

# Deminor *Damage Recovery*

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Dear Reader,

Almost three years after the eruption of the financial crisis, investigations and congressional reports identifying malpractices in the financial industry are still hitting the headlines. Generous bonuses which had been seen as one of the causes (or consequences) of many excesses are now back in the remuneration policies of most financial institutions and are provoking strong criticism.

While discussions and debates are taking place about the need (or usefulness) to further investigate into the role played by financial institutions and particularly investment banks in order to take additional sanctions and once more amend regulations, one of the top priorities that remains high on the agenda is the need to indemnify the victims of malpractice and fraud. Sanctions and new regulations to deter future misconducts will not erase their losses.

In this context, measures to facilitate the recovery of collective financial losses are necessary. More than ever.

Considering the number of public responses to the recent consultation launched by the European Commission on collective redress, and to which Deminor also participated (see below), the least we could say is that investors, market participants and other stakeholders are perfectly aware of the importance of this issue. It remains to be seen whether there will be a consensus on the measures to be taken. Indeed, there are not many topics that are as controversial as this one.

The discussion – if it ever takes place (we believe it will) – will have to be based on rational arguments and not on political slogans. The question is not whether the European Union has to simply replicate the US class action and the whole US legal culture. We need to identify and agree on an efficient mechanism that makes it possible to seek collective redress and that is adapted to our own European legal culture. The fact that there are several different legal cultures within the European Union makes it already very challenging.

In the meantime, investors have to deal with existing legislations and regulations which make court actions to seek collective redress in Europe more complicated but certainly not impossible. The growing interest shown by investors (both European and non-European) to consider collective actions in European countries is an encouraging message. There is also a willingness to extend the scope of collective actions to other areas such as antitrust and cartels where losses are often suffered on a massive scale, including by (large) corporations and businesses.

This is a clear indication that the debate around collective redress cannot be reduced to a confrontation of views between investors and consumers on the one side and corporations on the other side. The alignment and community of interests may be greater than what many may think.

Charles Demoulin  
Partner

NEWSLETTER - MAY 2011

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## EU consultation on collective redress

Deminor has participated to the public consultation launched by the EU Commission to define a common and coherent framework for collective redress in Europe that would improve the enforcement of EU legislation and better protect the right of victims of mass prejudice.

Deminor strongly believes the issue of collective redress (both injunctive and compensatory) should be addressed in a legally binding instrument that could fill the gap in the current judiciary system, both at national and European level. An efficient enforcement of collective redress mechanisms requires ad-hoc legislative interventions both at the European and at national levels, to avoid “forum shopping” and ensure a “level playing field” between Member States.

Misconceptions about the US class action should not prevent the introduction in the EU of some kind of collective redress mechanism. Our civil law systems work differently than in the US and should not lead to an excess or even an abuse of litigation, as most EU countries of civil law tradition do not provide for a trial with a jury, discovery procedures or punitive damages. Our traditional tort law is also very different and should provide inherent limits to unreasonable claims.

Drawing on its own experience of collective actions mainly in the financial services area, Deminor welcomes the horizontal approach of the consultation and recommends to extend the scope

of application of any collective redress mechanism to all areas of substantive law, including competition and consumer affairs but also corporate and financial law.

Considering the advantages of both opt in and opt out proceedings and as it is difficult to provide for a mechanism appropriate in all circumstances, we believe it could be left at the court’s discretion or based on a request filed by the plaintiffs, to decide on a case by case basis to qualify the collective procedure as an “opt in” or as an “opt out”, depending on several factors such as the type of prejudice or the group of victims.

In securities litigation, the opt in proceedings seem however more appropriate. Despite the advantages related to opt out proceedings, Deminor believes the initiative of a lawsuit should remain the prerogative of each individual whose rights have been violated. Opt in proceedings should however not preclude the negotiation of settlements out of court, the outcome of which could subsequently be approved by court and even be declared binding on all the victims of the same prejudice even if they were not involved in the proceedings. A combination of “opt in” legal proceedings with possible “opt out” settlements may represent an interesting approach.

Deminor’s response also stressed the importance of informing properly the parties being interested or having a potential interest in pending collective actions. This information is crucial for the success of a collective action and the representativeness of a group.

Representativeness of the group is a key element and should be a condition to the admissibility of the claim under the European collective redress mechanism. This representativeness could be seen as a natural filter to avoid unmeritorious claims. Claims should not be admitted on a “first come, first serve” basis but rather on the basis of representativeness and on the ability of the group and its representative(s), to conduct the proceedings.

