

Resolution No. 16/595/23
of the KDPW_CCP S.A. Supervisory Board
dated 14 June 2023

Pursuant to Article 48(15) of the Act of 29 July 2005 on Trading in Financial Instruments (consolidated text: Journal of Laws of 2023, item 646, as amended) and § 15(2)(13) of the Statute of KDPW_CCP S.A., the KDPW_CCP S.A. Supervisory Board resolves as follows:

§ 1

The Rules of Transaction Clearing (organised trading) attached to Resolution No. 9/9/10 of the KDPW_CCP S.A. Supervisory Board dated 29 November 2010 (as amended) shall be amended as follows:

1/ § 1a subpara. 4 shall be replaced by the following:

“4. For transactions cleared in the way referred to in subpara. 1, KDPW_CCP shall act as a central counterparty within the meaning of the Act on the Finality of Settlement in Payment Systems and Securities Settlement Systems and the Rules of Supervision over those Systems of 24 August 2001 (consolidated text: Dziennik Ustaw – Journal of Laws of 2022, item 1581) between clearing members acting, respectively, on side A (buyer, long position holder or borrower) or on side B (seller, short position holder or lender).”;

2/ in § 3:

a/ point 46 shall be replaced by the following:

“46/ **the Law on trading in financial instruments**, 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 2023, item 646, as amended),”;

b/ points 48 and 49 shall be replaced by the following:

“48/ **KDPW_CCP capital requirement**, this shall be understood to mean a defined amount of the capital of KDPW_CCP referred to in Article 16 subpara. 2 of EMIR calculated by KDPW_CCP according to the applicable law in a way ensuring protection of KDPW_CCP against the risk arising from the conducted activity and effective liquidation or restructuring of such activity,

49/ **dedicated resources I**, this shall be understood to mean a defined amount of resources constituting own capital of KDPW_CCP, dedicated to cover the potential loss arising in the event of clearing members’ default in respect of obligations arising from transactions accepted by KDPW_CCP for clearing which in the case of an identified event of default should be used prior to using the

contributions to the relevant fund in the event of default of a clearing member other than the contribution to the fund of the defaulting member,”;

c/ after point 49, point 49a shall be added as follows:

“49/ **dedicated resources II**, this shall be understood to mean a defined amount of resources constituting own capital of KDPW_CCP, dedicated to cover the potential loss arising in the event of clearing members’ default in respect of obligations arising from transactions accepted by KDPW_CCP for clearing or arising from a non-default event which in the case of an identified event of default should be used after using the contributions to the relevant fund in the event of default of a clearing member,”;

3/ in § 8a, after subpara. 4, subpara. 5 and 6 shall be added as follows:

“5. After KDPW_CCP has fulfilled the clearing payments determined as a result of the clearing of transactions in securities and the replacement payments referred to in Article 45h(4) of the Law on trading in financial instruments, KDPW_CCP shall not be obliged to return the cash constituting the surplus resulting from the difference from the performance of such payments, unless otherwise provided for in the rules.

6. The provisions of subpara. 5 shall apply accordingly to the surplus remaining after the distribution of all cash penalties imposed by the settlement institution for transaction settlement fails referred to in Article 7(2) of the CSDR.”;

4/ § 9 subpara. 2 shall be replaced by the following:

“2. Eligible to become participants with the status of clearing member are only entities that are:

1/ holders of a depository account, or a securities account managed in the relevant settlement institution, or those having a settlement agent authorised under regulations issued by that institution to operate a relevant account in such institution – where such entity intends to:

a/ participate in the clearing of transactions in securities executed in the regulated market or the alternative trading system, or

b/ participate in the clearing of transactions executed in the derivatives market, consisting in the delivery of the underlying consisting of securities registered in the securities depository operated by the Central Securities Depository of Poland, or

c/ post securities referred to in § 47 subpara. 3 points 1-2 as margins or contributions to the clearing fund or the relevant guarantee fund, and

2/ holders of a cash account, in the relevant clearing bank, in the currency in which KDPW_CCP clears transactions and in which participation of such entity in transaction clearing performed by KDPW_CCP is envisaged, or a payment agent maintaining such an account in this bank, and where it plans to participate in clearing in EUR - also a cash account maintained in such currency in TARGET, or a payment agent maintaining such an account in this system, and

3/ referred to in subpara. 1 points 1-3, 5 or 6 and, in the case referred to in subpara. 1 point 4, provided that it is a credit institution or foreign bank within the meaning of the Banking Law – Act of 29 August 1997 (consolidated text: Dziennik Ustaw – Journal of Laws of 2022, item 2324, as amended), or a foreign legal person, referred to in Article 115(1) of the Act on Trading in Financial Instruments.”;

5/ § 11 subpara. 1 shall be replaced by the following:

“1. The following types of participation status are admitted:

