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THE CONCEPT OF PRIVATE PLACEMENT IN POLISH AND AMERICAN FEDERAL LAW: THE COMPARATIVE ANALYSIS

Introduction

Private placements (private offerings, non-public offerings)¹ appears to be an important way of raising capital for the companies. They are considered to be an alternative to the public offerings, and typically don't take place on public stock exchanges but rather are addressed to a close group of investors. This way of selling securities can provide significant edges in comparance to public offerings. Private placement allows to offer shares of the company without completing formal procedure of registration, which often can be complicated, long-lasting and expensive. Private offerings are usually excluded from meeting certain requirements for financial supervisory authorities and can be done without preparing formal prospectus or other information document for potential buyers. Another advantage of private placement is more control and privacy for company partners. Private placement transactions are negotiated confidentially and may protect the company from fragmentation of its shareholders. They also help to diversify sources of capital and capital structure and tend to provide more professional approach, as they are usually carried out among qualified investors.

Before 2019 Polish law provided a clear distinction between public offerings and private placements. This distinction faded after implementation of the Regulation (EU) 2017/1129 of the European Parliament and of The Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC². Regulation 2017/1129 significantly broadened the definition of public offerings.

¹ Dz. U. L no. 168 from 30.06.2017, p. 12, hereinafter referred as: Regulation 2017/1129.

² In legal literature one can find an interchangeable use of the terms "private placement", "private offerings" and "non-public offerings" referring to the same institution, therefore in this article these terms will be used interchangeably.

In this article, the author will try to answer the question whether there is still a place for private placements in Poland in the new legal environment. He will as well provide comparative analysis of the American federal laws and regulations related to private placements and public offerings with Polish regulations. The author will also attempt to create a proper definition of private placement in the absence of legal definition of this notion in Polish legal system.

Polish legal background

In Poland public offerings are regulated by The Act of 29 July 2005 on Public Offering and the Conditions for Introducing Financial Instruments to the Organized Trading System and Public Companies Act³. Before 2019 Polish law provided a distinction between public and private offering. According to the Art. 3.1 of the act on The Public Offering Act (in the form prior to its amendment on 16 November 2019⁴), the public offering was to be made available to at least 150 persons on the territory of one of the Member State of European Union or to an undefined addressee, in any form and by any means, information about the securities and the terms of their purchase, which constitute a sufficient basis for making a decision to purchase these securities.

In pursuance to the former legal definition, the offering was considered to be the public only in case of the cumulative fulfillment of the three conditions. Firstly, it was necessary to provide information on the securities and the terms of their purchase. Secondly, the release of this information had to involve a group of at least 150 people within the territory of one Member State of European Union or an unidentified addressee. Third, and finally, the information made available had to constitute a sufficient basis for a decision to purchase these securities. Moreover, it was irrelevant whether the purchase of securities was subject to payment or free of charge.

A contrario to the definition of public offering, the private placement consisted in directing the purchase proposal to a predetermined narrow group of maximum 149 people, regardless of its other conditions⁵. This kind of offering was excluded from meeting the requirements of The Public Offering Act and didn't require preparation of a prospectus. Private placements were regulated only by the law

³ Journal of Laws of the Republic of Poland (abbreviated: Dz.U.) 2020, item 2080, hereinafter referred as: The Public Offering Act.

⁴ Dz.U. 2018, item 512.

⁵ M. Wierzbowski, L. Sobolewski, P. Wajda, *Ustawa o ofercie publicznej i warunkach wprowadzania instrumentów finansowych do zorganizowanego systemu obrotu oraz o spółkach publicznych, art. 3* [in:] *Prawo rynku kapitałowego. Komentarz*, vol. III, eds. M. Wierzbowski, L. Sobolewski, P. Wajda, Warszawa 2018.

of bonds⁶ and by The Commercial Companies Code⁷. It was also not necessary to conclude an agreement with a brokerage entity and general solicitation was not allowed.

The situation changed with the entry into force of Regulation 2017/1129. The regulation resigned from the distinction between public offering and private placement, while it introduced the distinction between public offering of securities with the obligation to publish a prospectus and public offering without such obligation. According to Art. 2(d) of the Regulation 2017/1129, offer of securities to the public means a communication to persons: in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those securities. This definition also applies to the placing of securities through financial intermediaries. The three key factors for an offer to be considered public are therefore as follows:

- (1) a communication process to recipients⁸,
- (2) communication that is made in any form and by any means,
- (3) presentation information about the terms of the offer and the securities to be offered, that is sufficient in order to enable the recipient to make an investment decision.

