





INVESTIGATION REPORT
BANK OF CYPRUS – BANCA TRANSILVANIA INVESTMENT

PREPARED FOR THE CENTRAL BANK OF CYPRUS

26 MARCH 2013

ALVAREZ & MARSAL
GLOBAL FORENSIC AND DISPUTE SERVICES, LLP

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DRAMATIS PERSONAE

Name	Defined name	Role within Bank of Cyprus ¹
BANK OF CYPRUS		
Mr Andreas Eliades	Mr Eliades	Group Chief Executive Officer until 10 July 2012
Mr Nicolas Karydas	Mr Karydas	Group General Manager Risk Management and Markets
Mr Yiannis Kypri	Mr Kypri	Group Chief General Manager, now Group Chief Executive Officer
Mr Christis Hadjimitsis	Mr Hadjimitsis	Group General Manager Finance and Strategy
Mr Vassos Shiarly	Mr Shiarly	Senior Group General Manager until 22 March 2012
Mr Georgios Christoforou	Mr Christoforou	General Manager, BOC Romania
Mr Yiannis Pehlivanidis	Mr Pehlivanidis	First Deputy Group Chief Executive Officer
Mr Anastasios Isaakidis	Mr Isaakidis	Credit Risk Manager, BOC Romania
Ms Marianna Pantelidou	Ms Pantelidou	Manager, M & A and Competition Monitoring
Mr Kyriacos Tsolakis	Mr Tsolakis	Manager, BOC Financial Control Division
Ms Anna Sofroniou	Ms Sofroniou	General Manager, CISCO
Mr Panicos Nicolaou	Mr Nicolaou	Head, Project Finance & Loan Syndication Unit
EXTERNAL TO BANK OF CYPRUS		
Mr Horia Ciorcilă	Mr Ciorcilă	Chairman & founding shareholder of Banca Transilvania
Mr Claudiu Silaghi	Mr Silaghi	Founding shareholder of Banca Transilvania
Mr Octavian Radu	Mr Radu	Alleged beneficial owner of Dodworth Ltd
Mr Lefkios Joannides	Mr Joannides	Managing Director, Joannides & Co

¹ Job titles taken from contemporaneous documentation, including BOC 2009 Annual report, Central Bank of Cyprus' website, organisation charts and e-mail correspondence

1. Instructions

1.1 Instructions

- 1.1.1. Alvarez & Marsal (“A&M”) was instructed by the Central Bank of Cyprus (“CBC”) on 21 August 2012 to conduct an Investigation as independent persons, appointed in accordance with Section 24 of the Central Bank of Cyprus Laws of 2002 to 2007, to assist the CBC in accordance with the Mandate² (the “Investigation”).
- 1.1.2. Specifically, the Investigation was tasked with assisting “the Governor to take all necessary legal and regulatory remedies, whether they concern the conduct of supervision by the Bank, the procedures followed by some systemically important local banks (hereinafter referred to as “the Cypriot banks”) to acquire Greek Government Bonds and / or investing abroad in the form of a branch network and/or subsidiaries banks, having regard to the requirements specified by the provisions of the Banking Laws of 1997 to (No. 2) 2011 and the Central Bank of Cyprus Laws of 2002 to 2007 and the Regulations / Directives/ Guidelines issued under these Laws, or otherwise at the discretion of the Governor”.
- 1.1.3. This report sets out the findings and conclusions based on work conducted up to 26 February 2013 in relation to the purchase of a 9.7% interest in Banca Transilvania, a Romanian listed company, by the Bank of Cyprus Public Company Limited (“BOC” or “the Bank”).
- 1.1.4. This report has been prepared for the CBC solely for use in relation to the Investigation and must be read in conjunction with our Statement of Protocol dated 26 March 2013. It may not be used for any other purpose, reproduced or disclosed to any other party in whole or in part without our prior notice. In no event, regardless of whether notice has been provided, will we assume any liability or responsibility to any third party to which this report is disclosed or otherwise made available.

² All capitalized terms herein shall have the meanings set forth in the Statement of Protocol, which is fully incorporated herein and must be read in conjunction herewith.

