

## **RULES OF CLEARING AND SETTLEMENT OF EUA/EUAA SALE TRANSACTIONS**

These present Rules of clearing and settlement of EUA/EUAA sale transactions (“**rules**”) lay down the terms and conditions of operation of the clearing system and the settlement system referred to, respectively, in Article 3(1)(31) and Article 2(1)(36) of Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (EU Official Journal L 302 from 2010, p. 1, as amended) organised by KDPW\_CCP S.A. for transactions referred to in these rule.

### **TITLE I GENERAL**

#### **§ 1**

Whenever reference is made herein to the following terms:

- 1/ **auction**, this shall be understood to mean a process performed by an auction platform, where EUA/EUAA within the meaning of these rules are offered for sale on the primary market and are allotted through sale.
- 2/ **margin**, this shall be understood to mean assets forming collateral deposited in the transaction clearing liquidity guarantee system;
- 3/ **participant’s instruction**, this shall be understood to mean a declaration or information provided to the clearing system, where the form, terms and conditions of its provision, its format and structure are defined by KDPW\_CCP on its website,
- 4/ **clearing instruction**, this shall be understood to mean a settlement order within the meaning of the Act of 24 August 2001 on the finality of settlement in payment systems and securities settlement systems and on the terms and conditions of supervision of such systems (consolidated text: Dziennik Ustaw – Journal of Laws from 2019, item 212, as amended), which is a document containing the terms and conditions of a transaction, whose structure and format have been agreed with the entity operating an auction platform, received from that platform,
- 5/ **auction calendar**, this shall be understood to mean an auction calendar referred to in Chapter III of Regulation No 1031/2010,
- 6/ **KDPW\_CCP**, this shall be understood to mean the company KDPW\_CCP S.A.,
- 7/ **netting**, this shall be understood to mean the netting of mutual debits arising from participation in the clearing system, including cleared transactions, performed according to these rules,
- 8/ **clearing account**, this shall be understood to mean a registration device operated by KDPW\_CCP in the clearing system in order to clear transactions and to register transactions,
- 9/ **collateral account**, this shall be understood to mean a registration device operated by KDPW\_CCP in the clearing system in order to register the collateral which constitutes margins,
- 10/ **national centre**, this shall be understood to mean a national administrator within the meaning of Article 3(22) of Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union

Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (EU Official Journal L 122 from 03.05.2013, p. 1), responsible for administering on behalf of a Member State a set of user accounts under the jurisdiction of a Member State in the Union Registry, designated in accordance with Article 8 of Regulation No 389/2013 (the national administrator designated by the Republic of Poland is the National Centre for Emissions Management (*Krajowy Ośrodek Bilansowania i Zarządzania Emisjami*), referred to in Article 3(1) of the Act of 17 July 2009 on the management system of greenhouse gas and other emissions),

11/ **transaction limit**, this shall be understood to mean an amount in EUR determined by KDPW\_CCP according to these rules, up to which transactions concluded at an auction are accepted for clearing,

12/ **novation**, this shall be understood to mean a method of clearing of transactions, where the rights and obligations arising from a transaction expire upon the acceptance of the transaction for clearing by KDPW\_CCP and instead, respectively:

a/ a party to the transaction being a participant obliged in relation to KDPW\_CCP to perform obligations arising from the clearing of its transactions has credits or debits, depending on the content of the transaction, in relation to KDPW\_CCP, or

b/ a party to the transaction not being a participant has credits or debits, depending on the content of the transaction, in relation to a participant being a clearing counterparty to the transaction which is obliged under an agreement with it to perform obligations arising from the clearing of its transactions and such participant has credits or debits, depending on the content of the transaction, in relation to KDPW\_CCP,

13/ **bid**, this shall be understood to mean an offer in an auction to acquire a given volume of EUA/EUAA, defined in Article 3(1)(5) of Regulation No 1031/2010,

14/ **auction platform**, this shall be understood to mean an auction platform, designated on the KDPW\_CCP website, authorised to carry out the functions referred to in Article 31(1) of Regulation No 1031/2010 according to the applicable legal provisions,

15/ **payment agent**, this shall be understood to mean an entity which has consented for its bank account managed in TARGET2 to be used for processing a participant's cash debits and credits arising from the clearing of transactions by KDPW\_CCP in EUR (settlement),

16/ **auctioneer**, this shall be understood to mean an entity defined in Article 3(1)(20) of Regulation No 1031/2010,

17/ **event of default**, this shall be understood to mean a situation where a participant poses or where reasonable circumstances suggest that it may soon pose a reasonable risk to the safety of trading or proper operation of the clearing system, in particular in connection with:

a/ reliable information which suggests that bankruptcy of the participant has been declared, the participant has become insolvent or will soon be unable to timely perform obligations arising from the clearing of transactions, which occurs among others where:

- the participant has filed a motion for declaration of bankruptcy, or
- the competent regulatory authority has filed a motion for declaration of bankruptcy of the participant, or

b/ reliable information which suggests that:

- the participant is in liquidation, or
- the competent regulatory authority has decided to suspend the operation of the participant or to revoke the permission for its formation, or

- the competent regulatory authority has decided to impose compulsory administration on the participant, or
  - the competent regulatory authority has been notified by the competent authority according to applicable law that the participant's assets are insufficient to meet its obligations, or
  - the competent regulatory authority has decided to limit the scope of the participant's activity, as a result of which the participant will not be entitled to conclude or clear transactions, or
  - another similar event has occurred and poses a risk to the safety of trading or the proper operation of the clearing system, or
- c/ merger, split or take-over of the participant or acquisition of the core assets of the participant by another entity, including acquisition of the enterprise or its organised part, where as a result of such event the participant's obligations are not recognised or taken over by, respectively, the entity taking over, the entity formed through the merger, or the split entity, or
- d/ reliable information which suggests that the rating issued to a participant by a specialised issuer of ratings will be downgraded at least by three grades below the recent highest rating issued since the participation agreement was concluded or will be downgraded below investment grade or will no longer be issued, or
- e/ the participant's non-performance or undue performance of its obligations arising from transaction clearing, or
- f/ failure to submit the information referred to in § 18 subpara. 1 or 3, or
- g/ material breach of legal regulations by the participant, or
- h/ breach of the terms and conditions of participation in a way which poses the risk that obligations arising from transaction clearing will not be performed in due time, or
- i/ the participant's non-performance or undue performance of other material obligations set out in the rules, which justifies the termination of its participation in the clearing system, or
- j/ identification by KDPW\_CCP of an event of default of the participant in another clearing system of which it is a participant in accordance with the regulations of such system where such event poses a risk that liabilities arising from the clearing of transactions in the clearing system will not be met timely by such participant or may pose a reasonable risk to the safety of trading,
- 18/ **Union registry**, this shall be understood to mean the Union Registry referred to in Article 4 of Commission Regulation (EU) No 389/2013 of 2 May 2013 establishing a Union Registry pursuant to Directive 2003/87/EC of the European Parliament and of the Council, Decisions No 280/2004/EC and No 406/2009/EC of the European Parliament and of the Council and repealing Commission Regulations (EU) No 920/2010 and No 1193/2011 (EU Official Journal L 122 from 03.05.2013, p. 1),
- 19/ **clearing**, this shall be understood to mean the process of clearing, defined in Article 3(1)(32) of Regulation No 1031/2010, performed by KDPW\_CCP,
- 20/ **settlement**, this shall be understood to mean settlement, defined in Article 3(1)(4) of Regulation No 1031/2010, consisting in the payment of the amount due for the conclusion of an EUA/EUAA sale transaction and in the delivery of such EUA/EUAA,
- 21/ **CRR**, this shall be understood to mean Regulation of the European Parliament and of the Council (EU) No 575/2013 of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (Official Journal of the European Union L 176 from 2013, p. 1, as amended),
- 22/ **EMIR**, this shall be understood to mean Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (Official Journal of the European Union L 201 from 2012, p. 1, as amended),

23/ **Regulation No 1031/2010**, this shall be understood to mean Commission Regulation (EU) No 1031/2010 of 12 November 2010 on the timing, administration and other aspects of auctioning of greenhouse gas emission allowances pursuant to Directive 2003/87/EC of the European Parliament and of the Council establishing a scheme for greenhouse gas emission allowances trading within the Community (EU Official Journal L 302 from 2010, p. 1, as amended)

24/ **clearing counterparty**, this shall be understood to mean a participant being a party to a transaction obliged to perform obligations arising from the clearing of its transactions or a participant representing a party to a transaction in the clearing of the transaction,

25/ **account system**, this shall be understood to mean all clearing accounts and collateral accounts managed by KDPW\_CCP in the clearing system,

26/ **payment system**, this shall be understood to mean a payment system which is a part of TARGET2 and manages the bank account indicated by the KDPW\_CCP participant under the agreement between the participant or its payment agent and the central bank which operates the system,

27/ **clearing system**, this shall be understood to mean, respectively, a clearing system defined in Article 3(1)(31) of Regulation No 1031/2010 or a settlement system defined in Article 3(1)(36) of Regulation No 1031/2010, organised by KDPW\_CCP for cleared EUA/EUAA sale transactions at auctions,

28/ **SWI system**, this shall be understood to mean the electronic communication system operated under an agreement with Krajowy Depozyt Papierów Wartościowych S.A., whereby information and declarations are provided in electronic form by KDPW\_CCP to a participant or participants of the clearing system or by a participant of the clearing system to KDPW\_CCP via Krajowy Depozyt Papierów Wartościowych S.A. in accordance with the agreement,

29/ **Detailed Rules of the Clearing System**, this shall be understood to mean the Detailed Rules of the Clearing System for EUA/EUAA Sale Transactions laid down in a resolution of the Management Board of KDPW\_CCP which govern the detailed principles of operation of the clearing system,

