

Resolution No. 43/345/18
of the KDPW_CCP S.A. Supervisory Board
dated 21 December 2018

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

In the Rules of transaction clearing (non-organised trading) attached to Resolution No 21/55/12 of the Supervisory Board of KDPW_CCP S.A. dated 29 August 2012 (as amended), shall be amended as follows:

1/ § 1 point 6 shall be replaced by the following:

„6/ **margin**, this shall be understood to mean assets constituting collateral posted within the transaction clearing liquidity guarantee system, being respectively an initial margin, an initial deposit,“;

2/ § 1 points 8 i 9 shall be replaced by the following:

„8/ **OTC guarantee fund**, this shall be understood to mean the fund which guarantees the proper clearing of transactions concluded outside organised trading referred to in Article 68 subpara. 7 of the Act on Trading in Financial Instruments of 29 July 2005 (consolidated text: Journal of Laws of 2017, item 1768, as amended),

9/ **clearing instruction**, this shall be understood to mean a settlement order within the meaning of the Law on the finality of settlement in payment systems and securities settlement systems and on the terms of supervision over such systems of 24 August 2001 (consolidated text: Journal of Laws of 2018, No. 145, as amended) which is, respectively:

a/ a document containing the terms of a transaction in a structure and format agreed with the entity operating an electronic platform, received from that platform, or

b/ an instruction confirming the acceptance of an offer to conclude a transaction for the opposite position, submitted by a clearing member in accordance with these rules and the Detailed Rules of the OTC Clearing System in the service of closing positions on demand referred to in § 90 subpara. 1, or

c/ a document issued by KDPW_CCP S.A. on the basis of appropriately matching instructions submitted by clearing members to KDPW_CCP containing the terms of a repo transaction within the meaning of these rules,“;

3/ § 1 point 25 shall be replaced by the following:

„25/ **transfer order**, this shall be understood to mean a transfer order referred to in Article 63c of the Banking Law of 29 August 1997 (consolidated text: Journal of Laws from 2017, item 1876, as amended),“;

4/ § 1 point 33a shall be replaced by the following:

„33a/ **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),”;

5/ § 1 point 36 shall be replaced by the following:

„36/ **payment system**, this shall be understood to mean a system designated by KDPW_CCP S.A., referred to in Article 1 point 1 of the finality of settlement in payment systems and securities settlement systems and on the terms of supervision over such systems of 24 August 2001 (consolidated text: Journal of Laws from 2018, item 145, as amended), within which cash payments of the participant are executed in a given currency, arising from transaction clearing performed by KDPW_CCP S.A., provided that for such cash payments executed in EUR, this shall be understood to mean any system that is a part of TARGET 2,”;

6/ § 1 point 53 shall be replaced by the following:

„53 **Act**, this shall be understood to mean the Act on trading in financial instruments of 29 July 2005 (consolidated text: Journal of Laws from 2017, item 1768, as amended),”;

7/ § 4 subpara. 2 shall be replaced by the following:

„2. KDPW_CCP shall make available to participants model declarations referred to in the rules, the Detailed Rules of the OTC Clearing System and resolutions adopted under the rules, as well as all other information it is obliged to deliver under those regulations, in the manner defined in subpara. 1, by fax (at the numbers provided by the participants) or by email over the Internet (at the addresses provided by the participants).”;

8/ § 5 shall be replaced by the following:

„§ 5

1. Unless otherwise allowed under these rules or the Detailed Rules of the OTC Clearing System, all declarations and information shall be delivered by KDPW_CCP to a participant or by a participant to KDPW_CCP in electronic format through the SWI system.

2. KDPW_CCP represents that it recognises as effective any submission of declarations of will by a clearing member and its transmission of information in electronic form through the SWI system.

