regulation. However, as noted in the works of Ansell C., Gash A.²⁷, Booher D.E.²⁸ a significant risk characteristic of the implementation of the collaborative theory is the occurrence of corruption situations and the risk of "capture of the regulator" (a situation where the regulator does not actually protect the interests of society, but promotes the interests of the largest representatives of the regulated sphere).

As we can see, the described regulatory theories point to risks associated with implementing regulatory measures in emergency conditions. Therefore, the question arises: Do these theories adequately describe the temporary regulatory measures applied in Russia to brokers? How effective are these measures, and are they subject to risks typical of emergency temporary regulation? Do they align with the general values (protection and profitability) of brokerage regulation?

In light of these questions, it became necessary to investigate the validity of the following hypotheses:

H1. Emergency regulatory relief measures were applied by the Bank of Russia under pressure from market participants;

H2. The restrictive measures for brokers were developed in accordance with the mechanisms used for permanent brokerage regulation;

²² Aigbogun O., Ghazali Z., Razali R. The Impact of regulatory function on supply chain resilience: Reliability of measurement scales // *Global Business and Management Research*. – 2017. – T. 9. – № 1. – P. 524-570.

²³ Talias M. Collaborative Regulation: Collaborative Governance in Regulation // *Collaborative Governance*. – 2021. – P. 165-189.

²⁴ Scott C. Regulation everything: from mega- to meta-regulation // *Administration*. – 2012. – T. 60. – № 1. – P. 61–89.

²⁵ Eggers W.D., Turley M., Kishnani P. The future of regulation: Principles for regulating. – New York: Deloitte Insights, 2018. – 27 p.

²⁶ Haines F. Regulatory failures and regulatory solutions: A characteristic analysis of the aftermath of disaster // *Law & Social Inquiry*. – 2009. – T. 34. – №. 1. – P. 31-60.

²⁷ Ansell C., Gash A. Collaborative governance in theory and practice // *Journal of public administration research and theory*. – 2008. – T. 18. – № 4. – P. 543-571.

²⁸ Booher D.E. Collaborative governance practices and democracy // *National Civic Review*. – 2004. – T. 93. – № 4. – P. 32-46.

H3. Emergency regulatory relief reduced the regulatory burden on brokers during the crisis period;

H4. The quality of emergency restrictive measures is high in terms of regulation;

H5. The existing system of regulation of brokerage activities contributes to the "regulatory capture".

Testing these hypotheses will help identify potential shortcomings in the applied regulatory measures and assess the possibilities for their adjustment. Since the permanent (non-emergency) regulation of brokerage activities has certain deficiencies, these could have been addressed through emergency measures. However, if emergency regulatory instruments are applied incorrectly, there is a risk (under equal circumstances) of further contraction of the financial market due to the increased regulatory costs for brokers and, consequently, their clients. One of the tasks of the Russian regulator (in the form of the Bank of Russia) is to prevent this from happening.

Description and methods of analysis of the source data

Several research methods were employed in conducting the study. The verification of the main hypotheses was supported by the case study method, within which similar examples from regulatory practice were examined, their projection and comparison with the situations and practices under consideration. Most of the cases reviewed concerned emergency and temporary regulatory measures previously applied in Russian and international practice during crisis periods, including financial crises. Additionally, a series of expert interviews with representatives of brokerage organizations and the Bank of Russia was conducted when addressing most of the research questions.

Moreover, for assessing the effectiveness of regulatory relief measures, statistical analysis, including regression analysis of panel data characterizing the activities of brokerage organizations, was used. A number of indicators were considered, determined in accordance with the content of the regulatory relief measures. The data sources for these indicators were information from the Bank of

Russia's website, brokerage organizations' websites, organizations specializing in information security, as well as data from the SPARK database.

Finally, when analyzing the quality of emergency restrictive measures, a technical analysis of legal acts was conducted. The texts of the acts were directly used for this analysis, taken from the databases of ConsultantPlus, the Garant system, and the Bank of Russia's website.