30/ **table of fees**, this shall be understood to mean Appendix 1 hereto, which defines the types and amount of fees and the detailed rules for setting them,

31/ **transaction**, this shall be understood to mean a legal relationship arising from, respectively:

a/ a transaction made in the primary market, consisting in the sale of EUA/EUAA at an auction,

b/ novation of a transaction referred to in point a,

32/ **participation** or **participant**, this shall be understood to mean, respectively, participation in the clearing system or a participant of this system,

33/ **clearing member** or **participant holding the status of clearing member**, this shall be understood to mean a participant who obtains this status and consequently becomes responsible in relation to KDPW\_CCP for the proper performance of obligations arising from the clearing of transactions (**buying participant** or **selling participant** within the meaning of § 13 subpara. 3 or subpara. 4, respectively),

34/ **EUA/EUAA**, this shall be understood to mean an allowance, defined in Article 3(1)(3) of Regulation No 1031/2010, to emit the equivalent, within the meaning of Article 2(4) of the Act of 17 July 2009 on the management system of greenhouse gas and other emissions, of carbon dioxide (CO<sub>2</sub>), sold at an auction, for delivery at the second trading day from the day of the auction (two-day spot), being an emission allowance within the meaning of Article 2(1)(2)(j) of the Act on trading in financial instruments, where a homogeneous batch of EUA or EUAA emission allowances are to be provided;

35/ **EUA**, this shall be understood to mean an emission allowance as defined in Chapter 3 of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC;

36/ **EUAA**, this shall be understood to mean an emission allowance as defined in Chapter 2 of Directive 2003/87/EC of the European Parliament and of the Council of 13 October 2003 establishing a scheme for greenhouse gas emission allowance trading within the Community and amending Council Directive 96/61/EC;

37/ **the Law**, this shall be understood to mean the Law on trading in financial instruments of 29 July 2005 (consolidated text: Dziennik Ustaw – Journal of Laws of 2018, item 2286, as amended),

38/ **applicant**, this shall be understood to mean an entity seeking the status of participant in the clearing system organised by KDPW\_CCP with a specific participation status type or a change of the status under its participation agreement.

## § 2

1. The rule of the clearing system are defined in these Bylaws, the Detailed Rules of the Clearing System and other resolutions passed in accordance with the Bylaws.

2. The Management Board of KDPW\_CCP may adopt the Detailed Rules of the Clearing System and other resolutions on detailed matters that relate to the operation of the clearing system, with the exception of matters regarding the rights and obligations of participants who define the terms and conditions of obtaining and terminating participation.

3. The resolutions referred to in subpara. 2 shall be made available to the interested participants immediately upon being passed.

4. Subject to subpara. 5, the resolutions referred to in subpara. 2 shall come into force two weeks after their becoming available according to subpara. 3, unless they indicate a longer period before coming into force.

5. If specific matters are subject to additional conditions arising from the applicable legal provisions, the resolutions referred to in subpara. 2 shall come into force provided that such conditions are met.

6. The provisions of subpara. 2-5 shall apply accordingly to amendments of the resolutions referred to in subpara. 2.

7. The provisions of subpara. 4 shall not apply to resolutions of the Management Board of KDPW\_CCP that relate to the entering into, amendments to, and termination of participation agreements with an individual participant, nor to resolutions which do not contain rules relating to the rights and obligations of participants. Subject to the provisions of subpara. 3, these resolutions shall come into force upon being passed, unless the relevant resolution provides a later date.

8. The Management Board of KDPW\_CCP shall adopt the Detailed Rules of the Clearing System in keeping with legal regulations, the safety of trading and the provisions of the rules. The scope and subject matter of the resolution shall include in particular:

1/ the scope and nature of matters which are to be regulated by the resolution according to the provisions of the rules,

2/ the specificity and functionality of actions taken in the clearing system which are to be regulated by the resolution according to the provisions of the rules,

3/ the necessity of ensuring proper operation of the clearing system including ensuring safe and efficient transaction clearing in the system,

4/ the necessity of maintaining clear and transparent rules of transaction clearing in the clearing

system.

### **§ 3**

1. KDPW\_CCP shall make available to participants the rules, the Detailed Rules of the Clearing System and resolutions adopted under the rules, as well as their amendments, by publishing their content on the KDPW\_CCP website or delivering their content to the concerned participants in writing or in electronic form via the SWI system.
2. KDPW\_CCP shall make available to participants model declarations referred to in the rules and the Detailed Rules of the Clearing System, as well as all other information it is obliged to deliver under those regulations, in the manner defined in subpara. 1, by fax (at numbers provided by participants) or by electronic mail over the Internet (at addresses provided by participants).

### **§ 4**

1. Any declarations and information shall be delivered by KDPW\_CCP to a participant or by a participant to KDPW\_CCP in electronic form via the SWI system unless these rules or a resolution allow otherwise.
2. KDPW\_CCP represents that it accepts as effective declarations submitted and information transmitted by participants in electronic form via the SWI system.
3. Unless these rules or the Detailed Rules of the Clearing System provide otherwise:
  - 1/ declarations and information submitted by:
    - a/ applicants, KDPW\_CCP or participants in connection with applications to conclude, extend, limit or cancel participation status, or as part of the update process of documents submitted by participants in order to conclude or amend a participation agreement,
    - b/ clearing members referred to in Title III "Participation",
    - c/ KDPW\_CCP or participants in matters relating to the complaint handling process, described in Title IX "Complaint Handling Process"require the delivery to the addressee of the original document containing the declaration or information, drawn up at least on the regular written form, or an appropriately certified copy, subject to the provisions of subpara. 5,
  - 2/ official documents shall be delivered in the original counterpart or a properly authenticated copy.
4. In the Detailed Rules of the Clearing System, the Management Board of KDPW\_CCP may:
  - 1/ define other cases where declarations or information shall be delivered according to subpara. 3,
  - 2/ allow participants or entities seeking the conclusion of a participation agreement to deliver certain documents, including official documents, in an electronic copy (scan).
5. In relations between KDPW\_CCP and participants, documents containing a declaration, or information, described in subpara. 3 or 4 may be sent via facsimile or electronic mail through the internet. However, until the moment when the document is received in the manner described in subpara. 1-3 only actions requiring an urgent response should be performed on the basis of the contents of a message sent via facsimile, or electronic mail. No action should be performed when a facsimile, or electronic mail transfer has been damaged in such a way as to render its contents impossible to determine.
6. An appropriately certified copy of a document shall mean:
  - 1/ for official documents: a copy certified officially or notarised, stating it is true to the original, and for documents containing information from the National Court Register or another register relevant to the participant or the entity seeking the conclusion of a participation agreement – also a computer

print-out which meets the requirements to consider its effect to be equivalent to that of documents according to the applicable legal provisions,

2/ for private documents: a notarised copy stating it conforms to the original, while for documents containing personal declarations by the entity submitting the copy of the document, a copy certified as being true to the original according to the corporate representation rules of that entity will also be required.

7. The declarations and information submitted or made available by KDPW\_CCP otherwise than via the SWI system, described in subpara. 3 and 4, shall be sent to the address indicated in the documents submitted by the participant to KDPW\_CCP. In the event that the declaration or information cannot be delivered to the participant at this address, this shall be understood to mean that on the day that KDPW\_CCP has received information that such a delivery was not possible, all consequences pertaining to the delivery to the participant of the declaration or information by KDPW\_CCP, have taken place.

#### **§ 5**

1. Should the declaration or information sent by electronic means be formatted accordingly, or have a pre-defined structure, KDPW\_CCP shall indicate the necessary format or structure of such a declaration, or information, on the KDPW\_CCP website, subject to subpara. 2.
2. KDPW\_CCP shall inform participants about any change of the requirements to the extent referred to in subpara. 1 at least two weeks prior to its introduction.

#### **§ 6**

1. Whenever a number of days are specified, the number shall exclude all official holidays, specified in the applicable regulations, and Saturdays, subject to subpara. 2 and 3.
2. If so required by the clearing system, the Management Board of KDPW\_CCP may, by way of resolution, specify additional days that shall be excluded when calculating time limits referred to in the rules, the Detailed Rules of the Clearing System and other resolutions of the Management Board of KDPW\_CCP adopted under the rules, and specify days from among those referred to in subpara. 1 that shall be included in the time-limit calculation. KDPW\_CCP shall notify its participants of every such case at least one month in advance.
3. The provisions of subpara. 1 shall not apply when calculating the deadline, described in § 81.
4. In instances where the rules impose a duty to perform an activity, or give an undertaking dependent on the performance of an activity, and do not specify in days, weeks or otherwise when that activity is to be carried out, the activity should be performed immediately after the event, which requires such activity to be carried out has taken place.

#### **§ 7**

1. The law governing the evaluation of legal relations between KDPW\_CCP and participants to the extent of participation agreements and transactions accepted for clearing shall be the law applicable in the Republic of Poland.
2. Any civil disputes arising from proprietary interests connected with participation, including connected with transactions accepted for clearing, arising between participants, or between a participant and KDPW\_CCP, shall be submitted to arbitration by the common court of law with jurisdiction over the seat of KDPW\_CCP.

**§ 8**

If the agreement concluded between KDPW\_CCP and the operator of the auction platform foresees such a possibility, KDPW\_CCP shall, on each auction date defined according to the auction calendar, receive from participants and send to the operator instructions for blocking the ability to execute on the platform, by another entity, transactions for which participants submitting such instructions hold the status of clearing member, and instructions relating to the removal of this blocking.

