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Audit Report

ACTIVITY OF STATE AUTHORITIES AND INSTITUTIONS, AND ENTITIES ORGANISING THE FINANCIAL MARKET IN RELATION TO GETBACK SA COMPANY, THE ENTITIES OFFERING ITS SECURITIES, AND ITS AUDITORS

DEPARTMENT OF BUDGET AND FINANCE

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Audit Report on
Activity of state authorities and institutions, and entities organising the financial market in relation to Getback SA company, the entities offering its securities, and its auditors

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TABLE OF CONTENTS

LIST OF ABBREVIATIONS, ACRONYMS AND TERMS **4**

1. INTRODUCTION **10**

2. GENERAL ASSESSMENT **12**

3. SUMMARY OF AUDIT RESULTS **15**

4. PROPOSALS **28**

List of abbreviations, acronyms and terms

AFI	Agent of Investment Firm (Polish: *agent firmy inwestycyjnej*) – an entity which, upon registration by the Polish Financial Supervision Authority and entering into written contract with the investment firm, is authorised to conduct regulated business activity consisting in the provision of intermediary services, permanently or from time to time, on behalf and for the account of the investment firm, to the extent of the business conducted by that investment firm; the Trading in Financial Instruments Act allows AFI to operate for the benefit of one investment firm only; if the AFI brings loss or damage while acting on behalf and for the benefit of the investment firm, the investment firm and the agent who has brought the loss or damage are liable jointly and severally. Liability is excluded where the loss or damage has occurred due to force majeure, or due to the fault of a third party
Share	a security representing a fraction of the share capital of a joint-stock company; holding a share is a formal evidence of the holder's (shareholder's) participation in a joint-stock company
ATS	Alternative Trading System - multilateral system operating in addition to the regulated market, matching buy and sell offers in such a way that transactions are entered into within the framework of that system in accordance with specific rules and in a non-discretionary way; trading in financial instruments with ATS in the territory of Poland is organised by GPW (NewConnect) and BondSpot S.A. (a segment of the Catalyst system)
BFG	Bank Guarantee Fund (Polish: *Bankowy Fundusz Gwarancyjny*) – a legal person operating under the Act of 10 June 2016 on the Bank Guarantee Fund, system of deposit guarantees, and compulsory restructuring (Journal of Laws of 2019, item 795, as amended); it guarantees deposits in banks and credit unions and is responsible for carrying out compulsory restructuring of banks and credit unions being at risk of bankruptcy
Account block	temporary preclusion of use and disposal of all or some property collected on the account, including also by the obligated institution
Catalyst	system for the authorisation of and trading in financial instruments, operated on GPW's transactional platforms (for retail customers – on the regulated market and ASO) and BondSpot S.A. (for wholesale customers – in the formula of over-the-counter regulated market and ATS)
Depositary of investment fund	entity (domestic bank or National Depository of Securities - KDPW) which carries out the duties mentioned in the Investment Fund Act, in particular consisting in the safe-keeping of assets and keeping a register of the assets of an investment fund or alternative investment firm, as well as ensuring adequate monitoring of the cash flows of those entities
MiFID I	Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (OJ L 145, 30.4.2004, p. 1, as amended)
MiFID II	Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349, as amended)
Brokerage business	carrying out activities consisting in, eg, accepting and transferring financial instrument buy or sell instructions, providing investment advice, offering financial instruments
Securities issue	a process consisting in the creation and sale of securities; the object of issue may be, eg, shares of bonds
Issuer	an entity issuing securities

Investment firm	brokerage house, bank operating brokerage business, foreign investment firm operating brokerage business in the territory of the Republic of Poland, or a foreign legal person with its principal place of business in the territory of a non-Member State country, operating brokerage business in the territory of the Republic of Poland
Securitisation fund	a special type of closed-end investment fund which accumulates funds through the issue of investment certificates for the acquisition of debt collection claims or rights derived from debt collection claims, and then carries out the collection of the acquired claims or rights attaching to these claims, or trades in the same, for profit
GIIF	Inspector-General of Financial Information (Polish: *Generalny Inspektor Informacji Finansowej*)
WSE or Stock Exchange	Warsaw Stock Exchange (*Giełda Papierów Wartościowych w Warszawie S.A.*)
Financial instruments	securities, including derivative instruments transferring credit risks, contracts for differences, money market instruments
Obligated institutions	entities listed in Article 2(1) of the Anti-Money Laundering Act
Cooperating organisations	central- and local-government administration authorities, and other State organisations, as well as the National Bank of Poland, Polish Financial Supervision Authority and Supreme Audit Office (Article 2(2)(8) of the Anti-Money Laundering Act)
Public-interest entities, or PIEs	entities as defined in Regulation 537/2014, including, among others, issuers of securities admitted to trading on a regulated market of an EU Member State, having their registered office in the territory of the Republic of Poland, whose financial statements are subject to statutory audit; domestic banks, branches of credit institutions and branches of foreign banks; open-ended investment funds and public closed-end investment funds
KDPW	Central Securities Depository of Poland (*Krajowy Depozyt Papierów Wartościowych S.A.*) whose responsibilities include, among others, management of securities depository, ensuring proper operation of the obligatory compensation system mentioned in Article 133(1) of the Trading in Financial Instruments Act
KIBR	National Chamber of Statutory Auditors (Polish: *Krajowa Izba Biegłych Rewidentów*) – renamed Polish Chamber of Statutory Auditors (PIBR) on 21 June 2017
KKN	National Supervision Commission (Polish: *Krajowa Komisja Nadzoru*) – a PIBR body whose responsibility is to supervise the observance of the law, procedures and standards by statutory auditors and audit firms in audits of statutory organisations other than public-interest entities, and in provision of services covered by national professional standards, other than statutory audits
Civil Code or CC	'Civil Code' Act of 23 April 1964 – (Journal of Laws of 2019, item 1145, as amended)
Criminal Code	'Criminal Code' Act of 6 June 1997 (Journal of Laws of 2019, item 1950, as amended)
Code of Civil Procedure, or CCP	'Code of Civil Procedure' Act of 17 November 1964 (Journal of Laws 2019, item 1460, as amended)

Code of Criminal Procedure	'Code of Criminal Procedure' Act of 6 June 1997 (Journal of Laws of 2018, item 1987, as amended)
KNA	Audit Supervision Commission (Polish: *Komisja Nadzoru Audytowego*)
KNF	Polish Financial Supervision Authority (Polish: *Komisja Nadzoru Finansowego*)
Consumer	natural person entering into a legal transaction with an economic operator, unrelated directly to her business or professional activity (Article 22 CC)
Customs and fiscal inspection	an inspection targeted specifically against fiscal and customs offences, VAT fraud, VAT criminal schemes, organised fiscal and customs crime. Customs and fiscal inspections are conducted by regional Customs & Fiscal Authorities
List of the KNF's public warnings	a website where the KNF publishes notices that information has been laid of suspected offences mentioned in Article 6b(1) of the Financial Market Supervision Act (Polish: *ustawa o nadzorze nad rynkiem finansowym*), including the offence defined in Article 178 of the Trading in Financial Instruments Act
Minister of Finance	the minister in charge of the national budget, public finance and financial institutions, including, from 28 September 2016 to 9 January 2018, the Minister of Development and Finance, and from 29 September to 8 November 2019, the Minister of Finance, Development and Investment
Misselling	proposing to consumers financial services which do not meet the needs of those consumers, which needs are identifiable based on information available to the economic operator in view of the features of those consumers, or proposing a purchase of financial services in a way which is inadequate for the nature of those services
NewConnect	organised stock market managed by GPW outside of the regulated market in the ATS formula; it is characterised by more lenient requirements for the issuers as compared to the GPW's primary market, is dedicated to new or young companies with relatively low expected capitalisation, often in 'new technologies' sectors or sectors based on non-tangible assets; due to the specific features of the market, investing in the shares of the companies listed on that market involves higher risks
Inadmissible contractual term or abusive clause	a provision of a contract between an economic operator and a consumer which is not individually agreed, shaping the rights and obligations of the consumer contrary to the accepted practice, and in gross violation of her interests (Article 385^1 CC)
NS FIZ	Non-Standardised Securitisation Closed-End Investment Fund
Bond	a security issued in a series, certifying that the issuer (eg, State Treasury, municipality, joint-stock company) owes money to the bondholder and undertakes to deliver a specific consideration (eg, pay interest and redeem the bonds)
Corporate bonds	bonds issued by economic operators (including joint-stock companies)
Subordinated bond	a bond which provides for the deferment or even suspension of payment of interest and of the redemption of bonds; in the event of liquidation or bankruptcy of the issuer – bondholders' claims are satisfied last, following all other creditors of the issuer – if any funds have been left
Bondholder	a creditor who may demand that a consideration promised under the terms of the bonds held by her is delivered
Organised trading	trading in securities or other financial instruments in the territory of Poland on a regulated market or on ASO
Private placement	making available to a maximum of 149 individuals information about securities and terms of their acquisition, sufficient for decision-making on the acquisition of those securities; it does not require that a complete, formalised information document is compiled (prospectus or information memorandum)

Public offering	making available to 150 or more individuals, or to unspecified addressees, in any form and by any means, information about securities and terms of their acquisition, sufficient for decision-making on the acquisition of those securities; it requires, as a rule, a prospectus that is publicly available
Securities	shares, bonds, subscription warrants, depositary receipts, mortgage bonds, investment certificates and other negotiable instruments
PIBR	Polish Chamber of Statutory Auditors (Polish: *Polska Izba Biegłych Rewidentów*); a self-government of statutory auditors in Poland, having its own legal personality
Private equity	a type of equity investment being an external source of funding for companies not admitted to public trading; the investor, usually being a fund that manages third-party assets, is usually interested in long-term increase in company value to realise profit when the shares are sold in the future
Prospectus	an informative document approved by the KNF, which should provide true, fair and complete information about the issuer and the securities to be offered in public offering or admitted to trading on a regulated market, important for the assessment of the business, finances and assets as well as development prospects of the issuer, and addressing the rights and obligations involved in those securities; the information provided in the prospectus should be presented in a language comprehensible for the investors and in such a way as to enable them to assess the situation of those entities
RF or Ombudsman	Financial Ombudsman (Polish: *Rzecznik Finansowy*)
MAR	Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1, as amended)
MiFIR	Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84, as amended)
Regulation 537/2014	Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158, 27.5.2014, p. 77, as amended)
Regulation 809/2004	Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ L 149, 30.4.2004, p. 1, as amended) – regulation repealed as of 21 July 2019;
Capital market	market for securities and other financial instruments, market for services provided by investment funds and other mutual investment vehicles, a commodity market, and spot market for two-day contracts

