

Resolution No. 7/415/20
of the Supervisory Board of KDPW_CCP S.A.
dated 4 March 2020

Pursuant to Article 48(15) of the Act on Trading in Financial Instruments of 29 July 2005 (consolidated text: Journal of Laws of 2020, item 89) and § 15 subpara. 2 point 13 of the Statute of KDPW_CCP S.A., the Supervisory Board of KDPW_CCP S.A. resolves as follows:

§ 1

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

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

“4. For transactions cleared in the way referred to in subpara. 1, KDPW_CCP shall act as a central counterparty within the meaning of the Act on the Finality of Settlement in Payment Systems and Securities Settlement Systems and the Rules of Supervision over those Systems of 24 August 2001 (consolidated text: Dziennik Ustaw – Journal of Laws of 2019, item 212) between clearing members acting, respectively, on side A (buyer, long position holder or borrower) or on side B (seller, short position holder or lender).”;

2/ § 3 point 1 shall be replaced by the following:

“1/ the Law on trading in financial instruments, this shall be understood to mean the Law on trading in financial instruments of 29 July 2005 (consolidated text: Dziennik Ustaw – Journal of Laws of 2020, item 89, as amended),”;

3/ in § 3, after point 29, point 30 shall be inserted as follows:

“30/ GUI, this shall be understood to mean an electronic communication system operating via the KDPW_CCP S.A. website under an agreement between a participant and KDPW_CCP S.A. whereby information and declarations referred to herein, in the Detailed Rules of Transaction Clearing (organised trading) and other resolutions issued under the rules are delivered in the system in electronic format from KDPW_CCP S.A. to the participant or participants of the clearing system or by the participant of the clearing system to KDPW_CCP S.A. according to the agreement.”;

4/ § 4 shall be replaced by the following:

“§ 4

1. All declarations and information shall be provided by KDPW_CCP to a participant or by a participant to KDPW_CCP in electronic format via:
 - 1/ SWI (mandatory system for participants holding the status of clearing member), or
 - 2/ GUI (additional system optional for participants holding the status of clearing member)unless otherwise allowed under these rules or the Detailed Rules of Transaction Clearing (organised trading).
2. KDPW_CCP represents that it accepts as effective declarations of will submitted and information sent by a participant in electronic format via SWI or via GUI.
3. Unless otherwise provided for under these rules or the Detailed Rules of Transaction Clearing (organised trading):
 - 1/ any declarations and information sent by:
 - a/ participants, in accordance with the provisions of § 12 subpara. 1, § 13 and § 22-§ 31, as well as § 40 subpara. 2, or in connection with applications to extend, limit or cancel participation status, or as part of the update process of documents submitted by such participants in order to conclude or amend a participation agreement,
 - b/ entities applying for the status of participant,
 - c/ participants that do not hold the status of clearing member for the matters described in § 14 subpara. 2 and § 69a - § 69c, subject to § 69b subpara. 11 and 12,
 - d/ KDPW_CCP in relations with the entities, described in point 2, and additionally in matters described in § 14 subpara. 2 – in relations with participants, described in point 3, while in matters described in point 1, and in matters relating to the imposition of disciplinary or orderly measures – in relations with other participants,and
 - e/ participants or KDPW_CCP in matters relating to the complaints process, described in § 84a - § 84d, 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 instances where the submission of declarations or information should take place:
 - a/ in electronic format via SWI or via GUI,
 - b/ in writing;
 - 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 via facsimile or electronic mail through the internet. However, until the moment when the document is received in the manner described in subpara. 3 or 4, only actions requiring an urgent response should be performed on the basis of the contents of a message sent via facsimile, or electronic mail. No action should be performed when a facsimile, or electronic mail transfer has been damaged in such a way as to render its contents impossible to determine.

6. If a declaration or information should be delivered in electronic format and cannot be delivered via GUI, it shall be delivered via SWI unless these rules or the Detailed Rules of Transaction Clearing (organised trading) provide otherwise. In special cases, in particular in the event of a contingency, a document containing a declaration or information may be sent in relations between KDPW_CCP and a participant, with their mutual consent, in a format other than required under the rules or the Detailed Rules of Transaction Clearing (organised trading).

7. 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.

