

## Appendix 2 to the Rules of Transaction Clearing (Non-organised Trading)

**OTC GUARANTEE FUND RULES****SECTION 1  
GENERAL PROVISIONS****§ 1**

1. This Appendix, hereinafter referred to as the OTC Guarantee Fund Rules, defines the procedures for the formation and use of the fund which guarantees the proper performance of obligations arising from transactions (OTC guarantee fund).
2. KDPW\_CCP may manage the assets of the OTC guarantee fund.
3. Specific deadlines described in these Rules shall be used according to their definition in the Rules of Transaction Clearing (Non-organised Trading), hereinafter referred to as the Rules.
4. The provisions of § 7 of the Rules shall be used to determine and calculate the deadlines.

**§ 2**

1. The OTC guarantee fund guarantees the performance of obligations arising from transactions accepted into the OTC clearing system and arising from non-execution or undue execution of such transactions, subject to subpara. 4.
2. The OTC guarantee fund is formed from contributions of participants holding clearing member status to the extent of transactions referred to in subpara. 1.
3. The OTC guarantee fund consists of the basic resource and the reserve resource.
4. The OTC guarantee fund shall guarantee, under extreme but plausible market conditions, the performance of obligations arising from transactions and arising from non-execution or undue execution of such transactions, according to Appendix 1 to the OTC guarantee fund rules.

**§ 3**

1. The assets of the OTC guarantee fund may be used for the purposes of covering losses which exceed losses that shall be covered with required margins, in the cases defined in the Rules, including in particular:
  - 1/ to cover the differences between the price of securities, if any, between a repo transaction or sale transaction whose settlement has been suspended and their purchase or sale, as well as the costs incurred to perform that purchase or sale, in instances where, in order to eliminate the settlement suspension of a repo transaction or sale transaction, securities concerned by the transaction are purchased or sold in order that the participant being the other clearing counterparty who has not caused the settlement to be suspended may receive payment,
  - 2/ to meet the cash payments owed by the participant being the other clearing counterparty where the defaulting participant has not fulfilled the cash payment obligations arising from clearing of a transaction guaranteed by the OTC fund,
  - 3/ to meet a replacement payment obligation towards the participant being the other clearing counterparty,
  - 4/ to perform marking to market of transactions in derivatives covered by the OTC guarantee fund.
2. The provisions of the Rules shall apply to any matters relating to the principles of the use of the

OTC guarantee fund that are not regulated herein.

3. Whenever these rules refer to a defaulting participant, this shall be understood to mean a clearing member affected by default within the meaning of the Rules.

## **SECTION 2**

### **PAYMENTS, UPDATES AND ADJUSTMENT OF THE CONTRIBUTIONS TO THE OTC GUARANTEE FUND**

#### **§ 3a**

1. Contributions to the OTC guarantee fund shall be calculated on the basis of the exposure of each clearing member resulting from transactions cleared in the OTC clearing system, irrespective of the scope of activity performed by the participant at the place of its establishment, head office or separate organised part of such activity for which it has executed a participation agreement.

2. If a participant intends to perform more than one scope of activity in the OTC clearing system and use for such purpose more than one identifier issued to it by KDPW\_CCP (institution code), then it shall indicate the identifier to be used for the purposes of participation in the OTC clearing fund. For this purpose, the participant shall submit a declaration according to a template defined by KDPW\_CCP, which shall be effective as of the next day following the day of submission of the declaration to KDPW\_CCP. In the absence of such identifier indicated by the participant, KDPW\_CCP may identify any institution code used by the participant in the clearing system and immediately notify the participant thereof.

3. The provisions of the first and second sentence of subpara. 2 shall apply accordingly to any change of the institution code for the purposes referred to in subpara. 2.

#### **§ 4**

1. Participants make payments to the OTC guarantee fund through contributions consisting of:

1/ cash accepted by KDPW\_CCP, or

2/ securities accepted by KDPW\_CCP, which are Treasury securities, or

3/ accepted debt securities, which are denominated in EUR and issued by European Union Member States other than the Republic of Poland,

where the types of accepted securities, referred to in points 2 and 3, which may constitute contributions to the OTC guarantee fund, as well as the conditions that such securities need to meet to be accepted as contributions, shall be defined in a resolution of the KDPW\_CCP Management Board.

