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ACT
of 29 July 2005
on Capital Market Supervision¹

Chapter 1
General Provisions

Based on: Journal of
Laws of 2005 No.
183, item 1537, of
2006 No. 157, item
1119, No. 170, item.
1217, of 2007 No.
50, item 331, of 2009
No. 18, item 97, No.
165, item 1316.

Article 1.

This Act defines the organisation and procedures for the exercise of supervision over the capital market.

¹This Act implements, within the scope of its regulation, the following Directives:

- 1) Council Directive 93/6/EEC of 15 March 1993 on the capital adequacy of investment enterprises and credit institutions (OJ L141, 11.06.1993),
- 2) Council Directive 93/22/EEC of 10 May 1993 on investment services in the securities field (OJ L141, 11.06.1993; L168, 18.07.1995; L290, 17.11.2000; and L35, 11.02.2003),
- 3) Directive 2000/64/EC of the European Parliament and of the Council of 7 November 2000 amending Directives 85/611/EEC, 92/49/EEC, 92/96/EEC and 93/22/EEC as regards exchange of information with third countries (OJ L290, 17.11.2000),
- 4) Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) (OJ L96, 12.04.2003),
- 5) Directive 2002/87/EC of the European Parliament and of the Council of 16 December 2002 on the supplementary supervision of credit institutions, insurance undertakings and investment firms in a financial conglomerate and amending Council Directives 73/239/EEC, 79/267/EEC, 92/49/EEC, 92/96/EEC, 93/6/EEC, 93/22/EEC and Directives 98/78/EC and 2000/12/EC of the European Parliament and of the Council (OJ L35, 11.02.2003),
- 6) Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC (OJ L345, 31.12.2003),
- 7) Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council with regard to accepted market practices, the definition of inside information in relation to derivatives on commodities, drawing up lists of insiders, the notification of managers' transactions and the notification of suspicious transactions (OJ L162, 30.04.2004).

The data contained herein and relating to the promulgation of EU legal acts relate as of the date of Poland's accession to the European Union to the promulgation of such legal acts in the Official Journal of the European Union – special edition.

This Act amends the following statutes: the Tax Supervision Act of 28 September 1991, the National Criminal Register Act of 24 May 2000, the Commodity Exchange Act of 26 October 2000, the Act on Gathering, Processing and Transmitting Criminal Information and on the National IT System of 6 July 2001 and the Act on Investment Funds of 27 May 2004.

Article 2.

Any reference in this Act to:

- 1) the “Act on Trading in Financial Instruments” shall mean the Act on Trading in Financial Instruments of 29 July 2005 (Journal of Laws No. 183, item 1538);
- 2) the “Public Offering Act” shall mean the Act on Public Offerings, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and on Public Companies of 29 July 2005 (Journal of Laws of 2005, No 184, item 1539);
- 3) the “Act on Investment Funds” shall mean the Act on Investment Funds of 27 May 2004 (Journal of Laws, No. 146, item 1546 and of 2005, No. 83, item 719);
- 4) the “Commodity Exchange Act” shall mean the Commodity Exchange Act of 26 October 2000 (Journal of Laws of 2005 No. 121, item 1019);
- 5) the “Supplementary Supervision Act” shall mean the Act on the Supplementary Supervision of Credit Institutions, Insurance Undertakings and Investment Firms in a Financial Conglomerate of 15 April 2005 (Journal of Laws No. 83, item 719);
- 6) “capital market” shall mean:
 - a) the market of securities and other financial instruments – to the extent that the provisions of the acts referred to in Article 2.1 and 2.2 are applicable to such securities and financial instruments, and
 - b) the market of services offered by investment funds and other collective investment undertakings – to the extent that the provisions of the act referred to in Article 2.3 are applicable to such services and undertakings, and
 - c) the commodities market as defined in the act referred to in Article 2.4;
- 7) “financial instruments” shall mean financial instruments as defined in the Act on Trading in Financial Instruments;
- 8) “securities” shall mean securities as defined in the Act on Trading in Financial Instruments;
- 9) “securities accounts” shall mean securities accounts as defined in the Act on Trading in Financial Instruments;
- 10) “regulated market” shall mean a regulated market as defined in the Act on Trading in Financial Instruments;
- 11) “Member State” shall mean a state which is a member of the European Union or party to the Agreement on the European Economic Area.

Article 3.

The competent authority supervising the capital market and the market of financial instruments which are sought to be admitted to trading on that market, within the meaning of legal acts enacted by institutions and authorities of the European Union, shall be the Polish Financial Supervision Authority, hereinafter referred to as the “Authority”.

Article 4.

1. The objective of the supervision shall be to ensure proper operation of the capital market and, in particular, security of trading and protection of investors and other market participants, as well as compliance with the principles of fair trading.
2. The means of exercising supervision shall be defined in this Act and in other regulations.

Article 5.

The Authority’s supervision shall cover entities which conduct activities on the capital market on the basis of authorisations issued by the Authority or another competent administrative authority, as well as other entities – to the extent that they are subject to the obligations related to the participation in such market, as specified in other regulations, and in particular:

- 1) investment firms as defined in the Act on Trading in Financial Instruments,
- 2) investment firm agents as defined in the Act on Trading in Financial Instruments,
- 3) (repealed),
- 4) custodian banks as defined in the Act on Trading in Financial Instruments,
- 5) companies operating a regulated market,
- 6) Krajowy Depozyt Papierow Wartosciowych S.A. (the National Depository for Securities),
- 6a) companies operating a clearing house,
- 6b) companies operating a settlement house,
- 6c) a company which has been appointed by Krajowy Depozyt Papierow Wartosciowych S.A. (National Depository for Securities) to perform duties set out in Article 48.1.1-6 or Article 48.2 of the Act on Trading in Financial Instruments;
- 7) issuers carrying out public offerings of securities, as defined in the Act on Public Offerings, and issuers whose securities are admitted to trading on a regulated market,
- 8) investment funds,
- 9) investment fund management companies,
- 10) other entities providing services to investment funds, including entities commissioned by investment fund management companies to perform those companies’ obligations,
- 11) companies operating commodity exchanges,
- 12) commodity brokerage houses as defined in the Commodity Exchange Act,
- 13) foreign legal persons conducting brokerage activities related to trading in commodities in the territory of the Republic of Poland,
- 14) power companies keeping, under an authorisation issued by the Authority,

accounts or registers of exchange commodities as defined in the Commodity Exchange Act,

- 15) exchange clearing houses as defined in the Commodity Exchange Act, hereinafter referred to as “supervised entities”.

Chapter 2

The Authority’s Rules of Operation

Article 6. (repealed)

Article 7.

1. The Authority shall:

- 1) take action intended to ensure the proper operation of the capital market;
- 2) exercise supervision over the activities of the supervised entities and the performance by such entities of the obligations related to their participation in trading on the capital market, to the extent defined in legal regulations;
- 3) perform activities related to education and information on the operation of the capital market;
- 4) perform other statutorily assigned tasks.

2. The Authority shall also prepare drafts of legal acts related to the operation of the capital market.

3. The Authority may apply to the competent authorities for enactment or amendment of secondary legislation provided for in the statutes.

4. (repealed).

Articles 8.-10. (repealed – Journal of Laws of 2006 No. 157, item 1119 – Article 62).

Article 11.

The Authority may impose pecuniary penalties in the cases specified in other regulations. The amounts due in respect of the imposed penalties shall constitute revenue of the state budget.

Article 12.

1. (repealed).

2. The Authority may render administrative decisions immediately enforceable, if such enforceability is justified by the need to protect the material interests of the capital market participants or prevent a threat to the proper operation of that market.

3. (repealed).

4. If a party appoints more than one attorney-in-fact in the course of administrative proceedings, serving a notice on one of them shall be deemed to be an effective service on the others.

5. The decision to instigate administrative proceedings, which are undertaken on the basis of the findings of a completed audit or explanatory proceedings, shall include the scope and type of behaviour to which the instigated proceedings apply.

Article 12a.

A legal action concerning a company, as defined by the Act of 23 April 1964 – Civil Code (Journal of Laws No. 16, item 93, as amended²) shall not include permits of that company, approvals granted by the Authority as well as register entries made under the Act on Trading in Financial Instruments, the Act on Public Offerings, and the Act on Investment Funds.

Article 13.

1. The Chairman of the Authority shall issue decisions to instigate administrative proceedings and, in the cases specified in this Act or other regulations, other decisions, orders and recommendations. In this scope, the Chairman of the Authority shall exercise the powers of the Authority.
2. The provisions of Art. 12.2 shall apply to the decisions issued by the Chairman of the Authority.
3. (repealed).