Regulated market	continuous transactional system for financial instruments admitted to trading, providing investors simultaneously with common and equal access to market information when matching buy and sell offers for financial instruments, and the same terms for buying and selling these instruments, organised and subject to oversight of the competent authority, and notified to the European Commission as a regulated market. GPW and BondSpot S.A. are authorised to operate regulated markets in Poland
Court of Competition and Consumer Protection, or SOKiK	XVII Division of the Regional Court in Warsaw, competent for examining by judicial procedure, among others, appeals and complaints against decisions and orders of the President of the Office of Competition and Consumer Protection, as well as claims against inadmissible clauses of template contracts, brought before the SOKiK until 16 April 2016
Securitisation	off-balance-sheet method for the acquisition of equity by securities issue (eg, bonds, investment certificates) secured by selected assets, in particular by packages of debt collection claims
Company	GetBack S.A., since 9 May 2018 'GetBack S.A. in restructuring'
Public company	a company with at least one share dematerialised
TFI	fund management company (Polish: *towarzystwo funduszy inwestycyjnych*)
UOKiK	Office of Competition and Consumer Protection (Polish: *Urząd Ochrony Konkurencji i Konsumentów*)
UKNF	Office of the Polish Financial Supervision Authority (Polish: *Urząd Komisji Nadzoru Finansowego*)
Statutory Auditors Act	Act of 11 May 2017 on statutory auditors, audit firms and public oversight (Journal of Laws of 2019, item 1421, as amended)
Investment Fund Act	Act of 27 May 2004 on investment funds and management of alternative investment funds (Journal of Laws of 2018, item 1355, as amended)
Capital Market Supervision Act	Act of 29 July 2005 on the supervision of the capital market (Journal of Laws of 2019, item 1871, as amended)
Financial Market Supervision Act	Act of 21 July 2006 on the supervision of the financial market (Journal of Laws of 2019, item 298, as amended)
NIK Act	Act of 23 December 1994 on the Supreme Audit Office (Journal of Laws of 2019, item 489, as amended)
Bonds Act	Act of 15 January 2015 on bonds (Journal of Laws 2018, item 483, as amended)
Trading in Financial Instruments Act	Act of 29 July 2005 on trading in financial instruments (Journal of Laws 2018, item 2286, as amended)
Competition and Consumer Protection Act, or CCPA	Act of 16 February 2007 on the protection of competition and consumers (Journal of Laws of 2019, item 369, as amended)
Public Offering Act	Act of 29 July 2005 on public offering, requirements for the introduction of financial instruments to organised trading, and public companies (Journal of Laws of 2019, item 623, as amended)

Combating Unfair Trading Practices Act, or CUTPA	Act of 23 August 2007 on combating unfair trading practices (Journal of Laws of 2017, item 2070)
Anti-Money Laundering Act	Act of 1 March 2018 counteracting money laundering and terrorism financing (Journal of Laws of 2019, item 1115, as amended)
Accounting Act	Act of 29 September 1994 on accounting (Journal of Laws of 2019, item 351, as amended)
Financial Ombudsman Act, or FOA	Act of 5 August 2015 on the examination of complaints by entities of the financial market and on the Financial Ombudsman (Journal of Laws of 2019 item 2279)
'Banking Law' Act	'Banking Law' Act of 29 August 1997 (Journal of Laws of 2019, item 2357)
Dematerialised securities	securities without tangible form (such as on paper), existing as electronic records in appropriate registers

1. INTRODUCTION

Question defining the main purpose of the audit

Were the activities of the national bodies, institutions and entities that organise the financial market towards GetBack SA, the entities offering its securities, and auditing it legal, diligent, effective and adequate for ensuring the protection of non-professional market participants?

Questions defining detailed purposes of the audit

1. Were the activities of the auditees towards GetBack SA legal and diligent and did they effectively ensure the protection of investors acquiring securities of GetBack SA?
2. Were the activities of the auditees towards the entities which offered and distributed securities of GetBack SA legal and diligent, and did they effectively protect investors against abuse?
3. Did the institutions supervising the entities which audited GetBack SA perform their responsibilities adequately to their mandate, diligently and effectively?

Auditees

- Office of the Polish Financial Supervision Authority
- Warsaw Stock Exchange
- Office of Competition and Consumer Protection
- Financial Ombudsman
- Ministry of Finance
- Audit Supervision Commission

On 17 July 2018, the President of the Council of Ministers, pursuant to Article 6 of the NIK Act, requested the President of the Supreme Audit Office to conduct an adequacy audit of the measures taken by the Polish Financial Supervision Authority towards GetBack SA and the entities which offered its bonds in terms of ensuring correct operation of the financial market and protection of legitimate interest of its non-professional participants.

The analysis of press releases as well as complaints and signals from non-professional participants of the financial market received by the NIK have shown that some buyers of GetBack SA bonds were unaware that they have taken significant risks involved in those instruments, resulting from the Company's aggressive business model. Cases have been described of bond buyers being misled in offering those securities. GetBack SA's bonds, being corporate debt instruments, were depicted as a product that is safer than bank deposits guaranteed by the Bank Guarantee Fund. They were claimed to ensure high interest return and protection of the principal amount at the same time. Those offering bonds put pressure on potential buyers, emphasising the unique nature of the product and suggesting the need to decide quickly. They transferred personal details of their customers, protected by brokerage confidentiality rules, without consent. Also, cases were documented of bank employees signing bond acquisition contracts for their customers without their consent or authorisation.

According to the NIK, in such circumstances it has been reasonable to comprehensively audit the effectiveness of not only the Polish Financial Supervision Authority, but also of a number of institutions required to ensure correct operation of the financial market and protect the rights of its participants.

The audit ref. P/18/112 titled, *Activity of state authorities and institutions, and entities organising the financial market in relation to Getback SA company, the entities offering its securities, and its auditors* was included in the Supreme Audit Office's work schedule for 2018 by resolution of the NIK College of 25 July 2018 amending the Work Schedule of the Supreme Audit Office for 2018. In addition to the Office of the Polish Financial Supervision Authority, the audit covered Warsaw Stock Exchange (Giełda Papierów Wartościowych w Warszawie S.A.), Office of Competition and Consumer Protection, Office of the Financial Ombudsman, Ministry of Finance, and the Audit Supervision Commission.

Until March 2018, GetBack SA was one of the fastest growing companies in the financial sector and a major actor on the debt collection market. In July 2017, the shares of the Company were publicly listed on Warsaw Stock Exchange. On 16 April 2018, the trading in GetBack SA's shares and bonds was suspended, and investors were unable to recover their funds. On 2 May 2018, GetBack SA applied to the District Court in Wrocław-Fabryczna for opening a restructuring procedure in the form of speeded-up composition procedure. On 22 January 2019, the Company Creditors' Committee voted for a composition agreement under which unsecured claims were to be repaid only in part, at one-fourth of their nominal value, in 16 instalments

Period audited:
Office of the Polish Financial Supervision Authority, Warsaw Stock Exchange, Office of Competition and Consumer Protection – 2012-2018,

Ministry of Finance – 2015-2018,

Office of the Financial Ombudsman – 11 October 2015-2018,

Audit Supervision Commission – 2017-2018

spread over eight years. On 6 June 2019, the Court approved that composition proposal. The number of bondholders who will not recover their funds is estimated at more than 9000 individuals. Also the buyers of other financial instruments based on GetBack SA's shares or bonds, including investment fund certificates, were harmed.

2. GENERAL ASSESSMENT

Since GetBack SA's liquidity problems were brought to light in April 2018, governmental institutions failed to ensure effective protection to non-professional participants of the financial market against the risks arising out of unlawful activities of GetBack SA and the entities offering and distributing its securities. At the time, their activities were inadequate to the nature and scale of actual risks, and not fully diligent. **Only after the Company had ceased to pay its liabilities,** the auditees took intensive and effective measures aimed at identification of the types and scale of breach by the above-mentioned financial market entities and auditors of the Company's financial statements. The outcome should be helpful in the recovery of claims by those harmed, unless prevented by strict regulations on legally protected secrets.

In particular, the Supreme Audit Office has assessed in negative terms the effectiveness of the **Polish Financial Supervision Authority** in meeting the purpose of its supervision, defined in Article 2 of the Financial Market Supervision Act, being to ensure proper operation of the financial market, its stability, safety, transparency and trust placed in it, and the protection of the participants of that market. This is based on the fact that the Polish Financial Supervision Authority and its Office failed to detect in proper advance irregularities in the supervised business of GetBack SA,[1] and in the process of the offering and sale of the Company's securities,[2] despite that they had supervisory authority both towards GetBack SA and securitisation funds whose claims were managed by the Company, fund management companies representing these funds, as well as other entities offering and selling the Company's securities. The NIK is of opinion that ineffectiveness of the supervisory body was caused by a limited scale of supervisory activities taken within the mandate available to it.[3] However, detection of risks for the safety of trading in the Company's securities was made more difficult by the fact that the supervisory authority did not have legal basis for auditing the Company's activities in full scope.[4]

The Supreme Audit Office considers that the measures taken by the supervisory authority after GetBack SA's liquidity problems were brought to light in April 2018 were reasonable, adequate to a large extent, and served the delivery of the statutory purpose of supervision. High commitment of the UKNF to supervisory activities allowed it to identify violations of the law by GetBack SA, entities of the financial market required to supervise the Company, and offering and selling its securities. Nevertheless, the NIK has concluded that some measures were not

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1 The irregularities consisted, in particular, in valuation of the funds managed by GetBack SA for the purpose of consolidated statements of GetBack SA Group in breach of regulations, conducting transactions with packages of debt collection claims that artificially inflated the Company's value, incorrect recognition in the Company's balance sheet of the value of a debt collection company acquired by the Company, breach of information requirements for a public company.

