

The role of the judiciary in controlling and supervising the crimes of the financial intermediary in the stock market operations

دور القضاء في الرقابة والإشراف على جرائم الوسيط المالي في عمليات البورصة

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Abstract:

Stock Exchange Regulatory and Supervisory Committee constitutes the Market Value Transfer Authority, This is an independent authority with moral character and financial independence, But its independence does not mean that it escapes all kinds of censorship, especially the judiciary, If they are not subject to guardian administrative control or receive instructions or directives, but they are not immune from judicial control, Like other independent authorities.

Keywords: Supervisory Committee - stock exchange – Commission - Judicial control.

المخلص :

تأتي الرقابة القضائية على قرارات الجهات الرقابية لعمليات التداول في البورصة كضمانة أساسية لتحقيق نظام الدولة القانونية، ويتمثل ذلك في خضوع كافة أنشطتها لرقابة قضائية قوية يباشرها قضاء مستقل ومحيد. وإن استقلالية أية هيئة إدارية لا يعني أبداً إفلاتها من جميع أشكال الرقابة، وخاصة القضائية منها، حيث أن مباشرة السلطة القضائية لرقابة فعالة على أعمال الإدارة يعد ضمانة أساسية من ضمانات الدولة القانونية.

الكلمات المفتاحية : لجنة الإشراف - البورصة - الهيئة - الرقابة القضائية.

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Introduction:

The Commission for Organization and Supervision of Stock Exchange operations (C.O.S.O.B)¹, It is the main engine of the stock exchange Pursuant to the provisions of Article 03 of Legislative Decree 93-10 amended and supplemente².

The securities exchange includes the following organizations a commission for the organization and supervision of stock market transactions which constitutes the authority of the securities market and which is hereinafter referred to as "the commission" and she is a management company of the stock exchange, The central securities depository.

The central securities depository, It is a stock company, which ensures the synchronization of the settlement and delivery of the operations that take place inside and outside the company managing the transferred values.

The shareholding is open to brokers in exchange operations, to bond issuers and to the management company of the Exchange of Values.

Public treasury and the Bank of Algeria contribute forcefully, open and manage current accounts of open bonds as account holders of intervening bondholders, Concentration of bonds, which facilitates their transfer between financial intermediaries.

Also they Completing bond transactions for issuers, dividends and capital increase, Legal numbering of securities accepted in its operations, in accordance with international standards, and dissemination of market information.

The establishment of such a body helps to reduce costs and time-outs for settlement, delivery and other bond-related operations.

Stock Exchange Regulatory and Supervisory Committee constitutes the Market Value Transfer Authority, which is called the Committee ... " This is an independent authority with moral character and financial independence³, But its independence does not mean that it escapes all kinds of censorship, especially the judiciary, If they are not subject to guardian administrative control or receive instructions or directives, but they are not immune from judicial control, Like other independent authorities.

they have their own actions, conduct legal actions, issue decisions and regulations, and conclude contracts, As the jurisdiction of the judiciary to protect the rights and freedoms of persons, Whether they are natural or legal persons, The Algerian legislator did not specify the nature of this authority.

In this intervention, we will address the nature of this authority and the judicial control that it is subjected to, highlighting the specificity of the rules governing it regarding the judiciary.

- the problematic of research: Is this authority subject to known general rules governing judicial disputes, whether in ordinary or administrative jurisdiction?

The objective of our research is to determine the specificity of this authority that makes it different in terms of the general rules governing various judicial disputes.

Because market activities present a number of risks, for both, the client and the financial intermediary, The authorities in charge of controlling these intermediaries are thus led to set up a control system to ensure that they comply with their obligations.

Some may think that the decisions taken by the regulators on the stock market management, whether regulatory or supervisory, are immune from judicial supervision do to the nature of these decisions, which are often fast enough to be consistent with the operations of the stock market⁴.

Judicial control over the decisions taken by the regulators of the Stock Exchange in general, and in particular the decisions relating to the trading of securities, are subject to specific controls that make them compatible with the nature of the Stock Exchange⁵.

And To study the research topic I chose the Descriptive Method.

For this research, I chose the following research plan: In Section one The control of the financial market, and in the Section two, the supervision and judicial review.

