

# **RULES OF TRANSACTION CLEARING**

## **(non-organised trading)**

Valid as of 21 February 2018

These rules of transaction clearing, hereinafter referred to as the rules, define the operating principles of the OTC clearing system organised by KDPW\_CCP S.A. for transactions designated in the rules, executed outside organised trading.

### **TITLE I**

#### **GENERAL PROVISIONS**

##### **§ 1**

Whenever reference is made herein to the following terms:

1/ **payment agent**, this shall be understood to mean the Central Securities Depository of Poland or a subsidiary of the Central Securities Depository of Poland, designated by KDPW\_CCP S.A. in the Detailed Rules of the OTC Clearing System, which under an agreement executed with KDPW\_CCP S.A.:

a/ sends transfer orders according to the agreement with the relevant clearing bank or, being a participant of the relevant payment system, including a system that is a part of TARGET2, settlement orders to that system, in order to execute cash payments in the given currency arising from clearing performed by KDPW\_CCP S.A. for transactions in derivative instruments within the meaning of these rules, and

b/ holds an open bank account maintained according to the agreement with the clearing bank, which designates KDPW\_CCP S.A. for the purpose of executing cash flows in a given currency within the transaction clearing liquidity guarantee system,

2/ **settlement agent**, this shall be understood to mean an entity being a participant of the relevant securities settlement system which has consented for its depository account managed in that system to be used to perform transaction settlement within the meaning of these rules, for which the clearing member designated by it is a clearing counterparty, and to adjust assets posted in securities as margins required of such clearing member and as its contributions to the OTC guarantee fund, excluding assets which are securities referred to in § 79 subpara. 3 point 4,

2a/ **collateral agent**, this shall be understood to mean an entity which is a participant of the relevant depository system indicated by the Management Board of KDPW\_CCP in a resolution, which has agreed for the relevant securities account maintained for it in such system (on its account or on the account of a clearing member) to be used in order to adjust assets which are securities referred to in § 79 subpara. 3 point 4, posted as margins required of an indicated clearing member and as its contributions to the OTC guarantee fund, and to adjust entitlements from such securities, provided that the Management Board of KDPW\_CCP may define in a resolution the conditions to be fulfilled by such entity to be accepted by KDPW\_CCP as a collateral agent of the clearing member, in particular specify that such function:

a/ may be performed by such entity exclusively for one clearing member, which has appointed it as its collateral agent, or

b/ may not be performed by an entity which is a clearing member and has indicated a securities account managed for it in the relevant depository system in order to contribute securities, referred to in § 79 subpara. 3 point 4, as margins or contributions to the OTC guarantee fund,

3/ **clearing bank**, this shall be understood to mean, respectively:

a/ a bank managing bank accounts through which the entity which operates the relevant securities settlement system performs the settlement of transactions in securities, within the meaning of these rules, to the extent of cash payments in the given currency,

b/ the bank specified in the Detailed Rules of the OTC Clearing System, managing bank accounts through which are executed cash payments of the participant in the given currency arising from clearing performed by KDPW\_CCP S.A. for transactions in derivative instruments within the meaning of these rules, as well as cash flows within the transaction clearing liquidity guarantee system, provided that payments in EUR arising from the clearing of such transactions shall be executed in bank accounts maintained according to agreements concluded by participants or their payment agents with central banks which operate payment systems in TARGET2,

4/ **lack of coverage in a bank account**, this shall be understood to mean a situation where the cash obligations of a participant:

a/ cannot be met due to the lack of sufficient cash deposited in the bank account of the participant or the payment agent designated by it, or

b/ cannot be fully met with assets deposited in the bank account of the payment agent designated by it because the obligations exceed the relevant limits set by the payment agent, or

c/ cannot be fully met with assets deposited in the bank account of the participant or the payment agent designated by it due to other actions taken by the clearing bank or a central bank which operates a payment system in TARGET2, the payment agent or the competent authority, resulting in the inability to use such assets in order to fully meet the cash obligations of the participant,

5/ **CET**, this shall be understood to mean the official time introduced in the territory of the Republic of Poland according to the Act on Official Time in the Territory of the Republic of Poland of 10 December 2003 (Journal of Laws from 2004, No. 16, item 144), being respectively the Central European Time or the Central European Summer Time in the period from its introduction until its revocation,

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, or an additional margin,

6a/ **variation margin**, this shall be understood to mean the value of a cash payment, other than a margin, resulting from the valuation of a transaction registered in the OTC clearing system as a transaction for which the payment is calculated, determined by KDPW\_CCP according to the Detailed Rules of the OTC Clearing System as collateral against the liabilities of clearing counterparties resulting from such transaction, where:

a/ if the value of the payment is determined on the day of the registration of the transaction in the OTC clearing system, this shall be understood to mean the value resulting from the valuation of such transaction determined on that day,

b/ if the value of the payment is determined after the day referred to in item (a), this shall be understood to mean the value resulting from the difference between the valuation of the transaction determined on a given day and the cumulative variation margin,

7/ **instruction**, this shall be understood to mean a declaration or information submitted to the OTC clearing system, whose form, terms and procedures of submission, as well as format and structure are defined in these rules and the Detailed Rules of the OTC Clearing System, or sent by KDPW\_CCP S.A. from the system,

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 2014, item 94, 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 2013, No. 246) 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,

10/ **derivative instruments**, this shall be understood to mean financial instruments designated in the Detailed Rules of the OTC Clearing System, within the meaning of Article 2 subpara. 1 point 2 letters (c), (d), (g), (h) or (i) of the Act on Trading in Financial Instruments of 29 July 2005, other than securities, settled in cash in a given currency, which have not been admitted to trading on a regulated market or introduced to an alternative trading system by an entity operating such market or trading system, respectively, in the territory of the Republic of Poland, which belong to a derivative instrument class which KDPW\_CCP S.A. is authorised to clear,

11/ **KDPW\_CCP**, this shall be understood to mean the company KDPW\_CCP S.A.,

12/ **Risk Committee** or **Committee**, this shall be understood to mean a body independent of KDPW\_CCP S.A. which performs the opinion-making and advisory function for KDPW\_CCP S.A., referred to in § 9a,

13/ **netting**, this shall be understood to mean the netting of mutual debits arising from cleared transactions and from participation in the OTC clearing system, performed according to the rules and the Detailed OTC Clearing Rules,

14/ **clearing account**, this shall be understood to mean a registration device operated by KDPW\_CCP S.A. in the OTC clearing system for a participant in order to clear transactions to which it is a party or a clearing counterparty and to register the participant's positions towards KDPW\_CCP S.A.,

15/ **collateral account**, this shall be understood to mean a registration device operated by KDPW\_CCP S.A. in the OTC clearing system in order to register collateral constituting an initial deposit and an initial margin,

16/ **the Central Securities Depository of Poland**, this shall be understood to mean the company known as "The Central Securities Depository of Poland (KDPW)" (in Polish: "Krajowy Depozyt Papierów Wartościowych S.A."),

16a/ **settlement amount**, this shall be understood to mean the value of a cash payment, other than a variation margin, resulting from the valuation of a transaction registered in the OTC clearing system as a transaction for which the payment is calculated, determined by KDPW\_CCP under the terms of the cleared transaction defined according to the Detailed Rules of the OTC Clearing System as marking to market of a transaction, where:

a/ if the value of the payment is determined on the day of the registration of the transaction in the OTC clearing system, this shall be understood to mean the value resulting from the valuation of such transaction determined on that day,

b/ if the value is determined after the day referred to in item (a), this shall be understood to mean the value resulting from the difference between the valuation of the transaction determined on a given day and the cumulative settlement amount,

17/ **closing amount**, this shall be understood to mean the amount calculated by a clearing member according to § 115 in connection with immediate termination of a participation agreement due to occurrence of circumstances referred to in § 111 subpara. 1 point 4 on part of KDPW\_CCP S.A.,

18/ **collateral limit**, this shall be understood to mean the total value of an initial deposit and an initial margin deposited by a clearing member provided that the value of the initial margin registered in collateral accounts linked to client position accounts maintained for that participant is credited up to the amount of obligations calculated for such collateral accounts. The limit is determined by KDPW\_CCP S.A. for a clearing member on an on-going basis in the monitoring of risk arising from transactions accepted for clearing,

18a/ **position concentration limit**, this shall be understood to mean the value determined by KDPW\_CCP S.A. in a resolution by using a percentage ratio, which sets the maximum acceptable position concentration level,

19/ [repealed]

20/ **immediate termination of the agreement or termination of the agreement effective immediately**, this shall be understood to mean the procedure of termination of a participation agreement following a notice of termination given, respectively, by KDPW\_CCP S.A. or a clearing member in case of occurrence of an event of default within the meaning of these rules or in the event referred to in § 111 subpara. 1 point 4, taking into account the actions referred to, respectively, in § 113 or § 114 and § 115,

21/ **novation**, this shall be understood to mean a method of clearing a transaction whereby, at the time of acceptance of the transaction for clearing by KDPW\_CCP S.A., the rights and obligations arising from it expire and in their place, respectively:

a/ the transaction counterparty which is a clearing member obliged towards KDPW\_CCP S.A. to perform obligations arising from clearing of transactions concluded by it becomes the creditor or debtor under the terms of the transaction towards KDPW\_CCP S.A., or

b/ the transaction counterparty which is not a clearing member becomes the creditor or debtor under the terms of the transaction towards the participant that is a transaction clearing counterparty and agrees under an agreement signed with it to perform obligations arising from clearing of transactions concluded by it while that participant becomes the creditor or debtor under the terms of the transaction towards KDPW\_CCP S.A.,

22/ **securities concerned by a transaction**, this shall be understood to mean securities within the meaning of Article 3 point 1 letter (a) of the Act on Trading in Financial Instruments of 29 July 2005, which are Treasury bonds registered in the securities depository operated by the Central Securities Depository of Poland or a subsidiary of the Central Securities Depository of Poland to which it has

outsourced activities within the scope of the tasks referred to in Article 48 subpara. 1 points 1-6 of the Act, other than indexed Treasury bonds, concerned by a repo transaction or a sale transaction,

23/ **electronic platform**, this shall be understood to mean, respectively, a trading platform or a confirmation platform, designated by KDPW\_CCP S.A. in the Detailed Rules of the OTC Clearing System, being an electronic system organised by another entity, other than a regulated market or an alternative trading system, which matches parties concluding transactions within the system (trading platform) or instructions concerning concluded transactions submitted by participants of the system (confirmation platform) in a way resulting in, respectively, conclusion or confirmation of conclusion of such transactions; however, where repo transactions are confirmed on the basis of appropriately matching instructions submitted directly by clearing members to KDPW\_CCP S.A., according to the Detailed Rules of the OTC Clearing System, wherever reference is made to electronic platform, this shall be understood to mean KDPW\_CCP,

24/ **payment agent**, this shall be understood to mean an entity which has consented for its bank account maintained in a clearing bank or in TARGET2 to be used in order to execute cash credits and debits of a participant arising from transaction clearing performed by KDPW\_CCP S.A. in a given currency,

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 2015, item 128, as amended),

26/ **concentration level**, this shall be understood to mean the sum of the ratio of the absolute values of equivalent positions calculated for a given clearing member to the sum of the absolute values of equivalent positions of all clearing members, determined for a given class of derivative instruments and a given point of the yield curve, where equivalent position shall be understood to mean a position equivalent in terms of risk, calculated for positions registered in a given clearing account maintained for the clearing member, in a given class of derivative instruments and a given point of the yield curve,

27/ **position**, this shall be understood to mean, respectively, a credit or debit of a clearing member towards KDPW\_CCP S.A. arising from a transaction created as a result of novation or a transaction concluded within the transaction clearing liquidity guarantee system operated by KDPW\_CCP S.A.,

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 2014, item 121),

29/ **opposite position**, this shall be understood to mean a position which corresponds to another position in terms of the kind and parameters of derivative instruments or securities, as a result of which mutual debits arising from such positions may be reduced to the amount of the surplus of the higher of the debits,

30/ **event of default**, this shall be understood to mean a situation where a participant poses or

where existing circumstances suggest that the participant may soon pose a reasonable risk to the safety of trading or the proper operation of the OTC clearing system, in particular in relation to:

a/ reliable information which suggests that the participant's bankruptcy has been declared, the participant is insolvent or will soon be unable to timely meet obligations arising from transaction clearing, which occurs among others where:

- the participant has filed a motion for declaration of bankruptcy, or
- the competent regulatory authority has filed a motion for declaration of bankruptcy of the participant, or

b/ reliable information which suggests that:

- the participant is in liquidation, or
- the competent regulatory authority has decided to suspend the operation of the participant or to revoke the permission for its formation, or
- the competent regulatory authority has decided to impose compulsory administration on the participant, or
- the competent regulatory authority has been notified by the competent authority according to applicable law that the participant's assets are insufficient to meet its obligations, or
- the competent regulatory authority has decided to limit the scope of the participant's activity, as a result of which the participant will not be entitled to conclude or clear transactions, or
- another similar event has occurred and poses a risk to the safety of trading or the proper operation of the OTC clearing system, or

c/ merger, split or take-over of the participant or acquisition of the core assets of the participant by another entity, including acquisition of the enterprise or its organised part, where as a result of such event the participant's obligations are not recognised or taken over by, respectively, the entity taking over, the entity formed through the merger, or the split entity, or

d/ reliable information which suggests that the classification rating assigned by an entity which specialises in assigning such rating to the participant will be downgraded at least by three grades below the recent highest rating assigned since the conclusion of the participation agreement or will be downgraded below the investment grade or will no longer be assigned, or

e/ the participant's exceeding the collateral limit and failure to adjust the margins up to the required amount within the time limit set in § 87 subpara. 3, or

f/ the participant's non-performance or undue performance of its obligations arising from transaction clearing, or

g/ failure to submit the information referred to in § 20, or

h/ material breach of legal regulations by the participant, or

i/ breach of the terms and conditions of participation referred to in § 14 subpara. 2 in a way which poses the risk that obligations arising from transaction clearing will not be performed in due time, or

j/ the participant's non-performance or undue performance of other material obligations set out in the rules, which justifies the termination of its participation in the OTC clearing system, or

k/ identification by KDPW\_CCP S.A. of an event of default of the participant in another clearing system of which it is a participant, according to the regulations of the system, where such event poses a risk that liabilities arising from the clearing of transactions in the OTC clearing system will not be met timely by such participant or may pose a reasonable risk to the safety of trading,

31/ **transaction report**, this shall be understood to mean information concerning transactions in derivative instruments accepted for clearing, which are submitted, respectively:

a/ where KDPW\_CCP S.A. is responsible for the submission of such information – by KDPW\_CCP S.A.

to a trade repository in the scope, within time limits, and in the form determined in the agreement concluded by KDPW\_CCP S.A. with such trade depository or resulting from applicable legal regulations, or

b/ where a participant holding the status of clearing member ensures the submission of such information - by that participant or another entity to a trade repository designated according to the rules or another repository authorised under applicable legal regulations to collect and store information concerning derivative instruments and concerning transactions in such instruments,

32/ **trade repository**, this shall be understood to mean the Central Securities Depository of Poland or another entity designated by KDPW\_CCP S.A. in the Detailed Rules of the OTC Clearing System, which is authorised under applicable legal regulations to collect and store information concerning derivative instruments and concerning transactions in such instruments,

33/ **EMIR**, this shall be understood to mean Regulation of the European Parliament and of the Council (EU) No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (Official Journal of the European Union L 201 from 2012, p. 1, as amended),

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),

33b/ **cumulative variation margin**, this shall be understood to mean the sum of variation margins resulting from the valuation of a transaction registered in the OTC clearing system as a transaction for which the payment is calculated, determined by KDPW\_CCP for such transaction for the period from the date of its registration in the OTC clearing system to the date on which the sum is determined (exclusive of the latter date),

33c/ **cumulative settlement amount**, this shall be understood to mean the sum of settlement amounts resulting from the valuation of a transaction registered in the OTC clearing system as a transaction for which the payment is calculated, determined by KDPW\_CCP for such transaction for the period from the date of its registration in the OTC clearing system or the date of modification of the terms of determining the variation margin for such transaction, referred to in § 74c subpara. 1, respectively, to the date on which the sum is determined (exclusive of the latter date),

34/ **clearing counterparty**, this shall be understood to mean a clearing member, within the meaning of these rules, being a party to a transaction or representing a party to a transaction in transaction clearing performed by KDPW\_CCP S.A. in the OTC clearing system,

35/ **account system**, this shall be understood to mean all clearing accounts and collateral accounts managed by KDPW\_CCP S.A. in the OTC clearing system in order to perform transaction clearing, position registration, monitoring of risk arising from transactions accepted for clearing, and registration of collateral,

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 2013, item 246), 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,

37/ **OTC clearing system**, this shall be understood to mean a clearing system organised by KDPW\_CCP S.A. for transactions within the meaning of these rules, which is a securities settlement

system within the meaning of the Act 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,  
38/ **settlement system**, this shall be understood to mean a securities settlement system referred to in Article 1 point 2 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, operated by, respectively:

a/ the Central Securities Depository of Poland or a subsidiary of the Central Securities Depository of Poland to which it has outsourced activities within the scope of transaction settlement,

b/ a settlement institution operated under authorisation from the Polish Financial Supervision Authority, designated by KDPW\_CCP S.A. in the Detailed Rules of the OTC Clearing System, or

c/ another entity authorised to perform transaction settlement, designated by KDPW\_CCP S.A. in the Detailed Rules of the OTC Clearing System,

39/ **SWI system**, this shall be understood to mean an electronic communication system operating under an agreement concluded with the Central Securities Depository of Poland, under which information and declarations referred to in these rules, the Detailed Rules of the OTC Clearing System and other resolutions issued under the rules are submitted in electronic form by KDPW\_CCP S.A. to a participant or participants of the OTC clearing system or by a participant of the OTC clearing system to KDPW\_CCP S.A. through the agency of the Central Securities Depository of Poland according to the agreement concluded with it,

40/ **transaction clearing liquidity guarantee system**, this shall be understood to mean the system referred to in Article 48 subpara. 10 point 2 of the Act on Trading in Financial Instruments of 29 July 2005,

41/ **Detailed Rules of the OTC Clearing System**, this shall be understood to mean detailed rules governing the operation of the OTC clearing system, which have been set out in a resolution of the KDPW\_CCP S.A. Management Board,

42/ **replacement payment**, this shall be understood to mean a cash payment which satisfies the obligation arising from the clearing of a transaction created as a result of novation, paid to a participant affected by default in cases and on the terms set out in these rules,

43/ **table of fees**, this shall be understood to mean Appendix 1 to these rules, which defines the types and amounts of fees as well as detailed rules of their calculation,

44/ **transaction**, this shall be understood to mean the legal relationship resulting from, respectively:

a/ a derivative transaction, a sale transaction or a repo transaction within the meaning of these rules, concluded on an electronic platform operated outside organised trading within the meaning of these rules or confirmed on such platform in a matter designating its conclusion,

b/ a repo transaction within the meaning of these rules, confirmed on the basis of appropriately matching instructions submitted by clearing members,

c/ a transaction concluded within the transaction clearing liquidity guarantee system operated by KDPW\_CCP S.A.,

d/ novation of a transaction referred to, respectively, in letter (a), (b) or (c),

44/ **transaction for the opposite position**, this shall be understood to mean, respectively:

a/ a derivative transaction concluded by a clearing member in order to close the opposite position in the service of closing positions on demand referred to in § 90 subpara. 1, or

b/ a transaction concluded by KDPW\_CCP S.A. in the operation of automatic closing of positions referred to in § 96 subpara. 1,

46/ **affected transaction**, this shall be understood to mean a transaction (“transaction A”) created as

a result of novation of a transaction accepted to the OTC clearing system which cannot be executed timely due to the non-performance or undue performance by the defaulting participant of an obligation arising from another transaction (“transaction B”), which was also created as a result of novation of the same transaction accepted to the OTC clearing system,

47/ **derivative transaction**, this shall be understood to mean a transaction in derivative instruments that are, respectively, a forward rate agreement or an interest rate swap, which fulfils the standard terms and conditions set out in the Detailed Rules of the OTC Clearing System, determined on the basis of a clearing instruction within the meaning of these rules,

48/ **repo transaction**, this shall be understood to mean a repo agreement or a sell/buy-back agreement, which fulfils the standard terms and conditions set out in the Detailed Rules of the OTC Clearing System, determined on the basis of a clearing instruction within the meaning of these rules, consisting of an opening transaction and a closing transaction, under which one party transfers the ownership of specific securities concerned by a transaction and subsequently buys them back while the other party pays for the securities and subsequently transfers the ownership of the securities back,

48a/ **sale transaction**, this shall be understood to mean the sale of specific securities concerned by a transaction, which meets the standard terms laid down in the Detailed Rules of the OTC Clearing System, determined on the basis of a clearing instruction within the meaning of these rules, which is not concluded in the regulated market or alternative trading system,

49/ **participation** or **participant**, this shall be understood to mean, respectively, participation in the OTC clearing system or a participant of this system,

50/ **participant affected by default**, this shall be understood to mean a clearing member which for KDPW\_CCP S.A. is the other clearing counterparty of an affected transaction, which has not received timely the payment arising from the transaction due to the non-performance or undue performance by the defaulting participant of an obligation arising from another transaction created as a result of novation,

51/ **defaulting participant**, this shall be understood to mean a clearing member on whose part default has occurred within the meaning of these rules,

52/ **clearing member** or **participant holding clearing member status**, this shall be understood to mean a participant who, by acquiring the status of clearing member in the OTC clearing system, has accepted liability to KDPW\_CCP S.A. for proper performance of obligations arising from clearing of transactions registered in the clearing account maintained in the OTC clearing system for that participant, including obligations related to the formation and operation of the transaction clearing liquidity guarantee system,

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 2014, item 94, as amended),

54/ **applicant**, this shall be understood to mean an entity which seeks participant status in the OTC clearing system organised by KDPW\_CCP S.A. with a specific participant status type or for change of such status under the participation agreement concluded with it,

54a/ **KDPW\_CCP capital requirement**, this shall be understood to mean a defined amount of the capital of KDPW\_CCP referred to in Article 16 subpara. 2 of EMIR calculated by KDPW\_CCP S.A. according to the rules notified to clearing members according to § 78a subpara. 7 taking into account legal regulations applicable to KDPW\_CCP S.A. and the safety of trading in a way ensuring protection of KDPW\_CCP S.A. against the risk arising from the conducted activity and effective liquidation or restructuring of such activity,

54b/ **dedicated resources**, this shall be understood to mean a defined amount of resources constituting own capital of KDPW\_CCP S.A. calculated by KDPW\_CCP S.A. according to § 78a subpara. 2, 3, 6 and 7 taking into account legal regulations applicable to KDPW\_CCP S.A. and the safety of trading, dedicated to cover the loss in the event of default in respect of obligations arising from transactions cleared by KDPW\_CCP S.A. prior to using the contributions to the OTC guarantee fund excluding the contribution of the participant on whose part the event of default has occurred,

54a/ **transaction settlement suspension**, this shall be understood to mean non-execution by the relevant settlement system of a settlement instruction sent by KDPW\_CCP S.A. to such system for a repo transaction or a sale transaction whose clearing counterparty is a clearing member, covered by the transaction clearing liquidity guarantee system, to the extent of liabilities arising from such transaction and within the time limit that such liabilities should be met, as a result of which the entity which operates such settlement system has suspended, pursuant to Article 45f subpara. 1 of the Act on trading in financial instruments, the settlement of such transaction in whole or in part due to circumstances arising on part of such participant or its settlement agent or its payment agent,

55/ **settlement order**, this shall be understood to mean an instruction of settlement of cleared transactions referred to, respectively, in Article 1 point 12 letter (a) or (b) 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,

56/ **submitting, making available, or delivering, respectively, an instruction, information or declaration**, unless the rules provide otherwise, this shall be understood to mean delivery by KDPW\_CCP S.A. to a participant or by a participant to KDPW\_CCP S.A. of the contents of, respectively, a declaration or information in the procedure and in the form set out under these rules.

