

Warsaw, 21 June 2021.

Black Pearl S.A.
with its registered seat in Warsaw
KRS 343453
Z. Słomińskiego 15/504
00-195 Warsaw

The Polish Financial Supervision Authority
The Trading Supervision Department
Piękna 20, 00-549 Warsaw

COMPLAINT ON THE MEASURES
UNDERTAKEN BY GIEŁDA PAPIERÓW WARTOŚCIOWYCH W WARSZAWIE S.A.
AND
REQUEST TO UNDERTAKE SUPERVISORY ACTIONS

Acting for and on behalf of BLACK PEARL S.A., with its registered seat in Warsaw, entered into the Register of Companies kept by the National Court Register (KRS), under a KRS file number: 343453 (“**Company**”), this is hereby to:

- 1) file a complaint against the measures undertaken by the Management Board of Gielda Papierów Wartościowych w Warszawie S.A. (“**Management Board**”) (“**GPW**”) which involved the suspension of the trading in the Company’s shares on the basis of the Resolution No 565/2021 of 1 June 2021, and;
- 2) request that relevant supervisory actions be undertaken against GPW, as due and required given the competencies assigned to the Polish Financial Supervision Authority.

JUSTIFICATION GROUNDS

Due to a failure to deliver the 2020 annual report or the 2020 consolidated annual report, the Management Board of GPW, acting pursuant to § 11.1.2) and 11.1a of the Alternative Trading System Regulations (General Provisions, as at 13 January 2021, the “**Regulations**”), suspended, by way of the Resolution No 565/2021 of 1 June 2021 (“**Resolution**”), the trading in the shares of some of the companies in the NewConnect Alternative Trading System as arranged by GPW.

The Company was one of the companies the listings of which were suspended under § 1.1.7) of the Resolution of GPW Management Board. The foregoing suspension was grounded on the failure to

deliver the 2020 annual report or the 2020 consolidated annual report. The Resolution does not contain any detailed explanatory information, or justification of the Company's condition.

The Company hereby informs that the justification grounds provided for in the Resolution were based upon the facts which did not implied all significant circumstances, and upon inappropriately applied legal standards. In the Company's opinion, the measures undertaken by GPW should be investigated by the supervision authority, i.e. the Polish Financial Supervision Authority – the scope of supervisory activities, with regard to practices pursued by GPW and the Regulations.

I. Facts of the case

By the current report no 19/2021 of 9 June 2021 r.ⁱⁱ, the Company informed about the Company's position concerning the Resolution. In the report, the Company proved that, among other things, during 2021 it was a party to the audit agreement executed with Kancelaria Biegłego Rewidenta Cz. Defański J. Defański s.c. On 27 April 2021, as informed in the report of 29 April 2021ⁱⁱⁱ, one of the partners of the above specified law firm passed away; therefore, the civil partnership was dissolved and the agreement on the audit of the financial statements was terminated. The Company promptly undertook the actions to execute another agreement on the audit of the financial statements with another statutory auditor; such audit agreement was effectively executed with KPW Audytor sp. z o.o. Given these events, even though the Company undertook relevant and appropriate measures, its financial statements could not have been audited as at 31 May 2021, for reason beyond its control.

The market was immediately informed of the above specified circumstances (the current report no 19/2021 of 9 June 2021, report of 29 April 2021, report of 4 May 2021, report of 5 May 2021). On 17 May 2021, the Company published the periodical report for the 1st quarter 2021^{iv}, and then on 31 May 2021 the 2020 annual report was published, along with the information whereby the opinion and the report of the statutory auditor on the audit of the 2020 Company's separate financial statements would be published on or before 18 June 2021 as a correction of the annual report. The Company explained the above specified circumstances. This report was published within the timeframe indicated by the Company.^v

The Company satisfied the reporting requirements determined under Attachment No 3 to the Regulations ("Current and Periodical Information delivered through the NewConnect alternative trading system") **and complied to the provisions of the 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

The Company published the above specified current reports and other communication, as it was required following a widely understood interest of all market participants, and specifically interest of all the Company's shareholders and its stakeholders. Thus, the market participants were in possession of all the information on the facts and circumstances related to the Company's non-deliberate delay in the publication of the auditor's opinion and report on the audit of the Company's 2020 separate financial statements, as well as the date to publish the missing materials.