Theoretical and practical significance

As a result of the conducted research, the findings of adaptive regulation theory were confirmed, specifically that the dynamic changes in the external environment require prompt regulatory intervention to address issues and eliminate gaps in the previously existing regulatory framework. Also confirmed by the noted scientists Arnold C.A.²⁹, Matei A., Antonovici C.G., Savulescu C.³⁰, Трунцевским Ю.В.³¹ the problem of insufficient quality of adaptive regulation, developed in a short time and/or according to simplified procedures. Additionally, the study revealed that this issue is most apparent in cases where the transitional period provided for the document's implementation from the moment of its issuance is insufficient.

The research established that the primary cause of poor-quality adaptive regulation lies in the problems of the regulatory process implemented on a permanent basis. Consequently, a conclusion was drawn about the risks of applying adaptive regulation when regulatory tools in the daily practice of the regulatory authority are insufficiently developed.

Moreover, the theory of collaborative regulation (as proposed by Ansell C. and Gash A.³²) that regulatory relief measures can only be induced by market pressure and regulatory capture was disproved. The analysis indicates that the

²⁹ Arnold C.A. Adaptive Water Law // *Kansas Law Review*. – 2014. – T. 62. – P. 1043–1090.

³⁰ Matei A., Antonovici C.G., Savulescu C. Adaptive Public Administration. Managerial and Evaluation Instruments // *Lex Localis – Journal of Local Self-Government*. – 2017. – T. 15. – № 4. – P. 763–784.

³¹ Truntsevsky Yu.V. The law as a code and precision law in the perspective of ratification // *Journal of Foreign Legislation and Comparative Jurisprudence*. – 2021. – vol. 17. – No. 1. – pp. 49-67.

³² Ansell C., Gash A. Collaborative governance in theory and practice // *Journal of public administration research and theory*. – 2008. – T. 18. – № 4. – P. 543-571.

emergency temporary measures under review were not triggered by market pressure, but were instead driven by another phenomenon of collaborative regulation theory—the so-called "regulatory gift." Within this framework, the risks of implementing the "regulatory gift" concept, as noted by Browne J.³³, were confirmed, such as the market's negative reaction to relief measures that have no real positive effect. Additionally, the study found that one of the most effective mechanisms for preventing regulatory capture is the limitation on the duration of regulatory relief measures.

From a practical standpoint, the research identified ineffective regulatory relief measures from the Bank of Russia, which in practice neither deliver a positive effect nor reduce costs for supervised organizations, while their introduction and implementation carry potential risks for the market as a whole. Ineffective emergency restrictions that do not fully contribute to achieving their intended objectives were also identified. It was further confirmed that the savings from regulatory relief are disproportionately smaller than the costs incurred in implementing emergency restrictive measures. Based on this, recommendations were prepared for the cancellation or revision of the aforementioned relief measures and restrictions.

As part of the analysis, indicators characterizing the impact of regulatory relief on the activities of brokers were identified, and a methodology for assessing their effects was developed and tested. Additionally, analytical tools were identified to evaluate the quality and thoroughness of regulatory documents.

Based on the methodology of the conducted analysis and considering the identified causes of shortcomings in emergency regulation, a draft Procedure for the Development and Evaluation of Emergency Regulatory Measures was formulated. This Procedure was developed within the framework of the regulatory activity improvement approaches currently being implemented by the Bank of Russia. This contributes to its relevance and feasibility for implementation in the regulatory

³³ Browne J. The regulatory gift: Politics, Regulation and governance // Regulation & Governance. – 2020. – T. 14. – № 2. – P. 203-218.

activities of the Bank of Russia. The Procedure defines a list of types of documents for which the proposed approaches should be applied, as well as outlines the key content and approaches to developing and evaluating regulations.

The main gaps and shortcomings of the Bank of Russia's permanent regulatory activities were identified, which result in the low quality of emergency regulation. Directions for the implementation of "smart regulation" tools and mechanisms were identified, which will improve the quality of financial market regulation both on a permanent basis and during crises.

Additionally, the author developed draft regulatory acts for the Bank of Russia, which will help establish the status of temporary regulatory documents and disseminate the best practices formed during emergency regulation into the Bank of Russia's ongoing regulatory activities.