1a. Cash accepted by KDPW\_CCP within the meaning of subpara. 1 is only cash deposited according to the terms defined in the provisions or the Rules and the Detailed Rules of the OTC Clearing System, in the following currencies:

1/ PLN,

2/ EUR.

2. Subject to the provisions of subpara. 3 and 4, as well as the provisions of § 5 subpara. 3, § 6 subpara. 2, § 8 subpara. 3 and § 19a subpara. 3, securities referred to in subpara. 1 points 2 and 3 paid in by a clearing member shall count towards the clearing member's contribution before any cash assets paid in.

3. Securities referred to in subpara. 1 points 2 and 3 paid into the OTC guarantee fund shall count towards the contribution only in part determined by the KDPW\_CCP Management Board by means of

a resolution. However, two days prior to the record date used to determine the owners of securities entitled to payments following their redemption or cancellation, these securities shall cease to count as a valid means of contribution, subject to § 13 subpara. 2.

4. The amount of the contribution paid in using securities referred to in subpara. 1 points 2 and 3 and cash in EUR shall be equal to the market value of the securities less their market value times the assigned haircut rate published by KDPW\_CCP according to a procedure defined in a resolution of the KDPW\_CCP Management Board.

5. The market value of securities shall be determined according to the provisions of § 78 of the Rules.

6. The updated market value of securities referred to in subpara. 1 points 2 and 3 and cash in EUR paid in as contributions by each participant shall be calculated each day in which KDPW\_CCP performs transaction clearing.

7. KDPW\_CCP shall define the value of the haircut rate for each security referred to in subpara. 1 points 2 and 3 and cash in EUR depending on its type, market price volatility risk, and liquidity.

8. The value of the haircut rate shall be updated by KDPW\_CCP for every day in which KDPW\_CCP performs transaction clearing. Changes to the level of the haircut rate following its update shall also apply to securities referred to in subpara. 1 points 2 and 3 and cash in EUR paid into the OTC guarantee fund prior to the introduction of the change.

9. The level of the haircut rate for specific securities referred to in subpara. 1 points 2 and 3 may be set at 100%.

10. The provisions of the rules shall apply in matters concerning the contribution of cash and securities to the fund, as well as their return, not governed by the OTC guarantee fund rules.

#### § 4a

1. The rights arising from the registration of securities referred to in § 4 subpara. 1 point 3 on the securities account referred to in § 5 subpara. 1 point 2 shall be governed by the applicable legal provisions of the state where the securities account is managed. The KDPW\_CCP Management Board shall indicate, in a resolution, the state where such securities account, on which securities referred to in § 4 subpara. 1 point 3, is managed.

2. KDPW\_CCP shall accept securities referred to in § 4 subpara. 1 point 3 if:

1/ the applicable legal provisions of the state referred to in subpara. 1 ensure effective posting of such securities as contributions into the OTC guarantee fund and enable their use with priority over third parties in cases referred to in the rules and the OTC guarantee fund rules and in accordance with the provisions of such rules,

2/ the provisions of the rules and the OTC guarantee fund rules concerning the posting of such securities as contributions into the OTC guarantee fund and their use in cases referred to in the rules are consistent with the applicable legal provisions referred to in subpara. 1.

3. Where securities referred to in § 4 subpara. 1 point 3 are posted as a contribution into the OTC guarantee fund:

1/ KDPW\_CCP may make the posting of such securities dependent on additional actions to be taken by the participant, as indicated by the KDPW\_CCP Management Board in a resolution, in order to ensure effective posting of such securities as contributions into the OTC guarantee fund and enable their use with priority over third parties in cases referred to in the rules and the OTC guarantee fund rules and in accordance with the provisions of such rules,

2/actions to post and release such securities may 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/ the valuation of the contribution, to the extent that it is formed of such securities, may be calculated and updated with the intermediation of an entity operating the relevant depository system for such securities, which has concluded an agreement with KDPW\_CCP, taking into account the haircut assigned to such securities as published by KDPW\_CCP.

4. If a clearing member posting securities as contributions into the OTC guarantee fund 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.

## § 5

1. The securities referred to in § 4 subpara. 1 points 2 and 3, paid into the OTC guarantee fund by participants shall be registered, respectively:

1/ for securities referred to in § 4 subpara. 1 point 2 – on the securities account managed by the Central Securities Depository of Poland for KDPW\_CCP,

2/ for securities referred to in § 4 subpara. 1 point 3 – on the securities account managed for KDPW\_CCP in the relevant depository system for such securities, indicated by the KDPW\_CCP Management Board in a resolution.

