

## **RULES OF TRANSACTION CLEARING**

(Organised Trading)

### **TITLE I**

#### **GENERAL PROVISIONS**

##### **§ 1**

1. The Rules of Transaction Clearing, hereinafter referred to as the “rules”, define the operating principles of the clearing system managed by KDPW\_CCP for transactions executed on regulated markets or in alternative trading systems in financial instruments registered in the securities depository managed by the Central Securities Depository of Poland and derivatives admitted to organised trading, and executed within the clearing liquidity guarantee system for such transactions organised by KDPW\_CCP.
2. The clearing system described in subpara. 1 may perform the clearing of transactions executed in the regulated markets, or alternative trading systems, including those operating outside the territory of the Republic of Poland, managed by entities that are parties to agreements concluded to this effect with KDPW\_CCP.
- 2a. The clearing system described in subpara. 1 may perform the clearing of on-demand loans concluded with the intermediation of the Central Securities Depository of Poland within the negotiated lending system where an agreement with the Central Securities Depository of Poland so provides.
3. Transactions executed in an alternative trading system managed in the territory of the Republic of Poland, as well as transactions executed in markets managed outside this territory may be cleared by KDPW\_CCP on condition that the agreement, described in subpara. 2, concluded with an entity managing such a system or market expects KDPW\_CCP to manage a guarantee fund to ensure the correct clearing of these transactions.
4. KDPW\_CCP shall publish a directory of regulated markets and alternative trading systems, described in subpara. 2, on its internet website.
5. The operating principles of the clearing system managed by KDPW\_CCP for transactions other than referred to in subpara. 1-3 shall be set out in separate rules.

##### **§ 1a**

1. On the terms set out in these rules and in the applicable legal regulations, KDPW\_CCP shall take over rights and obligations arising from transactions which have been accepted for clearing in this way.
2. The law governing the evaluation of legal consequences in relations between KDPW\_CCP and participants arising from acceptance of transactions for clearing in the way referred to in subpara. 1 shall be exclusively the law applicable in the Republic of Poland irrespective of the place where such transactions are made and their applicable law.
3. KDPW\_CCP shall take over rights and obligations arising from transactions accepted for clearing under the relevant provisions of the Law on Trading in financial instruments which set out the way of clearing consisting in novation of such transactions.

4. For transactions cleared in the way referred to in subpara. 1, KDPW\_CCP shall act as a central counterparty within the meaning of the Act on the Finality of Settlement in Payment Systems and Securities Settlement Systems and the Rules of Supervision over those Systems of 24 August 2001 (consolidated text: Dziennik Ustaw – Journal of Laws of 2022, item 1581) between clearing members acting, respectively, on side A (buyer, long position holder or borrower) or on side B (seller, short position holder or lender).
5. Where a transaction counterparty is represented in clearing performed by KDPW\_CCP by another entity which is a participant holding the status of clearing member, KDPW\_CCP shall take over rights and obligations arising from the transaction acting as a central counterparty for such participant.
6. Where a transaction counterparty is represented in clearing performed by KDPW\_CCP by a participant which is a company operating a clearing house or an entity with a seat outside the territory of the Republic of Poland performing tasks in the scope of clearing transactions made in financial instruments trading, KDPW\_CCP shall take over rights and obligations arising from the transaction acting as a central counterparty for such participant, subject to specific provisions set out in the participation 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 that case, KDPW\_CCP shall clear with the represented participant any payments received in connection with representing it in clearing performed by another entity, provided that such payments may be used to meet obligations of the participant arising from the clearing of transactions performed by that entity or by KDPW\_CCP and where such payments arise from transactions made by the participant and cleared by another entity, they shall be paid to the participant no earlier than after the participant has paid to KDPW\_CCP all amounts it is obliged to pay under such transactions.

## § 2

1. The terms and conditions of operation of the clearing system are laid down in these present rules, the Detailed Rules of Transaction Clearing (organised trading) and other resolutions of the Management Board of KDPW\_CCP adopted under these rules. The Management Board of KDPW\_CCP may pass resolutions on detailed matters that relate to the operation of the clearing system, with the exception of matters regarding the rights and obligations of participants who define the terms and conditions of obtaining and terminating participation.
2. The resolutions referred to in subpara. 1 shall be made available to the interested participants immediately upon being passed.
3. The resolutions referred to in subpara. 1 shall come into force two weeks after their becoming available according to subpara. 2, unless they indicate a longer period before coming into force.
4. The provisions of subpara. 3 shall not apply to resolutions of the Management Board of KDPW\_CCP that relate to the entering into, amendments to, and termination of participation agreements with an individual participant, nor to resolutions which do not contain rules relating to the rights and obligations of participants. Subject to the provisions of subpara. 2, these resolutions shall come into force upon being passed, unless the relevant resolution provides a later date.

5. The Management Board of KDPW\_CCP shall take a resolution on detailed matters that relate to the operation of the clearing system in keeping with legal regulations, the safety of trading and the provisions of the rules. The scope and subject matter of the resolution shall include in particular:

- 1/ the scope and nature of matters which are to be regulated by the resolution according to the provisions of the rules,
- 2/ the specificity and functionality of actions taken in the clearing system which are to be regulated by the resolution according to the provisions of the rules,
- 3/ the necessity of ensuring proper operation of the 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 clearing system.