3. Unless otherwise provided for under these rules or the Detailed Rules of the OTC Clearing System:

1/ declarations and information submitted by:

a/ an applicant, KDPW_CCP or a participant in relation to seeking the conclusion, extension, limitation or termination of their participation or as part of updating documents previously submitted by the participant in order to conclude or amend a participation agreement,

b/ a clearing member, referred to in Title III “Participation”,

c/ a participant who is not a clearing member or by KDPW_CCP in matters referred to in § 18 subpara. 2 and § 110a - § 110c, subject to § 110b subpara. 11 and 12,

d/ KDPW_CCP or a participant in matters concerning the complaint handling procedure referred to in Title

IX "Complaint Handling Procedure"

will require the delivery to the addressee of the original document containing the declaration or information, prepared at least in the ordinary form in writing or an appropriately certified copy, subject to the provisions of subpara. 5,

2/ official documents shall be submitted in the original counterpart or an appropriately certified copy.

4. The Management Board of KDPW_CCP may, by means of a resolution:

1/ define other instances where the submission of declarations, or information should take place according to the rules described in subpara. 3,

2/ allow participants or entities applying for the conclusion of a participation agreement to submit 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 by facsimile or electronic mail over the internet. However, until the moment that 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 by facsimile or electronically. No action shall be performed when a facsimile or electronic transfer has been distorted 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 other register if appropriate for a participant or entity applying for 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 legislation,

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 through the SWI system, described in subpara. 3 and 4, shall be sent to the address designated in the documents submitted by the participant. 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 delivery was not possible, all consequences pertaining to the delivery to the participant of the declaration or information by KDPW_CCP have taken place.”;

9/ § 19a shall be added after § 19 as follows:

„§ 19a

KDPW_CCP shall issue to each participant an identifier in the OTC clearing system (institution code) which identifies the scope or scopes of its activity in the OTC clearing system (taking into account the place of establishment, head office or organised part of the participant’s enterprise within which the given type of activity is performed).”;

10/ § 22 shall be replaced by the following:

„§ 22

Applications for a participation agreement should contain the following:

- 1/ a designation of the type of participation which the applicant is seeking,
- 2/ a designation of the entity that is a clearing member and will represent the applicant in clearing, if the applicant is seeking to obtain the participation type of non-clearing member,
- 3/ if the applicant is seeking to obtain the participation type of clearing member – a declaration that the participant fulfils the financial conditions referred to in § 27 subpara. 2 and is familiar with the principles of sending and receiving declarations and information prepared in electronic form, used in relations between KDPW_CCP and participants, which are available on the KDPW_CCP website, and has understood the terms and conditions which need to be met by participants in accordance with § 27 subpara. 3,
- 4/ 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).”;

11/ § 23 subpara. 1 point 6 shall be replaced by the following:

„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: Journal of Laws from 2017, item 679, as amended).”;

12/ § 28 subpara. 4 shall be replaced by the following:

„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 clearing member 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.”;

13/ § 29 subpara. 3 and 4 shall be replaced by the following:

„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 clearing member 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.”;

14/ § 32 subpara. 3 otrzymuje brzmienie:

„3 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, 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, as amended). 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.”;

15/ § 34 shall be replaced by the following:

„§ 34

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, 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.”;

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 2017, item 2344, as amended) for transactions accepted for clearing created as a result of novation, and such transactions shall be executed under such agreement.”;

17/ subpara. 3 shall be added in § 74a with the following wording:

„3. As a remitter of the withholding tax on revenue earned by clearing members who are non-residents, KDPW_CCP shall charge the withholding tax in the maximum amount applicable under Polish law prior to transferring to such members any revenue referred to in subpara. 2, any benefits from securities and any payment from the issuer received for the redemption or cancellation of such securities.“;

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 and EUR – in the case referred to in subpara. 2 points 1 and 2,
- 2/ PLN – in the case referred to in subpara. 2 point 3.

3. Securities accepted by KDPW_CCP within the meaning of subpara. 2 points 1 and 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 the condition that these have been designated in the list of securities referred to in § 80 subpara.