8. Declarations and information in writing shall be sent by KDPW_CCP to the address indicated in the documents submitted by the participant. In the event that a 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 a delivery was not possible, all consequences pertaining to the delivery to the participant of the declaration or information by KDPW_CCP, have taken place.”;

5/ § 9 subpara. 2 point 3 shall be replaced by the following:

“3/ referred to in subpara. 1 points 1-3, 5 or 6 and, in the case referred to in subpara. 1 point 4, provided that it is a credit institution or foreign bank within the meaning of the Banking Law – Act of 29 August 1997 (consolidated text: Dziennik Ustaw – Journal of Laws of 2019, item 2357, as amended), or a foreign legal person, referred to in Article 115(1) of the Act on Trading in Financial Instruments.”;

6/ § 20 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: Dziennik Ustaw – Journal of Laws from 2019, item 160).”;

7/ § 43a subpara. 1 shall be replaced by the following:

“1. Subject to subpara. 2, novation shall apply to transactions made:

1/ on the regulated market organised by the Warsaw Stock Exchange excluding transactions in securities made outside the standard trading systems,

2/ on the regulated market organised by BondSpot S.A. excluding transactions in securities made outside the standard trading systems,

3/ in the alternative trading system operated by the Warsaw Stock Exchange excluding transactions in securities made outside the standard trading systems,
4/ in the alternative trading system operated by BondSpot S.A. excluding transactions in securities made outside the standard trading systems,
5/ on other regulated markets and in other alternative trading systems operated by entities which have concluded agreements with KDPW_CCP concerning performance of clearing of transactions made therein.”;

8/ § 46b shall be replaced by the following:

“§ 46b

1. Assets of the transaction clearing liquidity guarantee system may be used on the occurrence of an event of default and in cases referred to in the provisions of this Section, provided that such assets shall be first used to meet liabilities arising from transactions. Assets of the transaction clearing liquidity guarantee system shall be understood as all assets which according to the applicable legal regulations and the provisions of the rules may be used to meet liabilities in respect of participation in the clearing system referred to in § 1 subpara. 1.
2. If a defaulting participant is a participant of another clearing system operated by KDPW_CCP, any surplus formed by the participant’s own assets posted as collateral against the execution of all transactions cleared by the participant or transactions concluded and cleared on own account of the participant, remaining after the participant’s debits arising from participation in such other system are cleared, shall be used in clearing in the clearing system referred to in § 1 subpara. 1 as assets of the transaction clearing liquidity guarantee system within the meaning of the rules.
3. In case of the occurrence of an event of default and the need to take actions set out in this Section, KDPW_CCP shall notify the defaulting participant of such actions being taken in electronic form or, if this is not possible, in any form.”;

9/ in § 46c, subpara. 3 shall be inserted as follows:

“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.”;

10/ § 47 subpara. 5 point 2 shall be replaced by the following:

“2/ shall constitute financial collateral referred to in Art. 1 in conjunction with Art. 5 subpara. 1 point 1 of the Law on certain financial collateral of 2 April 2004 (consolidated text: Dziennik Ustaw – Journal of Laws from 2020, item 103).

11/ § 47b subpara. 4 shall be replaced by the following:

“4. The value of securities issued by a participant holding the status of clearing member or by an entity of the participant’s group of companies, within the meaning of Article 3 subpara. 1 point 44 of the Accountancy Act of 29 September 1994 (consolidated text: Dziennik Ustaw - Journal of Laws from

2019, item 351, as amended), or securities for which the participant or such entity has granted a guarantee or surety to perform obligations arising thereunder shall not be recognised to any degree when calculating the value of margins posted by the participant. If a merger, split or take-over of the participant or another entity which has issued securities posted by the participant as margins or the acquisition of a significant block of shares of the participant or such entity or another event causes an effect through which securities become securities issued by the participant that has posted them as margins or by an entity of the participant's group of companies, within the meaning of Article 3 subpara. 1 point 44 of the Accountancy Act, the value of such securities shall cease to be recognised to any degree when calculating the value of posted margins as of the second day after it comes to the attention of KDPW_CCP.”;

12/ § 48 subpara. 3 shall be replaced by the following:

“3. The value of the initial margin required from a participant shall be calculated according to the risk parameters defined according to the Detailed Rules of Transaction Clearing (organised trading) in relation to the participant's transaction obligations whose clearing is secured with such margin (participant exposure) in order to:

- 1/ cover potential future participant exposure in the event of the participant's default;
- 2/ reflect the current participant exposure resulting from actual changes of market prices;
- 3/ cover the risk of liquidity of financial instruments and concentration of positions to the extent of participant exposure; and
- 4/ cover the risk of the correlation between participant exposure and participant credit risk.”;

13/ in § 48, after subpara. 3, subpara 3a shall be inserted as follows:

“3a. The value of the initial margin required from a participant shall be updated on each day when KDPW_CCP clears transactions.”;

14/ in § 49, subpara. 4 shall be inserted as follows:

“4. A surplus referred to in § 46b subpara. 2 shall constitute financial collateral posted as an initial deposit as of the date of posting according to the regulations governing a different clearing system operated by KDPW_CCP to the relevant account managed for KDPW_CCP.”;

15/ § 50a shall be deleted;

16/ § 77a subpara. 1 point 4 item (e) shall be replaced by the following:

“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, as amended), is not adopted within 30 calendar days after liquidation is initiated,”.

§ 2

This Resolution shall come into force two weeks after the Management Board of KDPW_CCP S.A. publishes the Resolution approved by the Polish Financial Supervision Authority.

Dr Marek Dietl

Chairman of the Supervisory Board