2. Executive Summary

2.1 Banca Transilvania

- 2.1.1 Banca Transilvania is a Romanian company listed on the Bucharest Stock Exchange (“BSE”). BT was established in 1994 as a local bank and has grown to be ranked one of the top 5 banks in Romania. Significant shareholders include the European Bank for Reconstruction and Development (“EBRD”), IFC (the investment division of the World Bank) and BOC³, with effect from the end of 2009.
- 2.1.2 Mr Georgios Christoforou (“Mr Christoforou”), the General Manager of BOC Romania, has stated that the Bank’s relationship with BT commenced on or around the date BOC opened its branch in Romania in 2006.
- 2.1.3 The Bank has also had commercial relationships with one of the founders of Banca Transilvania, Mr Horia Ciorcilă (“Mr Ciorcilă”), since January 2007, by virtue of the Bank being a lender to Cypriot companies beneficially owned by Mr Ciorcilă.
- 2.1.4 In the latter half of 2008, BT needed to obtain additional funding and therefore publicly sought a possible capital injection from a strategic investor. To this end, in October 2008, BT engaged Merrill Lynch to find potential investors, of which six were identified, including BOC⁴. BOC’s Mergers and Acquisitions (“M&A”) team undertook due diligence on BT, in April 2009, with a view to investing⁵.
- 2.1.5 On 23 April 2009 Mr Christoforou⁶, received a call from Mr Andreas Eliades (“Mr Eliades”) (Chief Executive Officer of BOC in 2009) informing him that he, Mr Yiannis Kypri (“Mr Kypri”) (Group Chief General Manager) and Mr Lefkios Joannides (“Mr Joannides”) (Managing Director at Joannides & CO, Cyprus) had met with BT representatives and had signed a non-disclosure agreement granting the Bank access to the information in the data room that had been set up by BT for the potential investors. This opportunity was referred to within BOC as “Project Beatrice”.
- 2.1.6 Only one of the six potential investors, Marfin Investment Group, submitted a non binding purchase offer, subject to approval from the National Bank of Romania. This approval was not obtained. It is understood that BOC withdrew from the process due to the limitations placed on investors in BT by BT’s Articles of Association; specifically that no foreign investor could hold more than a 10% stake in BT⁷.

³ Exhibit 1: http://www.bancatransilvania.ro/bt/despre_noi_en.html

⁴ Exhibit 2: Translation of Sentence following the public hearing of case no 33454/3/2010 on 4 July 2010 in the Bucharest Court, page 7

⁵ Exhibit 3: Witness Statement of Mr Karydas, presented to the Romanian Court on 18 May 2011

⁶ Per a meeting between Alvarez & Marsal and Mr Christoforou, on 19 December 2012 in Romania

⁷ Exhibit 2: Translation of Sentence following the public hearing of case no 33454/3/2010 on 4 July 2010 in the Bucharest Court, page 7

2.1.7 On 23 September 2009, in conjunction with the EBRD a 15%⁸ shareholder in BT⁹, BT decided to stop its search for a strategic investor¹⁰.

2.2 Investment in Banca Transilvania

2.2.1 According to Mr Christoforou, during August and September 2009, Mr Claudiu Silaghi (“Mr Silaghi”), a founding shareholder in BT and a member of the Board of Directors, commenced purchasing additional BT shares in the market. Following the receipt of a non-binding offer from MIG these shares were subsequently sold to MIG.

2.2.2 From the documents reviewed, it appears that in August 2009 conversations had already taken place between Mr Christoforou from BOC and Mr Ciorcilă, a founding shareholder of BT and Chairman of the Board of Directors, regarding the potential to purchase an interest in BT.¹¹

2.2.3 The review of electronic communications has identified that the possibility of obtaining a shareholding of up to 20% of BT was still under consideration by BOC in June 2009, despite BOC having formally withdrawn from the process following the April due diligence.

