

# The Rules of the Clearing Guarantee Fund

Valid as of 1 September 2016

## Chapter I General Provisions

### § 1

1. These rules, hereinafter referred to as "the rules", define the procedures for the formation and use of the clearing guarantee fund, as defined in Article 65 subpara 1 of the Law on the Trading in Financial Instruments, organised and managed by KDPW\_CCP in accordance with Article 65 subpara 4 of this Law.
2. The clearing guarantee fund shall be used to guarantee the proper performance of obligations arising from the clearing of transactions and arising from non-execution or undue execution of such transactions, executed in the regulated market, performed by KDPW\_CCP.
3. Specific deadlines described in these rules shall be used according to their definition in the Rules of Transaction Clearing.
4. The provisions of § 6 of the Rules of Transaction Clearing (organised trading, hereinafter "Rules of Transaction Clearing") shall be used to determine and calculate the deadlines defined in these rules.

### § 2

1. The clearing guarantee fund shall secure the clearing of:
  - 1/ transactions executed in the stock exchange regulated market operated by the Warsaw Stock Exchange, with the exception of redistributive transactions and off-session transactions, and
  - 2/ transactions executed in the regulated off-exchange market operated by BondSpot, with the exception of transactions outside the regular trading session, on condition that KDPW\_CCP performs clearing from transactions executed in these markets.
2. The clearing guarantee fund shall be formed by the contributions of participants holding the status of clearing member for transactions, referred to in subpara. 1.
3. The clearing guarantee fund shall consist of a basic and reserve resource.

### § 3

1. The assets of the clearing guarantee fund shall be used for the following purposes:
  - 1) to cover the differences between the price of securities forming part of a transaction guaranteed by the clearing fund, whose settlement has been suspended and the price of their purchase or sale, as well as the costs incurred to perform that purchase or sale, in instances where, in order to eliminate the settlement suspension of such transaction, securities are purchased or sold in order that the participant who has not caused the settlement of the transaction to be suspended may receive payment,
  - 2/ to meet the cash payments owed by the participant holding the status of clearing member, who has not fulfilled the cash payment obligations arising from a securities transaction guaranteed by the clearing fund,
  - 3/ to meet the cash payment up to the amount defined in the Rules of Transaction Clearing on behalf

of a participant, who is not responsible for the settlement suspension of a securities transaction guaranteed by the clearing fund, in place of a cash payment, or non-cash payment, arising from that transaction,

4/ to close open positions in derivatives transactions guaranteed by the clearing fund,

5/ in other cases defined in the rules.

1a. KDPW\_CCP shall conduct stress testing in order to monitor the ability of performing obligations arising from transactions for which participants holding the status of clearing member are a clearing counterparty.

2. The provisions of the Rules of Transaction Clearing shall apply to any matters relating to the principles of the use of the clearing guarantee fund that are not regulated herein.

#### § 3a

1. KDPW\_CCP shall determine, on the basis of the weighted average value of the clearing fund in the last four update periods, the minimum value below which the value of the fund must not fall. The minimum value shall be equal to half the weighted average value of the clearing fund rounded off to PLN 1,000,000 (one million zlotys).

2. KDPW\_CCP shall determine, on the basis of the weighted average value of the clearing fund in the last four update periods, the maximum value; once it is exceeded, KDPW\_CCP shall no longer accept contributions of participants to the basic resource of the clearing fund until the next update begins. The maximum value shall be equal to twice the weighted average value of the clearing fund rounded off to PLN 1,000,000 (one million zlotys).

3. The minimum value and the maximum value referred to in subpara. 1 and 2, respectively, shall be updated on each last day of a calendar month in which contributions to the basic resource of the clearing fund are updated.

## Chapter II

### Payments, Updates and Regulation of the Contributions to the Fund

#### § 4

1. Participants make payments to the guarantee fund through contributions consisting of:

1/ cash accepted by KDPW\_CCP, or

2/ securities accepted by KDPW\_CCP, which are Treasury securities, or

3/ accepted debt securities, which are denominated in EUR and issued by European Union Member States other than the Republic of Poland,

where the types of accepted securities, referred to in points 2 and 3, which may constitute contributions to the clearing guarantee fund, and as well as the conditions that these securities need to meet to be accepted as contributions, shall be defined in a resolution of the KDPW\_CCP Management Board.