### § 3

Whenever reference is made herein to the following terms:

- 1/ settlement agent, this shall be understood to mean a participant of a settlement institution which:
  - a/ has consented, in connection with an agreement concluded with a participant holding the status of clearing member, for the use of its depository account or securities account managed in that settlement institution to perform transaction settlement, within the scope for which the participant holds the status of clearing member, and to adjust assets posted in securities as margins required of such participant and as its contributions to the clearing guarantee fund or the relevant guarantee fund, excluding assets which are securities referred to in § 47 subpara. 3 point 4, and
  - b/ according to regulations issued by the settlement institution, it is authorised for such transactions to be settled and for such assets to be adjusted using such account,
- 2/ 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 managed 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 § 47 subpara. 3 point 4, posted as margins required of such clearing member and as its contributions to the clearing guarantee fund or the relevant guarantee 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 § 47 subpara. 3 point 4, as margins or contributions to the clearing guarantee fund or the relevant guarantee fund,
- 3/ clearing bank, this shall be understood to mean a bank managing bank accounts used:
  - a/ by the relevant settlement institution to perform the cash leg of the settlement of transactions in a given currency, and

- b/ to process cash flows arising from the settlement of transactions in derivatives and cash flows in the transaction clearing liquidity guarantee system,  
provided that payments in EUR arising from participation in the clearing system are processed through bank accounts managed under agreements concluded by participants or their payment agents with central banks which manage payment systems in TARGET,
- 4/ business day, this shall be understood to mean a day determined according to applicable regulations and the rules,
- 5/ additional buyer protection, this shall be understood to mean measures taken by KDPW\_CCP in order to compensate a participant affected by default, in the amount and on the terms defined in the rules, for property benefits lost as a result of suspension of the settlement of a transaction in securities which such participant or its client would obtain by exercising, in direct connection with an event defined in the rules as an optional corporate action, a property right attached to such securities,
- 6/ clearing fund, this shall be understood to mean the fund securing the clearing of transactions concluded on the regulated market, operated by KDPW\_CCP under the clearing fund rules,
- 7/ clearing instruction, this shall be understood to mean a settlement order within the meaning of the Act of 24 August 2001 on Finality of Settlement in Payment Systems and Securities Settlement Systems and Supervision of Such Systems, which is respectively:
- a/ a document containing the terms of a transaction concluded on the regulated market, in an alternative trading system or in the negotiated lending system,
- b/ a document containing the terms of return of an on-demand loan concluded in the negotiated lending system,
- c/ an instruction which confirms the conclusion of a transaction concluded, respectively, in an open market buy-in operation or an auction operation carried out by KDPW\_CCP in accordance with the rules,
- 8/ derivatives, this shall be understood to mean derivatives admitted to organised trading, cleared by KDPW\_CCP,
- 9/ settlement institution, this shall be understood to mean, respectively, the Central Securities Depository of Poland or another entity indicated in a resolution of the Management Board of KDPW\_CCP authorised to perform transaction settlement under the authorisation referred to in Article 16 CSDR or a recognition decision referred to in Article 25 CSDR, including a central bank operating as a CSD within the meaning of Article 2(1)(1) CSDR,
- 10/ KDPW\_CCP, this shall be understood to mean the company KDPW\_CCP S.A.,
- 11/ clearing account, this shall be understood to mean a registration device operated by KDPW\_CCP in the transaction 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,
- 12/ collateral account, this shall be understood to mean a registration device operated by KDPW\_CCP in the transaction clearing system in order to calculate and register the initial margin,
- 13/ 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."),

- 14/ interest coupon, this shall be understood to mean the amount of interest for an interest period, calculated by KDPW\_CCP, due for a security in a repo transaction,
- 15/ novation, this shall be understood to mean a way of clearing transactions consisting in novation of such transactions as defined in relevant provisions of the Law on trading in financial instruments,
- 16/ transaction settlement order cancellation, this shall be understood to mean also the cancellation of such order only to such extent that the settlement under such order is not made pursuant to the regulations of the relevant settlement institution to which KDPW\_CCP sends such order due to the lack of necessary assets in the depository account, the bank account, the omnibus securities account, the securities account or the cash account,
- 17/ auction operation, this shall be understood to mean measures taken by KDPW\_CCP in accordance with the rules in order to close out a position of a defaulting participant in connection with the termination of such participant's participation agreement effective immediately,
- 18/ securities, this shall be understood to mean securities as defined in Article 3 point 1a and b of the Law on trading in financial instruments,
- 19/ securities in a repo transaction, this shall be understood to mean securities as defined in Article 3 point 1a of the Law on trading in financial instruments 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 functions referred to in Article 48(1) point (1)-(6) of the Law on trading in financial instruments, other than indexed Treasury bonds, in a repo transaction,
- 20/ payment agent, this shall be understood to mean an entity which has consented for its bank account managed in the clearing bank or in TARGET to be used for processing a participant's cash debits and credits in a given currency arising from participation in the clearing system, where the participant's consent may be limited as determined by the participant according to § 15d,
- 21/ position, this shall be understood to mean, respectively, a credit or debit of a participant holding the status of clearing member arising from a transaction accepted to the transaction clearing system or a transaction concluded within the transaction clearing liquidity guarantee system operated by KDPW\_CCP,
- 22/ open market buy-in, this shall be understood to mean measures taken by KDPW\_CCP in accordance with the rules in order to eliminate suspension of the settlement of a transaction in securities,
- 23/ event of default, this shall be understood to mean a situation where a participant poses or where reasonable circumstances suggest that it may soon pose a reasonable risk to the safety of trading or proper operation of the clearing system, in particular in connection with:
- a/ reliable information which suggests that bankruptcy of the participant has been declared, the participant has become insolvent or will soon be unable to timely perform obligations arising from the clearing of transactions, 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 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/ or the participant's non-performance or undue performance of its obligations arising from transaction clearing, or

e/ failure to submit the information referred to in § 22 necessary to assess whether or not the participant meets the requirements of participation or events which may have a negative impact on its obligations arising from participation, or