2.2.4 A document titled “Draft Non-Paper on a possible Structure and Consideration for the acquisition of 20% strategic interest in Beatrice and subsequent Call Options”¹² (“Draft Non-Paper”) and circulated amongst BOC’s internal M&A department and external advisors on 29 June 2009¹³, outlined a mechanism via which BOC could obtain a 20% shareholding in collaboration with one or more of the founding shareholders, and the “relevant investor”¹⁴. The Draft Non-Paper also sets out that BOC would require changes to BT’s Articles of Association (i.e. to permit BOC to hold more than 10% of BT) in order to proceed with the proposed acquisition of 20% of BT.

2.2.5 On 16 December 2009, BOC made an announcement that it had acquired 102,862,785 BT shares, a 9.7% shareholding, for €58 million¹⁵. BOC paid an average of RON 2.38¹⁶ per share, the price at which they were initially recognised in the Bank’s financial statements.

⁸ EBRD was permitted to obtain a greater than 10% shareholding in BT

⁹ Exhibit 1: <http://www.bancatransilvania.ro/index/43.html>

¹⁰ Exhibit 2: Translation of Sentence following the public hearing of case no 33545/3/2010 on 4 July 2010 in the Bucharest Court, page 7

¹¹ Exhibit 4: Doc I.D: 0.7.12.2186833 with attachment “Memo regarding Mr C’s Loans and Beatrice”

¹² Exhibit 5: Doc I.D: 0.7.13.445383, E-mail from Ms Pantelidou to Mr Polys Polyviou & Michalis Kramvis (both of CP Law), Todd Robinson & Simon Dayes (both of CMS Cameron McKenna) and Mr Aristidis Vourakis of JP Morgan. The Draft Non-Paper is referred to as having been drafted by Ms Pantelidou’s Romanian colleagues, which is assumed to refer to employees of BOC Romania.

¹³ Exhibit 5: Draft Non-Paper

¹⁴ This is believed to refer to the European Bank of Reconstruction and Development as it was the only shareholder other than the founding members to hold more than 10% of BT’s share capital

¹⁵ Exhibit 6:

http://www.bankofcyprus.com/Documents/Investor%20Relations/Press%20Releases/ENG/AnnouncementBT_Final-ENG.pdf

¹⁶ As derived from Exhibit 60

2.3 Alleged Market Manipulation

- 2.3.1 In making its investment in BT, the Bank sought to do so through various structures that disguised the true beneficial ownership of the shares (see Section 4 below), a possible consequence of which was to limit the impact on the share price, as the market was not aware of the Bank's interest in purchasing a significant shareholding in BT. The structures used by the bank to obfuscate the true ownership included:
- 2.3.1.1 Reaching an agreement with one of the founding shareholders to purchase BT shares in the market knowing that he had a guaranteed purchaser (i.e. BOC) at an already agreed premium;
 - 2.3.1.2 Providing a bank loan to a BOC employee as a proxy who was used to purchase shares in the market on behalf of the Bank; and
 - 2.3.1.3 Providing loans on favourable terms to companies beneficially owned by the founding shareholders of BT in return for agreements to sell their shareholdings in BT at a later date.
- 2.3.2 BOC's original intention was to acquire a 10% stake in BT, which would be further increased to 20% during 2010¹⁷. However, following BOC's initial acquisition of 9.7% of BT, an investigation into market manipulation and insider trading was instigated by DIICOT, the Romanian Directorate for Investigating Organised Crime and Terrorism. The investigation named, amongst others, two founders of BT and two BOC Romania employees.
- 2.3.3 There is an on-going criminal case in Romania¹⁸ in which the General Manager for BOC Romania is one of the defendants. It is apparent from evidence submitted in the course of the criminal trial¹⁹ that the actions taken by individuals from the Bank in Romania were done on the basis of instructions from the Head Office of BOC.
- 2.3.4 The criminal aspects of market manipulation vary between different jurisdictions and the merits of any criminal case are a matter for legal opinion. However, JP Morgan stated in an e-mail dated 30 June 2009, that they were concerned that the proposed structure for the acquisition of BT shares as proposed in the Draft Non-Paper was potentially not compliant with the spirit Romanian regulations (see paragraph 4.4.11 below).
- 2.3.5 Despite this advice from JP Morgan, BOC continued with its plans to purchase shares in Banca Transilvania through various mechanisms apparently designed to conceal BOC being the ultimate beneficial owner of the shares acquired, until such time as all of the transactions were completed with BOC owning just under 10% of the share capital and BOC

