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New Legal Standards for Investment Policy of Open Pension Funds

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Abstract: The global financial crisis affected also Polish pension market. Low or negative rate return on pension capital accumulated in Open Pension Funds led to social disappointment and growth of feeling of social insecurity. Prolonged financial crisis together with sluggish economic growth forced first reform of Open Pension Funds system in 2011. Second reform was introduced just three years later. On February 3rd Open Pension Funds were forced to transfer 51,5% of their assets to Social Security Institution. The total value of transferred cash and fixed income assets was 153 151,2 mln PLN. The transfer left Open Pension Funds mainly with equity allocations and fundamentally changed their investment policy. From domestic stable growth funds OFE had to change to equity funds. Together with the transfer of half of OFE capital major legal changes were introduced liberalizing investment policy of Open Pension Funds in the long term. The goal of this study is to analyze the legal changes of investment standards that shape the investment policy of Open Pension Funds today. Evolution of investment standards for Open Pension Funds during last fifteen years is analyzed with special emphasis on the consequences of the transfer of Open Pension Funds' capital to Social Security Institution.

Keywords: Open Pension Fund, pension market, pension reform, pension, investment limit
JEL codes: H550, G110,

1. Introduction

Reform of 2014 brought new standards applicable to OFE investment policy. Half of the assets was transferred to Social Insurance Institution (ZUS) and legal investment limits for Open Pension Funds undergone a major changes. In the years 1999 – 2011 Open Pension Funds assets were managed just like in balanced funds. Their portfolio was composed of two major components: a fixed income portion and an equity portion. The expected role of OFE fixed income investments was to provide for more stable periodic returns and provide some protection against prolonged decline in the market value of OFE equity investments. Therefore there was no

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legal limit of investments in this asset class. The expected role of Open Pension Funds equity investment was to maximize the long term real growth of OFE assets. The legal limit of investments in this asset class was set at the maximum level of 40% of OFE portfolio.

Legal changes introduced in 2014 forced Open Pension Funds to radical change of their investment policy. The goal of this study is to analyze the legal changes of investment standards that shape the investment policy of Open Pension Funds today. Research was based on legal dogmatic methodology combined with economic analysis of law. Evolution of investment standards for Open Pension Funds during last fifteen years is analyzed.

2. Initial investment standards for Open Pension Funds

Aforementioned lack of legal limit for fixed income investments and 40% legal limit for equity investment were the most important legal standards and had a fundamental influence on the structure of OFE portfolios (Chybalski 2009a). Outlined below are the long term strategic asset allocation limits, determined by the law on organization and functioning of pension funds (the Act) (Journal of laws 2013, item 989). In the years 1999 – 2011 the limits were thought to be the most appropriate, given the Open Pension Funds' long term objective and short term constraints (Szumlicz 2009). OFE assets were, under normal circumstances, allocated across broad asset and subasset classes in accordance with the following legal limits.

a. Legal standards for debt allocations before 2011

There was no maximum limit for investments in treasury bonds and treasury bills (Journal of Laws 2004, No 32, item 276). Also debt securities guaranteed or backed by the State Treasury or the National Bank of Poland and bonds issued by BGK (Bank Gospodarstwa Krajowego[1]) were free of maximum limit (art. 141 point 1-2 and 15 in conjunction with art. 142 point 5 of the Act in the version in force before May 1st 2011). Act on organization and operation of pension funds determined maximum investment limits for other income instruments. Municipal dematerialized

[1] Bank Gospodarstwa Krajowego (BGK) is Poland's only state-owned bank. BGK was established in 1924 during the monetary reforms of Władysław Grabski. The primary business objective of BGK is to provide banking services for the public finance sector, in particular through the support of the government's economic programs, as well as local government and regional development programs implemented with the use of public funds, including those of the European Union.