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

g/ or breach of the terms and conditions of participation referred to in § 9 subpara. 2 in a way which poses the risk that obligations arising from transaction clearing will not be performed in due time, in particular in connection with the occurrence of the circumstances referred to in § 9 subpara. 3 and 4, or

h/ 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 clearing system,

i/ identification by KDPW\_CCP according to separate rules referred to in § 1 subpara. 5 of an event of default of the participant in another clearing system organised by KDPW\_CCP where such event poses a risk that liabilities arising from the clearing of transactions in the clearing system will not be met timely by such participant or may pose a reasonable risk to the safety of trading,

24/ derivatives account - this shall be understood to mean the account used by participant holding the status of clearing member to records positions arising from derivative transactions, held by that participant in accordance with Article 39(4) of the EMIR and according to the applicable legislation applicable to that participant's business,

25/ transaction report, this shall be understood to mean, respectively, information concerning transactions in derivative instruments accepted for clearing or information concerning securities financing transactions referred to in Article 3(11) SFTR accepted for clearing which are required to be reported to a trade repository, which are submitted, respectively:

a/ where KDPW\_CCP is responsible for the submission of such information – by KDPW\_CCP to a trade repository in the scope, within time limits, and in the form determined in the agreement concluded by KDPW\_CCP 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,

26/ trade repository, this shall be understood to mean an entity designated by KDPW\_CCP, which is authorised under EMIR or SFTR to collect and store, respectively, information concerning derivative instruments and concerning transactions in such instruments or information concerning securities financing transactions referred to in Article 3(11) SFTR,

27/ 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, as amended),

28/ CSDR, this shall be understood to mean Regulation of the European Parliament and of the Council (EU) No 909/2014 of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012 (Official Journal of the European Union L 257 of 28 August 2014, as amended),

29/ EMIR, this shall be understood to mean Regulation (EU) No 648/2012 of the European Parliament and of the Council 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),

30/ SFTR, this shall be understood to mean Regulation of the European Parliament and of the Council (EU) No 2015/2365 of 25 November 2015 on transparency of securities financing transactions and of reuse and amending Regulation (EU) No 648/2012 (Official Journal of the European Union L 337 of 23 December 2015, as amended),

31/ Implementing Regulation 2018/1229, this shall be understood to mean Commission Implementing Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on settlement discipline (Official Journal of the European Union L 230 of 13 September 2018, p. 1),

32/ derivatives market, this shall be understood to mean the market where transactions involving derivatives are executed, and are cleared by KDPW\_CCP,

33/a counterparty to transaction clearing, this shall be understood to mean a participant holding the status of clearing member for transactions for which that participant is a party, or represents a party, in transaction clearing performed by KDPW\_CCP,

34/ GUI, this shall be understood to mean an additional electronic communication system mandatory for clearing members to the extent defined in these rules and in the Detailed Rules of Transaction Clearing (organised trading), operating via the KDPW\_CCP website under an agreement between a participant and KDPW\_CCP whereby information and declarations referred to herein, in the Detailed Rules of Transaction Clearing (organised trading) and other resolutions issued under the rules are delivered in the system in electronic form from KDPW\_CCP to the participant or participants of the clearing system or by the participant of the clearing system to KDPW\_CCP according to the agreement,



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

36/ clearing system, this shall be understood to mean the transaction clearing system referred to in § 1 subpara. 1 unless the rules provide otherwise,

37/ SEI, this shall be understood to mean the basic electronic communication system mandatory for clearing members, operating via an established system connection between the IT systems of a clearing member and KDPW\_CCP, under an agreement with KDPW\_CCP, under which information and declarations referred to in these rules, the Detailed Rules of Transaction Clearing (organised trading) and other resolutions adopted under these rules are delivered via that system connection in electronic form by KDPW\_CCP to a participant or participants of the clearing system or by a participant of the clearing system to KDPW\_CCP according to the agreement with KDPW\_CCP,

38/ Detailed Rules of Transaction Clearing (organised trading), this shall be understood to mean the detailed rules of operation of the clearing system, defined in a resolution of the Management Board of KDPW\_CCP,

39/ transaction, this shall be understood to mean a legal relationship concerning financial instruments, respectively:

a/ arising from a transaction made in securities trading or on a derivative instruments market, or

b/ arising from novation of a transaction referred to in point a,

40/ affected transaction, this shall be understood to mean a transaction ("transaction A") originating from novation which cannot be executed when due in whole or in part due to the defaulting participant's failure to perform or its undue performance of an obligation arising from another transaction ("transaction B") also originating from novation,