## § 2

1. In the OTC clearing system:

1/ clearing of transactions accepted to the system, referred to in § 1 subpara. 44 letters (a)-(c), is performed on the basis of novation,

2/ a transaction clearing liquidity guarantee system is operated.

2. KDPW\_CCP shall publish on its website a directory of electronic platforms.

## § 3

1. The rules of operation of the OTC clearing system are described in these rules, the Detailed Rules of the OTC Clearing System and other resolutions of the Management Board of KDPW\_CCP adopted under the rules.

2. The Management Board of KDPW\_CCP may adopt resolutions, including the Detailed Rules of the OTC Clearing System, on detailed matters that relate to the operation of the clearing system, other than matters regarding the rights and obligations of participants, which define the terms and conditions of acquiring and losing participation status.

3. The resolutions referred to in subpara. 2 shall be made available to the interested participants for information immediately upon being adopted.

4. Subject to subpara. 5, the resolutions referred to in subpara. 2 shall come into force two weeks after their becoming available according to subpara. 3, unless they designate a longer period before coming into force.

5. Where applicable legal regulations designate that specific matters require the fulfilment of additional requirements, the resolutions referred to in subpara. 2 shall not come into force before

such requirements are fulfilled.

6. The provisions of subpara. 2-5 shall apply to amendment of resolutions referred to in subpara. 2.

7. The provisions of subpara. 4 shall not apply to resolutions of the Management Board of KDPW\_CCP that relate to matters of concluding, amending and terminating participation agreements with an individual participant or to resolutions which do not contain provisions relating to the rights and obligations of participants. Subject to the provisions of subpara. 3, such resolutions shall come into force upon being adopted, unless the relevant resolution designates a later date.

8. The Management Board of KDPW\_CCP shall adopt the Detailed Rules of the OTC Clearing System in keeping with legal regulations, the safety of trading and the provisions of the rules. The scope and subject matter of the Detailed Rules of the OTC Clearing System shall include in particular:

1/ the scope and nature of matters which are to be regulated by the Detailed Rules of the OTC Clearing System according to the provisions of the rules,

2/ the specificity and functionality of actions taken in the OTC clearing system which are to be regulated by the Detailed Rules of the OTC Clearing System according to the provisions of the rules,

3/ the necessity of ensuring proper operation of the OTC clearing system including ensuring safe and efficient transaction clearing in the system,

4/ the necessity of maintaining clear and transparent rules of transaction clearing in the OTC clearing system.

#### § 4

1. KDPW\_CCP shall make available to participants the rules, the Detailed Rules of the OTC Clearing System and resolutions adopted under the rules, as well as their amendments, by publishing their content on the KDPW\_CCP website or delivering their content to the participants in writing or through the SWI system.

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.

#### § 5

1. All declarations and information shall be delivered by KDPW\_CCP to a clearing member or by a clearing member to KDPW\_CCP in electronic form through the SWI system, subject to subpara. 3-4, § 32 subpara. 7, § 32a subpara. 4, § 75 subpara. 2, § 113 subpara. 5 and cases defined in the Detailed Rules of the OTC Clearing 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. Subject to subpara. 5, the following declarations and information shall not be transmitted through the SWI system in electronic form and require the delivery to the addressee of the original document containing such declaration or such information or its appropriately certified copy:

1/ declarations and information submitted by 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,

2/ declarations and information submitted by a clearing member, referred to in Title III "Participation", unless the rules provide otherwise,

3/ declarations and information submitted by 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,

4/ declarations and information submitted by KDPW\_CCP or by a participant in matters concerning the complaint handling procedure referred to in Title IX "Complaint Handling Procedure".

4. The Management Board of KDPW\_CCP may define in the Detailed Rules of the OTC Clearing System other instances where the submission of declarations or information should take place otherwise than through the SWI system or according to subpara. 3.

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 – also a computer print-out which meets the requirements to consider its effect to be equivalent to that of documents issued by the Central Information of the National Court Register,

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.

## § 6

1. Should the declaration or information sent by electronic means be specifically formatted or have a predefined structure, KDPW\_CCP shall designate the necessary format or structure of such a declaration or information on its website, subject to subpara. 2.

2. KDPW\_CCP shall inform participants about each change of the relevant requirements to the extent referred to in subpara. 1 at least two weeks prior to their introduction.

## § 7

1. Whenever a number of days is specified in a time limit, it shall exclude all official holidays, specified in the applicable regulations, and Saturdays, subject to subpara. 2 and 3.

2. If so required by the OTC clearing system, the Management Board of KDPW\_CCP may, by way of a resolution, specify additional days that shall be excluded when calculating time limits referred to in the rules, the Detailed Rules of the OTC Clearing System or other resolutions of the Management Board of KDPW\_CCP adopted under these rules, and specify days from among those referred to in

subpara. 1 that shall be included in the time limit calculation. KDPW\_CCP shall notify its participants of every such case at least one month in advance.

3. The provisions of subpara. 1 shall not apply to the calculation of the time limits referred to in § 111 subpara. 1 point 4 and § 125.

4. In instances where the rules impose a duty to perform an activity or make an effect dependent on the performance of an activity and do not specify in days, weeks or otherwise when such activity is to be carried out, such activity should be performed immediately after the occurrence of the event which requires such activity to be carried out.

#### § 8

1. Relations between KDPW\_CCP and participants under participation agreements and transactions created as a result of novation shall be governed by the laws of the Republic of Poland, subject to § 86 subpara. 2 as well as § 4a subpara. 1 of the OTC Guarantee Fund Rules.

2. Any civil disputes arising from proprietary interests connected with participation, including connected with transactions arising as a result of novation, arising between participants, or between a participant and KDPW\_CCP, shall be submitted to the jurisdiction of the common court of law with jurisdiction over the seat of KDPW\_CCP.

#### § 9

1. KDPW\_CCP shall publish on its website a directory of securities concerned by transactions. Amendment of the directory shall take effect no earlier than the day following the day of publication.

2. Amendment of the directory referred to in subpara. 1 shall not affect transactions accepted for clearing in the OTC clearing system.

#### § 9a

1. The OTC clearing system includes a Risk Committee acting as an opinion-making and advisory body to KDPW\_CCP.

2. The terms and conditions of operation of the Risk Committee are set out in the Statute of KDPW\_CCP and a resolution of the Supervisory Board of KDPW\_CCP in a way which ensures the independence of the Risk Committee of direct impact of the Management Board of KDPW\_CCP S.A. and other persons who actually manage the activity of KDPW\_CCP including without limitation opinions given by the Risk Committee.

3. KDPW\_CCP shall not be bound by the content of opinions of the Risk Committee.

#### § 9b

1. KDPW\_CCP may perform activities defined in the rules and in the Detailed Rules of the OTC Clearing System in cases defined therein through the agency of the Central Securities Depository of Poland, subject to subpara. 2 and 3.

2. KDPW\_CCP may order the Central Securities Depository of Poland to perform activities which are the core activities related to risk management only if approved by the Polish Financial Supervision Authority.

3. The activities referred to in subpara. 1 may be performed with the assistance of the Central Securities Depository of Poland if this is in compliance with legal regulations, the safety of trading and provisions of the rules, including without limitation:

1/ KDPW\_CCP shall be responsible for any action or omission of the Central Securities Depository of

Poland as for its own,

2/ performance of such activities shall be under the management of and on the terms and conditions defined by KDPW\_CCP, which shall have on-going direct access to information concerning such activities,

3/ proper supervision of performed activities and protection of all related confidential information shall be ensured,

4/ performance of such activities with the assistance of the Central Securities Depository of Poland shall not alter the rights and obligations of participants to which they are entitled in relations with KDPW\_CCP or obligated under the rules.

## **TITLE II STATUS AND RESPONSIBILITIES OF KDPW\_CCP**

### **§ 10**

1. KDPW\_CCP is an entity which, with regard to transactions accepted to the OTC clearing system, acts as the 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, between clearing members representing, respectively, party A (the buyer who takes a long position) and party B (the seller who takes a short position).

2. Under the terms set out in these rules and the applicable legal regulations, KDPW\_CCP enters the rights and obligations arising from transactions accepted for clearing.

3. For transactions concluded on an electronic platform or confirmed on such platform in a manner designating their conclusion, to which provisions of the laws of the Republic of Poland apply, KDPW\_CCP enters the rights and obligations arising from transactions accepted for clearing according to the relevant provisions of the Act which define the mode of clearing consisting in novation of such transactions.

4. For transactions concluded or confirmed on an designated electronic platform under provisions of foreign laws, determined according to these rules and the Detailed Rules of the OTC Clearing System, KDPW\_CCP may enter the rights and obligations under relations concerning mutual obligations arising from the acceptance of such transactions for clearing unless this should cause a breach of the provisions of these rules and resolutions adopted under these rules.

5. Where a party to a transaction is represented in clearing performed by KDPW\_CCP by another entity which is a clearing member, KDPW\_CCP enters the rights and obligations arising from such transaction acting as the central counterparty for that participant.

6. Where a party to a transaction is represented in clearing performed by KDPW\_CCP by a clearing member which is a company operating a clearing house or an entity with its seat outside the Republic of Poland which performs tasks relating to the clearing of transactions concluded in trading in financial instruments, KDPW\_CCP enters the rights and obligations arising from such transaction acting as the central counterparty for that participant, subject to the special provisions set out in the agreement concluded with such participant.

7. The provisions of subpara. 6 shall apply accordingly where KDPW\_CCP represents a participant in clearing performed by another entity. In this case, KDPW\_CCP shall clear accounts with the represented participant in respect of payments received in connection with representing the participant in clearing performed by another entity, provided however that such payments may be used to meet the obligations of the participant arising from the clearing of transactions performed by

such entity or by KDPW\_CCP and, where such payments arise from transactions concluded by the participant and cleared by another entity, they shall not be paid to the participant before the participant has made to KDPW\_CCP such payments which it is obliged to make under such transactions.

#### § 11

1. The obligation of KDPW\_CCP resulting from entering the rights and obligations of a party to a transaction as a result of its novation shall only arise towards clearing members which are clearing counterparties of the transaction and shall be performed by executing the clearing payment determined exclusively on the basis of a clearing instruction concerning the transaction.

2. The application of Article 481 § 1 of the Civil Code shall be excluded in relations concerning mutual obligations between KDPW\_CCP and clearing members which are clearing counterparties of transactions created as a result of novation.

3. In relations concerning mutual obligations between KDPW\_CCP and clearing members which are clearing counterparties of transactions created as a result of KDPW\_CCP entering the rights and obligations arising from cleared transactions referred to in § 10 subpara. 4, the obligations of KDPW\_CCP arising from such relations concerning mutual obligations shall not include any accessory payments, in particular interest for delayed cash payments, liquidated damages for non-performance or undue performance of a payment, or compensation for damage or harm suffered as a result of suspension of transaction settlement.

#### § 12

1. In the event of non-performance or undue performance of its duties, KDPW\_CCP shall not be liable to provide compensation for damage or harm resulting in loss of any gains which a party would have been able to obtain had the damage or harm been avoided, unless the damage or harm was intentional or the result of gross negligence on the part of KDPW\_CCP.

2. KDPW\_CCP shall not be liable to provide compensation for damage or harm suffered as a result of a transaction concluded or confirmed on an electronic platform being inconsistent with the contents of the clearing instruction entered to the OTC clearing system, invalid, or unenforceable for reasons beyond the control of KDPW\_CCP.

3. KDPW\_CCP shall not be liable to provide compensation for damage or harm suffered as a result of actions taken by KDPW\_CCP according to the rules due to the occurrence of an event of default.

4. KDPW\_CCP shall not be liable to provide compensation for damage or harm suffered as a result of suspension of transaction settlement or lack of a cash payment arising from the clearing of a derivative transaction within the time limit determined by the parties to the transaction, unless the non-performance or undue performance of the obligation referred to in § 11 subpara. 1 was intentional or the result of gross negligence on the part of KDPW\_CCP

5. KDPW\_CCP shall not be liable to the extent set out in § 108 subpara. 3, § 109 subpara. 3, and § 110 subpara. 1 point 5 and subpara. 2.

#### § 13

1. KDPW\_CCP shall not be liable for non-performance or undue performance:

1/ on the part of an entity operating a settlement system – of settlement orders concerning cleared transactions or their non-acceptance or undue acceptance to the system for reasons beyond the control of KDPW\_CCP,

2/ on the part of a trade repository – of obligations arising from tasks performed by it, connected to the delivery by KDPW\_CCP of reports for transactions accepted to the OTC clearing system, unless non-performance or undue performance of such obligations is for reasons within the control of KDPW\_CCP.

2. Where cash payments in a given currency resulting from clearing performed by KDPW\_CCP for derivative transactions are made through a payment agent, KDPW\_CCP shall be liable for the action and omission of the agent to the extent of delivery of, respectively, the settlement order to the relevant payment system or the transfer order to the clearing bank.

### **TITLE III PARTICIPATION**

#### **SECTION I GENERAL PROVISIONS**

##### **§ 14**

1. The following legal entities may be participants:

1/ investment firms,

2/ domestic banks,

3/ foreign investment firms,

4/ legal entities other than those referred to in point 1-3, provided that they are eligible to become participants under legal provisions applicable in the Republic of Poland, referred to in § 8 subpara. 1, and according to the provisions of the rules its participation is aimed at co-operation with KDPW\_CCP to the extent of activities performed in the OTC clearing system,

5/ entities with a seat outside the Republic of Poland, which perform activities relating to the clearing of transactions concluded in trading in securities, subject to § 17, or,

6/ companies managing a clearing house,

2. Only such entities are eligible as clearing members which:

1/ are holders of a depository account or a securities account managed in a relevant settlement system by the entity operating the system, or have a settlement agent in that system, where such entity intends to participate in the clearing of repo transactions and sale transactions, and

2/ are holders of a bank account in the Polish currency in the relevant clearing bank, and where in intends to participate in clearing in EUR – also a bank account maintained in EUR in TARGET2, or have a payment agent maintaining such account in such bank or in such system, respectively, and

3/ are 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, or a foreign legal person, referred to in Article 115(1) of the Law.

##### **§ 15**

The participation agreement shall define the scope of liability of the participant in the OTC clearing system, in particular by specifying the type or types of participant status granted to the participant according to the classification in § 16 subpara. 1.

##### **§ 16**

1. The following types of participation status are admitted:

1/ general clearing member – where the clearing member being a financial institution referred to in § 14 subpara 1 points 1-4 is liable in the OTC clearing system for transactions:

a/ concluded by itself on its own account and then confirmed on an electronic platform, and

b/ concluded by another entity on its own account and then confirmed on an electronic platform;

2/ individual clearing member – where the clearing member being a financial institution referred to in § 14 subpara 1 points 1-4 is liable in the OTC clearing system for transactions concluded by itself on its own account and then confirmed on an electronic platform,

3/ clearing house – where the clearing member is an entity referred to in § 14 subpara. 1 point 5 or 6, liable in the OTC clearing system for transactions concluded or confirmed by itself on an electronic platform as part of a clearing guarantee system or by other entities, subject to subpara. 2,

4/ non-clearing member - where the participant not being a clearing member acting with the participation type referred to in point 1, 2 or 3 is a client of a clearing member authorised to require KDPW\_CCP to perform the actions referred to in § 110a - § 110c, respectively.

2. The participation type of clearing house shall be granted to an applicant:

1/ operating an activity involving the performance of transaction clearing, and

2/ which has concluded with KDPW\_CCP a separate agreement concerning co-operation of clearing systems operated by KDPW\_CCP and such entity. In that case, the provisions of these rules shall apply to the participation agreement concluded with such entity with the participation type of clearing house, subject to the special provisions set out in the agreement.

#### § 17

Institutions with a seat abroad, which perform activities relating to the clearing of transactions concluded in trading in securities which is not subject to supervision by the appropriate body supervising financial institutions in European Union member states, European Economic Area agreement signatory countries, or Organisation for Economic Co-operation and Development member countries, may become a participant with the participation type of clearing house on the condition that they obtain the consent of the Polish Financial Supervision Authority.

#### § 18

1. A participant with the participation type of non-clearing member shall only be an entity which has a relevant participant in the clearing system holding the participant type of general clearing member through which it participates in transaction clearing, subject to subpara. 2.

2. An entity with the participant type of non-clearing member shall act single-handedly in the cases referred to in § 110a - § 110c and in matters concerning the submission of declarations and documents in matters relating to the extension, limitation or termination of participation, the application of measures for maintaining order and discipline, and as part of the update of documents submitted by a non-clearing member in order to conclude or amend a participation agreement.

#### § 19

Rights arising from a participation agreement to which a clearing member is a party may only be transferred with the consent of KDPW\_CCP to another clearing member holding the same status of clearing member in the OTC clearing system.

#### § 20

1. The Management Board of KDPW\_CCP may require at any time that a participant provide

information necessary to assess whether it meets the terms and conditions of participation, including information about the classification rating assigned by an entity specialising in the assignment of such rating to the participant.

2. Participants shall be obliged to notify KDPW\_CCP promptly of changes to the information described in § 23 subpara. 1-3, as well as any downgrade of the classification rating referred to in subpara. 1 or discontinuation of such rating.

3. Participants shall be obliged to notify KDPW\_CCP promptly of any circumstances arising on their part which give rise to the occurrence of an event of default or justified suspicion of its occurrence, no later than within 24 hours after the occurrence of such circumstances, and of any other events which may adversely affect their performance of obligations arising from participation within the same time limit, unless the rules designate a different time limit.

## **SECTION II**

### **CONCLUSION AND AMENDMENT OF A PARTICIPATION AGREEMENT**

#### **§ 21**

1. An applicant that intends to obtain participation shall submit a declaration on the intention to conclude a participation agreement in the form of an application sent to KDPW\_CCP.

2. The participation agreement shall be concluded within two weeks after the date of the submission of the relevant application referred to in subpara. 1 to KDPW\_CCP if the applicant fulfils the terms and conditions of participation specified by the law and by these rules and the application and appended documents meet the formal terms and conditions specified herein.

3. In circumstances where the submitted application or appended documents require completion or amendment, the time limit referred to in subpara. 2 shall start on the day on which the applicant performed the relevant completion or amendment. In such cases, KDPW\_CCP shall prepare information about the scope of the necessary completion or amendments within two weeks of the day of receipt of the application, and shall without delay send this information to the applicant.

4. If the applicant does not fulfil the terms and conditions of participation specified by the law and by these rules, KDPW\_CCP shall, within the time limit referred to in subpara. 2 and 3, adopt a resolution refusing participation. Such resolution shall require justification. A resolution refusing participation may be appealed against to the Supervisory Board of KDPW\_CCP. The Supervisory Board of KDPW\_CCP shall review an appeal within 2 weeks from submission.

5. The provisions of subpara. 1-4 shall apply accordingly to amendments of participation agreements.

#### **§ 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.

§ 23

1. The following shall be appended to the application for a participation agreement:

1/ a copy of the company statute or articles of association and a valid copy or excerpt from the relevant company register,

2/ a copy of the business authorisation granted according to, respectively, Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, the Directive of the European Parliament and of the Council 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, or Directive 73/239/EEC of 22 June 1987 on the coordination of laws, regulations and administrative provisions relating to the taking-up and pursuit of the business of direct insurance other than life assurance or Directive 2002/83/EC of 5 November 2002 concerning life assurance or Directive 2005/68/EC of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC as well as Directives 98/78/EC and 2002/83/EC or Directive 2009/65/EC of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) or Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, as well as relevant legal regulations applicable in the country of, respectively, the seat or branch of the applicant. In addition, where additional conditions are required in connection with business pursued by the applicant in the Republic of Poland – a declaration to the effect that conditions required to take up business in the Republic of Poland have been fulfilled,

3/ a card with specimen signatures of the applicant's authorised representatives, as well as copies of powers of attorney in instances where the right to represent the applicant by those persons submitting a specimen signature on the specimen signature card does not derive from the documents specified in point 1,

4/ a declaration relating to the submission of disputes referred to in § 8 subpara. 2 to the jurisdiction of the common court of law with jurisdiction over the seat of KDPW\_CCP,

5/ an information card containing the address for deliveries and, for an entity that seeks the participation type of non-clearing member, also the number of the bank account of the entity in the currency in which transaction clearing is performed, as well as a list of staff authorised by the applicant to contact KDPW\_CCP that includes their positions, telephone/facsimile numbers as well as email addresses.

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 2012, item 826, as amended).

2. Subject to subpara. 3a, if the application concerns a participation type related to the status of clearing member, the applicant shall, in addition to the documents described in subpara. 1, also append the following to the application:

1/ a list of staff involved in transaction clearing that includes their positions, telephone and facsimile

numbers as well as e-mail addresses,

2/ if the applicant intends to participate in the clearing of repo transactions and sale transactions or post securities referred to in § 79 subpara. 3 point 1-3 as margins or contributions to the OTC guarantee fund:

a/ a declaration providing the identifier of the applicant in the relevant settlement system or designating an entity that will perform the role of settlement agent for the applicant and the identifier of that entity in the relevant settlement system,

b/ a declarations of the entity indicated by the applicant according to item (a) that intends to perform the functions of settlement agent, providing its consent to perform these functions for the applicant,

3/ a declaration indicating the number of the bank account of the applicant managed in the relevant clearing bank in the Polish currency in which it will execute cash credits and debits arising from the clearing of transaction performed by KDPW\_CCP according to the rules or designating the entity that will perform the role of payment agent for the applicant and the number of the bank account managed for it in the clearing bank and where the applicant plans to participate in clearing in EUR - the number of the bank account managed for the applicant in TARGET2 or indicating the entity that will perform the function of payment agent for the applicant and the number of the bank account maintained for it in this system,

4/ a declarations of the entity designated by the applicant in accordance with the provisions of point 3 that intends to perform the functions of payment agent, providing their consent to perform these functions for the applicant,

5/ if the applicant submits the application:

a/ after the end of the period in which financial statements for a given period should be audited according to applicable legal regulations concerning the applicant – the audited financial statements for the period together with the auditor’s opinion and report, and where such statements are not required to be audited according to the legal provisions applicable in the state of seat of the applicant or where a seat is not required to be established, then its head office – approved or authorised by the competent authority,

b/ on the lapse of six months after the end of the last six months of a financial year or the start of business – interim financial statements for the period,

6/ if the applicant intends to post securities referred to in § 79 subpara. 3 point 4 as margins or contributions to the OTC clearing guarantee fund:

a/ a declaration indicating, according to a resolution of the Management Board of KDPW\_CCP, a relevant identifier of the applicant in the relevant depository system for such securities, indicated by KDPW\_CCP, or the number of the securities account managed for the applicant in such system and, where the securities account is to be managed for a collateral agent in such system, indicating an entity that will perform the function of collateral agent and, according to a resolution of the Management Board of KDPW\_CCP, a relevant identifier of the agent or applicant in such system, or the number of the relevant securities account managed for the agent or applicant in such system,

b/ a declaration of the entity indicated by the applicant according to item (a) that will perform the function of collateral agent, wherein it agrees as referred to in § 1 point 2a item (a) in favour of the applicant, unless a separate agreement between KDPW\_CCP and the entity or an entity operating the depository system for such securities confirms that it performs such function for the applicant,

7/ if according to the relevant legal provisions applicable in the state of seat of the applicant or where a seat is not required to be established, then its head office, CRR does not apply to its activity:

a/ a declaration of the applicant indicating the elements referred to in § 28 subpara. 3-4 and § 29 subpara. 2-4, which it considers eligible according to those provisions for the calculation of Tier I capital and funds considered equivalent to Tier I capital within the meaning of CRR, where such declaration should be authenticated by a person authorised as an auditor in a European Union Member State or a third country and subject to public supervision, disciplinary system and quality assurance system in such state, considered equivalent to the requirements laid down in the provisions referred to in § 8 subpara. 1,

b/ a list of financial information referred to in § 32 subpara. 3, to the extent defined according to subpara. 2, which the participant is required to provide to the competent authorities which supervise its operation and the time limits within which it is required to provide such information to such authorities and where there is no such requirement – a declaration to the effect that it is not required to provide specific data to such authorities according to the applicable legal provisions binding such participant.