Scientific novelty of the research

1. Within the framework of the dissertation research, for the first time, emergency measures for the regulation of brokerage activities implemented by the Bank of Russia in 2020 and 2022 were examined through the lens of adaptive and collaborative regulation theories. In addition, the emergency regulatory measures were systematized, classified, and their specific features were described, followed by a comparative analysis (see Appendices G and D of the dissertation). It was found that many measures were followed by market participants despite their non-mandatory regulatory nature (due to being introduced through documents without a fixed legal form).

2. The most significant indicators were identified (characterizing both the activities of individual brokerage organizations and the securities market professional participants as a whole) that should be influenced by the temporary regulatory relief measures imposed by the Bank of Russia.

3. Methods for analyzing the impact of the Bank of Russia's emergency relief measures on the performance indicators of brokers were developed. A retrospective assessment (based on a regression analysis of panel data) of the influence of regulatory relief measures on these indicators was carried out, and emergency relief

measures that did not positively affect the activities of brokerage organizations were identified (see Appendix E of the dissertation). In the future, with the provision of internal data access to research organizations, planned by the Bank of Russia, it will be possible to assess other emergency regulatory measures using the developed methodology.

4. For the first time, it was established that the considered emergency temporary relief measures in Russia can be explained by the phenomenon of the collaborative regulation theory, specifically the "regulatory gift," as well as by the nature of "regulatory mimicry" (copying measures from other regulators or previous experiences). At the same time, it was found that such regulatory practices entail risks of relief ineffectiveness. Although these relief measures limit the application of some costly requirements for brokers, they also impose other costs on market participants due to the need to restructure processes and adapt to new conditions.

5. Based on approaches of technical analysis of regulatory acts, a methodology for assessing the quality of temporary regulatory acts was developed, taking into account quantitative indicators such as volume, complexity, and stability of emergency temporary regulatory requirements. Using this methodology, restrictive measures with insufficient quality that carry risks of emergency regulation failure were identified.

6. For the first time, on the example of brokerage activity regulation, the risks of adaptive regulation failure in cases of insufficient elaboration and frequent revisions were confirmed. In particular, it was proven that, in such cases, the costs for market participants to adjust to changing requirements increase significantly.

7. Proposals were developed for the repeal of ineffective emergency relief measures in the brokerage sector, and alternative mechanisms to achieve the goals of emergency measures were suggested (see Appendices A and B of the dissertation).

8. Proposals regarding methodological approaches to the development and evaluation of emergency regulation concerning brokers were formulated. Based on

these, a draft procedure for the development and evaluation of emergency regulatory measures by the Bank of Russia was developed (see Appendix V of the dissertation).

THE MAIN SCIENTIFIC STATEMENTS AND CONCLUSIONS TO BE DEFENDED

1. The research established that scholars and financial market regulators consider the regulation of brokerage activities within the theoretical framework of the "smart regulation" approach. However, it was found that the extent of the implementation of this approach in the activities of the Bank of Russia is relatively low.

An examination of the existing regulatory impact assessment system at the Bank of Russia revealed its formal and limited nature. The current documents do not provide for the assessment of impact using economic methods. In practice, the only effective aspect is the discussion of drafts, but this mechanism is implemented by the Bank of Russia in a limited format. Moreover, the final impact assessment document is prepared by the department responsible for developing the draft act, without additional internal approval or discussion within the regulator, and it does not serve as an obstacle to the adoption of the act.

Table 1 – Characteristics of the regulatory impact assessment procedure at the Bank of Russia

Positive aspects of ODS in	Positive aspects of ODS in
The procedure is documented	Information about the projects is not subject to mandatory publication
Provides for the formal aspects of RI (justification and objectives of regulation, the range of stakeholders and the estimated impact)	The rationale for the impact assessment is not supported by analytical or evidence-based methods
There is a possibility of holding discussions on projects	It is possible to hold discussions on projects, discussions are held in a closed format
	Information on accounting/non-accounting of proposals received in relation to the draft by the Bank of Russia is not published
Based on the results of the assessment, an explanatory note is being prepared on the results of the assessment	The author of the explanatory note is the project developer unit
	The assessment may not be carried out on a reasoned basis

	A negative assessment is not a basis for reviewing the draft act
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Source: compiled by the author

At the same time, the Bank of Russia's use of a wide range of regulatory instruments, attempts to create regulatory sandboxes, the application of temporary measures during the crises of 2020 and 2022, as well as the experiment with perpetual bonds (2023-2024), indicate the Bank's openness to implementing components of "smart regulation."

