

Toruń, 30.05.2012

APATOR S.A.
m.Ostaszewo 57C
87-148 Łysomice

Applicant:

Zbigniew Jaworski

A P P L I C A T I O N

on putting the point regarding the adoption of the resolution on appointment of chartered auditor for special affairs on the agenda of Ordinary General Shareholders Meeting of Apator SA called on 18.06.2012

Zbigniew Jaworski - undersigned as the shareholder of Apator SA having got named certificate confirming the number of bearer shares being in my possession issued by Dom Maklerski – BZ WBK SA and the entries in share book of the Company concerning registered shares representing over 5% of total votes at Ordinary General Shareholders Meeting based on art.84 para 1 and 6 of the Act dated 29th July 2005 on public offer and the conditions for the introduction of financial instruments to the arranged turn over system and public companies Dz.U. 05.1841539 with further amendments further: “The Act on public offer”

I demand to put the point regarding the adoption of the resolution on appointment of chartered auditor for special affairs on the agenda of Ordinary General Shareholders Meeting of Apator SA including the scope of the audit covering the establishment of the method the Executive Board of Apator SA in 2008-2011 and subsidiaries of the Issuer hedged in financial years against currency exchange rate risk related to the performance of sales by Apator SA quoted in foreign currency, earned on export and to indicate the persons guilty of financial losses incurred by Apator SA in 2008-2011.

In particular the scope of the audit to be carried out by chartered auditor for special affairs is to be regarded:

1. What was business justification to apply hedging tool against currency exchange rate risk while concluding contracts of forwards transactions with banks that brought with the risk of unlimited losses?
2. Were concluded contracts for hedging transactions in accordance with binding provisions of the Statutes of subsidiaries of the Issuer and parent entity?
3. How high losses were born by Capital Group of Apator SA in financial years 2008-2011 in result of hedging applied of Grupa Apator SA against losses in order to reduce currency exchange rate risk?
4. What control actions have been taken by the bodies of the Company (Executive Boards and Supervisory Boards including Audit Committee of the Issuer and subsidiaries) in view of art. 483 § 1 and § 2 and art. 484 of the Commercial Companies Code?

5. What kind of management control system against currency exchange rate risk was operated in Apator SA and in subsidiaries of the Issuer in particular financial years 2008-2011?
6. Who approved the limits for hedging in the Company?
7. Who is responsible for monitoring of currency exchange rate risk in the Company for 2008-2011?
8. Since what time there is a department or persons responsible for management risk?
9. Has the company implemented and since what moment the hedging accounting aiming at periodical tests for profitability allowing to evaluate the effectiveness of established hedging relations?
10. Determination who and when made the decision regarding the signature of the contracts with banks of acquisition of derivatives and hedging transactions against currency exchange rate risk?
11. Did the Executive Board and Supervisory Board adopt the resolutions on acquisition of currency options of high risk being aware of not-well thought out actions?
Did the Executive Board advised the Supervisory Board about adopted resolutions on acquisition of currency options?
12. Determination of persons guilty of financial losses incurred and possible exceeding resulting of binding provisions of the Statutes of the Company in 2008-2011?
13. Did concluded transactions on derivatives by the Company in financial years 2008-2011 were aimed at hedging or speculation?

At the same time I apply to appoint the auditor for special affairs to audit with the above described scope by audit company Deloitte Advisory Sp. z o.o. ul.Jana Pawła II 19, 00854 Warsaw, National Court Register: 0000004728 and I declare that I agree the above presented Company to be appointed the auditor for special affairs.

