

**Resolution No. 45/347/18**  
**of the KDPW\_CCP S.A. Supervisory Board**  
**dated 21 December 2018**

Pursuant to Article 66(3) of the Act of 29 July 2005 on Trading in Financial Instruments (consolidated text: Journal of Laws of 2018, item 2286) and § 15 sub-paragraph 2 point 14 of the Statute of KDPW\_CCP S.A., the Supervisory Board of KDPW\_CCP S.A. hereby resolves as follows:

**§ 1**

Resolution No. 1/10/11 of the Supervisory Board of KDPW\_CCP S.A. dated 11 January 2011 r. regarding the Rules of the Clearing Fund (as amended) shall be amended as follows:

**1/** § 2 subpara. 1 shall be replaced by the following:

„1. The clearing fund shall secure the clearing of:

- 1/ transactions executed in the stock exchange regulated market operated by the Warsaw Stock Exchange, with the exception of transactions executed in securities trading outside the continuous trading system and the single-price auction system, and
- 2/ transactions executed in the regulated off-exchange market operated by Bondspot, with the exception of transactions executed in securities trading outside the continuous trading system, provided that KDPW\_CCP performs clearing for transactions executed in these markets.”;

**2/** § 3 shall be replaced by the following:

**„§ 3**

1. The assets of the clearing fund shall be used for the purposes of covering losses which exceed losses that can be covered with required margins, in the cases defined in the Rules of Transaction Clearing, including in particular:

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

transaction,

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

5/ to perform marking to market of transactions in derivatives covered by the clearing fund.

2. The provisions of the Rules of Transaction Clearing shall apply to any matters relating to the principles of the use of the clearing 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 of Transaction Clearing.”;

**3/** § 3a shall be repealed;

**4/** after „CHAPTER II Payment, update and adjustment of contributions to the fund” § 3b shall be added as follows:

**„§ 3b**

1. Contributions to the clearing fund shall be calculated on the basis of the exposure of each clearing member resulting from cleared transactions executed in the markets referred to in § 2 subpara. 1, irrespective of the scope of its activity in the clearing system defined according to § 11 subpara. 3 point 1-4 of the Rules of Transaction Clearing (including irrespective of any 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 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 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.”;

**5/** § 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. 1 and § 21 subpara. 3, securities referred to in subpara. 1 point 2 and 3 paid in by a participant shall count towards the participant’s contribution before any cash assets paid in.

3. Securities referred to in subpara. 1 point 2 and 3 paid into the clearing fund shall count towards the participant’s contribution up to the amount of 90% of the updated amount of the contribution. Cash in euro paid into the clearing fund shall count towards the participant’s contribution up to the amount of 100% of the updated amount of the contribution. In instances justified for reasons of safety of transaction clearing, the KDPW\_CCP Management Board may, in a resolution, lower these ratios for a set period. However, two days prior to the record date used to determine the owners of securities entitled to payments following the redemption or cancellation of securities referred to in subpara. 1 point 2 and 3, such securities shall cease to count as a valid means of contribution, subject to § 14 subpara. 2.”;

**6/** § 5 subpara. 3 shall be replaced by the following:

„3. Instructions submitted to KDPW in order to transfer securities referred to in § 4 subpara. 1 point 2 which are paid by a clearing member to the fund through its settlement agent to the securities account managed for KDPW\_CCP by KDPW shall indicate the contribution towards which the transferred securities are to be counted in the clearing fund and shall be submitted according to the rules referred to in subpara. 2 point 2.”;

7/ §§ 6-9 shall be replaced by the following:

#### „§ 6

1. Participants shall make the first contribution to the basic resource of the clearing fund exclusively in the form of cash. The first contribution should be paid in prior to the date that the appropriate governing body of the regulated market operator indicates the day that the participant, or an entity that will be represented by a participant in the clearing system acting as clearing member, commences activities on any regulated market, referred to in § 2 subpara. 1, not later, however, than two days prior to the day of the commencement of these activities.
2. Participants intending to hold the status of clearing members for transactions guaranteed by the clearing fund, executed by another entity following a change of participant holding such status, shall be obliged to make the first contribution to the basic resource of the clearing fund not later than two days prior to the date when the participant intends to acquire the status of clearing member.

#### § 7

1. Subject to the provisions of subpara. 3 and 4, contributions to the basic resource of the clearing fund shall be updated each day in which clearing in the Polish currency 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 of a participant to the basic resource of the clearing fund is performed for the first time after the close of a trading session on the regulated market or organised trading in the alternative trading system, respectively, on the date on which the participant, or the entity which the participant will be representing within the clearing system as clearing member, may commence executing transactions on any of the markets referred to in § 2 subpara. 1.
4. In the event of default, within the meaning of the Rules of Transaction Clearing, 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 clearing fund or determine other dates of such contribution updates if justified by the safety of trading or the clearing of transactions.