1a. Cash accepted by KDPW\_CCP within the meaning of subpara. 1 is only cash deposited according to the terms defined in the provisions or the Rules of Transaction Clearing and a resolution of the KDPW\_CCP Management Board adopted under the Rules, in the following currencies:

1/ PLN,

2/ EUR.

2. Subject to the provisions of subpara. 3 and 4, as well as the provisions of § 5 subpara. 3, § 6 subpara. 1 and § 21, subpara 3, securities referred to in subpara. 1 points 2 and 3 paid in by a

participant shall count towards the participant's contribution before any cash assets paid in. For participants making separate contributions, described in the first sentence of § 6 subpara. 4, the cash assets and securities referred to in subpara. 1 point 2 and securities referred to in subpara. 1 point 3 paid in by the participants shall be counted separately for each of these contributions.

3. Securities referred to in subpara. 1 points 2 and 3 paid into the clearing fund shall count towards the participant's contribution up to the amount of 90% of their actual value. Cash in EUR paid into the clearing fund may be credited as part of the initial margin up to 100% of its updated value. In instances justified for reasons of safety of transaction clearing, the KDPW\_CCP Management Board may, by means of a resolution, lower these ratios for a set period. However, two days prior to the record date used to determine the owners of securities referred to in subpara. 1 points 2 and 3 entitled to payments following their redemption, these securities shall cease to count as a valid means of contribution.

4. The amount of the contribution paid in using securities referred to in subpara. 1 points 2 and 3 and cash in EUR shall be equal to the market value of the securities less their market value times the assigned haircut rate published by KDPW\_CCP according to a procedure defined in a resolution of the KDPW\_CCP Management Board. KDPW\_CCP shall define the value of the haircut rate for each security and cash in EUR depending on its type, market price volatility risk, and liquidity.

5. The value of the haircut rate shall be updated by KDPW\_CCP for every day in which KDPW\_CCP performs transaction clearing. Changes to the level of the haircut rate following its update shall also apply to securities referred to in subpara. 1 points 2 and 3 and cash in EUR paid into the clearing guarantee fund prior to the introduction of the change.

6. The level of the haircut rate for specific securities referred to in subpara. 1 points 2 and 3 may be set at 100%.

7. The market value of securities referred to in subpara. 1 points 2 and 3 and cash in EUR shall be determined according to the provisions of § 72 of the Rules of Transaction Clearing.

8. The updated market value of securities referred to in subpara. 1 points 2 and 3 and cash in EUR paid in as contributions by each participant shall be calculated each day in which KDPW\_CCP performs transaction clearing.

9. The provisions of the Rules of Transaction Clearing shall apply in matters concerning the contribution of cash and securities to the guarantee fund, as well as their return, not governed by the rules.

#### § 4a

1. The rights arising from the registration of securities referred to in § 4 subpara. 1 point 3, on the securities account referred to in § 5 subpara. 1 point 2 shall be governed by the applicable legal provisions of the state where the securities account is managed. The KDPW\_CCP Management Board shall indicate, in a resolution, the state where securities account, on which securities referred to in § 4 subpara. 1 point 3, is managed.

2. KDPW\_CCP shall accept securities referred to in § 4 subpara. 1 point 3 if:

1/ the applicable legal provisions of the state referred to in subpara. 1 ensure effective payment of such securities as contributions into the clearing guarantee fund and enable their use with priority over third parties in cases referred to in the rules and the Rules of Transaction Clearing and in accordance with the provisions of such rules,

2/ the provisions of the rules and the Rules of Transaction Clearing concerning the payment of such securities as contributions into the clearing guarantee fund and their use in cases referred to in the rules are consistent with the applicable legal provisions referred to in subpara. 1.

