

About the law on bonds and its amendments

(from the volume editors)

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T. Sójka, A. Rycerski, **Bond issue agent**

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Summary: This article presents the matter of the obligation of the issue agent to participate in the process of issuing bonds, mortgage bonds and investment certificates issued by a private closed-end investment fund. This is a *novum* introduced to the Polish capital market law pursuant to the Act of 9.11.2018 amending certain acts in connection with the strengthening of supervision over the financial market and investor protection in this market, directly affecting the shape of the basic institutions of the Act of 15.1.2015 on bonds.

Key words: issue agent; bonds; investor protection; MIFID II; bonds issue; financial instruments.

JEL: K22

Jarosław Szewczyk, **On the available modes of bond issue**

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Summary: The subject of the article is the analysis of regulations regulating the permissible “modes” of bond issue in the context of the provisions of the Prospectus Regulation, i.e. Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market and repealing Directive 2003/71/EC. Since 21 July 2019, a new regime for public offering of securities has appeared in the Polish legal system. The new legal act not only changed the

rules for drawing up prospectuses, but also revolutionized the concept of “public offering”. The new definition of public offering affects many areas of the capital market, including the regulations regulating the mode of issuing (offering) bonds to investors.

Key words: bonds; public offering; public offering of securities; regulation 2017/1129; mode of issue; private debt; securities; financial market.

JEL: K20, K22, K23

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Summary: The bonds are securities qualified under financial regulations as financial instruments. The subject of the article is the issue of bond trading and changes that have occurred in connection with the implementation of MIFID II, the strengthening of supervision over non-public issues and those resulting from the entry into force of new EU legislation. The author tries to analyze the changes introduced in the context of the goal pursued by the legislator.

Key words: bonds; financial instruments; issue agent.

JEL: K22, K23

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Summary: The subject of this paper is the assessment of possibility and forms of infringement of the collective interests of consumers during a private offering of bonds. Recent events on the Polish capital market have shown that the consumers investing their funds on this market are exposed to entrepreneurs' actions which may infringe their interests. In this context it should be assessed whether entrepreneurs' actions may lead to infringement of collective interests of consumers, and if yes, to which examples of infringements described under the respective provisions of Polish law such infringements may apply and what forms such infringements may have. Considering the above, in this paper it will be presented how should the notion of private offering of bonds be interpreted, given the latest changes in Polish law, what actions constitute the process of issuance of bonds and whether the potential violations of rules of conducting the process of issuance of bonds may be classified as infringements of collective interests of consumers.

Key words: bonds; private offering; collective interests of consumers; *misspelling*.

JEL: K22

Rafał Woźniak, **Issuers' obligations related to the issue, servicing and redemption of bonds – selected issues**

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Summary: This article discusses selected issues related to the disclosure requirements of bond issuers. The article is divided into three main parts corresponding to three categories of disclosure requirements. The first category is the information provided in connection with the bond issue process. The author discussed in this respect in particular the scope of information provided in the terms and conditions of bonds. The second group consists of obligations imposed by law on issuers during the period until redemption of bonds. As indicated in the article, the scope of such information is not extensive and does not pose any difficulties for issuers. At the same time, what has been emphasized, it may be extended in the terms and conditions of the bonds. Due to the particular significance and specificity of the regulation as a separate, third group, the disclosure obligations of issuers of bonds introduced or admitted to trading are discussed. This article analyses legal regulations relating to disclosure requirements of bond issuers, focusing on key areas only.

Key words: bonds; inside information; disclosure requirements.

JEL: K22, K29

Aleksander Kowalski, **Cancellation of interest payments under AT1 bonds – regulatory framework**

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Summary: AT1 bonds are the newest type of hybrid financial instruments which, thanks to specific mechanisms of the issuer's loss absorption, constitute a surrogate for the bank's capital. One of these mechanisms is the special feature in the form of the possibility of total cancellation of the payment of interest by the issuer. In the early period of development of the AT1 bond market, the risk of suspension of interest payments based on discretionary rights of the issuer was quite commonly treated as unlikely. However, the risk of suspension of interest payments materialized at the beginning of 2016, when the rumors about the possibility of Deutsche Bank AG being able to use this option led to a significant decline in the valuation of the entire AT1 bond market. There are a number of circumstances that make it possible not to pay interest on AT1 bonds, and the issuer's autonomous decision in this respect is only one of them. The purpose of this article is to describe these cases in which – due to regulatory restrictions – the issuer of AT1 bonds will not be entitled to interest payments.

