

MEMBERSHIP REQUIREMENTS - NON-ORGANISED TRADING

Who may become a KDPW_CCP participant?

The following entities are eligible to become KDPW_CCP participants for OTC clearing:

- investment firms,
- domestic banks,
- foreign investment firms,
- other financial institutions,
- entities established outside the Republic of Poland performing clearing of trades in financial instruments,
- companies managing a clearing house.

Types of participation

Types of participation in OTC clearing:

GENERAL CLEARING MEMBER - where the clearing member being a financial institution is liable in the OTC clearing system for transactions concluded:

- by itself on its own account and then confirmed on an electronic platform,
- by another entity on its own account and then confirmed on an electronic platform.

INDIVIDUAL CLEARING MEMBER – where the clearing member being a financial institution is liable in the OTC clearing system for transactions concluded by itself on its own account and then confirmed on an electronic platform,

CLEARING HOUSE - where the clearing member is an entity (entities established outside the Republic of Poland or companies managing a clearing house), 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,

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 of the Rules of transaction clearing (non-organised trading).

How to become a KDPW_CCP participant?

Preliminary (test) phase - possibility to conduct tests before becoming participant [more](#)

A participation agreement is signed in the following steps:

1. **Filling an application** ([Form No. 1](#) or [Form No. 2](#)) **for participation** (together with appendices)

If the application is seeking to obtain the participation type of:

- **clearing member** ([Form No.1](#)) – submit a declaration to the effect that the applicant fulfils the financial requirements under § 27 subpara. 2 of the Rules of transaction clearing (non-organised trading) and that the applicant is familiar with the rules of sending and receiving declarations and information in electronic form applicable in relations between KDPW_CCP and participants, available on the KDPW_CCP website, and that the applicant is aware of the requirements it should meet as a participant under § 27 subpara. 3 of the Rules of transaction clearing (non-organised trading),
- **non-clearing member** ([Form No. 2](#)) –specify the entity which is a clearing member and will represent the applicant.

Appendices to the application:

- a copy of the company statute or articles of association and a valid copy or excerpt from the relevant company register,
- a copy of the business authorisation granted,
- 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 ([Form No. 4](#)),
- a declaration relating to the submission of disputes to the jurisdiction of the common court of law with jurisdiction over the seat of KDPW_CCP ([Form No. 5a](#)),
- 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 ([Form No. 6](#)),
- a declaration concerning establishment or fixed establishment ([Form No. 22](#)).

If the application concerns a participation type related to the status of clearing member, the applicant shall also append the following to the application:

- a list of staff involved in transaction clearing that includes their positions, telephone and facsimile numbers as well as e-mail addresses ([Form No. 6](#))

If the applicant intends to participate in the clearing of repo transactions and sale transactions or post securities as margins or contributions to the OTC guarantee fund:

- 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 ([Form No. 7](#)),
- a declarations of the entity indicated by the applicant that intends to perform the functions of settlement agent, providing its consent to perform these functions for the applicant ([Form No. 21](#)),

- 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 ([Form No. 8](#)),
- if the applicant submits the application:
 - 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,
 - 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,
- if the applicant intends to post debt securities denominated in EUR, issued by European Union Member States other than the Republic of Poland, as margins or contributions to the OTC clearing guarantee fund:
 - 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,
 - a declaration of the entity indicated by the applicant according to the above mentioned item that will perform the function of collateral agent, wherein it agrees as referred to in § 1 point 2a item (a) of the Rules of transaction clearing (non-organised trading) 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,
- 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 declaration of the applicant indicating the elements referred to in § 28 subpara. 3-4 and § 29 subpara. 2-4 of the Rules of transaction clearing (non-organised trading), 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 of the Rules of transaction clearing (non-organised trading),
 - a list of financial information referred to in § 32 subpara. 3 of the Rules of transaction

clearing (non-organised trading), 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.

Applicants that are foreign investment companies or any other foreign financial institutions applying for the status of clearing member append to their application:

- if an applicant seeking the status of clearing member has provided the financial information referred to in § 32 subpara. 2 and 3 of the Rules of transaction clearing (non-organised trading) 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) of the Rules of transaction clearing (non-organised trading), 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;
- 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 of the Rules of transaction clearing (non-organised trading) 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.

In addition, please note the following conditions:

- an application for conclusion, amendment or termination of a participation agreement and a statement on submission of disputes to the jurisdiction of the competent court should be submitted in Polish, and in addition they may be submitted in an English language version, however, in such instances it should be declared that the Polish language document shall be deemed the definitive version according to § 6 of the KDPW_CCP Detailed rules of the OTC clearing system;
- participants holding clearing member status are obliged at least once every calendar year to take part in tests of the Business Continuity System organised by KDPW_CCP, according to § 36 of the Rules of transaction clearing (non-organised trading);

- participants holding clearing member status are obliged to holder of:
 - 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
 - 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.