2. Contributions to the OTC guarantee fund shall be paid in as follows:

1/ for cash assets - by means of a debit of the bank account in the relevant clearing bank or in TARGET2 managed for the clearing member or its payment agent, subject to subpara. 6,

2/ for securities referred to in § 4 subpara. 1 point 2 - by means of the transfer of such securities onto the securities account referred to in subpara. 1 point 1, according to the principles described in the relevant rules issued by the Central Securities Depository of Poland, defining the rules for the management of the securities depository and for processing of transaction settlement,

3/ for securities referred to in § 4 subpara. 1 point 3 - by means of the transfer of such securities onto the securities account referred to in subpara. 1 point 2, according to the principles described in the rules issued by the entity indicated by the KDPW\_CCP Management Board in a resolution, which define the terms of operation of the relevant depository system for such instruments and of the clearing of transactions, subject to § 4a subpara. 3 point 2.

3. Instructions sent to the Central Securities Depository of Poland in order to transfer securities referred to in § 4 subpara. 1 point 2 paid by a clearing member into the OTC guarantee fund or paid into it via its settlement agent, onto the securities account managed by the Central Securities Depository of Poland for KDPW\_CCP, shall indicate that the transferred securities shall count towards a contribution to the OTC guarantee fund and shall be sent according to the regulations referred to in § 2 subpara. 2.

4. Subject to § 4a subpara. 3 point 2, the Management Board of KDPW\_CCP shall define in a resolution the detailed terms of contributing securities to the OTC guarantee fund as well as the detailed terms of their return.

5. Securities contributed to the guarantee fund in the way referred to in subparas. 3 and 4 shall not count towards other contributions made by the participant to the basic resource of the OTC guarantee fund.

6. Cash in EUR shall be paid as contributions into the OTC guarantee fund and returned on the basis of instructions sent by the participant, and returned to the bank account indicated according to § 23 subpara. 2 point 3 of the rules.

#### § 6

1. A clearing member shall join the OTC guarantee fund upon the performance of the obligations referred to in subpara. 2-4.
2. A clearing member shall make the contribution to the basic resource of the OTC guarantee fund for the first time exclusively in the form of cash. The first contribution should be paid in not later than two days prior to the day of the commencement of the activities of the participant in the OTC clearing system.
3. A participant intending to hold the status of clearing member for transactions guaranteed by the OTC guarantee fund, executed by another entity following a change of participant holding such status, shall be obliged to make the contribution to the basic resource of the fund for the first time not later than two days prior to the date when the participant intends to acquire the status of clearing member to such extent.

#### § 7

1. Subject to the provisions of subpara. 3 and 4, contributions to the basic resource of the OTC guarantee fund shall be updated on each day on which KDPW\_CCP clears transactions in the Polish currency.
2. KDPW\_CCP performs the update by calculating the required amount of the contribution.
3. The update of the contribution is performed for the first time, respectively, on the date on which the clearing member will commence activities in the OTC clearing system or on the date that the participant acquires the status of clearing member for transactions executed by another entity following a change of participant holding this status.
4. In the event of default, within the meaning of the Rules, by a defaulting participant, the KDPW\_CCP Management Board may decide in a resolution to suspend for a set period of time the update of contributions to the basic resource of the OTC clearing fund or determine other dates of such contribution updates if justified by the safety of trading or the clearing of transactions.

#### § 8

1. The update of the value of the OTC clearing fund and of the required contribution of each participant shall be performed according to the principles described in Appendix 1 to the OTC guarantee fund rules. The amount of the contribution to the basic resource of the OTC clearing fund shall be calculated in proportion to the exposures of the clearing member arising from cleared transactions taking into account the minimum contribution.
2. The amount of the contribution to the basic resource of the OTC guarantee fund shall not be lower than PLN 1,000,000 (one million zlotys) - minimum contribution. The KDPW\_CCP Management Board may determine another amount for the minimum contribution in a resolution.
3. In cases specially justified by reasons of safety of trading and transaction clearing, the KDPW\_CCP Management Board in a resolution may oblige all or some clearing members to pay in contributions in a specific amount other than the amount determined according to subpara. 1 and 2 and decide that such contributions may be paid in in a form other than provided for in the Rules and the OTC

guarantee fund rules.