1/ general clearing member - representative in securities trading – where a participant holds the status of clearing member for all transactions involving securities, that are executed in the regulated market, alternative trading system or negotiated lending system by another entity, indicated by it according to the rules,

2/ individual clearing member – where a participant holds the status of clearing member for transactions executed by that participant in the regulated market, alternative trading system or negotiated lending system, on their own account, or the account of a client,

3/ general clearing member – representative in the derivatives market – where a participant holds the status of clearing member for transactions executed in the derivatives market by another entity, indicated by it according to the rules,

4/ non-clearing member – where a participant executes transactions in the regulated market, alternative trading system or negotiated lending system, while at the same time not holding the status of clearing member in any scope and is a client of a participant holding such status and is authorised to require KDPW_CCP to perform the actions referred to in § 69a - § 69c, respectively.”;

6/ § 13 shall be replaced by the following:

“§ 13

1. Two or more participants with the participant type of general clearing member – representative in the derivatives market may indicate the same entity that executed transactions in the derivatives market provided that the represented entity also holds the status of clearing member for transactions executed by it. In that case, the represented entity shall be the participant holding the status of default participant for such transactions. The provisions of § 12 subpara. 2 shall apply accordingly.

2. As of the day of, respectively, the expiration or suspension of the participation of an entity represented, as per subpara. 1, by two or more participants with the participant type of general clearing member – representative in the derivatives market, KDPW_CCP shall discontinue the clearing of transactions executed by that entity if that entity continues to have multiple participants with the participant type of general clearing member – representative in the derivatives market.

3. Only one participant with the participant type of general clearing member – representative in the derivatives market for one type of activity performed by the participant, determined according to the provisions of § 11 subpara. 3, may hold the status of clearing member for transactions executed in the derivatives market by an entity that is not a participant, referred to in subpara. 1.”;

7/ § 15 subpara. 1 shall be replaced by the following:

“1. A participant, which as part of the performance of a given type of activity, determined according to § 11 subpara. 3, has obtained the participation status of clearing member, shall be obliged, as applicable for that type of activity, type of transactions for which the status applies, and market on which they are to be executed, to:

1/ make a contribution to the clearing guarantee fund,

2/ submit a written declaration on admission to the relevant guarantee fund and make a contribution to this fund,

- 2a/ make a contribution to the on-demand lending guarantee fund,
- 3/ pay an initial deposit in the amount determined by the Management Board of KDPW_CCP in a resolution (minimum amount of initial deposit),
- 3a/ pay an initial deposit for loans in the amount determined by the Management Board of KDPW_CCP in a resolution where the participant is a clearing counterparty to loans contracted in the negotiated lending system,
- 4/ submit a written power of attorney for KDPW_CCP to:
 - a/ close derivatives positions on the participant's account, for those positions where the participant holds the status of clearing member, in instances described in these rules, b/ receive and submit on its behalf declarations of will on matters concerning the transfer within the transaction clearing liquidity guarantee system of positions arising from transactions executed by an entity acting with the participation type of non-clearing member, represented by the participant in the clearing system, or executed on the account of such entity, together with the collateral of such positions posted as initial margin, and perform actions referred to in § 69a - § 69c in the cases described in the rules,
- 5/ (repealed),
- 6/ open a clearing account in the clearing system relevant for the given participation type,
- 7/ deliver a declaration, according to the model set out by KDPW_CCP, where the participant commits to ensure the submission of transaction reports or which designates KDPW_CCP as the entity to submit transaction reports to the relevant trade repository where the obligation to submit transaction reports to a trade repository results from relevant regulations,
- 8/ conduct tests confirming the participant's readiness to commence operations in the clearing system referred to in the Detailed Rules of Transaction Clearing (organised trading).";

8/ § 19 shall be replaced by the following:

"Applications for a participation agreement should contain the following:

- 1/an indication of the activities the applicant intends to perform as participant within the clearing system, and the type or types of participant status being applied for as part of the performance of these activities, and in addition, if the participation type general clearing member – representative in securities trading or the participation type general clearing member – representative on the derivatives market has been selected, to indicate as appropriate the participant or the entity that is not a participant, for whom the applicant intends to act in that type of participation status,
- 2/ an indication of the entity or entities that will perform the activities of representative for the applicant in clearing, if the applicant is seeking to obtain the participation type of non-clearing member,
- 3/ a declaration that the applicant meets the financial conditions, described in § 23 subpara. 2 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 principles of § 23 subpara. 3, if the applicant is seeking to obtain the participation status of clearing member,
- 4/ an indication of the type of transactions for which the applicant is seeking to obtain participation status, and the market on which they will be executed,

5/ an indication of the applicant's identifier (LEI or preLEI), which is a global identifier issued by an entity authorised to register identifiers in the Global Legal Entity Identifier System (GLEIS).”;

9/ § 20 subpara. 1 shall be replaced by the following:

“1. The application for a participant agreement shall in addition include:

1/ a copy of the company statute, or articles of association and a valid copy or excerpts from the relevant company register,

2/ a copy of their brokerage licence or licences to conduct other activities related to trading in or registration of financial instruments, that entitle the performance of activities which the applicant intends to perform as part of participation, if such licences are required by the relevant legal regulations, while for foreign investment companies conducting brokerage activities on the territory of the Republic of Poland – an additional declaration showing that conditions have arisen to allow them to begin performing brokerage activities in the territory of the Republic of Poland, defined in Article 117(3), of the Law on trading in financial instruments, or a document from the Polish Financial Supervision Authority (KNF), or a department of the Polish Financial Supervision Authority, confirming that the Authority has received from the appropriate foreign supervisory body notification on the intention to begin performing brokerage activities in the Republic of Poland by that foreign investment company, indicating the date when this notification was received,

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 § 17 subpara. 1 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 and, for an entity that seeks the participation type of non-clearing member, also the number of the bank account of the entity in the currency in which transaction clearing is performed, as well as a list of staff authorised by the applicant to contact KDPW_CCP that includes their positions, telephone numbers as well as email addresses,

5a/ if an entity that seeks the participation type of non-clearing member, a declaration where the clearing member representing such entity in clearing approves that entity's access to the clearing member's data in GUI in connection with such representation,

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 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 of 2022, item 309, as amended),

7/ a declaration confirming that the applicant takes special restricting measures under applicable regulations, in particular with respect to persons and entities on sanction lists relating to threats to international peace and security caused by terrorist attacks, published under resolution of the United Nations Security Council, regulations of the Council of the European Union and other regulations applicable to the applicant and applicable in the United States of America and the United Kingdom,

8/ a declaration necessary to confirm whether any proceedings are pending against the applicant in connection with the provision of financial services which may impose administrative sanctions on the applicant for any breach of regulations applicable to the applicant or a decision has been issued imposing such administrative sanctions on the applicant,

9/ a questionnaire, which is set out in a resolution of the KDPW_CCP Management Board, required in order to obtain information on the applicant and to identify the risks of money laundering and terrorist financing related to the business relationships undertaken by the applicant,

10/ a declaration, in accordance with the model set out by KDPW_CCP, confirming that all requirements under the relevant legislation applicable to the applicant have been met and that there are no formal and legal obstacles on the part of the applicant to conclude the agreement.”;

10/ in § 23, after subpara. 2, subpara. 2a shall be added as follows:

“2a. The fulfilment of financial conditions by participants whose primary task is to take measures to promote the stability of the national financial system under the applicable legislation shall consist in their maintaining an adequate amount of capital as required under that legislation.”;

11/ the existing § 32c shall become § 32d, and § 32c shall be replaced by the following:

“§ 32c

1. The participant shall comply with the requirements set out in the applicable legislation on the prevention of money laundering and terrorist financing in connection with the business relationships undertaken by the participant.

2. In the event of a change in the factual or legal situation which has a significant impact on the participant’s declaration contained in the questionnaire referred to in § 20 subpara. 1 point 9, the participant shall immediately inform KDPW_CCP thereof by submitting an updated questionnaire.”;

12/ § 44 subpara. 1 shall be replaced by the following:

“1. Subject to the provisions of subpara. 2 and § 1 subpara. 2 and 3, the transaction clearing liquidity guarantee system operated by KDPW_CCP covers the following:

1/ transactions created as a result of novation and transactions concluded by KDPW_CCP within the system and in accordance with the provisions of this Section,

2/ transactions referred to in § 43a subpara. 2, to which novation does not apply.”;

13/ § 46c subpara. 2 shall be replaced by the following:

“2. Revenue earned from the management of cash contributed to the transaction clearing liquidity guarantee system, other than revenue earned from the management of cash contributed in EUR, shall be transferred to participants holding the status of clearing member 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, referred to in § 1 subpara. 1 or subpara. 5, respectively, KDPW_CCP may credit it towards such obligations instead of transferring it to the participant.”;

14/ in § 47:

a/ subpara. 5 shall be replaced by the following:

“5. Each margin:

1/ shall be established on the day it is deposited and expire at the time set according to the provisions of this Chapter and the resolution of the Management Board of KDPW_CCP adopted under the rules, subject to § 42b and § 69b,

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 2022, item 133).”;

b/ after subpara. 10, subpara. 10a shall be added as follows:

“10a. Any surplus contributed by a clearing member on account of a given margin to the relevant account held for the KDPW_CCP in excess of the required amount of the margin shall also constitute financial collateral contributed on account of that margin.”;

15/ § 47b subpara. 4 shall be replaced by the following:

“4. The value of securities issued by a participant holding the status of clearing member or by an entity of the participant’s group of companies, within the meaning of Article 3 subpara. 1 point 44 of the Accountancy Act of 29 September 1994 (consolidated text: Dziennik Ustaw - Journal of Laws from 2023, item 120, as amended), or securities for which the participant or such entity has granted a guarantee or surety to perform obligations arising thereunder shall not be recognised to any degree when calculating the value of margins posted by the participant. If a merger, split or take-over of the participant or another entity which has issued securities posted by the participant as margins or the acquisition of a significant block of shares of the participant or such entity or another event causes an effect through which securities become securities issued by the participant that has posted them as margins or by an entity of the participant’s group of companies, within the meaning of Article 3 subpara. 1 point 44 of the Accountancy Act, the value of such securities shall cease to be recognised to any degree when calculating the value of posted margins as of the second day after it comes to the attention of KDPW_CCP.”;

16/ § 55c shall be replaced by the following:

“§ 55c

A defaulting participant shall be obliged in connection with the suspension of the settlement of a transaction to which it is a clearing counterparty:

1/ to pay cash penalties imposed by the settlement institution for the suspension of the settlement of the transaction, referred to in Article 7(2) CSDR,

2/ to reimburse any expenses paid by KDPW_CCP as a result of actions taken in accordance with the rules in connection with such suspension of the settlement of the transaction (in particular, transaction and banking fees and commissions, losses incurred by KDPW_CCP resulting from the withdrawal of a settlement order for an affected transaction or the suspension of the execution of such settlement order), unless a fee is set for such actions as referred to in the Table of Fees, up to a maximum amount

equivalent to the initial margin required to secure the clearing of such a transaction (KDPW_CCP shall inform participants of the costs that arise in connection with the suspension of settlement of the affected transaction),

3/ to pay fees referred to in the Table of Fees,

4/ to make a cash payment in an amount determined according to the rules, if the open market buy-in is unsuccessful in whole or in part or proves impossible (compensation),

5/ to reimburse the difference in the price of securities in an amount determined according to the rules, if such difference arises due to the purchase of securities in an open market buy-in and their price is higher than the price of the transaction whose settlement is suspended, including additional payments arising from such transactions,

6/ to pay cash entitlements, in the amount and on the terms defined in the rules, in respect of property benefits lost by a participant affected by default or by its client which such participant or its client would obtain by exercising a property right attached to securities in the affected transaction, provided that:

a/ such right was exercised in direct connection with a corporate action other than a general meeting, understood as an action:

- initiated in accordance with applicable legal provisions by the issuer of the securities in the affected transaction or an authorised third party, previously published in accordance with applicable legal provisions, such as profit distributions, tender offers concerning sale or exchange of securities,
- addressed to all beneficial owners of securities which meet the criteria set in accordance with applicable legal provisions,
- as a result of which beneficial owners of securities may, at their election, exercise the property right attached to such securities, and
- necessary to exercise a specific property right attached to such securities in a way which requires a participant affected by default or its client to declare the intention of exercising such right (optional corporate action),

b/ such value is not included in the calculation of the payment referred to in point 4 or the amount or entitlements arising from the cleared transaction,

c/ the property benefit is not delivered or compensated by the settlement institution to a participant affected by default or its client and, if the participant has a settlement agent, also to such agent, and

d/ the participant affected by default or its client was entitled to exercise a right attached to securities in the affected transaction in connection with the corporate action but could not do so as a result of suspension of the settlement of the affected transaction in whole or in part (additional buyer protection),

7/ to repay cash or non-cash entitlements attached to securities in the affected transaction due as a result of recording the rights of beneficial owners of such securities and the amount of such entitlements on the day when the settlement of the affected transaction was suspended in whole or in part or to pay adequate cash compensation in that regard, on the terms defined by the settlement institution.”;

17/ § 56b subpara. 1 shall be replaced by the following:

“1. On the business day after the expiry of the extension period, KDPW_CCP shall suspend the

execution of the settlement order for a transaction whose settlement is suspended and perform a preliminary verification to check whether an open market buy-in is possible for the cleared transaction.”;

18/ § 56h shall be replaced by the following:

“§ 56h

1. If the price of securities in a repurchase transaction is higher than the price of the transaction whose settlement is suspended, KDPW_CCP shall:

1/ determine the difference in price and notify the defaulting participant thereof, and subsequently 2/ debit the difference to the defaulting participant.

2. The difference in price referred to in subpara. 1 point 1 shall be paid:

1/ together with additional payments arising from the repurchase transaction and the transaction whose settlement is suspended,

2/ on the day when the repurchase transaction is settled and the securities purchased in such transaction are delivered to the participant affected by default.