3. If an applicant seeking the status of clearing member has provided the financial information referred to in § 32 subpara. 2 and 3 to the competent authorities which supervise its operation, according to the applicable regulations binding it, it shall also attach to the application such information prepared for the last period of activity preceding the date of submission of the application described in subpara. 2 point 5 item (a) or (b), respectively. Subject to subpara. 4, the applicant shall provide the financial information referred to in the preceding sentence prepared on a separate basis and where the relevant legal provisions applicable in the state of its seat or, where a seat is not required to be established, its head office require it to prepare and provide such information to the competent authorities which supervise its operation on a consolidated basis – then in addition it shall provide such information prepared on such basis.

4. If according to the applicable provisions of CRR the competent authorities which supervise the operation of the applicant have waived the precautionary requirements on an individual basis, and as a result it is not required to provide such authorities with the financial information referred to in § 32 subpara. 2 and 3 prepared on a separate basis, it shall attach to the application a copy of the official document which confirms that the precautionary requirements have been waived on such basis. In that case, the applicant shall attach financial information provided on a consolidated basis to the competent authorities which exercise consolidated supervision over the applicant unless the applicable legal provisions do not require it to provide such information to such authorities, as confirmed by a copy of the official document attached by the applicant to the application.

5. Where an applicant is a participant of a separate clearing system operated by KDPW\_CCP for transactions executed in organised trading and, when applying for participation in that system, it submitted documents referred to in subpara. 1 points 1-3 and 5-6, subpara. 2 points 1-3, point 5, point 6 item (a), point 7, and subpara. 3-4, in place of such documents it may submit a declaration confirming their application to participation in the OTC clearing system, unless they have been amended and KDPW\_CCP has not yet been notified thereof.

6. Upon the conclusion of a participation agreement, the declarations referred to in subpara. 2 points 2, 3 and 4 may be amended but any such amendment shall be effective to KDPW\_CCP no earlier than on the second day after the submission of the relevant declaration by the participant to KDPW\_CCP unless KDPW\_CCP agrees to a shorter period.

**SECTION III**  
**OBLIGATIONS OF A CLEARING MEMBER**

§ 24

1. A clearing member who has acquired a given participation type shall be obliged, before commencing activity in the OTC clearing system within such participation type, to do the following:

1/ make a contribution to the OTC guarantee fund,  
2/ pay an initial deposit in the amount set by the Management Board of KDPW\_CCP in a resolution (minimum amount of initial deposit),

3/ open a clearing account in the OTC clearing system relevant for the given participation type,

4/ deliver a written power of attorney for KDPW\_CCP, according to the model set out by KDPW\_CCP, to:

a/ close positions in derivative instruments on the participant's account for which the participant holds the status of clearing member, in instances described in the rules,

b/ receive and submit on its behalf declarations of will on matters concerning the transfer within the transaction clearing liquidity guarantee system of positions arising from transactions executed by an entity acting with the participation type of non-clearing member, represented by the participant in the clearing system, or executed on the account of such entity, together with the collateral of such positions posted as initial margin, and perform actions referred to in § 110a - § 110c in the cases described in the rules,

5/ deliver a written power of attorney for KDPW\_CCP, according to the model set out by KDPW\_CCP, to issue buy and sell orders for securities concerned by a transaction on the account of the participant within the scope necessary to perform obligations arising from the clearing of transactions for which the clearing member is liable in the OTC clearing system,

6/ deliver a declaration, according to the model set out by KDPW\_CCP, where the participant commits to ensure the submission of transaction reports or which designates KDPW\_CCP as the entity to submit transaction reports to the relevant trade repository where the obligation to submit such reports to a trade repository results from relevant regulations.

2. The obligations referred to in subpara. 1 and § 25 subpara. 1 and § 26 subpara. 1 shall be performed before the participant or the entity represented by it in clearing commences the conclusion of transactions to be cleared in the OTC clearing system. The clearing member shall designate to KDPW\_CCP the date of commencing activity in the OTC clearing system in the given scope at least two days in advance.

3. The powers of attorney referred to in subpara. 1 points 4 and 5 shall contain a declaration of the participant waiving the right to cancel them or to amend their scope in order to enable KDPW\_CCP to enforce its rights as described herein. Such powers of attorney shall cease to be valid at the moment of termination of the participation of the entity which issued them but no earlier than upon its performance of obligations of a clearing member arising from transaction clearing in the OTC clearing system.

4. The power of attorney described in subpara. 1 point 4 item (b) shall include a declaration to the effect that every entity acting with the participation type of non-clearing member, represented by the participant in the clearing system, is authorised within the scope referred to in § 82a and § 110a - § 110c in cases described therein and that the participant has waived the right to cancel the authorisation granted to that entity or to amend its scope in order to enable KDPW\_CCP to exercise the rights of such entity, as described in the rules.

5. The declaration described in subpara. 1 point 6 may be amended by the participant; however, any amendment shall be effective for KDPW\_CCP no earlier than three days after its delivery to KDPW\_CCP.

#### § 24a

A clearing member that intends to post securities referred to in § 79 subpara. 3 points 1-3 as margins or as contributions to the OTC guarantee fund shall:

- 1/ hold a relevant securities account maintained in the relevant settlement system by the entity which operates such system, or have a settlement agent in the system, and
- 2/ if the Detailed Rules of the OTC Clearing System provide for other actions which should be performed in accordance with the applicable legal provisions referred to in § 86 subpara. 2 point 1 in order to establish collateral on such securities and to ensure that such collateral is effective for third parties and to enforce it in cases referred to in the rules – perform such actions.

#### § 25

1. Where a clearing member intends to represent in clearing another entity which concludes transactions, it shall be obliged, before opening a client position account in which transactions concluded by such entity are to be registered, deliver to KDPW\_CCP a declaration, according to the model set out by KDPW\_CCP, designating the entity which it will represent in the OTC clearing system for transactions concluded by such entity, and confirming that the participant has ensured that ensure that the entity does not duplicate the performance of the obligation of submitting transaction reports transaction reports, where the obligation to submit such reports results from relevant legal regulations.
2. Where a clearing member represents in the OTC clearing system another participant for transactions concluded by it, the provisions of subpara. 1 shall apply accordingly.
3. The designation referred to in subpara. 1 may be amended but any such amendment shall be effective to KDPW\_CCP no earlier than on the second day after the submission of the relevant declaration by the participant to KDPW\_CCP.

#### § 26

1. A clearing member which is to represent in clearing another entity which concludes transactions shall be obliged, before opening a client position account in which transactions concluded by such entity are to be registered, to do the following:
  - 1/ obtain from that entity a written declaration, according to the model set out by KDPW\_CCP, where that entity:
    - a/ consents to the performance by the participant of obligations arising from the clearing of transactions concluded by that entity,
    - b/ confirms that it has been informed about the use of novation for transactions it concludes and about the publication of information about the use of novation for such transactions on the website of KDPW\_CCP,
    - c/ confirms that introduction of a transaction concluded by it to the OTC clearing system means that the parties to the transaction have agreed to apply novation according to the rules,
    - d/ confirms that it has been informed about submission by KDPW\_CCP of reports of transactions concluded by it to a trade repository – where the participant has designated KDPW\_CCP as the entity to submit transaction reports to a trade repository and where the obligation to submit such reports

to a trade repository results from relevant legal regulations,

2/ written confirmation, in the declaration submitted to KDPW\_CCP as referred to in point 1, that the entity which has signed the declaration:

a/ has signed it according to the entity's rules of representation,

b/ has concluded an agreement with the applicant whereby it shall be a clearing counterparty of transactions concluded by that entity,

3/ deliver to KDPW\_CCP the declaration referred to in point 1 with confirmation according to point 2.

2. KDPW\_CCP shall accept declarations referred to in subpara. 1 point 1 and information about their amendment, withdrawal or any other events related to such declarations only from the participant respectively seeking or holding the status of clearing member for transactions concerned by such declarations.

3. A clearing member shall cease to perform obligations arising from the clearing of transactions concluded by another entity upon termination or amendment of the participation agreement in this scope.

#### § 27

1. Participants with the status of clearing member shall meet the appropriate material, technical and financial conditions.

2. Meeting the appropriate financial conditions shall mean that the participant maintains the adequate level of Tier I capital and meets the precautionary requirements referred to in the provisions of § 28 and § 29.

3. Meeting the appropriate material and technical conditions shall mean that the participant maintains technical and technological equipment which allows the participant to connect with the IT system used by KDPW\_CCP to operate the OTC system ensuring that documents can be safely sent to and received from that system in electronic form.

#### § 28

1. The level of Tier I capital held by a clearing member shall not be lower than:

1/ PLN 100 million for a participant acting with the participation type of general clearing member,

2/ PLN 50 million for a participant acting with the participation type of individual clearing member,

3/ PLN 100 million for a participant acting with the participation type of clearing house.

2. Tier I capital shall be understood to mean Tier I capital within the meaning of CRR, which is determined and calculated according to CRR, subject to subpara. 3.

3. If according to the relevant legal provisions applicable in the state of seat of the participant or where a seat is not required to be established, then its head office, CRR does not apply to its activity, Tier I capital shall be understood to mean capital which the participant may use without limitation and without delay to cover risk or losses as soon as they arise, which is equivalent to Tier I capital within the meaning of CRR.

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) and which meets such rules.

#### § 29

1. A clearing member shall be obliged to meet the prudential requirements laid down in CRR and in particular requirements for own funds within the meaning of CRR as well as individual measures complementing such requirements which have been applied to it by the competent supervisory authority which supervises its operation according to CRR as well as other 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, subject to subpara. 2.

2. 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, it shall be obliged to meet requirements equivalent to the prudential requirements laid down in CRR and in particular requirements for funds equivalent to own funds within the meaning of CRR as well as individual measures complementing such requirements which have been applied to it by the competent supervisory authority which supervises its operation according to the relevant legal provisions.

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 (Official Journal of the European Union L from 2013, 176, p. 338) 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 (Official Journal of the European Union L from 2013, 176, p. 338) and which meet such rules.

#### § 30

[repealed]

#### § 31

If a participant no longer fulfils the requirements referred to in § 28 or § 29, it shall be obliged to notify KDPW\_CCP of this in writing within two days indicating the reasons for the non-compliance as well as steps taken to remedy it.

#### § 32

1. Clearing members shall be obliged to provide KDPW\_CCP with the following:

1/ audited annual financial statements along with an opinion and report of the certified auditor – within no more than 15 days after the audit is completed, and where the annual financial statement is not required to be audited according to the legal provisions applicable in the state of seat of the participant or where a seat is not required to be established, then its head office – within no more than 15 days after it is approved or authorised by the competent authority,

2/ half-yearly financial statements, if according to the relevant legal provisions applicable in the state of seat of the participant or where a seat is not required to be established, then its head office, it is required to provide the competent authorities which supervise its operation with such statements – within the time limit in which such information should be provided to such competent authorities,

3/ financial information containing data on levels of Tier I capital and other requirements referred to in § 28 and § 29 being maintained by it, which the participant is obliged to provide to the competent supervisory authorities which supervise its operation, prepared according to the applicable legal regulations– within the time limit in which such information should be provided to such competent authorities to the extent defined in subpara. 2, subject to subpara. 3.

2. The Management Board of KDPW\_CCP shall define in a resolution the scope of data contained in the financial information referred to in subpara. 1 point 3, provided to the competent authorities authorised to exercise supervision over clearing members in the supervisory system operating in the European Union Member States as necessary for KDPW\_CCP to assess the compliance of such participants with the financial conditions referred to in § 27 subpara. 2.

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). 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.

4. Subject to subpara. 5, the financial information referred to in subpara. 1 shall be prepared and provided on a separate basis and where the relevant legal provisions applicable in the state of seat of the clearing member or, where a seat is not required to be established, its head office require it to prepare and provide such information to the competent authorities which supervise its operation on a consolidated basis – then in addition it shall be prepared and provided on such basis.

5. If according to the applicable provisions of CRR the competent authorities which supervise the operation of the clearing member have waived the precautionary requirements on an individual basis, and as a result it is not required to provide such authorities with specific financial information prepared on a separate basis, it shall be obliged to provide KDPW\_CCP immediately with a copy of the official document which confirms that the precautionary requirements have been waived on such basis. In that case, the participant shall provide KDPW\_CCP with financial information provided on a

consolidated basis to the competent authorities which exercise consolidated supervision over the participant.

6. The documents referred to in subpara. 1 which have not been prepared in the original in the Polish language or in the English language, according to the legal provisions applicable to the participant, shall be delivered translated into the Polish language or the English language. The translation shall be certified as corresponding to the original document by persons authorised to represent the participant.

7. The documents described in subpara. 1 may be delivered to KDPW\_CCP, at the discretion of the participant, in electronic form through the SWI system or by e-mail over the internet on the terms defined by the KDPW\_CCP Management Board in a resolution.

#### § 32a

1. Clearing members shall be obliged to provide KDPW\_CCP with annual information, according to a template defined by KDPW\_CCP, including the following values of its exposures to all central counterparties other than KDPW\_CCP (i.e., defined in Article 2(1) of EMIR with a place of establishment or head office in a European Union member state or third country) for which it is or was a clearing member within the meaning of CRR:

1/ aggregate sum of the amounts it has paid to the central counterparty's default fund, and  
2/ aggregate sum of the amounts it is required to pay to the central counterparty after the central counterparty's default fund is exhausted in order to cover the loss incurred by the central counterparty as a result of default of one or more of its clearing members (hypothetical payments), subject to subpara. 2.

2. If the amount of hypothetical payments is not limited by a central counterparty as a cash amount, the information referred to in subpara. 1 shall include an amount equal to three times the amount paid by the clearing member to the central counterparty's default fund.

3. The information referred to in subpara. 1 shall be prepared as at 31 December of each year in the currency defined by the clearing member and provided to KDPW\_CCP within 30 calendar days after the end of the calendar year.

4. The information referred to in subpara. 1 shall be provided to KDPW\_CCP, at the election of the clearing member, in electronic form through the SWI system or by e-mail over the internet on the terms defined by the KDPW\_CCP Management Board by way of a resolution.

#### § 33

Participants that hold the status of clearing member as part of their activity pursued as a branch shall be obliged to provide KDPW\_CCP with additional financial information referred to in § 32 subpara. 1 to the extent of activities of such branch, provided that according to the relevant legal provisions applicable in the state of seat of the participant or where a seat is not required to be established, then its head office, the participant is required to prepare such information – within time limits in which such information should be provided to the competent authorities which supervise its operation or the operation of its branch according to such applicable legal provisions. The provisions of § 32 subpara. 2, 3, 6 and 7 shall apply accordingly.

#### § 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.

#### § 35

The Management Board of KDPW\_CCP may, by way of a resolution, order a clearing member to provide, within specific time limits and over specific periods of time, additional information specified in such resolution concerning the participant's compliance with the requirements referred to in § 28 or § 29 according to the applicable legal provisions where there is a reasonable suspicion that the activities of that participant threaten or are likely to threaten the safety of trading or the proper operation of the OTC clearing system.

#### § 36

1. Clearing members shall be obliged at least once every calendar year to take part in Business Continuity System the organised by KDPW\_CCP.
2. The Business Continuity System shall be understood to mean a set of technical and organisational measures used in order to maintain operational continuity or the fastest possible recovery of the key business processes performed in the clearing system in the event that these are disrupted as a result of the inability to use the standard IT processing systems operated by KDPW\_CCP or as a result of the sites where these systems are located being unavailable.
3. KDPW\_CCP shall inform participants holding the status of clearing member of the date or dates of Business Continuity System tests in a given calendar year with at least one month's advance notice.

#### § 36a

1. KDPW\_CCP shall perform regular tests of the key aspects of procedures in the event of default in respect of obligations arising from transactions accepted for clearing in the OTC clearing system or arising from participation in the system. Clearing members shall be obliged to participate in such tests.
2. KDPW\_CCP shall inform clearing members of the date or dates of the tests described in subpara. 1 performed in a given calendar year, with at least one month's advance notice.
3. The Management Board of KDPW\_CCP may at any time request clearing members to provide information concerning such participants' access to relevant solutions enabling them to respond to cases of default in respect of the obligations referred to in subpara. 1.

### **TITLE IV NOVATION**

#### § 37

The introduction of a clearing instruction to the OTC clearing system shall mean that the parties to

the transaction concerned by the instruction have agreed the application of novation to the transaction according to the rules.

#### § 38

1. Transactions shall be accepted for clearing upon registration of the transactions in a clearing account maintained in the OTC clearing system (time of novation).
2. Transactions shall be accepted for clearing on the condition precedent that the requirements set out in § 47 are fulfilled for the transaction, subject to § 41 subpara. 1.

#### § 39

1. A clearing payment determined as a result of transaction clearing shall be executed according to its content determined on the basis of a clearing instruction, in particular by means of, respectively, a one-off payment, periodic payments, or the payment of a difference.
2. At the time of novation, KDPW\_CCP shall become, respectively, the creditor or debtor exclusively towards the participant that is the other clearing counterparty of the transaction.
3. At the time of novation, the clearing counterparty shall become, respectively, the creditor or debtor towards KDPW\_CCP and, where it represents another entity in clearing, also towards that entity.
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 2012, item 1112, as amended) for transactions accepted for clearing created as a result of novation, and such transactions shall be executed under such agreement.

#### § 40

Novation of transactions shall take place separately for each transaction and according to its content determined in the clearing instruction.

#### § 41

1. If a transaction concluded or confirmed on an electronic platform, which has been registered in the OTC clearing system, is inconsistent with the contents of the clearing instruction entered to the OTC clearing system or with the provisions of the rules, of which KDPW\_CCP did not know and could not know despite exercising due care at the time of registration of the transaction, this shall mean that:
  - 1/ the transaction has not been accepted to the OTC clearing system,
  - 2/ the clearing member and KDPW\_CCP have at such time entered into a legal relationship whose contents are consistent with the contents of the instruction. In that case, the clearing instruction shall constitute a declaration of will of the clearing member consenting to enter such legal relationship.
2. Where KDPW\_CCP has accepted a repo transaction for clearing and securities concerned by a transaction are repurchased before the repurchase date, KDPW\_CCP shall be entitled to terminate the repo transaction early, and where the transaction is not terminated before the securities repurchase date, it shall be, respectively, entitled or liable to a cash payment due in the exercise of the rights attached to such securities concerned by a transaction.
3. If, after the time of novation, any corporate actions are performed with respect to securities concerned by a repo transaction, the transaction shall concern securities in such form and number as

would apply to such securities if the settlement of, respectively, the opening or the closing transaction had taken place on the date of the corporate action.

3a. The provisions of subpara. 2 and 3 shall apply accordingly to sale transactions accepted in the OTC clearing system.

4. Payments arising from a transaction shall be made according to the rules set out by the entity which operates the relevant settlement system to which KDPW\_CCP sends the transaction settlement order.

#### § 42

1. After the time of novation:

1/ netting of payments between KDPW\_CCP and the clearing counterparties of transactions shall only be allowed under the terms set out in the rules,

2/ the entity exclusively authorised to determine the net credits and debits shall be KDPW\_CCP, subject to § 115 subpara. 1 and subject to the regulations of the relevant settlement system to which the settlement order concerning such payments is sent.

2. A clearing counterparty shall not transfer the rights arising from novation of a transaction to another entity without the consent of KDPW\_CCP.

3. Another entity shall not accept the obligations arising from novation of a transaction without the consent of KDPW\_CCP.

#### § 43

Where any loss of assets is suffered on the part of KDPW\_CCP due to the non-performance or undue performance by a participant which is a clearing counterparty of a transaction of its obligations arising from the novation of the transaction, in particular delayed performance of such obligations, the participant shall provide compensation.

#### § 44

KDPW\_CCP shall be entitled to make a replacement payment in order to perform an obligation arising from a transaction exclusively in cases referred to in Title V "OTC Transaction Clearing System" Section 6 "Use of the Assets of the Transaction Clearing Liquidity Guarantee System".

### TITLE V

## OTC TRANSACTION CLEARING SYSTEM

### SECTION I

## GENERAL PROVISIONS

#### § 45

In organising and operating the OTC clearing system, KDPW\_CCP shall:

1/ accept for clearing in the system transactions concluded or confirmed on relevant electronic platforms,

2/ calculate the amounts of cash and non-cash payments that clearing counterparties of transactions or KDPW\_CCP are obliged to meet,

3/ maintain the account system,

4/ register in clearing accounts positions arising from transactions that are to be cleared and

operations related to such positions,

5/ submit reports of derivative transactions to the relevant trade repository where the participant has designated, according to the rules and the Detailed Rules of the OTC Clearing System, KDPW\_CCP as the entity to submit such reports,

6/ within the scope defined in the rules, organise and manage the transaction clearing liquidity guarantee system,

7/ depending on the result of calculations referred to in point 2, send settlement orders to the relevant settlement system or payment system or transfer orders to the relevant clearing bank.

#### § 46

Transactions shall be cleared in the Polish currency and in EUR on the terms laid down in the rules and the Detailed Rules of the OTC Clearing System.

#### § 47

KDPW\_CCP shall accept transactions for clearing and perform their clearing in a given currency if the entity which has concluded the transaction:

1/ is a clearing member to such extent and has properly performed the obligations described in § 24 subpara. 1, or

2/ is not a clearing member to such extent if, for such transaction, the status of clearing member is held by another entity which has properly performed the obligations described in § 24 subpara. 1, § 25 subpara. 1 and § 26 subpara. 1.

#### § 48

KDPW\_CCP may refuse acceptance of a transaction for clearing in the OTC clearing system where:

1/ a party concluding the transaction is not a clearing counterparty for such transaction or has no clearing member representing it in clearing to such extent,

2/ a clearing instruction, the terms of the transaction determined on its basis, derivative instruments or securities concerned by the transaction do not fulfil the requirements set out in the rules and the Detailed Rules of the OTC Clearing System,

3/ the electronic platform is not designated by KDPW\_CCP or does not fulfil the requirements set out in the rules and the Detailed Rules of the OTC Clearing System and in the agreement concluded with KDPW\_CCP,

4/ the collateral limit set for the clearing member has been breached and it has not adjusted the margin within the time limit according to § 87 subpara. 3,

5/ in the event referred to in § 87 subpara. 6 and 7,

5/ conditions which give rise to occurrence of an event of default occur on the part of the participant which is a clearing counterparty of the transaction,

6/ a clearing counterparty is in breach of the concentration level and has not eliminated the breach within the time limit set in the notice according to § 87 subpara 10.

#### § 49

1. KDPW\_CCP shall make cash payments in respect of participation in the OTC clearing system in a given currency, which are not executed according to a settlement instruction submitted to the settlement system:

1/ directly, by submitting settlement orders to the relevant payment system, including a system that

is a part of TARGET2, or transfer orders to the relevant clearing bank, or

2/ through the agency of a payment agent that submits settlement orders to the relevant payment system, including a system that is a part of TARGET2, or transfer orders to the relevant clearing bank.

2. If payments referred to in subpara. 1 are executed in EUR in TARGET2, KDPW\_CCP shall submit settlement instructions in TARGET2 on the basis of an agreement concluded by KDPW\_CCP or the payment agent, respectively, and the National Bank of Poland.