debt securities could constitute only 10% of OFE assets (art. 141 point 9 in conjunction with art. 142 point 5 of the Act in the version in force before May 1st 2011). Municipal not dematerialized debt securities had a maximum limit of 20% in OFE portfolio (art. 141 point 10 in conjunction with art. 142 point 5 of the Act in the version in force before May 1st 2011). The same 20% maximum level was set for income bonds and non treasury and non municipal dematerialized debt securities fully secured (art. 141 point 10a and 11 in conjunction with art. 142 point 5 of the Act in the version in force before May 1st 2011). Non treasury and non municipal debt securities fully secured and not dematerialized could constitute only 10% of OFE assets (art. 141 point 12 in conjunction with art. 142 point 5 of the Act in the version in force before May 1st 2011). The same 10% maximum level was set for other debt securities of public companies (art. 141 point 13 in conjunction with art. 142 point 5 of the Act in the version in force before May 1st 2011). Other dematerialized debt securities (i.e. mortgage bonds, not fully secured bonds, etc.) could constitute only 5% of OFE assets (art. 141 point 13a in conjunction with art. 142 point 5 of the Act in the version in force before May 1st 2011).

b. Legal standards for equity allocations before 2011

Practically the most important maximum limit was set for equity allocations (Jakubowski, 2013a). Shares listed on a stock exchange could consist only 40% of OFE assets (art. 141 point 4 in conjunction with art. 142 point 5 of the Act in the version in force before May 1st 2011). But Open Pension Funds also had a possibility to invest in shares listed on a regulated over – the – counter market or not listed shares. In this case the limit was set at 10% of OFE portfolio (art. 141 point 5 in conjunction with art. 142 point 5 of the Act in the version in force before May 1st 2011). The same 10% level was set for investment certificates of investment funds, shares in National Investment Funds and depository receipts (art. 141 point 6 and 7 and 13c in conjunction with art. 142 point 5 of the Act in the version in force before May 1st 2011). Only participation units of open investment funds had higher limit set at 15% of OFE assets (art. 141 point 8 in conjunction with art. 142 point 5 of the Act in the version in force before May 1st 2011).

c. Legal standards for cash allocations before 2011

Cash investments were, under normal circumstances, only considered as temporary Open Pension Funds holdings, and were used for OFE liquidity needs. The legal limit for deposits and bank securities in Polish currency was 20% of OFE assets (art. 141 point 3 in conjunction with art. 142 point 5 of the Act in the version in force before May 1st 2011). Deposits and bank securities in foreign currencies were allowed only to settle current liabilities and the maximum level was set at 5% of the assets (art. 141 point 3a in conjunction with art. 142 point 5 of the Act in the version in force before May 1st 2011).

d. Legal standards for foreign investments before 2011

Domestic bonds and domestic shares were always a core asset class of Open Pension Funds with long term investment horizons and modest liquidity constraints. The objective of the portfolio dominated by domestic investments was to generate investment returns and to foster development of the domestic financial markets (Dybał, 2013).

But Open Pension Funds always had some possibility to invest part of their assets abroad. The act on pension funds determined maximum limit for foreign investments at the level of 5% of OFE assets (art. 143 point 2 of the Act in the version in force before January 1st 2012). The objective of the foreign investment part of Open Pension Fund portfolio was to generate investment returns with adequate liquidity and to provide a diversification benefit to the entire portfolio. Foreign investment of Open Pension Funds included bonds and publicly traded common stock of predominantly international markets, both in developed and emerging regions. Over long term periods of time international investments have relatively low correlations to the Polish markets, making them not only a return source, but a portfolio diversification tool.

3. Open Pension Funds investment policy during financial crisis

The construction of the pension system, as well as the legal conditions of the funds' activities, including restrictive limitations regarding their investment activities, influenced the system's shape and weakened any competitive pressure between the funds. Before we move to describing the situation of the competition between the funds, let us present the structure of the OFE market and the investment limits.

Considering the described legal limits for investments, Open Pension Funds had a chance to choose between two kinds of investment policy. First OFE could invest their assets mainly in domestic bonds and domestic debt instruments - with the objective of preserving the long term, real purchasing power of assets, just like domestic bond investment funds do. Or OFE could accept medium level of investment risk and allocate their assets both in domestic bonds and domestic equities, with the objective to generate investments returns – just like domestic stable growth investment funds do (Zawadzka *et al.*, 2013).

In practice Open Pension Funds adopted the latter investment policy. All of them invested both in domestic fixed income instruments and domestic equities, with very low level of foreign investments (Table 1).