I apply to give access to the auditor for special affairs to carry out the material audit of the following documents of the Company:

- a) consolidated financial statements of Apator SA for particular financial years 2008-2011
- b) contracts with banks confirming the acquisition of currency options, forwards transactions by the Issuer and subsidiaries
- c) resolutions of the Executive Board and the Supervisory Boards including Audit Committee of Apator SA granting the permission to acquire derivatives
- d) opinions and reports of chartered auditor on auditing of consolidated financial statements of Apator SA for financial years 2008-2011
- e) statutes of the Issuer and subsidiaries binding in 2008-2011
- f) resolutions of the Ordinary Shareholders Meeting regarding the cover of the losses from supplementary capital of Apator SA for the years 2008-2011
- g) the above list can be extended in the resolution of the appointment of chartered auditor for special affairs

I apply to fix the date of commencement of the audit on the thirtieth day calculated from the date of adoption of the resolution on appointment of chartered auditor for special affairs.

Moreover, further to the application supplied to put the point regarding the adoption of the resolution on the appointment of chartered auditor for special affairs I submit also the draft of the resolution on the appointment of the auditor for special affairs.

The draft of the resolution is in the Enclosure no.1 to hereby application.

JUSTIFICATION

The executive boards of the entities of Grupa Apator S.A. concluded with banks transactions of derivatives that based on the assumption to hedge the currency exchange rate differences though in fact derivatives could be of speculative nature. Transactions could at the same time violate bidding regulations of the Statutes of Apator SA and the Statutes of subsidiaries of the Issuer.

Decisions of the Executive Board of Apator SA and the Executive Boards of subsidiaries of the Issuer led to cumulative financial losses of - 61.398 000 PLN being the result of arbitrary and not well thought actions of the bodies of speculative nature.

Financial losses included in consolidated financial statements in financial years 2008-2011 were as presented below:

In 2008 losses -25.260.000 PLN (page 14 according to the opinion of chartered auditor)
-3.738.000 PLN additional costs of service of the bank loans taken are interests and commissions

In 2009 losses - 11.447.000 PLN
losses - 3.000.000 PLN extra costs related loans and borrowings

In 2010 losses - 10.560.000 PLN

In 2011 losses - 7.393.000 PLN

Further to the above cumulative financial losses presented above in amount about - 61.389 .000 PLN in financial years 2008-2011 the appointment of auditor for special affairs seems to be necessary and completely justified.

Zbigniew Jaworski

Enclosures:

- draft of the resolution with justification –Enclosure no. 1
- named certificate for the deposit in Dom Maklerski BZ WBK S.A.
- a/a

Enclosure 1

The draft of the resolution with justification

RESOLUTION no.....

of the Ordinary General Shareholders Meeting of Apator SA called on 18.06.2012 on the appointment of chartered auditor for special affairs.

§ 1

Based on art. 84 para 1 and 6 of the Act dated 29th July 2005 on public offer and conditions of introduction of financial instruments to organized trading system and public companies (Dz.U. 05184.1539 with later amendments). Ordinary Shareholders Meeting appoints Deloitte Audyt Sp. z o.o. with headquarters in Warsaw to chartered auditor for special affairs to audit how Apator SA and its subsidiaries hedged themselves against currency exchange rate risk in 2008-2011 regarded the performance by Apator SA of sales quoted in foreign currency being obtained in export activity and also to indicate the persons guilty of financial losses incurred by Apator SA in 2008-2011. The audit will be carried out with most due diligence at the cost of Apator SA.

§ 2.

The subject and scope of the audit to be carried out by chartered auditor for special affairs will include all the issues specified below:

1. What was business justification to apply hedging tool against currency exchange rate risk while concluding contracts of forwards transactions with banks that brought with the risk of unlimited losses?
2. Were concluded contracts for hedging transactions in accordance with binding provisions of the Statutes of subsidiaries of the Issuer and parent entity?
3. How high losses were born by Capital Group of Apator SA in financial years 2008-2011 in result of hedging applied of Grupa Apator SA against losses in order to reduce currency exchange rate risk?
4. What control actions have been taken by the bodies of the Company (Executive Boards and Supervisory Boards including Audit Committee of the Issuer and subsidiaries) in view of art. 483 § 1 and § 2 and art. 484 of the Commercial Companies Code?
5. What kind of management control system against currency exchange rate risk was operated in Apator SA and in subsidiaries of the Issuer in particular financial years 2008-2011?
6. Who approved the limits for hedging in the Company?
7. Who is responsible for monitoring of currency exchange rate risk in the Company for 2008-2011?
8. Since what time there is a department or persons responsible for management risk?