3. Designation by KDPW\_CCP of a bank account of the payment agent referred to in subpara. 1 point 2 in order to make cash payments referred to in subpara. 1 shall mean that:

1/ the payment agent is authorised by KDPW\_CCP to receive payments due to KDPW\_CCP arising from the clearing of derivative transactions,

2/ KDPW\_CCP may make its cash payments arising from the clearing of derivative transactions through the agency of the payment agent,

3/ cash payments of a clearing counterparty to KDPW\_CCP arising from the clearing of derivative transactions are made on the crediting of the bank account of the payment agent designated by KDPW\_CCP.

#### § 50

Clearing instructions shall be deemed introduced to the clearing system upon their effective delivery to the KDPW\_CCP system.

#### § 51

1. A clearing member which is a clearing party of transactions concluded by another entity shall be authorised to set, on the basis of an instruction introduced to the OTC clearing system, a limit up to which transactions concluded by that entity shall be accepted to the system.

2. Upon the introduction of the instruction referred to in subpara. 1 to the OTC clearing system, KDPW\_CCP shall register the instruction in the system and set the limit determined according to the contents of the instruction in the designated clearing account used to clear transactions concluded by the entity referred to in subpara. 1.

3. Upon the registration of the instruction referred to in subpara. 1, transactions concluded by the entity referred to in subpara. 1 shall not be accepted to the OTC clearing system if the participant who introduced the instruction to the system became their clearing counterparty or if it caused the limit set by it to be exceeded.

4. KDPW\_CCP shall lift the limit referred to in subpara. 1 in the OTC clearing system upon the receipt of relevant instructions from the clearing member.

### **SECTION II ACCOUNT SYSTEM**

#### § 52

1. KDPW\_CCP shall operate clearing accounts in the OTC clearing system used to register:

1/ positions arising from transactions registered in the OTC clearing system,

2/ operations concerning positions referred to in point 1,

3/ balances resulting from the netting of the positions referred to in point 1.

2. The account system shall be maintained in such a way as to separate clearing accounts used to register positions resulting from:

- 1/ transactions concluded by a clearing member on its own account (own position accounts),
- 2/ transactions concluded by a clearing member on its clients' account and concluded by other entities which the clearing member represents in the OTC clearing system (client position accounts).
3. KDPW\_CCP shall maintain collateral accounts in the OTC clearing system assigned to the accounts referred to in subpara. 2. Collateral accounts assigned to client position accounts shall be maintained separately from collateral accounts assigned to own position accounts.

#### § 53

1. The account system shall be maintained by KDPW\_CCP according to the following principles:
  - 1/ respecting the types of participation of clearing members,
  - 2/ separate registration of positions,
  - 3/ simultaneity of actions,
  - 4/ completeness,
  - 5/ truthfulness.
2. The principle of respecting the types of participation shall mean that clearing accounts and collateral accounts shall be opened for a given participation type with which the clearing member acts in the OTC clearing system.
3. The principle of separate registration of positions shall mean that all positions arising from transactions which have been accepted to the clearing system shall be registered in the account system separately.
4. The principle of simultaneity of actions shall mean that registration in the account system shall take place on the performance of a specific action in the OTC clearing system.
5. The principle of completeness shall mean that all actions referred to in § 52 subpara. 1 shall be registered in the account system.
6. The principle of truthfulness shall mean that the account system shall be maintained in accordance with the factual status of actions performed in the OTC clearing system.

#### § 54

1. KDPW\_CCP shall assign attributes to each clearing account and collateral account as determined in the Detailed Rules of the OTC Clearing System, subject to subpara. 2.
2. A clearing member shall define the attributes of clearing accounts maintained for it, in particular the client identification number. The client identification number shall be assigned to a client of such participant or a group of clients of such participant on the basis of the account opening instruction, referred to in § 56 subpara. 1, or on the basis of a separate instruction submitted by the participant which intends to open a clearing account. If a participant's client already has an appropriate identifier in the depository system operated by the Central Securities Depository of Poland or in the clearing system operated by KDPW\_CCP for transactions executed in organised trading, the participant shall define in the OTC clearing system the same attribute of the clearing account in which transactions executed by the client or on the client's account will be registered, unless it applies for a client identification number for a group of clients including such client.
3. Clearing accounts and collateral accounts linked to them defined by the participant according to subpara. 2 exclusively for a given client or group of clients of the participant shall be maintained separately from other accounts in the account system.
4. Where transactions are to be registered in a clearing account and the terms of such transactions are used to determine a settlement amount, the clearing member for whom the account was opened

shall mark them by submitting an instruction according to the Detailed Rules of the OTC Clearing System according to a template defined by KDPW\_CCP.

§ 55

Records in clearing accounts and collateral accounts shall only be made by KDPW\_CCP.

§ 56

1. A clearing account shall be opened on the basis of an instruction of a clearing member. KDPW\_CCP shall open a collateral account assigned to every clearing account and where the relevant collateral account has previously been opened – it shall assign such account to the clearing account being opened.
2. A clearing member shall open an own position account with a given type of participation.
3. If a clearing member is to clear transactions on its clients' account, it shall open the relevant client position account.

§ 57

1. Subject to subpara. 2, at the instant of entering a clearing instruction into the OTC clearing system, during the relevant clearing session, KDPW\_CCP shall verify the terms of the transaction concerned by the instruction and then register the transaction in the clearing account indicated in the instruction or refuse to register it in the system and immediately notify the clearing member thereof. Registration of a transaction in a clearing account shall take place before the end of the relevant clearing session at which the terms of acceptance of the transaction in the OTC clearing system are verified, at the time specified in the information which confirms the registration of such transaction, sent by KDPW\_CCP to the clearing member.
2. If a clearing instruction is introduced to the OTC clearing system after the end of the relevant clearing session, the verification of the terms of acceptance of the transaction concerned by the instruction in the system and the registration of the transaction in a clearing account shall take place immediately after the commencement of the next clearing session performed in order to clear the transaction.
3. Upon the registration of a repo transaction in OTC clearing accounts, KDPW\_CCP shall register the opening transaction and the closing transaction at the same time in such accounts.

§ 58

KDPW\_CCP shall store information about records in clearing accounts concerning transactions as well as all amendments of such records for ten years after the deletion of the positions concerning such transactions from clearing accounts.

**SECTION III**

**CLEARING TRANSACTIONS, SUBMITTING ORDERS AND TRANSACTION REPORTS**

§ 59

1. Transaction clearing shall be carried out according to the principle that cash debits and credits of a participant holding the status of clearing member arising from cleared transactions and from participation in the transaction clearing liquidity guarantee system shall be recalculated, respectively, to form a single net debit or a single net credit in the given currency of clearing (netting).

2. Netting shall include cash debits and credits of a participant holding the status of clearing member arising from all transactions accepted for clearing which are to be executed in the same currency and at the same time, subject to subpara. 7 and 8.
3. Netting shall be performed separately for debits and credits arising from transactions concluded on own account of clearing members and for debits and credits arising from transactions concluded on their clients' account and transactions concluded by the entities which they represent in clearing.
4. Netting shall determine the entities obliged to make a net payment and entities entitled to receive net payments.
5. Netting shall be performed after the end of each clearing session, within the time limit designated in the Detailed Rules of the OTC Clearing System. Immediately upon netting, KDPW\_CCP shall register its result in clearing accounts.
6. Performance of netting by KDPW\_CCP shall require no additional declarations of the clearing counterparties of transactions.
7. Cash credits arising from a sale transaction or an opening transaction concluded as part of a repo transaction shall not be netted where:
  - 1/ the settlement date of such transactions according to the terms of the clearing instructions concerning such transactions is indicated as the date on which they are accepted for clearing in the OTC clearing system, and
  - 2/ the clearing instructions concerning such transactions are submitted to the OTC clearing system before the time set in the Detailed Rules of the OTC Clearing System.

#### § 60

Cash debits netted in the clearing of transactions shall be cancelled, respectively, at the time of:

- 1/ for repo transactions and sale transactions – settlement of the transaction performed in the relevant settlement system on the basis of a settlement order submitted by KDPW\_CCP,
- 2/ for derivative transactions:
  - a/ respectively, debiting or crediting the bank account maintained by the relevant clearing bank on the basis of a settlement order submitted to the relevant payment system or a transfer order submitted to the relevant clearing bank, or
  - b/ where the result of netting does not require the submission of a settlement order or a transfer order referred to in letter (a) – at the time of registration in clearing accounts of the balance resulting from clearing performed by KDPW\_CCP for such transactions and notification of the clearing members for which the accounts are maintained of the records in such accounts.

#### § 61

1. Subject to subpara. 2, KDPW\_CCP shall cancel positions arising from derivative transactions which are opposite positions, registered in the same clearing account, provided that the clearing member has designated such account for that purpose according to the Detailed Rules of the OTC Clearing System.
2. KDPW\_CCP shall cancel the positions referred to in subpara. 1 irrespective of the nominal amount of the transaction, up to the surplus of the nominal amount remaining after the reduction of such positions. As a result of such cancellation, positions shall be deleted, up to the amount of such surplus, in the clearing account designated by the clearing member.
3. KDPW\_CCP shall cancel the positions referred to in subpara. 1 after the end of the clearing session, in the time limit defined in the Detailed Rules of the OTC Clearing System. KDPW\_CCP shall inform

the participant of the cancellation of such positions immediately thereafter.

#### § 62

1. As part of the marking to market of transactions where a settlement amount is determined under the terms of the transaction, KDPW\_CCP shall determine the party that on the given day, under the terms of the transaction determined according to the Detailed Rules of the OTC Clearing System is, respectively, entitled to receive the settlement amount or obliged to deliver the settlement amount.
2. The provisions of § 49 shall apply accordingly unless the settlement amount is cleared as a result of transaction settlement performed within the relevant settlement system

#### § 63

The amount of debits and credits of participants who are clearing counterparties of transactions shall be determined on the basis of clearing instructions delivered to KDPW\_CCP from the electronic platform, subject to § 66.

#### § 64

1. A transaction shall be cleared as of the day of its conclusion or confirmation on an electronic platform provided that the transaction has been registered on that day in the clearing account maintained in the OTC clearing system, during the relevant clearing session.
2. KDPW\_CCP shall determine in the Detailed Rules of the OTC Clearing System:
  - 1/ the number of clearing sessions, if more than one session is organised on each day, as well as the duration of a clearing session on each day in which transaction clearing is performed in the OTC clearing system,
  - 2/ for repo transactions confirmed on the basis of matching instructions submitted by clearing members to the OTC clearing system, the terms and conditions and procedure of submitting such instructions.
3. In an agreement concluded with the entity operating an electronic platform, KDPW\_CCP shall determine the structure, format, terms and conditions, and procedure of submitting clearing instructions concerning transactions concluded or confirmed on the platform.

#### § 65

1. A clearing instruction introduced to the OTC clearing system shall not be withdrawn from the system once it has been delivered to the system, subject to subpara. 2 and 3.
2. For a repo transaction concluded or confirmed on the basis of appropriately matching instructions submitted by clearing members to the OTC clearing system:
  - 1/ a clearing member may withdraw an instruction submitted to the system no later than the time when KDPW\_CCP concludes that it matches the instruction submitted by the clearing member which is the other clearing counterparty,
  - 2/ a clearing instruction may be withdrawn from the OTC clearing system after the time when KDPW\_CCP concludes that the instructions submitted by the clearing members match only on the basis of matching declarations submitted by the participants before KDPW\_CCP sends the settlement order for the transaction concerned by the instruction to the relevant settlement system.
3. For a repo transaction or a sale transaction concluded on an electronic platform, which is to be cleared on the basis of a clearing instruction entered to the OTC clearing system by the entity which operates the electronic platform which concluded an agreement with KDPW\_CCP, such instruction

may only be cancelled by such entity but no later than the time when KDPW\_CCP sends the settlement instruction for the transaction concerned by the instruction being cancelled to the settlement system.

#### § 66

A repo transaction may be cleared on the basis of a clearing instruction issued by KDPW\_CCP on the basis of instructions delivered by clearing members containing the terms of the repo transaction or sale transaction. In that case:

- 1/ KDPW\_CCP shall be entitled and obliged to issue a relevant clearing instruction which shall match the content of such instructions as soon as it finds that they match,
- 2/ the credits and debits of the participants that are clearing counterparties to the transaction shall be determined on the basis of the clearing instruction referred to in point 1.

#### § 67

1. KDPW\_CCP shall submit settlement orders to the relevant settlement system, respectively, for the opening transaction and the closing transaction arising from a repo transaction or sale transaction in due time necessary for settlement of the transaction on the day designated in the contents of the clearing instruction, on which it should be performed according to the regulations of the system.
2. Where the relevant settlement system is the system operated by the Central Securities Depository of Poland, KDPW\_CCP shall send settlement orders according to the contents of the clearing instruction or according to the contents of an instruction of the clearing member for settlement on the day referred to in subpara. 1 to the relevant settlement session performed in the multibatch system.

#### § 68

1. KDPW\_CCP shall, immediately on the clearing of a derivative transaction, submit, according to § 49 subpara. 1 point 1 or 2, respectively, a settlement order to the relevant payment system or a transfer order to the relevant clearing bank, including a system that is a part of TARGET2, or where the cash payment of the participant is executed through the agency of the payment agent, an instruction to submit, respectively, a settlement order or a transfer order.
2. KDPW\_CCP shall submit the documents referred to in subpara. 1 in due time necessary to execute cash payments of participants arising from the clearing of transactions according to the contents of the clearing instruction.
3. If KDPW\_CCP receives information about non-execution of cash payments referred to in subpara. 1 within the time limit, KDPW\_CCP shall immediately notify the clearing member thereof.

#### § 69

Cash payments arising from the clearing of transactions in a given currency which are not executed in the relevant settlement system shall be executed in the bank account designed according to § 23 subpara. 2 point 3 maintained in the clearing bank and, for payments in EUR – in the bank account in TARGET 2 designated according to § 23 subpara. 2 point 3.

#### § 70

1. If KDPW\_CCP is responsible for the submission of transaction reports to a trade repository, such reports shall be submitted without limitation as a result of the registration of positions in clearing

accounts, as well as their deletion in such accounts. KDPW\_CCP shall submit transaction reports within the scope arising from settlement instructions, actions taken in the OTC clearing system, as well as information received from the participant, referred to in subpara. 2, taking into account the definition of accounts in the clearing system.

2. A participant holding the status of clearing member that has designated KDPW\_CCP as the entity to submit transaction reports to the relevant trade repository shall be obliged to provide KDPW\_CCP with all information necessary to perform the obligation of submitting transaction reports to the trade repository and define accounts in the OTC clearing system in a way enabling the submission of transaction reports.

3. A participant that has designated KDPW\_CCP as the entity responsible for the submission of transaction reports to a trade repository shall be obliged to pay any costs incurred by KDPW\_CCP in favour of such repository in respect of the submission of such reports provided that:

1/ the amount of such costs arises from regulations issued by the trade repository,

2/ KDPW\_CCP has informed participants of the amount of such costs at least two weeks prior to incurring them, by publishing such information on its website.

4. The costs described in subpara. 3 shall be reimbursed by a participant on a monthly basis, within 14 days of the delivery of an invoice to the participant.

5. The Management Board of KDPW\_CCP shall define in a resolution the scope of information referred to in subpara. 2 and the mode of its provision.

### **SECTION IIIa**

#### **TRANSFERS ON DEMAND OF CLEARING MEMBERS**

##### **§ 70a**

1. Subject to subpara. 2 – 3 and subpara. 10, a clearing member may request:

1/ the transfer of positions arising from derivative transactions, registered in the clearing account indicated by it, to the clearing account managed for another clearing member (“transfer of positions”), or

2/ the transfer of all positions registered in the clearing account indicated by it together with assets deposited as initial margin for such positions, registered in the collateral account assigned to the clearing account, to the clearing account or the collateral account linked to it, respectively, managed for another clearing member (“transfer of positions and collateral”).

2. A transfer of positions and a transfer of positions and collateral may only take place on the basis of matching instructions delivered, in form and in content as defined in the Detailed Rules of the OTC Clearing System, by:

1/ the clearing member in whose accounts such positions are registered, and

2/ the participant which acquires the status of clearing member for such positions.

3. The submission of an instruction by the participant referred to in subpara. 2 point 2 shall be tantamount with that participant’ consent for the performance of all liabilities related to the clearing of transactions arising from the positions referred to in subpara. 1, subject to subpara. 8.

4. A transfer of positions and collateral may take place if the clearing accounts indicated in the instructions referred to in subpara. 2 are marked with the same client identification number and, for a clearing account indicated in the instruction by a participant who accepts the status of clearing member for such positions, provided that such account is designated for the registration of such positions according to the Detailed Rules of the OTC Clearing System, other than in cases referred to

in § 74c subpara. 1.

5. At the instant that KDPW\_CCP registers a transfer of positions or a transfer of positions and collateral, respectively, in the account system:

1/ the participant referred to in subpara. 2 point 1 shall cease to have credits or debits, respectively, towards the entities referred to in § 39 subpara. 3,

2/ the participant which acquires the status of clearing member for the positions referred to in subpara. 1 point 1 or 2, respectively, shall have credits or debits, respectively, towards the entities referred to in § 39 subpara. 3,

3/ KDPW\_CCP shall cease to have credits or debits, respectively, towards the participant referred to in subpara. 1 point 1 and shall have credits or debits, respectively, towards the participant which acquires the status of clearing member for the positions referred to in subpara. 1 point 1 or 2, respectively.

6. A transfer of positions and a transfer of positions and collateral shall require the consent of KDPW\_CCP acting on its own behalf and on the basis of a power of attorney referred to in subpara. 12. Such consent shall be granted on the condition precedent whereby each of the participants referred to in subpara. 2 fulfils the requirements set out in subpara. 10 point 5. A declaration of will granting such conditional consent shall be provided by KDPW\_CCP to the participant referred to in subpara. 2 point 2 together with confirmation that the submitted instructions referred to in subpara. 2 match.

7. At the instant of the submission of the declaration of will referred to in subpara. 6, KDPW\_CCP acting on its own behalf and on the basis of a power of attorney referred to in subpara. 12 and the participant referred to in subpara. 2 point 2 enter into an agreement concerning the transfer of rights and obligations to the extent of:

1/ for a transfer of positions – the positions referred to in subpara. 1 point 1, or

2/ for a transfer of positions and collateral – the positions and assets referred to in subpara. 1 point 2.

8. The participant referred to in subpara. 2 point 1 and 2, respectively, shall provide the instruction referred to in subpara. 2 point 1 and 2, respectively, after it has ascertained that it has executed the relevant legal transactions as necessary for an effective transfer of:

1/ for a transfer of positions – the positions referred to in subpara. 1 point 1,

2/ for a transfer of positions and collateral – the positions and assets referred to in subpara. 1 point 2.

By providing an instruction referred to in subpara. 2 point 1 and 2, respectively, the participant who provides such instruction shall confirm that such legal transactions have been executed.

9. KDPW\_CCP shall check that the content of the instructions referred to in subpara. 2 matches within the time limit set in the Detailed Rules of the OTC Clearing System.

10. KDPW\_CCP may refuse to execute a transfer of positions or a transfer of positions and collateral, respectively, where:

1/ it has identified an event of default on the part of either of the clearing members referred to in subpara. 2, or

2/ prior to concluding that the instructions referred to in subpara. 2 match, a relevant instruction has been sent to the clearing bank or to the relevant payment system, including a system which is a part of TARGET 2, to clear cash for positions and assets being transferred and it cannot be effectively recalled from such system, or

3/ prior to concluding that the instructions referred to in subpara. 2 match, a transaction settlement

instruction has been sent to the settlement system for the positions being transferred, or  
4/ the instructions referred to in subpara. 2 were delivered after the end of the clearing session on the day when the transfer of positions or the transfer of positions and collateral, respectively, is to be executed according to the content of such instructions, or  
5/ as a result of their execution, the balance of liabilities of either participant submitting the instructions referred to in subpara. 2 would exceed the collateral limit.

11. At the instant of a transfer of positions and collateral in the OTC clearing system:

1/ claims for the return of financial collateral established by the clearing member referred to in subpara. 2 point 1 as an initial margin in assets referred to in subpara. 1 point 2 shall expire,

2/ financial collateral shall be established by the clearing member referred to in subpara. 2 point 2 as an initial margin in assets referred to in subpara. 1 point 2,

3/ KDPW\_CCP shall provide the participant referred to in subpara. 2 point 2, on the terms defined in the rules, with revenue earned as of such time from the management of such cash assets which constitute the initial margin as well as entitlements from securities posted as such initial margin where the attached rights have been recorded until such time.

12. KDPW\_CCP shall execute a transfer of positions or a transfer of positions and collateral, respectively, provided that the participants referred to in subpara. 2 prior to such transfer granted to it irrevocable powers of attorney under which it is authorised to receive on behalf of each of the participants declarations of will in matters concerning the conclusion of agreements concerning transfer of rights and obligations towards KDPW\_CCP for positions or assets concerned by such instructions in this procedure.

#### § 70b

1. Subject to subpara. 2, 6, 7 and 8, a clearing member may request the transfer of positions arising from derivatives transactions registered in the clearing account indicated by it to another clearing account managed for it ("transfer in participant accounts")

2. A transfer in participant accounts may only take place on the basis of an instruction delivered, in form and in content as defined in the Detailed Rules of the OTC Clearing System, by the clearing member in whose accounts the transfer is to be executed.

3. KDPW\_CCP shall execute a transfer in participant accounts within the time limit set in the Detailed Rules of the OTC Clearing System.

4. The clearing member shall provide the instruction referred to in subpara. 2 after it has ascertained that it has executed the relevant legal transactions as necessary for an effective transfer of the positions referred to in subpara. 1 to an own position account managed for it.

5. By providing the instruction referred to in subpara. 2, the participant holding the status of clearing member shall confirm that:

1/ it is authorised to make a transfer in own accounts,

2/ the transactions referred to in subpara. 4 have been executed.

6. KDPW\_CCP shall not execute a transfer in participant accounts where:

1/ it has identified an event of default on the part of the clearing member submitting the instruction referred to in subpara. 2, or

2/ the balance of liabilities of the participant submitting the instruction referred to in subpara. 2 exceeds its collateral limit.

7. If the positions being transferred, referred to in subpara. 1, have been registered in the OTC

clearing system for transactions concluded by a non-clearing member, KDPW\_CCP shall no longer be obliged towards the participant holding the status of non-clearing member to perform the actions referred to in § 110a - § 110c.

8. A transfer in accounts may take place provided that the clearing account indicated in the instruction referred to in subpara. 2 is designated for the registration of such positions according to the Detailed Rules of the OTC Clearing System, other than in cases referred to in § 74c subpara. 1.

#### § 70c

1. Instructions referred to in § 70a subpara. 2 may be cancelled:

1/ before they are found to match – by the participant who sent the instruction to KDPW\_CCP, at any time,

2/ after they are found to match – only on the basis of matching declarations of participants who sent the instructions, delivered to KDPW\_CCP before the time set in the Detailed Rules of the OTC Clearing System.

4. An instruction referred to in § 70b subpara. 2 may be cancelled by the participant who sent the instruction to KDPW\_CCP before the time set in the Detailed Rules of the OTC Clearing System.

### SECTION IV

#### TRANSACTION CLEARING LIQUIDITY GUARANTEE SYSTEM

##### SECTION 1

##### GENERAL PROVISIONS

#### § 71

1. The transaction clearing liquidity guarantee system organised by KDPW\_CCP shall cover transactions which have been sent for clearing in the OTC clearing system and subsequently accepted by KDPW\_CCP for clearing in the system.

2. The transaction clearing liquidity guarantee system organised by KDPW\_CCP shall also cover legal relations referred to in § 41 subpara. 1 point 2.

