

**Resolution No. 38/385/19
of the KDPW_CCP S.A. Supervisory Board
dated 17 June 2019**

Pursuant to Article 48(15) of the Act of 29 July 2005 on Trading in Financial Instruments (consolidated text: Journal of Laws of 2018, item 2286, as amended) and § 15 sub-paragraph 2 point 13 of the Statute of KDPW_CCP S.A., the Supervisory Board of KDPW_CCP S.A. hereby resolves as follows:

§ 1

Resolution No. 43/345/18 of the Supervisory Board of KDPW_CCP S.A. dated 21 December 2018 shall be amended as follows:

1/ § 1 point 16 shall be replaced by the following:

“16/ § 39 subpara. 4 shall be replaced by the following:

“4. As of the time of novation, the participation agreement shall constitute the framework agreement referred to in Article 85 subpara. 1 of the Bankruptcy Law of 28 February 2003 (consolidated text: Journal of Laws from 2019, item 498, as amended) for transactions accepted for clearing created as a result of novation, and such transactions shall be executed under such agreement.”;”;

2/ § 1 point 18 shall be replaced by the following:

“18/ § 79 shall be replaced by the following:

“§ 79

1. Margins shall take the form of:

- 1/ initial margins,
- 2/ initial deposits.

Margins referred to in points 1-2 shall cover liabilities arising from transactions and arising from non-execution or undue execution of such transactions.

2. Initial margins and initial deposits may consist of cash or securities accepted by KDPW_CCP.

2a. Cash accepted by KDPW_CCP within the meaning of subpara. 2 shall be only cash posted as margins according to the terms laid down in the provisions of this Section and the Detailed Rules of the OTC Clearing System, in the following currencies:

- 1/ PLN,
- 2/ EUR.

3. Securities accepted by KDPW_CCP within the meaning of subpara. 2 shall be limited to:

- 1/ Treasury bonds traded in the territory of the Republic of Poland,
- 2/ shares of companies that make up the WIG20 stock exchange index,
- 3/ Treasury bills, and

4/ debt securities denominated in EUR, issued by European Union Member States other than the Republic of Poland,

on condition that these have been indicated in the list of securities described in § 80 subpara. 4. When indicating securities in the list, KDPW_CCP shall take into account, without limitation, the issuer’s credit risk level, the expected dispersion of ownership of such securities, the volatility of the price of such securities, and their liquidity, subject to subpara. 4.

4. KDPW_CCP may indicate securities referred to in subpara. 3 point 4 in the list of securities described in § 80 subpara. 4 provided that:

1/ the provisions of the rules to the extent of the conclusion of the agreement referred to in § 86 subpara. 1, establishment of collateral on such securities, expiration of such collateral and enforcement of such collateral by KDPW_CCP are in compliance with the applicable legal provisions referred to in § 86 subpara. 2 point 1,

2/ under the applicable legal provisions referred to in § 86 subpara. 2 point 1, KDPW_CCP shall have the priority to enforce financial collateral on such securities from the moment it is established in favour of KDPW_CCP,

3/ the applicable legal provisions referred to in § 86 subpara. 2 point 1 are in compliance with Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (Official Journal of the European Union L 168 from 2002, p. 43, as amended).

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 Section and the Detailed Rules of the OTC Clearing System, subject to § 70a and § 110b,

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: Journal of Laws from 2016, item 891, as amended), subject to § 86 subpara. 2.

6. A margin shall be deposited in cash on the terms defined in the Detailed Rules of the OTC Clearing System by means of debiting the relevant bank account designated by the clearing member according to § 23 subpara. 2 point 3 of the rules.

7. A participant depositing a margin in cash shall ensure that cash in the relevant bank account designated by it according to § 23 subpara. 2 point 3 of the rules is sufficient to perform the obligations towards KDPW_CCP thereunder including its other obligations related to participation no later than 15 minutes before the opening of the clearing session on the day following transaction clearing.