2 The irregularities consisted, in particular, in unlawful offering of bonds by Idea Bank S.A. and cooperation of Polski Dom Maklerski S.A. with that entity, brokerage business conducted by other intermediaries offering GetBack SA's bonds without licence.

3 In particular, until 2018, the UKNF failed to audit GetBack SA, did not effectively supervise the fund management companies which entrusted GetBack SA with the management of the debt collection claims of securitisation funds or depositary banks responsible for controlling the correctness of cash flows in the funds.

4 The inspection was limited to the compliance of the management of debt collection claims of securitisation funds with the law and internal regulations of the Company. The KNF was not authorised to review the business model of the Company or its business on its own account outside of the investment-fund formula.

carried out fully diligently.[5] The supervisory mandate of the KNF and **Warsaw Stock Exchange** over the admission of GetBack SA's securities to trading on a regulated market was legally limited to formal legal verification of the documents submitted by the issuer and did not include the assessment of the risk involved in the adopted business model, which – in the case of GetBack SA – was aggressive. In approving the prospectus, the KNF did not inform about the above-mentioned limitation of its supervision mandate. Such information was, however, provided by the WSE. The Management Board of Warsaw Stock Exchange admitted GetBack SA to trading on the stock market in accordance with the applicable regulations. Nevertheless, the NIK found that there was no actual oversight of how the opinion on the admission of GetBack SA's bonds and shares to trading on the primary stock market was prepared for the Stock Exchange's Management Board. That opinion has significantly understated the debt of GetBack SA Group. However, the Management Board of the Stock Exchange considered that it had no impact on the assessment of credibility of the Company. The Stock Exchange strengthened this credibility by awarding the Company for its optimal use of WSE markets despite that it has received whistle-blower information about irregularities in the Company's business that put into question the correctness of its valuation.

Consumer protection activities of the **Office of Competition and Consumer Protection** against inadequate practices of GetBack SA in collection business[6] and the effects of inadequate practices of entities offering and distributing the Company's securities, in particular after its liquidity problems were brought to light, were reasonable and have had major effect on the elimination of those practices and providing support to the individuals harmed in pursuing their claims. However, some of these activities were protracted and incomplete, which limited their effectiveness. In particular, the UOKiK President unreasonably refrained from issuing an interim decision ordering GetBack SA to cease debt collection practices that compromised collective interests of consumers. He also failed to see such risks for consumers in whistle-blower's information received in December 2017 suggesting a pyramid scheme in the Company's business.

The **Financial Ombudsman** was taking, without undue delay, measures in response to support requests submitted by holders of GetBack SA's securities distributed through financial-market entities. However, the interventions of the Ombudsman in the audited period were protracted in most cases due to his limited mandate defined in the FOA, incomplete exercise of the powers he held,[7] and lack of cooperation from entities of the financial market (due to which the Ombudsman had to send multiple ineffective requests for explanations or materials). Except in one case, the Ombudsman was also ineffective in the accomplishment of the legal purpose of the Ombudsman, ie, determination of whether or not customer's rights and interest have been compromised due to action or inaction of a financial-market entity

[5] The NIK considered it inadequate, in particular, that no administrative proceeding was initiated against one of the TFIs, failure to inform the Public Prosecution Office of suspected offence by another TFI, failure to inform the KNA and PIBR about irregularities in the activity of statutory auditors who audited the financial statements of the supervised entities.

[6] These practices included, in particular, collection by the Company of non-existent debt, harassing the consumers, difficult contact of debtors with the collection agent.

[7] In particular, the Financial Ombudsman was slow in obtaining inspection materials from the Office of the Polish Financial Supervision Authority presenting the mechanism of irregularities in selling GetBack SA's bonds.

or achieving the recovery of the funds invested in bonds, which was expected by the bondholders.[8]

The activities of the **Minister of Finance** consisted, in particular, in submitting to sessions of the Council of Ministers draft pieces of legislation governing the operation of the financial market and auditing. The NIK considers that one aspect which reduced the Minister's effectiveness were delays in the implementation of two EU Directives in these areas. In particular, the implementation of MiFID II 108 days past due time delayed the entry into force of additional regulations which would enhance the protection of market participants acquiring GetBack SA's bonds.

After the Polish Financial Supervision Authority published a notice of suspension of trading in all financial instruments issued by GetBack SA, the Ministry of Finance started working on legislative amendments to systemically strengthen the supervision of the financial market and consumer protection. The adopted regulations contributed, in particular, to more efficient cooperation between particular institutions.

Having learned about potential irregularities in GetBack SA's and GetBack SA Group's financial statements for 2017, the **Audit Supervision Commission** took, without undue delay, inspection activities towards the auditor of those statements. However, the Supreme Audit Office has refrained from assessing the effectiveness of those measures, since, by the date of completion of our audit, the KNA has not ratified the inspection report containing main findings and conclusions or information on the measures contemplated by the KNA. However, the said body had no inspection mandate towards auditors of prior statements. What it did, it requested the National Supervision Commission to review auditors' performance, but the Commission is not subject to NIK's audits.

[8] In only one out of 333 interventions undertaken by the Financial Ombudsman, the customer has settled with the bank, as a result of which the bank returned 300,000 zloty to them.

3. SUMMARY OF AUDIT RESULTS

Key competencies of national authorities and institutions

Particular state authorities and institutions held varied competencies and tools to identify and act against violations of law and the effects of violations of law by GetBack SA and the entities offering and distributing securities of that company.

The **Polish Financial Supervision Authority** was, in particular, responsible for the supervision of the management by GetBack SA of securitised debt collection claims held by securitisation funds and fulfilment of the obligations of issuers of securities admitted to public trading. The KNF was required to supervise investment funds managed by GetBack SA, fund management companies representing these funds, and depositary banks for these funds. Subject to the supervision were entities offering and selling GetBack SA's securities, both in public and private offering, such as banks and brokerage houses. The KNF's responsibilities also included supervision of banks. Banks were the main group of entities which sold portfolios of overdue accounts receivable for GetBack SA and the funds managed by it. The KNF's responsibility was to, among other things, ensure the protection of financial market participants.

Warsaw Stock Exchange (Giełda Papierów Wartościowych S.A. w Warszawie) was due to verify whether GetBack SA met the requirements for admission (introduction) to trading on the stock exchange of its securities, and if the Company duly complied with the information requirements after its bonds have been admitted to the Alternative Trading System but before the initial public offering.

President of the Office of Competition and Consumer Protection was the authority responsible for the protection of consumers, including GetBack SA's bondholders, against practices that compromised their collective interests.

GetBack SA interfaced with consumers both as part of its primary business, being debt collection from private individuals, and issuing its securities intended for purchase by non-professional market participants. Consumers were also the more vulnerable parties in relationships with intermediaries offering and distributing GetBack SA's securities.

The NIK is of opinion that the KNF and UOKiK President should, on their own, monitor the market for potential legal violations, and immediately respond to signals received by the UKNF and UOKiK, and information available to the public. It is evident both from the purpose of those authorities and public needs. Prompt response of these authorities to irregularities determines the number of people adversely affected by violations of law. These authorities and their supporting offices play a very important role in establishing the mechanisms and scale of violation of law and proper documenting of the same. The findings made by these authorities can play a key role in the repair of damage sustained by consumers as a result of unlawful activities of financial-market entities.

The **Financial Ombudsman** is the authority which should provide ex post help to consumers in individual cases. The scope of this help was limited to the individuals being customers of the financial-market entities mentioned in the FOA. Help could be, therefore, provided to individuals who acquired GetBack SA's bonds through the agency of banks and

brokerage houses. But such help was not available to consumers who received the bonds directly from the Company. This is because issuers of securities are not listed in the FOA as financial-market entities. The NIK is of opinion that this legislative gap limits the protection of non-professional participants of the financial market.

In the audited period, the **Minister of Finance's** responsibilities included preparing draft legislation governing the operation of the financial market. The Minister of Finance also supervised the fiscal administration, including with regard to the investigation, detection and counteracting tax offences, prosecution of the offenders, and identifying and recovering the assets at risk of loss in connection with such offences. The Minister of Finance and the Inspector-General of Financial Information were the authorities competent for the prevention of introduction into financial circulation of proceeds from illegal or undisclosed sources and prevention of terrorism financing. In particular, the GIIF's responsibility was to review information concerning anything of value suspected to have connection with money laundering or terrorist financing, carry out the procedure of transaction suspension or account block, request the provision of information on transactions and make the same available, and provide the competent authorities with information and documents supporting a suspicion of offence. The offence of money laundering is always connected with the occurrence of what is called the underlying offence. Taking up this thread by the NIK has been reasonable given that the prosecution office has been informed multiple times of substantiated suspicion of offence in the case of GetBack SA.