#### § 72

To the extent that they impose specific obligations on participants in relation to their liability for the proper performance of obligations arising from the clearing of transactions, the provisions of this Section shall not apply to participants with the participation type of non-clearing member.

#### § 73

In the transaction clearing liquidity guarantee system, KDPW\_CCP shall:

1/ collect and manage assets that form margins,

2/ collect and manage assets that form the OTC guarantee fund,

2a/ determine the amount of variation margin and the amount of entitlements from such margin,

3/ monitor risks arising from transactions accepted for clearing and take actions aiming to mitigate such risks,

4/ provide the service of closing positions on demand within the scope defined in these rules and the Detailed Rules of the OTC Clearing System,

5/ perform the operation of automatic closing of positions within the scope defined in these rules

and the Detailed Rules of the OTC Clearing System,

6/ take actions aimed to make payments arising from the clearing of transactions in case of:

a/ suspension of transaction settlement,

b/ non-execution of cash payments arising from transaction clearing within the time limit determined by the parties to the transaction,

c/ occurrence of an event of default which justifies immediate termination of the agreement.

#### § 74

1. KDPW\_CCP shall be entitled to designate a bank account of the payment agent in order to execute cash flows in a given currency within the transaction clearing liquidity guarantee system.

2. Designation of the bank account of the payment agent referred to in subpara. 1 by KDPW\_CCP shall mean that:

1/ the payment agent is authorised by KDPW\_CCP to receive payments due to KDPW\_CCP in a given currency,

2/ KDPW\_CCP may make its cash payments executed in a given currency within the transaction clearing liquidity guarantee system through the agency of the payment agent,

3/ cash payments of a clearing counterparty to KDPW\_CCP executed in a given currency within the transaction clearing liquidity guarantee system are made on the crediting of the bank account designated according to subpara. 1.

#### § 74a

1. KDPW\_CCP shall be authorised to manage the resources contributed to the transaction clearing liquidity guarantee system, including the resources of the OTC guarantee fund, performing actions within such scope personally or with the assistance of the Central Securities Depository of Poland.

2. Revenue earned from the management of cash constituting margins, other than revenue earned from the management of cash contributed in EUR, shall be transferred to clearing members on a quarterly basis unless the Management Board of KDPW\_CCP defines another time limit by way of a resolution, less of taxes due. If, however, a participant is in arrears with the performance of any obligations towards KDPW\_CCP arising from its participation in the OTC clearing system or in a separate clearing system operated by KDPW\_CCP for transactions executed in organised trading, KDPW\_CCP may credit it towards such obligations instead of transferring it to the participant.

#### § 74b

1. A clearing counterparty to a transaction accepted in the OTC clearing system, where no settlement amount is to be determined under the terms of the transaction, shall be entitled to receive or obliged to deliver or return a variation margin, respectively. KDPW\_CCP shall determine the counterparty entitled to receive and the counterparty obliged to deliver such payments on each day when the transaction is cleared.

2. A variation margin shall be calculated in the currency in which the transaction is cleared according to the content of the clearing instruction.

3. Interest on a variation margin shall be calculated according to the rules laid down in the Detailed Rules of the OTC Clearing System.

#### § 74c

1. A clearing member may, according to the Detailed Rules of the OTC Clearing System, modify the

terms of determining the variation margin for a transaction whereby the obligation to deliver or return the variation margin expires and each clearing counterparty becomes entitled to receive or obliged to deliver the settlement amount, respectively, on the modified terms of the cleared transaction.

2. In order to modify the terms referred to in subpara. 1, the clearing member shall deliver to KDPW\_CCP, within the time limit set in the Detailed Rules of the OTC Clearing System, an instruction according to a template defined by KDPW\_CCP.

3. Modification of the terms referred to in subpara. 1 shall only apply to transactions registered in the OTC clearing system in the own position account maintained for the clearing member requesting a modification of such terms.

4. Modification of the terms referred to in subpara. 1 shall not affect clearing payments determined before the date of such modification in the OTC clearing system.

5. KDPW\_CCP shall approve modification of the terms referred to in subpara. 1 according to the Detailed Rules of the OTC Clearing System.

6. KDPW\_CCP shall define detailed rules on which the terms referred to in subpara. 1 may be modified in the Detailed Rules of the OTC Clearing System, ensuring safety of trading and legal compliance, including without limitation:

1/ the time limit for the participant's delivery of the instruction referred to in subpara. 2 and modification of the terms referred to in subpara. 1;

2/ the conditions on which KDPW\_CCP shall approve such modification.

#### § 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. 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.

#### § 76

1 A clearing member shall be obliged to take necessary actions to prevent suspension of transaction settlement. In particular, a clearing member shall ensure the immediate acquisition of securities concerned by a repo transaction or sale transaction in order to prevent the suspension of their settlement owing to a shortage of such securities or the fastest possible elimination of such suspension. Such actions may involve the conclusion of framework securities lending agreements on the basis of which the participant will be able immediately to take out a securities loan for the outstanding securities, unless it is possible to prevent suspension of transaction settlement otherwise.

2. A clearing member shall be responsible for suspension of settlement of a transaction to which it is a clearing counterparty due to circumstances which have arisen on its side or on the side of its settlement agent or its payment agent through which it settles transactions or whom it uses in such settlement if due to such circumstances the entity which operates the settlement system has taken the action referred to in Art. 45f subpara. 1 of the Act on trading in financial instruments. At the

instant of receipt from the settlement system of information which suggests that such obligations have not been met timely and the entity which operates the settlement system has taken the action referred to in Art. 45f subpara. 1 of the Act on trading in financial instruments, KDPW\_CCP shall identify suspension of transaction settlement due to the circumstances for which such participant is responsible. Such participant shall be obliged to take immediate actions in order to eliminate the suspension of transaction suspension as soon as possible.

3. The participant referred to in subpara. 2 shall be liable to KDPW\_CCP for any loss caused in connection with the suspension of transaction settlement. In the event that such loss is repaired using assets of the OTC guarantee fund, KDPW\_CCP shall be authorised to claim their reimbursement and any assets received under such claims shall become a part of the assets of the fund.

4. If the settlement of transactions for which the participant holds the status of clearing member is performed using a settlement agent or payment agent, actions taken to ensure that transaction settlement is not suspended or to eliminate suspension of such settlement, described in subpara. 1 and 2, shall be performed by the participant through such settlement agent or such payment agent.

#### § 77

1. In case of a lack of coverage in the bank account designated by the clearing member, that member shall immediately take actions to restore the ability to perform its cash obligations arising from the clearing of transactions by ensuring coverage in the relevant bank account.

2. A clearing member shall immediately notify KDPW\_CCP of the effect of taken actions referred to in subpara. 1.

3. Until the receipt of reliable information from the participant, suggesting the ability of performing its obligations, KDPW\_CCP shall be entitled to:

1/ refrain from sending, respectively, a settlement instruction, a settlement order or a transfer order concerning obligations of KDPW\_CCP towards the participant referred to in subpara. 1 arising from transactions created as a result of novation,

2/ cancel, respectively, a settlement instruction, a settlement order or a transfer order referred to in point 1, if they have been sent previously.

#### § 78

1. Subject to the second sentence of subpara. 3 and subject to subpara. 4 and 5a, the market value of securities traded in the organised market, posted as margins or as contributions to the OTC guarantee fund, shall be calculated according to the following principles:

1/ the market value of securities traded only on one organised market shall be calculated at their price on that market taken as the reference price,

2/ if no price taken as their reference price was determined on the organised market of trading in securities referred to in point 1 on a given day, their market value shall be calculated at the last such price before that day,

3/ the market value of securities traded on more than one organised market shall be calculated at their price on that market, assigned a priority higher than the priorities assigned to the other markets, taken as the reference price,

4/ if no price taken as the reference price was determined on the organised market identified according to point 3 on a given day, the market value of securities referred to in point 3 shall be calculated at the last such price determined on that day on another organised market on which such securities are traded or, if such price was determined on that day on more than one market, at such

price determined on the market assigned a priority higher than the priorities assigned to the other markets,

5/ if no price taken as the reference price was determined on the organised markets on which securities referred to in point 3 are traded on a given day, their market value shall be calculated at the last such price on the market on which it was determined last or, if the criterion is met by more than one organised market, at the last such price on the market assigned a priority higher than the priorities assigned to the other markets.

2. The priorities assigned to the organised markets and the prices taken as the reference price for the calculation of the market price of securities are defined in Appendix 3 to the rules.

3. The market value of securities posted as margins or as contributions to the OTC guarantee fund whose price taken as the reference price is calculated as a percentage shall be equal to their current nominal value times the price calculated according to subpara. 1 and the value of incremental interest accrued at the day of calculating their market value if the entity operating the organised market provides KDPW\_CCP with information indicating such value. However, it is assumed that the market value of securities on a day other than a trading day or a session day on any organised market on which such securities are traded shall be equal to their market value determined on the last trading day or a session day on such market.

4. If on a given day, due to a change of the nominal value of securities posted as margins or as contributions to the OTC guarantee fund whose price taken as the reference price is not calculated as a percentage, the Central Securities Depository of Poland has exchanged them for securities with a new nominal value, their market value on that day shall be calculated at the price taken as the reference price according to subpara. 1 and 2, however, for the purpose of the calculation, the price shall be multiplied by a ratio where the new nominal value is the numerator and the previous nominal value is the denominator.

5. Subject to subpara. 5a, the market value of securities posted as margins or as contributions to the OTC guarantee fund which are not traded on any organised market shall be calculated as follows:

1/ the market value of Treasury bills shall be calculated according to the rules applied by the National Bank of Poland to determine the market value of Treasury bills loaned in the securities registration system operated by the National Bank of Poland and used as collateral of such loans,

2/ the market value of securities delisted on an organised market or securities whose trading on such market has been terminated for other reasons shall be calculated according to subpara. 1-4, however, if such securities were traded on more than one organised market and they were delisted on such markets on different days, their market value shall be calculated at the last price on the market on which they were last delisted, taken as the reference price,

3/ for subscription rights not covered by point 2, the market value shall be equal to zero,

4/ the market value of other securities shall be calculated, respectively, at their issue price or at their average issue price weighted by the number of securities registered from different issues in KDPW or, if no issue price can be determined, at their nominal value.

5a. The market value of securities referred to in § 79 subpara. 3 point 4 posted as margins or as contributions to the OTC guarantee fund shall be calculated according to the current market data available from services of information agencies indicated in the Detailed Rules of the OTC Clearing System or available from other sources used by the entity which operates the relevant depository system for such securities.

6. If the market value of securities posted as margins or as contributions to the OTC guarantee fund calculated according to subpara. 1-5a is expressed in a foreign currency, the value shall be calculated

in the Polish currency according to the current market value of that currency determined according to the Detailed Rules of the OTC Clearing System.

6a. KDPW\_CCP shall inform clearing members of the current market value of securities posted by them as margins or as contributions to the OTC guarantee fund and of the valuation of such securities performed according to the Detailed Rules of the OTC Clearing System.

7. For the purpose of application of subpara. 1-5, it is assumed that an organised market shall be a regulated market and an alternative trading system if these are operated by an entity or entities that are parties to agreements referred to in § 1 subpara. 2 concluded with KDPW\_CCP and binding on the day of calculating the market value of securities, and the electronic market in Treasury securities operated by BondSpot S.A. under an agreement with the Minister of Finance.

8. The Management Board of KDPW\_CCP shall specify in the Detailed Rules of the OTC Clearing System the entity which operates the relevant depository system for securities posted as margins or contributions to the OTC guarantee fund where the market value of such securities is determined through such entity.

#### § 78a

1. KDPW\_CCP shall cover losses in the case of default in respect of obligations arising from transactions cleared by KDPW\_CCP, which it is obliged to perform with its own assets, prior to using resources contributed to the OTC guarantee fund, excluding the contribution of the participant on whose part the event of default has occurred, with resources constituting own capital of KDPW\_CCP, dedicated to that purpose according to subpara. 2, in the amount calculated according to subpara. 3 (dedicated resources).

2. KDPW\_CCP shall dedicate for the purpose referred to in subpara. 1 own funds in an amount representing at least 25% of the KDPW\_CCP capital requirement, subject to subpara. 3.

3. The amount of the funds referred to in subpara. 2 shall be calculated taking into account the allocation of such funds in relation to the value of the OTC guarantee fund as well as other guarantee funds and the clearing guarantee fund, managed by KDPW\_CCP within another clearing system.

4. If assets constituting dedicated resources are used according to the provisions of the rules, KDPW\_CCP shall immediately take actions necessary to replenish the dedicated resources up to the amount referred to in subpara. 2 within one month of the day when such resources are used.

5. KDPW\_CCP shall inform clearing members:

1/ of the amount of assets constituting dedicated resources – immediately after calculating it, but at least once per year,

2/ of the allocation of assets constituting dedicated resources referred to in subpara. 3 – immediately after updating contributions to the funds referred to in subpara. 3,

3/ of any change of the amount of assets constituting dedicated resources due to their use according to the rules and of replenishing such resources up to the amount referred to in subpara. 2,

4/ of the amount of all own funds of KDPW\_CCP and the amount of the KDPW\_CCP capital requirement – immediately after receiving a written request of a clearing member.

6. Subject to subpara. 4 and subpara. 5 point 3, any change of the amount of assets constituting dedicated resources due to their recalculation shall require giving prior notification to clearing members.

7. KDPW\_CCP shall inform clearing members of the detailed rules of calculating the KDPW\_CCP capital requirement and the dedicated resources.

**SECTION 2**  
**MARGINS AND THE OTC GUARANTEE FUND**

§ 79

1. Margins shall take the form of:

- 1/ initial margins,
- 2/ initial deposits,

Margins referred to in points 1-3 shall cover liabilities arising from transactions and arising from non-execution or undue execution of such transactions.

2. Margins may consist of:

- 1/ for initial margins – cash or securities accepted by KDPW\_CCP,
- 2/ for initial deposits – cash or securities accepted by KDPW\_CCP,
- 3/ for additional margins – only cash 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).

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 2012, item 942, 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.

#### § 80

1. The value of securities and cash in EUR that form a margin shall be equal to their market value less the market value multiplied by the haircut, published by KDPW\_CCP.

2. The value of the haircut shall be updated daily by KDPW\_CCP, on the days when KDPW\_CCP performs the clearing of transactions. Changes to the value of the haircut performed as part of the update shall also have a bearing on securities posted as margins prior to the update.

3. KDPW\_CCP may update on an on-going basis the value of securities and cash in EUR which constitute a margin and the haircut rate. KDPW\_CCP shall immediately notify the relevant clearing members of the effect of an update to the securities they have posted as margins.

4. The list of securities that may form margins, including their corresponding haircuts, shall be provided to participants for information purposes in the form of a resolution by the KDPW\_CCP Management Board.

5. Haircuts for specific securities may be set at 100% level.

6. Where a margin comprises securities referred to in § 79 subpara. 3 point 4, the value of such securities, referred to in subpara. 1, may be calculated and updated through an entity which operates the relevant depository system for such securities, referred to in § 78 subpara. 8, taking into account the haircut rate assigned to such securities, published by KDPW\_CCP. KDPW\_CCP may outsource the activities referred to in the preceding sentence to such entity provided that such outsourcing is legal and does not jeopardise the safety of trading, in particular KDPW\_CCP shall remain fully liable for non-performance or undue performance of such activities.

#### § 81

1. The value of Treasury bonds shall cease to be recognised to any degree when calculating the value of margins starting on the second day prior to the record date used to determine those entitled to

receive payments following the redemption of such bonds.

2. The value of Treasury bills shall cease to be recognised to any degree when calculating the value of margins starting on the second day prior to the redemption of such bills.

2a. The provisions of subpara. 1 shall apply to securities referred to in § 79 subpara. 3 point 4 provided that subpara. 2 shall apply accordingly where the persons eligible to receive entitlements in respect of redemption are identified on the redemption date of such securities.

3. The value of shares shall cease to be recognised to any degree when calculating the value of margins starting on the day that the issuing company ceases to become a constituent member of the WIG20 stock exchange index.

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 2013, item 330), 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.

5. In the event referred to in the second sentence of subpara. 4, KDPW\_CCP may cease to recognise to any degree the value of securities posted by the participant before the event as a result of which such 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, provided that it has previously informed the participant thereof and indicated the time limit as of which such effect occurs, which shall be not less than two days.

6. A clearing member shall be obliged to notify KDPW\_CCP immediately of any obstacles in determining the value of margins posted by the participant, referred to in subpara. 4.

7. In the event that securities have been issued by:

1/ an entity of KDPW\_CCP's group of companies, within the meaning of Article 3 subpara. 1 point 44 of the Accountancy Act of 29 September 1994, or

2/ another entity which provides to KDPW\_CCP services which have a significant impact on the activity of KDPW\_CCP, other than services provided by the National Bank of Poland, the value of such securities shall not be included in the calculation of margins posted by the participant. The provisions of subpara. 4 and 5 shall apply accordingly.

8. The provisions of subpara. 4-7 shall apply accordingly to the recognition of the value of securities posted by a clearing member as a contribution to the OTC guarantee fund.

## § 82

1. The initial margin shall be posted by a clearing member for transactions which are to be cleared in the OTC clearing system according to the contents of the clearing instruction.

1a. An initial margin may only be used to meet obligations arising from positions registered in

clearing accounts which have been assigned to a collateral account in which the margin is registered unless assets posted as the margin are registered in a collateral account linked to an own position account.

1b. The amount of the initial margin requirement shall be determined by KDPW\_CCP at a level not lower than the level resulting from calculations based on estimated volatility in the historical lookback period of 10 years.

2. The value of the initial margin required from a participant shall be calculated according to the risk of transactions, allowing for a reduction in risk as a result of the relevant correlation between derivative instruments or repo transactions and sale transactions, respectively.

3. The obligations of a participant in respect of initial margins shall be updated daily on the days when KDPW\_CCP performs the clearing of transactions.

4. Securities may be posted as part of the initial margin up to 60% of its required value. Cash deposited in EUR may be credited as part of the initial margin up to 100% of its required value. In certain circumstances justified in order to protect the safety of transaction clearing, the Management Board of KDPW\_CCP may lower these ratios for a limited period by means of a resolution.

5. In case of a significant downgrade of the credit rating of a participant or receipt of reliable information about events which could soon cause it, or in case of a participant's non-performance or undue performance of its obligations arising from the participation agreement, the Management Board of KDPW\_CCP may, on giving prior notice to the participant, adopt a resolution increasing for a limited period, no longer than three months, the amount of the participant's obligations in respect of initial margins calculated on the basis of a ratio set in the resolution. The period of increased obligations in respect of margins calculated for the clearing member may be extended for another limited period, no longer than three months, if the situation referred to in the preceding sentence persists.

6. In case of an abrupt occurrence of significant volatility of market parameters (prices, interest rates or exchange rates) or receipt of reliable information about events which could soon cause it, the Management Board of KDPW\_CCP may, on giving prior notice to participants, adopt a resolution increasing for a limited period, no longer than one month, the amount of obligations in respect of margins calculated for all clearing members on the basis of a ratio set in the resolution. The period of increased obligations in respect of margins calculated for all clearing members may be extended for another limited period, no longer than one month, if the situation referred to in the preceding sentence persists.

#### § 82a

Where assets posted as an initial margin are registered in a collateral account linked to a clearing account maintained in order to register positions arising from transactions executed by an entity acting with the participation type of non-clearing member, that entity shall be entitled to receive such assets or to have them transferred to another clearing member together with positions registered in such clearing account in the events described in § 110a - § 110c within the scope defined therein.

#### § 83

1. The initial deposit shall be posted by a clearing member for transactions which are to be cleared in the OTC clearing system according to the contents of the clearing instruction.

2. An initial deposit is first posted by a clearing member before starting operation in the clearing system in the amount set by the Management Board of KDPW\_CCP in a resolution (minimum amount of initial deposit). After the clearing member starts operation in the system, the amount of the required initial deposit is determined according to the provisions of the Detailed Rules of the OTC Clearing System, and shall not be lower than the minimum amount of initial deposit.

3. Securities and cash in EUR may form part of an initial deposit up to the level of 100% of its value. In certain circumstances justified in order to protect the safety of transaction clearing, the Management Board of KDPW\_CCP may lower these ratios for a limited period by means of a resolution.

#### § 84

1. An additional margin shall be posted by participants referred to in subpara. 2 in instances described therein.

2. In instances where, following transactions concluded in the period between subsequent deadlines in which KDPW\_CCP performs the update of contributions to the OTC guarantee fund, the level of uncovered risk calculated for a given clearing member for such transactions exceeds the total value of contributions paid into that fund, the participant shall be obliged to post an additional margin in an amount that allows to cover the difference between these values. The additional margin shall be maintained by the participant until the next deadline for the update of contributions to the OTC guarantee fund or the date on which the value of the uncovered risk calculated for the participant falls at least to the level equal to the total value of contributions paid into that fund, inclusive, depending on which of these events takes place earlier.

3. Uncovered risk referred to in subpara. 2 shall be understood to mean the difference between the value of the estimated loss on closing out the position of the clearing member in the event of the most adverse stress-test scenario and the value of the initial margin required on the previous day, taking into account marking-to-market, calculated for each participant holding the status of clearing member on each day in which KDPW\_CCP performs transaction clearing.

4. KDPW\_CCP shall immediately notify a clearing member of the obligation to deposit an additional margin no later than 15 minutes before the opening of a clearing session on the day following the day when uncovered risk calculated for the participant exceeds the total amounts contributed by it to the OTC guarantee fund.

5. An additional margin shall be returned, respectively:

1/ upon an update of contributions to the OTC guarantee fund, or

2/ once the uncovered risk calculated for the clearing member falls at least to the level of the total amounts contributed to the fund,

- whichever happens earlier. KDPW\_CCP shall immediately notify the clearing member that it is released of this obligation.

6. An additional margin shall be returned by KDPW\_CCP to the clearing member on the day following the day of the notification given to the participant as referred to in subpara. 5.

#### § 85

1. KDPW\_CCP shall organise and manage the OTC guarantee fund.

2. Once an entity obtains participation of a type associated with the status of clearing member, it shall become a participant of the OTC guarantee fund.

3. Contributions to the OTC guarantee fund shall be paid in by clearing members. The detailed rules of formation and use of the OTC guarantee fund in matters not regulated herein are set out in

Appendix 2 to these rules.

4. Contributions to the OTC guarantee fund shall be calculated by KDPW\_CCP in the Polish currency.

5. Assets of the OTC guarantee fund shall be used in cases referred to in Section 6 "Use of the Assets of the Transaction Clearing Liquidity Guarantee System" and in case of occurrence of an event of default which justifies immediate termination of the agreement.

#### § 86

1. In instances where collateral referred to in this Section is posted in the form of securities, KDPW\_CCP shall have the right to dispose of such securities according to the purpose which the collateral serves from the moment when the securities are first posted as collateral. Securities shall be deposited as an initial margin or an initial deposit by means of their transfer, respectively, to:

1/ for securities referred to in § 79 subpara. 3 point 1-3 - the securities account maintained for KDPW\_CCP by the Central Securities Depository of Poland,

2/ for securities referred to in § 79 subpara. 3 point 4 – the securities account maintained for KDPW\_CCP in the relevant depository system for such securities, indicated by the Management Board of KDPW\_CCP in a resolution,

no later than the time limit set in the Detailed Rules of the OTC Clearing System. Upon such transfer, KDPW\_CCP and the clearing member depositing the margin shall enter into an agreement of transfer of ownership of such securities to KDPW\_CCP in order to secure the performance by the participant of obligations which may be performed by means of the margin according to the rules and to cover the cost of such performance, subject to subpara. 2 and 3.