Section 01: control of the financial market

The Organization and Supervisory Commission for Stock Exchange Operations "COSOB" is an independent regulatory authority, with legal personality and financial autonomy.

COSOB was established by Legislative Decree No 93-10 of 23 May 1993, as amended and supplemented, relating to on the stock exchange.

The main objective of market surveillance is to ensure the integrity and security of the securities.

It concerns the control of the activities of the Intermediaries in Stock Exchange Operations, Securities Conservative Accounts, Stock Exchange

Management Company, Depositary central securities and Undertakings for Collective Investment in Transferable Securities.

In addition, where a practice contrary to the laws and regulations is likely to the rights of securities investors, the President of the Commission may ask the court to order those responsible to comply with these provisions, put an end to the irregularity or to remove the effects.

I- judicial control taken on The decisions of stock exchange operations:

Judicial control is part of the basic guarantee for the realization of the legal system of the State, This puts All decisions of the regulators of the trading transactions in the Stock Exchange and their activities for judicial supervision, equal in that legislative or administrative activity.

A- Judicial review of the acts of the Organization and Monitoring Commission of the Exchange:

The independence of any administrative body does not mean that it will escape from all forms of censorship, especially the judiciary Of which Direct power effective control over the work of the administration is a fundamental guarantee of the legal state, Because it provides a real guarantee and legal protection of individual rights and freedoms, against all arbitrariness on the part of the administration, whether to cancel the administrative decision or compensation for damages caused to litigants, and therefore the independence, however strong, can in no way be absolute.

We mention two important observations:

- The Commission for Organization and Supervision of Stock Market Operations (COSOB) is an independent regulatory authority, enjoying legal personality and financial autonomy. It was established by Legislative Decree No. 93-10 of 23 May 1993, as amended and supplemented, relating to the stock exchange, This gives them the right to litigation, that is, they can be parties to disputes either as a plaintiff or defender.

- The Committee is also an administrative authority within the range of administrative authorities and enjoys With the privileges of the public authority in its field of competence.

Disputes which the Committee is a party shall be under the jurisdiction of the administrative judiciary⁶.

The Commission is financially independent and can pay compensation from its own financial responsibility.

B- Judicial oversight of the general organizational work of the Stock Exchange Regulatory Committee:

In the event of a judicial appeal, suspension of operation of the provisions of the Regulation subject of the appeal may be ordered if those are likely to lead to manifestly excessive consequences or if new facts of exceptional gravity have intervened since their publication.

The commission may suspend for a period not exceeding five days francs, stock market transactions in the event of a major event causing a malfunction, the stock market or the erratic movements of share prices.

When this event requires a suspension of more than five clear days, the decision is the exclusive responsibility of the Minister of Finance.

The supervisor may pronounce during the session the suspension of one or more quotations.

The review does not stop execution, as the State Council has the power to override the regulations issued by the Monetary and Loan Council, as in the case of the decisions of the Central Authority, and the Minister in charge of Finance has a monopoly on the eligibility of requesting revision alone to revoke it alone, since it cannot override the Council's decisions without resorting to the judiciary.

So the general regulatory decisions of (C.O.S.O.B) Considerable midwives For cancellation and interpretation.

The Council of State shall issue its decision in the first instance and in its final decision.

These regulations may be suspended despite ratification and publication in the Official Gazette when a judicial appeal is filed against them, either because of the effects that may be imposed on them. Spoken, or for reasons that appeared on the scene after publication and which conflict with it.

In many cases, however, the legislator did not specify the procedures to be followed to counter such decisions, for example, it did not provide for any type of appeal against the visa decisions that the Committee placed on the information note.

However, it is likely that the legislator intended to apply the general rules in appeals against unilateral administrative decisions.

The intermediaries in stock market transactions are approved by the commission of organization and supervision of COSOB Stock Exchange transactions under the conditions laid down in the Regulation mentioned in Article 31 of Legislative Decree No 93-10 of 23 May 1993, as amended and supplemented, referred to above.

In case of refusal or limitation of approval, the decision of the commission is motivated.

The applicant may bring an action for annulment before the Council of State within a one (1) month from the date of notification of the decision of the board.

The Council of State has a period of three (3) months to rule on the action for annulment from its registration.

The decisions of the Disciplinary Chamber may be action for annulment before the Council of State within one (1) month, starting from notification of the contested decision.