Regulation 2017/1129 provides exemptions from publishing a prospectus for certain situations, most important of which are:

- an offer of securities which is addressed solely to qualified investors,
- an offer of securities which is addressed to fewer than 150 natural or legal persons per Member State, other than qualified investors,
- shares issued in substitution for shares of the same class already issued, if the issuing of such new shares does not involve any increase in the issued capital
- securities offered, allotted or to be allotted to existing or former directors or employees by their employer or by an affiliated undertaking provided that a document is made available containing information on the number and nature of the securities and the reasons for and details of the offer or allotment⁹.

Regulation 2017/1129 significantly widened the definition of public offering. The previous criteria for distinguishing a private placement from a public offering are no longer relevant. In the new legal model the status of the addressees,

⁶ Dz.U. 2015, item 238.

⁷ Dz.U. 2020, item 1526.

⁸ According to the Oxford Advanced Learner's Dictionary the term "communication" means the activity or process of expressing ideas and feelings or of giving people information, therefore communication relates rather to the process than to a single message.

⁹ Art. 1.4(a), 1.4(b), 1.4(e), 1.4(i) of Regulation 2017/1129.

the number of persons to whom the offer is addressed, the issue price or the final amount paid by investors are not relevant to the definition of a public offer. Therefore, it is legitimate to claim, that almost every message which indicates the issuer and the offered securities, and is addressed to at least two people, can constitute a public offering. Under the regulation, even an offer addressed to a selected group of investors who can influence the scope of the information that is communicated to them, is still generally a public offering¹⁰. As a result, many offerings that were considered to be private placements before the regime of Regulation 2017/1129 meet the new definition of public offering of securities without an obligation to issue a prospectus. In this context, it should now be of primary importance for Polish courts and legal practitioners to examine not whether a given offering constitutes a public offering at all subject to the regime of the Public Offering Act, but rather whether a given offering is subject to the exemption from the obligation to publish a prospectus.

However, according to the official statement of The Polish Financial Supervision Authority offers directed to only one investor do not constitute a public offering and therefore the provisions of Regulation 2017/1129 and The Public Offering Act do not apply to them¹¹. This statement is strengthened by interpreting the definition in Regulation 2017/1129, which refers to plural persons.

The amendment of The Public Offering Act of 16 November 2019, adjusted the provisions of Polish law to the provisions of Regulation 2017/1129. What is worth noticing, the amendment introduced new legal obligations for some of the public offerings that are excluded from publishing the prospectus. According to Art. 3.1a of the amended Public Offering Act, if the number of persons to whom the offer for the purchase of securities is directed, together with the number of persons to whom the issuer has addressed an offer to purchase securities of the same type in the previous 12 months, is more than 149 persons, it is required to prepare an information memorandum, subject to approval by the Financial Polish Supervision Authority (KNF). Moreover, there are two exemptions from the obligation of issuance of memorandum. The first one includes offers addressed only to the holders of the same type of securities of the same issuer, which may apply to e.g. existing shareholders of the company, who embraces all of the new shares. The second exemption includes offers addressed to entities to which the issuer's bonds were offered as part of the exchange of receivables due to the redemption other issuer's bonds that were previously issued.

¹⁰ J. Szewczyk, *Publiczne oferowanie papierów wartościowych*, "Monitor Prawniczy" 2020, no. 3, p. 129.

¹¹ *Stanowisko w związku z wejściem w życie w dniu 30 listopada ustawy z dnia 16 października 2019 r. o zmianie ustawy o ofercie publicznej i warunkach wprowadzania instrumentów finansowych do zorganizowanego systemu obrotu oraz o spółkach publicznych oraz niektórych innych ustaw*, pismo z dnia 29 listopada 2019 r., Urząd Komisji Nadzoru Finansowego, www.knf.gov.pl (10.02.2023).

