INTERNATIONAL SECURITIES LENDING ASSOCIATION

The International Securities Lending Association
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Mateusz Morawiecki
Ministerstwo Finansów
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00-916 Warszawa
Poland

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Dear Sir,

I am writing to you in relation to the Polish Act dated 24 July 2015 and the impact it may have on the securities lending market. We believe this may be an un-intended consequence and seek to achieve an amendment to the Act in order to resolve the matter.

International Securities Lenders arrange loans of equity securities to borrowing counterparties, often as agent on behalf of principal clients investing in domestic markets such as Poland. Loans are temporary arrangements to lend securities, with legal ownership transfer, on an open or a term basis, against the receipt of collateral, in return for a fee. By lending securities these investors generate tangible incremental revenues which have the effect of increasing the returns on their portfolios (thereby helping to meet the needs of investors). The securities that are lent are borrowed by market participants for a variety of reasons, providing liquidity and increasing settlement efficiency in financial markets and also play an increasingly important role in addressing the demand for collateral in the system as regulators seek to improve market infrastructure and mitigate systemic risk.

The International Securities Lending Association (ISLA) is a trade association established in 1989 to represent the common interests of participants in the securities lending industry. It has approximately 120 full and associate members comprising insurance companies, pension funds, asset managers, banks, securities dealers and service providers representing more than 4,000 clients. While based in London, ISLA represents members from more than sixteen countries in Europe, and the rest of the world.

Our members have conducted a review of the Polish Act dated 24 July 2015, (Journal of laws of 2015, No. 1272, as amended), introduced to control certain investments. The Act became law in October 2015 (and effective from June2016). Our understanding is that the Act applies solely to shareholdings in individually identified companies of strategic importance (**Protected Companies).** Further, under the Act, acquisitions of significant shareholdings in Protected Companies are subject to notification and pre-approval (with no-objection) from the Polish government (Minster of State Treasury). The regulation applies to the acquisition of a Protected Company and to acquiring control over a Protected Company.

Analysis by our members has concluded that a loan **return** transaction (of a previously lent Polish equity in a Protected Company), will also be considered an acquisitions of shares. As such, currently, the loan **return** will be subject to pre-approval if the client's ownership has crossed the 20% threshold.

For loan returns, market practice allows the counterparty/borrower to return equivalent securities to the lender as soon as their securities financing obligations end. The equities are typically returned quickly, often same day and normally within three trading days, in order to limit unnecessary financing costs. It also enables investors to continue to actively manage investments whilst the securities are on loan, as there is a legal obligation on the borrower to return securities when requested, within the market settlement timeframes (T+2), thus ensuring that securities are returned to the investor in time to meet any settlement obligation.

Importantly, an investor can recall securities from loan, giving market settlement notice, for any (or no) reason. This means that the controlling interest of the security is effectively retained by the investor (lender), so the loan return does not represent a change in beneficial ownership.

For investors with significant ownership in Polish Protected Companies, that are also active lenders of equity securities, the requirement to apply for approval and wait for the approval to be granted, is challenging in relation to loan return transactions which are typically agreed at very short notice. Failure to comply with the disclosure and pre-approval requirements can result in significant sanctions.

We understand that the names falling under the Protected Companies regulation may be extended or reduced and the process to add new company names can be completed within a few days. Draft legislation may publish the names of these new companies being considered but in some instances, names can be added without pre-notification.

Typically securities borrowing and lending (SBL) activity is exempted from requirements for similar regulation in other markets. In order for the international lenders and borrowers to continue to participate freely in SBL activity without unintentionally breaching the pre-approval requirements for acquisitions in Protected companies, we (ISLA) ask that an exemption be applied for SBL transactions, be considered.

We would be happy to further discuss this issue with you further at your convenience.

Yours sincerely,

Andrew Dyson
CEO