To this extent, given all the objective developments, the Company undertook all the measures it considered necessary that proved reasonable on all respective grounds .

II. Principles governing GPW's activities.

Apart from the quoted provisions of the Regulations (that contained only general clauses, i.e. security of trading and interest of its participants) and indication of some of the facts, the Resolution does not contain any substantive justification or analysis of the facts and conditions of any of few dozen or so companies specified in the Resolution. **The foregoing actions constitute an example of over interpretation of legal standards and constitutes an example of deviation of not only from literal meaning of the regulations, but mostly from their object.** The GPW Management Board followed an assumption of breach of security of trading or interest of its participants somehow on *a priori* basis, without any thorough analysis of the facts, and specifically without proving that the security of trading or interest of the market participants actually required that the Company's listings be suspended.

The Management Board of GPW did not refer, in any manner whatsoever, to any of the specific circumstances resulting in non-deliberate delay in the publication of the opinion and the report, and **they failed to consider the transparent reporting policy implemented by the Company. The Management Board of GPW failed to consult the Company to develop the solution which would really consider the interest of market participants.** The Management Board of GPW did not provide any justification grounds for legitimacy of the far-reaching measure which involved the suspension of the Company's listings, taking into account the circumstances which in fact challenged the Company's operations.

Pursuant to the provisions of § 11.1.2) and 11.1a of the Regulations, whereupon the Resolution was grounded, the Management Board of GPW holds a discretionary right to suspend the trading in financial instruments (point 2 – *if it is considered that such suspension is required due to the security of trading or interest of its participants*), whereas the decision is not to be subject to any challenge whatsoever. The Regulations do not provide for any rights of the companies, whose instruments are listed on the alternative trading system, to file a request for the matter to be reconsidered should the Management Board of GPW executes its discretionary right. The foregoing *de facto* entails that the decision made by the Management Board of GPW is to be considered final and should not be verified, and that the issuers are not authorized to request such verification. In the circumstances where measures undertaken by GPW are challenged by the issuers, and whereby the issuers find themselves in vulnerable position where market participants are deprived of the right to defend their reputation.

The foregoing argument proves reasonable to the extent whereby the procedure for filing a request for the matter to be reconsidered is recommended by the Regulations in a few other cases (e.g. in case of a refusal to introduce financial instruments into the organised trading in case of exclusion of financial instruments from trading or if financial penalties are imposed on the issuer of the instruments listed on the alternative trading system).

The assumption whereby the operator of the alternative trading system, and GPW in Poland, fulfils the obligations assigned thereto based upon discretionary principles, which are not explicitly grounded on any laws, and what is even more deviate from the model which has been accepted in other sections of

the Regulations and commonly applicable laws and regulations, may result in actual **breach of the principles of fair trading and interest of all market participants**, since the supervision authority, i.e. the Polish Financial Supervision Authority, and the operator of the alternative trading system, i.e. GPW, and market participants, are interested in the existence of transparent and predictable trading system, whereby the entities may verify the decision which affect their operations, i.e. to be based upon the principles that have been approved and commonly accepted in the legal system of the Republic of Poland.

Given the foregoing arguments, the measures undertaken by the Management Board of GPW against the Company constitutes abuse of law.

III. Evaluation of key charges pressed against the Company

To conclude, the Company is of the opinion that the circumstances referred thereto by the Resolution adopted by the Management Board of GPW, should not be considered to be satisfying the requirements set forth in § 11.2.2 of the Regulations. The Company informs that GPW failed to prove (and to attempt to prove) that the security of trading or interest of the market participants with regard to specific circumstances faced by the Company would require the suspension of listing of the Company's shares. The Company believes that the foregoing provisions of the Regulations could effectively applied in case of the occurrence of the following events:

- the Company's preventing effective audit, that would result in a failure to timely publish periodical financial statements,
- a failure to undertake measures with the aim being to mitigate risk of a failure to timely publish the Company's periodical financial statements,
- non-disclosure of the information necessary to prepare and publish the Company's financial statements,
- any other negligent activities or omissions on the part of the Company which contributed to the failure to timely publish the Company's periodical financial statements.