Furthermore, the Bank of Russia's implementation of an analogue of the "regulatory guillotine," similar to that executed in the realm of government regulation and oversight, also reflects its understanding of the existing issues. However, this mechanism does not fully adhere to the principles of regulatory guillotines implemented globally. The optimization of the regulatory burden by the Bank of Russia does not always imply the elimination of requirements and, moreover, often involves the creation of new regulatory acts. Additionally, the commonly used "one in, one/two out" mechanism, which limits the number of new acts introduced after a regulatory guillotine, is not employed. Market participants have relatively limited involvement in these procedures. While they may initiate the revision of requirements, their participation in its refinement can be passive. Thus, the results cannot be unequivocally assessed as positive in terms of reducing the regulatory burden (Figure 1).

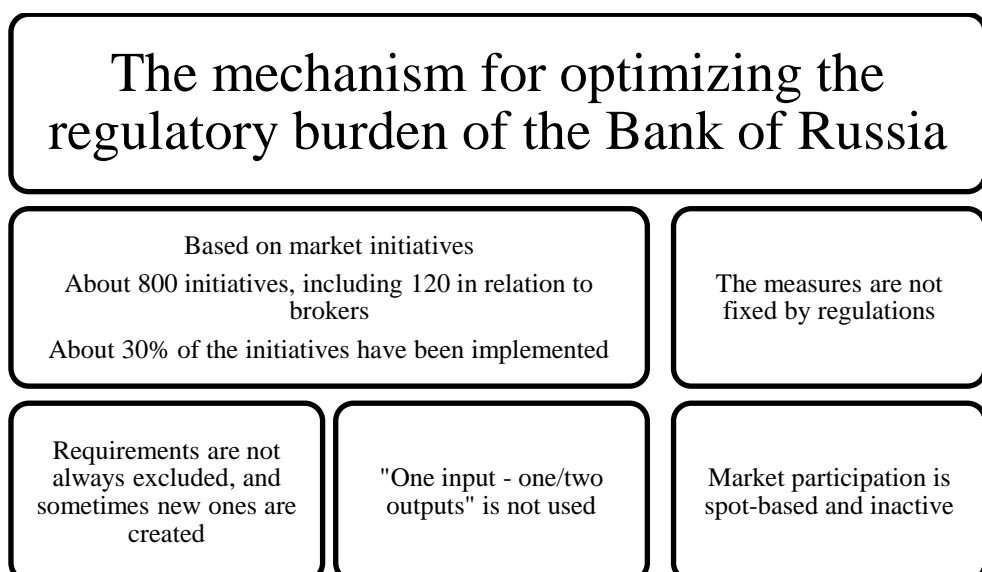


Figure 1 – Assessment of regulatory load optimization mechanisms used by the Bank of Russia

Source: compiled by the author

Thus, the research reveals that the regulation implemented by the Bank of Russia, including in relation to brokerage activities, does not fully align with the "smart regulation" approach.

2. As a result of the review of emergency regulatory measures for brokerage activities implemented by the Bank of Russia in 2020 and 2022, these measures were systematized for the first time, their specific characteristics were identified, and the phenomenon of "regulatory imitation" in the development of emergency relief measures by the Bank of Russia was established.

As of March 1, 2023, 77 such documents (along with 50 other acts that had already expired) were in force concerning brokers, all of which were adopted by the Bank of Russia in an expedited manner to address emerging issues. The analysis of the Bank of Russia's emergency regulatory measures showed that they had two primary directions: relieving existing regulatory requirements and introducing new restrictive prohibitive norms. In contrast to standard practice, the regulator utilized a wide range of instruments, including those that are not typically considered as sources of law. The research revealed that market participants comply with emergency regulation even in cases where it is introduced through non-regulatory acts, i.e., other documents of a less formal nature.