Table 1: Open Pension Funds Asset Allocation 2006 - 2011

OFE Asset Allocation	Domestic Equities	Domestic bonds	Foreign Assets
December 2006	34,0%	64,7%	1,3%
June 2007	38,1%	60,6%	1,2%
December 2007	34,6%	64,4%	1,0%
June 2008	28,7%	70,3%	1,0%
December 2008	21,6%	77,8%	0,6%
June 2009	24,7%	74,6%	0,8%
December 2009	30,2%	69,0%	0,7%
June 2010	32,6%	66,6%	0,8%
December 2010	36,2%	63,1%	0,7%
June 2011	35,5%	63,6%	0,8%
December 2011	31,2%	68,2%	0,5%

Source: Author’s own elaboration

It’s worth noting that because of the minimum required rate of return mechanism Open Pension Funds implemented very similar investment strategies. The mechanism of minimum required rate of return was in fact guaranteed rate of return for members of Open Pension Funds. Minimum required rate of return was determined in relation to a reference rate – the weighted average rate of return achieved by all funds. This guaranteed rate of return for members of Open Pension

Funds aimed to protect the capital of fund members. The Open Pension Funds that had significantly lower rates of return were required to supplement their assets with capital from the companies managing them – PTE (Powszechne Towarzystwa Emerytalne) (Chybalski 2009b).

In consequence clients of Open Pension Funds had not much choice (Chybalski 2012). Despite different needs of different age groups (aggressive investment strategy for young and low risk investment strategy for old) all the members of Open Pension Funds had to enjoy stable growth investment policy with moderate investment risk and moderate capital gains (Dybał 2008).

It should be noted that however Open Pension Fund investment policy was more risk averse than investment policy of plain vanilla funds, which invest up to 60% of their assets into equity instruments and only 40% into bond instruments, Open Pension Funds were not saved from the financial crisis that begun in 2008 (Jakubowski 2013).

Between October 31st 2007 and February 27th 2009 net assets of OFE declined by 13 bln PLN - from 142 801 mln PLN to 130 868 mln PLN (Table 2). Open Pension Funds were able to reach the same level of net assets in the second half of 2009, but only due to inflow of compulsory fees from insured citizens (Banaszczak – Soroka and Jakubowski 2011).

Table 2: Net Assets of Open Pension Funds

Year	Open Pension Funds Net Assets
1999	2 254 837 873,51
2000	9 921 249 691,37
2001	19 409 420 713,11
2002	31 564 646 669,65
2003	44 833 088 918,58
2004	62 626 944 016,05
2005	86 078 777 334,35
2006	116 563 259 565,10
X 2007	142 800 986 642,69
2007	140 030 893 475,80
2008	138 261 447 317,79
II 2009	130 867 800 968,77
2009	178 630 090 689,18
2010	221 251 119 982,00
VI 2011	236 802 427 758,83
2011	224 701 817 601,76

Year	Open Pension Funds Net Assets
2012	269 596 467 329,15
X 2013	303 419 637 743,19

Source: Polish Financial Supervision Authority

OFE customers needed even more time to recover from the financial crash. Between October 2007 and February 2009 value of average weighted accounting unit fell down by 23%. The price bounced back after five years. Only in December 2012 value of average weighted accounting unit was substantially higher than in October 2007 (Table 3).

Table 3. Value of Average Weighted Accounting Unit in PLN

Year	Average Weighted Accounting Unit (PLN)
1999	11,47
2000	13,01
2001	13,75
2002	15,85
2003	17,58
2004	20,08
2005	23,09
2006	26,88
X 2007	29,80
2007	28,55
2008	24,51
II 2009	22,93
2009	27,88
2010	31,01
2011	29,56
2012	34,39
2013	36,88
II 2014	38,56
X 2014	38,16

Source: Polish Financial Supervision Authority

Additionally in April 2009 the European Commission brought a case against Poland at the European Court of Justice concerning excessively restrictive limits on foreign investments by Open Pension Funds (Chybalski 2009c). All this led to first major change of the legal investment limits for Open Pension Funds in 2011. The liberalization process started with the phasing out of the restrictive legal limits on equity investment of Open Pension Funds (Jakubowski 2014a). The changes were introduced by the art. 4 of act of March 25th 2011 on amendment of certain laws relating to functioning of the social security system (Journal of laws 2011, No 75, item 398). The new law raised the limit on equity investments. According to the act on pension funds (art. 142 of the Act in the version in force before January 1st 2012) OFE could invest up to 90% of their assets in shares of companies listed on a regulated stock market and listed on a regulated stock exchange market pre-emptive rights, rights to shares and bonds convertible into shares of these companies and national investment fund shares. But this target limit was planned to be phased in gradually (Table 4). According to The Ordinance of the Council of Ministers the legal limit on equity investment was raised year by year to reach the level of 90% in 2034 (Journal of Laws 2011, No 90, item 516).