2. In the event that collateral consists of securities referred to in § 79 subpara. 3 point 4:

1/ the agreement referred to in subpara. 1, the establishment and expiration of collateral in such securities, and the enforcement of such collateral shall be governed by the applicable legal provisions of the state where the securities account referred to in subpara. 1 point 2 is managed. KDPW\_CCP shall indicate, in the Detailed Rules of the OTC Clearing System, the state where such securities account is managed,

2/ each margin consisting in such securities shall be financial collateral established under title transfer financial collateral arrangements referred to in Art. 1 subpara. 1 item (b) of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements,

3/ KDPW\_CCP may make the establishment or release of such collateral dependent on additional actions to be taken by the participant, as indicated in the Detailed Rules of the OTC Clearing System, in order to meet the conditions necessary, according to applicable legal provisions, referred to in point 1, to conclude the agreement referred to in subpara. 1, and to make the collateral effective for third parties and to enforce it in cases referred to in the rules. In this case, the conclusion of the agreement referred to in subpara. 1 may take place provided that the participant has performed such actions,

4/ subject to subpara. 3, collateral shall be established in such securities at the instant of their transfer from the securities account managed in the system in which such securities are registered to the account managed in such system for KDPW\_CCP, unless the applicable legal provisions, referred to in point 1, require that such agreement should be concluded at a different, later time. In that case, the moment when the collateral is established under such applicable legal provisions shall be set by the Management Board of KDPW\_CCP in a resolution,

5/ actions to establish and release such collateral may only be performed with the intermediation of an entity operating the relevant depository system for such securities, under an agreement concluded with such entity by KDPW\_CCP, the participant or its collateral agent, respectively.

3. In instances referred to in § 70a and § 110b, collateral in securities shall be established in the manner defined therein, and the provisions of subpara. 2 and subpara. 3a shall apply accordingly.

3a. If a clearing member posting a margin for KDPW\_CCP concludes an agreement with another entity in order to establish or release such collateral, it shall ensure that the agreement is not in conflict with the rules or resolutions of the KDPW\_CCP Management Board issued under the rules.

4. KDPW\_CCP shall perform the sale of assets in non-cash form that constitute margins if a need arises to use them for purposes described in the provisions of these rules.

5. A clearing member may only demand the release of collateral in whole or in part when the value of that participant's posted collateral exceeds the collateral required or in instances where it has posted equivalent collateral in alternative form in order to have the collateral released.

6. KDPW\_CCP shall not dispose of securities posted as margins within the period that such securities are registered in a securities account maintained for KDPW\_CCP otherwise than in order to establish collateral referred to in subpara. 4.

7. Subject to subpara. 8, payments received by KDPW\_CCP in respect of entitlements from securities posted as margins and in respect of the redemption or cancellation of such securities by the issuer shall be transferred by KDPW\_CCP to clearing members in an amount less of taxes due. If, however, a participant is in arrears with the performance of any cash obligations towards KDPW\_CCP arising from its participation in the OTC clearing system or in a separate clearing system operated by KDPW\_CCP for transactions executed in organised trading, KDPW\_CCP may credit them towards such obligations instead of transferring them to the participant.

8. If an issuer redeems or cancels securities posted as margins, KDPW\_CCP shall be entitled to use such payments in order to cause the performance of obligations of a participant arising from its status of clearing member, but such payments shall be credited in the first place towards a margin in respect of which the cancelled securities were posted, to the extent that the value of other assets credited towards it is lower than the minimum margin or the margin requirement, respectively.

9. If financial collateral referred to in this Section is formed by securities referred to in § 79 subpara. 3 point 1-4, KDPW\_CCP shall be entitled to request the clearing member that has posted such securities as initial margin or initial deposit to post, prior to the record date of entitlements from such securities, an equivalent collateral as required in order to enable the collateral posted in such securities to be released.

10. Subject to subpara. 2 point 5, the KDPW\_CCP Management Board shall indicate, in a resolution, the detailed rules of posting securities as initial margins or initial deposits, as well as their return.

11. Any rights under the agreement referred to in subpara. 1 may only be assigned with the consent of KDPW\_CCP.

#### § 86a

1. Securities posted by a participant holding the status of clearing member in respect of margins or contributions to the OTC guarantee fund shall be included in the calculation of the value of margins or contributions to the OTC guarantee fund posted by the participant, provided that the values set by the Management Board of KDPW\_CCP, hereinafter "concentration limits", are not breached.

2. Subject to subpara. 8, concentration limits shall be defined by KDPW\_CCP for all securities credited towards margins and contributions to the OTC guarantee fund, and taking into account collateral in

other clearing systems.

3. KDPW\_CCP shall define, according to the applicable legislation, the following types of concentration limits:

- 1/ concentration limit for an individual issuer,
- 2/ concentration limit for a type of issuer,
- 3/ concentration limit for a type of asset,
- 4/ concentration limit for a type of collateral,

and such limits are defined separately for, respectively, a given issuer, a given type of issuer, a given type of asset and a given type of collateral.

4. If securities posted by a participant holding the status of clearing member in respect of margins or contributions to the OTC guarantee fund should cause a breach of a concentration limit referred to in subpara. 3 point 1-4, respectively, such securities shall be credited towards such collateral up to the limit.

5. KDPW\_CCP shall define, in a resolution, according to the applicable legislation and safety of trading, in particular ensuring adequate diversification of collateral, the values of the concentration limits referred to in subpara. 3 point 1-3. The value of the concentration limit for a type of collateral shall be defined only for securities designated in the list of securities referred to in § 80 subpara. 4 in the manner defined in § 82 subpara. 4 and § 83 subpara. 3 and in the OTC guarantee fund rules.

6. KDPW\_CCP undertakes to ensure that the concentration limits applicable on a given day are not breached directly due to investments made on that day by KDPW\_CCP or for KDPW\_CCP by the Central Securities Depository of Poland with the own resources of KDPW\_CCP and cash credited to margins and contributions to the OTC guarantee fund.

7. The concentration limit for a type of asset shall be defined only for shares included in the WIG20 index, designated in the list of securities referred to in § 80 subpara. 4, taking into account the breakdown into types of assets issued by entities referred to in subpara. 9 point 4-5.

8. The following concentration limits shall not apply to securities issued by the State Treasury, the National Bank of Poland and securities referred to in § 79 subpara. 3 point 4 issued by European Union Member States other than the Republic of Poland:

- 1/ concentration limit for an individual issuer,
- 2/ concentration limit for a type of issuer,
- 3/ concentration limit for a type of asset.

9. KDPW\_CCP differentiates between the following groups of issuers of securities which may be deposited as collateral by participants, taking into account collateral in other clearing systems (type of issuer):

- 1/ the State Treasury,
- 2/ the National Bank of Poland,
- 3/ European Union Member States other than the Republic of Poland,
- 4/ banks and credit institutions which have issued securities designated in the list of securities referred to in § 80 subpara. 4, included in the WIG20 index,
- 5/ entities other than those described in point 4 which have issued securities designated in the list of securities referred to in § 80 subpara. 4, included in the WIG20 index, broken down by the entities' type of activity and place of establishment or management.

10. KDPW\_CCP shall calculate, according to the applicable legislation and safety of trading, the following concentration levels, which shall be compared with the relevant concentration limits:

- 1/ concentration level for an individual issuer – for the concentration limit for an individual issuer,

- 2/ concentration level for a type of issuer – for the concentration limit for a type of issuer,
- 3/ concentration level for a type of asset – for the concentration limit for a type of asset,
- 4/ concentration level for a type of collateral – for the concentration limit for a type of collateral.

11. When calculating the concentration levels referred to in subpara. 10, KDPW\_CCP shall take into account the value of its total exposure according to the applicable legislation, including assets available to KDPW\_CCP, deposited in bank accounts maintained by third parties, invested in financial instruments and forward financial transactions, deposited as on-demand or term cash deposits, or otherwise invested, as well as the total amount of credit lines.

12. Subject to subpara. 16, the concentration level for an individual issuer shall be understood to mean the value determined by calculating the ratio of the value of securities, designated in the list of securities referred to in § 80 subpara. 4, issued by a given issuer or by an entity of the issuer's group of companies, within the meaning of Article 3 subpara. 1 point 44 of the Accountancy Act of 29 September 1994, credited at the day towards margins or contributions to the OTC guarantee fund, taking into account collateral in other clearing systems, and the value of other assets available to KDPW\_CCP, included in the total exposure of KDPW\_CCP to the issuer under the applicable legislation, in particular assets:

- 1/ deposited in bank accounts maintained by the issuer or by an entity of the issuer's group of companies, or
  - 2/ invested in financial instruments issued by the issuer or forward financial transactions to which the issuer or an entity of the issuer's group of companies is a party, or
  - 3/ deposited with the issuer or an entity of the issuer's group of companies as on-demand or term cash deposits, or
  - 4/ otherwise invested for the issuer or an entity of the issuer's group of companies, or
  - 5/available as a credit granted by the issuer or an entity of the issuer's group of companies
- to the value of all securities credited at the day towards margins or contributions to the OTC guarantee fund, taking into account collateral in other clearing systems, and the value of all assets available to KDPW\_CCP, representing the total exposure of KDPW\_CCP, including all credit lines granted to KDPW\_CCP.

13. The concentration level for a type of issuer shall be understood to mean the value determined for a type of issuer, referred to in subpara. 9 point 1-5, by calculating the ratio of the value of securities, designated in the list of securities referred to in § 80 subpara. 4, issued by the entities of the group of the type of issuer, credited at the day towards margins or contributions to the OTC guarantee fund, taking into account collateral in other clearing systems, and the value of other assets available to KDPW\_CCP, included in the total exposure of KDPW\_CCP to the type of issuer under the applicable legislation, in particular assets:

- 1/ deposited in bank accounts maintained by such issuers, or
- 2/ invested in financial instruments issued by such issuers or forward financial transactions to which any of such issuers are a party,
- 3/ deposited with such issuers as on-demand or term cash deposits, or
- 4/ otherwise invested for any of such issuers, or
- 5/available as a credit granted by such issuers

to the value of all securities credited at the day towards margins or contributions to the OTC guarantee fund, taking into account collateral in other clearing systems, and the value of all assets available to KDPW\_CCP, representing the total exposure of KDPW\_CCP, including all credit lines granted to KDPW\_CCP.

14. The concentration level for a type of asset shall be understood to mean the value determined by calculating the ratio of the value of securities referred to in subpara. 7, credited at the day towards margins, and the value of securities of the given type of asset available to KDPW\_CCP, to the value of all securities credited at the day towards margins and contributions to the OTC guarantee fund, taking into account collateral in other clearing systems, and the value of all securities available to KDPW\_CCP, representing the total exposure of KDPW\_CCP under securities.

15. The concentration level for a type of collateral shall be understood as the value determined by calculating the ratio of the value of securities deposited as margins and contributions to the OTC guarantee fund to the value of margin requirements and required contributions to the OTC guarantee fund, calculated separately for each clearing member.

16. Whenever securities issued by an entity referred to in subpara. 12 or an entity of the same group of companies are referred to in subpara. 12, this shall be understood to mean also securities which have not been issued by that entity or an entity of the same group of companies if that entity has granted a guarantee or surety to perform obligations arising from such securities.

#### § 86b

1. A clearing member that intends to post assets as margins or a contributions to the OTC guarantee fund on a given day shall be entitled to request KDPW\_CCP for information whether or not such assets will be credited towards such margins or contributions to the OTC guarantee fund on that day but no later than within 30 minutes from the delivery of such information to the participant.

2. KDPW\_CCP shall immediately provide information to the participant that has made a request referred to in subpara. 1.

#### § 86c

1. If assets deposited as margins or contributions to the OTC guarantee fund in a currency other than the currency required for the settlement of transactions need to be used in accordance with the provisions of Sections 5 and 6, KDPW\_CCP may convert such currency at the market rate on the day of the conversion.

2. If any assets which have been converted remain to be returned after the actions referred to in the provisions of Sections 5 and 6, KDPW\_CCP may return such assets in the converted currency which was required for the settlement of transactions.

3. In the event of sale of securities which form financial collateral referred to in this Section by KDPW\_CCP in accordance with the purpose of such collateral, redemption or cancellation of such securities by the issuer, the provisions of subpara. 1 and 2 shall apply accordingly to assets received as a result of such sale, redemption or cancellation, respectively.

### **SECTION 3 RISK MONITORING**

#### § 87

1. KDPW\_CCP shall monitor risks arising from transactions accepted for clearing among others by means of:

1/ setting of a collateral limit for each clearing member,

2/ on-going monitoring of positions for each clearing member to ensure that its limit referred to in subpara. 1 is not breached,

3/ on-going monitoring of the value of margins posted by the participant and the value of contributions to the OTC guarantee fund,

4/ on-going monitoring of the concentration level.

2. KDPW\_CCP shall calculate, on the days when transaction clearing is performed, according to the Detailed Rules of the OTC Clearing System, the current value of obligations arising from transactions accepted for clearing for which a given participant is liable. The value shall be included in the verification of breach of the collateral limit.

3. If KDPW\_CCP finds during a clearing session that the current value of obligations arising from transactions accepted for clearing exceeds the collateral limit set for a clearing member, KDPW\_CCP may call on such participant to eliminate the breach immediately, no later than within 60 minutes after the participant becomes aware of the limit being exceeded. If the participant fails to eliminate the breach within such time limit, KDPW\_CCP may refuse further acceptance for clearing of transactions of which the participant is a clearing counterparty, and take actions according to § 104.

4. Subject to subpara. 5 and 7, if the collateral limit set for the clearing member which is a clearing counterparty to a transaction would be breached as a result of the transaction sent for clearing to the OTC clearing system being accepted for clearing in the system, KDPW\_CCP shall refuse its acceptance in the system and notify the clearing member of its non-acceptance due to the breach of the collateral limit, including the amount of required collateral. In that case, KDPW\_CCP shall once again verify the terms of acceptance of the transaction in the OTC clearing system if, before the end of the clearing session at which the transaction was sent to the system, the participant adjusts the margin to the required amount or a transaction referred to in subpara. 7 is sent to and accepted in the system.

5. Subject to subpara. 7, if KDPW\_CCP refuses the acceptance of the transaction referred to in subpara. 4 in the OTC clearing system and then further transactions of which the same clearing member is a clearing counterparty are sent to the system during the clearing session at which the transaction was sent to the system:

1/ the provisions of subpara. 4 shall apply accordingly to such transactions, where KDPW\_CCP shall include the transaction referred to in subpara. 4 and each subsequent transaction not accepted in the system in the verification of breach of the collateral limit for each such transaction,

2/ as a condition of acceptance of all such transactions, including the transaction referred to in subpara. 4, in the system, the margin shall be adjusted in the amount required for all such transactions or the transaction referred to in subpara. 7 shall be sent to and accepted in the system.

6. The transaction referred to in subpara. 4 and subsequent transactions sent to the system, referred to in subpara. 5, shall be accepted in the system at the instant that KDPW\_CCP ascertains, before the end of the clearing session at which they were sent to the system, that actions referred to in subpara 4, 5 and 7 have been performed as necessary to prevent breach of the collateral for all such transactions. In that case, KDPW\_CCP shall immediately send to the participant information confirming that each such transaction has been registered in the clearing account, including the time of registration.

7. After refusal of acceptance of the transaction referred to in subpara. 4 in the system, KDPW\_CCP shall accept any further transaction of which the same clearing member is a clearing counterparty in the system only if its acceptance would restore the level of utilisation of the collateral limit set for the clearing member and enable positive verification of all transactions which were not accepted in the system due to the breach of the collateral limit. While accepting such transaction in the system, KDPW\_CCP shall also take the actions referred to in subpara. 6.

8. If the value of a position concerning a given class of derivative instruments which are registered in clearing accounts of a clearing member exceeds the concentration level, KDPW\_CCP may call on the participant to eliminate the breach immediately, no later than within the time limit designated in the call, which shall be at least 5 days. Upon ineffective lapse of the time limit, KDPW\_CCP may refuse further acceptance for clearing of transactions of which the participant is a clearing counterparty, and take actions according to § 104.

#### § 88

1. A clearing member who concludes transactions or represents in clearing another entity which concludes transactions shall be obliged to adjust the margins in the relevant amount prior to the conclusion by itself or by such entity of transactions which would cause the collateral limit to be exceeded if sent for clearing in the OTC clearing system.
2. A clearing member shall be obliged to maintain a relevant collateral system within which it shall in particular perform on-going monitoring of risks arising as a result of transactions concluded by itself or by entities which it represents in clearing performed by KDPW\_CCP and as a result of submission of transaction orders to it by its clients and, depending on the results of such risk measurement, it shall accept necessary collateral from its clients and such entities.

#### § 89

1. A clearing member holding depository accounts maintained in the settlement system relevant for the performance of settlement of transactions concluded by it shall be obliged to enable within such system transfers of securities concerned by a transaction from its securities accounts to its clients' securities accounts to the extent necessary to perform obligations arising from the clearing of transactions concluded by it by order of clients.
2. The obligation referred to in subpara. 1 shall arise on the condition that the relevant settlement system uses the mechanism referred to in subpara. 1.

### **SECTION 4 SERVICE OF CLOSING POSITIONS ON DEMAND**

#### § 90

1. The service of closing positions on demand shall be organised in order to ensure the execution of cash payments arising from the clearing of derivative transactions, in particular to avoid the necessity of using margins due to lack of coverage in the bank account maintained by the relevant clearing bank for a clearing member or the payment agent designated by it.
2. The service referred to in subpara. 1 shall involve KDPW\_CCP matching parties to a transaction for the opposite position on the terms set out herein in order to close the position of one party, this being a position opposite to the transaction.
3. The service referred to in subpara. 1 shall be initiated by a clearing member where it identifies the need to close a position registered in the clearing account maintained for it in order to ensure proper performance of its obligations arising from the performance of obligations of a clearing member and in particular where it concludes that the relevant bank account maintained for it or for a payment agent designated by it may have a lack of coverage preventing the proper execution of cash payments arising from the clearing of the positions being closed.

#### § 91

1. The service of closing positions on demand shall be performed by KDPW\_CCP for derivative transactions of clearing members who, by submitting a written declaration to that effect according to the model set out by KDPW\_CCP, have consented to participate in the service and authorised KDPW\_CCP to take actions described in § 92 subpara. 3-4 and to receive on their behalf declarations of will submitted as part of the service.
2. Participation in the service referred to in subpara. 1 shall be voluntary.
3. Participation in the service referred to in subpara. 1 shall mean that, on the terms set out in the rules, a clearing member may submit, through the agency of KDPW\_CCP, to other clearing members participating in the service, position opening proposals and offers to conclude a transaction for the opposite position.
4. Clearing members participating in the service referred to in subpara. 1 may act on their own account or on account of another person.
5. KDPW\_CCP shall ensure mutual anonymity of parties in the service referred to in subpara. 1.

#### § 92

1. A clearing member may request KDPW\_CCP to provide the service of closing positions which have been opened in clearing accounts maintained for it by sending an instruction with a position opening proposal for that purpose.
2. A position opening proposal shall be deemed to be effectively submitted in the OTC clearing system once KDPW\_CCP confirms its acceptance.
3. Upon acceptance of a position opening proposal, KDPW\_CCP shall make it available to other clearing members participating in the service of closing positions on demand. KDPW\_CCP shall be entitled to limit the number of clearing members to which it sends the position opening proposal on the terms set out in the Detailed Rules of the OTC Clearing System.
4. In response to a position opening proposal, a clearing member receiving the proposal shall send an offer to conclude a transaction for the opposite position through the agency of KDPW\_CCP.
5. If the clearing member receiving the offer to conclude a transaction for the opposite position accepts its terms, it shall send to KDPW\_CCP an instruction confirming acceptance of the offer. Delivery of an instruction to KDPW\_CCP shall mean at the same time that the transaction for the opposite position is sent by the parties for clearing.
6. The transaction for the opposite position shall be concluded once KDPW\_CCP has received the instruction referred to in subpara. 5. KDPW\_CCP shall immediately send confirmation of conclusion of the transaction to its parties.

#### § 93

1. The Management Board of KDPW\_CCP shall designate in the Detailed Rules of the OTC Clearing System such information as should be contained in a position opening proposal and in an offer to conclude a transaction for the opposite position, subject to the following:
  - 1/ the price of an offer to conclude a transaction for the opposite position shall follow from the contents of the offer determined on the terms set out in the Detailed Rules of the OTC Clearing System,
  - 2/ the settlement date of the cash payment arising from the clearing of the transaction for the opposite position shall not be later than the time limit set out in the Detailed Rules of the OTC Clearing System running from the time of conclusion of the transaction,

- 3/ the derivative instrument concerned by the transaction for the opposite position shall correspond to the kind and parameters of the derivative instrument concerned by the position to be closed.
2. The detailed terms and procedures of delivering a position opening proposal and an offer to conclude a transaction for the opposite position are set out in the Detailed Rules of the OTC Clearing System.

#### § 94

1. Upon the receipt by KDPW\_CCP of an instruction confirming the conclusion of the transaction for the opposite position, KDPW\_CCP shall accept the transaction for clearing and register in clearing accounts the opening of a position for the transaction and then cancel the position according to § 61.
2. A position opening proposal and an offer to conclude a transaction for the opposite position may be withdrawn only by means of submitting, respectively, a new position opening proposal or a new offer to conclude a transaction for the opposite position, but no later than the time of delivery of the instruction confirming acceptance of the offer to KDPW\_CCP.

#### § 95

1. KDPW\_CCP may suspend the performance of actions for a clearing member in the service of closing positions on demand if KDPW\_CCP finds that the conclusion of the transaction for the opposite position will cause the collateral limit set for the participant to be exceeded or the concentration level to be exceeded.
2. KDPW\_CCP shall be entitled to suspend the performance of actions in the service of closing positions on demand in cases described in § 48.

### **SECTION 5 OPERATION OF AUTOMATIC CLOSING OF POSITIONS**

#### § 96

1. The operation of automatic closing of positions shall be organised in case of immediate termination of a participation agreement concluded with a defaulting participant in order to ensure the execution of cash payments arising from the clearing of affected transactions. Participation in the operation shall be mandatory for all clearing members receiving a position opening proposal referred to in § 97 subpara. 1.
2. The operation referred to in subpara. 1 shall involve KDPW\_CCP concluding a transaction for the opposite position which corresponds to the position or positions of the defaulting member being closed and closing the position or positions in case of occurrence of an event of default. Positions shall be closed according to in § 104 subpara. 3.
3. The operation referred to in subpara. 1 shall be initiated by KDPW\_CCP in case of termination of transactions created as a result of novation between KDPW\_CCP and a defaulting participant and closing of positions registered in clearing accounts maintained for the participant.
4. KDPW\_CCP shall perform the operation referred to in subpara. 1 with due diligence justified by market conditions prevailing on the date of the operation.

#### § 97

1. KDPW\_CCP shall perform the operation of automatic closing of positions registered in clearing accounts maintained for the defaulting participant by sending to the other clearing members an

instruction with a position opening proposal for that purpose concerning a position corresponding to the position or positions of the defaulting member being closed. KDPW\_CCP shall be entitled to limit the number of clearing members to which it sends the position opening proposal on the terms set out in the Detailed Rules of the OTC Clearing System.

2. Every clearing member receiving a position opening proposal shall be obliged, under the terms set out in the rules and the Detailed Rules of the OTC Clearing System, to submit to KDPW\_CCP an offer to conclude a transaction for the opposite position. Delivery of an offer to conclude a transaction for the opposite position by a clearing member shall mean at the same time that the clearing member consents that the transaction is sent for clearing in the OTC clearing system and accepts the consequences referred to in subpara. 4. In response to a position opening proposal, the clearing member receiving the proposal shall send an offer to conclude a transaction for the opposite position through the agency of KDPW\_CCP.