9. Has the company implemented and since what moment the hedging accounting aiming at periodical tests for profitability allowing the evaluation of the effectiveness of established hedging relations?
10. Determination who and when made the decision regarding the signature of the contracts with banks of acquisition of derivatives and hedging transactions against currency exchange rate risk?
11. Did the Executive Board and Supervisory Board adopt the resolutions on acquisition of currency options of high risk being aware of not-well thought out actions?
Did the Executive Board advised the Supervisory Board about adopted resolutions on acquisition of currency options?
12. Determination of persons guilty of financial losses incurred and possible exceeding resulting of binding provisions of the Statutes of the Company in 2008-20011?
13. Did concluded transactions on derivatives by the Company in financial years 2008-2011 were aimed at hedging or speculation?

§ 3

The Company should make the following documents available for the chartered auditor for special affairs. The Company is obliged to make available to chartered auditor appointed in § I of hereby resolution the following documents:

- a) consolidated financial statements of Apator SA for particular financial years 2008-2011
- b) contracts with banks confirming the acquisition of currency options, forwards transactions by the Issuer and subsidiaries
- c) resolutions of the Executive Board and the Supervisory Boards including Audit Committee of Apator SA granting the permission to acquire derivatives
- d) opinions and reports of chartered auditor on auditing of consolidated financial statements of Apator SA for financial years 2008-2011
- e) statutes of the Issuer and subsidiaries binding in 2008-2011
- f) resolutions of the Ordinary Shareholders Meeting regarding the cover of the losses from supplementary capital of Apator SA for the years 2008-2011
- g) the above list can be extended in the resolution of the appointment of chartered auditor for special affairs

§ 4

The date of commencement of the audit mentioned in § 1 of hereby resolution is fixed on the thirtieth day calculated from the date of adoption of the resolution on appointment of chartered auditor for special affairs.

§ 5

The audit will be carried out by chartered auditor for special affairs that is auditing company – Deloitte Advisory Sp. z o.o. ul.Jana Pawła II 19, 00-854 Warsaw, National Court Register: 0000004728

§ 6

Chartered auditor for special affairs will complete audit of financial losses with after control conclusion for financial years 2008-2011 due to transactions regarding currency options concluded by parent entity and subsidiaries and will determine the value of losses incurred by shareholders in the above mentioned years indicating at the same time persons guilty of the losses incurred.

Resolution comes into force on the date of its adoption.

JUSTIFICATION

The appointment of chartered auditor for special affairs by the Ordinary General Shareholders Meeting will determine the fact of the case and the amount of financial losses incurred by the Company and also contracts of derivatives signed with banks by the issuer and subsidiaries with the violation § 6 of the Statutes binding in the Company in 2008.

The audit will allow also to determine guilty persons and responsible ones for the conclusions of the transactions and it also will allow to determine whether transactions of derivatives concluded were of hedge nature or speculation one.

The aim of the report of the chartered auditor for special affairs is to obtain the answer for the questions presented in points 1÷13 and also to evaluate the legitimacy of conclusions by the Company and subsidiaries of the Issuer of the transactions of hedge instruments against foreign currency exchange rate risk and if the losses incurred by the Company in result of the performance of those transactions were to be avoided?

The opinion of auditor for special affairs will have the influence on the claim of the Company itself and shareholders to remedy the damage caused in property of the huge size resulting of the art. 483. § 1 of the Commercial Companies Code.

The Executive Board and the Supervisory Board of the Company by their not well though action caused non controlled losses of – 61.398 000 PLN for financial years 2008 ÷ 2011.