Articles 14-16. (repealed)

² Amendments to the said Act were promulgated in the Journal of Laws of 1971 No. 27, item 252, of 1976 No. 19, item 122, of 1982 No. 11, item 81, No. 19, item 147 and No. 30, item 210, of 1984 No. 45, item 242, of 1985 No. 22, item 99, of 1989 No. 3, item 11, of 1990 No. 34, item 198, No. 55, item 321 and No. 79, item 464, of 1991 No. 107, item 464 and No. 115, item 496, of 1993 No. 17, item 78, of 1994 No. 27, item 96, No. 85, item 388 and No. 105, item 509, of 1995 No. 83, item 417, of 1996 No. 114, item 542, No. 139, item 646 and No. 149, item 703, of 1997 No. 43, item 272, No. 115, item 741 and No. 117, item 751, of 1998 No. 106, item 668 and No. 117, item 758, of 1999 No. 52, item 532, of 2000 No. 22, item 271, No. 74, item 855 and 857, No. 88, item 983 and No. 114, item 1191, of 2001 No. 11, item 91, No. 71, item 733, No. 130, item 1450 and No. 145, item 1638 of 2002 No. 113, item 984 and No. 141, item 1176, of 2003 No. 49, item 408, No. 60, item 535, No. 64, item 592 and No. 124, item 1151, of 2004 No. 91, item 870, No. 96, item 959, No. 162, item 1692, No. 172, item 1804 and No. 281, item 2783, of 2005 No. 48, item 462, No. 157, item 1316 and No. 172, item 1438, of 2006 No. 133, item 935 and No. 164, item 1166, of 2007 No. 80, item 538, No. 82, item 557 and No. 181, item 1287 and of 2008 No. 116, item 731.

Article 17.

1. The expenses representing the cost of the Authority's and the Office's operations, in the amount specified in the budgetary act, including remuneration and discretionary bonuses for the Chairman of the Authority, his deputies and employees of the Office, shall be financed with:
 - 1) fees and charges referred to in the Act on Investment Funds, the Commodity Exchange Act, the Act on Trading in Financial Instruments and the Act on Public Offerings, paid for this purpose by the supervised entities to the Authority, and
 - 2) other proceeds to the income account of the Office, excluding the pecuniary penalties referred to in Article 11.
2. The fees and charges and other proceeds referred to in Article 17.1.2 shall also be used to cover the costs of organisation of examinations and tests referred to in the Act on Trading in Financial Instruments, including remuneration of the members of the relevant examination boards.
3. The zloty equivalent of the fees and charges expressed in euros shall be determined at the mid-exchange rate quoted for the euro by the National Bank of Poland.
4. If the fees and charges due to the Authority are not paid in full or in part, the Authority shall issue a decision in which it shall specify the amount of such overdue fees and charges.
5. Statutory interest shall accrue on any overdue amounts resulting from fees and charges unpaid by the due date or fees and charges paid in an amount lower than the due amount.
6. The minister competent for financial institutions shall define by way of a regulation:
 - 1) the amount, the method of calculation, and the terms and conditions and dates for the payment of fees and charges referred to in Article 17.1.1,
 - 2) the detailed method of settlement of the fees and charges and other proceeds referred to in Article 17.1,
 - including in particular the types of fees and charges and the nature of the actions which entail the obligation to pay such fees and charges. The fees and charges shall not materially increase the costs of operation of the entities required to pay such charges.
7. (repealed).

Article 18. (repealed).

Article 19.

1. The Chairman of the Authority, his deputies, members of the Authority, employees of the Office and persons employed at the Office on the basis of a fee-for-task agreement, a mandate agreement or other agreements of a similar character shall be bound by the professional secrecy obligation, whose substance, scope and limitations, as well as consequences of non-compliance therewith, are specified in the Act on Trading in Financial Instruments, the Act on Investment Funds and the Commodity Exchange Act.
2. The obligation referred to in Article 19.1 shall also apply to:
 - 1) persons bound by a legal relation under a mandate agreement or any other legal relation of a similar nature with the persons referred to in Article 19.1, the

Authority or the Office;

- 2) persons employed by the entities bound by a legal relation under a mandate agreement or any other legal relation of a similar nature with the persons referred to in Article 19.1, the Authority or the Office.
3. The professional secrecy obligation shall survive the termination of the legal relations referred to in Article 19.1 and 19.2.

Chapter 3

Exchange of Information between Supervisory Authorities

Article 20.

1. The Authority or its authorised representative may provide to and receive from a foreign supervisory authority competent for the securities market or financial market information necessary to:
 - 1) duly perform specific supervisory responsibilities, including the responsibilities set forth in the Supplementary Supervision Act, or
 - 2) ensure a proper conduct of court, administrative, criminal, explanatory and audit proceedings in cases related to the exercise of supervision.
2. The rules and procedure for the provision of information shall be defined in the agreements referred to in Article 20.1 concluded by the Authority with such supervisory authorities.
3. The Authority may provide the information on the basis of the agreement referred to in Article 20.2 if:
 - 1) it will not have an adverse effect on the sovereignty, security or public interest of the Republic of Poland;
 - 2) the laws in effect in the home country of the foreign supervisory authority to whom such information is provided ensure:
 - a) that such information will be used only for the purpose of exercising supervision or conducting administrative or court proceedings in cases related to the exercise of such supervision,
 - b) that such information will be covered by a secrecy obligation binding on that authority;
 - 3) it is ensured that each further transfer of such information outside the foreign supervision authority, for a purpose other than that specified in Article 20.1, shall be possible only upon obtaining the prior approval of the Authority.
4. Without the foreign supervision authority's consent, information obtained by the Authority under the agreement referred to in Article 20.2 may not be used for any purpose other than that specified in Article 20.1 or transferred outside the Authority to the competent authority of another state.

Article 21.

1. For the purposes specified in Article 20.1, the Authority or its authorised representative shall, on its own initiative or on demand, provide the information it holds to the competent authority in another Member State or a foreign coordinator within the meaning of Article 3.20 of the Supplementary Supervision Act.
2. If the entities referred to in Article 21.1 have applied for information which is not held

by the Authority, the Authority shall promptly take steps to obtain such information or shall notify such entities, stating the reasons for its inability to obtain the information.

3. The Authority may refuse to provide information if:
 - 1) the provision of information could have an adverse effect on the sovereignty, security or public interest of the Republic of Poland, or
 - 2) the request to provide information relates to the same acts of violation of law or principles of fair trading effective in another Member State, committed by the same entity, with respect to which court or administrative proceedings are pending in the Republic of Poland, or a final judgment has been issued, or a final decision imposing a penalty has been issued by the Authority; in such a case, detailed information on such circumstances shall be provided.
4. Subject to the Authority's approval, information provided by the Authority to the supervisory authority in another Member State may be used for a purpose other than that specified in Article 20.1 or transferred outside that authority to the competent authority in another state.
5. Subject to the approval of the supervisory authority in another Member State, information required for the purposes specified in Article 20.1 and obtained by the Authority from such authority may be used for other purposes or transferred outside the Authority to the competent authority in another state, in particular a party to the agreement referred to in Article 20.2.
6. If it is found that behaviour which is in conflict with the law has occurred or is also occurring in the territory of another Member State, or that such behaviour relates to financial instruments which are traded on a regulated market in another Member State, the Authority or its authorised representative shall provide detailed information concerning such behaviour to the supervisory authority in that state.
7. After the Authority has obtained information from a supervisory authority in another Member State on behaviour being in conflict with the law, which has occurred or is occurring in the territory of the Republic of Poland or relates to financial instruments traded on a regulated market in the Republic of Poland, the Authority or its authorised representative shall notify that authority of the actions taken and, if necessary, of the course of proceedings carried out.
8. The Authority shall consult with supervisory authorities in other Member States on the planned actions aimed at counteracting behaviour which is in conflict with the law and which has occurred or is occurring in the territory of the Republic of Poland and such other states.
9. The provisions of Article 21.1-7 shall apply accordingly to the provision of information to a foreign coordinator in connection with the supervisory responsibilities specified in the Supplementary Supervision Act.
10. The powers of the Authority referred to in Article 21.1-9 shall apply in the case of the behaviour referred to in Article 25.7.
11. The exchange of information on the activities of investment companies, entities organising the regulated market or on transactions in financial instruments shall be performed under the provisions of Articles 14 and 15 of Commission Regulation (EC) No. 1287/2006 of 10 August 2006 introducing implementing measures for Directive 2004/39/EC of the European Parliament and Council in respect of the obligations of investment firms in the field of record-keeping, transaction reporting, market transparency, admission to trading of financial instruments and the terms defined for the purposes of that Directive (Official Journal EU L 241 of 2 September 2006, p. 1).

Article 22.

If the performance of responsibilities specified in the Supplementary Supervision Act so requires, the Authority may provide and receive information to and from central banks of other Member States, the European System of Central Banks and the European Central Bank. The provisions of Article 21.6-8 shall apply accordingly.

Article 23.

1. (repealed).
2. The Authority or its authorised representative may provide and receive information, including opinions from the President of the Office of Competition and Consumer Protection, necessary to duly perform the supervisory responsibilities, including responsibilities specified in the Supplementary Supervision Act.
3. The rules and procedure for the provision of the information referred to in Article 23.2 shall be defined in the agreement concluded by the Authority with the President of the Office of Competition and Consumer Protection.

Chapter 4

Audit and Explanatory Proceedings and Blocking of Accounts

Article 24.