3. If the price of securities in a repurchase transaction is lower than the price of the transaction whose settlement is suspended, KDPW_CCP shall not be required to credit the difference in price to the defaulting participant.”;

19/ § 57b subpara. 2 shall be replaced by the following:

“2. The entitlement referred to in § 55c subpara. 6 shall be equal to:

1/ if the exercise of the right attached to securities in the affected transaction whose settlement is suspended results in the exchange of such securities or their sale in exchange for a property entitlement according to the terms of the optional corporate action – the difference between the amount of such entitlement which a participant affected by default or its client would obtain if it exercised the right attached to the securities in the affected transaction and the amount of the entitlement arising from the affected transaction,

2/ if the exercise of the right attached to securities in the affected transaction whose settlement is suspended results in the receipt of a property entitlement without concurrent exchange or sale of such securities according to the terms of the optional corporate action – the amount of such entitlement which a participant affected by default or its client would obtain if it exercised the right attached to the securities in the affected transaction whose settlement is suspended,

and the amount of such entitlement shall be calculated according to the Detailed Rules of Transaction Clearing (organised trading).”;

20/ § 58e shall be replaced by the following:

“§ 58e

1. KDPW_CCP shall cover losses in the case of default in respect of obligations arising from transactions cleared by KDPW_CCP, which it is obliged to perform with its own assets:

1/ prior to using resources contributed to the clearing guarantee fund or the relevant guarantee fund, respectively, excluding the contribution of the participant on whose part the event of default has occurred, with resources constituting dedicated resources I, taking into account the allocation

according to subpara. 3,

2/ after using all resources contributed to the clearing guarantee fund or the relevant guarantee fund, respectively, with resources constituting dedicated resources II, taking into account the allocation according to subpara. 3.

2. KDPW_CCP shall allocate for dedicated resources I own funds in an amount representing at least 25% of the KDPW_CCP capital requirement, taking into account the allocation according to subpara. 3.

2a. KDPW_CCP shall allocate for dedicated resources II own funds in an amount representing 25% of the KDPW_CCP capital requirement, taking into account the allocation according to subpara. 3.

3. The amount of the funds constituting dedicated resources I and dedicated resources II, respectively, shall be calculated taking into account the allocation of such funds in relation to the clearing guarantee fund, the relevant guarantee fund or other guarantee fund organised under the rules referred to in § 1 subpara. 5, proportionally to the value of each of these funds. KDPW_CCP shall announce the allocation rules on its website.

4. If assets constituting dedicated resources I and dedicated resources II, respectively, are used according to the provisions of the rules, KDPW_CCP shall immediately take actions necessary to replenish such dedicated resources up to the amount referred to in subpara. 2 or subpara 2a, respectively, within one month of the day when such resources are used.

5. KDPW_CCP shall inform participants holding the status of clearing member of:

1/ the current amount of assets constituting dedicated resources I and dedicated resources II and the allocation of such resources on its website or via the SWI system or the GUI system;

2/ the amount of all own funds of KDPW_CCP and the amount of the KDPW_CCP capital requirement – immediately after receiving a written request of a participant holding the status of clearing member.”;

21/ § 59 subpara. 4 shall be replaced by the following:

“4. Subject to subpara. 5, any potential differences in the price of securities between the sale transaction executed according to the provisions of subpara. 2, and the transaction for which settlement was suspended, if the price difference reflects a profit, shall be transferred to KDPW_CCP and used to perform other obligations on behalf of participants affected by default, however, if the price difference incurs a loss, then the difference shall be covered from margins posted by the defaulting participant and after the resources have been used, in sequence from:

1/ the contribution of that participant to the clearing guarantee fund or the relevant guarantee fund,

2/ the dedicated resources I in the amount calculated according to § 58e subpara. 2 and 3,

3/ other resources of the clearing guarantee fund or the relevant guarantee fund,

4/ the dedicated resources II in the amount calculated according to § 58e subpara. 2a and 3.”;

22/ § 60 subpara. 2 shall be replaced by the following:

“2. If the margins posted by the participant, described in § 59 subpara. 1, shall prove insufficient, the cash liabilities of that participant shall be met in sequence from:

1/ the contribution of that participant to the clearing guarantee fund or the relevant guarantee fund,

2/ the dedicated resources I in the amount calculated according to § 58e subpara. 2 and 3,

- 3/ other resources of the clearing guarantee fund or the relevant guarantee fund,
- 4/ the dedicated resources II in the amount calculated according to § 58e subpara. 2a and 3.”;

23/ § 60a subpara. 3 shall be replaced by the following:

“3. If the margins posted by the defaulting participant, described in subpara. 1, prove insufficient, the cash debits of that participant shall be met in sequence from:

- 1/ the contribution of that participant to the clearing guarantee fund or the relevant guarantee fund,
- 2/ the dedicated resources I in the amount calculated according to § 58e subpara. 2 and 3,
- 3/ other resources of the clearing guarantee fund or the relevant guarantee fund,
- 4/ the dedicated resources II in the amount calculated according to § 58e subpara. 2a and 3.”;

24/ § 62 subpara. 2 shall be replaced by the following:

“2. If the margins posted by the defaulting participant referred to in subpara. 1 prove insufficient, the cash debits of that participant shall be met in the following sequence:

- 1/ from the contribution of that participant to the clearing guarantee fund or the relevant guarantee fund,
- 2/ from the dedicated resources I in the amount calculated according to § 58e subpara. 2 and 3,
- 3/ from other resources of the clearing guarantee fund or the relevant guarantee fund,
- 4/ from the dedicated resources II in the amount calculated according to § 58e subpara. 2a and 3.”;

25/ § 65 shall be replaced by the following:

“§ 65

1. If, as a consequence of circumstances for which KDPW_CCP is not responsible, the actions taken by KDPW_CCP, after having identified an event of default of the defaulting participant, cannot result in the full performance of the obligation arising from the clearing of a transaction accepted into the clearing system, despite:

- 1/ use of resources in the order and in the amount set out in § 58e subpara. 1 to 3 and § 59 subpara. 4, KDPW_CCP may request other clearing members to reduce the value of the financial benefits or interest coupons referred to in § 46e subpara. 1 to which such clearing members are or will be entitled,
- 2/ the auction operation carried out for the third time or actions taken in organised trading for a period of three days in order to perform such obligation, KDPW_CCP may request the other clearing members to terminate in whole or in part the cleared transactions to which they are the other clearing counterparty.

2. Actions taken on the regulated market shall be deemed not to result in the performance of an obligation arising from the clearing of a transaction accepted to the clearing system if, despite the orders placed by KDPW_CCP in organised trading, no transaction is concluded and:

- 1/ the clearing members have been informed by KDPW_CCP of the actions taken and of the orders placed by KDPW_CCP,
- 2/ the clearing members are members of the relevant market or trading system on which the orders are placed or have the possibility to place orders through another entity, and
- 3/ the market operator offers the possibility to match the orders of KDPW_CCP and clearing members

or their intermediaries.

3. Any change of the conditions referred to in subpara. 1 point 1 and 2 shall only cover positions registered on participants' own accounts.

4. Before requesting clearing members to change the conditions referred to in subpara. 1 point 1 and 2, KDPW_CCP shall:

1/ inform the clearing members that the actions taken so far have not resulted in the performance of the obligation arising from the clearing of the transaction accepted to the clearing system and therefore, within the indicated time limit, it shall organise an auction operation or place an order in organised trading for the last time, as the case may be;

2/ where actions are taken in organised trading, call on clearing members who are not members of the relevant market or trading system to inform KDPW_CCP of their inability to place orders on that market no later than the end of the day on which they receive the call. In the absence of such information by this deadline, the clearing member shall be deemed to have been able to place orders on that market or trading system.

5. In order to request clearing members to change the conditions referred to in subpara. 1 point 1 or 2, KDPW_CCP shall send them a proposal specifying in particular:

1/ the positions that are covered by the proposal for this change of conditions,

2/ the deadline by which the clearing members are to declare whether they agree or disagree with the change in those conditions,

3/ the deadline by which the conditions referred to in subpara. 1 point 1 or 2 are to be changed,

4/ in the event of a change of the conditions referred to in subpara. 1 point 1:

a/ the value reduction distribution ratio, determined in accordance with the provisions of the Detailed Rules of Transaction Clearing (organised trading),

b/ the period during which the change of the conditions of the transaction is to be effective,

5/ in the event of a change of the conditions referred to in subpara. 1 point 2 – the limit up to which the positions may be closed, determined in accordance with the provisions of the Detailed Rules of Transaction Clearing (organised trading).

6. Any change of the conditions referred to in subpara. 1 point 1 and 2 shall require the consent of the clearing members who are a clearing counterparty to at least 2/3 of the value of the positions recorded in the clearing system that are affected by the change, whereby:

1/ the clearing members shall be required to declare whether or not they give their consent,

2/ the clearing members who do not give a timely declaration of such consent or of failure to give such consent shall not be included in the calculation of the qualified majority referred to above requiring such consent (i.e., the value of the positions to which they are a clearing counterparty shall be disregarded in that calculation).

7. The consent referred to in subpara. 6 shall mean that:

1/ in the event of a change of the conditions referred to in subpara. 1 point 1, KDPW_CCP shall not be obliged to pay, respectively, the financial benefits or interest coupons referred to in § 46e subpara. 1 in respect of marking to market of transactions in an amount exceeding the established value reduction distribution ratio, and the clearing member shall remain obliged to KDPW_CCP in full to pay such benefits or coupons calculated in that period in respect of marking to market,

2/ in the event of a change of the conditions referred to in subpara. 1 point 2, KDPW_CCP shall not be

obliged to execute the cleared transaction in the amount specified in the agreed limit, and the clearing member which is the other clearing counterparty to the transaction shall remain obliged to KDPW_CCP in full.