None of the foregoing circumstances have been actually proven to occur. The Management Board specifically neglected the significant circumstance of **the lack of the Company's fault**, i.e. beyond the Company's control, on the part of the company which was to audit the Company's financial statements as a result of which the Company could not fulfil its reporting obligations. Nevertheless, following the security of trading and being fully aware of interest of market participant, by the report dated 29 April 2021 the Company published relevant information and promptly undertook activities to involve another auditor to audit the Company's financial statements, with all these efforts having been presented in detail by consecutive reports.

In addition, the Company points out to the lack of an option to verify the Resolution despite unbiased facts evidencing the implementation of such mechanisms into the Regulations, following the solutions that have already been functioning in the Regulations. To the best knowledge of the Company, the practice of functioning and applying the Regulations duly justifies the legitimacy of its provisions.

Thus, the Company hereby claims that the charge pressed against it has been based upon wrongly determined facts and inaccurately applied legal standards and, as such, it proves illegitimate and groundless.

IV. Supervision of the activities undertaken by GPW. Authorities of the Polish Financial Supervision Authority

The fact goes that under the Constitution of the Republic of Poland, the stock exchange regulations do not constitute a source of law.^{vi} They are not directly governed by the mechanisms which are provided for in the administrative procedure. When compared to the regulated market, the alternative trading system is also characterised by lower formalisation standards. The company which pursues this organised trading standard is subject to slightly less moderate supervision standard.^{vii} Nevertheless, in the opinion of the Company, the foregoing does not imply the recognition of the **GPW's right to undertake any actions whatsoever**. The stock exchange regulations should to the broadest possible extent reflect the solutions that are known and accepted in the Polish legal system. The provisions concerning the issues that are significant from perspective of market participants should be accurate and precise, if possible, without leaving any space for any ambiguous interpretation.

GPW also undergoes specific control regimes, i.e. the regulations of the Act of 29 July 2005 on Trading in Financial Instruments provide for instruments whereby the Polish Financial Supervision Authority would be authorised to pursue inspections and controls of GPW on a regular basis.^{viii} The scrutiny of the alternative trading system is pursued through Polish Financial Supervisory Authority's supervision over the market operators. The Authority has been assigned broad competencies which result from independent supervisory authorities, which are not grounded upon the operating the alternative trading system, against the regulated entities. The supervisory instruments involve specifically an option to pursue control or request persons representing or employed by investment firms or regulated market operator to deliver documents or explanation. In addition, the authorities enjoyed by the Polish Financial Supervision Authority also include the right to impose administrative penalties.^{ix} The Polish Financial Supervision Authority may cancel an authorisation to operate the stock exchange if the market is operated in the manner whereby laws and regulations are violated.

In general, the method of functioning of the stock exchange, as the venue where financial instruments are traded, is determined by the stock exchange regulations.^x Only a small number of statutory regulations governs the functioning of the alternative trading system. The Regulations constitute the basic document upon which the alternative trading system functions, including the entities operating thereon. To this extent, the significance of the Regulations and the provisions thereof proves extremely important. There does not exist a closed catalogue of issues to be included into the Regulations. The Polish Financial Supervision Authority may affect the wording thereof, at the moment of its adoption and when changes are introduced.^{xi}

Taking the foregoing into consideration, the Polish Financial Supervision Authority is fully authorised to undertake relevant actions.

V. Request for the relevant actions to be undertaken.

Given the foregoing facts and circumstances, the Company finds it reasonable and legitimate to file the Complaint with the Polish Financial Supervision Authority against the measures undertaken by GPW with regard to the Company within extent determined under the Resolution and to undertake relevant supervisory activities against GPW, and, to this extent, **to request the alternative trading system operator to cease and desist the activities resulting in the breaches of applicable regulations and not to undertake these actions in future.** Given the interest of the market participants, the Company finds it reasonable to request the Polish Financial Supervision Authority to undertake appropriate actions that would comply with relevant competences assigned thereto, **with the aim being to change practices pursued by GPW and modify the Regulations,** both within extent governing the resolutions adopted on the suspension of listings of financial instruments as well as any other similar issues, in the manner whereby:

- GPW would terminated practices to adopt resolutions concerning several market participants which in fact do not include individual situations of specific companies and should be a subject of separate resolutions,
- GPW would be obliged to provide substantive explanation for all the resolutions concerning the issues which prove significant in terms of trading in financial instruments (apart from organizational and technical aspects), in order not to cause any market disruptions through collective consideration of specific causes,
- GPW was obliged to introduce legal mechanism for the issuer to file a request for the matter to be reconsidered within regard to these matters concerning the issuers where this mechanism was not specified under the Regulations.