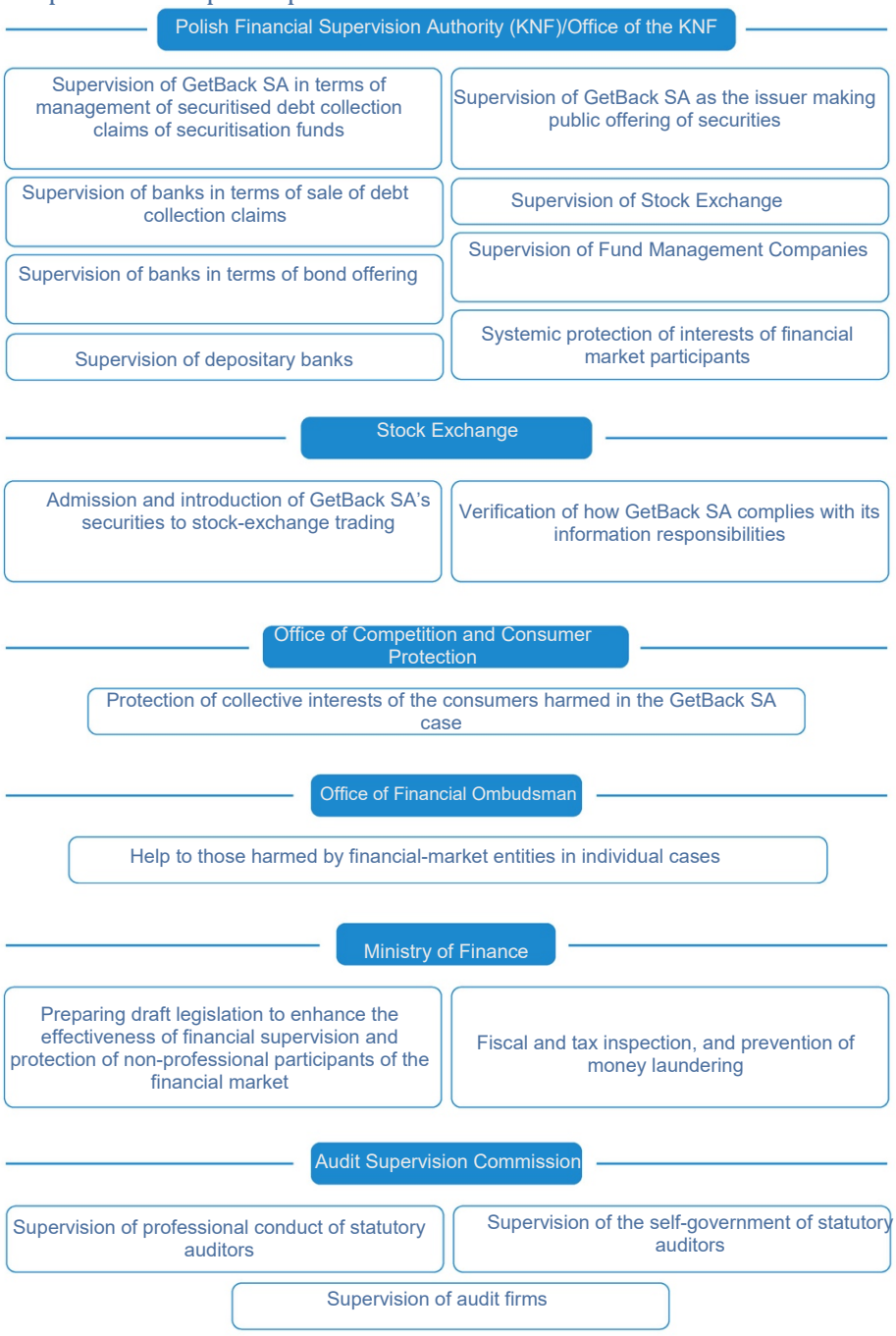
Based on the Statutory Auditors Act, the **Audit Supervision Commission** was required to supervise how audit firms auditing the financial statements of GetBack SA and its Group of companies complied with their duties. This requirement has arisen when GetBack SA gained the status of public-interest entity, which happened on the first day of GetBack SA's bonds being admitted to trading on the regulated market, ie, on 12 May 2017. Responsible for oversight of the auditors who audited the statements prior to that date was the National Supervision Commission, a body of the statutory auditors' self-government. That body is not subject to NIK's audit.

The topics investigated in the audit of *Activity of state authorities and institutions, and entities organising the financial market in relation to Getback SA company, the entities offering its securities, and its auditors* are presented in Infographic 1.

Identification of violations of law in GetBack SA's activities triggered action of prosecution authorities and administration of justice. However, the effectiveness of those authorities has not been subject to NIK's audit and assessment. In particular, the NIK holds no legal mandate to audit judicial activities of courts.

Infographic 1

Institutions regulating and supervising the financial market and audit firms, and institutions supporting non-professional participants of that market – in connection with the GetBack SA case



Source: Developed by the NIK

Ineffective supervision exercised by the Polish Financial Supervision Authority and its Office

The Supreme Audit Office assessed it in negative terms that the **Polish Financial Supervision Authority** and its Office failed to detect sufficiently early irregularities in GetBack SA's activity, consisting, in particular, in acquisition and repurchase of packages of debt collection claims in such a way as to hide their actual value and create inflated financial results of the Company and GetBack SA's group of companies. Such activity was aimed at building unwarranted trust with the Company. The NIK is of opinion that ineffectiveness of the supervisory body was caused by a limited scale of

supervisory activities within the mandate available to it. In particular, after the Authority authorised GetBack SA in September 2012 to manage and securitise debt collection claims of securitisation funds, it limited its supervisory activity over the Company to reviewing changes in the details and operating procedures, and upon legislative amendments since 2016 also its statements, whereas these activities were not documented. During the five years from issuing the authorisation for the management of securitised debt collection claims of securitisation funds, the UKNF failed to conduct any inspection at GetBack SA to verify if it had stable financial situation and correctly performed the activities authorised by the KNF. Diligent inspection would have allowed it to detect irregularities in the valuation of packages of debt collection claims which led to value overstatements and artificial inflation of the Company's financial performance, as identified during the inspection at GetBack SA in 2018. The UKNF held information indicating highly aggressive operating model of the Company in the debt collection market, which by itself involves increased business risks, including irregularities. The UKNF was also receiving other signals which, in NIK's opinion, made it reasonable to undertake inspection. Already in their opinion to the 2014 financial statements, the statutory auditor noted the uncertain nature of financial figures concerning the valuation of packages of debt collection claims held by GetBack Group. Other signals, covered by professional confidentiality, appeared in Q2 and Q3 of 2017. The NIK is of opinion that such signals should have been considered a reason to take supervisory measures towards GetBack SA, and in particular to inspect it in Q3 2017. In the wake of such inspection, the supervisory authority should have taken measures that would probably translate into lower scale of bond issues and less exposure of investors to losses. The NIK considers that the inspection at GetBack SA was conducted too late. [pp. 40-41, 44-49]

At the same time, the NIK notes that the supervisory authority did not have a mandate to inspect the Company's activity in full scope, which prevented the detection of threats to safe trading in the Company's securities. The Authority was not allowed to investigate the safety of the Company's activities in other areas than the management of securitisation funds. In particular, the Company's compliance with the responsibilities of an issuer of private bonds was not subject to the KNF's supervision, including the assessment if the Company was able to meet its liabilities in that regard. The supervisory authority was also not authorised to conduct inspection at GetBack SA as an issuer of securities under public offering. Nevertheless, the UKNF had an opportunity to identify irregularities in GetBack SA's activity that breached information obligations incumbent on public companies if it had immediately conducted an in-depth insight into consolidated financial statements of GetBack Group for Q3 2017 published on 23 October 2017 regarding the acquisition by GetBack SA of the shares of EGB Investments S.A. Already after GetBack SA ceased to service its debt, on 29 May 2018, the KNF informed that the transaction conducted in August 2017 based on which GetBack SA acquired the said shares for PLN 209 million would not bring economic benefits to the Company in the future, and it was necessary to make an impairment of the goodwill stated in consolidated assets. The Company's value was, therefore, actually lower than transpired from the documents published on the occasion of its securities issue. [pp. 40-41, 44-45, 47-49]

No analysis of the debt collection market and risk transfers from professional to non-professional entities

Until September 2018, the UKNF did not conduct analyses of the debt collection market, in particular the terms of disposal by particular banks of packages of debt collection claims with impairment loss, acquired by, among others, the funds managed by GetBack SA. During that time, the UKNF also did not review the impact of aggressive investment policies of GetBack SA on asset prices on the debt collection market.

Information about transactions of sale of collection debt claims at discount was not transferred from the banking supervision division to other supervisory divisions, in particular, to the capital market supervision division. This indicates ineffective integration of supervisory activities. Failure to use the opportunities resulting from integrated supervision is contrary to the founding concept of the Polish Financial Supervision Authority which should exercise supervision over all segments of the financial market. In the NIK's opinion, the Office should have been aware, in particular, that the said assets, usually of very poor quality, might have provided basis for structuring financial instruments involving increased risk levels. It was the case for GetBack SA bonds. As a result, the risks involved in non-performing receivables were transferred from entities professionally prepared to manage the risk to non-professional market participants who, in addition, were not thoroughly informed of the potential consequences of assuming that risk. [pp. 46-47]

Ineffective supervision of the KNF over TFI

Until February 2018, the KNF also failed to exercise diligent supervision of fund management companies required to supervise the activities of GetBack SA as the manager of investment portfolios of securitisation funds, except for one TFI. Following the completion of inspection activities at that TFI, the Office refrained from conducting inspection at other TFIs whose funds were managed by GetBack SA. The measures taken by the supervisory authority were not effective enough to make these entities enforce GetBack SA's proper fulfilment of the function entrusted to it.

No information for investors regarding the scope in which the KNF verified the documents underlying the securities issue

The UKNF had not practiced inspecting entities subject to KNF supervision which carried out public offering of securities, as GetBack SA did in 2017. In accordance with the applicable regulations, the Authority, by approving the prospectus, limited itself to verifying the completeness of that document. The Authority had not recommended issuers to explain in the prospectus what it means that the prospectus has been approved by the KNF, ie, that the issuer's business model, business methods, financing methods, or truthfulness of the information contained in the prospectus were not evaluated. In the opinion of the NIK, this could have made non-professional investors, including those who acquired the bonds by private issue, confident about increased safety of their investment. Investors were buying bonds of GetBack SA Group entities on a significant scale. The total value of issues was PLN 3,816.6 million, of which PLN 2,577.9 million were not redeemed. [pp. 51-54]

Ineffective preventive identification of irregularities in the sale of GetBack SA's bonds.