8. Any change of the conditions referred to in subpara. 1 point 1 and 2 shall take place within the deadline specified in the proposal referred to in subpara. 5, provided that the clearing members give their consent in accordance with subpara. 6. KDPW_CCP shall immediately inform the clearing members of:

1/ the number of clearing members who:

a/ have made declarations on the change of conditions referred to in subpara. 1 point 1 and 2,

b/ have given consent to a change of those conditions,

c/ have not given consent to a change of those conditions,

2/ a change or no change of the conditions referred to in subpara. 1 point 1 and 2 and, in the event of a change to such conditions, confirmation of the date and time when such conditions are changed.

9. The Detailed Rules of Transaction Clearing (organised trading) set out detailed principles and procedures for the change of the conditions referred to in subpara. 1 point 1 and 2, including on the submission of a proposal to change those conditions and on the consent given by clearing members referred to in subpara. 6.”;

26/ after § 65, § 65a shall be added as follows:

“§ 65a

1. If KDPW_CCP identifies an event of default with respect to a defaulting participant and initiates the actions referred to in this section, KDPW_CCP may withhold payments to clearing members of:

1/ all resources of the transaction clearing liquidity guarantee system,

and

2/ the financial benefits or interest coupons referred to in § 46e subpara. 1 to which such clearing members are or will be entitled,

until such actions have been completed and the positions of the defaulting participant have been closed out, but no later than for a period of 10 business days from the date on which such event of default is identified.

2. KDPW_CCP shall:

1/ inform all clearing members of the withholding of payments of resources referred to in subpara. 1,

2/ calculate, on an ongoing basis, the financial benefits or interest coupons referred to in § 46e subpara. 1 of the rules to which such clearing members are or will be entitled during the period in which the payment of such benefits and coupons is withheld,

3/ at the end of the period during which the payment of the resources referred to in subpara. 1 is withheld, pay these resources to the clearing members, whereby the financial benefits and interest coupons calculated on each day shall be offset to form a single cash credit.”;

27/ § 66 subpara. 1 shall be replaced by the following:

“1. In the event that, due to actions of KDPW_CCP taken in order to cause the performance of an obligation arising from the clearing of a transaction accepted to the clearing system referred to in § 1 subpara. 1 or subpara. 5, respectively, the amount of own funds of KDPW_CCP decreases to 110% of

the set KDPW_CCP capital requirement, KDPW_CCP shall immediately notify participants holding the status of clearing member thereof. In that event, prior to using other own funds, KDPW_CCP shall call such participants to make additional contributions to the clearing guarantee fund or the relevant guarantee fund, not greater than 100% of the maximum existing contributions according to their latest update, provided that the obligation arising from the transaction, which should be performed, is secured by that fund.”;

28/ § 67 subpara. 1 shall be replaced by the following:

“1. In instances where the actions, described in the provisions of this Section, cannot be fully performed using the assets described therein, then KDPW_CCP shall assume the obligation for the performance of these actions using its own proprietary assets, to the extent that the actions have not been completely performed despite the use of these assets, subject to § 65 and § 66.”;

29/ § 69 subpara. 2 shall be replaced by the following:

“2. If the assets, described in subpara. 1, shall prove insufficient, contributions to the clearing guarantee fund or the relevant guarantee fund and own funds of KDPW_CCP, in the order and in the amount referred to in § 59 subpara. 4 and 6 and § 58b subpara. 1-3, shall be used to close these positions. In instances where these assets are still insufficient, the provisions of § 67 subpara. 1-3 shall apply to close these positions.”;

30/ § 77a shall be replaced by the following:

“§ 77a

1. A participation agreement may be terminated:

1/ on request of a participant, effective two weeks from the date of the request, subject to subpara. 2 - 6,

2/ by agreement of the parties,

3/ according to a unilateral declaration made by KDPW_CCP in the procedure of termination effective immediately – in the event of default,

4/ subject to subpara. 4 - 6, on the basis of a declaration of the clearing member in the procedure of termination of the agreement effective immediately in case of occurrence of any of the following events:

a/ KDPW_CCP has not made a payment in accordance with the rules in respect of:

- making a clearing payment determined as a result of the clearing of a transaction in the clearing system, or