3. Where securities referred to in § 4 subpara. 1 point 3 are contributed to the clearing guarantee fund:

1/ KDPW\_CCP may make the acceptability of payments in securities referred to in § 4 subpara. 1 point 3, dependent on additional actions to be taken by the participant, as indicated by the Management Board of KDPW\_CCP in a resolution, in order to ensure that the payment of such securities as contributions to the clearing guarantee fund is effective and to enable their use with priority over third parties in cases referred to in the rules and the Rules of Transaction Clearing and in accordance with the provisions of such rules,

2/ actions related to the establishment or return of such securities may be taken through the entity which operates the relevant depository system for such securities, under an agreement concluded with it by, respectively, KDPW\_CCP, the participant or its collateral agent;

3/ the value of the contribution to the extent of such securities may be calculated and updated through an entity which operates the relevant depository system for such securities, which has concluded an agreement with KDPW\_CCP, taking into account the haircut rate assigned to such securities, published by KDPW\_CCP.

4. If a clearing member contributing securities to the clearing guarantee fund concludes an agreement with another entity in order to cause the contribution or return of such securities, it shall ensure that the provisions of the agreement are not in contradiction with the provisions of the Rules of Transaction Clearing, the rules and of resolutions of the Management Board of KDPW\_CCP adopted under the rules.

## § 5

1. The securities referred to in § 4 subpara. 1 points 2 and 3, paid into the clearing guarantee fund by participants shall be registered, respectively:

1/ for securities referred to in § 4 subpara. 1 point 2 – on the securities account managed by the Central Securities Depository of Poland for KDPW\_CCP,

2/ for securities referred to in § 4 subpara. 1 point 3 – on the securities account managed for KDPW\_CCP in the relevant depository system for such securities, indicated by the KDPW\_CCP Management Board in a resolution.

2. Contributions to the clearing guarantee fund shall be paid in as follows:

1/ for cash assets - by means of a debit of the bank account in the relevant clearing bank or in TARGET2 managed for the clearing member or its payment agent, subject to subpara. 6,

2/ for securities referred to in § 4 subpara. 1 point 2 - by means of the transfer of such securities onto the securities account referred to in subpara. 1, according to the principles described in the relevant rules issued by the Central Securities Depository of Poland, defining the rules for the management of the securities depository and for processing of transaction settlement,

3/ for securities referred to in § 4 subpara. 1 point 3 - by means of the transfer of such securities onto the securities account referred to in subpara. 1 point 2, according to the principles described in the rules issued by the entity indicated by the KDPW\_CCP Management Board in a resolution, which define the terms of operation of the relevant depository system for such instruments and of the clearing of transactions, subject to § 4a subpara. 3 point 2.

3. Instructions sent to the Central Securities Depository of Poland in order to transfer securities referred to in § 4 subpara. 1 point 2 paid into the clearing guarantee fund directly by a participant making separate contributions referred to in the first sentence of § 6 subpara. 4 or paid into it via its settlement agent, onto the securities account managed by the Central Securities Depository of Poland for KDPW\_CCP, shall indicate that the transferred securities shall count towards a contribution to the clearing guarantee fund and shall be sent according to the regulations referred to in § 2 subpara. 2.
4. Subject to § 4a subpara. 3 point 2, the Management Board of KDPW\_CCP shall define in a resolution the detailed terms of contributing securities to the guarantee fund as well as the detailed terms of their return.
5. Securities contributed to the guarantee fund in the way referred to in subparas. 3 and 4 shall not count towards other contributions made by the participant to the basic resource of the clearing guarantee fund.
6. Cash in EUR shall be paid as contributions into the guarantee fund and returned on the basis of instructions sent by the participant, and returned to the bank account indicated according to § 20, subpara. 2, point 3 of the Rules of Transaction Clearing.