#### § 9

1. Subject to the provisions of subpara. 2, the contribution of a participant shall be adjusted if the required contribution is different than the value of the assets paid in by the participant to the basic resource of the OTC clearing fund
2. If the assets of the OTC guarantee fund were sold below their purchase price, following their use in accordance with the provisions of § 3 subpara. 1, the level forming the basis for the update adjustment of the contributions shall be defined by the KDPW\_CCP Management Board by means of a resolution.
3. The adjustment of the contribution shall be made by participants paying in a contribution to the basic resource of the OTC guarantee fund, or following a refund of part of the participant's contribution.
4. A refund of part of the participant's contribution shall only be made in the form of cash, through a credit payment onto the bank account, referred in § 5 subpara. 2 point 1, subject to § 5 subpara. 6. The amount of the refund shall not be higher than the surplus over the part of the participant's contribution, which according to the provisions of § 4 subpara. 3 must remain in cash form.
5. A clearing member's debits and credits as a result of the adjustment of contributions to the OTC guarantee fund shall be offset (netted) with the clearing member's debits and credits arising from the payment of maintenance margins and marking to market.

#### § 10

1. The adjustment of the contribution shall take place on the basis of documents containing the information referred to in subpara. 2 below, issued by KDPW\_CCP and made available to participants.
2. On the day of the update, KDPW\_CCP shall make available not later than 23:00 hours CET, to each clearing member, information defining the updated amount of the participant's contribution to the basic resource of the OTC guarantee fund, the updated market value of the securities paid in as part of the contribution and the amount of the participant's cash debits and credits that need to be adjusted as part of the next contribution adjustment.
3. The adjustment of the contribution when this contribution consists of cash assets on the day following the day when the information referred to in subpara. 2 is made available, indicating that the participant is obliged to make a payment, but not later than the time determined in the Detailed Rules of the OTC Clearing System. On the same day, KDPW\_CCP shall refund part of the contribution paid in by the participant if this information indicates a credit owed to the participant. In instances justified by reasons of trading or transaction clearing safety, the Management Board of KDPW\_CCP may, by means of a resolution, designate separate deadlines for each update.
4. Securities may be used as part of the contribution on condition that, on the day the information referred to in subpara. 2 was made available, but not later than the time determined in the Detailed Rules of the OTC Clearing System, they were registered, respectively:
  - 1/ for securities referred to in § 4 subpara. 1 point 2 - on the securities account referred to in § 5 subpara. 1 point 1,
  - 2/ for securities referred to in § 4 subpara. 1 point 3 - on the securities account managed for KDPW\_CCP in the relevant depository system for such securities, indicated by the KDPW\_CCP

Management Board in a resolution.

5. The adjustment consisting of a refund to the participant of a part of the contribution paid in shall be withheld in instances where participants are obliged to make replacement or additional contributions, referred to in § 19 subpara. 1 and 2, as well as § 19a subpara. 1 – 3.

### **SECTION 3 WITHDRAWAL OF SECURITIES**

#### § 11

1. Clearing members may withdraw securities paid in by them to the OTC guarantee fund by means of an instruction sent to KDPW\_CCP to this effect.

2. KDPW\_CCP shall send an instruction to the depository system operated, respectively, by the Central Securities Depository of Poland or the entity referred to in § 5 subpara. 2 point 3, to transfer securities from the securities account referred to in § 5 subpara. 1 point 1 or 2, in accordance with the contents of the instruction referred to in subpara. 1, on the day following the day of its receipt, on condition that:

- 1/ the participant has performed the obligations relating to the adjustment of the contribution,
- 2/ the withdrawn securities do not need to be used by the OTC guarantee fund, and
- 3/ the instruction referred to in subpara. 1 was sent to KDPW\_CCP prior to 18:00 CET on the day preceding the date of the intended withdrawal.

3. If the instruction, referred to in subpara. 1, is sent to KDPW\_CCP, then the documents, referred to in § 10 subpara. 2 shall not include the value of the securities, which are to be withdrawn in accordance with the instruction.

#### § 12

1. A clearing member shall be obliged to withdraw securities paid into the OTC guarantee fund two days prior to the record day on which those entitled to receive payments following redemption or cancellation of these securities are determined. This does not exempt participants from the obligation to adjust the contribution.

2. KDPW\_CCP may send an instruction to transfer securities which have not been withdrawn by the participant according to the principle described in subpara. 1, from the securities account, referred to in § 5 subpara. 1 point 1 or 2, onto the account from which the securities were paid into the OTC guarantee fund.