The appeal is heard and tried within six (6) months from its recording⁷.

II- The relationship between the work of the judiciary and the organization and monitoring commission for trading operations:

The Algerian legislator explicitly separated the nature of each, If the first role is to protect economic dealers and compensate them for potential damages in the stock exchange, then the second role aims to regulate, protect and control investment in the stock exchange.

The legislator has created a series of complementary mutual mechanisms.

A- Judicial participation in the disciplinary function:

Organize and monitor the securities market, including by:

- the protection of savings invested in securities or any other financial product giving rise to a public offering.

Controlled financial products are not subject to the control of the commission under the authority of the Bank of Algeria.

- the smooth functioning and transparency of the securities market.

As such, the Commission for Organization and Supervision of Stock Exchange Operations presents Government an annual report on the activity of the securities market⁸.

The commission ensures that companies whose securities are admitted trading on the securities exchange comply with the laws and regulations governing them, in particular with regard to securities, the holding of General Assemblies, Composition of Management and Supervisory Bodies and Publications legal.

It shall, where appropriate, order those companies to publish corrigenda in the event of omissions would have been noted in the documents published or provided.

Where a practice contrary to law or regulation is likely to affect the rights of securities investors, the Chairman of the commission can ask the court to order the officials to comply with these provisions, to put an end to the irregularity or to remove its effects. He communicates a copy of the application to the prosecutor's office for any purpose.

Without prejudice to criminal proceedings, the competent judicial authority shall rule in even ex officio, any precautionary measure and pronounce for the execution of his order a penalty paid to the Treasury.

In the case of criminal offenses, the chairman of the commission may become a civil party.

B- Judicial control:

Intermediaries in stock market transactions, their directors, managers.

The managers, registered agents, and generally all of their staff and commissioners, accounts are bound by professional secrecy.

In order to ensure the effectiveness of the order, public and the proper use of public funds.

The public procurement must respect the principles of freedom access to public order, equal treatment candidates, and transparency of procedures, in the compliance with the provisions of this decree 247-15⁹.

The provisions of this Title shall apply exclusively to public contracts, subject of the Expenditure:

- of State.
- local authorities.
- Public establishments of administrative character.
- Public institutions subject to legislation

Governing commercial activities, where these are In charge of the realization of a financed operation, Totally or partially, on temporary competition or Definitive state or local authorities.

Designated hereafter by “ contracting service”, The mission of the organization and supervision of stock market transactions is organize and monitor the securities market, including by ensuring:

- the protection of savings invested in securities or any other financial product

Giving rise to a public offering, Controlled financial products are not subject to the control of the commission reporting to the authority of the Bank of Algeria.

- the smooth functioning and transparency of the securities market.

As such, the Commission for Organization and Supervision of Stock Exchange Operations presents Government an annual report on the activity of the securities market¹⁰. The procedure, within the meaning of Article 18 of Legislative Decree No. 93-10, corrigendum to Law No. 03-04, on traded securities, is performed by a management company of the stock exchange which is in the form of a corporation.

The purpose of the company includes:

- The practical organization of the IPO of securities,
- The material organization of transactions and trading sessions,
- Record trading of intermediaries in stock market transactions,
- Organizing clearing transactions for securities transactions,
- The management of a trading and quotation system,
- The publication of information relating to stock market transactions,
- The publication of an official bulletin of the coast under the control of the commission.

The missions of the company are carried out under the control of the commission.

Section 02: supervision and judicial review

To ensure the establishment opens its directives, the COSOB carried out inspection missions at the BIO level and CBT. These missions show that banks have put in place procedures to meet the requirements of guidelines.

And to ensure the coordination of controls, the COSOB and the commission banks are allowed to communicate information necessary for the accomplishment of their respective missions, in accordance with Article 63 of the Law on the Stock Exchange of securities.

The Council's decisions shall be considered by the Council of State, According to Article 09 of Organic Law n ° 11-13¹¹ : (The State Council knows first and foremost last action for annulment, interpretation or to assess the legality of the acts Administrative authorities central governments, national public institutions and national professional organizations. He also knows the cases that are conferred on him by particular texts).

I- Intervene at the initiative of the Stock Exchange Regulatory and Monitoring Committee or the Authority:

The legislator Authorize the organization and Monitoring commission for trading operations to resort to the judiciary in order to ensure the good implementation of its decisions and regulations.