#### § 6

1. Participants shall make the first contribution to the basic resource of the clearing guarantee fund exclusively in the form of cash. The first contribution should be paid in prior to the date that the appropriate governing body of the regulated market operator indicates the day that the participant, or an entity that will be represented by a participant in the clearing system acting as clearing member, commences activities on any regulated market, described in § 2 subpara 1, not later, however, than two days prior to the day of the commencement of these activities.
2. Participants intending to hold the status of clearing members for transactions guaranteed by the clearing guarantee fund, executed by another entity following a change of participant holding such status, shall be obliged to make the first contribution to the basic resource of the clearing guarantee fund not later than two days prior to the date when the participant intends to acquire the status of clearing member.
3. The amount of the first contribution paid shall equal the five-fold amount of the minimum contribution determined according to the provisions of § 8 subpara 2.
4. Participants holding the status of clearing members for transactions covered by the clearing guarantee fund, however as part of more than one type of activity determined according to § 11 subpara. 3 points 1 - 4 of the Rules of Transaction Clearing, shall be obliged to make a separate contribution, allocated to each of those types of activities. The provisions of subpara. 1-3 shall apply accordingly to each of these separate contributions.
5. Prior to the payment of the first separate contribution, described in the first sentence of subpara. 4, to the basic resource of the clearing guarantee fund, participants shall be obliged to inform KDPW\_CCP in written form of the type of activity determined, according to § 11 subpara. 3 points 1-4 of the Rules of Transaction Clearing, within which the contribution will be paid in.

#### § 7

1. Subject to the provisions of subpara. 3, contributions to the basic resource of the clearing guarantee fund shall be updated on the last day of each calendar month, and if this date should fall on a day on which KDPW\_CCP does not process transaction clearing - on the last day, preceding that

day, in which clearing is performed by KDPW\_CCP.

2. KDPW\_CCP performs the update by calculating the required amount of the contribution.
3. The update of the contribution is performed for the first time, respectively, on the date on which the participant, or the entity which the participant will be representing within the clearing system as clearing member, will commence executing transactions on any of the markets described in § 2 subpara 1, or on the date that the participant acquires the status of clearing member for transactions executed in such a market by another entity following a change of participant holding this status.
4. Separate contributions paid in by participant, according to the provisions of the first sentence of § 6, subpara 4, shall be subject to a separate update.

#### § 8

1. The update of the contributions shall be performed according to the principles described in Appendix 1 to these Rules.
2. The amount of the contribution to the basic resource of the clearing guarantee fund, including the amount of the separate contribution described in the provisions of the first sentence of § 6 subpara 4, shall not be lower than 100,000 PLN (minimum contribution). The KDPW\_CCP Supervisory Board shall have the right to authorise the KDPW\_CCP Management Board to determine another amount for the minimum contribution. The KDPW\_CCP Management Board shall notify the KDPW\_CCP Supervisory Board of the contents of the resolution to this effect at its next meeting.

#### § 9

1. Subject to the provisions of subpara. 2, as well as the provisions of § 10 subpara 5, the contribution shall be adjusted in the following instances:
  - 1/ when the updated amount of the participant's contribution is at least 10% higher or lower than the value of the contribution paid in by the participant to the basic resource of the clearing guarantee fund,
  - or,
  - 2/ when the updated value of the securities paid in as part of the participant's contribution, is higher or lower than the market price of the securities at the time of the last payment of the participant's contribution.
2. If the assets of the clearing guarantee fund were sold below their purchase price, following their use in accordance with the provisions of § 3 subpara 1, the level forming the basis for the update adjustment of the contributions shall be defined by the KDPW\_CCP Management Board by means of a resolution.
3. The debits and credits of the participant paying in separate contributions to the basic resource of the clearing guarantee fund, according to the provisions of the first sentence of § 6 subpara 4, following the adjustment of the contribution, shall be calculated separately for contributions paid in by that participant as part of several types of activities performed, determined according to § 11 subpara 3 points 1 – 4 of the Rules of Transaction Clearing.
4. The adjustment of the contribution shall be made by participants paying in a supplementary contribution to the basic resource of the clearing guarantee fund, or following a refund of part of the participant's contribution.
5. A refund of part of the participant's contribution shall only be made in the form of cash, through a credit payment onto the bank account, referred in § 5 subpara 2 point 1, subject to § 5 subpara. 6. The amount of the refund shall not be higher than the limit of the participant's contribution, which

according to the provisions of § 4 subpara 3, must remain in cash form.

6. The participant's debits and credits as a result of the adjustment of the contribution to the clearing guarantee fund, shall be offset (netted) with the debits and credits arising from the adjustment of contributions to the relevant guarantee fund, with the amount of margins and with marketing to market, described in § 46 point 3 of the Rules of Transaction Clearing.

#### § 10

1. The adjustment of the contribution shall take place on the basis of documents containing the information, referred to in subpara. 2 below, issued by KDPW\_CCP and made available to participants.