Table 4: Legal Limits on Equity Investments of Open Pension Funds

Year	Restrictions on Equity Investments
2010	40,0%
2011	42,5%
2012	45,0%
2013	47,5%
2014	50,0%
2015	52,0%
2016	54,0%
2017	56,0%
2018	58,0%
2019	60,0%
2020	62,0%
2021	64,0%
2022	66,0%
2023	68,0%
2024	70,0%
2025	72,0%
2026	74,0%
2027	76,0%
2028	78,0%
2029	80,0%
2030	82,0%
2031	84,0%

Year	Restrictions on Equity Investments
2032	86,0%
2033	88,0%
2034	90,0%

Source: Journal of Laws 2011, No 90, item 516

The legal limits for debt and cash allocations were not changed till 2014.

Eurozone crisis caused second wave of serious fiscal problems in Poland. Bad economic situation posed serious threat to the planned civilizational leap taking into account the inflow of subsidies from the new EU budget and the fiscal stability of local governments. This forced introduction of second reform in the system of Open Pension Funds that had to improve situation of public finances in Poland and increase revenues of Social Insurance Institution (ZUS).

Polish Parliament voted Act of 6 December 2013 on amendment of certain laws relating to rules of paying out retirement pensions from assets accumulated in Open Pension Funds (Journal of Laws of 2013, item 1717). According to this legal change Open Pension Funds were forced to transfer 51,5% of their accounting units to Social Security Institution on February 3rd 2014 (Table 5). Total value of transferred assets was 153 151,2 mln PLN. Nominal value of transferred securities was 146 bln PLN. This included:

- 130 bln PLN - Treasury Bills,
- 15,6 bln PLN - Highway Bonds,
- 200 mln PLN – debt securities guaranteed or backed by the State Treasury or the National Bank of Poland.

Debt securities transferred to Social Security Institution were redeemed by the Ministry of Finances.

Partial nationalization of Open Pension Funds' assets led to reduction of Polish public debt by 145 bln PLN what constitutes 8.5% of GDP (Jakubowski 2014b).

Table 5: Net Assets of Open Pension Funds

Year	Open Pension Funds Net Assets
1999	2 254 837 873,51
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2002	31 564 646 669,65
2003	44 833 088 918,58
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2007	140 030 893 475,80
2008	138 261 447 317,79
II 2009	130 867 800 968,77
2009	178 630 090 689,18
2010	221 251 119 982,00
2011	224 701 817 601,76
2012	269 596 467 329,15
2013	299 272 473 053,74
II 2014	153 963 070 937,18
X 2015	156 728 702 417,30

Source: Polish Financial Supervision Authority

4. Contemporary investment limits

After the reform of 2014 Open Pension Funds are managed just like equity funds. Their portfolio is mainly composed of shares of companies listed on regulated markets (stocks). Today three legal limits are the most important and have a major impact on the structure of OFE portfolios. First prohibition of investment in government debt. Second minimum level of investment in stocks and already mentioned higher level of investments in foreign assets.

Outlined below are the contemporary long term strategic asset allocation limits, determined by the law. Since 2014 Open Pension Fund assets are, under normal circumstances, allocated across broad asset and subasset classes in accordance with the following legal limits:

a. Contemporary legal standards for equity allocations

The major change took place in OFE investment limits for equity allocations. Since 2014 there is no maximum level for this asset class. Instead of that art 35 of the act on amendment of certain laws relating to rules of paying out retirement pensions from assets accumulated in Open Pension Funds (Journal of Laws of 2013, item 1717) introduced temporary minimum limit on equity allocations, which will be phased out in the following years (Table 6). In 2014 Open Pension Funds had to invest at least 75% of their assets in these equity instruments. This year this minimum limit is 55%. In 2016 the limit will be lowered to 35% and in 2017 to 15%. Since January 1st 2018 there will be no minimum or maximum level for investments in: shares of companies listed on regulated markets in Poland or abroad and bonds convertible into such shares, listed pre-emptive rights and listed rights to shares (art. 141 paragraph 1 points 7 and 9 in conjunction with art. 142 paragraph 6 of the Act). Also shares, pre-emptive rights and rights to shares offered in public offering in Poland or in the European Union, Organization of Economic Co-operation and Development or European Economic Area member states will be free of minimum or maximum level (art. 141 paragraph 1 points 8 and 10 in conjunction with art. 142 paragraph 6 of the Act).