The losses are the consequence of ineffective risk control mechanisms, insufficient knowledge about derivatives and also lack of imagination by the bodies of the Company.

Therefore, the Executive Boards of the entities are responsible for wrong decisions made.

In order to conclude the hedge transactions the adopted resolution of the Executive Board is required where the maximum nominal value of hedging determined by a plan of the balance of the foreign trade and the level of current hedging.

The conclusion of such complicated hedging structure is made after positive opinion given by the Supervisory Board and the decision is made based on submission of the reasons of the application of such hedging by the Executive Board and its potential influence on financial results.

The Executive Board of Apator SA effectively kept secret from the market for some years the fact of conclusions of transactions of currency options with banks without submission of appropriate current reports by use of ESPI.

The obligation of publishing the confidential information by the Company is the result of determined order in the Act on trading of financial instruments and art.56 para 1 point 1 of the Act on public offer and the obligation of its publication.

Public company has simply the obligation to announce about the options already in the moment of conclusion of the transactions according to the verdict of the Province Administrative Court in Warsaw file number: VI S.A./Wa24331/10 where it was stated that

“ stock has to get the information that has the influence on share price not at the moment of risk occurrence but when in the result of conclusion of the optional transaction the risk may occur.”

Administrative Court presenting its sentence shared the opinion of the Polish Financial Supervision Authority giving the legal permission to punish by financial penalty the executive boards of the entities.

Issuers of securities are legally obligated to inform about all significant events that can have the influence on share price but investors were not fully aware of the risk the Company had been exposed to.

Taking into account the rational acting, investor should receive from the Company the information that can have the influence on market price of securities, particularly when it regards the involvement in high risk, speculative financial instruments which are currency options.

In result of lack of performance of the duty of announcement by the Company, the Polish Financial Supervision Authority at the meeting on the 17th April 2012 published its 153 announcement where it unanimously punished Apator SA by financial penalty of 150 000 PLN for the lack of performance by the public company of the duty of announcement to the public and the Polish Financial Supervision Authority and Warsaw Stock Exchange in statutory term that is immediately and not later than within 24 hours since became aware, by the Company and its subsidiaries about confidential information in the period 2008-2009 on conclusion of hedging currency transactions bringing the huge risk of significant losses or significant increases concerning the terms of their conclusion where planned inflows in foreign currency have been exceeded and it could have significant influence on individual or consolidated financial result of the issuer.

Moreover, the Company published on page 44 of consolidated financial statement of Grupa Apator SA for 2011 the information that subsidiary FAP PAFAL SA in Świdnica had taken the proceeding at the court against the bank – BPH S.A. with headquarters in Cracow concerning the payment of the amount of 2.268 000 PLN that FAP Pafal SA paid to the bank due to transactions regarding options concluded in the period since the 23rd February 2008 till the 19th November 2008.

On the 12th April 2012 the District Court in Wrocław submitted to the Company the verdict after the case considered on the 24th February 2012. The verdict of court dismissed the claim of PAFAL SA in whole and awarded the BPH SA with compensation in amount of 10,3 000 PLN due to legal expenses and the amount of 900 PLN due to court fees in favour of State Treasury.

The transactions regarding currency options concluded with banks did not comply with the condition of imprecise since the Company by its actions indicated the risk of unlimited financial losses and it did not admitted the losses on currency speculation that have been disclosed only in quarterly results.

Currency options have be acquired by the executive boards of the entities for speculation purposes and brought with them the risk of unlimited losses, proved by the lost case at the court of FAP PAFAL SA due transaction regarding currency options just concluded in the period since the 23rd July 2008 till 19th November 2008 for the amount of 2.268.000 PLN.

The members of the Executive Board and Supervisory Board in joint stock company are liable to the Company for the damage caused to it by its action or giving up being illegal or the being not in accordance with the provisions of the Statutes.

Zbigniew Jaworski

Enclosures : a/a