8. If there is a shortage of cash in the bank account maintained in the clearing bank, designated by the participant according to § 23 subpara. 2 point 3 of the rules, after the lapse of the time limit referred to in subpara. 7, the amount of the initial deposit deposited by the participant shall be reduced by such shortage.

9. Collateral deposited in cash shall be returned by means of crediting the bank account from which the collateral was drawn, provided that in the case of:

1/ cash in EUR or in the Polish currency posted as an initial deposit, and

2/ cash in EUR posted as an initial margin,

they shall be returned on the basis of a cash return instruction submitted by the participant by means of crediting the bank account designated according to § 23 subpara. 2 point 3 of the rules.

10. Margins shall be calculated by KDPW_CCP in the Polish currency. The detailed rules of calculating margins are set out in the Detailed Rules of the OTC Clearing System.”;”;

3/ § 1 point 22 shall be replaced by the following:

“22/ § 111 shall be replaced by the following:

“§ 111

1. A participation agreement may be terminated:

1/ on the basis of a declaration of a clearing member, effective two weeks from the date of the request, subject to subpara. 2-4,

2/ by agreement of the parties,

3/ on the basis of a declaration of KDPW_CCP, effective immediately, in case of occurrence of an event of default,

4/ subject to subpara. 3, on the basis of a declaration of a clearing member, 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 OTC clearing system, or

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

within 45 calendar days after the day on which KDPW_CCP becomes obliged to make the payment to the clearing member affected by default, referred to in § 102 subpara. 1, § 103 subpara. 1 and § 106 subpara. 1, respectively, 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 of 28 February 2003,

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 2019, item 505), 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 clearing member or the participant is obliged to make payments in respect of participation in the OTC clearing system, a participation agreement may be terminated in the case referred to in subpara. 1 point 1 only on the condition of deletion of such positions from the clearing system and 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 § 100 *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 OTC guarantee fund.

4. A clearing member for which KDPW_CCP has identified an event of default and initiated any of the actions described in § 113 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 § 113 subpara. 3, all its obligations arising from transactions accepted for clearing

in the OTC clearing system for which the participant is a clearing counterparty and arising from its participation in the transaction clearing liquidity guarantee system.”;”;

4/ § 1 point 24 item (g) shall be replaced by the following:

“g/ § 9 - § 11 shall be replaced by the following:

“§ 9

1. Subject to the provisions of subpara. 2, the contribution of a participant shall be adjusted if the required contribution is different than the value of the assets paid in by the participant to the basic resource of the OTC clearing fund
2. If the assets of the OTC guarantee fund were sold below their purchase price, following their use in accordance with the provisions of § 3 subpara. 1, the level forming the basis for the update adjustment of the contributions shall be defined by the KDPW_CCP Management Board by means of a resolution.
3. The adjustment of the contribution shall be made by participants paying in a contribution to the basic resource of the OTC guarantee fund, or following a refund of part of the participant’s contribution.
4. A refund of part of the participant’s contribution shall only be made in the form of cash, through a credit payment onto the bank account, referred in § 5 subpara. 2 point 1, subject to § 5 subpara. 6. The amount of the refund shall not be higher than the surplus over the part of the participant’s contribution, which according to the provisions of § 4 subpara. 3 must remain in cash form.
5. A clearing member’s debits and credits as a result of the adjustment of contributions to the OTC guarantee fund shall be offset (netted) with the clearing member’s debits and credits arising from the payment of maintenance margins and marking to market.