The supervision authority had taken preventive activities aimed at reducing irregularities in the process of selling products in the financial market. It had addressed these topics during inspections at banks, including at investment firms, issued recommendations in response to any negligence or

irregularities found. However, these activities were ineffective for GetBack SA's bonds offering before the Company lost its liquidity, for they failed to identify key irregularities in the process of selling the products in the financial market (offering the bonds without required licences, misleading the customers, misselling). [pp. 62-63]

The UKNF accepted a long-standing[9] practice used by investment firms offering corporate bonds which had been accepting and transferring to the issuer (of seller of the financial instrument) orders (subscriptions for a financial instrument) only based on an agreement with the issuer. The NIK is of opinion that such practice was inadequate and reduced the effectiveness of protecting non-professional participants of the capital market. No agreements for the provision of brokerage services were entered into with investors, and no tests of adequacy and suitability of the financial instruments offered were conducted. The investor was not acquainted with the risks involved in the investment. It was only in February 2017 that the UKNF requested the Minister of Finance to amend the regulations in this regard and put certain obligations on investment firms to protect investors. [pp. 63-66]

On 19 December 2017, the Office of the Polish Financial Supervision Authority received a whistle-blower report indicating some irregularities in GetBack SA's activity, including incorrect valuation of packages of debt collection claims, and indicating certain threats to the Company's liquidity in a longer term. It was *inter alia* in response to that report that the UKNF initiated an inspection at the Company in February 2018. As a result of its supervisory measures, the UKNF found that certain managers of the Company conducted operations by which it no longer needed to conduct on-balance-sheet valuation of certain packages of debt collection claims in accordance with regulations of International Accounting Standards and the Polish Accounting Act. Before the end of particular reporting periods, GetBack SA was selling portfolios of debt collection claims held by its Group of companies, to parties from outside that Group. Such practice was aimed at recognising profit on such operations instead of losses that should have transpired from the on-balance-sheet valuation of the debt collection claims they were selling.

Intensification of supervisory activity upon GetBack SA problems with payment of its liabilities were brought to light

After GetBack SA's financial problems were brought to light and in connection with the inflow of complaints indicating irregularities in the process of sale of GetBack SA's bonds by banks, investment firms and other entities of the financial market, the UKNF took intensified and reasonably targeted supervisory activities, ie, inspections, administrative procedures, and supervisory correspondence, and imposed sanctions on certain entities. As a result of inspection addressing selected topics, conducted between 4 June and 7 September 2018 at one of the banks involved in offering the Company's shares, major irregularities were found in the activities of that entity, and post-inspection recommendations were formulated. However, the inspection and recommendation did not lead directly

[9] MiFID was implemented in the Polish legal system on 21 October 2009, with entry into force of the Act of 4 September 2008 amending the Trading in Financial Instruments Act and some other Acts (Journal of Laws of 2009, No. 165, item 1316).

to the estimation of bank's risks involved in the irregularities found, and the bank failed to secure adequate funding to cover them. [pp. 67-69]

Following the identification of irregularities in GetBack SA's activities, the supervisory authority took intensive measures also towards the entities supervising and auditing GetBack SA, including auditing the standing of the Company, to determine the role of those entities in allowing the irregularities to occur, and to enforce liability for potential violations of law. The supervisory measures undertaken by the UKNF towards TFIs revealed that their supervisory performance vis-à-vis the securitisation funds from the GetBack SA Group breached the obligations imposed on them by the Investment Fund Act. In particular, TFIs failed to monitor and verify correctly the effectiveness of the debt collection measures undertaken by the fund manager and failed to take proper measures to ensure correct valuation of the assets held by those funds. However, UKNF's measures were not fully adequate, in particular, due to the fact that no administrative proceeding was initiated against one of the TFIs, failure to inform the Public Prosecution Office of suspected offence by another TFI, failure to inform the KNA and PIBR about irregularities in the activity of statutory auditors who audited the financial statements of the supervised entities. [pp. 76-77]

In the process of gathering evidence, the UKNF was reporting suspected offences to the Public Prosecution Office, however, these measures were often protracted. In particular, the UKNF failed to immediately report suspected offence in connection with unlawful participation of one of the banks in the process of selling GetBack SA's bonds. [pp. 49-51]

The Office was presenting legislative proposals aimed at strengthening the actual protection of non-professional participants of the capital market, thus complying with its obligatory statutory mandate and responsibilities with regard to the preparation of draft legislation related to the operation of the capital market. [pp. 74-76]

Regulations on legally protected secrets make it harder to provide effective support to harmed bondholders

The NIK would like to bring attention to the access to legally protected information in connection with the GetBack SA case. Problems with providing such information, especially by the Office of the Polish Financial Supervision Authority and the NIK, was many times raised by representatives of the Association of Harmed Bondholders of GetBack SA, including at sessions of parliamentary committees addressing the GetBack SA case. Particular sectors of the financial market are bound by specific regulations limiting the access to information. The disclosure of legally protected information would result in criminal liability of the public official, even if he would act with good will in public interest – including in the event of his willingness to help the harmed bondholders. Consequently, the bondholders were deprived of an important tool in pursuing their claims in courts, such as reports of UKNF inspections

in the areas thematically relevant to the case. In the opinion of the NIK, the outcomes of the activities of the Authority and its Office should provide meaningful support to the harmed bondholders in pursuing their claims against entities which breached the law. Due to the applicable regulations on the protection of secret information, despite receiving numerous requests, the UKNF and NIK were not able to provide GetBack SA's bondholders with detailed information on the measures taken as part of their supervision, or outcomes of such measures. In the opinion of the NIK, it is reasonable to consider amending these regulations to avoid a situation where the interests of the supervised entities enyoy significantly better protection than the interests of more vulnerable participants of the financial market. [p. 71]

Absence of actual oversight of how the opinion on the admission of securities to trading on the stock market is prepared

GetBack SA's securities were admitted to trading on the primary market operated by **Warsaw Stock Exchange** (Giełda Papierów Wartościowych w Warszawie S.A.) in compliance with the requirements of the Ordinance of the Minister of Finance of 12 May 2010 laying down detailed requirements to be met by the market of official stock exchange listings and issuers of securities admitted to trading on that market[10] and in the Exchange Rules.[11] However, in procedures for the admission to trading of bond series PP1-PP6 and shares, in assessing the issuer according to the criteria defined in § 10(1) and (5) of the Exchange Rules, the Management Board of the Stock Exchange held some incorrect information. This was due to the absence of actual oversight of the correctness of information contained in the opinions of the WSE Issuers Department in examining the applications for admission to stock-market trading of the above-mentioned GetBack SA's securities. [pp. 78-84]

Under the applicable regulations, the Stock Exchange supervised how GetBack SA met its information obligations in the period in which only the bonds introduced to the Alternative Trading System were listed on the markets operated by the WSE. [p. 84]

UOKiK activities reasonable, but protracted and incomplete, which limited their effectiveness

In response to signals received by the **Office of Competition and Consumer Protection** concerning irregularities in GetBack SA's debt collection activity, the President of the Office took investigative measures. However, proceedings before the UOKiK President conducted to identify and eliminate GetBack SA's inadequate practices in debt collection business lasted more than three years and four months in total. One proceeding was too narrow in scope, which resulted in failure to identify certain practices which were challenged only three years later by decision of the UOKiK President in another proceeding. During the proceeding in the case of debt collection practices compromising collective interests of consumers, the UOKiK President unreasonably refrained from issuing interim decisions mentioned in Article 101a of the Competition and Consumer Protection Act, since there was a probable cause that continuation of such practices might seriously compromise collective interests of consumers. Consequently, some Company activities found to have breached legislation or established good practice were stopped only after 16-18 months from the initiation of the proceeding in the case of compromising collective interests of consumers, including the most onerous practices complained against by consumers. [pp. 84-88]

[10] Journal of Law No. 84, item 547 - Ordinance repealed as of 22 April 2019

[11] Warsaw Stock Exchange Rules adopted in Resolution No. 1/1110/2006 of the Exchange Supervisory Board dated 4 January 2006, as amended

No response of UOKiK President to whistle-blower information on irregularities in GetBack SA's activities

In response to the information received in December 2017 from a whistle-blower indicating a pyramidal nature of the Company's activities, the UOKiK did not see any risks to consumers that would justify the activity of the President of the Office. The UOKiK President took action for the protection of the buyers of such securities only in response to KNF notice of 24 April 2018 and signals from consumers about potential irregularities in the offering and distribution of GetBack SA's securities. [pp. 88-90]

The NIK has refrained from assessing the effectiveness of pending proceedings

Since April 2018, proceedings have been initiated against five economic operators whose practices were most often complained against in connection with irregularities in the offering and distributing GetBack SA's securities. Also, information was published on how the individuals harmed by the conduct of those entities can pursue their rights. In one proceeding, the UOKiK President regarded as inadmissible a clause of the template agreement in which the investor was expected to confirm that he has received no information that would be inconsistent with the information contained in the Bond Acquisition Proposal or Bond Issue Terms. This ruling, if it becomes legal and valid, will have system-wide significance, because similar clauses have been universally used by financial institutions. They have transferred on consumers the risk of misconduct of the entities and individuals offering the bonds. Proceedings against other entities have not been closed by the end of our auditing activities at the UOKiK, therefore the NIK has refrained from assessing the effectiveness of UOKiK President's activity. [pp. 89-90, 92-93]

Informative campaign five months after the request for such campaign

To ensure that all bondholders are informed about what product they hold and about their legal situation in connection with GetBack SA ceasing to service its bonds, the UOKiK President, together with the Financial Ombudsman, held a meeting with the entities involved in the offering of GetBack SA's bonds. At that meeting, they requested 16 entities to conduct an info campaign addressed to their customers. However, the meeting was held on 30 October 2018, ie, almost five months after the Association of Harmed Bondholders of GetBack SA had informed about urgent need to make the bondholders aware of the fact that they might unwittingly have come in possession of the bonds of that Company. [p. 91]

Proper cooperative relationship between UOKiK and other institutions

The UOKiK diligently worked with other entities, including with the UKNF, the Office of the Financial Ombudsman, consumer ombudsmen, and associations of harmed bondholders of GetBack SA. This cooperative relationship consisted in the exchange and making available of information and materials concerning pending proceedings and how to provide help to the bondholders. The UOKiK also provided funding support to consumer organisations for the dissemination and protection of consumer rights. The UOKiK and Financial Ombudsman published, among other things, the information material presented in Infographic 2.

