

Resolution No. 8/416/20
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 (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/ in § 1:

a/ point 8 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 2020, item 89, as amended),”;

b/ point 9 shall be replaced by the following:

“**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 2019, item 212) 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 S.A. containing the terms of a repo transaction within the meaning of these rules,”;

c/ 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 2019, item 2357, as amended),”;

d/ point 28 shall be replaced by the following:

“28/ **position opening proposal**, this shall be understood to mean, respectively:

a/ a proposal made by a clearing member in the service of closing positions on demand, referred to in § 90 subpara. 1, to submit through the agency of KDPW_CCP S.A. offers containing terms of opening the opposite position for selected positions registered in the clearing account maintained for the clearing member, or

b/ a proposal made by KDPW_CCP S.A. in the operation of automatic closing of positions, referred to in § 96 subpara. 1, to submit offers containing terms of opening a position corresponding to the position or positions of the defaulting participant which are being closed.

The proposal referred to, respectively, in letter (a) and letter (b) does not constitute an offer within the meaning of the provisions of the Civil Code of 23 April 1964 (consolidated text: Journal of Laws from 2019, item 1145, as amended),”;

e/ after point 34, point 34a shall be inserted as follows:

“34a/ 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.”;

f/ 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, 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,”;

g/ 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 2020, item 89),

2/ § 5 shall be replaced by the following:

“§ 5

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 the OTC Clearing System.
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 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 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 by facsimile or electronic mail over the internet. However, until the moment that 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 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. 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 the OTC Clearing System 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 the OTC Clearing System.
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 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.”;

3/ § 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 2019, item 160).”;

4/ § 75 shall be replaced by the following:

“§ 75

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 OTC clearing system.

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 OTC 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 need to take actions set out in this Section, KDPW_CCP shall notify the defaulting participant of such actions being taken through the SWI system or, if this is not possible, in any form.”;

5/ § 79 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: Journal of Laws from 2020, item 103), subject to § 86 subpara. 2.”;

6/ § 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 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 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.”;

7/ in § 83, subpara. 4 shall be inserted as follows:

“4. A surplus referred to in § 75 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.”;

8/ § 111 subpara. 1 point 4 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.

Chairman of the KDPW_CCP S.A.
Supervisory Board

Dr Marek Dietl