**TITLE II****STATUS AND LIABILITY OF KDPW\_CCP****§ 9**

1. KDPW\_CCP is an entity referred to in Article 2(1) of EMIR, established in the Republic of Poland.
2. On the terms set out in these rules and in the applicable legal regulations, KDPW\_CCP shall take over rights and obligations arising from transactions which have been accepted for clearing.

**§ 10**

1. Obligations of KDPW\_CCP arising from the take-over of rights and obligations of a counterparty to a transaction as a result of its novation shall only arise towards participants being the transaction clearing counterparty and shall be performed by making a clearing payment determined exclusively on the basis of the clearing instruction concerning the transaction.
2. The provisions of Article 481 § 1 of the Civil Code shall not apply to mutual obligations between KDPW\_CCP and participants being counterparties to the clearing of transactions created in novation.
3. Liabilities arising from obligations between KDPW\_CCP and participants being counterparties to the clearing of transactions, arising from KDPW\_CCP's take-over of rights and obligations arising from cleared transactions, shall not apply to any indirect payments.

**§ 11**

1. In the event of the non-performance, or improper performance of its duties, KDPW\_CCP shall not be obliged to provide compensation for damage or harm resulting in loss of any gains, which a party would have been able to obtain had the damage or harm been avoided, unless the damage or harm was intentional, or the result of negligence on the part of KDPW\_CCP.
2. KDPW\_CCP shall not be obliged to provide compensation for damage or harm resulting from a transaction concluded on the auction platform being inconsistent with the content of a clearing instruction entered into the clearing system, being invalid or being non-executable for reasons beyond the control of KDPW\_CCP.
3. KDPW\_CCP shall not be obliged to provide compensation for damage or harm resulting from actions taken by KDPW\_CCP in compliance with the rules due to an event of default occurring on the part of a clearing member.
4. KDPW\_CCP shall not be obliged to provide compensation for damage or harm resulting from failure to pay debits arising from the clearing of transactions within the time limit set by the parties to the transaction unless non-performance or undue performance of an obligation referred to in § 10 subpara. 1 is due to wilful action or gross negligence of KDPW\_CCP.

**§ 12**

KDPW\_CCP shall have no liability for non-performance or undue performance of a settlement order by the operator of a payment system or a national centre, or its non-acceptance or undue acceptance in a payment system or a Union registry, respectively, for reasons beyond the control of KDPW\_CCP, in particular if the non-performance of an order is due to a participant providing the wrong identifier of an account managed in the Union registry.

**TITLE III  
PARTICIPATION****CHAPTER I GENERAL****§ 13**

1. Subject to subpara. 2-4, the following legal entities may become participants:

1/ investment firms,

2/ domestic banks,

3/ foreign investment firms,

4/ credit institutions or foreign banks within the meaning of the Act of 29 August 1997 – Banking Law, or foreign legal entities referred to in Article 115 (1) of the Law,

5/ auctioneer,

6/ legal entity other than those listed in points 1-5, if such entity is allowed to be a participant under applicable laws and regulations, and according to the Bylaws, such participation is aimed at collaborating with KDPW\_CCP with respect to clearing system operations.

2. Eligible to become participants are only entities holding a bank account in EUR managed in a payment system or having a payment agent holding such account in the system, provided that selling participants referred to in subpara. 4 shall indicate the relevant bank account in the system for the settlement of transactions.

3. Eligible as a participant responsible for the clearing of a transaction on the side of the buyer of EUA/EUAA on an auction platform (as a direct buyer in the transaction or as a clearing counterparty representing the buyer in clearing) are only entities referred to in subpara. 1 point 1-4 (“**buying participant**”).

4. Eligible as a participant responsible for the clearing of a transaction on the side of the seller of EUA/EUAA on an auction platform on behalf of the State Treasury is only the auctioneer (“**selling participant**”).

**§ 14**

The entities referred to in § 13 subpara. 1 shall be granted access to services provided by KDPW\_CCP under a participation agreement which defines the scope of their activity in the clearing system and in particular defines the type of types of their participation status as per the classification laid down in § 15.

**§ 15**

The types of participation status shall include:

1/ **general clearing member** – if the participant, being a person referred to in § 13 subpara. 1 point 1-4, is responsible in the clearing system for transactions concluded by another entity on an auction platform,

2/ **individual clearing member** - if the participant, being a person referred to in § 13 subpara. 1 point 1-4, is responsible in the clearing system for transactions concluded by itself on an auction platform,

3/ **auctioneer member** – where the member is an auctioneer which has concluded the arrangements referred to in Article 22(2) of Regulation No 1031/2010 with KDPW\_CCP,

4/ **non-clearing member** – if the participant, not being a clearing member with the participation status type referred to in points 1-3, concludes transactions on an auction platform and is authorised to receive cash in return for a margin on the terms and conditions laid down in the rules.

#### **§ 16**

Participants placing bids on an auction platform, not being a buying participant responsible for such transactions, may be represented in clearing by no more than one participant with the participation status type of “general clearing member”.

#### **§ 17**

Rights arising from the participation agreement, to which the buying participant is a party, may only be transferred with the consent of KDPW\_CCP to another buying participant holding the same status of clearing member in the clearing system.

#### **§ 18**

1. The Management Board of KDPW\_CCP may require at any time that a buying participant provide information necessary to assess whether or not it meets the requirements of participation.

2. Buying participants shall be obliged to notify KDPW\_CCP immediately of changes to the information in the documents attached by the participant to the application for a participation agreement.

3. Buying participants shall be obliged to notify KDPW\_CCP promptly of any circumstances arising on their part which give rise to the occurrence of an event of default or justified suspicion of its occurrence, no later than within 24 hours after the occurrence of such circumstances, and of any other events which may adversely affect their performance of obligations arising from participation within the same time limit, unless the rules designate a different time limit.

### **CHAPTER II CONCLUDING AND AMENDING PARTICIPATION AGREEMENTS**

#### **§ 19**

1. An applicant that intends to obtain participation submits a declaration on the intention to conclude a participation agreement in the form of an application sent to KDPW\_CCP.

2. The participation agreement shall be concluded two weeks after the date of the submission of the relevant application, described in subpara. 1, to KDPW\_CCP if the applicant fulfils the participation requirements specified by the law and by these rules, and the application and supplementary appended documentation meet the formal requirements specified herein.

3. In circumstances where the submitted application, or documents appended to it require completion, or amendment, the deadline described in subpara. 2 shall start on the day on which the entity seeking to conclude a participation agreement performed the relevant completion or

amendment. In such cases, KDPW\_CCP shall prepare information about the scope of the necessary completion or amendments within two weeks of the day of receipt of the application, and shall without delay send this information to the applicant.

4. If an applicant does not fulfil the terms and conditions of participation specified by the law and by the rules, KDPW\_CCP shall, within the time limit referred to in subpara. 2 and 3, adopt a resolution refusing participation. Such resolution shall require justification. A resolution refusing participation may be appealed against to the Supervisory Board of KDPW\_CCP. The Supervisory Board of KDPW\_CCP shall review an appeal within 2 weeks from submission.

5. The provisions of subpara. 1 – 4 shall apply accordingly to amendments to participation agreements.

## **§ 20**

1. Applications for a participation agreement should contain the following:

- 1/ the type of participation status sought by the applicant,
- 2/ if the applicant seeks the participation status type of “general clearing member” – the name of the entity concluding transactions on an auction platform which it will represent in clearing,
- 3/ if the applicant is seeking to obtain the participation status type of buying participant - a declaration that the applicant meets the financial conditions, described herein, and that the applicant is familiar with the principles of sending and receiving declarations and information prepared in electronic form, used in relations between KDPW\_CCP and its participants, which are available on the KDPW\_CCP website, and that the applicant has understood the terms and conditions which need to be met by participants in accordance with the rules.

2. If the applicant is seeking to obtain the participation status type of member auctioneer:

- 1/ the application for a participation agreement in this participation status type may be submitted as a part of the arrangements referred to in Article 22(2) of Regulation No 1031/2010,
- 2/ the participation agreement in this participation status type may be concluded no earlier than the date of such arrangements concluded between KDPW\_CCP and the applicant.

## **§ 21**

1. The application for a participant agreement” with the participation status of “general clearing member”, “individual clearing member” or “non-clearing member” shall in addition include:

- 1/ a copy of the company statute or articles of association or another act defining the governance structure and organisation of the applicant and a valid copy or excerpts from the relevant company register if the applicant is entered in the relevant register,
- 2/ a copy of the business licence granted to the applicant, if such licence is required under the applicable provisions of Polish or foreign law. Furthermore, if additional conditions must arise for the applicant to perform activities in the territory of the Republic of Poland – a declaration to the effect that conditions have arisen to begin performing activities in the territory of the Republic of Poland,
- 3/ cards with specimen signatures of the applicant’s authorised representatives, as well as copies of power of attorney documents in instances where the right to represent the applicant by those persons submitting a specimen signature on the specimen signature card does not derive from the documents specified in point 1,
- 4/ a declaration relating to the submission of disputes referred to in § 7 subpara. 2 to the jurisdiction of the common court of law with jurisdiction over the seat of KDPW\_CCP,
- 5/ an information card containing the address for deliveries,

6/ a declaration concerning establishment or fixed establishment within the meaning of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (Official Journal of the European Union L 77 of 23 March 2011, p. 1, as amended) for which the participation agreement is to be concluded, where the applicant is a non-resident within the meaning of the Foreign Exchange Law of 27 July 2002 (consolidated text: Dziennik Ustaw – Journal of Laws from 2019, item 160),

7/ a declaration indicating the number of the bank account of the applicant, managed in the payment system in which it will process cash credits and debits arising from the clearing of transactions by KDPW\_CCP according to the rules, or indicating the entity that will perform the function of payment agent for the applicant and the number of the bank account maintained for it in the payment system,

8/ a declaration by the entity indicated by the applicant in accordance with the provisions of point 3 that intends to perform the functions of payment agent, providing their consent to perform these functions for the applicant.