- making a replacement payment in order to perform an obligation arising from a transaction cleared in the clearing system

within 45 calendar days from the day after the day on which KDPW_CCP becomes obliged to make the payment to the clearing member affected by default, provided that the obligation to execute such payment has not expired and has not been terminated with the consent of the clearing member that is the creditor, the time limit of such obligation has not changed with the consent of such clearing member, it has not been cancelled and has not expired due to statute of limitation,

b/ bankruptcy of KDPW_CCP has been declared or a motion for bankruptcy has been dismissed

because the assets of KDPW_CCP are insufficient to pay the cost of the procedure or are only sufficient to pay such cost,

c/ the Management Board or the liquidator of KDPW_CCP has filed a motion for declaration of bankruptcy of KDPW_CCP;

d/ an entity which is a creditor of KDPW_CCP has filed a motion for declaration of bankruptcy of KDPW_CCP and at least one of the following conditions is met at the same time: the motion has not been withdrawn, dismissed, returned or rejected within 60 calendar days after its submission for reasons other than those listed in Article 13 of the Bankruptcy Law – Act of 28 February 2003 (consolidated text: Journal of Laws of 2022, item 1520, as amended),

e/ KDPW_CCP is in liquidation and, at the same time, where the dissolution of KDPW_CCP does not take place on the basis of a legally valid court decision, a resolution of the General Meeting of KDPW_CCP preventing the dissolution, referred to in Article 460 § 1 of the Code of Commercial Companies of 15 September 2000 (consolidated text: Journal of Laws from 2022, item 1467, as amended), is not adopted within 30 calendar days after liquidation is initiated,

f/ the Polish Financial Supervision Authority has decided to cancel the authorisation given to KDPW_CCP for the provision of clearing services as a CCP and the time limit for appeal measures has expired or such measures have been exhausted.

2. If positions or balances arising from the netting of positions are registered in clearing accounts maintained for a participant holding the status of clearing member, or the participant is obliged to make payments in respect of participation in the clearing system, a participation agreement may be terminated in the case referred to in subpara. 1 point 1 only following the deletion of such positions from the clearing system and the performance of all obligations arising from participation in the system.

3. Termination of the participation agreement in the case referred to in subpara. 1 point 1 shall be effective unless KDPW_CCP identifies an event of default of any participant holding the status of clearing member within two weeks after the submission of the request by the participant. If KDPW_CCP identifies an event of default of any participant holding the status of clearing member, the termination of the participation agreement on request of the participant referred to in subpara. 1 item 1 shall be effective once KDPW_CCP completes the actions referred to in § 59 et seq. and the participant performs all obligations arising from participation in the clearing system, including the obligation to make the required contribution to the clearing fund or the relevant guarantee fund.

4. A clearing member for which KDPW_CCP has identified an event of default and initiated any of the actions described in § 77c subpara. 1 prior to the occurrence of any of the circumstances that justify termination of the participation agreement referred to in subpara. 1 point 4 shall not be entitled to terminate the participation agreement effective immediately unless it has performed, in accordance with the notice referred to in § 77c subpara. 3, all its obligations arising from transactions accepted for clearing for which the participant is a clearing counterparty and arising from its participation in the transaction clearing liquidity guarantee system.

5. If KDPW_CCP has activated a recovery plan as referred to in Article 9(1) of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC,

2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132:

1/ it shall inform clearing members thereof;

2/ it may propose to a clearing member that is a party to the obligation, in respect of which KDPW_CCP has not made a payment in accordance with the payment rules, another means of performing that obligation, in particular deferring the payment date or amending the content of that obligation. Where such participant agrees to this, the provisions of subpara. 1 point 4 item a) shall not apply to that participant unless KDPW_CCP has failed to perform the obligation subject to that arrangement as a result of circumstances for which it is responsible.

6. A participant shall not be entitled to unilaterally terminate the participation agreement in connection with a change in the conditions referred to in § 65 subpara. 1 point 1 or 2 or the exercise by KDPW_CCP of the rights referred to in § 65a subpara. 1. In such a case, the provisions of subpara. 1 point 4 item a) shall not apply.”;

31/ in § 83, after subpara. 2, subpara. 2a shall be added as follows:

“2a. The threat referred to in subpara. 1 point 1 shall also arise in the event that KDPW_CCP identifies a risk of money laundering and terrorist financing associated with the business relationships undertaken by the participant, in particular in connection with information on the application of restrictive measures to the participant in accordance with the relevant legal provisions, information on the initiation of proceedings in connection with the provision of financial services on the basis of which administrative sanctions may be applied to the participant for breach of the legal provisions applicable to the participant, or information on the issuance of a decision on the application of such administrative sanctions to the participant.”;

32/ after § 90, § 91 shall be added as follows:

“§ 91

“In the event that any amendments are made to the rules which introduce an obligation for clearing members or entities applying for participant status to provide additional documents, participants who, on the effective date of such amendments, hold that status shall be obliged to provide KDPW_CCP with such documents within two weeks of receiving a request to that effect from KDPW_CCP and, if the documents are to be provided in accordance with a template drawn up by KDPW_CCP, after KDPW_CCP has made that template available to the participants, unless a longer deadline results from the content of the Supervisory Board’s resolution on such amendment to the rules.”;

33/ in § 3 et seq. of the rules, the word “TARGET2” shall be replaced by the word “TARGET”.

§ 2

This resolution shall enter into force two weeks after the Management Board has published the resolution approved by the Polish Financial Supervision Authority.

Dr Marek Dietl
Chairman of the Supervisory Board