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.”;

19/ § 81 subpara. 4 shall be replaced by the following:

„4. The value of securities issued by a 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: Journal of Laws from 2018, item 395, 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 of 29 September 1994, 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.”;

20/ § 84 shall be repealed;

21/ § 101 subpara. 4 shall be replaced by the following:

„4. If margins posted by the defaulting participant must be used according to subpara. 1 and 2, such margins shall be used in the following order, where KDPW_CCP reserves the option of using the assets in

another order:

- 1/ initial deposit, and then
- 2/ initial margin.”;

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 2017, item 1577, 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 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.”;

23/ § 116 subpara. 2 point 1(e) shall be repealed;

24/ in Appendix 2 „OTC Guarantee Fund Rules”:

a/ §§ 2 and 3 shall be replaced by the following:

„§ 2

1. The OTC guarantee fund guarantees the performance of obligations arising from transactions accepted into the OTC clearing system and arising from non-execution or undue execution of such transactions, subject to subpara. 4.

2. The OTC guarantee fund is formed from contributions of participants holding clearing member status to the extent of transactions referred to in subpara. 1.

3. The OTC guarantee fund consists of the basic resource and the reserve resource.

4. The OTC guarantee fund shall guarantee, under extreme but plausible market conditions, the performance of obligations arising from transactions and arising from non-execution or undue execution of such transactions, according to Appendix 1 to the OTC guarantee fund rules.

§ 3

1. The assets of the OTC guarantee fund may be used for the purposes of covering losses which exceed losses that shall be covered with required margins, in the cases defined in the Rules, including in particular: 1/ to cover the differences between the price of securities, if any, between a repo transaction or sale transaction whose settlement has been suspended and their purchase or sale, as well as the costs incurred

to perform that purchase or sale, in instances where, in order to eliminate the settlement suspension of a repo transaction or sale transaction, securities concerned by the transaction are purchased or sold in order that the participant being the other clearing counterparty who has not caused the settlement to be suspended may receive payment,

2/ to meet the cash payments owed by the participant being the other clearing counterparty where the defaulting participant has not fulfilled the cash payment obligations arising from clearing of a transaction guaranteed by the OTC fund,

3/ to meet a replacement payment obligation towards the participant being the other clearing counterparty,

4/ to perform marking to market of transactions in derivatives covered by the OTC guarantee fund.

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

3. Whenever these rules refer to a defaulting participant, this shall be understood to mean a clearing member affected by default within the meaning of the Rules.”;

b/ after „SECTION 2 Payments, updates and adjustment of the contributions to the otc guarantee fund” § 3a shall be added as follows:

„§ 3a

1. Contributions to the OTC guarantee fund shall be calculated on the basis of the exposure of each clearing member resulting from transactions cleared in the OTC clearing system, irrespective of the scope of activity performed by the participant at the place of its establishment, head office or separate organised part of such activity for which it has executed a participation agreement.

2. If a participant intends to perform more than one scope of activity in the OTC clearing system and use for such purpose more than one identifier issued to it by KDPW_CCP (institution code), then it shall indicate the identifier to be used for the purposes of participation in the OTC clearing fund. For this purpose, the participant shall submit a declaration according to a template defined by KDPW_CCP, which shall be effective as of the next day following the day of submission of the declaration to KDPW_CCP. In the absence of such identifier indicated by the participant, KDPW_CCP may identify any institution code used by the participant in the clearing system and immediately notify the participant thereof.

3. The provisions of the first and second sentence of subpara. 2 shall apply accordingly to any change of the institution code for the purposes referred to in subpara. 2.”;

c/ § 4 subpara. 2 and 3 shall be replaced by the following:

„2. Subject to the provisions of subpara. 3 and 4, as well as the provisions of § 5 subpara. 3, § 6 subpara.

2, § 8 subpara. 3 and § 19a subpara. 3, securities referred to in subpara. 1 points 2 and 3 paid in by a clearing member shall count towards the clearing member’s contribution before any cash assets paid in.

3. Securities referred to in subpara. 1 points 2 and 3 paid into the OTC guarantee fund shall count towards the contribution only in part determined by the KDPW_CCP Management Board by means of a resolution. However, two days prior to the record date used to determine the owners of securities entitled to

payments following their redemption or cancellation, these securities shall cease to count as a valid means of contribution, subject to § 13 subpara. 2.”;

d/ § 5 subpara. 3 shall be replaced by the following:

„3. Instructions sent to the Central Securities Depository of Poland in order to transfer securities referred to in § 4 subpara. 1 point 2 paid by a clearing member into the OTC guarantee fund or paid into it via its settlement agent, onto the securities account managed by the Central Securities Depository of Poland for KDPW_CCP, shall indicate that the transferred securities shall count towards a contribution to the OTC guarantee fund and shall be sent according to the regulations referred to in § 2 subpara. 2.”;

e/ §§ 6-7 shall be replaced by the following:

„§ 6

1. A clearing member shall join the OTC guarantee fund upon the performance of the obligations referred to in subpara. 2-4.
2. A clearing member shall make the contribution to the basic resource of the OTC guarantee fund for the first time exclusively in the form of cash. The first contribution should be paid in not later than two days prior to the day of the commencement of the activities of the participant in the OTC clearing system.
3. A participant intending to hold the status of clearing member for transactions guaranteed by the OTC guarantee fund, executed by another entity following a change of participant holding such status, shall be obliged to make the contribution to the basic resource of the fund for the first time not later than two days prior to the date when the participant intends to acquire the status of clearing member to such extent.

§ 7

1. Subject to the provisions of subpara. 3 and 4, contributions to the basic resource of the OTC guarantee fund shall be updated on the last day of each calendar month, and if this date should fall on a day on which KDPW_CCP does not process transaction clearing - on the last day, preceding that day, in which clearing is performed by KDPW_CCP.
2. KDPW_CCP performs the update by calculating the required amount of the contribution.
3. The update of the contribution is performed for the first time, respectively, on the date on which the clearing member will commence activities in the OTC clearing system or on the date that the participant acquires the status of clearing member for transactions executed by another entity following a change of participant holding this status.
4. In the event of default, within the meaning of the Rules, by a defaulting participant, the KDPW_CCP Management Board may decide in a resolution to suspend for a set period of time the update of contributions to the basic resource of the OTC clearing fund or determine other dates of such contribution updates if justified by the safety of trading or the clearing of transactions.”;

f/ § 8 subpara. 1 shall be replaced by the following:

„1. The update of the value of the OTC clearing fund and of the required contribution of each participant shall be performed according to the principles described in Appendix 1 to the OTC guarantee fund rules. The amount of the contribution to the basic resource of the OTC clearing fund shall be calculated in proportion to the exposures of the clearing member arising from cleared transactions taking into account the minimum contribution.”;

g/ §§ 9-10 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 limit 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.

3. 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.”;

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

„1. A clearing member shall be obliged to withdraw securities paid into the OTC guarantee fund two days prior to the record day on which those entitled to receive payments following redemption or cancellation of these securities are determined. This does not exempt participants from the obligation to adjust the contribution.”;

i/ § 13 shall be replaced by the following:

„§ 13

1. Subject to subpara. 4, the reserve resource of the OTC guarantee fund consists of:

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

2/ the assets described in § 19 subpara. 5, and

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

2. If a participant does not perform the obligations described in § 12 subpara. 1, the payment from the issuer received for the redemption or cancellation of securities that were paid in by the participant to the OTC guarantee fund shall be added to the basic resource of the fund, increasing the value of cash assets paid in by that participant as contribution.

3. KDPW_CCP shall be entitled to retain all proceeds from the management of the cash resources of the OTC clearing fund in EUR, if any.

4. Any assets paid by a clearing member as a contribution to the OTC clearing fund or due to such clearing member as a surplus above the required contribution to the basic resource shall be counted towards the participant’s contribution to the reserve resource of the OTC clearing fund. Such assets shall be withdrawn according to the procedures applicable to the return of assets paid as contributions to the basic resource, subject to § 15 subpara. 1-3, which shall apply accordingly.”;

j/ § 14 subpara. 2 shall be replaced by the following:

„2. The share of a participant in the assets described in § 19 subpara. 4 shall be proportional to that participant’s share in the basic resource.”;

k/ § 15 shall be replaced by the following:

„§ 15

1. The share in the revenue generated by the investment of assets referred to in § 13 subpara. 1 point 1 and 3 shall be paid out to participants quarterly, subject to subpara. 3 – 5.
2. Benefits from securities contributed to the OTC clearing fund shall be transferred by KDPW_CCP to the participant who contributed such securities to the OTC clearing fund on the day of receipt of such benefits, subject to subpara. 3 – 5.
3. In the event of a default within the meaning of the Rules, the KDPW_CCP Management Board may, in a resolution, suspend the payment of assets referred to in subpara. 1 and 2 until the measures referred to in § 113 subpara. 1 point 1 of the Rules are completed or participants perform the obligation to pay in contributions referred to in § 19 subpara. 1 and 2 or § 19a subpara. 1 – 3.
4. If the payment of assets referred to in subpara. 1 and 2 is suspended, such assets shall be added to the share of each clearing member in the reserve resource of the OTC clearing fund and shall be counted towards contributions referred to in § 19 subpara. 1 and 2 or § 19a subpara. 1 – 3, subject to § 16 subpara. 2.
5. As a remitter of the withholding tax on revenue earned by clearing members who are non-residents, KDPW_CCP shall charge the withholding tax in the maximum amount applicable under Polish law prior to transferring to such members any benefits from securities contributed to the OTC clearing fund, any payment from the issuer received for the redemption or cancellation of such securities or any revenue referred to in subpara. 1.
6. KDPW_CCP shall immediately notify participants of any suspension of payment of assets referred to in subpara. 1 and 2.”;

l/ §§ 16-19 shall be replaced by the following:

„§ 16

1. In the event of a default within the meaning of the Rules:
 - 1/ contributions to the basic resource of the OTC clearing fund shall be adjusted unless their update has been suspended according to § 7 subpara. 4, subject to § 10 subpara. 3 and § 17,
 - 2/ KDPW_CCP may disburse of any assets contributed to the basic resource of the OTC clearing fund for the purposes of the OTC clearing fund.
2. Prior to any disbursement a contribution of a defaulting participant paid to the basic resource of the OTC clearing fund, KDPW_CCP shall count assets forming its share in the reserve fund towards such contribution.

§ 17

1. KDPW_CCP shall allow clearing members other than the defaulting participant to replace securities or cash in euro paid by them to the OTC clearing fund with cash in the Polish currency unless:
 - 1/ this shall jeopardise the safety of trading or the safety of clearing,
 - 2/ this shall affect the deadlines of measures referred to in § 113 subpara. 1 point 1 of the Rules of Transaction Clearing, or

3/ this shall increase the cost of the measures referred to in point 2.

For this purpose, KDPW_CCP shall notify such clearing members of the time limit within which they may submit a declaration relating to the replacement of securities or cash in euro with cash assets in the Polish currency up to the amount of the required contribution to the basic resource of the OTC clearing fund.

2. The declaration referred to in subpara. 1 should indicate, respectively, the quantity and identifier of securities or the quantity of cash assets in euro that are to be replaced. The replacement shall take place provided that:

1/ the cash assets in the Polish currency available in the bank account referred to in § 5 subpara. 2 point 1 are sufficient to replace the assets indicated in the participant's declaration, and

2/ the time limit set by KDPW_CCP, referred to in subpara. 1, is still pending.

§ 18

1. Disbursement of the assets of the OTC guarantee fund shall be made from the basic resource.

2. If securities form part of the assets of the OTC clearing fund that are subject to the disbursement, KDPW_CCP shall sell such securities with a view to selling them as soon as possible at the best possible price.

§19

1. Following the completion of measures defined in the Rules involving any disbursement of assets of the OTC clearing fund, KDPW_CCP shall update the contributions to the basic resource of the OTC clearing fund and determine the amount of replacement contributions. Participants shall be obliged immediately to replenish the OTC clearing fund according to the update. The provisions of § 7 - § 10 shall apply accordingly.

2. Replacement contributions shall be paid in proportion to the contributions of participants to the basic resource of the fund. A participant's share in the reserve resource shall count towards the replacement contribution.

3. The obligation to make replacement contributions shall not apply to the defaulting participant, whose obligations arising from the status of clearing member for transactions guaranteed with the OTC clearing fund have been performed using assets of the OTC clearing fund.