2. On the day of the update, KDPW\_CCP shall make available not later than 23:00 hours, to each participant holding the status of clearing member for transactions guaranteed by the clearing fund, information defining the updated amount of the participant's contribution to the basic resource of the clearing fund, the updated market value of the securities paid in as part of the contribution and the amount of the participant's cash debits and credits that need to be adjusted as part of the next contribution adjustment.

3. The information referred to in subpara. 2, shall also be made available by KDPW\_CCP on every day on which KDPW\_CCP shall perform transaction clearing, and if on the day that the information is made available is not at the same time the date on which the contribution is updated, then this information shall indicate the amount of the contribution that will be required from participants if on the day the information is made available the update had been performed, while the amount of the cash debits and credits shall be determined on the basis of changes in the current market price of securities forming part of the contribution.

4. The information referred to in subpara. 2 and 3, made available to a participant paying in the separate contribution, described in the first sentence of § 6 subpara 4, shall be made available separately for each of these contributions.

5. Subject to the provisions of § 8 subpara. 2, if the value of cash assets which need to be paid in to the basic resource of the clearing guarantee fund as part of a specific contribution is lower than 1000 PLN, then this value shall not be used to calculate the debits and credits of the participant, described in subpara. 2 and 3, in relation to this contribution.

#### § 11

1. A participant shall pay the adjusted contribution, when this contribution consists of cash assets, up to 8:30 on the day following the day when the information, referred to in § 10 subpara 2 or 3 is made available, indicating that the participant is obliged to make a payment. On the same day, KDPW\_CCP shall refund part of the contribution paid in by the participant if this information indicates a credit owed to the participant. In instances justified by reasons of trading and transaction clearing safety, the Management Board of KDPW\_CCP may, by means of a resolution, designate separate deadlines for each update.

2. Securities may be used as part of the supplementary contribution on condition that before 18:00 hours on the day the information referred to in § 10 subpara 1 or 3 was made available, they were registered, respectively:

1/ for securities referred to in § 4 subpara. 1 point 2 - on the securities account referred to in § 5 subpara. 1 point 1,

2/ for securities referred to in § 4 subpara. 1 point 3 - on the securities account managed for

KDPW\_CCP in the relevant depository system for such securities, indicated by the KDPW\_CCP Management Board in a resolution.

3. The adjustment consisting of a refund of the participant of part of the contribution paid in, shall be withheld in instances where participants shall be obliged to make replacement or additional contributions, described in § 20 subpara. 1 and 2, as well as in § 21 subpara. 1 - 3.

### **Chapter III The Withdrawal of Securities**

#### § 12

1. Participants may withdraw securities paid in by them to the clearing guarantee fund by means of an instruction sent to KDPW\_CCP to this effect.

2. KDPW\_CCP shall send an instruction to the depository system operated, respectively, by the Central Securities Depository of Poland or the entity referred to in § 5 subpara. 2 point 3, to transfer securities from the securities account referred to in § 5 subpara. 1 point 1 or 2, in accordance with the contents of the instruction referred to in subpara. 1, on the day following the day of its receipt, on condition that:

1/ the participant has performed the necessary obligations relating to the adjustment of the contribution,

2/ the withdrawn securities do not need to be used by the clearing guarantee fund  
and,

3/ the instruction referred to in subpara. 1 was sent to KDPW\_CCP prior to 18:00 on the day preceding the date of the intended withdrawal.

3. If the instruction, referred to in subpara. 1, is sent to KDPW\_CCP, then the documents, referred to in § 10 subpara 2 and 3 shall not include the value of the securities, which are to be withdrawn in accordance with the instruction.

#### § 13

1. Participants shall be obliged to withdraw securities they have paid into the clearing guarantee fund two days prior to the record day on which those entitled to receive payments following redemption of these securities are determined. This does not exempt participants from the obligation to adjust the contribution.

2. KDPW\_CCP may send an instruction to transfer securities which have not been withdrawn by the participant according to the principle described in subpara. 1, from the securities account, referred to in § 5 subpara. 1 point 1 or 2, onto the account from which the securities were paid into the clearing guarantee fund.