As collective actions may result expensive, costs should not be a barrier to launch a case and appropriate funding should be available. Therefore third party funding or legal cost insurance should be taken into consideration.

Finally, the issue of several “national” collective actions being launched simultaneously in various EU Member States should be dealt with and should lead to some form of “consolidation” of the various actions to the extent that they can be considered as similar.

**If you want more information on this particular subject, please click here to view Deminor’s response to the consultation.**

## Revision of the Markets in Financial Instruments Directive (MiFID)

A new legislative proposal to amend the MiFID is expected this spring. The EU Commission has gathered in that respect the input from all stakeholders through a public consultation that was closed early February 2011.

The purpose of the amendments under MiFID II is to remedy the shortcomings in the implementation of this Directive based on the lessons of the financial crisis. They are also meant to adapt the legal framework to the new financial landscape which has changed substantially since the entry in force of MiFID in November 2007, due to the evolution of trading markets and technology developments.

MiFID is a cornerstone of the EU financial regulation, providing a comprehensive framework for securities markets and financial intermediaries offering investment services in relation to financial instruments. It allows trading venues and investment firms to operate freely across the EU.

MiFID also contains important investor protection rules that should be strengthened under the new proposed changes to the Directive. The suggested changes aim to offer new protections for retail investors while some protections currently available for retail investors will be extended to professional investors. Most important changes regarding investor protection include a.o.:

- introduction of a civil liability

rule in case of infringement of MiFID rules;

- tougher rules on conflicts of interest and their disclosure;

- extension of the scope of application of some MiFID rules to products or areas that were previously not covered, to protect needs of investors in relation to more complex instruments, like for e.g.:

- extension of transaction reporting requirements to derivatives, commodity derivatives and depositary receipts;
- improvement of pre- and post-trade market transparency beyond equities markets;
- stricter information and ongoing reporting obligations to clients for complex products, including OTC derivatives and structured products;

- strengthening the conduct of business rules by reviewing the suitability and appropriateness test;

- narrowing the definitions of professional client and eligible counterparty categories, and imposing additional duties to them;

- enhancement of rules on execution policies to improve the quality of execution data;

- much stricter authorisation and organisational requirements for investment firms with detailed board member requirements and governance standards.

The European Securities and Market Authority (ESMA)

should help ensure a harmonized application of investor protection requirements across Europe, by drafting technical standards which will lead to more convergence in the application of MiFID. In addition, ESMA will have a role in settling possible disagreements between national competent authorities regarding the interpretation of the Directive.

Deminor welcomes the suggestions under MiFID II to adapt the regulatory framework to a more complex reality and to capture a wider range of instruments, services and activities. The amended rules will hopefully prevent in the future the sale of unsuitable products and complex products to investors that do not fully appreciate their risks. The attempt to level the playing field and improve transparency across all organised trading platforms, could also mean a major progress.

## Update on cases

### Madoff

Deminor is more than ever active in representing the interests of investors who invested in so-called “Madoff feeder funds”. Litigation has been initiated in Luxembourg, the Netherlands and in Monaco against various opponents, primarily banks and auditors whom we consider as liable for the losses suffered by the funds and their investors.

Deminor’s group is composed of more than 2,500 investors, having collectively lost around 400 million EUR on their investments in various Madoff feeder funds. As such, the Deminor group has probably become the biggest syndicate of investors in Madoff feeder funds, not only in Europe but also on a worldwide level.

More than two and a half years after the Madoff scandal was revealed, investors are still trying to understand what part of their investment can potentially be recovered. The situation has become extremely complex, with ongoing litigation at various levels, i.e. the U.S. Trustee acting on behalf of the Madoff estate, the liquidators of the Madoff feeder funds and the investors themselves. To make matters worse, the U.S. Trustee has sued the feeder funds in order to get as much money back into the Madoff estate.

Apart from the Santander early settlement, no other fund service providers have made any attempts to settle the case with investors. Despite the existence of overwhelming evidence that banks such as UBS, HSBC and Citco,

and auditing firms such as Ernst & Young and PriceWaterhouse Coopers have failed to adequately supervise BMIS (Bernard Madoff Investment Securities LLC) and, in some cases, have even chosen to hide important risks from investors, they have not made so far any attempt to present a compensation plan to investors.