§ 10

1. The adjustment of the contribution shall take place on the basis of documents containing the information referred to in subpara. 2 below, issued by KDPW_CCP and made available to participants.
2. On the day of the update, KDPW_CCP shall make available not later than 23:00 hours CET, to each clearing member, information defining the updated amount of the participant’s contribution to the basic resource of the OTC guarantee fund, the updated market value of the securities paid in as part of the contribution and the amount of the participant’s cash debits and credits that need to be adjusted as part of the next contribution adjustment.
3. The adjustment of the contribution when this contribution consists of cash assets on the day following the day when the information referred to in subpara. 2 is made available, indicating that the participant is obliged to make a payment, but not later than the time determined in the Detailed Rules of the OTC Clearing System. On the same day, KDPW_CCP shall refund part of the contribution paid in by the participant if this information indicates a credit owed to the participant. In instances justified by reasons of trading or transaction clearing safety, the Management Board of KDPW_CCP may, by means of a resolution, designate separate deadlines for each update.
4. Securities may be used as part of the contribution on condition that, on the day the information referred to in subpara. 2 was made available, but not later than the time determined in the Detailed Rules of the OTC Clearing System, they were registered, respectively:
 - 1/ for securities referred to in § 4 subpara. 1 point 2 - on the securities account referred to in § 5 subpara. 1 point 1,
 - 2/ for securities referred to in § 4 subpara. 1 point 3 - on the securities account managed for KDPW_CCP in the relevant depository system for such securities, indicated by the KDPW_CCP Management Board in a resolution.
5. The adjustment consisting of a refund to the participant of a part of the contribution paid in shall be withheld in instances where participants are obliged to make replacement or additional contributions,

referred to in § 19 subpara. 1 and 2, as well as § 19a subpara. 1 – 3.

§ 11

1. Clearing members may withdraw securities paid in by them to the OTC guarantee fund by means of an instruction sent to KDPW_CCP to this effect.

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

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

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

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

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

5/ The appendix to Resolution No. 43/345/18 of the Supervisory Board of KDPW_CCP S.A. dated 21 December 2018, which is Appendix 1 to the OTC Guarantee Fund Rules, shall be replaced by the appendix to this Resolution.

§ 2

This Resolution shall come into force on the date of its adoption.

Dr Marek Dietl

Chairman of the Supervisory Board

Appendix 1 to the OTC guarantee fund rules

**Rules for determining the value of the OTC guarantee fund
and the amount of contributions of clearing members**

- I. The value of the OTC guarantee fund is determined by KDPW_CCP in the following steps:
 1. Calculation of uncovered risk, separately for own portfolios of the clearing member (i.e., all positions arising from transactions registered in own position accounts of the clearing member) and for client portfolios (i.e., all positions arising from transactions registered in client position accounts of the clearing member), for stress-test scenarios defined by KDPW_CCP. Uncovered risk under a stress-test scenario is equal to the difference between the hypothetical loss on a portfolio (determined by KDPW_CCP as the difference between the value of the portfolio under the stress-test scenario and the value of the portfolio as at the end of day in the clearing system) and the value of the initial margin requirement, provided that uncovered risk of client portfolios of clearing members has a floor value equal to zero;
 2. Calculation of the exposure of each clearing member as at the given day in the OTC clearing system under the stress-test scenario, equal to the sum of uncovered risk of all own portfolios and all client portfolios of the clearing member under the stress-test scenario;
 3. Calculation of the maximum exposure under the stress-test scenario as at the given day in the OTC clearing system equal to the greater of:
 - 1/ the biggest clearing member exposure of all exposures calculated in item 2, or
 - 2/ the sum of the second and third biggest clearing member exposures of all exposures calculated in item 2;
 4. Calculation of the value of the OTC clearing fund equal to the biggest maximum exposure calculated in item 3 at all days in the OTC clearing system within the time window set by KDPW_CCP multiplied by the parameter securing the change of the exposure value on the next day.¹
- II. The required contribution of a clearing member to the OTC clearing fund is calculated in proportion to the clearing member's average exposure (calculated in item I.2) within the time window set by KDPW_CCP.¹ The required contribution of a clearing member to the OTC clearing fund is equal to or greater than the minimum contribution set by KDPW_CCP.

¹ KDPW_CCP notifies clearing members of the defined time window referred to in items I.4 and II and the parameter securing the change of exposure referred to in item I.4 in accordance with § 4a subpara. 1 or 2 of the Rules of Transaction Clearing.