### **SECTION 4 RESERVE RESOURCE OF THE OTC GUARANTEE FUND**

#### § 13

1. Subject to subpara. 4, the reserve resource of the OTC guarantee fund consists of:

- 1/ revenue from the investment of cash assets paid in the Polish currency into the basic resource, and
- 2/ the assets described in § 19 subpara. 4, and
- 3/ revenue generated by the investment of assets, as referred to in points 1- 2 above.

2. If a participant does not perform the obligations described in § 12 subpara. 1, the payment from

the issuer received for the redemption or cancellation of securities that were paid in by the participant to the OTC guarantee fund shall be added to the basic resource of the fund, increasing the value of cash assets paid in by that participant as contribution.

3. KDPW\_CCP shall be entitled to retain all proceeds from the management of the cash resources of the OTC clearing fund in EUR, if any.

4. Any assets paid by a clearing member as a contribution to the OTC clearing fund or due to such clearing member as a surplus above the required contribution to the basic resource shall be counted towards the participant's contribution to the reserve resource of the OTC clearing fund. Such assets shall be withdrawn according to the procedures applicable to the return of assets paid as contributions to the basic resource, subject to § 15 subpara. 1-3, which shall apply accordingly.

#### § 14

1. The share of a participant in the revenue generated by the investment of assets from the basic resource in the Polish currency and of assets from the reserve resource, referred to in § 13 subparas. 1-3, shall be proportional to the participant's share in the basic resource in such currency and share in the reserve resource, respectively, subject to the provisions of subpara. 2 .

2. The share of a participant in the assets described in § 19 subpara. 4 shall be proportional to that participant's share in the basic resource.

#### § 15

1. The share in the revenue generated by the investment of assets referred to in § 13 subpara. 1 point 1 and 3 shall be paid out to participants quarterly, subject to subpara. 3 – 5.

2. Benefits from securities contributed to the OTC clearing fund shall be transferred by KDPW\_CCP to the participant who contributed such securities to the OTC clearing fund on the day of receipt of such benefits, subject to subpara. 3 – 5.

3. In the event of a default within the meaning of the Rules, the KDPW\_CCP Management Board may, in a resolution, suspend the payment of assets referred to in subpara. 1 and 2 until the measures referred to in § 113 subpara. 1 point 1 of the Rules are completed or participants perform the obligation to pay in contributions referred to in § 19 subpara. 1 and 2 or § 19a subpara. 1 – 3.

4. If the payment of assets referred to in subpara. 1 and 2 is suspended, such assets shall be added to the share of each clearing member in the reserve resource of the OTC clearing fund and shall be counted towards contributions referred to in § 19 subpara. 1 and 2 or § 19a subpara. 1 – 3, subject to § 16 subpara. 2.

5. As a remitter of the withholding tax on revenue earned by clearing members who are non-residents, KDPW\_CCP shall charge the withholding tax in the maximum amount applicable under Polish law prior to transferring to such members any benefits from securities contributed to the OTC clearing fund, any payment from the issuer received for the redemption or cancellation of such securities or any revenue referred to in subpara. 1.

6. KDPW\_CCP shall immediately notify participants of any suspension of payment of assets referred to in subpara. 1 and 2.

**SECTION 5**  
**USING THE ASSETS OF THE OTC GUARANTEE FUND.**  
**REPLACEMENT CONTRIBUTIONS AND ADDITIONAL CONTRIBUTIONS**

§ 16

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

1/ contributions to the basic resource of the OTC clearing fund shall be adjusted unless their update has been suspended according to § 7 subpara. 4, subject to § 10 subpara. 3 and § 17,

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

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

§ 17

1. KDPW\_CCP shall allow clearing members other than the defaulting participant to replace securities or cash in euro paid by them to the OTC clearing fund with cash in the Polish currency unless:

1/ this shall jeopardise the safety of trading or the safety of clearing,

2/ this shall affect the deadlines of measures referred to in § 113 subpara. 1 point 1 of the Rules of Transaction Clearing, or

3/ this shall increase the cost of the measures referred to in point 2.

For this purpose, KDPW\_CCP shall notify such clearing members of the time limit within which they may submit a declaration relating to the replacement of securities or cash in euro with cash assets in the Polish currency up to the amount of the required contribution to the basic resource of the OTC clearing fund.