On the contrary, as we are witnessing in nearly all court proceedings, the banks and auditors are using any possible means to delay a debate on the merits of the case. It is their right to be convinced that they have not committed any wrongdoing, but the best way to get an answer from an independent court on “who is liable” is to get the debate on the merits ongoing. The procedural tactics that they are using are time consuming and imposing unnecessary costs on all parties involved (including the courts and the defendants themselves). Some of these tactics are unreasonable and, especially in Luxembourg, we are surprised to see that the courts are passively admitting them.

Legal uncertainty is not going to help anyone in this case. If the banks and auditors think that investors will in the end give up their legal fight, tired by the endless procedural games played by the opponents, they are simply wrong.

There is an opportunity to be grasped by the banks and auditors. The U.S. Trustee’s recovery efforts and the distressed market on Madoff customer claims that has progressively taken shape allow for market based compensation mechanisms akin to what certain banks have done in the wake of

the Lehman Brothers bankruptcy. Yes, there will be a cost for the banks and auditors, but on the basis of their own due diligence that should not be a surprise to them. On the other hand, there will always be a fast mover advantage for those banks and auditing firms that are willing to take the lead on this. So far, they are willing to let Banco Santander take the prize.

Deminor is presenting the status of the Madoff case in a **webcast presentation to be held on May 31, at 3 PM CET.**

Contact persons: **Erik Bomans, Charles Demoulin and Edouard Fremault** (Deminor Brussels)

## Fortis

Deminor is currently representing 4,900 retail investors and 470 institutional investors in the Fortis (now Ageas) case. Those investors are claiming damages for the losses they suffered as a result of Fortis' misleading communication during the 16 months preceding its dismantling in October 2008.

Those investors' claims are based on Deminor's own analysis of Fortis' communication as well as on a report by court-appointed experts and decisions by the Dutch market authority (AFM) imposing fines on Fortis for breaches of the financial legislation, including the obligation to immediately disclose price sensitive information. The experts' report and the decisions of the AFM had confirmed Deminor's prior conclusions that the communication by Fortis had been misleading on several material aspects (including its exposure to subprime, its solvency, its liquidity, its dividend policy, guarantees that there would be no dilution, etc.).

Fortis had filed appeals against the decisions by the AFM but the court of Rotterdam recently confirmed one of those decisions. This court decision reinforces the case of the investors against Fortis.

Other court actions have been launched in connection with the dismantling of the group in October 2008 and the nationalization of the largest part of its assets and activities by the Dutch and the Belgian States.

A court in Amsterdam recently dismissed a claim filed against the

Dutch State. Deminor, several of its clients and the Dutch shareholders' association VEB claimed damages from the Dutch State for the losses caused by the nationalization of the Dutch banking and insurance activities. The court considered that the plaintiffs had not succeeded in demonstrating that the Dutch State was liable for misconduct (abuse of circumstances) in the context of this nationalization.

The decision of the court is disappointing for the plaintiffs but also for Fortis who nevertheless considered this decision as a success... The plaintiffs have 3 months to decide whether or not they want to file an appeal. Interestingly, the Dutch State would have already selected an investment banker to prepare an IPO of Fortis' former Dutch insurance business.

Fortis (Ageas) and the Dutch State are also involved in litigation against one another. Depending on the outcome of those legal proceedings, Fortis (Ageas) may recover substantial amounts.

Finally, the Belgian experts have communicated their much-awaited preliminary report in the court-ordered investigation into Fortis' nationalization. Although the President of the Court of Commerce had clearly established in October 2008 that there had been a serious lack of transparency surrounding the transactions causing Fortis to surrender its strategic activities which required an investigation in order to restore transparency, and in spite of Deminor's repeated requests to inform investors as quickly as possible, the Court ordered that the preliminary

report had to remain confidential, subject to a penalty of 100,000 EUR per violation, and may only be disclosed to the parties to the pending lawsuit. The final report is expected by 30 September 2011.

Contact person: **Charles Demoulin** (Deminor Brussels)

## Parmalat

### Old Parmalat: Ongoing litigation

On 18 April 2011, a Milan Court acquitted Citigroup, Bank of America, Morgan Stanley and Deutsche Bank in the main court case (not involving Deminor) relating to the banks' role in the 2003 collapse of Parmalat. The four banks had been charged with stock-market manipulation by failing to have the necessary procedures in place that could have prevented the alleged crimes that helped sink Parmalat. Six employees and former employees at three of the banks were also acquitted of charges of stock-market manipulation.

The judges have 90 days to publish their reasoning behind the verdict. The prosecution can decide to appeal.