41/ repo transaction, this shall be understood to mean a repo agreement concluded in organised trading which meets the standard conditions laid down in the Detailed Rules of Transaction Clearing (organised trading), determined on the basis of a clearing instruction, consisting of:

a/ an opening leg, which shall be understood to mean an operation where counterparty A transfers the ownership of specific securities in a repo transaction and counterparty B pays a price for such securities which is or may be determined ("front transaction")

and

b/ a closing leg, which shall be understood to mean an operation where counterparty B returns the ownership of equivalent securities in a repo transaction and counterparty A pays a price for such securities which is or may be determined ("end transaction"),

42/ participation, or participant, this shall be understood to mean, respectively, participation in the clearing system, described in § 1 subpara. 1, or a participant of this system,

43/ a participant affected by default, this shall be understood to mean a clearing member who is KDPW\_CCP's other counterparty to clearing of an affected transaction, who is due an obligation arising from such transaction which is not performed when due in connection with the defaulting participant's failure to perform or its undue performance of an obligation arising from another transaction originating from novation,



- 44/ a defaulting participant, this shall be understood to mean a clearing member who fails to perform or unduly performs its obligations arising from participation in the clearing system,
- 45/ a clearing member or a participant with the status of clearing member, this shall be understood to mean that a participant is responsible to KDPW\_CCP for the proper performance of responsibilities arising from transaction clearing, including also responsibilities involving the creation and operation of a system for securing transaction clearing liquidity,
- 46/ the Law on trading in financial instruments, this shall be understood to mean the Law on trading in financial instruments of 29 July 2005 (consolidated text: Dziennik Ustaw – Journal of Laws of 2023, item 646, as amended),
- 47/ relevant guarantee fund, this shall be understood to mean, respectively:
- a/ the fund securing the clearing of transactions concluded in alternative trading systems, operated by KDPW\_CCP under the rules of the ATS guarantee fund, or
  - b/ the on-demand lending guarantee fund, operated by KDPW\_CCP under the rules of the on-demand lending guarantee fund.
- 48/ 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 according to the applicable law in a way ensuring protection of KDPW\_CCP against the risk arising from the conducted activity and effective liquidation or restructuring of such activity,
- 49/ dedicated resources I, this shall be understood to mean a defined amount of resources constituting own capital of KDPW\_CCP, dedicated to cover the potential loss arising in the event of clearing members' default in respect of obligations arising from transactions accepted by KDPW\_CCP for clearing which in the case of an identified event of default should be used prior to using the contributions to the relevant fund in the event of default of a clearing member other than the contribution to the fund of the defaulting member,
- 49a/ dedicated resources II, this shall be understood to mean a defined amount of resources constituting own capital of KDPW\_CCP, dedicated to cover the potential loss arising in the event of clearing members' default in respect of obligations arising from transactions accepted by KDPW\_CCP for clearing or arising from a non-default event which in the case of an identified event of default should be used after using the contributions to the relevant fund in the event of default of a clearing member,
- 50/ transaction settlement suspension, this shall be understood to mean non-execution by the relevant settlement institution of a settlement instruction sent by KDPW\_CCP to such institution for a transaction whose clearing counterparty is a participant holding the status of 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 such institution has suspended, pursuant to Article 45f subpara. 1 of the Law 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.
- 51/ settlement order, this shall be understood to mean a settlement order within the meaning of the Act of 24 August 2001 on the Finality of Settlement in Payment Systems and Securities Settlement Systems and the Rules of Supervision over those Systems, which is respectively:

- a/ an instruction to settle cleared transactions in securities, submitted by KDPW\_CCP to the relevant settlement institution, or
- b/ an instruction to pay cash entitlements resulting from the clearing of a transaction in derivatives and in respect of participation in the liquidity and transaction clearing guarantee system or the negotiated loan clearing guarantee system, submitted by KDPW\_CCP to a clearing bank.

#### § 3a

Whenever the rules refer to a transaction in securities, this shall be understood to mean, respectively, also the delivery of an underlying consisting of securities registered in the securities depository operated by the Central Securities Depository of Poland, arising from the clearing of a transaction executed in the derivatives market, unless the rules or resolutions issued under it provide otherwise.

#### § 4

1. All declarations and information shall be provided by KDPW\_CCP to a clearing member or by a clearing member to KDPW\_CCP in electronic format via:

- 1/ SEI, or
- 2/ GUI

unless otherwise allowed under these rules or the Detailed Rules of Transaction Clearing (organised trading).

1a. All declarations and information shall be provided by KDPW\_CCP to a participant holding the status of non-clearing member or by such participant to KDPW\_CCP in electronic form via GUI to the extent defined in the rules and in the Detailed Rules of Transaction Clearing (organised trading) unless otherwise allowed under these rules or the Detailed Rules of Transaction Clearing (organised trading).

1b. Upon a participant's written request in which the participant agrees to grant another entity designated by the participant access to that participant's data, including the data of its clients, copies of system documents sent by KDPW\_CCP to that participant may be sent to that entity in parallel, provided that the entity has a system connection with KDPW\_CCP established according to the agreement with KDPW\_CCP and meeting the technical requirements set out by KDPW\_CCP.

2. KDPW\_CCP represents that it accepts as effective declarations of will submitted and information sent by a participant in electronic format via SEI or via GUI.