In connection with the performance of its supervisory responsibilities, the Authority, the Chairman of the Authority, the Authority's authorised representatives, and employees of the Office shall have access to:

- 1) inside information as defined in Article 154 of the Act on Trading in Financial Instruments,
- 2) other information, including information covered by the professional secrecy obligation referred to in Article 19.1,
 - held by natural persons or other entities, in particular the entities specified in Article 20, Article 21 and Article 23, as well as Article 150.1 of the Act on Trading in Financial Instruments. Unless separate statutes provide otherwise, such information, as well as information obtained by the Authority pursuant to Article 20, Article 21 and Article 23, may only be used, unless other acts of parliament state otherwise, to perform the statutory supervisory responsibilities and, in particular, may serve as evidence in administrative proceedings conducted by the Authority.

Article 25.

1. The Authority may, by way of a resolution, resolve to disclose to the public information on:
 - 1) instances of non-compliance with the provisions of the Act on Trading in Financial Instruments, the Act on Public Offerings, the Act on Investment Funds and the Commodity Exchange Act,
 - 2) legal measures undertaken to counteract non-compliance with the acts referred to in Article 25.1.1, including information on the sanctions applied and on filing a notification of a suspected offence, as well as on instigation of administrative or

civil proceedings or the results of such proceedings,

- 3) occurrence of circumstances suggesting market manipulation referred to in the Act on Trading in Financial Instruments, or commitment of an offence or a misdemeanour referred to in the acts referred to in Article 25.1.1,
 - unless the disclosure of such information poses a serious threat to the capital market or causes incommensurate damage to the persons to whom such information relates.
2. The information referred to in Article 25.1 may not contain personal details of any persons, unless:
 - 1) a final judgment has been issued with respect to such persons, or
 - 2) a final decision has been issued concerning such persons' non-compliance with the provisions of the acts referred to in Article 25.1.1, or
 - 3) the decision concerning non-compliance with the provisions of the acts referred to in Article 25.1.1 by such persons has been made immediately enforceable.
3. Where justified by the need to exercise supervision by a foreign supervisory authority which has concluded the agreement referred to in Article 20.2 with the Authority, or by the need to carry out administrative or court proceedings concerning issues related to the exercise of supervision by such an authority, or at the request of a supervisory authority in another Member State, the Authority may instigate ex officio and conduct audit, explanatory or administrative proceedings, and may demand that such proceedings be instigated by a supervisory authority in another Member State. In such a case, an authorised representative of that supervisory authority may participate in the actions undertaken in the course of such proceedings.
4. The Authority shall not instigate the proceedings referred to in Article 25.3 or shall refuse to allow participation in the actions undertaken if:
 - 1) compliance with the request for instigation of such proceedings could adversely affect the sovereignty, security or public interest of the Republic of Poland, or
 - 2) court proceedings are pending or a final judgment has been issued in respect of the same acts of violation of the law committed by the same entity in the territory of the Republic of Poland or in the home country of the supervisory authority.
5. In the case referred to in Article 25.4.2, the Authority shall provide the foreign supervisory authority with detailed reasons for not instigating the proceedings or not allowing participation in the actions undertaken.
6. If a given behaviour is found to violate laws the compliance with which falls within the scope of the Authority's supervision, the Authority may request that such behaviour be discontinued.
7. The powers of the Authority referred to in the provisions of this Chapter 4 shall apply to:
 - 1) behaviour in the territory of the Republic of Poland or another Member State relating to financial instruments admitted or sought to be admitted to trading on a regulated market in the territory of the Republic of Poland;
 - 2) behaviour occurring in the territory of the Republic of Poland and relating to financial instruments admitted or sought to be admitted to trading on a regulated market in the territory of another Member State.

Article 26.

1. With a view to performing the Authority's responsibilities, authorised employees of the Office or, in the case referred to in Article 26.7, other persons, hereinafter referred to as the "inspectors", may carry out inspections concerning the activities or the financial standing of:
 - 1) a regulated entity referred to in Article 5.1-6c and Article 5.8-15,
 - 2) a third party commissioned, within the scope of the authorisation provided for by the applicable laws, by an entity referred to in Article 26.1.1 to perform certain actions which fall within the scope of the Authority's supervision,
 - hereinafter referred to as the "inspected entity".
2. In the case of:
 - 1) a branch of a foreign credit institution (as defined in the Act on Trading in Financial Instruments) conducting brokerage activities in the territory of the Republic of Poland, the inspection shall only cover the organisational unit which conducts such activities;
 - 2) a foreign investment firm conducting brokerage activities in the territory of the Republic of Poland, the inspection shall only involve assessment of the compliance of the brokerage activities conducted in the territory of the Republic of Poland with the rules governing the provision of services defined in Polish law.
3. The powers connected with the inspections referred to in Article 26.1 may be exercised with respect to a branch of a brokerage house or a bank conducting brokerage activities which is situated in the territory of another Member State subject to a prior written notification by the Authority of the competent supervisory authority in the country where the branch of such brokerage house or bank is situated.
4. With respect to branches and representative offices of foreign investment firms operating in the territory of the Republic of Poland, the powers connected with the inspections referred to in Article 26.1 shall also be conferred upon the representatives of the supervisory authorities competent for the securities market or the financial market in another Member State in which such foreign investment firm has obtained the relevant authorisation, in accordance with the rules defined in the laws of such Member State. Such powers may be exercised subject to a prior written notification of the Authority.
5. At a written request of the supervisory authorities referred to in Article 26.4, the powers conferred upon such authorities with respect to a branch or a representative office of a foreign investment firm shall be exercised by the Authority or its authorised representative.
6. The representatives of supervisory authorities in other Member States in which foreign investment firms conducting brokerage activities in the territory of the Republic of Poland have obtained the relevant authorisations shall have, in connection with the exercise of the powers connected with inspections referred to in Article 26.1 with respect to branches and representative offices of foreign investment firms, the right to access information covered by professional secrecy obligation which is held by such entities, and natural persons employed by such entities or bound by a legal relation under a mandate contract or any other legal relation of a similar nature with such entities.
7. The Chairman of the Authority may also authorise a person who is not an employee of the Office but who has the necessary knowledge in the respective areas to carry out inspections covering the operations of the inspected entity's IT systems, financial statements, accounting books or other financial documents and information.

8. (repealed).

Article 27.

1. The subject of the inspection shall be compliance of the activities or the financial situation of the inspected entity, to the extent falling within the scope of the Authority's supervision, with the provisions of the law, the rules, the terms and conditions of authorisations, the principles of fair trading or the interests of the customers.
2. The scope of the inspection shall cover all or some specific issues related to the activities or the financial situation of the inspected entity.
3. The purpose of the actions undertaken by inspectors in the course of inspections (inspection activities) shall be to determine the actual state of affairs and document it in a reliable manner, making it possible to evaluate the correctness of the inspected entity's activities, and in the event of any irregularities to determine the extent of such irregularities, their causes and the persons responsible for their occurrence.
4. Inspection activities should be carried out without significant interference with the business activities of the inspected entity, and, in particular, shall not obstruct the timely performance of its obligations to third parties.

Article 27a.

1. The inspection shall be ordered by the head of the organisational unit of the Authority which is responsible for conducting inspections.
2. The person ordering the inspection, referred to in Article 27a. 1, may, in cases justified by the nature of the inspection, notify the subject of the inspection in writing about the intended inspection not earlier than three days before the inspection activities take place, indicating the subject matter and the extent of the inspection in order to allow the inspected entity to collect or prepare documents, and to gather other necessary data and information, including the assurance of the presence of persons authorised to represent the inspected entity in the course of the inspection.

Article 28.

1. Inspection authorisations shall be issued in writing by the Chairman of the Authority, who shall specify in such authorisation:
 - 1) the legal basis of the inspection;
 - 2) the designation of the inspection authority;
 - 3) the date and place of issue;
 - 4) first names, surnames and positions of the inspectors who are employees of the Office;
 - 5) numbers of official identity cards of the inspectors who are employees of the Office;
 - 6) the name of the inspected entity;
 - 7) the place of the inspection;
 - 8) the subject and scope of the inspection;
 - 9) the date of commencement and the anticipated duration of the inspection;
 - 10) information on the rights and obligations of the inspected entity.
- 1a. When the inspection is carried out by a person referred to in Article 26.7, the

- authorisation referred to in Article 28.1 shall include the first name, the last name as well as the ID number of that person.
2. The inspected entity shall be promptly notified in writing if it proves necessary to extend the duration of the inspection or change its subject, scope or place.
 3. The changes referred to in Article 28.2 shall require an appropriate amendment to the inspection authorisation, apart from the change of the place of the inspection in the case referred to in Article 32.3.
 4. A separate authorisation shall be issued each time the persons authorised to carry out the inspection are replaced.

Article 29.

1. The duration of an inspection may not exceed six months.
2. The authorisation to carry out an inspection shall be delivered to the inspected entity prior to the commencement of an inspection, however no later than on the date specified in Article 28.1.9.
3. An inspection shall commence on the date on which the authorisation to carry out an inspection is produced pursuant to Article 30.1, but not earlier than on the date specified in Article 28.1.9.
4. The day on which the last inspection activity is performed, immediately preceding the preparation of the inspection report, shall be deemed the day of the inspection completion. The inspected entity shall be promptly notified in writing of the inspection completion.