Deminor has federated bondholders and shareholders of Parmalat, both private and institutional, to file collective actions in Milan to recover the losses they suffered on their Parmalat investments, against the auditors (Deloitte & Touche and Grant Thornton) and against the banks (Citibank, Bank of America, UBS, Nextra, Morgan Stanley and

Deutsche Bank). These actions were filed on behalf of both retail investors (representing a total loss of approximately 55 million EUR) and institutional investors (representing a loss of around 200 million EUR) We are currently holding negotiation discussions with various opponents in order to reach, eventually, a settlement agreement.

The recent decision of the Milan Criminal Court should not affect Deminor's collective actions, since Deminor's case is pending before the civil courts and is based on a much broader range of arguments than market rigging. Furthermore, the banks are still involved in a criminal proceeding in Parma where they are investigated for the offence of fraudulent bankruptcy.

#### **New Parmalat: Lactalis takeover bid**

Late in March 2011, French dairy group Lactalis announced to have bought at the price of 2.80 EUR per share 15.3% of the new company Parmalat SpA (that was created after the bankruptcy of the former Parmalat Group) from Skagen AS, Mackenzie Financial and Zenit Asset Management AB. With a stake of 29%, Lactalis became then the largest shareholder of Parmalat, whose capital is very fragmented. Furthermore, with a stake of 29%, Lactalis was expected to gain majority board representation at the company's AGM - originally scheduled for the end of April - after it proposed a list of directors for nomination to Parmalat's board. However, Parmalat said that it would delay its AGM by two months after the Italian government - concerned

at Lactalis's stake building in the dairy group and the possibility that the French company could win control of the board - introduced a law that would allow the company to do so. In this time, it was hoped that a consortium of Italian shareholders could be formed to block Lactalis' control of the group.

On 26 April 2011, Lactalis announced it will make a 3.38 billion EUR offer for all the shares of Parmalat SpA it doesn't already own. In particular, it would offer 2.60 EUR a share for the remaining 71% stake, a 12.5% premium to the closing price on 21 April 2011 and a 21.3% premium on Parmalat's average share price over the past 12 months.

Lactalis's announcement came during a crucial week for Italian bankers, financiers and industrialists as they tried to agree on a joint defense of Parmalat. Italian bank Intesa Sanpaolo SpA has been working for weeks to create a consortium with the blessing of the Italian government. Cassa Depositi e Prestiti SpA, a state-controlled institution that manages more than 200 billion euros in postal savings, also changed its by-laws to enable itself to acquire stakes in companies deemed of strategic importance for Italy.

As we had indicated in our previous newsletter, Deminor has recently been contacted by a number of investors, shareholders of the new Parmalat SpA, who were concerned about the current situation of the Parmalat Group and wanted to understand what they could do to maximise shareholder value. Deminor is monitoring closely the evolution

of the situation in order to be sure that the interests of Parmalat's minority shareholders will not be harmed by the parties involved in the dispute for the acquisition of the control of Parmalat.

Contact persons : **Erik Bomans** (Deminor Brussels) and **Rosario Marcone** (Deminor Italy)

## **Sonova**

Deminor is investigating in-depth the case of Sonova AG (hereafter referred to as the "Company"), a Swiss-based company leader in the manufacturing of hearing instruments ([www.sonova.com](http://www.sonova.com)). The Company issued a profit warning (hereafter referred to as the "Profit Warning") on 16 March 2011 announcing new sales and earnings outlook for the business year 2010/2011, surprising investors by its magnitude and timing. The stock price reacted by losing more than 23% in a single trading day, destroying 1.6 billion CHF of market value. The stock price has not recovered since.

In its Profit Warning, the company's management blamed (i) the recall of a recently-launched product on the American market (the "Advanced Bionics cochlear implant"), (ii) delayed sales growth in traditional hearing instruments, notably because of the harsh winter conditions, and (iii) negative current currency effects. According to the Company, these events took place in February 2011.

A few days later, on 30 March 2011, the Company announced major changes to the management

and the board of directors, as a consequence of allegations of insider trading committed by the Chairman and founder shareholder (Mr. Andy Rihs), the CEO (Mr. Valentin Chapiro) and the CFO (Mr. Olivier Walker) (hereafter referred to as the “Executives”).

The Company publicly acknowledged that the Profit Warning had been issued too late. Based on different elements, one could not exclude that the Profit Warning should have been issued much earlier than March 2011, as serious business problems in Europe and USA started probably in December 2010 and were not disclosed to the investor community. Investors who acquired shares as from December 2010 may therefore have been misled on the financial health and perspectives of the Company.