2. The declaration referred to in subpara. 1 should indicate, respectively, the quantity and identifier of securities or the quantity of cash assets in euro that are to be replaced. The replacement shall take place provided that:

1/ the cash assets in the Polish currency available in the bank account referred to in § 5 subpara. 2 point 1 are sufficient to replace the assets indicated in the participant's declaration, and

2/ the time limit set by KDPW\_CCP, referred to in subpara. 1, is still pending.

§ 18

1. Disbursement of the assets of the OTC guarantee fund shall be made from the basic resource.

2. If securities form part of the assets of the OTC clearing fund that are subject to the disbursement, KDPW\_CCP shall sell such securities with a view to selling them as soon as possible at the best possible price.

§19

1. Following the completion of measures defined in the Rules involving any disbursement of assets of the OTC clearing fund, KDPW\_CCP shall update the contributions to the basic resource of the OTC clearing fund and determine the amount of replacement contributions. Participants shall be obliged immediately to replenish the OTC clearing fund according to the update. The provisions of § 7 - § 10 shall apply accordingly.

2. Replacement contributions shall be paid in proportion to the contributions of participants to the basic resource of the fund. A participant's share in the reserve resource shall count towards the replacement contribution.
3. The obligation to make replacement contributions shall not apply to the defaulting participant, whose obligations arising from the status of clearing member for transactions guaranteed with the OTC clearing fund have been performed using assets of the OTC clearing fund.
4. Cash paid into the OTC guarantee fund according to the provisions of § 101 subpara. 3 or § 105 subpara. 5 of the Rules shall be allocated to the reserve resource of the OTC guarantee fund; however, where such assets are in a currency other than the Polish currency, KDPW\_CCP may convert them into the Polish currency at the market exchange rate at the date of the conversion prior to allocating such assets to such resource.

#### § 19a

1. Where, due to actions taken by KDPW\_CCP in order to cause the performance of an obligation arising from the clearing of a transaction accepted to the OTC clearing system, the amount of own funds of KDPW\_CCP falls to 110% of the set capital requirement, clearing members shall be obliged to make additional contributions relative to the value of their contributions made thus far to the basic resource of the fund, arising from the most recent update performed before measures were taken under the Rules involving disbursement of assets of the OTC clearing fund.
2. The amount of the additional contribution that the participant may be obliged to make in the event described in subpara. 1 shall not exceed 50% of that participant's total amount of contributions to the basic resource of the fund, arising from the most recent update (maximum amount of additional contribution).
3. The additional contributions shall only be paid in the form of cash within the deadline defined by KDPW\_CCP, set at the earliest on the day following the date of the demand for additional payment. The KDPW\_CCP Management Board may decide in a resolution that additional contributions may be paid in instalments whose amount shall be defined in such resolution.
4. In an event described in subpara. 1, contributions shall be updated taking into account the additional contribution that the participant has been called to make. The additional contribution referred to in subpara. 1 shall be maintained by the participant until the time of the next update following the restitution of a situation where the amount of own funds of KDPW\_CCP is greater than the set capital requirement.
5. The provisions of subpara. 1-4 shall apply subject to § 108a subpara. 1 of the Rules.

### SECTION 6

#### CONSEQUENCES OF TERMINATION, SUSPENSION OF PARTICIPATION OR PARTICIPANT ACQUISITION

#### § 20

1. Subject to subpara. 2 and 3, in instances when participant status is terminated or limited to the extent that it involves the loss of clearing member status for transactions guaranteed by the OTC guarantee fund, KDPW\_CCP shall refund the participant the securities and cash assets remaining from contributions made by that participant to the basic resource, as well as the cash assets being equal to the participant's share in the reserve resource, calculated as at the day of the refunding of

the assets to the participant. The assets refunded to the participant may be subject to a deduction by an amount necessary to perform the clearing of transactions executed in connection with other transactions guaranteed by the assets of the OTC guarantee fund, for which the participant held the status of clearing member.

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

3. If an event of default within the meaning of the Rules occurs before the participant status is terminated or limited to the extent that it involves the loss of clearing member status for transactions guaranteed by the OTC clearing fund, then:

1/ the clearing member's participation in the OTC clearing fund shall not terminate until the measures referred to in § 113 subpara. 1 point 1 of the Rules are completed and the clearing member performs the obligation to pay in the contribution referred to in § 19a subpara. 1 – 3,

2/ the assets forming the clearing member's share in the reserve resource shall be counted towards the contribution referred to in § 19a subpara. 1 – 3,

3/ the assets shall not be returned until the measures referred to in § 113 subpara. 1 point 1 of the Rules are completed and the clearing member performs the obligation to pay in the contribution referred to in § 19a subpara. 1 – 3.