Table 6: Minimum Limits on Equity Investments of Open Pension Funds

Minimal Equity Investments of OFE	
2014	75,0%
2015	55,0%
2016	35,0%
2017	15,0%
2018	0,0%

Source: Journal of Laws of 2013, item 1717

Act on organization and operation of pension funds determined maximum investment limits for other equity instruments. Open Pension Funds are allowed to invest in participation titles issued by collective investment undertakings. Participation units of open investment funds and specialized investment funds and units issued by collective investment undertakings of the open-end type with a seat in member states of the European Union, Organization of Economic

Co-operation and Development or European Economic Area, which meet certain specific criteria can constitute 15% of OFE assets (art. 141 paragraph 1 points 13 - 14 in conjunction with art. 142 paragraph 6 point 3 of the Act).

Investment certificates of closed-end funds and units issued by collective investment undertakings of the closed-end type with a seat in member states of the European Union, Organization of Economic Co-operation and Development or European Economic Area, which meet certain specific criteria can constitute 10% of OFE assets (art. 141 paragraph 1 points 11 - 12 in conjunction with art. 142 paragraph 6 point 2 of the Act).

Lower level of 10% is set for depository receipts admitted to trading on the Polish and foreign regulated markets (art. 141 paragraph 1 points 30 -31 in conjunction with art. 142 paragraph 6 point 12 of the Act).

And the lowest level of 5% was set for investment certificates or bonds issued by securitization fund and units or bonds issued by collective investment undertaking with a seat in member states of the European Union, Organization of Economic Co-operation and Development or European Economic Area, for the purpose of collecting money to acquire claims or rights to certain claims (art. 142 paragraph 2 of the Act).

Finally Open Pension Funds are not allowed to invest in shares listed on alternative markets (i.e. New Connect market in Poland) (Journal of Laws of 2014, item 116).

b. Contemporary legal standards for debt allocations

Practically the most important limits are set for debt allocations right now. According to article 141 paragraph 2 point 1 of the Act Open Pension Funds are not allowed to invest in government bonds, treasury bills and other debt instruments issued or guaranteed by the State Treasury, National Bank of Poland, governments or central banks. OFE are also not allowed to invest in bonds, mortgage bonds and bank securities issued by BGK (Bank Gospodarstwa Krajowego), which are guaranteed by the State Treasury (art 141 paragraph 2 point 2 of the Act). But Open Pension Funds are allowed to invest in other debt instruments. Law on organization and operation of pension funds allows OFE to invest up to 40% of their net assets into: municipal bonds and other municipal debt securities, offered in a public offering (art. 141 paragraph 1 point 15 in conjunction with art. 142 paragraph 6 point 4 of the Act); municipal bonds and other debt securities issued by regional and local authorities from the European Union, Organization of Economic Co-operation and Development and European Economic Area, offered in a public offering (art. 141 paragraph 1 point 16 in conjunction with art. 142 paragraph 6 point 4 of the Act); corporate bonds with their nominal value and potential interest secured, offered in a public offering in Poland (art. 141 paragraph 1 point 21 in conjunction with art. 142 paragraph 6 point 7 of the Act); corporate bonds and other corporate debt securities with their nominal value and potential interest secured, offered in a public offering in the European Union, Organization of Economic Co-operation and Development or European Economic Area member states (art. 141 paragraph 1 point 23 in conjunction with art. 142 paragraph 6 point 7 of the Act); mortgage bonds (art. 141 paragraph 1 point 29 in conjunction with art. 142 paragraph 6 point 11 of the Act); debt securities issued by one credit institution with its seat in the European Union, Organization of Economic Co-operation and Development or European Economic Area member states, which is subject to a special public supervision aimed at protecting the holders of securities, provided that the amounts collected from the issue of this securities are invested in assets which, until their redemption, ensure repayment of money to which their holders are entitled under the securities and in the event of an issuer's insolvency – ensure the priority of repayment (art. 141 paragraph 1 point 30 in conjunction with art. 142 paragraph 6 point 11 of the Act).