4. Cash paid into the OTC guarantee fund according to the provisions of § 101 subpara. 3 or § 105 subpara. 5 of the Rules shall be allocated to the reserve resource of the OTC guarantee fund; however, where such assets are in a currency other than the Polish currency, KDPW_CCP may convert them into the Polish currency at the market exchange rate at the date of the conversion prior to allocating such assets to such resource.”;

†/ § 19a subpara. 1 shall be replaced by the following:

„1. Where, due to actions taken by KDPW_CCP in order to cause the performance of an obligation arising from the clearing of a transaction accepted to the OTC clearing system, the amount of own funds of KDPW_CCP falls to 110% of the set capital requirement, clearing members shall be obliged to make additional contributions relative to the value of their contributions made thus far to the basic resource of the fund, arising from the most recent update performed before measures were taken under the Rules

involving disbursement of assets of the OTC clearing fund.”;

m/ the title of the Section 6 shall be replaced by the following: „SECTION 6 Consequences of termination, suspension of participation or participant acquisition”;

n/ § 20-21 shall be replaced by the following:

„§ 20

1. Subject to subpara. 2 and 3, in instances when participant status is terminated or limited to the extent that it involves the loss of clearing member status for transactions guaranteed by the OTC guarantee fund, KDPW_CCP shall refund the participant the securities and cash assets remaining from contributions made by that participant to the basic resource, as well as the cash assets being equal to the participant’s share in the reserve resource, calculated as at the day of the refunding of the assets to the participant. The assets refunded to the participant may be subject to a deduction by an amount necessary to perform the clearing of transactions executed in connection with other transactions guaranteed by the assets of the OTC guarantee fund, for which the participant held the status of clearing member.

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

3. If an event of default within the meaning of the Rules occurs before the participant status is terminated or limited to the extent that it involves the loss of clearing member status for transactions guaranteed by the OTC clearing fund, then:

1/ the clearing member’s participation in the OTC clearing fund shall not terminate until the measures referred to in § 113 subpara. 1 point 1 of the Rules are completed and the clearing member performs the obligation to pay in the contribution referred to in § 19a subpara. 1 – 3,

2/ the assets forming the clearing member’s share in the reserve resource shall be counted towards the contribution referred to in § 19a subpara. 1 – 3,

3/ the assets shall not be returned until the measures referred to in § 113 subpara. 1 point 1 of the Rules are completed and the clearing member performs the obligation to pay in the contribution referred to in § 19a subpara. 1 – 3.

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

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

2/ limitation of participant status is caused by the acquisition of a participant by another entity, assuming the participant's rights within a specified scope, and the procedure described in the second sentence of point 1 shall be applied to contributions to the basic resource and to the share of the reserve resource of the participant being taken over.

§ 21

1. Subject to the provisions of subpara. 2, refunds of the assets referred to in § 20 subpara. 1 shall be made within a period of 7 days following the performance of the obligations referred to in § 20 subpara. 2 and

in the case referred to in § 20 subpara. 3 after the measures referred to in § 113 subpara. 1 point 1 of the Rules are completed and the participant performs the obligation to pay in the contribution referred to in § 19a subpara. 1 – 3.

2. The refund of entitlements from securities shall take place on the day these entitlements have been received, subject to § 20 subpara. 1 - 3.

3. In instances of refunds of the assets referred to in § 20 subpara. 1, the provisions of § 11 subpara. 2 and 3 shall apply. “;

o/ §§ 22-23 shall be repealed;

p/ Appendix 1 to the OTC Guarantee Fund Rules shall be replaced by the following in the appendix to the Resolution.

§ 2

The Resolution shall come into force on the first day of the calendar month which is not earlier than two weeks after publication by the KDPW_CCP S.A. Management Board of the Resolution approved by the Polish Financial Supervision Authority.

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). Uncovered risk is equal to the difference between the hypothetical loss on a portfolio, determined by KDPW_CCP at the end of day in the clearing system on the basis of stress test parameters set by KDPW_CCP, and the value of the initial margin required from the clearing member;
 2. Calculation of the exposure of each clearing member as at the given day in the OTC clearing system equal to the sum of uncovered risk of each own portfolio and each client portfolio of the clearing member;
 3. Calculation of the maximum exposure 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.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 in accordance with § 4a subpara. 1 or 2 of the Rules of Transaction Clearing.