This regulation is a result of so called “The Getback scandal”¹², which relates to the problems with solvency of the big Polish debt collection company Getback S.A. The insolvency led to huge losses of many of its bondholders and shareholders. The legislator stated that the former definition of public offering was too flexible and made it possible to make multiple public offers to fewer than 150 people at short intervals without a prospectus, which in practice resulted in offering securities without a prospectus to a virtually unlimited group of addressees. This practice led to many cases of abusing of the provisions of The Public Offering Act¹³.

American legal background

In the United States there is a general prohibition of offering and selling unregistered securities or shares provided by Subdivision (c) of Section 5 of The Securities Act of 1933¹⁴. Selling securities must be the subject of the registration statement, which constitutes a set of documents, including a prospectus, which a company must file with the Securities and Exchange Commission¹⁵.

The process of registration can be long-lasting and expensive, including the legal, accounting and audit expenses. According to Latham and Watkins LLP the typical process of an initial public offering takes at least 180 days and requires preparation of complicated documentation to meet SEC standards¹⁶. However, there is a group of exemptions that the companies can rely on to conduct a private placement. They are called safe harbors and allows companies to avoid the registration. The exemptions can be statutory or take a form of rules promulgated by SEC.

First of all, section 3(a) of The Securities Act¹⁷, lists securities exempted from provisions of this act (which include e.g. securities issued and guaranteed by the United States). Section 3(b)(1) of The Securities Act allows SEC to define the types of exempt transactions where the value of securities issued does not exceed \$5 million. This statutory authority is the basis for example of an exemption under Rule 504 of Regulation D¹⁸. Section 3(b)(2) of The Securities Act gives

¹² W. Rogowski, K. Gemra, *Wpływ przypadku firmy GetBack na polski rynek finansowy*, “Kwartalnik Nauk o Przedsiębiorstwie” 2018, no. 49(4), p. 101.

¹³ Uzasadnienie rządowego projektu ustawy o zmianie ustawy o ofercie publicznej i warunkach wprowadzania instrumentów finansowych do zorganizowanego systemu obrotu oraz o spółkach publicznych oraz niektórych innych ustaw, druk nr 3755, s. 5.

¹⁴ *United States Code: Securities Act of 1933*, 15 U.S.C. §§ 77a–77mm 1934, LII/Legal Information Institute, hereinafter referred to as: The Securities Act.

¹⁵ Hereinafter referred to as: SEC.

¹⁶ Latham and Watkins LLP, *US IPO Guide*, 2021, www.lw.com (10.02.2023).

¹⁷ 15 U.S. Code § 77c, LII/Legal Information Institute.

¹⁸ 17 CFR § 230.504, LII/Legal Information Institute.

SEC the authority to define a new small issuance class of securities traded without registration with a limit on the amount of funds raised to \$50 million. This statutory authority is the basis of an exemption under Regulation A¹⁹.

The first important exemption from registration is assured by Section 4(a)(2)²⁰ of The Securities Act, which is colloquially called the private placement rule. The section provides a general provision, according to which transactions by an issuer not involving any public offering are excluded from registration with the SEC. This exemption is based on the philosophy that private transactions between an issuer and a sophisticated investor should not be subject to the regime of registration process²¹. This statutory rule is the oldest exemption for private sales. Because of its generality, indeterminacy and the fact that The Securities Act doesn't define the notion of "public offering", it has been dependent on the court's and SEC's interpretations²².

The first interpretation was released by SEC in rule no. 285 in 1935, where SEC set four factors that should be considered in determining whether an offering is public:

1. The number of offerees and their relationship to each other and to the issuer. An offering to the members of a class who should have special knowledge of the issuer is less likely to be a public offering than an offering to the same number of persons who do not have that advantage.
2. The number of securities offered. The issuance of securities in small number of units in large denominations was evidence of a private offering, whereas an issuance of a large number of units with small denominations would suggest the issuer anticipated public offering of such securities.
3. The size of the offering. The exemption was considered to be predominantly applicable to small offerings, which were less likely to be traded even if re-distributed.
4. The manner of offering. Transactions which are effected by direct negotiation by the issuer are more likely to be considered non-public than those effected through the use of the mechanisms of public distributions²³.

A milestone in defining public offering was set by The United States Supreme Court in the *SEC vs Ralston Purina*²⁴ case. Ralston Purina, which is a company that provides feed and cereal products throughout the U.S. and Canada, had a policy of offering company's stock ownership to its key employees. According to the company statement an offering to all of its employees would be a public offer-

¹⁹ Regulation A – Conditional Small Issues Exemption 17 CFR part 230 (§§ 230.251–230.300–230.346), *LII/Legal Information Institute*.