3. Unless otherwise provided for under these rules or the Detailed Rules of Transaction Clearing (organised trading):

1/ any declarations and information sent by:

- a/ participants, in accordance with the provisions of § 12 subpara. 1, § 13 and § 22-§ 31, as well as § 40 subpara. 2, or in connection with applications to extend, limit or cancel participation status, or as part of the update process of documents submitted by such participants in order to conclude or amend a participation agreement,
- b/ entities applying for the status of participant,
- c/ participants holding the status of non-clearing member for the matters described in § 14 subpara. 2, subject to subpara. 1 a and § 69b subpara. 11 and 12,

d/ KDPW\_CCP in relations with the entities, described in point 2, and additionally in matters described in § 14 subpara. 2 – in relations with participants, described in point 3, while in matters described in point 1, and in matters relating to the imposition of disciplinary or orderly measures – in relations with other participants,

and

e/ participants or KDPW\_CCP in matters relating to the complaints process, described in § 84a - § 84d, will require the delivery to the addressee of the original document containing the declaration or information, prepared at least in the ordinary form in writing or an appropriately certified copy, subject to the provisions of subpara. 5;

2/ official documents shall be submitted in the original counterpart or an appropriately certified copy.

4. The Management Board of KDPW\_CCP may, by means of a resolution:

1/ define instances where the submission of declarations or information should take place:

a/ in electronic format via SEI or via GUI,

b/ in writing;

2/ allow participants or entities applying for the conclusion of a participation agreement to submit certain documents, including official documents, in an electronic copy (scan).

5. In relations between KDPW\_CCP and participants, documents containing a declaration, or information, described in subpara. 3 or 4 may be sent via electronic mail through the internet. However, until the moment when the document is received in the manner described in subpara. 3 or 4, only actions requiring an urgent response should be performed on the basis of the contents of a message sent via electronic mail. No action should be performed when electronic mail transfer has been damaged in such a way as to render its contents impossible to determine.

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

7. An appropriately certified copy of a document shall mean:

1/ for official documents: a copy certified officially or notarised, stating it is true to the original, and for documents containing information from the National Court Register or other register if appropriate for a participant or entity applying for the conclusion of a participation agreement – also a computer print-out which meets the requirements to consider its effect to be equivalent to that of documents according to the applicable legislation,

2/ for private documents: a notarised copy stating it conforms to the original, while for documents containing personal declarations by the entity submitting the copy of the document, a copy certified as being true to the original according to the corporate representation rules of that entity will also be required.

8. Declarations and information in writing shall be sent by KDPW\_CCP to the address indicated in the documents submitted by the participant. In the event that a declaration or information cannot be

delivered to the participant at this address, this shall be understood to mean that on the day that KDPW\_CCP has received information that such a delivery was not possible, all consequences pertaining to the delivery to the participant of the declaration or information by KDPW\_CCP, have taken place.

#### § 4a

1. KDPW\_CCP shall make available to participants the rules 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 in electronic form in the way described in § 4 subpara. 1.
2. KDPW\_CCP shall make available to participants model declarations referred to in the rules 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 or by email over the Internet (at the addresses provided by the participants).

#### § 5

1. KDPW\_CCP shall indicate on its website:
  - 1/ the scope and structure of the system documents (messages) which can be transmitted through SEI,
  - 2/ should the declaration or information sent by electronic means according to the provisions of § 4 subpara. 1 be formatted accordingly, or have a pre-defined structure, the necessary format or structure of such a declaration, or information, subject to subpara. 2 and 2a.
2. KDPW\_CCP may indicate the format or structure of the declaration or information, referred to in subpara. 1, by reference to formats or structures determined in norms set out as international standards of electronic exchange of information in the form of structured messages, in particular by reference to the standards ISO 20022 or ISO 15022. In that case, KDPW\_CCP shall indicate on its website the kinds (types) of structured messages that may be used to send such declaration or information or indicate the website on which the formats or structures of such kinds (types) of messages are available, subject to subpara. 5.
- 2a. KDPW\_CCP may make available on its website an application enabling the preparation and transmission of a declaration or information with the scope of the required data.
3. KDPW\_CCP may additionally determine on its website the rules of application and completion of messages referred to in subpara. 2 by participants or by KDPW\_CCP.
4. KDPW\_CCP shall inform participants about any change of the requirements to the extent referred to in subpara. 1 - 3 at least four weeks prior to its introduction.
5. Where a message format or structure indicated by KDPW\_CCP by reference in connection with subpara. 2 is no longer available on the website indicated by KDPW\_CCP, KDPW\_CCP shall make the message format or structure available on its website until the effective implementation of the relevant change to this extent according to subpara. 4.

#### § 6

1. Whenever a number of days are specified, the number shall exclude all official holidays, specified in the applicable regulations, and Saturdays, subject to subpara. 1a and 2. 1a. The provisions of subpara. 1 shall not apply when calculating the deadline, described in § 75.

2. If so required by the clearing system, the Management Board of KDPW\_CCP may, by way of resolution, specify additional days that shall be excluded when calculating settlement time limits, 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. In instances where the rules impose a duty to perform an activity, or give an undertaking dependent on the performance of an activity, and do not specify in days, weeks or otherwise when that activity is to be carried out, the activity should be performed immediately after the event, which requires such activity to be carried out has taken place.