Article 30.

1. The inspection shall be carried out by an inspection team comprising at least two inspectors, who shall show their authorisation and a service identification card or another identification document to the inspected entity or its authorised representative. The obligation to show the official identification card shall not apply to the persons referred to in Article 26.7.
2. In the absence of the inspected person or its authorised representative, the inspection may commence upon showing the service identity card to an employee of the inspected entity who may be regarded as the person referred to in Article 97 of the Act of 23 April 1964 – the Civil Code or to a witness called who is a public official not employed by the inspecting body. In such a case the authorisation shall be promptly sent to the inspected person; not later, however, than three days before the start of the inspection.
3. After the authorisation is produced and prior to the commencement of the first inspection activity, an inspector is also obliged to inform the person referred to in Article 30.1 of the rights and obligations of the inspected entity, the legal consequences of obstructing or preventing the inspection and the liability for providing misleading explanations or concealing the truth. Any person providing explanations may refuse to answer questions if the answer could expose such person or that person's relatives, as referred to in Article 83.1 of the Code of Administrative Procedure, to criminal liability or direct property damage.
4. The authorisation shall include a note of the information referred to in Article 30.3. The inspected person or the person authorised shall confirm having received the information by signing it.
5. If the case of a refusal to confirm the reception of the information referred to in Article 30.4, such a fact shall be indicated on the information note including the reasons for the refusal.

Article 31.

1. An inspector shall be excluded from an inspection if the findings of such inspection might affect his or her rights or obligations, or the rights or obligations of the inspector's spouse or cohabiting partner, persons related through blood or marriage up to the second degree in kinship or persons related through adoption, custody or guardianship.
2. The grounds for excluding an inspector from an inspection shall continue to be effective even after termination of the marriage, cohabitation, adoption, custody or guardianship.
3. An inspector may also be excluded from an inspection on other grounds which may raise doubts as to the inspector's impartiality.
4. If the circumstances referred to in Article 31.1 and 31.3 occur in the course of an inspection, the inspector shall refrain from further activities and shall promptly notify the Chairman of the Authority. In such a case, until the order referred to in Article 31.5 is issued, the inspector excluded from the inspection may only undertake activities which are urgent due to the public interest or an interest of the inspected entity.
5. The exclusion from an inspection shall be ordered by the Chairman of the Authority, acting *ex officio* or at the request of the inspected entity or at the request of the inspector.
6. Upon excluding an inspector from an inspection, the Chairman of the Authority shall appoint another inspector to fill the vacancy on the inspection team.
7. For material reasons, the Chairman of the Authority may also change the composition of the inspection team in circumstances other than those specified in Article 31.1 and 31.3. The provisions of Article 31.6 shall apply accordingly.

Article 32.

1. An inspection shall be carried out at the place where the inspected entity conducts its business, in particular at its head office, branch or representative office referred to in Article 116 of the Act on Trading in Financial Instruments, during the inspected entity's working days and business hours.
2. Where particularly justified by a threat to the security of trading, urgent inspection activities may be undertaken on non-working days or outside the business hours of the inspected entity, subject to prior notification of the person authorised to represent the inspected entity.
3. Individual inspection activities may be undertaken outside the place specified in Article 32.1, in particular at the premises of the Office, if it is justified by the nature of such activities and can result in the inspection being carried out more quickly and effectively.
4. The inspector shall have the right to enter the places and premises referred to in Article 32.1 and to inspect books, documents or other information carriers.
5. At the inspector's request, persons who are members of the inspected entity's governing bodies or are bound by a legal relation under an employment contract, a mandate contract or another legal relation of a similar nature with the inspected entity, shall promptly prepare and deliver, at the expense of the inspected entity, copies of documents or other data carriers, and shall provide written or oral explanations, within the timeframe specified in the request.
6. The inspected entity shall ensure appropriate conditions for the inspector to be able to carry out the inspection in an efficient manner, and in particular it shall promptly provide the inspector with any requested books, documentation or other information carriers, and shall give explanations in due time. The inspected entity shall enable the

inspectors, as far as possible, to use its technical equipment to facilitate the inspection activities, and, subject to Article 35, shall provide a separate room with appropriate equipment.

- 6a. Pursuant to Article 32.6.2, the inspectors may prepare, on their own, copies of documents and other information carriers examined in the course of the inspection.
- 6b. Inspectors may require the inspected entity to prepare collations of data and information from the documents and media mentioned above, setting an appropriate deadline for their submission.
- 6c. A report shall be drafted in two copies, and one copy handed to the inspected entity, on the submission of materials, referred to in Article 32.5 and 32.6b, and the collection of materials, referred to in Article 32.6a. The inspector and the person providing the materials shall initial each page and sign the report.
- 6d. If the report referred to in Article 36.6c is refused to be signed, a note of that shall be included in the report along with the explanation of the reasons for the refusal.
7. To the extent justified by the subject of the inspection, the inspector may freely move around the places and premises referred to in Article 32.1 without the need to obtain a pass, and cannot be searched.
8. The inspection shall not, as far as possible, interrupt the work of the inspected entity.

Article 33.

1. In the course of the inspection, the Chairman of the Authority may order a seizure of any document or other information carrier necessary for further proceedings.
2. A person in charge of a document or other information carrier subject to seizure shall be requested to release it voluntarily, and if that person refuses to do so, that document or other information carrier may be seized in accordance with the administrative enforcement procedure.
3. All released or seized information carriers shall be itemised in a list and described, and a report on the seizure of such information carriers shall be prepared, whereupon such information carriers shall be secured by the inspectors against damage or disfiguration.
4. The report on the seizure of information carriers should specify the case with respect to which the seizure was made, the time of commencement and completion of the seizure, and a list of the seized carriers together with their description. The report shall be signed by the inspector who performed the seizure and the person authorised to represent the inspected entity. If the person authorised to represent the inspected entity refuses to sign the report, an appropriate note shall be made.
5. Persons whose rights are infringed as a result of the seizure shall have the right to lodge a complaint against the order to seize documents or other information carriers. The complaint shall be considered by the Authority within seven days. The execution of a seizure order shall not be suspended by the fact that a complaint has been lodged.
6. Information carriers which are not necessary for further proceedings shall be promptly returned to the entitled entity.

Article 34.

Inspection findings shall be made on the basis of:

- 1) documents;
- 2) explanations given by the persons referred to in Article 32.5;
- 3) data and information contained in the inspected entity's IT systems;
- 4) representations of third parties;
- 5) other materials which may contribute to the determination of the actual state of affairs in the areas covered by the inspection.

Article 34a.

1. Information in writing prepared by the inspected entity for the purpose of the inspection shall be signed by persons authorised to prepare it. In the event of a refusal, the inspector shall make an appropriate note in the materials submission report.
2. Copies of the documents shall be certified by a person employed by or authorised to represent the inspected entity.
3. The verification referred to in Article 34a.2 shall include the clause "certified to be a true copy of the original document(s)" and the signature of the person performing the verification. Information about the true copies of data from IT systems or information carriers other than documents shall be noted in writing along with details of the content and the type of the carrier.

Article 34b.

1. A report on accepting verbal explanations shall be made in writing in duplicate and a copy of it shall be given to the inspected entity. The inspector and the person providing the verbal explanations shall initial each page and sign the report.
2. If the person providing the verbal explanations refuses to sign the report, a note of that shall be included in it along with information on the reasons for the refusal.
3. The verbal explanations provided by the persons referred to in Article 32b may be recorded with the use of a recording device after prior notification of the person providing the verbal explanations. The person authorised to represent the inspected entity may be present during the proceedings. The provisions of Article 34b.1 and Article 43b.2 shall not apply.

Article 35.

1. Materials gathered in the course of the inspection may be secured against loss or distortion by storing them at the premises of the inspected entity in a locked and sealed cabinet or safe provided for exclusive use by the inspection team or, when justified by the quantity of such materials, in a separate, locked and sealed room.
2. The decision to release documents or other information carriers from such secured storage shall be made by the inspector.
3. In the event of the seizure referred to in Article 33, the provisions of Article 35.1 and 2 shall apply accordingly, with the proviso that the released documents or other information carriers may also be removed from the inspected entity's premises against signing a receipt. The person authorised to represent the inspected entity shall receive a

copy of the seizure report.

Article 35a.

1. A report shall be drawn up after the conducted inspection. The inspection report shall include, in particular:
 - 1) the name and address of the inspected entity;
 - 2) specification of the organisational units covered by the inspection;
 - 3) the names, surnames and functions of inspecting persons;
 - 4) the date and number of the authorisation to conduct the inspection as well as information on its amendments;
 - 5) the definition of the subject and scope of the inspection;
 - 6) the date of the start and end of the inspection;
 - 7) the names and surnames as well as positions of the persons making statements and providing information and explanations during the inspection;
 - 8) a note on the information referred to in Article 30.4;
 - 9) a description of the inspection carried out and of factual findings, together with the documents or other information and materials on which those findings were based, as well as a description of irregularities found, their extent and causes;
 - 10) a list of materials collected during the inspection, including the name of each;
 - 11) the place and date of the inspection report;
 - 12) a note on the provision of recommendations under Article 36.6.
2. The materials referred to in Article 35a.1.10 are, in particular:
 - 1) the reports drafted in the course of the inspection;
 - 2) written statements and explanations;
 - 3) the instructions of the Chairman of the Authority issued in the course of the inspection.