#### § 8

1. The update of the value of the clearing fund and of the required contribution of each participant shall be performed according to the principles referred to in Appendix 1 to these Rules.
2. The amount of the contribution to the basic resource of the clearing fund shall not be lower than 500,000 PLN (minimum contribution). The KDPW\_CCP Supervisory Board shall have the right to authorise the KDPW\_CCP Management Board to determine another amount for the minimum contribution. The KDPW\_CCP Management Board shall notify the KDPW\_CCP Supervisory Board of the contents of the resolution to this effect at its next meeting.
3. The amount of the contribution to the basic resource of the clearing fund shall be calculated in proportion to the exposures of the clearing member arising from cleared transactions taking into account the minimum contribution.

§ 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 clearing fund
2. If the assets of the clearing 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 in a resolution.
4. The adjustment of the contribution shall be made by participants paying in a supplementary contribution to the basic resource of the clearing fund or by means of a refund of part of the participant's contribution.
5. A refund of part of the participant's contribution shall only be made in the form of cash, through a credit payment onto the bank account referred in § 5 subpara. 2 point 1, subject to § 5 subpara. 6. The amount of the refund shall not be higher than the limit of the participant's contribution, which must remain in cash form according to the provisions of § 4 subpara. 3.
6. The participant's debits and credits as a result of the adjustment of the contribution to the clearing fund shall be offset (netted) with the participant's debits and credits arising from the adjustment of contributions to the relevant guarantee funds, with the amount of margins and with marking to market, referred to in § 46 point 3 of the Rules of Transaction Clearing.”;

**8/** § 10 subpara. 3-5 shall be repealed;

**9/** § 11 shall be replaced by the following:

„§ 11

1. A participant shall pay the adjusted contribution, when such contribution consists of cash assets, up to 8:30 on the day following the day when the information referred to in § 10 subpara. 2 or 3 is made available, indicating that the participant is obliged to make a payment. On the same day, KDPW\_CCP shall refund a part of the contribution paid in by the participant if such information indicates a credit owed to the participant. In instances justified by the safety of trading or the clearing of transactions, the KDPW\_CCP Management Board may, in a resolution, designate separate deadlines for each update.
2. Securities may be counted towards a contribution provided that they are registered on the day when the information referred to in § 10 subpara. 1 or 3 is made available, but not later than 18:00 on that day, respectively, as follows:
  - 1/ securities referred to in § 4 subpara. 1 point 2 – in the securities account referred to in § 5 subpara. 1 point 1,
  - 2/ securities referred to in § 4 subpara. 1 point 3 – in 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 § 20 subpara. 1 and 2, as well as § 21 subpara. 1 - 3.”;

**10/** § 13 shall be replaced by the following:

„§ 13

1. Participants shall be obliged to withdraw securities they have paid into the clearing fund two days prior to the record day on which those entitled to receive payments following redemption or cancellation of such securities are determined. This does not exempt participants from the obligation to adjust the contribution.
2. KDPW\_CCP may send an instruction to transfer securities which have not been withdrawn by the participant according to the principles referred to in subpara. 1 from the securities account referred to in § 5 subpara. 1 point 1 or 2 onto the account from which the securities were paid into the clearing fund.”;

**11/** §§ 14-16 shall be replaced by the following:

„§ 14

1. Subject to subpara. 4, the reserve resource of the clearing fund consists of:
  - 1/ revenue from the investment of cash assets paid into the basic resource in the Polish currency, and
  - 2/ the assets referred to in § 20 subpara. 4, and
  - 3/ revenue from the investment of assets referred to in points 1-2 above.
2. If a participant does not perform the obligations referred to in § 13, the payment from the issuer received for the redemption or cancellation of securities that were paid in by the participant to the clearing fund shall be added to the basic resource of the fund, increasing the value of cash assets paid in by that participant as contributions.
3. Any income earned from the management of cash assets of the clearing fund in euro shall go to KDPW\_CCP.
4. Any assets paid by a clearing member as a contribution to the 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 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 § 16 subpara. 1-3, which shall apply accordingly.

§ 15

1. The share of a given participant in the revenue generated by the investment of assets from the basic resource in the Polish currency and by the investment of assets from the reserve resource, referred to in § 14 subpara. 1-3, shall be proportional in respect to the participant’s share in the basic resource in the Polish currency and its share in the reserve resource, subject to the provisions of subpara. 2.
2. The share of a participant in the assets referred to in § 20 subpara. 4 shall be proportionate to its share in the basic resource.