¹⁷ Exhibit 5: Draft Non-Paper

¹⁸ Following the acquisition of 9.7% of BT by BOC, DIICOT launched an investigation into the share purchases due to suspicions that the Chairman and founding shareholder (Mr Ciorcilă), another founding shareholder (Mr Silaghi) and two BOC Romania employees, Mr Christoforou and Mr Isaakidis, had traded on the back of inside information (Case no 191D/P/2010 – Exhibit 7)

¹⁹ Exhibit 2: : Translation of Sentence following the public hearing of case no 33545/3/2010 on 4 July 2010 in the Bucharest Court

having in place agreements to secure a 20% shareholding (subject to approval from National Bank of Romania).

2.3.6 It is noted that in relation to the case against its employees in Romania the Bank has, so far, been successful in dismissing the allegations put forward by the prosecution. In this regard, as described herein, our investigation has identified that *some of the evidence and statements provided to the courts in Romania are inconsistent with the evidence found*. Consideration should be given as to whether their potentially contradictory statements should be brought to the attention of the Cypriot and Romanian legal authorities.

2.3.7 As set out above, whether or not the agreements reached between BOC and the founding shareholders and their consequent execution to acquire BT shares constitutes market abuse, is a legal matter. However, we have concerns surrounding the manner in which BOC secured the 9.7% shareholding and these concerns may require further investigation and/or review by the relevant authorities. The areas of concern are:

2.3.7.1 Facilitating one of the founding shareholders, Mr Silaghi, to buy up a 3% stake in BT, for onward sale to BOC at a pre agreed premium to the market price, thereby enabling Mr Silaghi to profit from information not publicly available (i.e. the precise number of BT shares BOC was intending to purchase, and the price for which they were intending to acquire the shares);

2.3.7.2 Entering into an Agreement with Mr Ciorcilă whereby Non Performing Loans held by companies under his beneficial ownership were restructured on favourable terms, in exchange for Mr Ciorcilă i) agreeing to sell approximately 5% of BT shares under his beneficial ownership to BOC at a pre agreed premium to the market price; ii) agreeing to ensure that BT would undertake a rights issue during 2010 and that BOC would be guaranteed a certain percentage of unsubscribed shares so as to facilitate an increase in BOC's stake to c20%; and iii) signing an exclusivity agreement whereby neither Mr Ciorcilă, nor Mr Silaghi, could sell any shares under their beneficial ownership to any party other than BOC until 30 June 2010 (see Section 3 below);

2.3.7.3 On 7 December 2009, via the various mechanisms employed to purchase shares, BOC was the beneficial owner of 9.1% of BT (see Section 7); however, only on 8 December 2009 did BOC approach the Romanian regulator to notify their intent to purchase more than 5% of BT²⁰, and only on 16 December 2009 was an announcement made of a significant investment, when such a disclosure was required to be made within 3 days of the acquisition per Romanian National Securities Commission ("CNVM")²¹ resolution 1/2006 (see Section 7).

²⁰ Exhibit 3: The witness statement of Mr Nicolas Karydas, General Director of BOC, presented to the Romanian court on 18 May 2011

²¹ Exhibit 8: CNVM Regulation No. 1/2006

- 2.3.7.4 The sequence of events leading up to the purchase of BT shares by BOC, and the nature of the agreements reached between BOC and the founding shareholders, were not disclosed to the Romanian Court. Instead an alternative description of events has been presented which creates the impression that BOC executives were not aware that the BT shares they acquired were purchased, indirectly, from Mr Silaghi and Mr Ciorcilă. Further, evidence has been discovered and detailed herein that directly contradicts the statements made to the court by Mr Nicolas Karydas (“Mr Karydas”) in his witness statement²².

²² Appendix 1: Evidence that contradicts the statements made to the court by Mr Karydas