#### § 7

Where performing an operation in the clearing system, including the clearing of a transaction, requires an amount expressed in a foreign currency to be converted to the Polish currency, or vice versa, such conversion shall be made on the basis of the market value of the foreign currency determined according to rules defined by the Management Board of KDPW\_CCP in a resolution.

#### § 8

Unless the rules provide otherwise, in the event of the non-performance, or improper performance of its duties, KDPW\_CCP shall not be obliged 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 negligence on the part of KDPW\_CCP.

#### § 8a

1. Obligations of KDPW\_CCP arising from the take-over of rights and obligations of a counterparty to a transaction as a result of its novation shall only arise towards the transaction clearing counterparty and shall be performed by making a clearing payment determined exclusively on the basis of a clearing instruction concerning the transaction.
2. KDPW\_CCP shall not be liable to repair any loss incurred as a result of suspension of the settlement of a transaction caused by KDPW\_CCP's non-performance or undue performance of the obligation referred to in subpara. 1 or any loss incurred as a result of KDPW\_CCP's delayed clearing payment in cash.
- 2a. KDPW\_CCP shall not be liable to repair any loss incurred as a result of settlement order cancellation or refraining from sending it to the relevant settlement institution for reasons referred to in the rules and in the cases defined therein.
3. The exclusion of liability referred to in subpara. 2 and 2a, respectively, shall not apply if non-performance or undue performance of the obligation referred to in subpara. 1 is caused by wilful misconduct or gross negligence of KDPW\_CCP.
4. The provisions of Article 481 § 1 of the Civil Code shall not apply to mutual obligations between KDPW\_CCP and counterparties to the clearing of transactions created in novation.
5. After KDPW\_CCP has fulfilled the clearing payments determined as a result of the clearing of transactions in securities and the replacement payments referred to in Article 45h(4) of the Law on trading in financial instruments, KDPW\_CCP shall not be obliged to return the cash constituting the surplus

resulting from the difference from the performance of such payments, unless otherwise provided for in the rules.

6. The provisions of subpara. 5 shall apply accordingly to the surplus remaining after the distribution of all cash penalties imposed by the settlement institution for transaction settlement fails referred to in Article 7(2) of the CSDR.

#### § 8b

KDPW\_CCP shall have no liability for any loss incurred due to action of the relevant settlement institution to which a settlement order for cleared transactions is sent or due to such institution's non-performance or undue performance of a settlement order for cleared transactions or its non-acceptance or undue acceptance in the system operated by such institution for reasons beyond the control of KDPW\_CCP.

#### § 8c

KDPW\_CCP shall not be liable for non-performance or undue performance by 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 clearing system, unless non-performance or undue performance of such obligations is for reasons within the control of KDPW\_CCP.

#### § 8d

1. The transaction clearing system organised by KDPW\_CCP 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 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.

#### § 8e

1. KDPW\_CCP may perform activities defined in the rules and in resolutions adopted under the rules 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.

#### § 8f

KDPW\_CCP shall have no liability for any damage caused by:

- 1/ participants' use of access to information referred to in § 35 subpara. 1 and 3, the ability of participants to submit instructions referred to in § 35 subpara. 2-4, or services referred to in § 35 subpara. 5,
- 2/ any failure or malfunction of technical tools and IT systems used to perform actions referred to in § 35 subpara. 1-5, lack of communication or resulting interruptions or disruptions in access to such information or preventing the submission of such instructions,
- 3/ any action or omission of a third party for which KDPW\_CCP has no liability in connection with the performance of actions referred to in § 35 subpara. 1-5, including third-party service providers, unless the damage is caused by wilful action or gross negligence of KDPW\_CCP.

#### § 8g

KDPW\_CCP shall have no liability for any damage caused by:

- 1/ the payment agent's use of the service referred to in § 15d subpara. 1,
  - 2/ any failure or malfunction of technical tools and IT systems used to provide the service referred to in § 15d subpara. 1, lack of communication or resulting interruptions or disruptions preventing the provision of such service,
- unless the damage is caused by wilful action or gross negligence of KDPW\_CCP.

#### §8h

1. If KDPW\_CCP becomes reliably aware of:

- 1/ the imposition on a participant or its client, for whose benefit it is a clearing counterparty of transactions accepted into the clearing system, of specific restrictive measures in accordance with applicable laws in connection with its inclusion on any of the sanction lists concerning threats to international peace and security caused by terrorist acts published on the basis of United Nations Security Council resolutions, regulations of the Council of the European Union and other laws applicable to that participant or its client, as well as those applicable in the territory of the United States of America and the United Kingdom,
  - 2/ the issuance of a decision on the imposition of administrative sanctions on a participant or its client for violation of the laws applicable to it in connection with the provision of financial services, or
  - 3/ the imposition of specific restrictive measures referred to in point 1 on an entity acting as settlement agent or paying agent for that participant or the issuance of a decision on the imposition of administrative sanctions referred to in point 2 on that entity,
- KDPW\_CCP may immediately suspend the execution of the instructions referred to in the Detailed Rules of Transaction Clearing (organised trading) resulting from the declarations provided by that participant or cease accepting that participant's declarations, of which it shall immediately inform that participant.



2. KDPW\_CCP shall not be liable for any damage resulting from the exercise of the power referred to in subpara. 1 unless the damage is caused by KDPW\_CCP's wilful misconduct or gross negligence.