3. If KDPW\_CCP accepts the terms of an offer to conclude a transaction for the opposite position, it shall send to the clearing member an instruction confirming the conclusion of the transaction and at the same time register the transaction for the opposite position in the OTC clearing system.

4. The transaction for the opposite position shall be concluded once it is registered in the OTC clearing system.

#### § 98

1. The Management Board of KDPW\_CCP shall designate in the Detailed Rules of the OTC Clearing System such information as should be contained in a position opening proposal and in an offer to conclude a transaction for the opposite position, subject to the following:

1/ the price of the offer to conclude a transaction for the opposite position shall follow from the contents of the offer determined on the terms set out in the Detailed Rules of the OTC Clearing System,

2/ the settlement date of the cash payment arising from the clearing of the transaction for the opposite position shall not be later than the time limit set out in the Detailed Rules of the OTC Clearing System running from the time of conclusion of the transaction,

3/ the derivative instrument or securities concerned by the transaction for the opposite position shall correspond to the kind and parameters of the derivative instrument or securities, respectively, concerned by the affected transaction.

2. The detailed terms and procedures of delivering a position opening proposal and an offer to conclude a transaction for the opposite position are set out in the Detailed Rules of the OTC Clearing System.

#### § 99

KDPW\_CCP shall be entitled to suspend the performance of actions in the operation of automatic closing of positions without stating its reasons.

#### § 99a

1. The defaulting participant shall repay the cost of the operation of automatic closing of positions incurred in favour of third parties (commissions, transaction and banking fees) in connection with actions taken according to the rules and the Detailed Rules of the OTC Clearing System.

2. After performing the operation of automatic closing of positions, KDPW\_CCP shall document, on written request of the defaulting participant, all incurred costs referred to in subpara. 1.

3. The cost of the operation of automatic closing of positions shall be covered with margins posted by the defaulting participant and if these prove insufficient – from the resources of the OTC guarantee fund and from the own resources of KDPW\_CCP in the amount and sequence laid down in § 101 subpara. 2 and § 102 subpara. 2.

## SECTION 6

### USE OF THE ASSETS OF THE TRANSACTION CLEARING LIQUIDITY GUARANTEE SYSTEM

#### § 100

1. Where the clearing of a repo transaction or sale transaction performed in the relevant settlement system on the basis of an instruction of KDPW\_CCP has been suspended due to a lack of coverage in the bank account of the clearing member or the payment agent designated by it maintained in the relevant clearing bank or in TARGET2, KDPW\_CCP shall submit settlement orders for the transactions to be settled following the suspension in such a way that the outstanding obligations of the participant can be performed using its cash credits arising from such transactions. In that case, the credits shall be netted against the outstanding obligations of the participant.

2. If a settlement order submitted to the relevant payment system in order to make a cash payment arising from the clearing of a derivative transaction or a transfer order delivered according to the agreement with the relevant clearing bank for that purpose has not been executed in due time due to a lack of coverage in the bank account of the participant or the payment agent designated by it maintained in the relevant clearing bank or in TARGET2, the provisions of subpara. 1 shall apply accordingly.

#### § 101

1. Where the credits due to a participant referred to in § 100 subpara. 1 are insufficient to eliminate the suspension of transaction settlement caused by the participant, KDPW\_CCP shall, immediately after being notified of the suspension of such settlement by the entity which operates the settlement system, identify occurrence of an event of default and subsequently, take actions necessary to sell securities concerned by the transaction and to perform the settlement of the affected transaction in favour of a participant affected by default by concluding a repo transaction whose position is opposite to the transaction whose settlement has been suspended or a sale of such securities. The defaulting participant may not require KDPW\_CCP to make payments arising from the contents of an instruction submitted by KDPW\_CCP to the relevant settlement system in order to perform the settlement of the transaction which has been suspended due to circumstances for which such participant is responsible.

2. Subject to subpara. 3, differences in prices of securities, if any, between the sale made according to subpara. 1 and the transaction whose settlement has been suspended, including transaction costs, shall inure to KDPW\_CCP if positive, and, if negative, they shall be covered with margins posted by the defaulting participant and subsequently:

1/ the contribution paid in by the participant to the OTC guarantee fund,

2/ the dedicated resources in the amount calculated according to § 78a subpara. 2 and 3, and once these assets are exhausted,

3/ the remaining assets of the OTC guarantee fund.

3. To the extent that the cost of concluding a sale of securities concerned by the transaction has been covered with the assets of the OTC guarantee fund, positive differences of prices of securities

referred to in subpara. 2 shall be credited to the assets of the fund.

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,
- 2/ initial margin,
- 3/ additional margin.

#### § 102

1. Where the participant referred to in § 100 subpara. 2 fails to ensure, on the day when its cash obligations arising from the clearing of transactions are due to be performed, coverage in the relevant bank account maintained by the relevant clearing bank or in TARGET2, necessary to perform in due time, respectively, a settlement order in the relevant payment system, including a system that is a part of TARGET2, or a transfer order in the relevant clearing bank or in TARGET2, KDPW\_CCP shall, on that day, take actions necessary to make the cash payment arising from the clearing of a derivative transaction to the participant affected by default. The provisions of § 101 subpara. 1 second sentence and subpara. 4 shall apply accordingly.

2. Where margins posted by the defaulting member referred to in subpara. 1 prove insufficient, its cash obligations shall be performed in the following order:

- 1/ the contribution paid in by the participant to the OTC guarantee fund,
- 2/ the dedicated resources in the amount calculated according to § 78a subpara. 2 and 3, and once these assets are exhausted
- 3/ the remaining assets of the OTC guarantee fund.

3. KDPW\_CCP shall not be liable to the extent that the cash obligations of the defaulting participant have been performed using margins and the assets of the OTC guarantee fund.

#### § 103

1. Where actions taken by KDPW\_CCP as referred to in § 101 subpara. 1 do not result, within five days from initiating them, in the sale of all securities concerned by the transaction whose settlement has been suspended, or where such actions cannot be taken within that time limit for reasons beyond the control of KDPW\_CCP, the Management Board of KDPW\_CCP guided by the safety and liquidity of clearing shall decide, by way of a resolution, not to take or to discontinue such actions and to make a replacement payment to the participant affected by default in the amount of the difference between the value of such securities which have not been sold arising from the affected transaction whose settlement has been suspended and their market value calculated according to § 78 as at the date of such payment made by KDPW\_CCP. A replacement entitlement shall be paid in the currency of transaction settlement.

2. To make the cash payment referred to in subpara. 1, KDPW\_CCP shall use margins, contributions paid in to the OTC guarantee fund and own assets of KDPW\_CCP, in the order and in the amount set out in § 101 subpara. 2 and 4.

3. The cash payment referred to in subpara. 1 shall relieve KDPW\_CCP from all obligations to the participant affected by default arising from the affected transaction.

#### § 104

1. If a clearing member breaches the collateral limit and fails to eliminate such breach within the

time limit referred to in § 87 subpara. 3, KDPW\_CCP may close all positions of such participant.

2. Positions referred to in subpara. 1 shall be closed in the operation of automatic closing of positions.

3. Positions referred to in subpara. 1 shall be closed with assets posted by the participant as margins. The provisions of § 101 subpara. 4 shall apply accordingly. Where such assets prove insufficient, such positions shall be closed with assets contributed to the OTC guarantee fund and own assets of KDPW\_CCP in the order and in the amount set out in § 102 subpara. 2. Where these assets are also insufficient, the positions shall be closed according to § 108 a subpara. 1 and § 109 subpara. 1-3.

#### § 105

1. Where the settlement of a repo transaction or sale transaction performed in the relevant settlement system on the basis of an instruction of KDPW\_CCP has been suspended due to the lack of securities concerned by the transaction and the suspension of such settlement persists, on the next day following the due date of settlement KDPW\_CCP shall identify suspension of transaction settlement and take actions on the account of the participant necessary to buy securities, respectively, by concluding a repo transaction whose position is opposite to the transaction whose settlement has been suspended or a purchase of such securities. In cases justified by special circumstances and in particular the safety of performed clearing, KDPW\_CCP may take such action earlier.

2. Where the clearing member fails to ensure cash necessary for KDPW\_CCP to purchase securities required to eliminate the suspension of transaction settlement, KDPW\_CCP shall submit settlement orders for the transactions to be settled following the suspension to the relevant settlement system in such a way that the purchase can be financed with cash credits of the participant arising from such transactions. In that case, the credits shall be netted against the obligations of the participant to cover the cost of purchase of securities.

3. To the extent that the cash credits of the defaulting participant are insufficient to purchase securities necessary to eliminate the suspension of settlement, their purchase shall be financed with margins posted by the participant. The provisions of § 101 subpara. 4 shall apply accordingly.

4. Where cash credits of the defaulting participant and margins posted by the defaulting participant do not allow for the purchase of securities in a number necessary to eliminate the suspension of settlement of the repo transaction or sale transaction, the purchase of securities concerned by the transaction whose settlement has been suspended shall be financed also with the assets of the OTC guarantee fund and own assets of KDPW\_CCP, in the order and in the amount set out in § 101 subpara. 2.

5. Positive differences in prices of securities, if any, between the repo transaction whose settlement has been suspended and the purchase made according to the provisions of the subpara. above shall inure to KDPW\_CCP. However, to the extent that the purchase of securities concerned by the transaction has been financed with the assets of the OTC guarantee fund, positive differences in prices of securities referred to in the preceding sentence shall be credited to the assets of the fund.

6. On the identification of an event of default by KDPW\_CCP, as referred to in subpara. 1, the defaulting participant may not require KDPW\_CCP to make payments arising from the contents of an instruction submitted by KDPW\_CCP to the relevant settlement system in order to perform the settlement of the transaction which has been suspended.

#### § 106

1. Where actions taken by KDPW\_CCP do not result, within five days from initiating them, in the purchase of all securities concerned by the transaction in a number necessary to eliminate the suspension of transaction settlement, or where such actions cannot be taken within that time limit for reasons beyond the control of KDPW\_CCP, the Management Board of KDPW\_CCP guided by the safety and liquidity of clearing shall decide, by way of a resolution, not to take or to discontinue such actions and to make a replacement payment to the participant affected by default in the amount of the difference between the market value of such securities which have not been purchased calculated according to § 78 as at the date of such payment made by KDPW\_CCP and their price arising from the affected transaction whose settlement has been suspended. A replacement entitlement shall be paid in the currency of transaction settlement.
2. The resolution referred to in subpara. 1 shall also be adopted in case of lack or significant limitation of the possibility of purchasing securities concerned by the transaction whose lack caused the suspension of settlement of a repo transaction or sale transaction. Lack or significant limitation of the possibility of purchasing securities concerned by the transaction shall be understood to mean in particular a situation where rights attached to such securities have expired or changed after the due date of settlement of the repo transaction and a situation where securities have been deregistered from the securities depository maintained by the Central Securities Depository of Poland.
3. To make the cash payment referred to in subpara. 1, KDPW\_CCP shall use margins posted by the defaulting member and, subsequently, the assets of the OTC guarantee fund and own assets of KDPW\_CCP, in the order and in the amount set out in § 101 subpara. 2 and 4.
4. The cash payment referred to in subpara. 1 shall relieve KDPW\_CCP from all obligations to the participant affected by default arising from the affected transaction.

#### § 107

1. In case of non-performance or undue performance of the obligations of a clearing member obliged to post margins and pay in a contribution to the OTC guarantee fund or make a payment arising from the marking to market, KDPW\_CCP shall identify occurrence of an event of default and begin to close positions registered in clearing accounts maintained for the participant, using margins for that purpose. The provisions of § 101 subpara. 4 shall apply accordingly.
2. Where the assets referred to in subpara. 1 prove insufficient, such positions shall be closed with assets contributed to the OTC guarantee fund and own assets of KDPW\_CCP in the order and in the amount set out in § 102 subpara. 2 and 4. Where these assets are also insufficient, the positions shall be closed according to § 109 subpara. 1-3 accordingly.
3. To the extent that positions have been closed using own assets of KDPW\_CCP, KDPW\_CCP shall be entitled to claim reimbursement of the expensed assets from the defaulting participant.

#### § 108

1. Where the settlement of a repo transaction or sale transaction ("affected transaction A") is suspended in the relevant settlement system due to KDPW\_CCP failing to make a payment arising from the transaction as a result of failure of a defaulting member to make to KDPW\_CCP a payment with the same title and in the same amount under another repo transaction or sale transaction ("transaction B") whose settlement has also been suspended, the payment arising from affected transaction A shall be made by KDPW\_CCP on the day when the suspension of settlement of transaction B is eliminated.

2. Where, in cases referred to in subpara. 1, the Management Board of KDPW\_CCP exercises the right to adopt a resolution concerning a replacement payment to the participant affected by default who is the other clearing counterparty of the affected transaction A, the payment shall relieve KDPW\_CCP from the obligation arising from the affected transaction A.

3. In cases referred to in subpara. 1, KDPW\_CCP shall not be liable for any accessory payments related to the main payment arising from the affected transaction A, in particular KDPW\_CCP shall not be liable to pay interest for a delayed cash payment arising from the transaction or compensation for damage or harm suffered as a result of suspension of transaction settlement.

#### § 108a

1. In the event that, due to actions of KDPW\_CCP taken in order to cause the performance of an obligation arising from the clearing of a transaction accepted to the OTC clearing system or to a separate clearing system operated by KDPW\_CCP for transactions executed in organised trading, the amount of own funds of KDPW\_CCP decreases to 110% of the set KDPW\_CCP capital requirement, KDPW\_CCP shall immediately notify clearing members thereof. In that event, prior to using other own funds, KDPW\_CCP shall call such participants to make additional contributions to the OTC guarantee fund, not greater than 50% of the maximum existing contributions according to their latest update, provided that the obligation arising from the transaction, which should be performed, is secured by that fund.

2. Immediately after making additional contributions referred to in subpara. 1 to the OTC guarantee fund, KDPW\_CCP shall use such assets to ensure the performance of an obligation arising from the clearing of a transaction covered by the transaction clearing liquidity guarantee system.

3. In the event that the amount of own funds of KDPW\_CCP decreases below 110% of the set KDPW\_CCP capital requirement, the Management Board of KDPW\_CCP shall immediately notify participants holding the status of clearing member:

1/ of the amount of own funds of KDPW\_CCP and

2/ of the fact that the situation has been restored where the amount of own funds of KDPW\_CCP is 110% of the set KDPW\_CCP capital requirement.

#### § 109

1. Where actions of KDPW\_CCP described in the preceding provisions of this Section do not result in performance of the obligation arising from the clearing of, respectively, a repo transaction or sale transaction whose settlement has been suspended or a derivative transaction, KDPW\_CCP shall be obliged to perform such obligation with its own assets to the extent that it is not performed despite such actions, subject to § 108a.

2. Only participants affected by default who are the other clearing counterparty of the affected transaction shall be creditors of KDPW\_CCP in respect of the obligation referred to in subpara. 1 and in § 78a.

3. The obligation of KDPW\_CCP referred to in subpara. 1 and in § 78a shall not include any accessory payments, in particular interest for a delayed cash payment or compensation for damage or harm suffered, respectively, as a result of suspension of settlement of a repo transaction or sale transaction or non-performance in due time of an obligation arising from the clearing of a derivative transaction.

4. Where the record date of entitlements from securities concerned by a repo transaction or sale transaction falls within the period of suspension of settlement of such transaction, the price of

securities arising from the transaction shall be reduced with the amount of such entitlements.

#### § 110

1. Where actions referred to in the preceding provisions of this Section are performed with own assets of KDPW\_CCP:

1/ where such assets have been used to perform actions referred to in § 101 subpara. 1, § 102 subpara. 1, § 104 subpara. 1, 4 and 5, § 105 subpara. 1, § 107 subpara. 1, KDPW\_CCP shall be entitled to claim reimbursement of such assets from the defaulting participant, or

2/ where such assets have been used in order to perform actions referred to in § 101 subpara. 1 in connection with the settlement of a repo transaction or sale transaction, KDPW\_CCP shall acquire ownership of the securities purchased with such assets,

3/ where such assets have been used to make a replacement payment, KDPW\_CCP shall be entitled to claim reimbursement of such assets from the defaulting participant,

4/ where such assets have been used to perform actions referred to in § 105 subpara. 1, KDPW\_CCP shall be entitled to receive the cash payment arising from the repo transaction or sale transaction whose settlement has been suspended to the extent that the suspension has been eliminated with the securities purchased with such assets,

5/ KDPW\_CCP shall not be liable to credit the defaulting participant or the participant affected by default with the amount of differences in prices of securities purchased with such assets, if any, between the transaction whose settlement has been suspended and their purchase by KDPW\_CCP,

6/ KDPW\_CCP shall be entitled to claim reimbursement of such assets from the defaulting participant to the extent of the loss resulting from the differences in prices referred to in point 5,

7/ KDPW\_CCP shall be entitled to claim from the defaulting participant reimbursement of costs or compensation for losses incurred as a result of actions taken as referred to in the preceding provisions of this Section, in particular reimbursement of incurred charges arising from public law made as a result of such actions, broker's fees and other direct costs.

2. KDPW\_CCP shall not be liable to return assets of the participant's margins or contributions to the OTC guarantee fund which have been used according to the provisions of these rules in order to perform obligations arising from a transaction created as a result of novation.

3. All costs incurred directly as a result of actions described in this Section, including broker's fees and charges arising from public law incurred as a result of such actions, shall be paid for with the defaulting participant's margins and if these prove insufficient – from the resources of the OTC guarantee fund and from the own resources of KDPW\_CCP in the amount and sequence laid down in § 101 subpara. 2 and § 102 subpara. 2.

### **SECTION 7**

#### **SECURING POSITIONS ARISING FROM TRANSACTIONS EXECUTED BY A NON-CLEARING MEMBER AND ASSETS SECURING SUCH POSITIONS**

#### § 110a

1. In the event that, following the performance of the actions referred to in the provisions of Section 6, assets posted as initial margin remain in a collateral account opened for a defaulting participant in order to secure positions arising from transactions executed by a non-clearing member, registered in the clearing system in a way enabling clear identification by KDPW\_CCP as transactions executed by the non-clearing member, KDPW\_CCP shall transfer such assets to the

entity acting with the participation type of non-clearing member and, should this prove impossible or excessively onerous, to the defaulting participant.

2. In the event of transferring assets to a non-clearing member according to subpara. 1, the defaulting participant shall not be entitled to raise claims against KDPW\_CCP for return of assets referred to in subpara. 1.

#### § 110b

1. Subject to subpara. 2, 3 and 13, in the event of default on the part of a defaulting participant in whose accounts positions are registered which arise from transactions executed by an entity acting with the participation type of non-clearing member, whose settlement has not been suspended, and which have been registered in the clearing system in a way enabling clear identification by KDPW\_CCP as transactions executed by such entity, and assets posted as initial margin to secure such positions, such entity may request that such positions be transferred together with such collateral to a designated clearing account and a collateral account linked to it opened by the participant that has committed to perform obligations arising from the clearing of such transactions.

2. The transfer of positions and assets referred to in subpara. 1 may take place after KDPW\_CCP identifies an event of default, on the basis of matching instructions for the transfer of positions and assets referred to in subpara. 1, to a designated clearing account and a collateral account linked to it opened by the participant assuming the status of clearing member for such positions, submitted within a time limit set by KDPW\_CCP, but not shorter than 60 minutes after its publication according to subpara. 12:

1/ by the participant acting with the participation type of non-clearing member, referred to in subpara. 1, and

2/ by the participant assuming the status of clearing member for such positions.

3. The submission of an instruction by a participant referred to in subpara. 2 point 2 shall simultaneously imply its consent for the performance of all obligations related to the clearing of transactions referred to in subpara. 1, subject to subpara. 10.

4. On the basis of matching instructions, referred to in subpara. 2, KDPW\_CCP shall recall from the settlement system the settlement instruction for transferred positions arising from repo transactions or sale transactions accepted to the OTC clearing system and submit a new settlement instruction for such positions to the settlement system. KDPW\_CCP shall register the transfer of such positions and assets securing such positions referred to in subpara. 1 in the account system provided that the instruction submitted as a result of the transfer of such positions and assets is accepted in the settlement system.

5. KDPW\_CCP shall be entitled to refuse the execution of instructions referred to in subpara. 2 if, due to their execution, the obligations of the participant intending to assume the status of clearing member for positions referred to in subpara. 1 should exceed the amount of initial deposit posted by the participant and the amount of assets posted as initial margin referred to in subpara. 1.

6. In the event of execution of a request referred to in subpara. 1, the participant on whose part an event of default has occurred shall not be entitled to raise any claims against KDPW\_CCP arising from the positions concerned by the request or any claim for the return of assets referred to in subpara. 1.

7. On the registration of the transfer of positions and assets, referred to in subpara. 1, by

KDPW\_CCP in the account system:

1/ the participant on whose part an event of default has occurred shall no longer be the creditor or debtor, respectively, with respect to the entities designated in § 39 subpara. 3,

2/ the participant assuming the status of clearing member for positions referred to in subpara. 1 shall become the creditor or debtor, respectively, with respect to the entities designated in § 39 subpara. 3,

3/ KDPW\_CCP shall no longer be the creditor or debtor, respectively, with respect to the participant on whose part an event of default has occurred and shall become the creditor or debtor, respectively, with respect to the participant assuming the status of clearing member for the positions referred to in subpara. 1.

8. The transfer of positions and assets, referred to in subpara. 1, shall require the consent of KDPW\_CCP acting on its own behalf and on the basis of a power of attorney, referred to in § 24 subpara. 1 point 4 item (b). Such consent shall be granted on the condition precedent that the participant referred to in subpara. 2 point 2 meets the conditions described in subpara. 5. A declaration of will granting such conditional consent shall be submitted by KDPW\_CCP to the participant referred to in subpara. 2 point 2 together with the confirmation that the submitted instructions referred to in subpara. 2 match.

9. On the submission of the declaration of will referred to in subpara. 8, KDPW\_CCP acting on its own behalf and on the basis of a power of attorney, referred to in § 24 subpara. 1 point 4 item (b), shall conclude an agreement to become the creditor or debtor with respect to the positions and assets, referred to in subpara. 1, with the participant referred to in subpara. 2 point 2.

10. The participant intending to assume the status of clearing member for the transactions referred to in subpara. 1 shall submit the instruction referred to in subpara. 2 after it has checked that it and the non-clearing member have performed relevant legal transactions necessary for an effective transfer of the positions and assets, referred to in subpara. 1. By submitting the instruction referred to in subpara. 2, the participant shall confirm that such legal transactions have been performed.

11. The instructions referred to in subpara. 2 shall be submitted in the form and content defined by the Management Board of KDPW\_CCP in a resolution.

12. If KDPW\_CCP identifies an event of default on the part of a participant in whose accounts positions are registered which arise from transactions executed by an entity acting with the participation type of non-clearing member or executed on its account, registered in the clearing system in a way enabling clear identification by KDPW\_CCP as transactions executed by the entity or executed on its account, as well as assets which secure such positions, posted as initial margin, KDPW\_CCP shall immediately publish on its website the time limit for the submission of an instruction for the transfer of the rights and assets, referred to in subpara. 2, and inform the entity holding the status of non-clearing member thereof by fax or by electronic mail over the Internet.

13. KDPW\_CCP shall be entitled to refuse the execution of a request referred to in subpara. 1 if:

1/ matching instructions for the transfer of the rights and assets, referred to in subpara. 2, are not submitted within the time limit referred to in subpara. 2, and KDPW\_CCP has begun to close out positions arising from transactions executed by an entity acting with the participation type of non-clearing member or executed on its account, or

2/ prior to the receipt of instructions for the transfer of the rights and assets, referred to in subpara. 2, a settlement instruction for the transferred positions has been sent to the settlement

system and it cannot be effectively recalled from the system, or

3/ instructions for the transfer of the rights and assets, referred to in subpara. 2, do not indicate all positions registered in the clearing account designated therein from which they are to be transferred.