2. If the applicant is seeking the status of clearing member with the participation status of “general clearing member” or “individual clearing member”, the applicant shall in addition to the documents described in subpara. 1 also submit the following:

1/ a list of staff employed in posts involving transaction clearing, that includes their positions, telephone/facsimile numbers as well as email addresses,

2/ if the applicant is obliged under the applicable legal provisions to prepare annual financial statements and submits the application:

a/ after the end of the period in which financial statements for a given period should be audited according to applicable legal regulations concerning the applicant – a copy of the annual financial statements for the last financial year together with the auditor’s opinion and report, and where such statements are not required to be audited according to the legal provisions applicable in the state of seat of the applicant or where a seat is not required to be established, then its head office – approved or authorised by the competent authority,

b/ on the lapse of six months after the end of the last six months of a financial year or the start of business – a copy of the interim financial statements for the period.

3/ if according to the relevant legal provisions applicable in the state of seat of the applicant being a financial institution or where a seat is not required to be established, then its head office, CRR does not apply to its activity:

a/ a declaration of the applicant indicating the elements referred to in § 245 subpara. 3 and 4 and § 26 subpara. 2 – 4, which it considers eligible according to those provisions for the calculation of Tier I capital and funds equivalent to own capital within the meaning of CRR, where such declaration should be authenticated by a person authorised as an auditor in a European Union Member State or a third country and subject to public supervision, disciplinary system and quality assurance system in such state, considered equivalent to the requirements laid down in the provisions referred to in § 7 subpara. 1,

b/ a list of financial information referred to in § 28 subpara. 3, to the extent defined according to § 28 subpara. 2, which the applicant is required to provide to the competent authorities which supervise its operation and the time limits within which it is required to provide such information to such authorities and where there is no such requirement – a declaration to the effect that it is not required to provide specific data to such authorities according to the applicable legal provisions binding such participant.

3. If an applicant seeking the status of buying participant has provided the financial information referred to in § 28 subpara. 2 and 3 to the competent authorities which supervise its operation, according to the applicable regulations binding it, it shall also attach to the application such information prepared for the last period of activity preceding the date of submission of the application described in subpara. 2 point 2 item (a) or (b), respectively. Subject to subpara. 4, the applicant shall provide the financial information referred to in the preceding sentence prepared on a separate basis and where the relevant legal provisions applicable in the state of its seat or, where a seat is not required to be established, its head office require it to prepare and provide such information to the competent authorities which supervise its operation on a consolidated basis – then in addition it shall provide such information prepared on such basis.
4. If according to the applicable provisions of CRR the competent authorities which supervise the operation of the applicant have waived the precautionary requirements on an individual basis, and as a result it is not required to provide such authorities with the financial information referred to in § 28 subpara. 2 and 3 prepared on a separate basis, it shall attach to the application a copy of the official document which confirms that the precautionary requirements have been waived on such basis. In that case, the applicant shall attach financial information provided on a consolidated basis to the competent authorities which exercise consolidated supervision over the applicant unless the applicable legal provisions do not require it to provide such information to such authorities, as confirmed by a copy of the official document attached by the applicant to the application.
5. If the applicant is a participant of a separate system managed by KDPW\_CCP, in which it has provided the documents referred to in subpara. 1 point 1-3 and 5-7 and subpara. 2-4, instead of such documents it may provide a declaration confirming their application to participation in the clearing system, unless they have been amended and KDPW\_CCP has not yet been notified thereof.
6. After conclusion of a participation agreement, the declarations referred to in subpara. 1 point 7 and 8 may be amended; however, such amendment shall become effective for KDPW\_CCP no earlier than two days after the date of submission of the relevant declaration by the participant to KDPW\_CCP, unless KDPW\_CCP agrees to a shorter period.
7. The provisions of subpara. 1 point 4 and 7 shall apply accordingly to the conclusion of a participation agreement in the participation status type of member auctioneer provided that the applicant provides the bank account number in the payment system to pay receipts from auctions due to the State Treasury.

## **§ 22**

1. An applicant seeking the participation status of “general clearing member” shall in addition to the documents described in § 21 also submit the following:
  - 1/ a written power of attorney for KDPW\_CCP, according to a template defined by KDPW\_CCP, to receive and submit on its behalf declarations of will on matters concerning the execution of payments for an entity acting with the participation type of “non-clearing member”, according to the rules and in the cases defined herein, in return of deposited margins. The power of attorney shall include a declaration to the effect that every entity to be represented by the applicant in the clearing system has such authorisation and that the participant has waived the right to cancel the authorisation granted to that entity or to amend its scope in order to enable KDPW\_CCP to exercise such rights.
  - 2/ a written declaration of the entity, to be represented by the applicant in clearing, according to a template defined by KDPW\_CCP. In such declaration, the entity:

a/ agrees that the applicant may perform obligations arising from the clearing of transactions made by that entity,

b/ confirms that it has been informed about the use of novation in its transactions and about the publication of information concerning the use of novation in such transactions on the KDPW\_CCP website,

c/ confirms that the entry of its transaction into the clearing system shall be tantamount to an agreement of the parties to such transaction concerning the use of novation under these rules,

3/ a written confirmation in the declaration delivered to KDPW\_CCP, referred to in point 2, that the entity signing the declaration:

a/ had it signed by its duly authorised representatives,

b/ concluded an agreement with the applicant under which it shall be a clearing counterparty to transactions concluded by such entity.

2. After conclusion of a participation agreement, the documents referred to in subpara. 1 point 2 and 3 may be amended only through the mediation of the buying participant; however, such amendment shall become effective for KDPW\_CCP no earlier than two days after the date of submission of the relevant declaration by the participant to KDPW\_CCP, unless KDPW\_CCP agrees to a shorter period.

### **CHAPTER III OBLIGATIONS OF BUYING PARTICIPANTS**

#### **§ 23**

Prior to the clearing of transactions to which they are a clearing counterparty, buying participants shall:

1/ open a relevant clearing account in the clearing system,

2/ provide KDPW\_CCP, no later than within the time limit defined in the Detailed Rules of the Clearing System, with the relevant identifier of an account managed in the Union registry to the extent concerning the opened clearing account,

3/ deposit a margin in accordance with these rules and Detailed Rules of the Clearing System.

#### **§ 24**

1. Buying participants, shall meet the appropriate material - technical and financial requirements.

2. Meeting the appropriate financial requirements shall mean that the clearing member maintains the adequate level of Tier I capital and meets the precautionary requirements referred to in the provisions of § 25 and § 26.

3. Meeting the appropriate material and technical requirements shall mean the clearing member maintaining technical and technological equipment, which ensures the participant is able to connect with the IT system of KDPW\_CCP and used to manage the clearing system, ensuring that documents can be safely sent to and received from that system in electronic form.

#### **§ 25**

1. The level of Tier I capital held by a buying participant may not be lower than:

1/ for participants holding the participation status of "general clearing member":

a/ PLN 50 million - for banks, credit institutions, and foreign banks within the meaning of the Banking Law,

b/ PLN 15 million - for brokerage houses, foreign investment firms, and foreign legal entities referred to in Art. 115 subpara. 1 of the Law on trading in financial instruments,

2/ for participants holding the participation status of “individual clearing member”:

a/ PLN 25 million - for banks, credit institutions, and foreign banks within the meaning of the Banking Law,

b/ PLN 4 million - for brokerage houses, foreign investment firms, and foreign legal entities referred to in Art. 115 subpara. 1 of the Law on trading in financial instruments.

2. Tier I capital shall be understood to mean Tier I capital within the meaning of CRR, which is determined and calculated according to CRR, subject to subpara. 3.

3. If according to the relevant legal provisions applicable in the state of seat of the participant or where a seat is not required to be established, then its head office, CRR does not apply to its activity, Tier I capital shall be understood to mean capital which the participant may use without limitation and without delay to cover risk or losses as soon as they arise, which is equivalent to Tier I capital within the meaning of CRR.

4. Tier I capital which is equivalent to Tier I capital within the meaning of CRR shall be understood to mean capital which is determined and calculated according to the requirements defined in the relevant regulations applicable to the participant considered by the competent authority authorised to exercise supervision in the supervisory system operating in a given European Union Member State to be at least as restrictive as the rules laid down in CRR or Directive of the European Parliament and of the Council 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (Official Journal of the European Union L from 2013, 176, p. 338, as amended) and which meets such rules.

## **§ 26**

1. A buying participant shall be obliged to meet the prudential requirements laid down in CRR and in particular requirements for own funds within the meaning of CRR as well as individual measures complementing such requirements which have been applied to it by the competent supervisory authority which supervises its operation according to CRR as well as other relevant legal provisions applicable in the state of seat of the participant or where a seat is not required to be established, then its head office, subject to subpara. 2.

2. If according to the relevant legal provisions applicable in the state of seat of the clearing member or where a seat is not required to be established, then its head office, CRR does not apply to its activity, it shall be obliged to meet requirements equivalent to the prudential requirements laid down in CRR and in particular requirements for funds equivalent to own funds within the meaning of CRR as well as individual measures complementing such requirements which have been applied to it by the competent supervisory authority which supervises its operation according to the relevant legal provisions.

3. Requirements equivalent to the prudential requirements laid down in CRR, referred to in subpara. 2, shall be understood to mean requirements considered by the competent authority authorised to exercise supervision in the supervisory system operating in a given European Union Member State to be at least as restrictive as the rules laid down in CRR or Directive of the European Parliament and of the Council 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC and which meet such rules.