Article 36.

1. Inspection findings shall be described in an inspection report prepared in two copies, with one copy to be delivered to the inspected entity within 30 days from the receipt of the information referred to in Article 29.4.
2. The inspection report shall be signed by the inspector and the person authorised to represent the inspected entity. The provisions of the third sentence of Article 33.4 shall apply accordingly.
 - 2a. The inspected entity or its representative shall also initial each page of the report and then submit the signed report to the Authority within 14 days from the receipt of the inspection report, subject to Article 36.2b-2d.
 - 2b. The inspected entity or its authorised representative may refuse to sign the inspection report, providing the explanations in writing. After an ineffectual expiry of the time limit referred to in Article 36.2a, a refusal to sign the report shall be recognised if it has been made by the expiry of that time limit, unless the inspected entity expresses reservations.
 - 2c. The inspector shall include a note in the report for the Authority that it had been

- refused to be signed and that the explanations referred to in Article 36.2b had been provided.
- 2d. The refusal to sign the report does not exempt the inspected entity from carrying out the recommendations referred to in Article 36.4 and 36.5. The entity ordering the inspection shall inform the inspected entity of that.
 3. The inspected entity shall have the right to express reservations as to the inspection report. The reservations shall be submitted to the Chairman of the Authority in writing within 14 days of the receipt of the inspection report.
 4. If the Chairman of the Authority:
 - 1) takes account of the objections raised by the inspected entity – the inspection report shall be changed accordingly by way of a written annex, which shall be delivered to the inspected entity within 30 days from the receipt of the objections; the provisions of Article 36.1 and 36.2 shall apply accordingly;
 - 2) refuses to take account of the objections raised by the inspected entity – a written position on the objections shall be presented to the inspected entity within 30 days from the receipt of such objections.
 5. Together with the annex or the position referred to in Article 36.4, or if the deadline for submitting objections lapses without any objections having been raised, the Chairman of the Authority may provide the inspected entity with a recommendation concerning removal of the irregularities identified on the basis of the inspection, hereinafter referred to as the “recommendations”, within a period of no less than 14 days from the date of receipt of such recommendations, subject to the provisions of Article 36.6.
 6. In urgent cases, if justified by the security of trading or investors’ interests, the Chairman of the Authority may issue recommendations even before the inspection has been completed, specifying a deadline shorter than 14 days to remove the irregularities. A note that such recommendations have been issued shall be made in the inspection report.
 7. The deadline by which the inspected entity is required to remove the irregularities specified in the recommendations shall be counted from the day following the receipt of the recommendations.
 8. The inspected authority, promptly but in no event later than on the day following the lapse of the deadline for the removal of the irregularities specified in the recommendations, shall notify the Authority of the manner in which the recommendations are to be complied with, indicating in detail the manner in which the irregularities are to be removed.

Article 37.

1. The provisions of this Chapter 4 shall apply accordingly in the course of liquidation or bankruptcy proceedings carried out with respect to the entity specified in Article 5.1-6 and Article 5.8-15, and also in the case of revocation of the authorisation held by that entity to conduct activities subject to the Authority’s supervision – until such activities are discontinued.
2. (repealed).

Article 37a.

1. Authorised employees of the Office may make a supervisory visit to the brokerage house with regard to an analysis and evaluation of the conformity of the brokerage house with capital adequacy rules.

2. The supervisory visit may also be made in the case of proceedings regarding the issuance by the Authority of the authorisations referred to in Article 98a.4 and 98a.5 as well as Article 105-105d of the Act on Trading in Financial Instruments.
3. The following provisions shall apply accordingly to the supervisory visit: Article 27.4, Article 28, Article 29.2 and 29.3 as well as Article 30-32 and Article 34.
4. The supervisory visit must not exceed two months.
5. The day on which the last supervisory activity was carried out in the offices of the inspected entity shall be deemed the day of the completion of the supervisory visit. The brokerage house shall be informed of the completion of the visit without delay in writing.

Article 38.

1. In order to determine whether there are grounds for filing the notification of a suspected offence concerning an offence specified in the following acts: on Public Offerings, on Trading in Financial Instruments, on Investment Funds, on Commodity Exchanges, and other acts – to the extent concerning actions directed against the interests of capital market participants, connected with the activity of the supervised entities, or for instigating administrative proceedings concerning a breach of law, to the extent falling within the scope of the Authority's supervision, the Chairman of the Authority may order that explanatory proceedings be carried out. The provisions of the Code of Administrative Procedure shall not apply to such explanatory proceedings, unless this Chapter 4 provides otherwise.
2. The explanatory proceedings shall be carried out by an employee of the Office holding a written authorisation of the Chairman of the Authority. Explanatory proceedings must not continue for more than six months. The provisions of Article 28.1 shall apply accordingly to the content of the authorisation.
3. In the course of the explanatory proceedings, no evidence based on opinions of court experts, interrogation of persons, or other actions which require preparation of a report under the provisions of the Code of Administrative Procedure, shall be used, with the exception of the seizure of the items referred to in Article 33.1.
4. Any person in possession of certain information, documents or carriers may be asked to provide written or spoken explanations or to hand in the documents or other information carriers. The provisions of Article 30.3 shall apply accordingly.
- 4a. In the course of the explanatory proceedings undertaken with regard to the entities referred to in Article 5.1-15 and Article 26.1.2 or issuers of financial instruments other than securities, Articles 32 and 33 shall apply accordingly.
5. To the extent necessary to establish whether there is a reasonable suspicion that the offence referred to in Article 38.1 has been committed, or a need to instigate administrative proceedings concerning the case referred to in Article 172 of the Act on Trading in Financial Instruments, the Chairman of the Authority may also:
 - 1) demand that a telecommunications services provider furnish information covered by the telecommunications secrecy obligation, within the meaning of a separate statute, concerning a list of telephone connections or other data transmissions with respect to an entity performing factual or legal actions connected with the circumstances which are sought to be explained, including information on the time of the connection or transmission and other information on the connection or transmission other than its content;
 - 2) request that the General Tax Supervision Inspector provide specific information covered by the tax secrecy obligation within the meaning of a separate statute.

The provision of such information by the aforementioned entities shall not be deemed a breach of the telecommunications or the tax secrecy obligation, as the case may be.

6. Upon completion of the explanatory proceedings, the Chairman of the Authority shall file a notification of a suspected offence, instigate administrative proceedings, or decide to close the explanatory proceedings.
7. The files of the explanatory proceedings, together with any appendices thereto, shall be attached to the notification of a suspected offence.
8. Following closure of the explanatory proceedings, the seized documents or other information carriers shall be returned to the entitled entity. The files of the explanatory proceedings shall be stored for five years.
9. Closure of any explanatory proceedings shall not prejudice reinstatement of such proceedings in relation to the same acts, unless the statute of limitation period for the offence in question has lapsed.
10. The provisions of this Chapter 4 shall apply accordingly in the course of liquidation or bankruptcy proceedings carried out with respect to the entity specified in Article 26.1, as well as in the case of revocation of the authorisation held by such entity to conduct activities subject to the Authority's supervision – until such activities are discontinued.

Article 38a.

The provisions of Chapter 5 of the Act on the Freedom to Conduct Business Activity of 2 July 2004 shall apply to the inspection of an entrepreneur's business activity (Journal of Laws of 2007 No. 155, item 1095, as amended³).

Article 39.

1. If the information obtained justifying the suspicion of the offence referred to in Articles 181-183 of the Act on Trading in Financial Instruments suggests that a transaction which has been or is to be executed may be connected with such offence, the Chairman of the Authority or his deputy may send a written notice to the regulated entity requesting that such entity block:
 - 1) a securities account,
 - 2) another account in which financial instruments other than securities are registered,
 - 3) a cash account,– for a period of up to 48 hours from the moment indicated in the request. Together with the request, the Chairman of the Authority shall file a notification of a suspected offence, enclosing information and documents concerning the blocked account.
2. The account block referred to in Article 39.1 shall mean a temporary block on disposing in full or in part of the financial instruments or funds accumulated in the account, including in the case of the supervised entity, excluding the settlements of financial instruments or funds which result from concluded transactions and liabilities from acquired financial instruments before the receipt of the request referred to in Article 39.1.
3. The regulated entity shall block the account promptly upon receiving the written request referred to in Article 39.1.

³ Amendments to the Act have been promulgated in Journal of Laws of 2007 No. 180, item 1280, of 2008 No. 70, item 416, No. 116, item 732, No. 141, item 888, No. 171, item 1056 and No. 216, item 1367 and of 2009 No. 3, item 11 and No. 18, item 97.

- 3a. The written request referred to in Article 39.1 shall include the date of the request as well as the extent and the date of the account block.
4. Establishing a block on an account pursuant to the provisions of Article 39.1 and 39.3 shall exclude any disciplinary, civil, criminal or other liability under other regulations on the part of the regulated entity and the persons acting on its behalf.