### **Chapter IV The Reserve Resource of the Fund**

#### § 14

1. The reserve resource of the clearing guarantee fund consists of:

1/ revenue from the investment of cash assets paid in the Polish currency into basic resource, and

2/ the assets described in § 20 subpara 4, and

3/ revenue generated by the investment of assets, as referred to in points 1-2 above.



2. Entitlements from securities paid into the guarantee fund shall be transferred by KDPW\_CCP to the participant who has paid these securities to the guarantee fund, on the day the entitlements are received, in the amount net of due taxes. However, if prior to the payment of the entitlement, a participant is obliged to make a contribution, referred to in § 20 subparas. 1 and 2 or § 21 subparas. 1-3, and the participant does not perform this obligation within the necessary deadline, these entitlements shall be reassigned as contribution to the basic resource in an amount equal to the value of the contribution.
3. If a participant does not perform the obligations described in § 13, the payment from the issuer received for the redemption of securities that were paid in by the participant to the guarantee fund shall be added to the basic resource of the fund, increasing the value of cash assets paid in by that participant as contribution.
4. KDPW\_CCP shall be entitled to retain all proceeds from the management of the cash resources of the guarantee fund in EUR, if any.

#### § 15

1. The share of a participant in the revenue generated by the investment of assets from the basic resource in the Polish currency and of assets from the reserve resource, referred to in § 14 subparas. 1-3, shall be proportional to the participant's share in the basic resource in such currency and share in the reserve resource, respectively, subject to the provisions of subparas. 2 and 3.
2. The share in the revenue described in subpara. 1 of a participant making separate contributions referred to in § 6, subpara. 4, first sentence, shall be determined separately for each such contribution.
3. The share of a participant in the assets described in § 20 subpara. 4 shall be proportional to that participant's share in the basic resource.

#### § 16

The share in the reserve resource of the clearing guarantee fund shall be paid out to participants quarterly, unless there has been an obligation imposed on a participant to make contributions referred to in § 20 subpara 1 and 2, or § 21 subpara 1 – 3. In such instances, participants' shares in the reserve resource shall be applied to contributions to the basic resource.

### **Chapter V** **Using the Assets of the Fund** **Replacement and Additional Contributions**

#### § 17

If the value of the assets required to meet the payment obligation from the assets of the clearing guarantee fund is higher than the total value of the cash assets, paid in as contributions to the basic resource of the fund by the participant, who despite the obligation, did not hold the necessary assets to enable the transaction to be settled, KDPW\_CCP shall assign to the basic resource of the fund those securities paid in by that participant, and if necessary, also shall assign to the basic resource securities paid in by other participants, recognising the need to ensure the fastest sale of these securities at the best available price.

#### § 18

1. Immediately upon determining the need to allocate securities to the basic resource of the fund, KDPW\_CCP shall inform participants paying in contributions of this fact.
2. In order to prevent the allocation of securities to the basic resource of the fund, the participant should provide KDPW\_CCP, not later than 20 minutes following the moment KDPW\_CCP has made the information referred to in subpara. 1 available, with a declaration relating to the replacement of securities contributed to the fund with cash assets of equal market value to the securities while retaining the haircut rate, referred to in § 4 subpara. 4. The declaration should indicate the number of securities that are to be replaced, along with their ID code. The replacement shall take place on condition that the cash available on the bank account, referred to in § 5 subpara 2 point 1, is sufficient to replace the securities indicated in the participant's declaration.

#### § 19

1. Disbursement of the fund assets shall be made from the basic resource. If securities form part of the assets of the fund that are subject to the disbursement, KDPW\_CCP shall sell these securities in the regulated market, or outside the regulated market.
2. Securities held by a participant in the clearing guarantee fund, which were not assigned to the basic resource, according to the provisions of § 17, shall not be used and may be withdrawn by the participant, while applying the provisions of § 12.