4. Funds equivalent to own funds within the meaning of CRR shall be understood to mean funds which are determined and calculated according to the requirements defined in the relevant

regulations applicable to the participant considered by the competent authority authorised to exercise supervision in the supervisory system operating in a given European Union Member State to be at least as restrictive as the rules laid down in CRR or Directive of the European Parliament and of the Council 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC and which meet such rules.

### **§ 27**

If a buying participant no longer fulfils the requirements referred to in § 25 or § 26, it shall be obliged to notify KDPW\_CCP of this in writing within two days indicating the reasons for the non-compliance as well as steps taken to remedy it.

### **§ 28**

1. Buying participants shall be obliged to provide KDPW\_CCP with the following:

1/ an audited annual financial statement along with an auditor's opinion and report – within no more than 15 days after the auditor's report is completed, and where the annual financial statement is not required to be audited according to the legal provisions applicable in the state of seat of the participant or where a seat is not required to be established, then its head office – within no more than 15 days after it is approved or authorised by the competent authority,

2/ half-yearly financial statements, if according to the relevant legal provisions applicable in the state of seat of the participant or where a seat is not required to be established, then its head office, it is required to provide the competent authorities which supervise its operation with such statements – within the time limit in which such information should be provided to such competent authorities,

3/ financial information containing data on levels of Tier I capital and other requirements referred to in § 25 and § 26 being maintained by it, which the participant is obliged to provide to the competent supervisory authorities which supervise its operation, prepared according to the applicable legal regulations– within the time limit in which such information should be provided to such competent authorities to the extent defined in subpara. 2, subject to subpara. 3.

2. The Management Board of KDPW\_CCP shall define in a resolution the scope of data contained in the financial information referred to in subpara. 1 point 3, provided to the competent authorities authorised to exercise supervision over clearing members in the supervisory system operating in the European Union Member States as necessary for KDPW\_CCP to assess the compliance of such participants with the financial conditions.

3. If according to the relevant legal provisions applicable in the state of seat of the buying participant or where a seat is not required to be established, then its head office, the participant is not required to provide the financial information referred to in subpara. 1 point 3, to the extent defined in subpara. 2, to the competent authorities which supervise its operation, it shall be obliged to provide such information to KDPW\_CCP within the time limit in which such information should be provided to the competent authorities authorised to exercise supervision in the supervisory system operating in the European Union Member States according to Commission Implementing Regulation (EU) No 680/2014 of 16 April 2014 laying down implementing technical standards with regard to supervisory reporting of institutions according to Regulation (EU) No 575/2013 of the European Parliament and of the Council (Official Journal of the European Union L 191 from 2014, p. 1). If the competent supervisory authority of the participant has waived, according to the applicable provisions of CRR, the application of specific prudential requirements for such participant or such requirements do not

apply to such participant according to the provisions of CRR, the obligation referred to in the preceding sentence shall not apply to the extent derived from such waiver or such legal provisions, respectively.

4. Subject to subpara. 5, the financial information referred to in subpara. 1 shall be prepared and provided on a separate basis and where the relevant legal provisions applicable in the state of seat of the participant or, where a seat is not required to be established, its head office require it to prepare and provide such information to the competent authorities which supervise its operation on a consolidated basis – then in addition it shall be prepared and provided on such basis.

5. If according to the applicable provisions of CRR the competent authorities which supervise the operation of the participant have waived the precautionary requirements on an individual basis, and as a result it is not required to provide such authorities with specific financial information prepared on a separate basis, it shall be obliged to provide KDPW\_CCP immediately with a copy of the official document which confirms that the precautionary requirements have been waived on such basis. In that case, the participant shall provide KDPW\_CCP with financial information provided on a consolidated basis to the competent authorities which exercise consolidated supervision over the participant.

6. The documents referred to in subpara. 1 which have not been prepared in the original in the Polish language or in the English language, according to the legal provisions applicable to the participant, shall be delivered translated into the Polish language or the English language. The translation shall be certified as corresponding to the original document by persons authorised to represent the participant.

7. The documents described in subpara. 1 may be submitted to KDPW\_CCP, at the participant's election, in electronic form via the SWI system or by e-mail over the internet on the terms defined by the Management Board of KDPW\_CCP in a resolution.

## **§ 29**

1. Buying participants shall be obliged to provide KDPW\_CCP with annual information, according to a template defined by KDPW\_CCP, including the following values of its exposures to all central counterparties other than KDPW\_CCP (i.e., defined in Article 2(1) of EMIR with a place of establishment or head office in a European Union member state or third country) for which it is or was a clearing member within the meaning of CRR:

1/ aggregate sum of the amounts it has paid to the central counterparty's default fund, and  
2/ aggregate sum of the amounts it is required to pay to the central counterparty after the central counterparty's default fund is exhausted in order to cover the loss incurred by the central counterparty as a result of default of one or more of its clearing members (hypothetical payments), subject to subpara. 2.

2. If the amount of hypothetical payments is not limited by a central counterparty as a cash amount, the information referred to in subpara. 1 shall include an amount equal to three times the amount paid by the clearing member to the central counterparty's default fund.

3. The information referred to in subpara. 1 shall be prepared as at 31 December of each year in the currency defined by the clearing member and provided to KDPW\_CCP within 30 calendar days after the end of the calendar year.

4. The information referred to in subpara. 1 shall be provided to KDPW\_CCP, at the election of the participant, in electronic form via the SWI system or by e-mail over the internet on the terms defined by the KDPW\_CCP Management Board by way of a resolution.

**§ 30**

Buying participants that hold the status of clearing member as part of their activity pursued as a branch shall be obliged to provide KDPW\_CCP with additional financial information referred to in § 28 subpara. 1 to the extent of activities of such branch, provided that according to the relevant legal provisions applicable in the state of seat of the participant or where a seat is not required to be established, then its head office, the participant is required to prepare such information – within time limits in which such information should be provided to the competent authorities which supervise its operation or the operation of its branch according to such applicable legal provisions. The provisions of § 28 subpara. 2, 3, 6 and 7 shall apply accordingly.

**§ 31**

If according to the relevant legal provisions applicable in the state of seat of the buying participant or where a seat is not required to be established, then its head office, CRR does not apply to its activity, the Management Board of KDPW\_CCP may require the clearing member, in a resolution, to provide KDPW\_CCP, within the time limit set in the resolution, with an official document defined in the resolution which confirms that the requirements applied to it, which are equivalent to the prudential requirements laid down in CRR, are considered by the competent authority authorised to exercise supervision in the supervisory system operating in a given European Union Member State to be at least as restrictive as the rules laid down in CRR or Directive of the European Parliament and of the Council 2013/36/EU of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC and that they meet such rules.

**§ 32**

The Management Board of KDPW\_CCP may, by way of resolution, order a buying participant to provide, at specified times and over specific periods of time, additional information specified in such resolution concerning the participant's compliance with the requirements referred to in § 25 or § 26 according to the applicable legal provisions where there is a well-founded justification that the activities being carried out by that participant threaten or are likely to threaten the safety of trading.

**§ 33**

1. Buying participants shall be obliged at least once every calendar year to take part in tests as part of the Business Continuity Planning System, organised by KDPW\_CCP.
2. The Business Continuity Planning System shall mean technical and organisational processes used in order to maintain operational continuity, or the fastest possible replication of the key business processes performed by the clearing system, in the event that these are disrupted as a result of the inability to use the standard IT processing systems operated by KDPW\_CCP, or as a result of the sites where these systems are located being unavailable for processing.
3. KDPW\_CCP shall inform buying participants of the date or dates of the tests of the Business Continuity Planning System in a given calendar year, with at least one month's advance notice.

**TITLE IV  
NOVATION****§ 34**

The entry of a clearing instruction into the clearing system shall be tantamount to the parties to the transaction concerned by the instruction agreeing that novation shall be used in the transaction in accordance with these rules.

**§ 35**

1. Transactions shall be accepted for clearing upon the registration of transactions in a clearing account maintained in the clearing system (**time of novation**).
2. transaction shall be accepted for clearing on the condition precedent whereby the requirements set out in § 42 are met, subject to § 38.

**§ 36**

1. Upon novation, KDPW\_CCP shall have, respectively, credits or debits exclusively towards the participant being the other transaction clearing counterparty.
2. Upon novation, the clearing counterparty shall have, respectively, credits or debits towards KDPW\_CCP and if it represents another entity in clearing, then also towards that entity.
3. At the time of novation, the participation agreement shall be a master agreement referred to in Article 85(1) of the Act of 28 February 2003 – Bankruptcy Law (consolidated text: Dziennik Ustaw – Journal of Laws from 2019, item 498) for transactions accepted for clearing arising from novation and such transactions shall be executed under such agreement.

**§ 37**

Novation of transactions shall be performed separately for each transaction and according to its contents set out in the clearing instruction.

**§ 38**

If a transaction concluded on an auction platform and registered in the clearing system is found to be inconsistent with the content of the clearing instruction entered into the clearing system or with these rules, of which KDPW\_CCP was unaware and could not be aware with due diligence at the time of the registration of the transaction, then:

- 1/ the transaction was not accepted into the clearing system,
- 2/ the clearing member and KDPW\_CCP entered at such time into a legal transaction according to the content of the instruction and these rules. In that case, the clearing instruction shall be a declaration of the clearing member accepting such legal transaction.

**§ 39**

1. From the time of novation:
  - 1/ netting of credits and debits of KDPW\_CCP and transaction clearing counterparties shall be allowed only on the terms set out in the rules,
  - 2/ KDPW\_CCP shall be exclusively authorised to determine credits and debits based on netting.
2. A clearing counterparty shall not transfer any rights created as a result of novation of the transaction to another entity without the consent of KDPW\_CCP.