Article 40.

1. If a notification of a suspected offence is filed in connection with an offence specified in Articles 181-183 of the Act on Trading in Financial Instruments, the public prosecutor may decide to block an account for a specific period of time, which shall not exceed three months from the receipt of the notification.
2. The decision referred to in Article 40.1 shall specify the name of the body which issues the decision, the date of the decision, the scope, manner and duration of the block, its justification and information on the right to lodge a complaint with the competent court.
3. In particularly justified cases, the announcement of the decision referred to in Article 40.1 may be postponed for a specific period of time necessary so as not to jeopardise the case. In such an event, the regulated entity shall be promptly notified of such decision having been issued.
4. The block on an account shall be released if no decision to create security over assets is issued within three months from the receipt of the notification of an offence.
5. To the extent not provided for in Chapter 4, the provisions of the Act of 6 June 1997 referring to account blocking shall apply – the Code of Criminal Procedure (Journal of Laws No. 89, item 555, as amended⁴).

Article 41.

If the account was blocked in breach of the law, the responsibility for the losses resulting from the block lies with the Treasury under the provisions of the Act of 23 April 1964 – the Civil Code (Journal of Laws No. 16, item 93, as amended⁵).

Article 42.

1. A written notice requesting that a block be established on an account may also be delivered to an investment company if the Authority receives the information referred to

⁴ Amendments to the Act were promulgated in the Journal of Laws of 1999 No. 83, item 931, of 2000 No. 50, item 580, No. 62, item 717, No. 73, item 852 and No. 93, item 1027, of 2001 No. 98, item 1071 and No. 106, item 1149, of 2002 No. 74, item 676, of 2003 No. 17, item 155, No. 111, item 1061 and No. 130, item 1188, of 2004 No. 51, item 514, No. 69, item 626, No. 93, item 889, No. 240, item 2405 and No. 264, item 2641 as well as of 2005 No. 10, item 70, No. 48, item 461, No. 77, item 680, No. 96, item 821, No. 141, item 1181, No. 143, item 1203, No. 163, item 1363, No. 169, item 1416 and No. 178, item 1479.

⁵ Amendments to the Act were promulgated in the Journal of Laws of 1971 No. 27, item 252, of 1976 No. 19, item 122, of 1982 No. 11, item 81, No. 19, item 147 and No. 30, item 210, of 1984 No. 45, item 242, of 1985 No. 22, item 99, of 1989 No. 3, item 11 and No. 33, item 175, of 1990 No. 34, item 198, No. 55, item 321 and No. 79, item 464, of 1991 No. 107, item 464 and No. 115, item 496, of 1993 No. 17, item 78, of 1994 No. 27, item 96, No. 105, item 509 and No. 85, item 388, of 1995 No. 83, item 417 and No. 141, item 692, of 1996 No. 114, item 542, No. 139, item 646 and No. 149, item 703, of 1997 No. 43, item 272, No. 115, item 741 and No. 117, item 751, of 1998 No. 106, item 668 and No. 117, item 758, of 1999 No. 52, item 532, of 2000 No. 22, item 271, No. 74, item 855 and 857, No. 88, item 983 and No. 114, item 1191, of 2001 No. 11, item 91, No. 71, item 733, No. 130, item 1450 and No. 145, item 1638, of 2002 No. 113, item 984 and No. 141, item 1176, of 2003 No. 49, item 408, No. 60, item 535, No. 64, item 592 and No. 124, item 1151, of 2004 No. 91, item 870, No. 96, item 959, No. 162, item 1692, No. 172, item 1804 and No. 281, item 2783 as well as of 2005 No. 48, item 462, No. 157, item 1316 and No. 172, item 1438.

in Article 40 and Article 161 of the Act on Trading in Financial Instruments from that investment company.

2. The provisions of Article 39 and Article 40 shall apply accordingly.

Article 43.

At the request of an account holder, the regulated entity may notify the account holder of a block established on the account, specifying the body which demanded that the block be established; the above shall not apply to cases where the announcement of the public prosecutor's decision to block an account is postponed for a specific period of time.

Article 44.

The provisions of Article 40 and Article 41 shall apply accordingly in the course of pending criminal proceedings related to the offences specified in Articles 181-183 of the Act on Trading in Financial Instruments, if the notification of a suspected offence is received by the prosecutor from another source.

Chapter 5

Criminal Provisions

Article 45.

Anyone who, acting on behalf or in the interests of a supervised entity, fails to fulfil its obligation to block an account shall be liable to a fine of up to PLN 1,000,000 or a penalty of imprisonment for up to three years, or to both these penalties jointly.

Article 46.

1. Anyone who prevents or obstructs the activities performed in the course of audit, administrative or explanatory proceedings shall be liable to a penalty of a detention or restriction of freedom, or to a fine.
2. Whoever commits the act specified in Article 46.1, acting on behalf or in the interests of a legal person or an organisational unit without legal personality, shall be liable to the same penalty.

Article 47.

Adjudication in the cases specified in Article 46 shall be governed by the regulations pertaining to proceedings concerning minor offences.

Chapter 6

Changes to the Current Regulations

Article 48.

In the Tax Investigation Act of 28 September 1991 (Journal of Laws of 2004, No. 8, item 65, as amended⁶) Article 34a.5.8 shall read as follows:

“8) the Chairman of the Polish Securities and Exchange Commission, to the extent necessary to carry out the explanatory proceedings under the Act on Capital Market Supervision of 29 July 2005 (Journal of Laws No. 183, item 1537).”.

Article 49.

In the Act of 24 May 2000 on the National Court Register (Journal of Laws No. 50, item 580, as amended⁷), Article 6.1.7b shall be added to read as follows:

“7b) the Polish Securities and Exchange Commission or its authorised representative, in connection with the activities performed as part of supervision exercised by the Polish Securities and Exchange Commission under separate statutes;”.

Article 50.

The Act of 26 October 2000 on Commodity Exchanges (Journal of Laws of 2005 No. 121, item 1019) shall be amended as follows:

- 1) Article 19 shall be deleted;
- 2) Article 20.1 shall read as follows:

“1. In all matters not provided for in this Act, the manner of operations and the responsibilities of the Authority shall be governed by the provisions of the Act on Capital Market Supervision of 29 July 2005 (Journal of Laws No. 183, item 1537).”;

- 3) Article 21 shall be deleted;
- 4) in Article 26:
 - a) Article 26.3 shall be deleted,
 - b) Article 26.4 shall read as follows:

“4. The application and distribution of proceeds from the fees and charges referred to in Article 26.1 and 26.2, as well as determination of the amount, the manner of charging and the payment thereof, shall be performed in accordance with the procedure and on the terms and conditions stipulated in Article 17 of the Act on Capital Market

⁶ Amendments to the consolidated text of the Act were promulgated in the Journal of Laws of 2004 No. 64, item 594, No. 91, item 868, No. 171, item 1800 and No. 173, item 1808 as well as of 2005 No. 124, item 1042 and No. 132, item 1110.

⁷ Amendments to the said Act were promulgated in the Journal of Laws of 2001 No. 56, item 579, of 2002 No. 74, item 676 and No. 197, item 1661 as well as of 2003 No. 137, item 1302.

Supervision of 29 July 2005.”;

5) in Article 53:

a) in Article 53.1:

- Article 53.1.1 shall be deleted,
- Article 53.1.4 shall read as follows:

“4) persons who are bound by an employment contract, a mandate contract or another legal relationship of a similar nature with the entities referred to in Article 53.1.2a and 53.1.3.”,

b) Article 53.2 shall read as follows:

"2. The professional secrecy obligation shall survive the termination of the legal relations referred to in Article 53.1.3 and 53.1.4."

Article 51.

In the Act of 6 July 2001 on Gathering, Processing and Transferring Criminal Information and on the National IT System (Journal of Laws No. 110, item 1189, as amended⁸), an Article 19.13a shall be added to read as follows:

“13a) the Polish Securities and Exchange Commission or its authorised representative;”.

Article 52.

The Act of 27 May 2004 on Investment Funds (Journal of Laws, No. 146, item 1546 and of 2005, No. 83, item 719) shall be amended as follows:

1) In Article 18.2:

a) Article 18.2.4a shall be added to read as follows:

“4a) the rules of concluding and the scope of agreements with the fund’s depository;”,

b) Article 18.2.15 shall read as follows:

“15) the frequency of valuation of an investment fund’s assets, the determination of the net asset value of an investment fund and the net asset value per unit or investment certificate;”,

c) Article 18.2.15a and Article 18.2.15b shall be added to read as follows:

“15a) methods and principles of the valuation of assets – in the case of a closed-end investment fund;

15b) information that the methods and principles used in the valuation of an investment fund’s assets, as described in the prospectus, comply with the accounting regulations applicable to investment funds – in the case of an open-end investment fund and a specialised open-end investment fund;”;

2) In Article 22:

a) Article 22.3 and 4 shall be deleted,

b) Article 22.12 shall be added to read as follows:

⁸ Amendments to the Act were promulgated in the Journal of Laws of 2001 No. 154, item 1800, of 2002 No. 81, item 731 and No. 89, item 804, of 2003 No. 124, item 1153, No. 128, item 1175, No. 137, item 1302 and No. 142, item 1380 as well as of 2004 No. 179, item 1842.