Other debt instruments allowed for Open Pension Fund investments are: municipal bonds and other municipal debt securities not offered in a public offering (art. 141 paragraph 1 point 17 in conjunction with art. 142 paragraph 6 point 5 of the Act); municipal bonds and other debt securities issued by the regional and local authorities from the European Union, Organization of Economic Co-operation and Development and European Economic Area not offered in a public offering (art. 141 paragraph 1 point 18 in conjunction with art. 142 paragraph 6 point 5 of the Act); revenue bonds referred to in the Polish Act on Bonds of 29 June 1995 (art. 141 paragraph 1 point 19 in conjunction with art. 142 paragraph 6 point 6 of the Act); debt securities under which the issuer's liability may be limited to the amount of income or value of an undertaking, from which bondholders may satisfy their claims with priority against other creditors of the issuer, provided that the debt securities are issued by certain categories of issuers having their seat in the European Union, Organization of Economic Co-operation and Development or European

Economic Area member states (art. 141 paragraph 1 point 20 in conjunction with art. 142 paragraph 6 point 6 of the Act).

The maximum investment limit for this income instruments is set at 20% of OFE assets.

The third group of income instruments can constitute only 10% of Open Pension Funds assets. This group includes: corporate bonds or other corporate debt securities with their nominal value and potential interest secured, which are not offered in a public offering in Poland (art. 141 paragraph 1 point 25 in conjunction with art. 142 paragraph 6 point 9 of the Act); corporate bonds and other corporate debt securities with their nominal value and potential interest secured, which are offered in the European Union, Organization of Economic Co-operation and Development or European Economic Area member states not in a public offering (art. 141 paragraph 1 point 28 in conjunction with art. 142 paragraph 6 point 9 of the Act); bonds and other debt securities under which companies listed on the Polish regulated market are liable (other than the corporate bonds subject to the 40% investment limit referred to above) (art. 141 paragraph 1 point 22 in conjunction with art. 142 paragraph 6 point 8 of the Act), bonds and other debt securities under which companies listed on foreign regulated markets are liable (other than the corporate bonds subject to the 10% investment limit referred to above) (art. 141 paragraph 1 point 24 in conjunction with art. 142 paragraph 6 point 8 of the Act).

Other bonds and debt securities which are the subject of a public offering in Poland, the European Union, Organization of Economic Co-operation and Development or European Economic Area member states are limited up to 5% of OFE net assets (art. 141 paragraph 1 point 26 and point 27 in conjunction with art. 142 paragraph 6 point 10 of the Act).

c. Contemporary legal standards for cash allocations

Cash investments are, under normal circumstances, only considered as temporary Open Pension Funds holdings, and are used for OFE liquidity needs. The legal limit for bank deposits in PLN held in licensed banks or credit institutions which are seated and pursue business activity in member states of the European Union, Organization of Economic Co-operation and Development or European Economic Area is 20% of OFE assets (art. 141 paragraph 1 point 5 in conjunction with art. 142 paragraph 6 point 1 of the Act). The same limit is applied to bank deposits in currencies of the European Union, Organization of Economic Co-operation and

Development or European Economic Area member states held in licensed banks or credit institutions which are seated and pursue business activity in the member states (art. 141 paragraph 1 point 6 in conjunction with art. 142 paragraph 6 point 1 of the Act). The foreign currency purchase is only permitted to settle the fund’s current obligations arising from the acquisition or sale of assets according to the fund’s investment policy.

d. Contemporary legal standards for foreign investments

Important element of latest reform was the major change in the legal limit for foreign allocations that took place because of the judgment of the European Court of Justice of 21 December Commission vs. Poland (Case C‑271/09, 2011). The European Court of Justice declared that by maintaining in force very restrictive investment limits on foreign allocations of Open Pension Funds in other Member States, the Republic of Poland has failed to fulfill its obligations under Article 56 of Treaty establishing the European Community (Treaty of Nice).