Keywords: hybrid financial instruments; regulatory capital; CRR; loss absorption; *coupon deferral*.

JEL: G21, G32, G33, G38

Angelina Stokłosa, **Principles of appealing against resolutions of bondholders' meetings – selected issues**

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Summary: The article discusses selected issues related to the basic principles of appealing against the resolutions of bondholders' meetings. To date this problem has not been much attention among academics, and all observations connected with it are only contributory. It should be assumed that the inclusion of the subject matter using the mechanism of "analogy", i.e. by referring to the regulation on the broadly described in the doctrine of the regime of appealing against resolution of the general stockholders meetings' in the corporations does not exhaust the subject. What is more, as it seems, this approach shall be regarded as methodologically misleading.

The article is divided into three main parts. The first refers to appealing against resolutions of bondholders meetings that flagrantly violate the interests of bondholders or are contrary to good morals. Such resolutions may be moved by an action to repeal them, pursuant to provisions of Art. 70 of the Act on Bonds. The second main part concerns appealing against bondholder's resolutions contrary the act, using the action for annulment of a resolutions – according the provisions of Art. 71 of the Act on Bonds. The third part of the article refers to the legal duty of bond issuers who are obliged to provide information on the repeal or declaration of invalidity of the bondholders' resolution. This duty is formulated in the provision of Art. 72 of the Act on Bonds.

Key words: bonds; general meeting of bondholders; appealing against resolutions of general meetings of bondholders; repeal of a general bondholders meeting's resolution; declaration of invalidity of a general bondholders meeting's resolution.

JEL: K22, K29

Szymon Syp, **The principle of personal identity and time continuity of the bond issuer**

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Summary: The article deals with an interesting issue of the so-called principle of personal identity and time continuity of the bond issuer. This issue has been discussed, in the first place, in relation to the general principles regarding the assumption of debt in the light of the Civil Code, and secondly, in the context of the legal structure of the bond and legal relations incorporated in bonds. The article reviews the views of the doctrine regarding the principle of personal identity and time continuity of the bond issuer. It covers also the Author's own standpoint on the subject matter. The article contains a number of regulations which suggest that there is no such a principle. Finally, the article contains remarks from the legal analysis.

Key words: bonds; bonds' issuer; the principle of personal identity of the bond issuer; debt assumption.

JEL: K20, K22, K29

LEGISLATION AND CASE LAW REVIEWS

Wojciech Chabasiewicz, **The moment of conclusion of the agreement for administering bond collateral**

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Summary: The effectiveness of bond collaterals is of great importance in the first place for bondholders, but in a broader perspective for the entire debt securities market. Ensuring that established collateral guarantees real security is a condition for increasing confidence in the market. This should be fostered by an appropriate interpretation of the law, consistent with the objectives of the regulation.

The provisions only slightly regulate the matters related to the collateral administration agreement. Despite the small amount, the rules are inconsistent, and their application raises a lot of doubt. One of them is the question of when the security administration agreement should be concluded. The purpose of the study is to point out the arguments supporting the thesis that a collateral administration agreement can be concluded at any time, starting from the idea for bond issues, until the issuer buys the last bond of the given series.

Key words: bonds; security administration agreement; mortgage administrator; lien administrator; security administrator.

JEL: K22

BOOK REVIEW

Tomasz Sójka, *Uprawnienia organizacyjne obligatariuszy. Studium cywilnoprawne ze szczególnym uwzględnieniem pozasądowej restrukturyzacji zobowiązań z obligacji [Organisational rights of bondholders. Civil law study with particular emphasis on out of court restructuring of liabilities from bonds]*, BECK, Warsaw 2018 (Angelina Stokłosa, Szymon Syp)

REPORTS

Corporate Bonds Congress, Warsaw, 21–22 October 2019 (Krzysztof Dziubiński)

Contents, Summaries and Key Words