HSH Sued by Talanx, Baloise Over Hybrid-Capital Payouts (1)

By Karin Matussek

- Capital-instrument holders allege HSH spirits away profits
- Investors say that accounting problems date back to 2012

(Bloomberg) --

HSH Nordbank, the scandal-ridden state-owned lender sold last month for 1 billion euros ($1.2 billion), is facing a wave of lawsuits by hybrid-capital investors who say the company cooked the books to avoid payouts.

Units of Talanx AG, Baloise Holding AG and other institutional investors filed a lawsuit seeking payouts on hybrid-capital instruments, their lawyer, Aljoscha Schmidberger, said in an interview. More investor groups may bring their own actions later. The suits, which were filed in December, argue that HSH hid profits to avoid making the payments, he said.

A group of funds led by Cerberus Capital Management agreed to buy HSH last month after years of uncertainty that was triggered by the German lender's rescue in the wake of the global financial crisis. When it announced the sale, HSH also adjusted its profit forecast for fiscal year 2017 and is now expecting a loss.

Schmidberger said the structure of the sale of HSH to Cerberus, J.C. Flowers & Co. and others showed how hybrid-capital holders were being taken advantage of. Most of the buyers also acquired a credit portfolio from HSH for a price that was too low, prompting the bank to reverse its forecast, he said, causing even more losses for the investors.

"Hybrid-capital investors are being made to pay the price for the 'successful' privatization of the bank," Schmidberger said. "It's a political scandal that mainly life insurers which granted HSH capital entrusted to them by their customers now have to cover losses of the bank that was until recently state-owned."

HSH spokesman Mirko Wollrab declined to comment.

The investors say in the lawsuit that HSH in 2012, 2014 and 2016 didn't adequately pay returns on profit certificates and "silent participations," which are both hybrid-capital instruments in Germany. To avoid payouts, HSH put money into a fund for general banking risks, allowing the company to avoid booking profits on its balance sheet, according to the suits.

In two of the years, this practice even caused "artificial losses" that hybrid-capital investors had to bear, according to Schmidberger.

Profit certificates entitle holders to a portion of a company's gains, but also require them to share losses.

The suits are following the pattern of similar cases against IKB Deutsche Industriebank AG, filed last year and still pending in Dusseldorf. These cases also center around whether IKB could book money into a fund for general banking risks with the result that hybrid-bond holders weren't paid.

The investors now suing HSH are holding profit certificates and silent participations with the face value of 250 million euros stemming from private placements. Hybrid-capital instruments from public placements were also effected by HSH's practices and holders of the securities with a face value of as much as 1 billion euros could also sue, according to Schmidberger.

A spokesman for the Kiel court confirmed that suits are pending but couldn't immediately comment on the details.

The cases are: LG Kiel, 8 O 20/18 et al.

(Updates with HSH Nordbank spokesman declining to comment in sixth paragraph.)

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