The UOKiK President actively participated in the process of strengthening the consumer protection system by proposing legislative amendments to protect individuals investing in the financial market. [pp. 93-94]

Infographic 2

Information material of GetBack SA bondholders

WHAT A CONSUMER WHO HOLDS GETBACK BONDS CAN DO

WHAT ARE CORPORATE BONDS?
Corporate bonds are securities issued by companies to obtain capital for their business.
A bond says that the issuer (economic operator) owes debt to the buyer (investor, bondholder). Bondholders are eligible for interest and repayment of the principal amount at bond maturity.

HOW WERE GETBACK BONDS SOLD?
They could be bought directly from GetBack, but significant volumes went through banks (eg Idea Bank, formerly under the Lion's Bank brand) and investment firms/brokerage houses (eg, Polski Dom Maklerski).
Misconduct could have been present in the sale of those bonds.
Customers could be misled, among other things, as to:

- product nature,
- level of risk,
- existence of guarantees,
- exclusive nature of the offering.

WHAT CAN BONDHOLDERS DO?
We have to discriminate between people who bought the bonds directly from GetBack and those who bought them indirectly. The appropriate ways of proceeding are shown in the following diagrams.

WHAT ELEMENTS SHOULD BE INCLUDED IN YOUR COMPLAINT?

1. Facts, or the circumstances in which the product has been acquired (which entities participated in the selling process – who proposed the product, who prepared the documents, with whom the contract was made, how they presented their offer, what induced you to buy)
2. Description of how you were misled.
3. Demand, eg, to return the invested funds.
4. Evidence supporting how the contract was made (documents, SMSs, emails, recordings, photographs, drawings, sketches made by the offeror).
   Remember! The complaint must be individualised!

WHO CAN HELP ME IN DRAFTING MY COMPLAINT?

- district consumer ombudsmen, uokik.gov.pl
- Consumer Federation, federacja-konsumentow.org.pl
- Retail Inspection Office (auxiliary) uokik.gov.pl

These institutions are prepared to help you to draw up your complaint. Use this opportunity and ask for help.

ASSOCIATIONS
Associations of those who bought GetBack bonds have been established. Follow their activities – sign up for membership or follow them in social media

CASE 1: YOU ARE A NATURAL PERSON AND YOU BOUGHT GETBACK BONDS WITH THE INVOLVEMENT OF A BANK OR BROKERAGE HOUSE (INVESTMENT FIRM)

YOU CAN USE YOUR RIGHTS UNDER THE FINANCIAL OMBUDSMAN ACT

01 Prepare yourself to drafting your complaint, identify information on parties to the contract, issue/series of the bonds
Recall how the selling process looked like

02 Submit your complaint based on the TEMPLATE with the financial market entities involved in the offering/sale of the bonds

03 Wait for their response. The financial institution is required to provide it within 30 days (In exceptional cases, this deadline can be extended up to 60 days, but they must inform you about it).

04 If your complaint is not accepted, you may submit a request to the Financial Ombudsman www.rf.gov.pl
Remember to attach all documents to your request.

05 The Financial Ombudsman may

- conduct intervention proceeding (make a request to the financial institution on your behalf),
- carry out amicable settlement procedure,
- prepare a significant position paper in the court case between the financial-market entity and its customer

CASE 2: YOU BOUGHT THE BONDS DIRECTLY FROM GETBACK

COMPOSITION PROCEEDING

At any time, you can:
- use your rights in restructuring procedure;
- pursue your rights by lawsuit; if you have been misled in the selling process – invoke unfair market practices.

CONSIDER WHAT IS BEST FOR YOU

GET FIRST AID BY CALLING CONSUMER HOTLINE
801 440 220 / 22 290 89 16
OR
PORADY@DLAKONSUMENTOW.PL

Source: Outcome of NIK audit at the UOKiK and the RF Office

Interventions of the Financial Ombudsman initiated without undue delay, but protracted and ineffective

The activities undertaken by the Financial Ombudsman consisted, in particular, in intervening with financial-market entities which rejected bondholders' complaints. In 2018, 445 requests for intervention were recorded at the Office of the Financial Ombudsman. The Ombudsman undertook intervention in 333 cases, requesting financial-market entities to provide information or explanations, and to provide documents. The Ombudsman did not undertake intervention in 112 cases, which was in compliance with regulations. The reasons included formal legal deficiencies of the requests which were not supplemented by the applicants by the end of 2018 (86 cases), the applicant providing a complaint letter only without an actual request for intervention (23 cases), and the Ombudsman's inability to act, because the applicants – in accordance with Article 2(1) of the FOA – could not be regarded as customers of the respective financial-market entity.

The Financial Ombudsman was taking, without undue delay, measures in connection with requests for support from holders of GetBack SA's securities distributed with the involvement of financial-market entities. However, a vast majority of Ombudsman's interventions were protracted and – except for a single case – ineffective both in terms of achieving the objective of the Ombudsman defined in Article 24(3) of the FOA, and achieving the recovery of the funds invested in bonds, which was expected by the bondholders. The NIK is of opinion that this was due to the limited mandate of the Ombudsman defined in the FOA. In addition, the Ombudsman used only partially or with delay his right to obtain inspection materials from the Polish Financial Supervision Authority and to use pressure on financial-market entities to collaborate, or to penalise them for lack of collaboration. [pp. 98-102]

Diligent informative and educational actions of the Financial Ombudsman

Both general informative measures undertaken by the Ombudsman regarding corporate bonds and detailed information in the GetBack SA case were reasonable and diligent. The Ombudsman was quickly responding to the risks involved in corporate bonds by taking educational action. The Ombudsman immediately presented GetBack SA bondholders with basic information helpful in pursuing their claims. In the opinion of the NIK, it would be also appropriate to complete the information above by listing the Ombudsman's right of bringing suits for the customers of financial-market entities in cases involving unfair market practices concerning the activities of those entities, as well as to participate – with the consent of the complainant – in pending proceedings. In its post-audit statement addressed to the Financial Ombudsman, the NIK also brought to the Ombudsman's attention the fact that the content of the Ombudsman's website concerning corporate bonds could be expanded by a warning that the KNF, as a rule, does not supervise issues under private placements, and in public offering it only checks the completeness of information provided by the issuer and does not verify its truthfulness, business model and operational mode of the issuer, or its capacity to repay the bonds. [pp. 94-96]

Active role of the Financial Ombudsman in collaboration with other national authorities

The Financial Ombudsman forwarded to the KNF and UOKiK President information and materials requested by those institutions. The Ombudsman participated in meetings of the working group reviewing the regulations of corporate bonds, established within the Financial Market Development Council

affiliated to the Ministry of Finance. On the Group, the Ombudsman voiced his remarks on identified irregularities in the operation of financial-market entities and submitted proposals for changes. In addition, the RF took part in the legislative process, submitting his comments to draft statutes and ordinances, including to the draft act on the liability of corporate entities for prohibited acts subject to penalty and amending some other acts, and draft ordinance laying down detailed requirements for members of management boards and supervisory boards of companies operating a regulated market in terms of professional integrity, knowledge, skills and experience. [pp. 96-98, 102]

Pro-active legislative measures of the Minister of Finance

Minister of Finance's activity relevant for the operation of the financial market and the audit market consisted, in particular, in initiating and developing Government policies, putting forward draft legislation governing these topics on Council of Ministers meetings.

After the KNF published a notice of suspension of trading in all financial instruments issued by GetBack SA, the Ministry of Finance started working on amendments to various acts to systemically strengthen the supervision of the financial market (including, primarily, the capital market) and consumer protection. The draft legislation so developed was adopted without undue delay. [pp. 102-109]

Delays in implementation of EU Directives

Independently from the GetBack SA case coming to light, the Ministry of Finance prepared draft legislation strengthening the supervision of financial market and the activity of audit firms, in connection with the need to implement or enforce EU law or meet current regulatory needs of the domestic market.

The implementation of two out of three Directives subject to the NIK's audit was delayed, and the Minister of Finance contributed to this delay. This delay was 108 and 369 days, respectively. This applied to the Act of 1 March 2018 amending the Trading in Financial Instruments Act and some other acts, and the Statutory Auditors Act. [pp. 103-107]

Delay in implementation of MiFID II Directive and its consequences from GetBack SA's bondholders

The former piece of legislation implemented MiFID II Directive to Polish law. Its implementation 108 days past the due time delayed the entry into force of regulations which increased the scope of protection of the market participants acquiring corporate bonds. Had these regulations become effective earlier, it would have limited the extent of GetBack SA bond sales to retail investors or made it easier for bond buyers who purchased the bonds in the effective period of MiFID II Directive and whose interests have been compromised because the obligations resulting from the Directive were not respected, to pursue their claims. [p. 103]

Ineffectiveness of the Statutory Auditors Act and the need to amend it.

The Statutory Auditors Act, which implements to the Polish law the Directive aimed at, among other things, strengthening public oversight of auditors and audit firms and audits of financial statements of public-interest entities, was adopted with almost one year of delay.