When a practice contrary to the laws or regulations is likely to affect the rights of securities investors, the chairman of the commission can ask the court to be ordered to those responsible to comply with these provisions, to terminate irregularity or to remove its effects. He sends a copy of his application to the public prosecutor's office for all legal purposes.

Without prejudice to criminal proceedings, the competent judicial authority shall rule in even ex officio, any precautionary measure and pronounce for the execution of his order a penalty paid to the Treasury.

In the case of criminal offenses, the chairman of the commission may become a civil party.

The committee shall examine the draft notice submitted for prior approval and indicate, where appropriate, the particulars to be amended or the additional information to be inserted.

The commission may also request any explanation or justification concerning the information contained in the draft notice, If the requests for amendment are not satisfied, the commission may refuse the visa.

The commission has a period of two months to grant or refuse his visa or to request additional information or modifications, The commission decides on the admission of securities to the negotiations and their radiation.

The Commission may order the suspension of quotations to ensure the information and investor protection.

The decisions made above are published in the official bulletin of the rating, it remains to be seen that the cooperation procedures between the judiciary and the committee are still insufficient for the judge in the exercise of his new disciplinary functions in the field of the stock exchange.

Intermediaries in stock market transactions are approved by the organizing and supervision of stock market transactions (C.O.S.O.B)under the conditions laid down in the mentioned in Article 31 of Legislative Decree No 93-10 of 23 May 1993, as amended and supplemented, referred to above.

In case of refusal or limitation of approval, the decision of the commission is motivated.

The applicant may bring an action for annulment before the Council of State within a one (1) month from the date of notification of the decision of the board, the Council of State has a period of three (3) months to rule on the action for annulment from its registration.

A- intermediaries in trading operations:

Any trading in publicly traded securities may not take place within it and through brokerage brokers.

However, the negotiations on publicly traded bonds issued by the State, the other persons under public law as well as by joint-stock companies, may take place outside under the forward-looking procedure between market participants, a regulation of the commission determines the conditions of realization of these negotiations and the quality of these.

B- Intermediary activity in stock market transactions:

It is exercised, after approval of the Commission for the organization and supervision of stock market transactions (COSOB) by the companies principally engaged in this purpose, the banks and financial institutions¹².

These intermediaries may also engage in intermediation activity in transactions in transferable securities and other non-publicly traded financial products, under the conditions laid down by the laws and regulations which govern these markets.

Intermediaries in stock market transactions may, within the limits of the provisions.

The laws and regulations governing them, essentially exercise portfolio management of undertakings for collective investment in transferable securities, custody and administration of securities, corporate advisory on capital structure, merger and redemption business¹³.

However, the commission for the organization and supervision of stock market operations (COSOB) may limit the authorization issued to an intermediary in stock market transactions to a part of the activities mentioned above.

In the event of a dispute, the aggrieved applicant may lodge an appeal procedures¹⁴.

II- The Committee's participation in the settlement of judicial disputes:

The role of the judge is to interpret the Constitution and the laws, and the system of interpretation is usually determined by itself. It follows that each branch of the state can not develop its own system of interpretation. The rule of law would be in jeopardy if the system of interpretation accepted by judges was not binding on the legislature and the executive. The difficulty, of course, is that there is no single system of interpretation. Amendments to the texts that seek to align law and society change the interpretation systems.

Judges play many roles, They interpret the law, evaluate the evidence before them, and control the conduct of hearings, instructions and trials before them. However, judges are first and foremost impartial decision-makers in search of justice.

A- Investor protection:

The COSOB approves the Intermediaries in Stock Market Operations, ensuring that they present sufficient guarantees in particular as regards the composition and amount of their capital¹⁵.

Their organization, technical and financial means, the guarantees and guarantees to be presented the good reputation and experience of their leaders, and agents and the security of their operations of their customers.

COSOB also approves Variable Capital Investment Companies (SICAV) and the Mutual Funds (FCP), and gives its opinion to the Ministry of Finance on the applications for authorization to exercise submitted to it by the founders of capital companies investment.

It empowers securities account holders, who are previously institutions approved as Banks, Financial Institutions and Intermediaries in Stock Exchange Transactions (BIO).