“12) statement by a qualified auditor of financial statements to the effect that the methods and rules applied in the valuation of the fund’s assets described in the articles of association are compliant with the regulations on the accountancy of investment funds and that the rules are complete and consistent with the investment policy adopted by the fund, in the case of a closed-end investment fund.”;

3) In Article 23, Article 23.3 shall be added to read as follows:

“3. By granting authorisation to create an investment fund, the Authority shall approve such fund’s articles of association.”;

4) Article 24 shall read as follows:

“Article 24.1. The Authority’s authorisation shall be required for any amendment to the articles of association of an open-end investment fund or of a specialised open-end investment fund which does not apply in its investments the investment rules and limits prescribed for a closed-end investment fund, if such amendment relates to:

- 1) the matters referred to in Article 18.2.14;
 - 2) specification of a regulated market referred to in Article 93.1.1 or Article 94.1.1;
 - 3) specification of the investments referred to in Article 93.1.2;
 - 4) specification of the entities referred to in Article 93.1.4.d;
 - 5) the possibility of increasing the investment limit in the case referred to in Article 96.3 and Article 98.2 and 98.4;
 - 6) the possibility of not complying with the limits referred to in Article 100.1-2, and indicating the issuer or guarantor, in the case referred to in Article 100.3.
2. The Authority’s authorisation shall be required for any amendment to the articles of association of a specialised open-end investment fund which in its investments applies the investment rules and limits prescribed for a closed-end investment fund, and of a closed-end investment fund, with respect to the matters referred to in:
- 1) Article 18.2.14;
 - 2) Article 139.3;
 - 3) Article 198.2.
3. The Authority shall issue the authorisation within two months of the application filing.
4. The Authority shall refuse its authorisation if the amendments to the articles of association are in conflict with the law or the interests of unit-holders.
5. The management company shall announce any amendments to the articles of association of an investment fund in a manner specified in the articles of association.
6. Any amendments to the articles of association of an investment fund related to the matters specified in Article 24.1 or 24.2 shall come into effect three months after the announcement of such amendments or, if the articles of association provide for more than one announcement to be made, from the date of the last announcement.
7. The Authority may permit the shortening of the period specified in

Article 24.6, if such shortening does not compromise the interests of the unit-holders of the fund.

8. Any amendment to the articles of association of an investment fund which does not require the Authority's authorisation shall come into effect:
 - 1) three months after the announcement of such amendment – in the case of amendments to the articles of association related to the matters specified in Article 18.2.10-11;
 - 2) as of the date of announcement – in other cases.
9. An investment fund shall notify the Authority of the announcements and their dates, and shall apply to the registry court for entering the amendments in the register; the consolidated text of the articles of association, together with the information on the announcements and their dates, shall be attached to the application.”;

5) Article 25 shall be deleted;

6) Article 32.5 shall read as follows:

“5. A domestic bank shall attach to the application the documents referred to in Article 32.4.4, 32.4.7, 32.4.9 and 32.4.10, as well as a statement to the effect that the documents referred to in Article 32.4.5 and 32.4.6 comply with the provisions of the articles of association of the investment fund and this Act, and give due regard to the interests of unit-holders of the investment fund or the foreign investment fund, the open-end investment fund registered in an EEA state and the open-end investment fund registered in an OECD state other than a Member State or an EEA state.”;

7) Article 32a shall be added to read as follows:

“Article 32a. “The entities referred to in Article 32.1 and 32.2 shall act as intermediaries in the sale and redemption of units in investment funds or foreign investment funds, open-end investment funds registered in EEA states and open-end investment funds registered in OECD states other than Member States or EEA states, having particular regard to the interests of unit-holders of those funds.”;

8) Articles 42-44 shall read as follows:

“Article 42.1. The management board of a management company shall comprise at least two members.

2. Any person appointed to the management board of a management company shall meet all the following criteria:
 - 1) shall have full capacity to enter into legal transactions;
 - 2) shall have a clean record of not being convicted of an intentional crime or a tax offence;
 - 3) shall enjoy a good opinion with respect to the positions he or she has held in the past.
3. At least two members of the management board, including the president, shall meet the following criteria apart from the requirements specified in Article 42.2:
 - 1) shall have a university degree or shall be qualified to practice the profession of an investment adviser referred to in Article 126.3 of the Act on Trading in Financial Instruments;
 - 2) shall have at least three years' experience of work at a

managerial or independent position in financial institutions, or of being a member of the governing bodies of such institutions.

4. A financial institution shall mean a domestic bank, a foreign bank, a credit institution, an investment firm, a company operating a stock exchange or an over the counter (OTC) market involved in trading in securities, a management company, an insurance undertaking, an asset manager, an investment fund management company, a general pension fund company, an employee pension fund company, a foreign fund, Krajowy Depozyt Papierów Wartościowych Spółka Akcyjna (National Depository for Securities), Krajowa Izba Rozliczeniowa Spółka Akcyjna (National Clearing House).

Article 43. The chairman of the supervisory board of an investment fund management company or another person designated in a supervisory board resolution shall promptly notify the Authority of any appointment of a new member to the management board and any change in the composition of the management board; the personal details of the newly appointed person and a description of such person's qualifications and professional experience, as well as information from the National Criminal Register, shall be attached to the notification.

Article 44.1. Any person appointed to the supervisory board of an investment fund management company must meet all the criteria specified in Article 42.2.

2. At least half of the members of the supervisory board of an investment fund management company must hold a university degree or be qualified to practice the profession of an investment adviser referred to in Article 126.3 of the Act on Trading in Financial Instruments.
3. An investment fund management company shall promptly notify the Authority of any appointment of a new member to the supervisory board; the personal details of the newly appointed person and a description of such person's qualifications and professional experience, as well as information from the National Criminal Register, shall be attached to the notification.”;

9) in Article 45:

a) in Article 45.2, Article 45.2.3 and 45.2.4 shall be deleted,

b) Article 45.2a shall be added to read as follows:

”2a. The Authority's approval shall not be required for an investment fund management company to extend the scope of its activities to include:

- 1) intermediation in the sale and redemption of units of investment funds created by other investment fund management companies or units of foreign funds;
- 2) acting as a representative of foreign funds referred to in Article 253.2.6.”,

c) Article 45.6 shall read as follows:

“6. An investment fund management company shall promptly notify the Authority of any extension of the scope of its activities referred to in Article 45.2a.”,

d) Article 45.7 shall be deleted;

10) In Article 48, Article 48.4 shall be added to read as follows:

“4. An investment fund management company should develop and apply

procedures for the prevention of money laundering practices.”;

11) In Article 58.1:

a) Article 58.1.17 shall be deleted,

b) Article 58.1.19 shall be added to read as follows:

“19) statement by a qualified auditor of financial statements to the effect that the methods and rules applied in the valuation of the fund’s assets described in the articles of association are compliant with the regulations on the accountancy of investment funds and that the rules are complete and consistent with the investment policy adopted by the fund, in the case of a closed-end investment fund.”;

12) In Article 61:

a) Article 61.4.2 shall read as follows:

“2) an analysis of the application and the documents attached thereto shows that the applicant or the persons referred to in Article 58.1.4-7 might perform their activities in breach of the principles of fair trading or in a manner that insufficiently protects the interests of the fund unit-holders, or that the members of the management board of the management company do not meet the requirements specified in Article 44.2.”;

b) Article 61.7 shall be deleted;

c) Article 61.8 shall be added to read as follows:

“8. By granting authorisation to create an investment fund, the Authority shall approve such fund’s articles of association.”;

13) Article 63 shall read as follows:

"Article 63. An investment fund management company shall promptly notify the Authority of any change of the information contained in the application and documents referred to in Article 22 and Article 58.”;

14) Article 107 shall read as follows:

“ Article 107.1. An open-end investment fund may not:

- 1) carry out an uncovered sale (assumption of an obligation to transfer rights which at the time of conclusion of the relevant agreement have not yet been acquired by the fund), unless the fund is entitled to acquire the rights which are to be sold;
- 2) carry out a short sale;
- 3) grant loans, issue sureties and guarantees, subject to the provisions of Article 102;
- 4) acquire securities or transferable property rights representing rights to precious metals.