It was found that the primary form of relief implementation in 2020 consisted of letters from the Bank of Russia and informational notices on its official website. At the same time, the foundation of the measures adopted in response to the crisis events of 2022 was laid by a series of decrees issued by the President of the Russian Federation, which were further detailed and specified by the Bank of Russia. Moreover, the Bank of Russia used a somewhat atypical regulatory instrument—decisions of the Bank of Russia's Board of Directors—along with several other regulatory tools typically regarded as "soft law" (e.g., informational messages,

information-recommendation letters, official clarifications, and directives). Notably, the regulatory instruments mentioned were characterized by accelerated and simplified approval procedures (Table 2).

Table 2 – Comparison of emergency regulation of brokerage activities in 2020 and 2022

Comparison criterion	Emergency measures 2020	Emergency measures 2023
The forms of regulation used	Letters from the Bank of Russia, information messages on the website, amendments to the NPA	Decrees of the President of the Russian Federation, NPA, decisions of the Board of Directors of the Bank of Russia, information messages and press releases, letters, official explanations, regulations
The list of the main indulgences	Accounting of assets at their value before the crisis; exemption from certain responsibilities in the field of AML/CFT, reporting, misuse of insider information; exemption from liability for violations of requirements for short-term liquidity and capital adequacy standards, information security, disclosure and submission of information to the Bank of Russia	Accounting of assets at their pre-crisis value, credit ratings and financial information based on Russian sources; accounting for payments "frozen" in foreign depositories; limited disclosure of information; exemption from certain obligations in the field of AML/CFT, reporting; exemption from liability for violations of the requirements for the standards of own funds and capital adequacy, information security; accounting of securities in foreign depositories with lower requirements
List of the main restrictive measures	-	Accounting of non-resident assets in type "C" accounts; restriction of transactions with assets received from non-residents; special procedure for payments on securities to non-residents; special procedure for transferring clients of sub-sanctioning brokers; termination/suspension of trading or certain types of transactions; termination of trading in "blocked" securities; procedure for the conversion of depositary receipts, etc.

Source: compiled by the author

During the crisis caused by the spread of COVID-19, emergency relief measures were the primary tool used to mitigate the crisis. These measures allowed

brokerage firms to forgo compliance with requirements whose implementation processes and procedures were difficult to achieve during the pandemic. It should be noted, however, that in 2020, regulatory relief measures were not only implemented in Russia. The measures taken by foreign financial regulators were, in many respects, similar to those introduced by the Bank of Russia. This suggests that the relief measures could have been borrowed from international experience.

Subsequently, a number of regulatory relief measures were reintroduced by the regulator in 2022. However, there were significant differences in the crises being addressed. In 2022, the crisis was marked by unprecedented pressure from foreign countries, the imposition of restrictions on major market participants, the blocking of assets, and the need to ensure the retention of assets within the country. In some instances, the relief measures of 2022 duplicated those of 2020 without any apparent justification and in the absence of corresponding requests from market participants. Based on this, we concluded that under conditions of uncertainty, the regulator implemented a number of measures without properly assessing their necessity for genuinely reducing the burden on the market.

3. The analysis of emergency regulatory relief measures for brokers revealed that they were introduced without sufficient elaboration and did not have a significant positive impact on brokerage organizations.

The study found that the measures implemented by the Bank of Russia differed significantly from examples of regulatory burden reduction resulting from "regulatory capture." The relief measures for brokers in the Russian Federation were limited in time, targeted, and intended to serve as a "market pacifier." This suggests that the regulator aimed to assist the market, which aligns with the theory of collaborative regulation, but does not indicate signs of "regulatory capture."