The foregoing solutions will certainly contribute to the improvement of transparency of the activities pursued by the business entity arranging the alternative trading system and will positively affect the widely understood trading security. There is no doubt that secure trading increases trust in stock exchange and its surrounding institutions. Therefore, any and all efforts should be undertaken to achieve and maintain these standards.^{xii}

Taking all the above specified information and facts into consideration, the Company hopes that the position and arguments presented herein will constitute the grounds for further talks and will be a trigger for relevant measures to be undertaken by the Polish Financial Supervision Authority and will not be neglected, specifically due to mutual relations between the Polish Financial Supervision Authority and GPW, through assigning certain controlling activities of PFSA to GPW.

ⁱ <https://newconnect.pl/uchwaly>, as at: 21.06.2021

ⁱⁱ [https://biznes.pap.pl/pl/news/search/info/39138102,black-pearl-sa-\(3-2021\)-rozwiązanie-umowy-z-kancelaria-bieglego-rewidenta](https://biznes.pap.pl/pl/news/search/info/39138102,black-pearl-sa-(3-2021)-rozwiązanie-umowy-z-kancelaria-bieglego-rewidenta), as at: 21.06.2021

ⁱⁱⁱ <https://www.bankier.pl/wiadomosc/BLACK-PEARL-Rozwiązanie-Umowy-z-Kancelaria-Bieglego-Rewidenta-8103112.html>, as at: 21.06.2021

^{iv} [https://biznes.pap.pl/pl/news/search/info/39292416,black-pearl-sa-\(6-2021\)-periodic-report-for-the-first-quarter-of-2021---raport-okresowy-za-i-kwartal-2021-roku](https://biznes.pap.pl/pl/news/search/info/39292416,black-pearl-sa-(6-2021)-periodic-report-for-the-first-quarter-of-2021---raport-okresowy-za-i-kwartal-2021-roku), as at: 21.06.2021

^v [https://biznes.pap.pl/pl/news/search/info/39589615,black-pearl-sa-\(10-2021\)-annual-report-of-black-pearl-sa-for-the-financial-year-2020--raport-roczny-black-pearl-s-a--za-rok-obrotowy-2020--black-pearl](https://biznes.pap.pl/pl/news/search/info/39589615,black-pearl-sa-(10-2021)-annual-report-of-black-pearl-sa-for-the-financial-year-2020--raport-roczny-black-pearl-s-a--za-rok-obrotowy-2020--black-pearl), as at: 21.06.2021

^{vi} A. Chłopecki in: ed. Szumański, Chłopecki, Dyl: *Prawo Papierów Wartościowych. System Prawa Prywatnego, volume 19*, 2006, § 50 Nb 1.

^{vii} K. Zacharzewski, *Prawo giełdowe*, 2019, page 78.

^{viii} M. Dyl in: ed. Szumański, Chłopecki, Dyl: *Prawo Papierów Wartościowych. System Prawa Prywatnego, volume 19*, 2006, § 51 Nb 109-112.

^{ix} M. Pachucki, Alternatywny System Obrotu - nowe miejsce obrotu instrumentami finansowymi, *Przegląd Prawa Handlowego* 2008, no 1, pp. 18-23.

^x M. Dyl in: ed. Szumański, Chłopecki, Dyl: *Prawo Papierów Wartościowych. System Prawa Prywatnego, tom 19*, 2006, § 51 Nb 73-74.

^{xi} M. Pachucki, Alternatywny System Obrotu - nowe miejsce obrotu instrumentami finansowymi, *Przegląd Prawa Handlowego* 2008, no 1, pp. 18-23.

^{xii} K. Zacharzewski, *Prawo giełdowe*, 2019, p. 122.