Where a practice contrary to laws or regulations is such as to impair the rights of securities investors, the chairman of the commission may request the court to order those responsible to comply with those provisions, to terminate irregularity or to remove its effects. He communicates a copy of his application to the public prosecutor's office for all legal purposes.

Without prejudice to criminal proceedings, the competent judicial authority shall rule in even ex officio, any precautionary measure and pronounce for the execution of his order a penalty paid to the Treasury.

In the case of criminal offenses, the chairman of the commission may become a civil party.

B- The Stock Exchange Regulatory and Control Committee provides its technical expertise to the judge:

The committee examines the draft notification submitted in advance if necessary, the declarations to be modified or the additional information to be inserted.

The commission may also request any explanation or justification concerning the past information in the draft notification. If the requests for amendment are not satisfied, the commission may refuse the visa.

The commission has a period of two months additional information or modifications, in arbitration matters, the above chamber is competent to hear all disputes resulting from the interpretation of the laws and regulations governing the operation of the intervening scholarship:

- between intermediaries in stock market transactions,
- between stock market intermediaries and the management company of the stock exchange values,
- between intermediaries in stock market transactions and issuing companies,
- between intermediaries in stock market transactions and stock market givers.

There should be procedures to identify and monitor risks on an on-going basis. Regulators of the securities market should be interested not only in risk reduction but also in the assumption and shifting of risk amongst participants.

The decisions of the Disciplinary Chamber may be action for annulment before the Council of State within one (1) month, starting from notification of the contested decision.

The appeal is heard and tried within six (6) months from its recording¹⁶.

Will be punished by imprisonment from six months to five years and a fine of 30,000 DA, the amount of which may be carried beyond this figure up to four times the amount of the profit, if any, without the fine being able to be less than the same profit, or of one of these two penalties only, any person with the exercise of his profession or function, privileged information about the prospect or situation of an issuer of securities or the prospect of a security, and who has realized or knowingly permitted to carry out one or more transactions on the market either directly or through an intermediary.

The public is aware of this information, operations carried out on this basis are null¹⁷.

The Commission for Organization and Supervision of Stock Exchange Operations (COSOB) may co-operate with foreign counterparts or with authorities carrying out missions in accordance with the laws and regulations in force.

To this end, it may conclude cooperation agreements which provide in particular for exchange of information and cooperation in the field of investigations within the framework of the exercise of its duties in accordance with conditions such as the information exchanged must be necessary for the

accomplishment of the mission of the requesting counterpart authority and may only be used for that purpose¹⁸.

Conclusion:

The securities and derivatives markets are vital to the growth, development and strength of market economies¹⁹.

They support corporate initiatives, finance the exploitation of new ideas and facilitate the management of financial risk. Further, since retail investors are placing an increasing proportion of their money in mutual funds and other collective investments, securities markets have become central to individual wealth and retirement planning.

Sound and effective regulation and, in turn, the confidence it brings is important for the integrity, growth and development of securities markets.

The financial market has several economic and strategic functions, It is an instrument of economic liberalization, mobilization of savings, favors the mutation of production structures through the acquisition of assets or by taking control of others companies that can be financed by the issue of securities without resorting to the cash of the company.

The Algerian stock market seems to be rather at the crossroads, and this, despite the availability of savings, which seeks alternative and attractive investments.

Scarcity equity securities and the reduced number of debt securities are not able to a real animation in this market. Today, this market is completely marginalized and does not play the role assigned to it at its creation.

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¹ - Arrêté du 18 Rajab 1424 correspondant au 15 septembre 2003 portant approbation du règlement de la commission d'organisation et de surveillance des opérations de bourse n° 03-04 du 15 Moharram 1424 correspondant au 18 mars 2003 modifiant et complétant le règlement COSOB n° 97-01 du 18 novembre 1997 relatif à la participation des intermédiaires en opérations de bourse au capital de la société de gestion de la bourse des valeurs mobilières, And the the term « C.O.S.O.B » means in french Commission d'organisation et de surveillance des opérations de bourse, in english Commission for organization and supervision of stock market transactions .