Therefore Poland was forced to increase the legal limit for foreign investments of OFE from the 5% to 30% (art. 141 paragraph 5 of the Act). But the change is not immediate and the target level is planned to be reached in 2016 (Table 7). According to art. 22 of Law of 6 December 2013 on amendment of certain laws (Journal of Laws 2013, item 1717) the new limit will be phased in as follows:

- till December 31st 2014 the legal limit for foreign investments of OPF is 10% of their assets,
- between January 1st 2015 and December 31st 2015 the legal limit for foreign investments of OFE will be 20% of their assets,
- since January 1st 2016 the legal limit for foreign investments of OFE will be 30% of their assets.

Table 7: Legal Limits on Foreign Investments of Open Pension Funds

Restrictions on Foreign Investments	
2013	5,0%
2014	10,0%
2015	20,0%
2016	30,0%

Source: Journal of Laws 2013, item 989.

5. Conclusion

The reform of 2014 forced Open Pension Funds to transfer majority of their fixed income assets (worth 153 billion of PLN) to Social Insurance Institution. This left OFE mainly with equity investment assets turning them practically into equity funds. Together with this fundamental change of OFE portfolio structure, process of a major liberalization of investment limits for Open Pension Funds was introduced.

This positive change gives a chance for a major improvement on the Open Pension Fund market in the long term. Till today Open Pension Funds apply very similar investment policy. First, till 2014 all Open Pension Funds invested their assets just like balanced investment funds and their portfolio structure was almost identical. Now all of them apply investment policy of equity funds, due to temporary minimum investment limits for shares. This leaves customers with rather limited choice on the market. Changes that were introduced last year give a chance for greater diversity on the Open Pension Funds market. No doubt this will be beneficial for OFE customers. Moreover Open Pension Funds will have a chance to apply geographical diversification of their investments. Rather quick liberalization of harsh legal limit on foreign investments initiated wave of assets purchases on foreign capital markets, changing structure of OFE portfolios. Once again in the long term this should be beneficial to OFE customers since this diversification means lower investment risks with similar investment profits. In this way a major reform of legal standards for investment policy of Open Pension Funds created a chance that this system becomes more customers friendly and provides more value for lower price. This is the only way to ensure that this market survives in the long term. Otherwise next fiscal crisis in Poland will trigger process of phasing out of second pillar of pension system in Poland.

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Nowe limity inwestycyjne Otwartych Funduszy Emerytalnych

Streszczenie

Światowy kryzys finansowy uderzył negatywnie również w krajowy rynek emerytalny. Niskie lub negatywne stopy zwrotu z kapitału emerytalnego zgromadzonego w Otwartych Funduszach Emerytalnych prowadziły do niezadowolenia społecznego i pogłębiania się uczucia niepewności co do poziomu zabezpieczenia w ramach emerytalnego ubezpieczenia społecznego. Przedłużający się kryzys finansowy oraz słaby wzrost gospodarczy wymusiły najpierw pierwszą reformę drugiego filaru systemu emerytalnego. Druga reforma została przeprowadzona zaledwie trzy lata później. Trzeciego lutego 2014 r. W wyniku tej ostatniej reformy Otwarte Fundusze Emerytalne przetransferowały 51,5% swoich aktywów do Zakładu Ubezpieczeń Społecznych. Całkowita wartość przeniesionej gotówki i obligacji wyniosła 153 151,2 mln PLN. W wyniku tej operacji w portfelach inwestycyjnych OFE pozostały głównie akcje, co fundamentalnie zmieniło politykę inwestycyjną OFE. Z krajowych funduszy zrównoważonego wzrostu OFE zamieniły się w fundusze akcyjne. Wraz z transferem aktywów OFE do ZUS przeprowadzona została liberalizacja limitów inwestycyjnych ciążących na Otwartych Funduszach Emerytalnych. Celem tego opracowania jest analiza zmian prawnych dotyczących limitów inwestycyjnych OFE. Jednocześnie poddana jest analizie ewolucja zasad prawnych rządzących polityką inwestycyjną OFE w ciągu ostatnich piętnastu lat.

Słowa kluczowe: Otwarte Fundusze Emerytalne, reforma emerytalna, rynek emerytalny, emerytura, limity inwestycyjne

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