²⁰ 15 U.S. Code § 77d, *LII/Legal Information Institute*.

²¹ F.G.C. Prado, *Restricted Offerings in the U.S. and in Brazil: A Comparative Analysis*, "The International Lawyer" 2014, vol. 48, no. 1, p. 35.

²² *Ibidem*, p. 36.

²³ Securities Act release no. 285, 1 Fed. Sec. L. Rep. (CCH) §§ 2241–2744 (Jan. 24, 1935).

²⁴ *SEC v. Ralston Purina Co.*, 346 U.S. 119 (1953), p. 125.

ing, but an offering only to key employees' was exempted from filing a registration statement under The Securities Act. However, the Supreme Court stated that: "The natural way to interpret the private offering exemption is in light of the statutory purpose. Since exempt transactions are those as to which 'there is no practical need for (the bill's) application, «the applicability of [Section 4(a)(2)] should turn on whether the particular class of persons affected need the protection of the Act. An offering to those who are shown to be able to fend for themselves is a transaction 'not involving any public offering»'"²⁵.

Moreover, the Supreme Court defined the term public in context of public offering: "In its broadest meaning, the term 'public' distinguishes the populace at large from groups of individual members of the public segregated because of some common interest or characteristic. Yet such a distinction is inadequate for practical purposes; manifestly, an offering of securities to all redheaded men, to all residents of Chicago or San Francisco, to all existing stockholders of the General Motors Corporation or the American Telephone & Telegraph Company, is no less «public», in every realistic sense of the word, than an unrestricted offering to the world at large. Such an offering, though not open to everyone who may choose to apply, is nonetheless «public»"²⁶.

As a result, the Supreme Court stated that sales of securities by a corporation to its employees does not exempt from the registration requirements, unless the employees have access to the same kind of information that would be available in a registrations statement. In absence of this circumstances, employees are members of the investing public, therefore, the provisions of The Securities Act concerning public offering shall apply²⁷.

Generally, after Ralston Purina case, courts consider four important factors to determine whether an offering is public or private: 1) the number of offerees; 2) the sophistication and experience of the offerees; 3) the nature and kind of information which has been provided; 4) the size of the offering and the precautions taken to prevent the offerees from reselling their securities²⁸.

The example of such ruling can be found in the *Feldman v. Concord Equity Partners* case from 2010, where the district court applied the Ralston Purina standard and stated that "Indeed, the Supreme Court in *Ralston Purina*, the landmark case on this issue, noted that an offering «made to executive personnel who because of their position have access to the same kind of information that the act would make available in the form of a registration statement» should generally be classified as a private offering"²⁹.

²⁵ *Ibidem*, p. 123.

²⁶ *Ibidem*, p. 123.

²⁷ *Ibidem*, pp. 126–127.

²⁸ *Steed Fin. LDC v. Nomura Sec. Int'l*, No. 00-CV-8058, 2001 WL 1111508, at *5 (S.D.N.Y. Sept. 20, 2001).

²⁹ *Feldman v. Concord Equity Partners, LLC*, 08-CV-4409 (CS), 9 (S.D.N.Y. May. 18, 2010).

Although Supreme Court interpreted the notion of private placement, there was still a lot of uncertainty and gray area between private and public offerings. Due to this circumstances, in 1982 SEC decided to promulgate a group of rules called Regulation D³⁰. Rules 501–506 established three transactional exemptions from the registration requirements of The Securities Act. Amended multiple times, the current exemptions are stated in rule 504, rule 506(b) and 506(c). Rule 504 applies to transactions in which no more than \$10,000,000 of securities are sold in any consecutive twelve-month period. Rule 506(b) has no dollar limitation of the offering and is available to all issuers for offerings sold to not more than thirty-five non-accredited purchasers and an unlimited number of accredited investors. The limitation to Rule 506(b) is that general solicitation is not allowed. Rule 506(c) also has no dollar limitation of the offering. According to rule 506(c) all purchasers of securities sold in any offering must be accredited investors. As opposed to the rule 506(b) general solicitation is allowed. According to this rule the issuer must take reasonable steps to verify that all purchasers are accredited investors.