4. The provisions of subpara. 1 above shall not apply in instances where:

1/ termination of participation status takes place as a result of the acquisition of a participant by another entity, which assumes all the rights of the participant being taken over. In such instances, assets paid into the OTC guarantee fund by the participant being taken over and that participant's share in the reserve resource shall be allocated to the acquiring participant, or

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

#### § 21

1. Subject to the provisions of subpara. 2, refunds of the assets referred to in § 20 subpara. 1 shall be made within a period of 7 days following the performance of the obligations referred to in § 20 subpara. 2 and in the case referred to in § 20 subpara. 3 after the measures referred to in § 113 subpara. 1 point 1 of the Rules are completed and the participant performs the obligation to pay in the contribution referred to in § 19a subpara. 1 – 3.

2. The refund of entitlements from securities shall take place on the day these entitlements have been received, subject to § 20 subpara. 1 - 3.

3. In instances of refunds of the assets referred to in § 20 subpara. 1, the provisions of § 11 subpara. 2 and 3 shall apply.

#### § 22

[repealed]

#### § 23

[repealed]

**§ 24**

In instances where a participant is acquired by another entity, within a given scope, the amount of contribution to the basic resource of the OTC guarantee fund required to be paid in by the acquiring entity shall be determined at the level of the most recent updated contribution of the participant being acquired, paid in during the period of the takeover, subject to the provisions of § 25.

**§ 25**

1. The amount of the contribution to the basic resource of the OTC guarantee fund required to be paid in by the acquiring entity, who is at the same time a participant in the fund, shall be determined in accordance with general principles, however, using data relating to both the acquiring entity and the entity being taken over, as the basis of calculation, subject to the provisions of subpara. 2.
2. When calculating the contribution, described in subpara. 1, data relating to the participant being taken over shall only apply in the scope of the takeover.

**SECTION 7  
REPORTING****§ 26**

The Management Board of KDPW\_CCP shall present participants of the OTC guarantee fund with semi-annual and annual reports on its activities in relation to the management of the assets of the OTC guarantee fund.

## Appendix 1 to the OTC guarantee fund rules

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

- I. The value of the OTC guarantee fund is determined by KDPW\_CCP in the following steps:
  1. Calculation of uncovered risk, separately for own portfolios of the clearing member (i.e., all positions arising from transactions registered in own position accounts of the clearing member) and for client portfolios (i.e., all positions arising from transactions registered in client position accounts of the clearing member), for stress-test scenarios defined by KDPW\_CCP. Uncovered risk under a stress-test scenario is equal to the difference between the hypothetical loss on a portfolio (determined by KDPW\_CCP as the difference between the value of the portfolio under the stress-test scenario and the value of the portfolio as at the end of day in the clearing system) and the value of the initial margin requirement, provided that uncovered risk of client portfolios of clearing members has a floor value equal to zero;
  2. Calculation of the exposure of each clearing member as at the given day in the OTC clearing system under the stress-test scenario, equal to the sum of uncovered risk of all own portfolios and all client portfolios of the clearing member under the stress-test scenario;
  3. Calculation of the maximum exposure under the stress-test scenario as at the given day in the OTC clearing system equal to the greater of:
    - 1/ the biggest clearing member exposure of all exposures calculated in item 2, or
    - 2/ the sum of the second and third biggest clearing member exposures of all exposures calculated in item 2;
  4. Calculation of the value of the OTC clearing fund equal to the biggest maximum exposure calculated in item 3 at all days in the OTC clearing system within the time window set by KDPW\_CCP multiplied by the parameter securing the change of the exposure value on the next day.<sup>1</sup>
- II. The required contribution of a clearing member to the OTC clearing fund is calculated in proportion to the clearing member's average exposure (calculated in item I.2) within the time window set by KDPW\_CCP.<sup>1</sup> The required contribution of a clearing member to the OTC clearing fund is equal to or greater than the minimum contribution set by KDPW\_CCP.

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<sup>1</sup> KDPW\_CCP notifies clearing members of the defined time window referred to in items I.4 and II and the parameter securing the change of exposure referred to in item I.4 in accordance with § 4a subpara. 1 or 2 of the Rules of Transaction Clearing.