## **TITLE II**

### **PARTICIPATION**

#### **§ 9**

1. The following legal entities may become 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 § 17 subpara. 2, 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 clearing system,

5/ entities authorised to provide CCP clearing services under Article 14 EMIR or recognised under Article 25 EMIR, subject to the provisions of § 16.

2. Eligible to become participants with the status of clearing member are only entities that are:

1/ holders of a depository account, or a securities account managed in the relevant settlement institution, or those having a settlement agent authorised under regulations issued by that institution to operate a relevant account in such institution – where such entity intends to:

a/ participate in the clearing of transactions in securities executed in the regulated market or the alternative trading system, or

b/ participate in the clearing of transactions executed in the derivatives market, consisting in the delivery of the underlying consisting of securities registered in the securities depository operated by the Central Securities Depository of Poland, or

c/ post securities referred to in § 47 subpara. 3 points 1-2 as margins or contributions to the clearing fund or the relevant guarantee fund, and

2/ holders of a cash account, in the relevant clearing bank, in the currency in which KDPW\_CCP clears transactions and in which participation of such entity in transaction clearing performed by KDPW\_CCP is envisaged, or a payment agent maintaining such an account in this bank, and where it plans to participate in clearing in EUR - also a cash account maintained in such currency in TARGET, or a payment agent maintaining such an account in this system, and

3/ referred to in subpara. 1 points 1-3, 5 or 6 and, in the case referred to in subpara. 1 point 4, provided that it is a credit institution or foreign bank within the meaning of the Banking Law – Act of 29 August 1997 (consolidated text: Dziennik Ustaw – Journal of Laws of 2022, item 2324, as amended), or a foreign legal person, referred to in Article 115(1) of the Act on Trading in Financial Instruments.

3. A participant no longer fulfils the condition referred to in subpara. 2 point 1 of having a settlement agent if KDPW\_CCP concludes that it is not possible to settle transactions or post securities as margins of the

participant or contributions of the participant to the clearing guarantee fund or the relevant guarantee fund in connection with:

- 1/ any modification or revocation of a statement of the settlement agent where the settlement agent consents for the use of its depository account or securities account to post such collateral,
- 2/ any action taken by the settlement agent in the settlement system operated by the settlement institution or actions taken by such institution as a result of which it is not possible to settle transactions or post such collateral in its depository account or securities account, in particular where the agent revokes its consent for settlement on the basis of settlement orders submitted by KDPW\_CCP,
- 3/ any other circumstances which prevent the settlement of transactions or the posting of such collateral, including the receipt of reliable information suggesting that the settlement agent has been declared bankrupt.

4. A participant no longer fulfils the condition referred to in subpara. 2 point 2 of having a payment agent if KDPW\_CCP concludes that the participant's cash debits and credits cannot be executed in the participant's bank account in connection with:

- 1/ non-execution of such debits due to an overrun of the limit of the participant's consent for such debits to be executed in its bank account according to § 15d, or
- 2/ any modification or revocation of a statement of the payment agent where the payment agent consents for the use of its bank account to execute such debits and credits,
- 3/ any other circumstances which prevent the execution of such debits and credits in the payment agent's bank account, including the receipt of reliable information suggesting that the payment agent has been declared bankrupt.

5. An entity referred to in subpara. 1 point 5 or 6 may become a participant provided that:

- 1/ it concludes a separate agreement with KDPW\_CCP which defines the interaction between the clearing system and the system operated by such entity, and
- 2/ the agreement referred to in point 1 is approved by the supervisory authorities competent for KDPW\_CCP and such entity.

In that case, these rules shall apply to the participation agreement, subject to the provisions of such agreement.

## § 10

The participation agreement shall define the scope of clearing member status held by the participant in the clearing system, in particular by specifying the type or types of status granted to the participant according to the classification contained in § 11 subpara. 1.

## § 11

1. The following types of participation status are admitted:

- 1/ general clearing member - representative in securities trading – where a participant holds the status of clearing member for all transactions involving securities, that are executed in the regulated market, alternative trading system or negotiated lending system by another entity, indicated by it according to the rules,

2/ individual clearing member – where a participant holds the status of clearing member for transactions executed by that participant in the regulated market, alternative trading system or negotiated lending system, on their own account, or the account of a client,

3/ general clearing member – representative in the derivatives market – where a participant holds the status of clearing member for transactions executed in the derivatives market by another entity, indicated by it according to the rules,

4/ non-clearing member – where a participant executes transactions in the regulated market, alternative trading system or negotiated lending system, while at the same time not holding the status of clearing member in any scope and is a client of a participant holding such status and is authorised to require KDPW\_CCP to perform the actions referred to in § 69a - § 69c, respectively.

2. The types of participation described in subpara. 1 points 1-3, shall be granted to an entity which is a financial institution referred to in § 9 subpara. 1, separately for each type of specific activity managed by it in the financial instruments market.

3. The types of activities in the financial instrument markets, described in subpara. 2, include:

1/ brokerage activities consisting of the execution of purchase and sale orders involving financial instruments on behalf of clients,

2/ custodian activities or brokerage activities not including the execution of purchase and sale orders involving financial instruments on behalf of clients,

3/ activities consisting of the clearing of transactions executed in financial instruments trading,

4/ other activities not described in points 1-3.