One can find also newer exemptions that applies to private placements, that are worth to be mentioned. Rule 144³¹ exempt resale of non-exempt securities, while Rule 144a³² exempts the purchase of securities among QIB (qualified institutional buyers). Regulation S³³, adopted by SEC in 1990 is a safe harbor for offshore offers and sales of securities. In turn, Regulation A/A+ allows companies to offer and sell eligible securities, which includes warrants and convertible equity and debt securities to the public under two different tiers. Under Tier 1, a company is permitted to offer a maximum of \$20 million in a 12-month period. Under Tier 2, companies can offer up to \$75 million in a 12-month period.

The intrastate exemption seeks to facilitate the financing of local business operations. To qualify for the exemption, an issuer must be organized in the state where it is offering the securities; carry out a significant amount of its business in that state; and make offers and sales only to residents of that state³⁴. It is supplemented by Rules 147 and 147A. Rule 147, has the following requirements: the company must be organized in the state where it offers and sells securities³⁵. Rule 147A is a newer intrastate offering exemption adopted by the SEC in Octo-

³⁰ Regulation D – Rules Governing the Limited Offer and Sale of Securities Without Registration Under the Securities Act of 1933, 17 CFR part 230, §§ 230.500–230.508, *LII/Legal Information Institute*.

³¹ 17 CFR part § 230.144, *LII/Legal Information Institute*.

³² 17 CFR part § 230.144a, *LII/Legal Information Institute*.

³³ Regulation S – Rules Governing Offers and Sales Made Outside the United States Without Registration Under the Securities Act of 1933, 17 CFR part 230, §§ 230.901–230.905, *LII/Legal Information Institute*.

³⁴ 15 U.S. Code § 77c, *LII/Legal Information Institute*.

³⁵ 17 CFR part § 230.147, *LII/Legal Information Institute*.

ber 2016³⁶. Rule 147A is substantially identical to Rule 147 except that Rule 147A allows offers to be accessible to out-of-state residents, so long as sales are only made to in-state residents.

As shown above, American federal law provides a complex group of safe harbors that can be used by a company to avoid registration with the SEC. It doesn't mean automatically that exempted offerings don't require any legal documents. Conversely, some of them may require publishing an information document, filing a special form with the SEC or meeting disclosure requirements. However, one can witness the policy of financial supervisory authorities to create more exemptions for conducting private placements over past years.

Particularly noteworthy is that the distinction between a private placement and a public offering has not been questioned in U.S. law. Courts and authorities have sought to create comprehensive and objective criteria to distinguish between the two types of offerings.

In search of the definition of private placement

As the legal background in Poland and in The United States has been described, the author now attempts to create a definition of private placement in Poland. It should be emphasized, that under Regulation 2017/1129 and Public Offer Act there is lack of legal definition of private placement. The offers that are colloquially understood as private offerings i.e. offering a security to a certain group of investors can be still carried out under Polish law and are now a group of public offerings that are prospectus exempt. The comparative analysis suggests that there are two major similarities between this kind of offers in Poland and in United States:

- they are addressed to a specific, closed group of people, which often have major influence on the transaction,
- they are exempt from the obligation of publishing a prospectus.

In this regard, it is legitimate to argue that private placement in the United States and public offerings exempted from prospectus in Poland are striking similar legal institutions. As a result, it is justified to claim that running a private placement is still possible under the Polish law. However, in the present legal environment the understanding of this term changed. Private placements shall be understood not as a separate group of offers, but rather as a specific type of public offering, for which there is no obligation to publish a prospectus. Private placements are therefore a subgroup of public offerings, to which the provisions of the Regulation 2017/1129 and The Public Offer Act shall apply, however they are exempted from certain publication obligations. Yet one exception from this definition can be found. An offering directed to only one investor does not fall

³⁶ 17 CFR part § 230.147A, *LII/Legal Information Institute*.

within the definition of a public offering and is excluded from the scope of The Public Offer Act, which has been confirmed by The Polish Financial Supervision Authority in their official statement.

As a result, the definition of a private placement in the new legal environment could be as follows: A private placement is “a type of public offering addressed to a specific, closed group of persons³⁷, that is exempt from the obligation of publishing a prospectus, to which the provisions of the Public Offering Act shall apply, or an offering addressed to only one person, to which the Public Offering Act shall not apply”.