Furthermore, interviews with industry participants did not confirm that market representatives were the initiators of the non-enforcement of certain requirements in 2022. For the first time, it was established that the actions of the regulator were not an attempt at "regulatory capture," but rather explained by another phenomenon within the same theory - namely, the "regulatory gift." The "regulatory gift" is

provided not due to market pressure (or requests), but rather at the regulator's own initiative to enhance the efficiency of the economy. At the same time, the regulator makes this process as public as possible so that society and businesses are aware of the relief measures, encouraging them to respond by more responsibly complying with regulatory requirements.

It was also found that, due to their nature, such relief measures do not reduce the core regulatory burden on financial organizations, as they still require the maintenance of all existing procedures, standards, and restrictions.

For the empirical assessment of the relief measures' effectiveness, based on their content and the evaluation models of brokers' financial condition, a set of performance indicators for brokerage organizations that should have been affected by the emergency relief measures was identified (Table 3).

Table 3 – Considered statistical indicators characterizing the impact of emergency relief

№	The direction of emergency temporary regulation	An indicator characterizing the state of brokers	A characteristic of the indicator indicating the effectiveness of the relaxation	The ability to assess the impact using an econometric model
1	The possibility of accounting for financial assets at their cost before the beginning of the crisis period	The value of brokers' assets; the value of securities owned by the brokers themselves by right of ownership; the ruble value of the currency available to the broker	Increasing the value of the indicator	The estimation is possible using a regression analysis model of panel data
2	The ability to account for accrued but unpaid cash on securities (dividends, coupons and other payments) in accounting, despite their actual unavailability	Accrued but unpaid payments	Increasing the value of the indicator	
3	The possibility of a less strict calculation of the indicators of the size of own funds and the capital adequacy ratio	The amount of own funds; the ratio of an organization's capital to its assets	Decrease in the values of indicators	

4	The ability to account for securities in a larger list of higher-level foreign depositories	Number of foreign higher-level depositories	Significant increase in the number of foreign higher-level depositories	An assessment is not possible due to the nature and volume of the available data
5	Non-application of a number of information security requirements	Information about information security incidents available in open sources	Maintaining the number of incidents at a comparable level (a slight increase is acceptable)	
6	Non-application of a number of AML/CFT requirements and reporting procedures	The number of broker licenses cancelled on the basis of violations in the field of AML/CFT and the reporting procedure	Reducing the number of licenses cancelled on such grounds	

Source: compiled by the author

Subsequently, based on the available statistical data for these indicators, an analysis of the impact of temporary relief measures was conducted. For a number of indicators, analysis was carried out using panel regression models. The constructed models confirmed the absence of a statistically significant impact of most of the relief measures on the performance indicators of brokerage organizations (Table 4).

It was established that the only relief measure that had a statistically significant impact on brokers' performance was the relaxation concerning the recognition of payments on securities that had been accrued but not yet actually transferred to the brokers.

Table 4 – Results of regression analysis of the impact of emergency relief on the performance of brokers

Indicator	Regression analysis indicators (FE)	Coefficient	P-value
The value of assets	The effect of regulation	-213412,7	0,908
	within	0,0017	
	between	0,0012	
	F- value	0,000***	
The amount of money	The effect of regulation	-671593,7	0,340
	within	0,008	
	between	0,0022	
	F- value	0,000***	
The value of securities	The effect of regulation	-27789,24	0,946
	within	0,0041	
	between	0,0186	
	F- value	0,000***	
Accrued but	The effect of regulation	-37881,79	** 0,047
	within	0,0296	

unpaid income on securities	between	0,0	
	F- value	0,0000***	
Capital adequacy	The effect of regulation	-0090558	0,994
	within	0,0254	
	between	0,0208	
	F- value	0,0000***	
Own funds	The effect of regulation	-8,93	0,692
	within	0,0011	
	between	0,0002	
	F- value	0,0000***	

Source: compiled by the author. P-value: *** p<0.01, **p<0.05, *p<0.1

Thus, the analysis of statistical data confirmed the insufficient effectiveness and minimal impact of most relief measures adopted during the crisis periods of 2020 and 2022, including:

- the ability to account for financial assets, currencies, and securities at their value prior to the onset of the crisis period;
- the possibility of a less stringent calculation of the capital adequacy and own funds ratios;
- the non-application of certain information security requirements.

