

PRESS RELEASE

POLISH FINANCIAL AUTHORITY FINES BROKERAGE HOUSE BOARD MEMBERS, SIGNIFYING TREND OF HARSHER PENALTIES AND INDIVIDUAL LIABILITY

Warsaw, 9 November 2020 – The Polish Financial Supervision Authority (PFSA) imposed fines on four board members of two brokerage houses in October 2020. The penalties are the result of taking over the decisive role in the process of offering financial instruments by other entities without the required entitlements. As noted by Arkadiusz Matusiak, Head of the White-Collar Crime team at Wolf Theiss in Poland, we observe not only more cases where the PFSA has decided to punish individuals, including members of the management board, but also an individual increase in the penalties imposed.

WOLF THEISS
P. Daszkowski sp.k.
ul. Mokotowska 49
00-542 Warsaw
Poland
T +48 22 378 8900
F +48 22 378 8901
warszawa@wolftheiss.com
www.wolftheiss.com

The PFSA has imposed financial penalties on four members of the management boards of two brokerage houses for breach of disclosure obligations and taking over by another entities a decisive role in the process of offering financial instruments, without the necessary authorisations. The amounts of the imposed penalties are PLN 850.000 (in one case), PLN 600.000 (in one case), and to PLN 300.000 (in two cases).

The administrative fines imposed by the PFSA might herald further regulatory actions and can be grounds for potential criminal prosecution under Article 178 of Trading in Financial Instruments Act, on the basis of which the financial penalty could be as high as PLN 5 million. In view of this, a revised approach to the liability of natural persons could be coming soon, to be applied in the future in respect of infringements of legal provisions by the legal persons under the supervision of the Polish Financial Supervision Authority, in line with the direction indicated by Mr. Jacek Jastrzębski, the Chairman of the Financial Supervision Authority. Mr. Jastrzębski announced on 4 March 2019 that, "we are going to move in a direction where penalties and sanctions will be imposed on natural persons to a larger extent."

"We have also observed an increase in the amount of fines imposed, from PLN 30 thousand at the beginning of this year to PLN 850 thousand for decisions issued in October. It is important that the Polish supervisory authority decided to impose penalties as a result of actions and omissions of individuals who are members of the companies' bodies. The main basis for the decisions issued was their contribution to the way financial instruments are distributed and legal obligations within the organisation are fulfilled," notes Arkadiusz Matusiak.

According to the PFSA guidelines on offering financial instruments, issued on 29 March 2019, offering shall be understood as, among others, undertaking activities consisting of searching for potential investors and providing support during negotiations by the financial advisor in favour of an issuer, grantor or offeror of the financial instruments. However, the provision of advisory services on the client's investment and delivery by an entity operating a crowdfunding platform of customised correspondence without any references to the conditions of the acquisition of financial instruments, to the addressees to whom it promotes such

crowdfunding platform only, shall not be treated as offering financial instruments. In the case of the PFSA's October decisions, the supervisory authority noted that the role of board members "was to encourage investors to take up bonds, for which a brokerage license is required".

"Entities that offer financial instruments within the meaning of Article 72 of the Trading in Financial Instruments Act need to have a license for conducting brokerage activities. However, based on the decisions made by the Polish Financial Supervision Authority, even holding a license does not protect an individual responsible for organising the process of offering financial instruments, with regard to their functions," underlines Marta Dzieciuch, legal advisor in the Banking & Finance team in the Warsaw office of Wolf Theiss.

"The companies supervised by the PFSA and their compliance departments will have a lot to do to adapt to the current situation. Recent decisions clearly show that managers, not just the entity they manage, such as a brokerage house, can be held responsible. In order to avoid negative effects of the new guidelines on individuals, companies should review potential new risks, but also audit existing irregularities and existing procedures. Additionally, it is worth taking care to adjust especially those internal arrangements that concern the very process of offering financial instruments, including the organisation of this process, in terms of exclusion, beyond any doubt, of excessive involvement of other entities," concludes Arkadiusz Matusiak.

The full content of the PFSA announcements you may find under below link (available in Polish only): <https://www.knf.gov.pl/komunikacja/komunikaty>.

ABOUT WOLF THEISS

Wolf Theiss is one of the leading European law firms in Central, Eastern and South-Eastern Europe with a focus on international business law. With 340 lawyers in 13 countries, over 80% of the firm's work involves cross-border representation of international clients. Combining expertise in law and business, Wolf Theiss develops innovative solutions that integrate legal, financial and business know-how.

For further information please contact:

dr Anna Szepietowska
Business Development & Marketing Manager
WOLF THEISS
P. Daszkowski sp.k.
ul. Mokotowska 49, 00-542 Warszawa, Polska
Tel.: +48 22 3788 900
E-Mail: anna.szepietowska@wolftheiss.com

www.wolftheiss.com

