

Resolution No. 47/394/19
of the KDPW_CCP S.A. Supervisory Board
dated 12 August 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 (as amended) of the Supervisory Board of KDPW_CCP S.A. dated 21 December 2018 shall be amended as follows:

1/ § 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. 4, 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.”;

2/ § 1 point 24 item (e) shall be replaced by the following:

”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 each day on which KDPW_CCP clears transactions in the Polish currency.

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.”;

3/ § 1 point 24 item (i) shall be replaced by the following:

“§ 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. 4, 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.”;

§ 2

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

Dr Marek Dietl

Chairman of the Supervisory Board