3. No other entity may accept any obligations created as a result of novation of the transaction without the consent of KDPW\_CCP.

**TITLE V  
CLEARING SYSTEM**

**CHAPTER I GENERAL**

**§ 40**

In organising and managing the clearing system, KDPW\_CCP shall:

- 1/ accept transactions concluded on the relevant auction platform for clearing in the system,
- 2/ calculate the amounts of monetary and non-monetary payments that parties to transaction clearing and KDPW\_CCP are obliged to meet,
- 3/ operate the account system,
- 4/ register transactions in clearing accounts,
- 5/ organise and manage the system for securing transaction clearing liquidity, to the extent specified herein,
- 6/ perform the settlement of transactions accepted for clearing according to the results of the calculations described in subpara. 2.

**§ 41**

Transactions shall be cleared and settled in EUR in accordance with these rules and the Detailed Rules of the Clearing System.

**§ 42**

KDPW\_CCP shall accept transactions for clearing and perform the clearing and settlement of transactions in EUR if the entity which executed the transaction:

- 1/ is a clearing member to such extent and has carried out the respective obligations described herein, or
- 2/ is not a clearing member to such extent, provided that the status of clearing member is held by another participant to the extent of such transaction, which has carried out the respective obligations described herein.

**§ 43**

KDPW\_CCP may refuse to accept a transaction for clearing in the clearing system if:

- 1/ a party concluding the transaction on an auction platform is not responsible for its clearing in the clearing system or has no buying participant representing it in clearing to such extent or KDPW\_CCP identifies an event of default of the buying participant being a clearing counterparty to the transaction,
- 2/ the settlement instruction or the terms of the transaction determined on its basis do not fulfil the requirements specified in the rules or a resolution of the Management Board of KDPW\_CCP issued on its basis,
- 3/ the auction platform on which the transaction is concluded is not designated by KDPW\_CCP,
- 4/ the acceptance of the transaction for clearing would exceed the transaction limit set for the buying participant,

5/ upon the acceptance of the transaction for clearing, KDPW\_CCP would be obliged to deliver a quantity of EUA/EUAA exceeding the quantity of EUA/EUAA registered in the relevant auction account for the purposes of the delivery, managed in the Union registry.

#### **§ 44**

KDPW\_CCP shall perform settlement:

- 1/ by submitting settlement orders to a payment system under an agreement between KDPW\_CCP and the National Bank of Poland, and
- 2/ by submitting instructions concerning the settlement of transactions in the Union registry under an agreement between KDPW\_CCP and the national centre.

#### **§ 45**

Clearing instructions shall be deemed to be entered into the clearing system upon their effective submission by the operator of an auction platform to the KDPW\_CCP system.

### **CHAPTER II ACCOUNT SYSTEM**

#### **§ 46**

1. KDPW\_CCP shall operate clearing accounts in the clearing system, used to register:
  - 1/ transactions registered in the clearing system,
  - 2/ balances arising from netting.
2. The account system shall be maintained in such a way as to separate clearing accounts as follows:
  - 1/ accounts used to register transactions concluded for its own account by a bidder on an auction platform (**bidder accounts**),
  - 2/ accounts used to register transactions concluded for the account of clients of a bidder on an auction platform (**bidder client accounts**).
3. KDPW\_CCP shall maintain collateral accounts in the clearing system assigned to the accounts referred to in subpara. 2.

#### **§ 47**

1. The account system shall be maintained by KDPW\_CCP according to the following principles:
  - 1/ respecting the types of participation of clearing members,
  - 2/ separate registration of transactions,
  - 3/ simultaneity of actions,
  - 4/ completeness,
  - 5/ truthfulness.
2. The principle of respecting the types of participation shall mean that clearing accounts and collateral accounts shall be opened for a given participation type with which the buying participant acts in the clearing system.
3. The principle of separate registration of transactions shall mean that all transactions which have been accepted to the clearing system shall be registered in the account system separately.
4. The principle of simultaneity of actions shall mean that registration in the account system shall take place on the performance of a specific action in the clearing system.
5. The principle of completeness shall mean that all actions referred to in § 46 subpara. 1 shall be registered in the account system.

6. The principle of truthfulness shall mean that the account system shall be maintained in accordance with the factual status of actions performed in the clearing system.

#### **§ 48**

1. KDPW\_CCP shall assign attributes to each clearing account and collateral account as determined in a resolution of the Management Board of KDPW\_CCP.
2. A buying participant shall define the attributes of clearing accounts maintained for it, in particular the client identification number and the identifier of the relevant account managed in the Union registry. The client identification number shall be assigned to a client or group of clients of such participant on the basis of an instruction submitted by the participant which intends to open a clearing account; where a client identification number is assigned to a group of clients, KDPW\_CCP shall assign one collateral account to the clearing accounts of such clients.
3. Clearing accounts and collateral accounts linked to them which are defined by the buying participant according to subpara. 2 exclusively for a given client or group of clients of the participant shall be maintained separately from other accounts in the account system.

#### **§ 49**

Records in clearing accounts and collateral accounts shall only be made by KDPW\_CCP.

#### **§ 50**

Accounts shall be opened on the basis of an instruction of a buying participant on the terms and conditions laid down in the Detailed Rules of the Clearing System.

### **CHAPTER III CLEARING AND SETTLEMENT OF TRANSACTIONS**

#### **§ 51**

1. Transaction clearing shall be carried out according to the principle that cash debits and credits of the participant holding the status of clearing member arising from cleared transactions and from margins, shall be recalculated, as appropriate, to form a single net debit of KDPW\_CCP in EUR or a single net credit of the participant in EUR (**netting**).
2. Netting shall cover cash debits and credits of a participant holding the status of clearing member, arising from all transactions accepted for clearing to be executed in EUR on the same date.
3. Netting shall be performed separately for debits and credits arising from transactions executed on the own account of clearing members, and for debits and credits arising from transactions executed on account of their clients and transactions concluded by entities they represent in clearing.
4. Entities which shall make a net payment and entities which shall receive a net payment shall be identified as a result of netting.
5. Netting shall be performed within time limits defined in a resolution of the Management Board of KDPW\_CCP. KDPW\_CCP shall register the outcome of netting in clearing accounts immediately after netting.
6. Netting performed by KDPW\_CCP shall require no additional declarations of the transaction clearing counterparties.

**§ 52**

Cash credits netted in connection with the clearing of transactions shall be cancelled and cash payments shall be settled, respectively, as follows:

- a/ upon the relevant bank account being debited or credited, respectively, on the basis of a settlement order provided to the payment system, or
- b/ if the outcome of netting does not require a settlement order to be submitted - upon the registration in the clearing accounts of the status resulting from the clearing of such transactions performed by KDPW\_CCP and a notification of records in such accounts given to clearing members for which such accounts are maintained.

**§ 53**

Debits and credits of participants being clearing counterparties to transactions shall be determined on the basis of clearing instructions provided to KDPW\_CCP from an auction platform.

**§ 54**

1. A clearing instruction entered into the clearing system shall not be recalled from the system once it is delivered to the system, subject to subpara. 2.
2. A clearing instruction entered into the clearing system may only be recalled by the operator of the auction platform and no later than at the time when KDPW\_CCP sends a settlement order for the transaction whose instruction is to be recalled to the payment system.

**§ 55**

1. KDPW\_CCP shall send settlement orders concerning cleared transactions to the payment system within the time limit set in the Detailed Rules of the Clearing System necessary to enable their settlement.
2. If KDPW\_CCP receives a notification of failure to make a cash payment referred to in subpara. 1 when due, KDPW\_CCP shall immediately notify the clearing participant thereof.

**§ 56**

1. KDPW\_CCP shall submit to the national center instructions concerning the settlement of EUA/EUAA deposited in an auction account for the purposes of delivery, managed in the Union registry, accounts managed in the registry which are defined by the buying participant for the relevant clearing accounts in which cleared transactions are registered, within time limits necessary to ensure the settlement of such transactions, defined in the Detailed Rules of the Clearing System. The delivery of EUA/EUAA shall be settled upon the entry of records in the Union registry according to instructions submitted by KDPW\_CCP.
2. If it comes to the attention of KDPW\_CCP that the delivery of EUA/EUAA has not been settled, KDPW\_CCP shall immediately notify the buying participant thereof.

**CHAPTER IV TRANSACTION CLEARING LIQUIDITY GUARANTEE SYSTEM****SECTION 1 GENERAL****§ 57**

As part of the transaction clearing liquidity guarantee system, KDPW\_CCP:

- 1/ collects and manages assets that form margins,
- 2/ sets the transaction limit,
- 3/ takes measures necessary to execute payments arising from the clearing of transactions if an event of default is identified on the part of a buying participant, providing grounds for termination of the agreement effective immediately.

#### **§ 58**

1. Assets of the transaction clearing liquidity guarantee system are used to meet liabilities arising from cleared transactions and on the occurrence of an event of default of a buying participant.
2. KDPW\_CCP shall be authorised to manage the cash assets contributed to the transaction clearing liquidity guarantee system.
3. If revenue is earned from the management of cash constituting margins, it shall be transferred to buying participants on a quarterly basis unless the Management Board of KDPW\_CCP defines another time limit by way of a resolution, less of taxes due. If, however, a participant is in arrears with the performance of any obligations towards KDPW\_CCP arising from its participation in the clearing system, KDPW\_CCP may credit it towards such obligations instead of transferring this revenue to the participant.