As a result of the dissertation research, a draft regulatory act was prepared proposing the cancellation of the aforementioned emergency relief measures.

At the same time, considering the Bank of Russia's plan to grant research organizations access to its internal data, the opportunity to assess the impact of a wider range of relief measures based on the methodology of this study will become available in the future.

Additionally, it was found that the relief measures introduced in 2020 were more relevant and in demand due to consultations and discussions with market participants. Although these discussions were limited in scope and conducted in a non-public manner, they enabled the regulator to develop more effective relief measures in 2020.

Moreover, the study for the first time revealed that, despite the fact that the relief measures limited the application of some cost-intensive requirements for brokers, they imposed additional costs on market participants due to the need to restructure processes and operations in the new conditions. Due to the nature of the

relief measures, brokerage organizations encountered situations where their complex and often automated processes effectively ceased to function. To comply with regulatory requirements, many processes had to be carried out or monitored manually, resulting in significant regulatory risks and requiring substantial additional labor resources, including an increase in the organizations' staff.

The evaluation of the temporary relief measures regarding the risk of "regulatory capture" did not reveal any clear contributing factors. However, in the development of the postulates of collaborative regulation theory, the study established that the risk of regulatory capture is most significantly reduced by the temporary nature of the relief measures.

4. The analysis of emergency restrictive measures has established that they were developed within the framework of adaptive theory but exhibit low quality due to insufficient elaboration. The regulator did not engage in discussions or consultations with market representatives prior to the introduction of emergency restrictive measures, with the exception of certain cases in 2020. This practice was largely driven by the urgency of adopting measures. The absence of coordination and discussion of the documents also precluded the assessment of the potential costs that supervised organizations would incur to comply with the requirements.

In the course of the research, an analysis of the emergency restrictive measures implemented by the Bank of Russia was conducted for the first time based on indicators of volume and duration, as well as the quality of the language used in the regulatory acts. This analysis revealed the low quality of restrictive requirements, which led to increased complexity in compliance for brokerage organizations (Table 5).

Table 5 – The results of the analysis of documents that established temporary relief/restrictions in 2022-2023.

	Average Volume	Average Duration of action	Average Indicator of language quality
Limitation	3363	187	44
Relaxation	1103	270	42
The overall result	2417	228,5	43

Source: compiled by the author

During the analysis of quantitative indicators of restrictive measures, their simplicity and conciseness were noted, yet it was also observed that the durations of these documents were excessively short. The frequent changes in regulations indicate that the emergency measures were developed without a sufficient level of elaboration. To compensate for the gaps and errors in these measures, it was necessary to issue additional documents targeting specific problematic areas.

This practice complicates the primary functions of brokerage organizations and necessitates constant monitoring of regulations and timely adjustments to operational processes. As a result, regulatory costs for brokerage organizations have significantly increased following the introduction of emergency regulation.

Thus, the research demonstrated that the characteristic improvement in the quality of regulatory acts associated with adaptive regulation will not be realized in the case of insufficient elaboration of the acts, their subjective development, and frequent revisions.

In particular, restrictive measures were identified that exhibit the greatest number of quality deficiencies, leading to their repeated revisions:

- the procedure for maintaining accounts of type "C" depository;
- procedure for making payments on securities;
- the procedure for the conversion of depository receipts of Russian issuers;
- limiting the supply of foreign assets to retail investors.

As a result of this research, a draft regulatory act was prepared proposing the cancellation of the aforementioned emergency measures.

Furthermore, the study established for the first time that the indicators of the complexity of the language used in regulatory acts and their volume are rather ambiguous characteristics of regulatory governance. In the examined acts of emergency restrictions, the indicators of complexity and document volume are significantly lower than those found in permanent regulatory acts. However, it was also found that this characteristic did not simplify the application of such acts; rather, it complicated their implementation due to a lack of precision and specificity and

misalignment with other legal acts. This necessitated repeated clarifications of the regulations. Thus, it has been confirmed that the simplification of regulatory acts at the expense of their content poses risks of regulatory instability.