#### § 20

1. Subject to the provisions of subpara. 3, participants whose contributions have been disbursed shall be obliged immediately to replace the used part of the fund. Replacement contributions shall be made relative to the size of the amounts of contributions made by participants to the basic resource of the fund. The value of the participant's share in the reserve resource shall be counted as part of the replacement contribution, while applying the principles set out in § 15 subpara. 2.
2. Replacement contributions shall be paid in up to the amount of the difference between the used part of the fund and the total value of assets paid in as contributions to the basic resource of the fund by the participant who despite the obligation, did not hold the assets necessary for the settlement of the transaction.
3. The obligation to make replacement contributions shall not apply to the participant referred to in subpara. 2 above.
4. Cash paid into the fund according to the provisions of § 59 subpara. 5, § 60 subpara. 4 and § 64 subparas. 7 and 8 of the Rules of Transaction Clearing shall be allocated to the reserve resource of the guarantee fund; however, where such assets are in a currency other than the Polish currency, KDPW\_CCP may convert them into the Polish currency at the market exchange rate at the date of the conversion prior to allocating such assets to such resource.

#### § 21

1. Where, due to actions taken by KDPW\_CCP in order to cause the performance of an obligation arising from the clearing of a transaction guaranteed by the clearing fund, the amount of own funds of KDPW\_CCP falls to 110% of the set capital requirement, clearing members shall be obliged to make additional contributions relative to the value of their contributions made thus far to the basic resource of the fund, arising from the most recent update.
2. The amount of the additional contribution that the participant may be obliged to make in the

event described in subpara. 1 shall not exceed 50% of that participant's total amount of contributions to the basic resource of the fund, arising from the most recent update (maximum amount of additional contribution).

3. The additional contributions shall only be paid in the form of cash within the deadline defined by KDPW\_CCP, set at the earliest on the day following the date of the demand for additional payment. The KDPW\_CCP Management Board may decide in a resolution that additional contributions may be paid in instalments whose amount shall be defined in such resolution.

4. Immediately after making additional contributions referred to in subpara. 1, KDPW\_CCP shall use such assets to ensure the performance of an obligation arising from the clearing of a transaction covered by the transaction clearing liquidity guarantee system.

## **Chapter VI**

### **Consequences of Termination, Change or Suspension of Participation or Participant Acquisition**

#### § 22

1. In instances when participant status is terminated or limited to the extent that it involves the loss of clearing member status for transactions guaranteed by the clearing fund, KDPW\_CCP shall refund the participant the securities and cash assets remaining from contributions made by that participant to the basic resource, as well as the cash assets being equal to the participant's share in the reserve resource, calculated as at the day of the refunding of the assets to the participant. The assets refunded to the participant may be subject to a deduction by an amount necessary to perform the settlement of transactions executed in connection with other transactions guaranteed by the assets of the fund, for which the participant held the status of clearing member.

2. The refund shall take place once the obligations of the participant have been met, arising from the participant's status of clearing member for transactions guaranteed by the clearing fund.

3. In instances where participant status is limited for a participant making separate contributions, described in the first sentence of § 6 subpara. 4, in relation to contributions paid in by that participant for activities of a certain type, while at the same time maintaining participation in the scope of contributions paid in for different activities, the principle described in subpara. 1 shall only apply to the values of those first contributions and corresponding shares in the reserve resource and subject to the condition that KDPW\_CCP shall not refund securities, however, the refund of cash assets shall take place up to the amount of cash assets allocated to the contribution of the participant that is to be refunded, according to the balance on the day of the last contribution made by the participant, however, only in the scope where the need did not arise for their use. In such instances, the participant may withdraw the securities whose market value corresponds to the value of the participant's contribution eligible for a refund, that was not refunded in cash.

4. The provisions of subpara. 1 above shall not apply in instances where:

1/ termination of participation status takes place as a result of the acquisition of a participant by another entity, which assumes all the rights and obligations of the participant being taken over. In such instances, assets paid into the clearing guarantee fund by the participant being taken over and that participant's share on the reserve resource shall be allocated to the acquiring participant, or

2/ limitation of participant status is caused by the acquisition of a participant by another entity, assuming the participant's rights and obligations within a specified scope, while the procedure described in the second sentence of point 1 has been applied to contributions to the basic resource

and to the share of the reserve resource of the participant being taken over.