² - Décret législatif n° 93-10 du 23 mai 1993 relatif à la bourse des valeurs mobilières , J.O, N°34, P :03& law n° 03-04 du 16 Dhou El Hidja 1423 correspondant au 17 février 2003 modifiant et complétant le décret législatif n° 93-10 du 23 mai 1993, modifié et complété, relatif à la Bourse des valeurs mobilières, J.O.N°11, P :16 .

³ - Roger Bird, District Judge Sophie Harrison ,*Financial Remedies Handbook*, twelfth edition, Family Law LexisNexis, united kingdom, 2019, p. 14.

⁴ - Johan Prorok, *La responsabilité civile sur les marchés financiers*, Thèse de doctorat en droit, soutenue le 31 mars 2016, Université Panthéon-Assas, école doctorale de droit privé, Paris, France, p. 09.

⁵ - A certain doctrine admits more and more today that the law of the financial markets seeks its autonomy like common law, But it is objected that this autonomy is only apparent, However, the obligations and responsibilities of financial intermediaries are nevertheless at a "crossroads here the general rules of law reach and confront the specificity of those of the financial market", « Securities regulation is an extremely complicated fiel... », Thomas Lee Hazen, *The Law of Securities Regulation*, West Academic Publishing, Sixth edition (June 30, 2009) Hornbook series, United States of America, p.01.

⁶ - The founder of the Constitution adopted the principle of dual justice under Article 152 of the 1996 Constitution.

⁷ - This article, as amended and supplemented by Law No. 03-04 of 17 February 2003, was originally worded as follows: Art. 57. -The chamber rules supremely as in matters of interim. The decisions of the Chamber may be appealed to the Administrative Chamber of the Court in accordance with Code of Civil Procedure.

⁸ - This article, as amended and supplemented by Law No. 03-04 of 17 February 2003, was originally worded as follows: Art. 30. -The commission's mission is to organize and monitor the securities market by ensuring, in particular:

- the protection of securities investors,
- the smooth functioning and transparency of the securities market.

⁹ - Presidential Decree No. 15-247 of 2 Dhou El Hidja 1436 Corresponding to September 16, 2015 Regulation of Public Contracts and Public Service Delegations, J.O, No. 58, P. 03.

¹⁰ - This article, as amended and supplemented by Law No. 03-04 of 17 February 2003, was originally worded as follows: Art. 30. -The commission's mission is to organize and monitor the securities market by ensuring, in particular: - the protection of securities investors.
- the smooth functioning and transparency of the securities market.

¹¹ - *Loi organique n° 11-13 du 24 Chaâbane 1432 correspondant au 26 juillet 2011 modifiant et Complétant la loi organique n° 98-01 du 4 Safar 1419 correspondant au 30 mai 1998 relative aux compétences, à l'organisation et au fonctionnement du Conseil d'Etat*, J.O, n :43, p. 07.

¹² - Richard J. Parsons, *Investing in Banks: Strategies and Statistics for Bankers, Directors, and Investors*, Paperback edition, U.S.A, 2016, p. 11.

¹³ - FINUCCI Florent, *Produits dérivés de l'immobilier et indices immobiliers*, Mémoire de recherche en majeur finance, HEC Paris, France, 2009, p. 11.

¹⁴ - The activity of intermediary in stock market trading may be exercised, after approval by the commission, by natural persons or by joint stock companies set up exclusively for this purpose.

¹⁵ - The market capitalization of listed companies is based on the average price and the number of shares listed on the stock market, Arbulu Pedro, *Le marché parisien des actions au 19^e siècle, performances et efficience d'un marché émergent*, thèse de gestion, Université d'Orléans, France, 1998, p. 214.

¹⁶ - *The chamber rules supreme as in matters of interim relief, The decisions of the chamber can be appealed before the administrative chamber of the court in accordance with the Code of Civil Procedure.*

¹⁷ - *Article 60 of Legislative Decree No. 93-10 of 23 May 1993 relating to the stock exchange amended and supplemented by Ordinance No. 96-10 of 10 January 1996, Law No. 03-04 of 17 February 2003.*

¹⁸ - *Art.95 of the law n ° 17-11 of December 27, 2017 bearing the law of finances for 2018.*

¹⁹ - *Real estate has always been a sector where businesses and households invest. Even if real estate is a "vital" good, it is also and for many people an asset economic. It therefore holds the same title as the actions or the works of art its place in the constitution of investors' wealth.*

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