§ 16

1. The share in the revenue generated by the investment of assets referred to in § 14 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 clearing fund shall be transferred by KDPW\_CCP to the participant who contributed such securities to the 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 of Transaction Clearing, 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 § 59 *et seq.* of the Rules of Transaction Clearing are completed or participants perform the obligation to pay in contributions referred to in § 20 subpara. 1 and 2 or § 21 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 clearing fund and shall be counted towards contributions referred to in § 20 subpara. 1 and 2 or § 21 subpara. 1 – 3, subject to § 17 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 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.”;

**12/** §§ 17-20 shall be replaced by the following:

#### „§ 17

1. In the event of a default within the meaning of the Rules of Transaction Clearing:

1/ contributions to the basic resource of the clearing fund shall be adjusted unless their update has been suspended according to § 7 subpara. 4, subject to § 11 subpara. 3 and § 18,

2/ KDPW\_CCP may disburse of any assets contributed to the basic resource of the clearing fund for the purposes of the clearing fund.

2. Prior to any disbursement a contribution of a defaulting participant paid to the basic resource of the clearing fund, KDPW\_CCP shall count assets forming its share in the reserve fund towards such contribution.

#### § 18

1. KDPW\_CCP shall allow clearing members other than the defaulting participant to replace securities or cash in euro paid by them to the 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 in § 59 *et seq.* 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 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.

#### § 19

1. Disbursement of the fund assets shall be made from the basic resource.
2. If securities form part of the assets of the fund that are subject to the disbursement, KDPW\_CCP shall sell such securities on the regulated market or outside the regulated market with a view to selling them as soon as possible at the best possible price.

#### § 20

1. Following the completion of measures defined in the Rules of Transaction Clearing involving any disbursement of assets of the clearing fund, KDPW\_CCP shall update the contributions to the basic resource of the clearing fund and determine the amount of replacement contributions. Participants shall be obliged immediately to replenish the clearing fund according to the update. The provisions of § 7 - § 11 shall apply accordingly.
2. Replacement contributions shall be paid in proportion to the contributions of participants to the basic resource of the clearing 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 clearing fund have been performed using assets of the clearing fund.
4. The assets paid into the fund according to the provisions of § 59 subpara. 5, § 60 subpara. 4 and § 64 subpara. 7 and 8 of the Rules of Transaction Clearing shall be allocated to the reserve resource of the clearing fund with the provision that, where such assets are denominated 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 the reserve resource.”;

**13/** § 21 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 guaranteed by the clearing fund, the amount of own funds of KDPW\_CCP falls to 110% of the set capital requirement, clearing members shall be obliged to make additional contributions relative to the value of their contributions made thus far to the basic resource of the fund arising from the most recent update performed before measures were taken under the Rules of Transaction Clearing involving disbursement of assets of the clearing fund.”;

**14/** the title of the Chapter VI shall be replaced by the following:

„CHAPTER VI Consequences of termination, change or suspension of participation or participant acquisition”;

**15/** §§ 22-23 shall be replaced by the following:

#### „§ 22

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 clearing

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

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

3. If an event of default within the meaning of the Rules of Transaction Clearing 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 clearing fund, then:

1/ the clearing member's participation in the clearing fund shall not terminate until the measures referred to in § 59 et seq. of the Rules of Transaction Clearing are completed and the clearing member performs the obligation to pay in the contribution referred to in § 21 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 § 21 subpara. 1 – 3,

3/ the assets shall not be returned until the measures referred to in § 59 et seq. of the Rules of Transaction Clearing are completed and the clearing member performs the obligation to pay in the contribution referred to in § 21 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 acquired. In such instances, assets paid into the clearing fund by the participant being acquired and that participant's share on the reserve resource shall be allocated to the acquiring participant, or

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

### § 23

1. Subject to the provisions of subpara. 2, refunds of the assets referred to in § 22 subpara. 1 shall be made within a period of 7 days following the performance of the obligations referred to in § 22 subpara. 2 and in the case referred to in § 22 subpara. 3 after the measures referred to in § 59 et seq. of the Rules of Transaction Clearing are completed and the participant performs the obligation to pay in the contribution referred to in § 21 subpara. 1 – 3.

2. The refund of benefits from securities shall take place on the day such benefits are received, subject to § 16 and § 22 subpara. 1 – 3.

3. In instances of refunds of the assets referred to in § 22 subpara. 1, the provisions of § 12 subpara. 2 and 3 shall apply.”;

**16/** §§ 25-26 shall be repealed;

**17/** § 29 shall be repealed;

**18/** Appendix 1 to the Rules of the Clearing Fund 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 Rules of the Clearing Fund

**RULES FOR DETERMINING THE VALUE OF THE CLEARING FUND  
AND THE AMOUNT OF CONTRIBUTIONS OF CLEARING MEMBERS**

- I. The value of the clearing 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 executed on the regulated market and registered in own position accounts of the clearing member) and for client portfolios (i.e., all positions arising from transactions executed on the regulated market and 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 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 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 clearing fund equal to the biggest maximum exposure calculated in item 3 at all days in the clearing system within the time window set by KDPW\_CCP.\*
- II. The required contribution of a clearing member to the 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.\* The required contribution of a clearing member to the clearing fund is equal to or greater than the minimum contribution set by KDPW\_CCP.

\* 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.