#### § 23

1. Subject to the provisions of subpara. 2 and 3, refunds of the assets referred to in § 22 subpara 1 shall be made within a period of 7 days following the performance of the obligations, referred to in § 22 subpara 2.
2. The refund of entitlements from securities shall take place on the day these entitlements have been received, subject to § 22 subpara. 1 and 2.
3. In instances referred to in the third sentence of § 22 subpara 3, the withdrawal of securities shall not take place earlier than the deadline defined in subpara. 1. The provisions of § 12 subpara. 2 and 3 shall apply accordingly.

#### § 24

[revoked]

#### § 25

The contribution made by a participant to the basic resource of the clearing guarantee fund shall not be subject to updates during the period of the suspension of participation, however, it shall be used and replenished, in accordance with general principles, to the level of contribution on the day of suspension of participation.

#### § 26

In instances of restitution of participant status by a participant following a period of suspension, the required amount of the contribution paid in by such a participant to the basic resource of the clearing guarantee fund shall be determined according to the principles described in § 6 subpara 3.

#### § 27

In instances where a participant is acquired by another entity, within a given scope, the amount of contribution to the basic resource of the clearing guarantee fund, required to be paid in by the acquiring entity shall be determined at the level of the most recent updated contribution of the participant being acquired, paid in during the period of the takeover, subject to the provisions of § 28.

#### § 28

1. The amount of the contribution to the basic resource of the clearing guarantee fund required to be paid in by the acquiring entity, who is at the same time a participant in the fund, shall be determined in accordance with general principles, however, using data relating to both the acquiring entity and the entity being taken over, as the basis of calculation, subject to the provisions of subpara. 2.
2. When calculating the contribution, described in subpara. 1, data relating to the participant being taken over shall only apply in the scope of the takeover.

#### § 29

Extension of participation to include the participant type of representative, in instances where the participant already holds this participant type, however, within the scope of transactions guaranteed

by the clearing fund and executed by another entity, shall not require the payment of the contribution referred to in § 6 subpara 1.

## **Chapter VII Reporting**

### **§ 30**

The Management Board of KDPW\_CCP shall present participants with semi-annual and annual reports on its activities in relation to the management of the assets of the fund.

### **Rules for determining the amount of contributions to the clearing fund**

The basis used in determining the total size of the fund and the contributions of participants with the status of clearing member is the level of uncovered risk. Uncovered risk is the difference between the value of the initial margin calculated under the stress test parameters for positions at the end of day *d* and the value of the initial margin calculated actually contributed by the participant.

Uncovered risk is measured on the basis of:

- 1/ the calculated value of margin requirements for cash instruments;
- 2/ the calculated value of margin requirements for derivative instruments;
- 3/ the marking to market on the cash market, which is the difference between the present market value of securities in all transactions covered by the clearing fund awaiting settlement and their transaction price;
- 4/ the marking to market between derivative market transaction counterparties;
- 5/ parameters determined by KDPW\_CCP.

The first step consists of the calculation of daily uncovered risk for each securities market transaction portfolio and daily uncovered risk for each derivatives market transaction portfolio. A cash market transaction portfolio means positions opened as a result of securities transactions, which are cleared by KDPW\_CCP and settled using the same numbered account held in the relevant settlement institution. A derivatives market transaction portfolio means positions opened as a result of derivative market transactions, which are settled using the same numbered account held in the relevant settlement institution.

Next, the value of each uncovered risk is combined to give the total daily uncovered risk, calculated for a participant holding the status of clearing member.

The final uncovered risk for a participant holding the status of clearing member is the smaller of the following two values: the maximum uncovered risk of the participant, calculated in a given time period; and the average uncovered risk of that participant in the same time period, increased by a standard deviation factor of 3.<sup>1</sup> The size of the fund (limited by the minimum and maximum levels adopted by KDPW\_CCP) is determined by the maximum value of the risk of default of the clearing member whose exposures are the highest or the second and third largest clearing members if the sum of their exposures is greater. If the fund size so calculated is lower than the minimum size of the fund or higher than the maximum size of the fund, then the size of the fund is determined by its minimum or maximum size, respectively. Contribution payment amounts are determined proportionally to the value of uncovered risk for each participant.

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<sup>1</sup> Standard deviation - a parameter of variation in the population, the square average of differences between the values of a variable and their arithmetic mean.