2. An open-end investment fund may not:

- 1) invest its assets in securities or receivables of the investment fund management company which manages such fund, its shareholder or the parent entity or a subsidiary of such investment fund management company or its shareholders;
- 2) enter into agreements concerning securities and cash receivables maturing in up to one year, with:
 - a) members of the governing bodies of the investment fund management company,

- b) employees of the investment fund management company,
 - c) persons designated by the depositary to perform the responsibilities specified in the agreement on the maintenance of a register of the fund's assets,
 - d) spouses of the persons enumerated in Article 107.2.2a-c,
 - e) persons related through blood or marriage, up to the second degree, to the persons enumerated in Article 107.2.2a-c;
- 3) conclude agreements concerning securities and property rights with:
- a) the investment fund management company,
 - b) the depositary,
 - c) the parent entity or a subsidiary of the investment fund management company or the depositary,
 - d) shareholders of the investment fund management company,
 - e) shareholders of the parent entity or a subsidiary of the investment fund management company or the depositary.
3. The limits referred to in Article 107.2.1 and 107.2.3 shall not apply to securities issued by the State Treasury or the National Bank of Poland.
4. The limits referred to in Article 107.2.3 d-e shall not apply if the entities referred to therein are public companies, and the agreement is concluded with a shareholder holding less than 5 per cent of the total vote at the general shareholders meeting.
5. An investment fund may make investments referred to in Article 107.2.1 or enter into the agreement referred to in Article 107.2.2 and 107.2.3, if the interests of the unit-holders require making such investment or entering into such agreements, and the fact of making such investments or entering into such agreements will not result in a conflict of interests.
6. A fund should keep documents evidencing compliance with the conditions referred to in Article 107.5, in particular relating to the rules for the determination of the price and other material terms and conditions of the transaction.";
- 15) Article 145.9 shall read as follows:
- "9. The provisions of Article 107.2-6 shall apply to investments of closed-end investment funds.";
- 16) Article 220.1 shall read as follows:
- "1. The prospectus of an open-end investment fund and a specialised open-end investment fund should contain the articles of association of the fund, a statement by a qualified auditor of financial statements to the effect that the methods and rules applied in the valuation of the fund's assets described in the prospectus, are compliant with the regulations on the accountancy of investment funds and that the rules are complete and consistent with the investment policy adopted by the fund, and in the event of any changes in the methods and principles used in the valuation of the fund's assets, including changes resulting from a change in the fund's investment policy, also an appropriate statement relating to the introduced changes and any information which may be required to assess the investment risk.";

17) in Article 226:

a) Article 226.2 and 226.3 shall be deleted,

b) Article 101.4 shall read as follows:

“4. The provisions on the audit and explanatory proceedings referred to in the Act on Capital Market Supervision shall apply to the audit or explanatory proceedings carried out with respect to the entities referred to in Article 226.1.”;

18) in Article 228:

a) Article 228.2 shall read as follows:

“2. The Authority may impose the sanctions referred to in Article 228.1 on the investment fund management company, if it finds that an investment fund violates the provisions regulating the activities of investment funds, the provisions of the Act on Capital Market Supervision, the Act on Public Offerings or the Act on Trading in Financial Instruments, does not comply with the provisions of its articles of association or the terms and conditions of the authorisation, and also if the fund’s articles of association contain provisions which are in conflict with the provisions of this Act or fail to give due regard to the interests of unit-holders.”,

b) Article 45.2a shall be added to read as follows:

"2a. The Authority may order the fund to amend its articles of association by the deadline specified by the Authority, if the fund’s articles of association contain provisions which are in conflict with the provisions of this Act or fail to give due regard to the interests of unit-holders.”;

19) Article 230.1 shall read as follows:

“1. In justified cases, the Authority may order an investment fund to replace the persons referred to in Article 58.1.4, 58.1.6 and 58.1.15, specifying the timeframe for doing so, which shall not be shorter than 14 days.”;

20) Article 235 shall be deleted;

21) in Article 236:

a) Article 236.1 shall read as follows:

“1. The Authority’s authorisation or approval referred to in Article 80, Article 93.2 and 93.3 shall be subject to a fee of up to the zloty equivalent of EUR 4,500, calculated at the mid-exchange rate quoted by the National Bank of Poland.”,

b) Article 236.3 shall read as follows:

"3. The application and distribution of proceeds from the fees referred to in Article 236.1 and 236.2, as well as determination of the amount, the manner of charging and the payment thereof, shall be performed in accordance with the procedure and on the terms and conditions stipulated in Article 17 of the Act on Capital Market Supervision of 29 July 2005.”,

c) Article 236.4 shall be deleted;

22) Article 237 shall be deleted;

23) in Article 263.2:

a) Article 263.2.1 and 263.2.2 shall read as follows:

“1) company name, registered office and address of the fund and its management company;

- 2) first name and surname or company name, place of residence or registered office and address in the Republic of Poland of the fund's representative;”,
- b) Article 263.2.4 shall be added to read as follows:
- “4) if the fund operates as an umbrella fund – the names of all sub-funds connected with the units which may be sold in the Republic of Poland.”;
- 24) Article 270.3 shall read as follows:
- “3. The Authority may, within two months from the date of receipt of the information referred to in Article 270.1, specify the terms and conditions to be followed by a branch in its operations in the Republic of Poland, including:
- 1) the rules governing sale of units;
 - 2) the rules governing advertising activities;
 - 3) the rules of conduct which must be followed in the provision of services consisting in the discretionary management of securities portfolios, advisory services in the area of securities trading, or depository and administrative services with respect to units.”;
- 25) Article 271.3 shall read as follows:
- “3. Within one month from receiving the information referred to in Article 271.1, the Authority may specify the terms and conditions to be followed by the management company, including the rules of conduct which must be followed in the provision of services consisting in the discretionary management of securities portfolios, advisory services in the area of securities trading, or depository and administrative services with respect to units in the Republic of Poland.”;
- 26) in Article 278.2:
- a) Article 278.2.1 and 278.2.2 shall read as follows:
- “1) company name, registered office and address of the fund and its management company;
 - 2) first name and surname or company name, place of residence or registered office and address in the Republic of Poland of the fund's representative;”,
- b) Article 278.2.4 shall be added to read as follows:
- “4) if the fund operates as an umbrella fund – the names of all sub-funds connected with units which may be sold in the Republic of Poland.”;
- 27) Article 280.1.3 and 280.1.4 shall be deleted;
- 28) Article 282.3.4 shall read as follows:
- “4) by the Authority or its authorised representative:
- a) to the public, to the extent related, subject to Article 282.3.4b, to the content of adopted resolutions and decisions, also in individual cases, which serve as a basis for administrative decisions – if the Authority has found the provision of such information justified in view of the interests of the holders of units or investment certificates of investment funds or collective securities portfolios,
 - b) to the public, through a news agency referred to in Article 58 of the Act on Public Offerings, on a suspicion of an offence connected with the activities of an investment fund – if required to ensure the protection of investors against incurring financial losses on the securities or

commodity market.”;

- 29) Article 283 shall be deleted;
- 30) Article 297 shall be deleted.

Chapter 7

Transitional and Final Provisions

Article 53.

1. The Chairman of the Authority appointed prior to the effective date hereof shall hold the post until the expiry of his term of office.
2. Appointment of the Chairman of the Authority in accordance with the rules provided for herein shall be effected upon expiry of the term of office referred to in Article 53.1.

Article 54.

To the extent provided for in Article 20.2 and Article 23.2, the agreements referred to in Article 161.3 and 161.4 of the Act on Public Trading in Securities of 21 August 1997 (Journal of Laws of 2005 No. 111, item 937, No. 132, item 1108, No. 143, item 1199, and No. 163, item 1362), concluded by the Authority prior to the effective date hereof, shall continue to be valid.

Article 55.

1. The minister competent for financial institutions shall define by way of a regulation:
 - 1) the technical means to be used by the supervised entities to provide information as part of their disclosure and reporting obligations specified in the acts referred to in Article 2.1-4 or secondary legislation issued thereunder,
 - 2) the technical conditions for the provision of information by such means,
 - taking into account the need to enable such entities to duly perform their obligations and to differentiate the methods of provision of information depending on the type of such entities, without increasing materially the costs of their participation in the capital market.
2. The supervised entities which did not perform the disclosure and reporting obligations in the manner specified by the regulations issued under Article 81.8 of the act referred to in Article 54 prior to the effective date hereof, shall perform their obligations in the manner specified in Article 55.1, after the lapse of six months from the effective date hereof.

Article 56.

1. Until the effective date of the secondary legislation issued under the authorisations provided for in this Act, within the scope defined herein, the existing regulations issued under:
 - 1) Article 19d, Article 20.4 and Article 81.8 of the Act referred to in Article 54,
 - 2) Article 236.4 of the Act on Investment Funds,

- 3) Article 26.3 of the Commodity Exchange Act,
 - shall continue to be effective, however for no longer than six months from the effective date hereof.
2. If the applicable regulations, within the scope defined herein, refer to specific provisions of the act referred to in Article 54, or refer generally to the provisions thereof, the applicable provisions hereof shall apply.

Article 57.

1. To the extent not covered by the regulations issued under Article 20.4 of the act referred to in Article 54, the obligation to pay the registration fee referred to in the Act on Public Offerings and the fees for the licences, authorisations and approvals granted under the Act on Trading in Financial Instruments and the Act on Public Offerings shall take effect as of the effective date of the regulations issued under Article 17.6 hereof.
2. The fees for the licences, authorisations and approvals granted under the Act on Trading in Financial Instruments and the Act on Public Offerings, due in respect of applications submitted prior to the effective date hereof, shall be paid in accordance with the provisions hereof.

Article 58.

The Act shall become effective after 30 days from the date of promulgation.