#### **§ 59**

1. Margins may consist only of:
  - 1/ cash in EUR – if deposited by a buying member to settle the cash payables arising out of the cleared transactions,
  - 2/ EUA/EUAA – if deposited by a selling member to settle the non-cash payables arising out of the cleared transactions.
2. Each margin:
  - 1/ shall be established on the day it is deposited and expire at the time set according to the provisions of the rules and the Detailed Rules of the Clearing System, subject to § 66 *et seq.*,
  - 2/ shall constitute financial collateral referred to in Art. 1 in conjunction with Art. 5 subpara. 1 point 1 of the Law on certain financial collateral of 2 April 2004 (consolidated text: Dziennik Ustaw – Journal of Laws from 2016, item 891, as amended).
3. A margin shall be deposited in cash on the terms defined by the Management Board of KDPW\_CCP in a resolution and by means of debiting the relevant bank account designated by the buying participant according to the rules.
4. A buying participant depositing a margin in cash shall ensure that the balance of cash in the relevant bank account designated by it according to the rules is sufficient to cover the participant's instruction submitted to the clearing system before the bidding period opens according to the auction calendar but no later than the time limit set in the Detailed Rules of the Clearing System.
5. Collateral deposited in cash shall be returned by means of crediting the bank account from which the collateral was drawn.

#### **§ 60**

1. Margins shall be posted for transactions which are to be cleared in the clearing system according to the content of a clearing instruction.
2. Margins shall be used to settle transactions registered in a clearing account or clearing accounts which have been assigned to the collateral account in which the margin is registered.

3. KDPW\_CCP shall count deposited assets towards a margin for the nearest auction.

#### **§ 61**

Where assets posted as an initial margin are registered in a collateral account linked to a clearing account maintained in order to register transactions executed by an entity acting with the participation type of non-clearing member, that entity shall be entitled, under the terms laid down herein, to receive such assets due in return upon such transactions are settled by KDPW\_CCP if an event of default occurs on the part of the buying participant which represent it in clearing.

#### **§ 62**

1. If collateral referred to in this Section is formed by EUA/EUAA, KDPW\_CCP may dispose of such EUA/EUAA for the purposes of such collateral. EUA/EUAA shall be deposited as a margin by transferring them to an auction account for the purposes of delivery identified by KDPW\_CCP, managed in the Union registry. The selling member shall deposit EUA/EUAA emission allowances prior to the commencement of the auction as per the auction calendar.

2. Upon such transfer, an agreement is made concerning the transfer of the title to EUA/EUAA in favour of KDPW\_CCP as collateral securing non-cash liabilities arising from transactions concluded at an auction and accepted for clearing.

3. KDPW\_CCP shall transfer EUA/EUAA forming a margin in order to meet non-cash liabilities arising from transactions concluded at an auction and accepted for clearing.

4. After transactions from an auction are settled, KDPW\_CCP shall immediately return the unused margin deposited in non-cash assets unless the unused collateral is to be counted towards the settlement of transactions concluded at the next auction. Unused collateral deposited in non-cash assets shall be returned to the relevant account managed in the Union registry from which those assets were previously transferred.

### **SECTION 2 RISK MONITORING**

#### **§ 63**

KDPW\_CCP shall monitor the risk generated by transactions accepted for clearing, in particular including:

- 1/ the setting of a transaction limit for each buying participant,
- 2/ the verification of transactions sent for clearing for each buying participant in order to check the utilisation of the transaction limit.

#### **§ 64**

1. KDPW\_CCP shall set a transaction limit for each collateral account, up to which transactions concluded at an auction shall be accepted for clearing.

2. A transaction limit shall be equal to the amount of cash in EUR counted by KDPW\_CCP towards margins and registered in the relevant collateral account.

3. If a transaction accepted for clearing in the clearing system would exceed a transaction limit, KDPW\_CCP shall refuse to accept the transaction into the system.

#### **§ 65**

Buying participants who conclude transactions on an auction platform or represent another entity

concluding transactions on an auction platform in clearing shall make sure that a transaction concluded by them or by such entities, which are to be sent for clearing, do not exceed a transaction limit set by KDPW\_CCP.

### **SECTION 3 RETURN OF RESOURCES OF THE TRANSACTION CLEARING LIQUIDITY GUARANTEE SYSTEM IN THE EVENT OF DEFAULT**

#### **§ 66**

1. If KDPW\_CCP identifies an event of default of a buying participant who represents another entity with the participation status type of “non-clearing member” in clearing, KDPW\_CCP shall transfer the cash assets due in return of a margin registered in the relevant collateral account to such entity or, should this prove impossible or overly onerous, to the buying participant whose event of default has been identified by KDPW\_CCP.
2. If assets are transferred according to subpara. 1, the buying participant shall have no claims to their return against KDPW\_CCP.

#### **§ 67**

1. Assets referred to in § 66 subpara. 1 may be returned after KDPW\_CCP identifies an event of default of a clearing member and transactions to which the participant is a clearing counterparty are settled, to the bank account designated according to these rules by an entity with the participation status type of “non-clearing member” whom the clearing member represents in clearing.
2. If assets referred to in § 66 subpara. 1 registered in one collateral account are to be returned to more than one entity with the participation status type of “non-clearing member” identified with the same client identification number, such assets may be transferred provided that such entities designate the same bank account according to these rules.

### **TITLE VI**

### **TERMINATION OF AGREEMENTS**

#### **CHAPTER I GENERAL**

#### **§ 68**

1. A participation agreement may be terminated:
  - 1/ according to a declaration made by the clearing member, effective two weeks from the date of its submission, subject to subpara. 2-3,
  - 2/ by agreement of the parties,
  - 3/ according to a declaration made by KDPW\_CCP in the procedure of termination effective immediately upon the occurrence of an event of default.
2. If transactions are registered in clearing accounts maintained for a clearing member, a participation agreement may be terminated in the case referred to in subpara. 1 point 1 only following the performance of all obligations arising from participation in the system.
3. A buying participant whose event of default is identified by KDPW\_CCP shall not be entitled to terminate the participation agreement unless it meets all of its liabilities arising from transactions

accepted for clearing in the clearing system, for which the participant is a clearing counterparty, according to a request received from KDPW\_CCP.

## **CHAPTER II TERMINATION EFFECTIVE IMMEDIATELY**

### **§ 69**

Termination effective immediately shall be termination of a participation agreement according to a unilateral notice of termination presented by KDPW\_CCP on the occurrence of an event of default on the part of a buying participant.

### **§ 70**

1. If an event of default occurs on the part of a buying participant holding the status of clearing member, KDPW\_CCP shall take measures according to the applicable legal provisions and may:

1/ terminate the participation agreement concluded with such participant effective immediately (**cancellation of participation**) and call as due immediately all transactions accepted for clearing to which the participant is a clearing counterparty, effective at the time determined according to subpara. 2,

2/ refrain from carrying out the participation agreement concluded with such participant in the procedure defined herein,

3/ refuse to accept for clearing any further transactions in whose clearing such participant would participate unless another participant holds the status of clearing member for such transactions and has been designated to clear them.

2. In the case of cancellation of participation, all liabilities of the buying participant in respect of its participation in the clearing system, as well as all liabilities of KDPW\_CCP to such participant thereunder, shall become due immediately at the time defined by KDPW\_CCP in the notice of termination of the participation agreement effective immediately. If KDPW\_CCP fails to indicate such date in the notice, all liabilities referred to in the preceding sentence shall become immediately due on the date of receipt of the notice.

3. KDPW\_CCP's notice of termination of the participation agreement effective immediately may be delivered to the buying participant electronically via the SWI system and, if delivery of the notice in this form is not possible, by fax or by electronic mail over the Internet. If it is not possible to deliver the notice in the manner referred to in the preceding sentence, the notice may be delivered to the participant in any manner.

4. Credits of KDPW\_CCP and the buying participant whose participation is being cancelled, arising from the clearing of transactions accepted for clearing in the clearing system, to which the participant is a clearing counterparty, as well as in respect of its participation in such system, shall be netted by KDPW\_CCP according to the rules and the Detailed Rules. As a result of netting of mutual credits, KDPW\_CCP shall have credits or debits, respectively, due to or from the participant in the amount outstanding after the performance of all actions aimed at meeting the liabilities of the participant in the system. Credits shall be cancelled at the instant that KDPW\_CCP performs such netting and registers its result in its systems.

5. After performing all actions aimed at meeting the liabilities of a buying participant in respect of participation in the clearing system, KDPW\_CCP shall:

1/ provide the buying participant with the result of netting and information on the date of its registration by KDPW\_CCP in its systems,

2/ at the written request of the buying participant, document all data used by it to perform such actions.

6. The provisions of subpara. 1-5 shall not limit KDPW\_CCP's right to claim damages on terms laid down in applicable legal provisions.

## **TITLE VII MEASURES FOR MAINTAINING ORDER AND DISCIPLINE**

### **§ 71**

1. Measures for maintaining order and discipline shall include:

- 1/ reminders,
- 2/ the fine referred to in subpara. 2,
- 3/ the suspension of participation.

2. If a buying participant contravenes the principles of participation by failing to carry out or by improperly carrying out its obligations under the participation agreement, the Management Board of KDPW\_CCP shall, on the terms laid down in the provisions of this Title, fine such participant:

1/ PLN 50,000 – if the participant:

- a/ fails to provide the information referred to in § 18 subpara. 3 in due time, or
- b/ fails to provide the additional information referred to in § 27 in due time, or
- c/ fails to provide the information referred to in § 31 in due time, or
- d/ is in breach of the principles referred to in § 12 subpara. 2 in a way which poses or posed a risk that obligations arising from the clearing of transactions to which it is a clearing counterparty will not be met in due time, or

2/ PLN 10,000 – in the case of a breach which poses or posed a risk to the safety of trading or the proper operation of the clearing unless it is a breach referred to in point 1, unless the participant's participation in the clearing system has been cancelled for such reason or its participation in the system has been suspended.

