

**Mr. Mario Nava**

Director

*Directorate G – Financial Services Policy and Financial Markets*

DG Internal Market and Services

European Commission

Avenue Cortenbergh 107, 3/28

Brussels 1049

BELGIUM

Warsaw, .... of June, 2008

## **COMPLIANCE OF POLISH MORTGAGE BONDS**

### **WITH UCITS 22 (4)**

Dear Mr. Nava,

#### **Request to disclose information on the Commission's website**

Pursuant to Article 22(4) of *Directive 2001/108/EC of the European Parliament and of the Council of 21 January 2002 amending Council Directive 85/611/EEC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), with regard to investments of UCITS:*

“Member States may raise the 5 % limit laid down in the first sentence of paragraph 1 to a maximum of 25 % in the case of certain bonds when these are issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bondholders. In particular, sums deriving from the issue of these bonds must be invested in conformity with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attaching to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

When a UCITS invests more than 5 % of its assets in the bonds referred to in the first subparagraph and issued by one issuer, the total value of these investments may not exceed 80 % of the value of the assets of the UCITS.

The Member States shall send the Commission a list of the aforementioned categories of bonds together with the categories of issuers authorised, in accordance with the laws and supervisory arrangements mentioned in the first subparagraph, to issue bonds complying with the criteria set out above. A notice specifying the status of the guarantees offered shall be attached to these lists. The Commission shall immediately forward that information to the other Member States together with any comments which it considers appropriate, and shall make the information available to the public. Such communications may be the subject of exchanges of views within the Contact Committee in accordance with the procedure laid down in Article 53(4).”

Due to the fact that Polish mortgage bonds („List zastawny”) are not reported to the Commission in accordance with Article 22(4) of the Directive 2001/108/EC, we believe that competition on the internal market is seriously distorted.

Since Polish mortgage bonds issued by Polish mortgage banks share the same characteristics of the bonds displayed on the EC website, we kindly request you to disclose the attached information on the website.

## **Legal background**

Article 22(4) of the UCITS allows Member States to raise investment limits for harmonised investment funds regarding their investment in certain bonds which meet the following criteria.

Such bonds should be issued by a credit institution which has its registered office in a Member State and is subject by law to special public supervision designed to protect bondholders. In particular, sums deriving from the issue of these bonds must be invested in conformity with the law in assets which, during the whole period of validity of the bonds, are capable of covering claims attached to the bonds and which, in the event of failure of the issuer, would be used on a priority basis for the reimbursement of the principal and payment of the accrued interest.

Polish mortgage bonds do fulfil the above criteria and belong to the asset-class characterised above, as outlined below.

There is special legislation in force on mortgage banks and mortgage bonds in Poland. Act on mortgage bonds and mortgage banks of August 29, 1997; Journal of Laws no. 99, item 919 (List Zastawny Act – hereafter: LZ Act) contains the specific rules applicable to mortgage banks and mortgage bonds. The denomination “list zastawny” is reserved only for the securities issued on the basis of the LZ Act (Article 37 of the LZ Act).

Mortgage banks are specialised credit institutions in Poland, established according to the Banking Act of August 29, 1997 (standardized text, Journal of Laws no. 72, item 665, as amended). A mortgage bank may only engage in the activities specified in the Act on mortgage bonds and mortgage acts- core operations (Article 12 of the LZ Act) and additional operations (Article 15 of the LZ Act). Permit for conducting the Bank’s activities is issued on the basis of Decision of the Chairman of the Commission for Banking Supervision.

The public supervision over the activity of the mortgage banks and over the issuance of the mortgage bonds is executed – according to the Banking Law and the Act of the National Bank of Poland – by the Banking Supervision Commission. Additionally, according to the art. 31 LZ Act, the trustee performs an ongoing control of the appropriateness of the management of the mortgage cover register. The trustee shall be appointed by the Banking Supervisory Commission.

The funds from the covered bonds must be – according to the Article 18 of the LZ Act - allocated in the mortgage credits or the loans granted to the public institutions, which on every time fully secure the sum of the principal amount of and the interest on its outstanding mortgage bonds. All “listy zastawne” must be fully secured by cover assets. There are two specific classes of the “listy zastawne” (covered bonds): *hipoteczne listy zastawne* (mortgage covered bonds) and *publiczne listy zastawne* (public covered bonds); registered in two separate cover registers.

In case of bankruptcy of a mortgage bank (there is special chapter concerning bankruptcy of mortgage bank in the new Bankruptcy Act - *Art. 442 – Art.450* - Bankruptcy and Reorganisation Law of 28<sup>th</sup> February 2003), the receivables entered into the mortgage cover register form a separate pool of assets primarily for satisfying the claims of mortgage bond creditors. The opening of bankruptcy proceedings does not mean that all mortgage covered bonds are declared due. Moreover, they maintain their maturities.

In case of a bankruptcy of a mortgage bank a separated bankruptcy estate which covers mortgage covered bonds can be sold to another mortgage bank. The selling of a separated bankruptcy estate doesn't require the consent of creditors (Art. 447.3 of the Bankruptcy Law)

The rights of covered bond holders in case of bankruptcy of a mortgage bank are represented by a curator (Art. 443). The curator is responsible for satisfying the priority rights of covered bonds holders, also in case of selling the separated bankruptcy estate to another mortgage bank (Art. 447 of the Bankruptcy Law).

Additionally Article 36 of the LZ Act stipulates that funds obtained from the receivables entered in the mortgage cover register, may be used exclusively for satisfying claims from mortgage bonds.

There are three mortgage banks issuing mortgage bonds on the market:

- BPH Bank Hipoteczny S.A.
- BRE Bank Hipoteczny S.A.
- ING Bank Hipoteczny S.A.
- 

Additional information can be obtained from Polish Financial Supervision Authority:

Komisja Nadzoru Finansowego / Polish Financial Supervision Authority

Plac Powstańców Warszawy 1

00-950 Warszawa

Tel.(48 22)33 26 600

Fax. (48 22)33 26 793 (602)

E-mail: [knf@knf.gov.pl](mailto:knf@knf.gov.pl)

Should you have any further questions concerning the above, please do not hesitate to contact me or my colleagues.