Conclusion

Comparing the institution of private placement in Poland and in United States, one can notice that in the latter country, there is a clear distinction between private placements and public offerings. Especially considering the Ralston Purina case, which constituted legally binding precedent, the private placements in the United States are treated as a separate class of offers. On the contrary, in Poland this distinction faded after the definition of public offering has been broadened by Regulation 2017/1129. Instead of a distinction between public offering and private placement Polish law provides a distinction between a public offering that requires publishing a prospectus and a public offering that does not require publishing a prospectus.

In the USA courts construed general private placement exemption focused on the protection for investors who were not able to fend for themselves or were not provided with necessary information for them to fend for themselves. The policy of Securities and Exchange Commission was to expand the exemptions in the following years. Private placements are now regulated by complex group of rules and regulations. Meanwhile, in Poland all of the exemptions are provided by one act – The Public Offering Act, which refers to Regulation 2017/1129. However, the comparative analysis allows to notice that public offerings which don't require publishing a prospectus under Polish law have many similarities to American private placements. The prospectus exempt offerings consider factors that are similar in both countries such as the number of investors, the amount of offer, whether offer is addressed to qualified investors etc. However, it can be noticed that the policy of Polish authorities unlike SEC's policy, is rather to tighten the exemptions and provide more formal requirements for offerings that are prospectus exempt e.g. the obligation to publish an information memorandum promulgated after the insolvency of GetBack S.A.

³⁷ A plural use of term persons suggests that the offer is addressed to more than one person.

The author of this article believes that Polish law allows private placements, although the definition of them changed after implementation of Regulation 2017/1129. The definition of private placement in Polish law is different than it was before regulation 2017/1129, where clear distinction between them could have been provided. The present concept of private placement falls within the definition of a public offerings. Private placements constitute a subgroup of public offerings, which however require less formal procedures and are addressed to the specific groups of investors, rather than being a stand-alone type of offerings. In this article the author proposed his own definition of private placement in the present legal environment.

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Summary

Private placement as an offering of securities or shares to a specific group of investors is eagerly chosen by company authorities due to low costs and uncomplicated formal requirements. The entry into force of Regulation 2017/1129 resulting in the amendment of the Public Offering Act has changed the definition of a public offering in Polish law, significantly expanding its scope. At the same time, transactions that were previously considered private placements have become public offerings under the new legal definition.

In this article the author compares the solutions of the American federal law regarding private and public offerings to the Polish regulations. Moreover, he proves that American law has developed a clear distinction between public and private offerings, treating private offerings as a separate class of offerings, while Polish law treats private placements as a type of public offerings. The author also tries to create a definition of a private placement that is consistent with the new legal environment in Poland.

Keywords: public offering, private placement, the Polish Financial Supervision Authority, comparative law

POJĘCIE OFERTY PRYWATNEJ W PRAWIE POLSKIM I AMERYKAŃSKIM PRAWIE FEDERALNYM: ANALIZA PRAWNOPORÓWNAWCZA

Streszczenie

Oferta prywatna jako oferowanie papierów wartościowych lub akcji określonej grupie inwestorów jest chętnie wybierana przez władze spółek ze względu na niskie koszty i nieskomplikowane wymogi formalne. Wejście w życie rozporządzenia 2017/1129 skutkujące nowelizacją ustawy o ofercie publicznej spowodowało zmianę definicję oferty publicznej w polskim prawie, znacznie rozszerzając jej zakres. Jednocześnie transakcje, które były uznawane do tej pory za oferty prywatne, stały się zgodnie z nową definicją legalną ofertami publicznymi.

W niniejszym artykule autor porównuje rozwiązania amerykańskiego prawa federalnego dotyczące ofert prywatnych i publicznych do polskich regulacji. Ponadto stawia tezę, że prawo amerykańskie wykształciło wyraźne rozróżnienie pomiędzy ofertą publiczną a prywatną, traktując ofertę prywatną jako osobną klasę ofert, podczas gdy prawo polskie traktuje ofertę prywatną jako jeden z rodzajów oferty publicznej. Autor stara się także stworzyć definicję oferty prywatnej zgodną z nowym otoczeniem prawnym w Polsce.

Słowa kluczowe: oferta publiczna, oferta prywatna, Komisja Nadzoru Finansowego, prawo porównawcze