In its press release of 16 March 2011, the management pointed out a previously announced recall of the Advanced Bionics cochlear implant, and delayed sales growth in other products as causes leading to the Profit Warning. Despite the management’s statements, which claimed that the Profit Warning should have been issued in early March 2011, we believe that the Profit Warning should have been issued much earlier than 16 March 2011, as it can be demonstrated from publicly known facts that the launch of new products had been experiencing serious problems as from late 2010. Investors having purchased shares throughout that period have not been informed in a fully transparent and timely manner of the business difficulties encountered by the Company in Europe and the USA during the

winter.

These elements, which severely impact the expected level of sales and led to the Profit Warning, were negative surprises for investors, as the Company never disclosed them previously, even though they were “potentially price-sensitive facts”.

Various administrative and judicial authorities recently started investigations against the Executives and the Company. The Swiss Stock Exchange is reportedly examining whether or not the Profit Warning was disclosed to the market in a timely manner. The District Attorney of Zürich focuses on the insider trading aspects of the case.

In accordance with the regulations provided by the Swiss Stock Exchange on publicity requirements, issuers are obliged to disclose “potentially price-sensitive facts” as soon as they have knowledge of the main points. Price-sensitive facts are new facts that are likely to trigger a price change that is considerably greater than the usual price fluctuations, and hence capable of affecting the average investor in its decision-making process.

Finally, the insider trading allegations can be demonstrated from the Swiss Stock Exchange website as it appears that directors and senior managers sold about 2.4 million shares and warrants between the 1st of February 2011 and the date of the Profit Warning. Executive members of the board of directors and/or members of the senior management massively started selling shares and warrants as from the 1st of March 2011, according to regulatory filings.

Such public information is rather compromising for the insiders and the Company, knowing that during that period of time around 5 million shares were traded on the Swiss Stock Exchange. Sales by management therefore constituted almost 50% of total volumes during that period.

Deminor made a preliminary analysis for the purpose of a potential collective action to be launched by Deminor against the Company. Deminor has sent an alert inviting each investor who purchased shares between 1 December 2010 to 15 March 2010 to join their action.

Deminor intends in a first phase to engage into active discussions with the management and to attend the annual shareholders’ meeting to be held in Zürich on 21 June 2011. Depending on the effective support from investors and the outcome of these first discussions, Deminor envisages legal action in a second stage.

**To find out more about this particular case, please follow this link to view Deminor’s alert.**

Contact persons : **Erik Bomans** and **Edouard Fremault**  
(Deminor Brussels)

## Vestas

Deminor is investigating elements which led to severe losses for investors in Vestas Wind Systems A/S (“Vestas”), a Denmark-based company developing wind turbines to generate electricity ([www.vestas.com](http://www.vestas.com)), and whose ordinary shares are listed and traded on the Copenhagen Stock Exchange. Deminor made a preliminary analysis with regard to a potential collective action to be launched against Vestas and is collecting support from investors.

On 18 August 2010, before the market opened, Vestas presented its second quarter 2010 results and downgraded its 2010 financial forecast for revenue and earnings. The market reaction on 18 August 2010 was severe. The stock price dropped 23% in a single trading day, destroying DKK 14.7 billion (EUR 2 billion) of market value. It has not recovered since.

On 26 October 2010, at the presentation of its third quarter 2010 figures, Vestas admitted that it had failed to adopt the International Financial Reporting Interpretations Committee’s (“IFRIC”) Interpretation 15 Agreements for the Construction of Real Estate (“IFRIC 15”), when it became effective on 1 January 2010, and that its 2010 financial statements would likely require a correction. The stock price reacted by losing more than 10% that day, destroying another DKK 4.2 billion (EUR 568 million) of market value.

On 22 July 2009, the European Commission endorsed IFRIC 15 by way of Commission Regulation (EC) No 636/2009, which stated:

“Each company shall apply IFRIC 15 [...] at the latest, as from the commencement date of its first financial year starting after 31 December 2009.” Vestas thus had to apply the completed contract approach for the recognition of revenue from its supply-and-installation contracts as from 1 January 2010.