Upon the entry into force of the Statutory Auditors Act and GetBack SA's financial problems coming to light, the Ministry of Finance considered that the experiences so far, resulting from the analysis of the financial market and the alleged irregularities in the operations of one audit firm required introducing appropriate amendments to the said Act. The main reason for starting work on amendments to the Statutory Auditors Act was the awareness that the Audit Supervision Commission does not hold sufficient tools to inspect the quality of services provided by audit firms, because the public supervision system was based to a large extent on indirect supervision, with significant role played by professional self-government. [pp. 106-108]

According to the information provided by the Ministry of Finance regarding anti-money laundering and prevention of violations of fiscal and criminal-fiscal regulations, measures were taken to identify the cases of violations of law in connection with the GetBack SA case. [pp. 110-112]

Due to the pending inspection process, the NIK refrained from assessing the effectiveness of KNA activities

The Audit Supervision Commission took measures towards the audit firm auditing the financial statements of GetBack SA and GetBack SA Group for 2015-2017 to the extent matching its statutory mandate. KNA inspectors conducted an *ad hoc* inspection of the documentation of statutory audits[12] of GetBack SA's statements for 2017 and consolidated financial statements of GetBack SA Group for 2017. By the date of completion of the NIK's post-audit statement, the KNA has still worked on the inspection report containing main findings and conclusions, as well as information on follow-up measures contemplated by the KNA. Consequently, the Supreme Audit Office refrained from assessing the effectiveness of the Commission's actions. [pp. 112-115]

[12] Under Article 2(1) of the Statutory Auditors Act, statutory audit shall be taken to mean an audit of financial statements of a group of companies or an audit of annual financial statements, required under Article 64 of the Accounting Act, regulations of other acts, or legislation of the European Union, conducted in accordance with national auditing standards.

4. PROPOSALS

Irregularities in the activity of GetBack SA and the entities offering its securities were subject to analysis conducted by governmental authorities to identify the weaknesses of the system for the protection of non-professional participants of the financial market, and to assume legislative work to eliminate such weaknesses. It has resulted, in particular, in the adoption of the Act of 9 November 2018 amending certain acts in connection with strengthening the supervision of the financial market and the protection of investors on that market. It has introduced a number of solutions increasing the level of protection of investors and expanding the effective scope of intervention of the authorities defending such interests (see Section 5.6 of this Report).

The Supreme Audit Office can see further opportunities for strengthening investor protection and easier pursuance of claims by individuals harmed by financial-market entities through the implementation of the following legislative and interpretative proposals. Some of these proposals have been voiced by the auditees, but have not been implemented so far.

Legislative proposals

I. Proposals to strengthen the protection of investors in the financial market

1) Introduce the obligation to include in the prospectus not only a discussion of risk factors incumbent on the issuer, but also the assessment of the likelihood of these occurring and potential effect on the activity or financial standing of the issuer.

Under Article 22(1) of the Public Offering Act, the information provided in the prospectus should be presented in a language comprehensible for the investors and in such a way as to enable them to assess the situation of those entities. In the opinion of the NIK, a mere description of the risk factors incumbent on the investor, as practiced today, does not allow the investor to conduct an assessment of the issuer's situation. This is due to the fact that risk descriptions usually have standard format for the given type of risk and fail to render the likelihood of such risk materialising in particular circumstances of the issuer or the consequences for its business or financial standing. The investor is unable to carry out a meaningful assessment of such risks, because he has incomplete access to information concerning the issuer. As a result, identification of risk factors in the prospectus acts mainly to absolve the issuer from liability to investors, but it fails to provide a real assessment of the circumstances of the entity issuing the securities.

2) Introduce the possibility of conducting due diligence of issuers applying for the first time for admission of their securities to trading on a regulated market.

The NIK shares the UKNF's position regarding the introduction of legislative and regulatory solutions strengthening the potential for effective verification of security issuers. A due diligence of issuers applying for the first time for admission of their securities to trading on a regulated market could be a solution serving such purpose. The purpose of such investigation would be to increase the quality of information verifying the correctness of the issuer's operations

extending beyond the information requirements for a prospectus. It would make it possible to verify how well the issuer is prepared to operate on a regulated market, the quality of its reporting system, with particular emphasis on the financial and accounting system, and identification of the risks involved in the issuer's business, with particular attention to the risk of economic offences and incorrect presentation of information in financial statements.

3) **Allow in Article 26(1) of the Capital Market Supervision Act the possibility for the supervisory authority to conduct an inspection of the activity or financial situation of the entities mentioned in Article 5(7) of that Act.**

The entities subject to UKNF's inspections, as identified in Article 26(1) of the Capital Market Supervision Act, do not include the entities supervised by the KNF mentioned in Article 5(7) of that Act. These include issuers making public offering of securities as defined in the Public Offering Act, or issuers whose securities are admitted to trading on a regulated market or introduced to an Alternative Trading System, and the issuers applying for admission or introduction of their securities to such trading. The existing situation prevents the supervisory authority from taking prompt and effective action to identify at source any threats to the safety of the capital market related to the violation of information obligations and responding to the same.

4) **Introduce a duty to record conversations related to the offering and sale of financial products for investment purposes at retail outlets and any conversations related to the provision of investment advisory services.**

The Act of 1 March 2018 amending the Trading in Financial Instruments Act and some other acts[13] imposes on investment firms an obligation to record telephone conversations and electronic correspondence related to activities that could result in the provision of a service of accepting and transferring orders of acquisition or disposal of financial instruments. Such recordings and correspondence are useful in the event of a dispute between a non-professional participant of the financial market and the supervised entity, and make it possible to verify how the process of offering and sale of a financial service has actually proceeded. However, such protection is absent when conversation takes place directly in the sales outlet, which makes it impossible to determine whether or not the confirmation by the customer in writing that he took an informed decision to invest has been signed as a result of misleading information or actual misselling. The regulations introduced by the Act amending the Trading in Financial Instruments Act and some other acts do not encompass investment advisory services despite that they involve similar risks as the offering of financial instruments.

13 Journal of Laws, item 685.

For this reason, it is justified to introduce the solutions discussed here also with regard to the mentioned service.

5) **Expand the list of offences mentioned in Article 6b(1) of the Financial Market Supervision Act for which the KNF is required to place a note on the List of the KNF's public warnings that information of a suspected offence has been laid, to include all offences.**

The KNF is obligated to place on its website called, 'List of the KNF's public warnings' a note that information has been laid of suspected offences enumeratively listed in Article 6b(1) of the Financial Market Supervision Act, including, among others, the offence defined in Article 287 and Articles 290-296 of the Investment Fund Act, Article 178 of the Tradingin Financial Instruments Act, Article 99 and Article 99a of the Public Offering Act.

The KNF has laid, on multiple occasions, information of suspected offences concerning the activity of capital-market entities not listed in Article 6b(1) of the Financial Market Supervision Act. Notes of laying such information are not placed on the KNF's list of public warnings. As a result, potential customers of financial institutions are deprived of the possibility of assessing the credibility of such institutions. This situation is not conducive to the safety of the financial market or building trust with it and with the supervisory authority.

6) **Regulate in the Criminal Code a specific type of financial offence based on 'pyramidal' systems.**

The NIK supports the still-unrealised request of the Working Group on the analysis of major threats to the safety and interests of consumers and the State in the business and financial spheres, established by the President of the Council of Ministers at the Office of Competition and Consumer Protection, to distinguish in the Criminal Code a new type of financial fraud based on 'pyramidal' systems.

'Currently, those responsible for setting up financial pyramids are liable under Article 286 § 1 of the Criminal Code .... The problem is that, to hold anyone criminally liable, harmed individuals must report it, which takes place usually in the eclipse of the operation of the financial pyramid or after its fall when it is no longer possible to recover the funds. Hence, distinguishing a specific type of financial fraud ... would allow us to prosecute the perpetrators of a specific offence related to setting up a financial pyramid when the financial pyramid is still solvent'.[14]

[14] D. Ćwiklak, 'Planowane zmiany w kodeksie karnym - nowy typ występku związanego z tworzeniem piramid finansowych', https://kancelarierp.pl/wiadomosci/planowane-zmiany-w-kodeksie-karnym-nowy-typ-wystepku-zwiazanego-z-tworzeniem-piramid-finansowych.html

7) **Expand the mandate of the Financial Ombudsman as to the entities covered by his assistance and the tools applied, and increase the amount of fines that can be imposed by the Financial Ombudsman for non-compliance of financial-market entities with the obligations defined in the FOA.**

In the opinion of the NIK, those who buy securities directly from issuers should be also able to use Financial Ombudsman's help. Currently, they are excluded from the group that can be supported by the Ombudsman, because the issuer is not a financial-market entity as mentioned in the FOA. Meanwhile, to be able to pursue claims in connection with securities issue, expert knowledge on the operation of financial markets is sometimes needed. The outcomes of our audits conducted so far in the field of consumer protection on the financial market show that district consumer ombudsmen often lack such knowledge and they cannot provide effective help. Consequently, the NIK calls for expanding the list of financial-market entities mentioned in the FOA to include issuers of securities, to the extent pertaining to the issue of such securities.

The audit of the activities of the Financial Ombudsman also revealed that he could have determined the facts of the case much quicker if he would have been able to take written and oral evidence from current and former employees of financial-market entities. Currently, he has to correspond with representatives of the financial-market entity who present the official position of that entity. Such positions sometimes happen to be evasive or incomplete.

In the opinion of the NIK, the maximum fine defined in Article 32 of the FOA (PLN 100,000) that can be levied on an entity evading the obligations defined in the FOA is too low for such penalty to serve a preventive function. This has been demonstrated by the case of a bank offering GetBack SA's bonds which evaded, on multiple occasions, providing information about their practices, making it more difficult for the Ombudsman to take legal action to help the harmed bondholders.

8) **Introduce the possibility of public announcements by UOKiK President of suspected practice violating collective interests of consumers already on the stage of fact-finding proceeding.**

The NIK shares the position of the UOKiK President in this regard. Under Article 73a(1) of the CCPA, if the information gathered in a proceeding against practices violating collective interests of consumers shows that there is reasonable suspicion that an economic operator has engaged in practices that violate collective interests of consumers that may result in significant losses or adverse consequences for a broad group of consumers, the President of the Office shall make public announcement, including on the Office's website, of any information obtained during that proceeding about such conduct and its probable consequences. Meanwhile, such findings are often made already in the course of fact-finding procedure, before initiating a proceeding into practices violating collective interests of consumers. Already on such stage, the UOKiK President should have the obligation to respond, in order to limit the losses sustained by consumers. It would upgrade consumer protection. This proposal was raised by the UOKiK President as part of the Working Group of the Financial Market Development Council reviewing the regulations of the market for corporate bonds. Due to a general nature of the proposed change that goes beyond regulations of the market for corporate bonds, this proposal has not been included in the work schedule of the Group until the completion of this present audit.