### **§ 72**

The provisions of this Title shall not limit the right of KDPW\_CCP to use remedies which may be used according to applicable legal provisions and provisions of the rules in order to perform liabilities in respect of participation in the clearing system and to claim damages on terms laid down in legal provisions.

### **§ 73**

1. Subject to subpara. 4, should there be grounds to impose the fine referred to in § 71 subpara. 2, the Management Board of KDPW\_CCP shall notify the buying participant of the breach, specifying precisely how it occurred and specifying a time limit to remedy the condition resulting from the breach or to take a specific action or inaction defined by the Management Board KDPW\_CCP in order to prevent any further breach. In case of the participant's failure to remedy the condition, failure to take or taking inadequate action or inaction, respectively, the Management Board of KDPW\_CCP shall fine the participant as referred to in § 71 subpara. 2.

2. In case of the buying participant's failure to remedy the condition of breach of participation which formed the basis for the levying of the fee, failure to take or taking inadequate action or inaction in order to prevent any further breach, respectively, the Management Board of KDPW\_CCP shall specify

a time limit for eliminating the said condition or taking the action or inaction prior to each subsequent imposition of a fine.

3. The Management Board of KDPW\_CCP may decide not to levy a fee and to caution the buying participant. The fee referred to in § 71 subpara. 2 shall not be imposed in such cases.

4. In case a buying member has not provided the information referred to in § 27 within the time specified therein:

1/ subpara. 1 and 2 shall not apply,

2/ the Management Board of KDPW\_CCP may levy a fee referred to in § 71 subpara. 2 without first performing the actions referred to in subpara. 1.

#### **§ 74**

1. The resolution passed by the Management Board of KDPW\_CCP concerning the imposition of the fee referred to in § 71 subpara. 2 shall immediately be delivered to the buying participant concerned.

2. The resolution on imposing the fee shall be carried out within 10 days of its being delivered to the participant.

#### **§ 75**

1. The buying participant levied a fee on the basis of § 71 subpara. 2 may, within 7 days of the receipt of the Management Board's resolution in this matter, submit an appeal to the Supervisory Board of KDPW\_CCP. The appeal shall be submitted through the Management Board of KDPW\_CCP.

2. Submission of an appeal shall not prevent the enforcement of the resolution.

#### **§ 76**

1. The resolution of the Supervisory Board of KDPW\_CCP concerning appeals shall be adopted no later than 3 months after its submission. Resolutions adopted by the Supervisory Board of KDPW\_CCP shall be final.

2. A change of circumstances occurring after the Management Board of KDPW\_CCP has issued its resolution shall not provide grounds for reversing the resolution. In such instances, the participant in question may apply to the Management Board of KDPW\_CCP to review the case once again.

#### **§ 77**

1. In the event that:

1/ the buying participant threatens the safety of trading or the proper operation of the clearing system, or

2/ the buying participant is in arrears with the payment of any fees due according to the Table of Fees for at least two full payment periods, where such periods need not be consecutive, and no complaint handling procedure has been opened on the matter or, if opened, it has been closed and the decision made in the procedure is final, or

3/ despite the levying of the fee referred to in § 71 subpara. 2 point 1, the buying participant has not remedied the condition of breach or taken an action or inaction defined by the Management Board of KDPW\_CCP in order to prevent any further breach or has taken it inadequately, or

4/ another breach occurs and KDPW\_CCP has not terminated the participation agreement effective immediately,

then KDPW\_CCP may refrain from carrying out the participation agreement (suspension of participation)

2. A threat referred to in subpara. 1 point 1 occurs, specifically, if the financial situation of a buying participant raises doubts as to the participant's ability to meet obligations arising from transaction clearing in a timely manner, or if the participant is in persistent breach of reporting obligations defined in these rules.
3. The suspension of participation is for a specified period, no longer than 6 months. The previous participant status shall be restored on the basis of a decision taken by the Management Board of KDPW\_CCP, by way of resolution, before or on expiry of the aforementioned period, unless a different decision concerning further participation has been taken before the expiry of that period.
4. Participation may be suspended with regard to all of the participant's activities under the participation agreement or with regard to only some activities.
5. The decision to suspend participation shall specify conditions needing to be met in order for the previous participant status to be restored.
6. In the event of suspension of participation, the rules laid down in § 75 and § 76 shall apply.

#### **§ 78**

Suspension of participation shall not release:

- 1/ KDPW\_CCP from obligations arising from the clearing of transactions to which the suspended participant is a clearing counterparty, accepted in the clearing system until the time of suspension, and
- 2/ the participant from its obligations arising from its activities in the clearing system until the time of suspension. The provisions contained herein shall apply accordingly.

### **TITLE VIII FEES**

#### **§ 79**

1. KDPW\_CCP shall charge fees; the types of fees, the amount charged and the rules for setting them, unless described in the provisions of this Chapter, are contained in the Table of Fees.
2. Fees listed in the Table of Fees are shown net of the value added tax and net of other taxes and levies. The applicable taxes and levies, which KDPW\_CCP is or will be required to charge under the applicable regulations, will be added to the amount of the fees. Any change of the amount of fees after such levies are imposed shall not affect the status of the fees listed in the Table of Fees as fees to which levies, if any, shall be added.

#### **§ 80**

At the request of the Management Board, the Supervisory Board of KDPW\_CCP may, for a limited time, reduce or waive fees defined in the Table of Fees.

#### **§ 81**

Unless these rules state otherwise, participants shall pay the fees within the following time limits:

- 1/ the fee for participation in the given calendar year – no later than 21 February of the same calendar year, however, where the participation agreement is concluded between 1 February and 31 December of the given calendar year inclusive, the fee charged for that calendar year shall be paid no later than the 21<sup>st</sup> day of the calendar month following the month when the agreement is concluded;
- 2/ other fees – no later than the 21<sup>st</sup> day of the calendar month following the month when,

respectively:

- a/ the action for which the fee is charged was performed or was being performed depending on its nature, or
- b/ the event for which the fee is charged took place.

#### **§ 82**

Any payment made by a participant who has at least two outstanding debts due to KDPW\_CCP in respect of fees shall be automatically credited to the debt which has been outstanding for the longest period of time.

#### **§ 83**

In instances where the value used to determine the amount of a fee is expressed in a foreign currency, it shall be calculated in the Polish currency according to the average exchange rate of the currency published by the National Bank of Poland as follows:

- 1/ for fees charged at each time after the performance of an action for which the fees are charged – on the day when the action was performed or, if the exchange rate is not yet known at the time of issue of the invoice – on the preceding day;
- 2/ for fees charged periodically:
  - a/ if the fees are charged separately for every day or some days of the period – on every day for which the fee is charged,
  - b/ if the fees are charged in total for the period – on the last day of the period.

### **TITLE IX COMPLAINT HANDLING PROCEDURE**

#### **§ 84**

The complaint handling procedure shall be performed in matters concerning non-performance or undue performance by KDPW\_CCP of services referred to in the rules, resolutions issued under the rules, as well as incorrect calculation of amounts due in respect of fees set out in the Table of Fees, other than the following:

- 1/ matters concerning seeking, modification or termination of participation in the clearing system,
- 2/ matters concerning the application of measures for maintaining order and discipline.

#### **§ 85**

1. A participant to whom a service referred to in the rules and resolutions issued under the rules is provided or a participant obligated to pay a fee set in the Table of Fees may submit a written complaint concerning the provided service.
2. A complaint submitted by a participant, referred to in subpara. 1, should have the heading “Complaint” and contain other information defined in a resolution of the Management Board of KDPW\_CCP.
3. The Management Board of KDPW\_CCP or a person authorised by it shall review a submitted complaint within 14 days of receipt or notify within that time limit the participant who has submitted the complaint of a new time limit for its review which shall be no longer than 30 days.
4. Submission of a complaint, referred to in subpara. 1, shall not suspend the performance of obligations of the participant with respect to KDPW\_CCP or suspend activities performed by

KDPW\_CCP.

#### **§ 86**

1. If the matter concerned by a complaint required a resolution of the Management Board of KDPW\_CCP, the complaint shall be reviewed in the same procedure.
2. A resolution of the Management Board of KDPW\_CCP shall be delivered to the participant who has submitted a complaint immediately on its adoption.
3. A participant who has submitted a complaint may, within 14 days of the delivery of a resolution of the Management Board of KDPW\_CCP concerning the submitted complaint, appeal to the Supervisory Board of KDPW\_CCP. An appeal shall be submitted in writing through the Management Board of KDPW\_CCP.
4. A resolution of the Supervisory Board of KDPW\_CCP concerning an appeal shall be taken within no more than 1 month of the date of the appeal. A resolution of the Supervisory Board of KDPW\_CCP on such matter shall be final.

#### **§ 87**

1. If the matter concerned by a complaint did not require a resolution of the Management Board of KDPW\_CCP, the complaint shall be reviewed by a person authorised by the Management Board of KDPW\_CCP who shall notify the participant in writing of the complaint review procedure immediately on its review.
2. A participant who has submitted a complaint may, within 14 days of the delivery of the notice of the complaint review procedure, submit a written request to the Management Board of KDPW\_CCP for the re-examination of the case.
3. A resolution of the Management Board of KDPW\_CCP concerning an appeal shall be taken within no more than 1 month of the date of KDPW\_CCP's receipt of the request referred to in subpara. 2. A resolution of the Management Board of KDPW\_CCP on such matter shall be final.