IFRIC 15 is an interpretation that provides clarification and guidance on when revenue from the construction of real estate should be recognized in the accounts, in particular, whether a construction agreement is within the scope of IAS 11 Construction Contracts or IAS 18 Revenue. As a consequence, Vestas had to change its revenue recognition accounting policies, only recognizing revenue from supply-and-installation projects in the income statement when the project has been delivered to the customer and the risk has been transferred to the customer. Before adapting its accounting policies to IFRIC 15, Vestas recognized revenue from “supply-and installation” projects in line with construction based on the rate of completion of each project.

Already on 27 October 2009, when Vestas announced its third quarter 2009 results, the company did not address the impact of the new IFRIC 15 accounting policy on its 2010 financial outlook. At that time, the company already knew that the new accounting policy would enter into force on 1 January 2010, and could have made a first estimate of the impact on its guidance for the 2010 revenue and earnings.

It took the company until 22

November 2010, i.e. almost one year after the interpretation’s effective date, to announce that it failed to implement IFRIC 15. In its company announcement on new accounting policies for supply-and-installation projects issued on that date, Vestas admitted that “the change with regard to IFRIC 15 could, according to the effective date already have taken place from 1 January 2010.”

As a consequence of its failure to apply IFRIC 15 at the latest from 1 January 2010, one could allege that Vestas made materially false and misleading statements with regard to its revenues and earnings, in particular with respect to its 2010 financial forecasts. Those statements were made in financial reports, in press releases and during analyst conference calls, starting from the announcement of the third quarter 2009 results on 27 October 2009, which provided guidance for the 2010 revenue of EUR 7 to 8 billion and for the 2010 operating profit margin of 10 to 12%.

As a consequence, investors who have purchased shares as from the announcement of the first 2010 financial outlook on 27 October 2009 until the admission by Vestas of its failure to timely adopt IFRIC 15 on 26 October 2010, have not been informed in a fully transparent and timely manner of the true financial situation and perspectives of Vestas.

Deminor has therefore invited investors having purchased shares between 27 October 2009 and 25 October 2010 to join their possible actions for damages.

Any contemplated litigation would most likely take place in Denmark as (i) ordinary shares were listed and traded on the Copenhagen Stock Exchange, (ii) the wrongdoing most likely took place in Denmark and (iii) the company has its registered office in Denmark. US judges are unlikely, in line with the Morrison v. NAB decision, to accept extraterritorial application of the US federal securities laws in damages claims brought by holders of ordinary shares.

**To view Deminor's alert, please follow this link.**

Contact persons : **Erik Bomans** and **Edouard Fremault** (Deminor Brussels)

## Gagfah

On 4 March 2011, Gagfah S.A. ("Gagfah") released an ad-hoc announcement informing investors that the City of Dresden contemplated legal action against some of its subsidiaries. This legal action related to alleged breaches of certain obligations under the privatization agreement entered into with the City of Dresden in 2006. The claim was formally filed in court on 31 March 2011 and amounts to 1.1 billion EUR (Gagfah's market capitalization before the announcement was 1.9 billion EUR).

Following this announcement, the share price of Gagfah lost 9.7 % in one single trading session. There were further losses during the following days and the share price dropped to around 6.00 EUR at the end of March 2011, implying a 30% loss of the share price compared to the days preceding the announcement.

About one month before the announcement, the CEO of the company had sold 621,500 shares of Gagfah at €7.5 per share for a total amount of 4,661,250 EUR. This was so far the only sale of shares and the largest transaction ever executed by an "insider". The German market regulator, Bafin, launched an investigation into this share transaction by Mr. Brennan.

In the course of March 2011, additional information on the dispute with the City of Dresden became available according to which the legal dispute between the City of Dresden and Gagfah would have started much earlier than 4 March 2011 and the company would have long been

aware of this serious complaint. Available sources even point to a letter of early 2009 from the City of Dresden to Gagfah in which the City of Dresden announced that it had analyzed the agreement and that it had identified breaches of the agreement by Gagfah.

The manager in charge of Gagfah's subsidiaries in Dresden had unexpectedly left the company in April 2009 while he was due to resign at the end of July 2009. He was immediately replaced by Mr. William Joseph Brennan, current CEO of Gagfah.

Based on the available information, we believe that there are good arguments to support that the information related to the dispute between the City of Dresden and Gagfah and to its developments before 4 March 2011 could qualify as "inside information" which Gagfah should have disclosed immediately instead of waiting until 4 March 2011 to inform the public. In this context, the sale of shares by the CEO a few weeks before the announcement of 4 March 2011 seems even more suspicious.

**To view Deminor's alert, please follow this link.**

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