II. Proposals to support consumers in pursuing their claims

9) Shape the rules of civil procedure and mechanisms so that to help consumers in pursuing their claims

The NIK holds it desirable to introduce in the Code of Civil Procedure a distinct procedure in consumer cases, eg, modelled on the Labour Law procedure, that would strengthen the position of the weaker party to the contractual relationship. Such proposal had been already voiced by the UOKiK President and referenced in NIK's audit report titled, *Protection of the rights of consumers using loans prone to currency risk* (ref. no. 33/2018/P/17/111/KBF). One important element of the consumer procedure should be higher activity of the court, including when evidence is examined, or the obligation for the court to examine the use of abusive clauses or unfair market practices on each stage of the procedure, regardless of the legal basis of the claim or the defence line adopted by the consumer. An alternative solution would be to introduce a reversed burden of proof, whereby the economic operator would be required to prove that it has complied with all requirements under consumer protection legislation. In civil procedure, it is difficult for consumers to prove that the economic operator has breached its obligations, because it is the economic operator, not the consumer, that keeps the contract documentation. Such changes would alleviate the disproportion between economic operators and consumers in judicial procedure.

10) Amend the Act of 28 July 2005 on Court Costs in Civil Cases.[15]

The party pursuing its claims in judicial procedure is required – as a rule (except for situations where, eg the court relieves the party from court costs if she is unable to pay without detriment to her and her family's support) – to pay court costs, including fees and expenses. Under the current wording of Article 13 of the Act on Court Costs in Civil Cases, in cases for proprietary interests, when the amount in controversy is up to PLN 20,000, a one-off fee is charged on the process, determined according to amount in controversy, at up to PLN 1000, and in cases for proprietary rights with the amount in controversy more than PLN 20,000, a *pro rata* fee is charged at 5% of the amount in controversy, but no more than PLN 200,000. Consequently, for proprietary claims of more than PLN 20,000 (claims of the harmed bondholders often exceed that amount), the amount of the court fee can be significant, often more than PLN 10,000.

[15] Journal of Laws of 2019, item 785, as amended

Under the current wording of Article 13a of the Act on Court Costs in Civil Cases, in cases involving claims resulting from banking activities brought by consumers or natural persons operating a family homestead, when the amount in controversy is more than PLN 20,000, a flat-rate fee is charged at PLN 1000.

In the opinion of the NIK, to facilitate the recovery of claims from economic operators involved in the process of offering and selling financial instruments, it would be reasonable to amend the Act on Court Fees in Civil Cases solutions in a way similar to the regulations on fees charged from consumers pursuing their claims resulting from banking activities. Court fees in civil cases play not only fiscal roles. The amount of the fee in particular classes of cases is a government policy measure influencing the choices of the entities which intend to initiate court proceedings. The need to pay a relatively high court fee and uncertain outcome of the decision about exemption from such fee (by way of court order) is a significant factor that can discourage consumers from pursuing their claims against economic operators involved in the process of offering and selling financial instruments such as corporate bonds.

11) **Amend regulations on access to KNF/UKNF professional secrets.**

A thorough analysis is needed of the impact of restrictions resulting from KNF/UKNF's professional secrets on the potential to effectively pursue claims by individuals harmed by financial-market entities. The audit findings have shown that, apart from the information provided by the KNF publicly, the harmed bondholders are not provided with information covered by such secrets. These include, eg, results of inspections documenting the scale, circumstances and mechanisms of abuse. They could have significantly contributed to proving the validity of claims. This can lead to a situation where the perpetrator is better protected than the victim. This applies, in particular, to situations where victims decide to pursue their claims in civil procedure, in which the burden of proof rests on them. Potential amendments should lead to removing barriers to pursuing claims, to properly balance the interests of various actors of the financial market.

12) **Adopt regulations that permit allotments from the Financial Education Fund, supplied from, among others, of fines levied by the KNF, to compensate consumers, up to specific amount set out by regulations, of the losses sustained due to purchase of corporate bonds if recovery from the issuers proves to be ineffective or where it is obvious that such recovery would be ineffective.**

One factor that would provide for adequate operation of the capital market, in particular the safety of transactions and protection of investors, should be a mechanism to guarantee the protection – at least to some extent – of invested assets in the event of insolvency of the issuer, especially where securities have been issued or offered in violation of the law.

The KDPW-operated system of obligatory compensation mentioned in Chapter V of the Trading in Financial Instruments Act protects only investors' funds and financial instruments which are held or should be held by a brokerage house,[16] and which cannot be returned to the investor, because the brokerage house, due to imminent or actual insolvency, is unable to meet its obligations versus its customers – investors. This compensation system provides no protection in the event of financial claims versus the issuer of corporate bonds, even in situation where the brokerage house is insolvent.[17]

Government proposal for amending certain acts aimed at strengthening the supervision and protection of investors in the financial market (listed under: UD427; proposal of 27 August 2018) provided for, among others, adding a regulation whereby the Financial Education Fund's responsibilities would be to compensate natural persons, up to the amount set out by the Act, for losses sustained due to the purchase of bonds issued pursuant to the Bonds Act, including in the event of declaration of bankruptcy or opening a restructuring procedure for the issuer of bonds, if law has been breached in preparing or issuing, or selling bonds, and any of the measures providing the source of income of that Fund has been applied in connection with such breach. During governmental legislative work on the above-mentioned proposal, the problem of compensations was given up in this project 'due to doubts as to certain solutions of the projected Financial Education Fund.[18]

In the opinion of the NIK, it would be justified to resume legislative work aimed at permitting allotments from the Financial Education Fund, supplied from, among others, fines levied by the KNF, to compensate consumers, up to specific amount set out by regulations, for some losses sustained due to purchase of corporate bonds if recovery from the issuers proves to be ineffective or where it is obvious that such recovery would be ineffective.

Preparation of draft regulations that would put into life proposals 1-4, 7 and 11-12 is responsibility of the Minister of Finance, proposals 5, 6, 9, 10 – the Minister of Justice, and proposal 8 – the President of the Office of Competition and Consumer Protection.

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16 Under Article 132(1)(3) of the Trading in Financial Instruments Act, brokerage house is taken to mean a standalone brokerage house, bank operating brokerage business, or custodian bank.

17 *System Rekompensat, Podstawy prawne oraz zasady funkcjonowania Systemu Rekompensat w Polsce [Compensation system: Legal basis and Rules of Operation of the Compensation System in Poland]*, an informative brochure published by the KDPW.

18 Cover letter of 31 August 2018, no. FN4.700.il.2016, to the proposal for an Act amending certain acts aimed at strengthening the supervision and protection of investors in the financial market, submitted on the session of the Council of Ministers.

To increase the level of consumer protection, the NIK also calls for the Financial Ombudsman to review the list of claims which can be pursued in cases involving unfair market practices.

Interpretative proposal

Under Article 26 of the FOA, the Financial Ombudsman may sue financial-market entities on behalf of their customers in cases involving unfair market practices which, under Article 4 of the Combating Unfair Trading Practices Act, include practices applied by economic operators towards consumers that are contrary to the accepted practice and distort or may distort significantly the operation of the market.

In the opinion of the RF, and this has not been disputed by the NIK so far, Article 26 of the FOA should be interpreted having regard to Article 12(2)(2) of the CUTPA, which, in turn, allows the Financial Ombudsman to bring a suit if unfair market practice is identified, only with regard to the demands defined in Article 12(1)(1), (3), (5) of the CUTPA, and namely:

- to refrain from such practice;
- to make a single or multiple statement with appropriate content and form;
- to award an appropriate sum of money for a specific public cause related to the support of Polish culture, protection of national heritage, or consumer protection.

In RF's view, the legislator has thus excluded the possibility of bringing suits by the Financial Ombudsman or his acceding to proceedings in cases concerning the repair of damage on general terms, in particular a demand to cancel a contract with the obligation of returning mutual considerations, or return by the economic operator of product purchasing costs in a situation where the economic operator has applied unfair market practices (demand mentioned in Article 12(1)(4) of the CUTPA).

However, having regard to, among other things, Judgement of the Appellate Court in Warsaw of 16 April 2018 (file ref. V Aca 1096/17), in the opinion of the NIK, the interpretation of Article 26 of the FOA adopted by the RF needs updating. Although that judgement relates to the assessment of procedural competencies in legal proceedings of the Consumer Ombudsmen in cases involving claims resulting from the CUTPA rather than RF's procedural competencies in legal proceedings, in the NIK's opinion, it should be nevertheless taken into account in the interpretation of Article 26 of the FOA. In the discussion of grounds for that judgement, the appellate court argues, among others, that Article 12(2)(4) of the CUTPA has opened up for the Consumer Ombudsman the capacity to act not only for a specific consumer (Article 63^3, Article 63^4 CCP), but also to act independently, by equipping him with his own active (public) mandate to act in legal proceedings. By acting independently, the Consumer Ombudsman is not only a formal, but also an actual party to the proceedings. In the opinion of the court, it is therefore obvious that Consumer Ombudsman, acting independently rather than on behalf of a specific consumer harmed by the consequences of unfair market practice, may not demand that the consequences of that practice be removed, the harm done to the consumer be repaired, or the contract be rescinded. However, a Consumer Ombudsman acting on behalf of an individual consumer may raise any demand which could be raised by the consumer alone.

To increase the level of protection of financial market participants, it is therefore reasonable to update the interpretation of Article 26 of the FOA, Article 12(2)(2) of the CUTPA, and accept that the latter regulation does not restrict the RF's capacity to act in legal proceedings, by providing the RF with stand-alone authority (without the need to act on behalf of any specific customers of a financial-market entity) to bring the claims mentioned there. The RF who acts on behalf of an individual consumer being a customer of a financial-market entity may bring all claims available to consumers under Article 12(1)(1) to (5) of the CUTPA, including also to bring claims for the repair of damage on general terms, and, in particular, demand to rescind a contract with the obligation of returning mutual considerations.