Simplified procedure for the participants of KDPW_CCP

Where an applicant is a participant of a separate clearing system operated by KDPW_CCP, in place of documents mentioned above as appendices, it may submit a declaration confirming their application to participation in the OTC clearing system ([Form No. 3](#)).

2. Granting participation status in KDPW_CCP:

Under § 21 of the Rules of transaction clearing (non-organised trading), **the participation agreement is concluded within two weeks after** the date of the submission of the application with all required enclosures to KDPW_CCP, if the applicant seeking to conclude the agreement fulfils the terms and conditions of participation specified by the law and by the Rules of transaction clearing (non-organised trading) and the application and appended documents meet the formal terms and conditions specified in the provisions of this Rules.

Conditions to fulfil after granting participation status in KDPW_CCP

Prior to starting activities in the OTC clearing system, under § 24 of the Rules of transaction clearing (non-organised trading), a clearing member who has obtained a specific type of participation should:

- **make an initial contribution to the OTC guarantee fund – PLN 5 million** - (ca. EUR 1,13 million)
 - the first contribution is five times the minimum contribution set in § 8 subpara. 2 of the *OTC Guarantee Fund Rules* at PLN 1 million (ca. EUR 0,23 million),
 - the participant's contribution to the basic resources of the OTC guarantee fund may only be paid in cash,
 - the first contribution should be paid no later than two days before the date of starting the participant's activities in the OTC clearing system.
- **pay an initial deposit – PLN 1 million** - (ca. EUR 0,23 million)

The initial deposit level according to Resolution No. 19/12 of the KDPW_CCP S.A. Management Board dated 19 December 2012.

- **open a clearing account in the OTC clearing system,**
- **deliver a written power of attorney for KDPW_CCP to:**
 - in derivative instruments on the participant's account for which the participant holds the status of clearing member, in instances described in the rules ([Form No. 18](#)),

- 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 of transaction clearing (non-organised trading),
- **deliver a written power of attorney for KDPW_CCP** to issue buy and sell 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 ([Form No.11](#)),
- **deliver a declaration** where the participant commits to submit transaction reports or which designates KDPW_CCP as the entity to submit transaction reports to the relevant trade repository where the obligation to submit transaction reports to a trade repository results from relevant regulations ([Form No. 12](#)).

A clearing member which represents in clearing another entity which concludes transactions should:

- **deliver a declaration** designating the entity which it will represent in the OTC clearing system for transactions concluded by such entity ([Form No. 13](#)),
- **obtain from that entity a written declaration, ([Form No. 13](#))** where that entity:
 - consents to the performance by the participant of obligations arising from the clearing of transactions concluded by that entity,
 - 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,
 - 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 to novation relevant legal provisions which have been designated by KDPW_CCP according to the *Rules of Transaction Clearing (non-organised trading)*,
 - 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 the obligation to submit such reports to a trade repository results from relevant legal regulations.
- written confirmation, in the declaration submitted to KDPW_CCP ([Form No. 13](#)), that the entity which has signed the declaration:
 - has signed it according to the entity's rules of representation,
 - has concluded an agreement with the applicant whereby it shall be a clearing counterparty of transactions concluded by that entity,

Capital requirements

The capital requirements for participant holding the status of clearing member are set in detail in § 28 and § 29 of the Rules of Transaction Clearing (non-organised trading):

Participation type	Minimum capital requirement
GCM (General clearing member)	PLN 100 million (ca. EUR 23 million)
ICM (Individual clearing member)	PLN 50 million (ca. EUR 11.5 million)
Clearing house	PLN 100 million (ca. EUR 23 million)

Reporting requirements

A participant holding the status of clearing member should regularly report to KDPW_CCP with financial information set out in § 32 - § 34 of the Rules of transaction clearing (non-organised trading). If a participant no longer fulfils the requirements referred to in § 28 or § 29 of the Rules of transaction clearing (non-organised trading), 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. A special fee will be charged to a clearing member who fails to provide the financial information referred to, respectively, in § 32 subpara. 1 points 1-3 or § 33 of the Rules of transaction clearing (non-organised trading), prepared for the given reporting period, within the time limit set for its provision in the applicable legislation, in the amount of PLN 200 for each day of delay but no more than PLN 10,000, separately for each item of financial information for the given reporting period. [More info](#)

Technical requirements

A participant holding the status of clearing member should fulfil the technical requirements including:

- maintenance of 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,
- mandatory participation (at least once every calendar year) in Business Continuity System tests organised by KDPW_CCP under § 36 of the Rules of transaction clearing (non-organised trading),
- obtain an access to the confirmation platforms.