Additionally, the research revealed for the first time that the primary costs of emergency regulation arise not from the content of the restrictive measures themselves but from the necessity of repeatedly adjusting the processes and procedures of brokers due to constant clarifications of such measures. In light of this, a calculation of the costs incurred by brokerage organizations to comply with the emergency restrictions was performed. According to estimations, the market's costs for adhering to emergency regulation amounted to 12.5 billion rubles in the first year of implementation, which cannot be offset by savings from regulatory reliefs.

5. Proposals have been developed to enhance the regulatory development process concerning brokers, aimed at improving the quality of regulation both on a continuous basis and during crisis periods.

The research findings indicate that the inefficacy and low quality of emergency regulatory measures stemmed from insufficient application of the principles and tools of "smart regulation" in the development of emergency regulations. This inadequacy is largely attributed to their weak implementation in the ongoing regulatory activities of the Bank of Russia.

It is concluded that the application of adaptive regulation without mechanisms of "smart regulation" is unacceptable due to the negative consequences of measures implemented "blindly".

In light of the deficiencies identified in the emergency regulation and considering international experience, proposals have been formulated to ensure the effectiveness of emergency regulation:

- financial market regulators must prioritize the development of normative regulation based on the principles and mechanisms of "smart regulation" in their ongoing activities (outside of crisis periods);
- financial regulators must take into account the limitations and risks associated with regulatory relief during crisis situations. Crisis conditions necessitate

well-considered and justified relaxations that genuinely mitigate risks for financial organizations while being time-limited;

- financial regulators should apply and develop specific positive practices of emergency regulation, such as utilizing a wide range of regulatory tools, establishing regulated limited durations for regulations, and maintaining a registry of regulatory measures;
- financial regulators need to implement mechanisms for transparent and justified assessment of emergency measures during their development and subsequent application.

Moreover, considering the characteristics of emergency regulation implementation identified in the research, it is noted that one of the central aspects of evaluation should be the costs incurred by brokerage organizations in restructuring processes and procedures, taking into account the timeline for the enactment of emergency regulations. Such evaluations must consider the feasibility of restructuring operations within the required timeframe and include calculations of compliance costs.

An important element of this assessment of emergency regulation should be the institutionalization of regulatory discussion procedures (regulatory draft projects). To ensure the quality and effectiveness of regulatory discussions, measures should be deliberated openly with all market participants. If it is assumed that the development of emergency regulation requires urgency and confidentiality, expert councils comprising representatives from the business and academic communities could be formed. These councils could convene on an urgent basis to provide timely recommendations and establish a collective opinion regarding regulation.

Additionally, based on the research findings, it is emphasized that when assessing the impact of emergency measures (both restrictions and relaxations) on a preliminary and subsequent basis, the costs to financial organizations should be considered not only in standard metrics of financial, procedural, and human

resources expenditures but also in terms of opportunity costs and the risks undertaken.

It is also proposed to evaluate the possibility of applying emergency regulatory measures solely to specific market participants who require them (in this case, to sanctioned organizations). Moreover, it is highlighted that alternatives to regulation should be explored, including the use of other tools/institutions to address the issues at hand.

The implementation of these proposals is suggested through the establishment of a corresponding mechanism for the development of emergency regulation during crisis periods within the regulator (Bank of Russia).

The author's main publications on the topic of the dissertation

Works published by the author in leading peer-reviewed scientific journals and publications recommended by the Higher Attestation Commission under the Ministry of Higher Education and Science of the Russian Federation:

1. Biktashev A. A. Regulation of brokerage activities based on an assessment of its risks // Bulletin of St. Petersburg University. Episode 5. Economy. – 2021. – Vol.37. – No.4. – pp. 546-569.

2. Biktashev A. A., Protection of the interests of a retail investor in the USA, China and Russia: on the example of brokerage activity // Bulletin of the Peoples' Friendship University of Russia. Series: Legal Sciences. – 2022. – vol.26. – No. 1. – pp. 129-148.

3. Biktashev A. A. The concept of "smart regulation" (smart regulation) in foreign studies on public administration // Issues of state and municipal management. - 2023. – No. 1. – pp. 199-222.