4/ prior to concluding that instructions for the transfer of the rights and assets, referred to in subpara. 2, match, it identified an event of default of the clearing member who is to acquire the status of clearing member for the positions being transferred,

5/ prior to concluding that instructions referred to in subpara. 2 match, a relevant instruction was sent to the clearing bank or the relevant payment system, including a system that is part of TARGET 2, to clear cash payments in relation to the positions or assets being transferred and it cannot be effectively recalled from the system,

6/ the clearing account indicated by the participant who is to acquire the status of clearing member for the positions being transferred is neither designated for the registration of such positions according to the Detailed Rules of the OTC Clearing System nor marked by it with the same client identification number.

14. On the transfer of the positions and assets, referred to in subpara. 2:

1/ claims for return of financial collateral established by the participant referred to in subpara. 7 point 1 as an initial margin on such assets shall expire,

2/ financial collateral shall be established by the clearing member referred to in subpara. 2 point 2 as an initial margin on such assets,

3/ KDPW\_CCP shall transfer to the participant referred to in subpara. 2 point 2, on the terms and conditions set out in this Section, revenue earned as of that time from the management of such cash assets constituting initial margin, as well as entitlements from securities posted as initial margin with a record date after that time.

15. In an event of default, referred to in subpara. 1, KDPW\_CCP shall be entitled to provide a participant acting with the participation type of non-clearing member with all information concerning transferred positions arising from transactions executed by the participant or executed on its account, as well as assets securing them, posted as initial margin, and from the time of submission by the participant of an instruction for the transfer of the rights and assets, referred to in subpara. 2 point 1, also provide such information to a participant that intends to accept the status of clearing member for the transferred positions.

#### § 110c

1. If positions registered in a clearing account arise from transactions which have not been executed by the same entity, the provisions of § 110b shall apply accordingly if:

1/ all entities which have executed transactions registered in the clearing account are participants represented in the OTC clearing system by the same entity holding the status of clearing member for such transactions, and

2/ only positions arising from transactions concluded by participants, referred to in point 1, are registered in the clearing account, and

3/ positions arising from transactions concluded by participants referred to in point 1 and assets posted as initial margin are registered in a way enabling clear identification by KDPW\_CCP as transactions executed by such participants, as well as assets which secure such positions, and

4/ all entities referred to in point 1 submit matching instructions referred to in § 110b subpara. 2, indicating without limitation the same participant which intends to assume the status of clearing

member for the transactions referred to in point 1.

## TITLE VI TERMINATION

### SECTION I GENERAL PROVISIONS

#### § 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,

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 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 or the court with jurisdiction to review the motion for declaration of bankruptcy of KDPW\_CCP has called a meeting of creditors referred to in Article 44 *et. seq.* of the Bankruptcy Law,

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 2013, item 1030, 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. 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 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.

## **SECTION II TERMINATION EFFECTIVE IMMEDIATELY**

### **§ 112**

Termination of a participation agreement effective immediately shall be performed on the basis of a unilateral notice given, respectively, by KDPW\_CCP or the participant:

- 1/ in case of occurrence of an event of default on the part of the defaulting participant,
- 2/ in case of occurrence of an event referred to in § 111 subpara. 1 point 4 on the part of KDPW\_CCP.

### **§ 113**

1. In case of occurrence of an event of default on the part of the defaulting participant, KDPW\_CCP shall be entitled to:

1/ terminate the participation agreement concluded with the participant effective immediately (cancellation of participation), together with transactions accepted for clearing for which the participant is a clearing counterparty, effective as of the time determined according to subpara. 2, and

a/ close positions registered in clearing accounts maintained for the participant by means of the operation of automatic closing of positions,

b/ perform the actions referred to in § 100 - § 106,

2/ refrain from carrying out the participation agreement concluded with the defaulting participant in the procedure defined in § 121,

3/ refuse to accept further transactions for clearing where the defaulting participant would participate in clearing unless another participant holds the status of clearing member for such transactions and has been designated for their clearing.

2. In the case of cancellation of participation, all liabilities of the clearing member in respect of its participation in the OTC clearing system, including liabilities arising from transactions accepted for clearing in the system, as well as all liabilities of KDPW\_CCP to such participant thereunder, shall become due at the time defined by KDPW\_CCP in the notice of termination of the participation agreement effective immediately, but no later than thirty days after the date of receipt of the notice.

If KDPW\_CCP fails to indicate such date in the notice, all liabilities referred to in the preceding sentence shall become immediately due on the date of receipt of the notice.

3. KDPW\_CCP's notice of termination of the participation agreement effective immediately may be delivered to the clearing member electronically via the SWI system and, if delivery of the notice in this form is not possible, by fax or by electronic mail over the Internet. If it is not possible to deliver the notice in the manner referred to in the preceding sentence, the notice may be delivered to the clearing member in any manner.

4. In the case of cancellation of participation, KDPW\_CCP shall take the actions referred to in this Section and in Section IV "Transaction Clearing Liquidity Guarantee System", including actions aimed to meet liabilities to a participant with the participation type of non-clearing member referred to in § 110a - § 110c.

5. Credits of KDPW\_CCP and the participant whose participation has been cancelled, arising from the clearing of transactions accepted for clearing in the clearing system, to which the participant is a clearing counterparty, as well as in respect of its participation in such system, shall be netted by KDPW\_CCP according to the rules and to resolutions of the Management Board of KDPW\_CCP adopted under the rules. As a result of netting of mutual credits, KDPW\_CCP shall have credits or debits, respectively, due to or from the participant in the amount outstanding after the performance of all actions aimed at meeting the liabilities of the participant in the system. Credits shall be cancelled at the instant that KDPW\_CCP performs such netting and registers its result in its systems.

6. After performing all actions aimed at meeting the liabilities of a defaulting participant in respect of participation in the OTC clearing system, KDPW\_CCP shall:

1/ provide the defaulting participant with the result of netting and information on the date of its registration by KDPW\_CCP in its systems,

2/ at the written request of the defaulting participant, document all data used by it to perform such actions.

7. The provisions of subpara. 1-6 shall not limit KDPW\_CCP's right to claim damages on terms laid down in legal provisions referred to in § 8 subpara. 1.

#### § 114

1. In case of occurrence of any of the circumstances referred to in § 111 subpara. 1 point 4 on the part of KDPW\_CCP:

1/ KDPW\_CCP shall notify all clearing members thereof immediately but no later than the day following the day of occurrence of such circumstance, and publish such information on its website,

2/ it shall stop accepting transactions to the OTC clearing system,

3/ each clearing member shall be entitled to terminate the participation agreement effective immediately, together with transactions accepted to the OTC clearing system for which the participant is a clearing counterparty, effective as of the day described in subpara. 2.

2. If a clearing member terminates the participation agreement effective immediately in case of occurrence of any of the circumstances referred to in § 111 subpara. 1 point 4 on the part of KDPW\_CCP, all obligations of KDPW\_CCP and obligations of the clearing member arising from transactions accepted for clearing in the OTC clearing system for which the participant is a clearing counterparty, as well as obligations of KDPW\_CCP and obligations of the clearing member arising from its participation in the transaction clearing liquidity guarantee system shall become immediately payable on the day following the day of occurrence of any of the circumstances referred to in § 111 subpara. 1 point 4 on the part of KDPW\_CCP.

3. On the cancellation of the participation agreement effective immediately by a clearing member referred to in subpara. 1, KDPW\_CCP and the participant shall be entitled to refrain from making payments 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; however, KDPW\_CCP or the participant, respectively, shall be entitled to do so subject to the condition subsequent that it performs all actions referred to in subpara. § 115 according to the provisions thereof.

4. Credits of KDPW\_CCP and the clearing member referred to in subpara. 1 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 shall be subject to netting performed by the participant according to § 115, unless they are subject to exclusion according to the applicable legal provisions referred to in § 8 subpara. 1. As a result of mutual netting of debits according to § 115, the clearing member referred to in subpara. 1 shall be a creditor or debtor towards KDPW\_CCP entitled to receive from KDPW\_CCP or obliged to pay to KDPW\_CCP the closing amount, respectively.

8. The provisions of subpara. 1-4 shall not hinder the right of the clearing member referred to in subpara. 1 to claim damages on the terms and conditions laid down in the legal regulations referred to in § 8 subpara. 1.

#### § 115

1. A clearing member referred to in § 114 subpara. 1 that has terminated the participation agreement effective immediately in case of occurrence of any of the circumstances referred to in § 111 subpara. 1 point 4 on the part of KDPW\_CCP shall be entitled to calculate the closing amount at the day referred to in § 114 subpara. 2. If it is not possible to calculate the closing amount at the day indicated above due to circumstances beyond the control of the participant, it shall be calculated at the day on which such circumstances cease to exist.

2. The closing amount shall be a net cash amount calculated as the sum of:

1/ debits of the clearing member due to KDPW\_CCP (negative figure), and

2/ credits of the clearing member due from KDPW\_CCP (positive figure),

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, referred to in § 114 subpara. 4.

3. If a calculated closing amount is:

1/ positive, KDPW\_CCP shall pay the closing amount to the clearing member, or

2/ negative, the clearing member shall pay the absolute value of the closing amount to KDPW\_CCP.

4. A clearing member shall calculate a closing amount in good faith and with due diligence justified by market conditions prevailing at the day of the calculation.

5. Non-cash payments shall be calculated by a clearing member according to § 78.

6. The total value of debits and credits arising from transactions accepted for clearing in the OTC clearing system for which the participant is a clearing counterparty, which form the closing amount, shall be calculated by the participant based on valuation models applied by the participant using:

1/ current market data (including without limitation exchange rates, reference rates, volatilities and prices of financial instruments) available from feeds of news agencies (e.g., Reuters or Bloomberg), including data obtained from KDPW\_CCP or obtained from other financial institutions, including quotes (closing prices) obtained from banks for transactions of the same parameters as the

transaction subject to the valuation, or

2/ data referred to in point 1 obtained from the participant's internal sources and data obtained from KDPW\_CCP.

7. A clearing member that calculates a closing amount shall document all data it has used in order to calculate the closing amount with relevant printouts from IT and trading systems.

8. A clearing member's declaration indicating a closing amount shall be delivered to KDPW\_CCP no later than one day after the set day of termination of the agreement effective immediately, subject to the second sentence of § 115 subpara. 1, in which case the declaration indicating a closing amount shall be delivered to KDPW\_CCP on the day following the day of calculating the closing amount. The participant shall deliver the declaration indicating a closing amount together with information about its calculation method.

9. A closing amount indicated in the declaration referred to in subpara. 8 shall be paid by the party obliged to make the payment within two days after delivery of the calculation of the closing amount to KDPW\_CCP. On the delivery of a declaration referred to in subpara. 8, the credits referred to in § 114 subpara. 4 shall be cancelled in the amount resulting from the calculation as indicated in the declaration.

10. If a clearing member fails to perform the actions referred to in subpara. 1-9 in due time, KDPW\_CCP may calculate the closing amount. In that case, the provisions of subpara. 1-9 shall apply accordingly.

## TITLE VII

### MEASURES FOR MAINTAINING ORDER AND DISCIPLINE

#### § 116

1. Measures for maintaining order and discipline shall include:

- 1/ warning,
- 2/ the fine referred to in subpara. 2,
- 3/ the suspension of participation,
- 4/ special fees.

2. If a clearing member is in breach of the principles of participation due to non-performance or undue performance of obligations under the participation agreement, other than obligations to pay fees defined in the Table of Fees, the Management Board of KDPW\_CCP shall, on the terms laid down in the provisions of this Chapter, fine such participant:

1/ PLN 50,000 if the participant:

- a/ fails to provide the information referred to in § 20 subpara. 3 in due time, or
- b/ fails to provide the additional information referred to in § 35 in due time, or
- c/ fails to provide the information referred to in § 31 in due time, or
- d/ is in breach of the principles referred to in § 14 subpara. 2 in a way which poses or posed a risk that obligations arising from the clearing of transactions to which it is a clearing counterparty will not be met in due time, or
- e/ fails to post an additional margin in due time, or
- f/ fails to adjust a contribution (including an additional contribution) to the OTC guarantee fund, or
- g/ fails to provide an offer referred to in § 97 subpara. 2 in due time or provides such offer in breach of the conditions laid down in the Rules or the Detailed Rules of the OTC Clearing System, in particular defines the terms of an offer in breach of such conditions,

or

2/ PLN 10,000 in the case of a breach which poses or posed a risk to the safety of trading or the proper operation of the clearing system referred to in § 1 subpara. 1 unless:

a/ it is a breach referred to in point 1 items (a)-(g), and

b/ a special fee is levied for such breach,

unless the participant's participation in the clearing system has been cancelled for such reason or its participation in the system has been suspended.

#### § 116a

The provisions of this Title shall not limit the right of KDPW\_CCP to use remedies which may be used according to applicable legal provisions and provisions of the rules in order to perform liabilities in respect of participation in the OTC clearing system and to claim damages on terms laid down in legal provisions referred to in § 8 subpara. 1.

#### § 116b

1. Special fees shall be paid by clearing members to KDPW\_CCP.
2. The provisions of § 125 and § 126 shall apply to special fees.
3. The amount of special fees is laid down in the Table of Fees.

#### § 117

1. Subject to subpara. 4, should there be grounds to impose the fine referred to in § 116 subpara. 2, the Management Board of KDPW\_CCP shall notify the participant concerned of the breach, specifying precisely how it occurred and designating a time limit to remedy the condition resulting from the breach or to take a specific action or inaction defined by the Management Board KDPW\_CCP in order to prevent any further breach. In case of the participant's failure to remedy the condition, failure to take or taking inadequate action or inaction, respectively, the Management Board of KDPW\_CCP shall fine the participant as referred to in § 116 subpara. 2.

2. In case of the participant's failure to remedy the condition of breach of participation which formed the basis for the levying of the fee, failure to take or taking inadequate action or inaction in order to prevent any further breach, respectively, the Management Board of KDPW\_CCP shall specify a time limit for eliminating the said condition or taking the action or inaction prior to each subsequent imposition of a fine.

3. The Management Board of KDPW\_CCP may decide not to levy a fee and to caution the participant. The fee referred to in § 116 subpara. 2 shall not be imposed in such cases.

4. If a participant fails to provide the information referred to in § 31 within the time limit defined therein:

1/ subpara. 1 and 2 shall not apply,

2/ the Management Board of KDPW\_CCP may levy a fee referred to in § 116 subpara. 2 without first performing the actions referred to in subpara. 1.

#### § 118

1. The resolution of the Management Board of KDPW\_CCP concerning the imposition of the fine referred to in § 116 subpara. 2 shall immediately be delivered to the participant concerned.

2. The resolution imposing the fine shall be carried out within 10 days of its being delivered to the participant.

#### § 119

1. The participant fined on the basis of § 116 subpara. 2 may, within 7 days of the receipt of the resolution of the Management Board of KDPW\_CCP in this matter submit an appeal to the Supervisory Board of KDPW\_CCP. The appeal shall be submitted through the Management Board of KDPW\_CCP.
2. Submission of an appeal shall not prevent the enforcement of the resolution.

#### § 120

1. The resolution of the Supervisory Board of KDPW\_CCP concerning the appeal shall be adopted not later than 3 months after the submission of the appeal. Resolutions adopted by the Supervisory Board of KDPW\_CCP shall be final.
2. A change of circumstances occurring after the Management Board of KDPW\_CCP has adopted its resolution shall not provide grounds for reversing the resolution. In such instances, the participant in question may apply to the Management Board of KDPW\_CCP to review the case once again.

#### § 121

1. KDPW\_CCP may refrain from carrying out the participation agreement (suspension of participation) if:
  - 1/ the participant threatens the safety of trading or the proper operation of the OTC clearing system,
  - 2/ the participant is in arrears with the payment of any fees due according to the Table of Fees for at least two full payment periods, where such periods need not be consecutive, and no complaint handling procedure has been opened on the matter or, if opened, it has been closed and the decision made in the procedure is final, or
  - 3/ despite the levying of the fee referred to in § 116 subpara. 2 point 1, the participant has not remedied the condition of breach or taken the action or inaction defined by the Management Board of KDPW\_CCP in order to prevent any further breach or has taken it inadequately, or
  - 4/ another breach occurs and KDPW\_CCP has not terminated the participation agreement effective immediately.
2. A threat referred to in subpara. 1 point 1 occurs specifically where the financial situation of the participant arouses doubts as to the participant's ability to meet obligations arising from transaction clearing in a timely manner or where the participant is in breach of the legal regulations governing the operation of the OTC clearing system or the provisions of the rules governing the transaction clearing liquidity guarantee system or where, as a result of undue performance of obligations applicable to the status of clearing member, the participant has caused a major suspension of transaction settlement or is in persistent breach of reporting obligations defined in the rules.
3. The suspension of participation shall be for a specified period, not longer than 6 months. The previous participant status shall be restored on the basis of a resolution of the Management Board of KDPW\_CCP adopted before or on expiry of such time limit, unless a different decision concerning further participation has been taken before the expiry of that time limit.
4. Participation may be suspended with regard to all of the participant's activities under the participation agreement or with regard to only some activities.
5. The decision to suspend participation shall specify the conditions needing to be met in order for the previous participant status to be restored.
6. In the event of suspension of participation, the rules laid down in § 119 and § 120 shall apply.

§ 122

Suspension of participation shall not release:

- 1/ KDPW\_CCP from obligations arising from the clearing of transactions to which the suspended participant is a clearing counterparty, accepted in the OTC clearing system until the time of suspension, and
- 2/ the participant from its obligations arising from its activities in the OTC clearing system until such time. The provisions contained herein shall apply accordingly.

**TITLE VIII**  
**FEES**

§ 123

1. KDPW\_CCP shall charge fees whose types, amounts, as well as rules of calculation are contained in the Table of Fees, to the extent not specified in the provisions of this Section.
2. Changes to the amount of the fees designated in the Table of Fees, carried out after having determined charges arising from public law for the activities for which these fees are levied, shall not affect the status of such fees, being fees to which any potential charges arising from public law should be added.

§ 124

On request of the Management Board, the Supervisory Board of KDPW\_CCP may, for a limited time, reduce or waive fees defined in the Table of Fees.

§ 125

Unless these rules state otherwise, participants shall pay the fees within the following time limits:

- 1/ the fee for participation in the given calendar year – no later than 21 February of the same calendar year, however, where the participation agreement is concluded between 1 February and 31 December of the given calendar year inclusive, the fee charged for that calendar year shall be paid no later than the 21<sup>st</sup> day of the calendar month following the month when the agreement is concluded;
- 2/ fees charged on a quarterly basis – no later than the 21<sup>st</sup> day of the calendar month following the end of each calendar quarter;
- 3/ other fees – no later than the 21<sup>st</sup> day of the calendar month following the month when, respectively:
  - a/ the action for which the fee is charged was performed or was being performed depending on its nature, or
  - b/ the event for which the fee is charged took place.

§ 126

1. Any payment made by a participant who has at least two outstanding debts due to KDPW\_CCP in respect of fees shall be automatically credited to the debt which has been outstanding for the longest period of time.
2. KDPW\_CCP shall immediately notify the participants of any reduction or waiver of fees defined in the Table of Fees.

§ 127

In instances where the value used to determine the amount of a fee is expressed in a foreign currency, it shall be calculated in the Polish currency according to the average exchange rate of the currency published by the National Bank of Poland as follows:

- 1/ for fees charged at each time after the performance of an action for which the fees are charged – on the day when the action was performed or, if the exchange rate is not yet known at the time of issue of the invoice – on the preceding day;
- 2/ for fees charged periodically:
  - a/ if the fees are charged separately for every day or some days of the period – on every day for which the fee is charged,
  - b/ if the fees are charged in total for the period – on the last day of the period.

**TITLE IX  
COMPLAINT HANDLING PROCEDURE**

§ 128

The complaint handling procedure shall be performed in matters concerning non-performance or undue performance by KDPW\_CCP of services referred to in the rules, resolutions issued under the rules, the rules of the OTC guarantee fund, as well as incorrect calculation of amounts due in respect of fees set out in the Table of Fees, other than the following:

- 1/ matters concerning seeking, modification or termination of participation in the OTC clearing system,
- 2/ matters concerning the application of measures for maintaining order and discipline, referred to in § 116 subpara. 1 points 1-3.

§ 129

1. A participant to whom a service referred to in the rules, resolutions issued under the rules, the rules of the OTC guarantee fund is provided or a participant obligated to pay a fee set in the Table of Fees may submit a written complaint concerning the provided service.
2. A complaint submitted by a participant, referred to in subpara. 1, should have the heading “Complaint” and contain other information defined in a resolution of the Management Board of KDPW\_CCP.
3. The Management Board of KDPW\_CCP or a person authorised by it shall review a submitted complaint within 14 days of receipt or notify within that time limit the participant who has submitted the complaint of a new time limit for its review which shall be no longer than 30 days.
4. Submission of a complaint, referred to in subpara. 1, shall not suspend the performance of obligations of the participant with respect to KDPW\_CCP or suspend activities performed by KDPW\_CCP.

§ 130

1. If the matter concerned by a complaint required a resolution of the Management Board of KDPW\_CCP, the complaint shall be reviewed in the same procedure.
2. A resolution of the Management Board of KDPW\_CCP shall be delivered to the participant who has submitted a complaint immediately on its adoption.

3. A participant who has submitted a complaint may, within 14 days of the delivery of a resolution of the Management Board of KDPW\_CCP concerning the submitted complaint, appeal to the Supervisory Board of KDPW\_CCP. An appeal shall be submitted in writing through the Management Board of KDPW\_CCP.

4. A resolution of the Supervisory Board of KDPW\_CCP concerning an appeal shall be taken within no more than 1 month of the date of the appeal. A resolution of the Supervisory Board of KDPW\_CCP on such matter shall be final.

#### § 131

1. If the matter concerned by a complaint did not require a resolution of the Management Board of KDPW\_CCP, the complaint shall be reviewed by a person authorised by the Management Board of KDPW\_CCP who shall notify the participant in writing of the complaint review procedure immediately on its review.

2. A participant who has submitted a complaint may, within 14 days of the delivery of the notice of the complaint review procedure, submit a written request to the Management Board of KDPW\_CCP for the re-examination of the case.

3. A resolution of the Management Board of KDPW\_CCP concerning an appeal shall be taken within no more than 1 month of the date of KDPW\_CCP's receipt of the request referred to in subpara. 2. A resolution of the Management Board of KDPW\_CCP on such matter shall be final.

### **TITLE X INTERIM PROVISIONS**

#### § 132

Participants holding the status of clearing member with the participant type of individual clearing member at the effective date of the amendments to the rules may submit an application for amendment of the participation agreement and granting of the participant type of general clearing member as of the publication date of the amendment to the rules.

#### § 133

A participant that is a non-resident within the meaning of the Foreign Exchange Law of 27 July 2002 and did not provide the declaration referred to in § 23 subpara. 1 point 6 when concluding the participation agreement, shall provide such declaration within two weeks of receipt of KDPW\_CCP's notice to such effect.

#### § 134

A participant holding the status of clearing member shall immediately notify its clients who have signed the declarations referred to in § 26 subpara. 1 point 1 of the amendments to the rules.

#### § 135

If according to the relevant legal provisions applicable in the state of seat of a clearing member or where a seat is not required to be established, then its head office, CRR does not apply to its activity, and the participant did not provide the declaration and information referred to in § 23 subpara. 1 point 7 when concluding the participation agreement, it shall provide such declaration and information within two weeks of receipt of KDPW\_CCP's notice to such effect.

§ 136  
[repealed]

§ 137  
[repealed]

§ 138  
[repealed]

§ 139  
[repealed]