## § 12

1. Granting more than one entity the participation type of general clearing member – representative in securities trading, where the represented entity is to be the same participant, first requires the represented participant to indicate to KDPW\_CCP which of the entities is to hold the status of principal clearing member in this respect. This indication may be changed, however, such a change will only be recognised by KDPW\_CCP at the earliest on the second day after KDPW\_CCP has been given notice of the change. The indication shall cease to be valid at the moment that the participation of the entity being indicated itself ceases within a given type of participation status, however, if this should still leave a situation with more than one entity with the participant status of general clearing member – representative in securities trading for the same participant, and the participant being represented prior to this date has not indicated a new representative, then KDPW\_CCP shall cease the clearing of transactions executed by that participant, until the date following the date when this situation no longer exists, or when the participant being represented makes a new indication.

2. If a given participant is represented by at least two entities with the participation type of general clearing member – representative in securities trading, then the process of determining which of these entities holds the status of clearing member for specific transactions takes place according to the details of the documents sent to KDPW\_CCP that form the basis for their clearing, and if it is not possible to determine this on the basis of these documents, then it shall be deemed that the entity with the status of primary clearing member, indicated according to the provisions of subpara. 1 shall be this clearing member.

3. If a given participant is to be, or already is, represented by another entity, which is to receive, or has already received the participation type of general clearing member – representative in securities trading within this scope, however, within various types of activities performed by this entity, determined according to the provisions of § 11 subpara. 3, then the provisions of subpara. 1 and 2 shall apply accordingly.

4. For transactions executed in securities trading by an entity that is not a participant or that is a participant described in § 11 subpara. 1 point 4, the status of clearing member may only be held by one participant with the participant type of general clearing member – representative in securities trading for that entity for one type of activity performed by that participant, determined according to the provisions of § 11 subpara. 3.

### § 13

1. Two or more participants with the participant type of general clearing member – representative in the derivatives market may indicate the same entity that executed transactions in the derivatives market provided that the represented entity also holds the status of clearing member for transactions executed by it. In that case, the represented entity shall be the participant holding the status of default participant for such transactions. The provisions of § 12 subpara. 2 shall apply accordingly.

2. As of the day of, respectively, the expiration or suspension of the participation of an entity represented, as per subpara. 1, by two or more participants with the participant type of general clearing member – representative in the derivatives market, KDPW\_CCP shall discontinue the clearing of transactions executed by that entity if that entity continues to have multiple participants with the participant type of general clearing member – representative in the derivatives market.

3. Only one participant with the participant type of general clearing member – representative in the derivatives market for one type of activity performed by the participant, determined according to the provisions of § 11 subpara. 3, may hold the status of clearing member for transactions executed in the derivatives market by an entity that is not a participant, referred to in subpara. 1.

### § 14

1. Eligible as a participant with the participant 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 – representative in trading in securities or general clearing member – representative in the derivatives market 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 § 69a - § 69c, and in matters concerning the submission of declarations and documents in matters relating to the extension, limitation or termination of participation, the application of disciplinary measures or safeguards, and as part of the update of documents submitted by a non-clearing member in order to conclude or amend a participation agreement.

3. An entity with the participant type of general clearing member – representative in securities trading or general clearing member – representative in the derivatives market that holds the status of clearing member (clearing entity) for specific transactions executed by another participant (cleared entity) shall be the only entity with credits or debits to KDPW\_CCP in respect of the clearing of transactions executed by

the cleared participant even if the cleared entity holds the status of clearing member. The cleared entity may act with respect to such transactions only through the clearing entity.

#### § 15

A participant, which as part of the performance of a given type of activity, determined according to § 11 subpara. 3, has obtained the participation status of clearing member, shall be obliged, as applicable for that type of activity, type of transactions for which the status applies, and market on which they are to be executed, to:

1/ make a contribution to the clearing fund or the relevant guarantee fund (by making the first contribution, the participant shall join the fund),

2/ (repealed),

2a/ (repealed),

3/ pay an initial deposit in the amount determined by the Management Board of KDPW\_CCP in a resolution (minimum amount of initial deposit),

3a/ pay an initial deposit for loans in the amount determined by the Management Board of KDPW\_CCP in a resolution where the participant is a clearing counterparty to loans contracted in the negotiated lending system,

4/ submit a written power of attorney for KDPW\_CCP to:

a/ close derivatives positions on the participant's account, for those positions where the participant holds the status of clearing member, in instances described in these 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 § 69a - § 69c in the cases described in the rules,

5/ (repealed),

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

7/ 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 transaction reports to a trade repository results from relevant regulations,

8/ conclude an agreement with KDPW\_CCP concerning the submission of declarations of will and the transmission of information in electronic form, as referred to in § 3 point 34 and § 3 point 37, respectively,

9/ conduct tests confirming the participant's readiness to commence operations in the clearing system referred to in the Detailed Rules of Transaction Clearing (organised trading).

2. The obligations, described in subpara. 1 and in § 15a, will need to be realised before the participant, or the entity being represented by that entity in clearing, commences the execution of transactions of a given type in a specific market. The clearing member shall designate to KDPW\_CCP the date of commencing activity in the clearing system in the given scope at least two days in advance.

3. The power of attorney described in subpara. 1 point 4 will need to contain a declaration of the participant to waive the right to cancel this authorisation or to amend its scope in order to enable KDPW\_CCP to perform its obligations, as described herein. These powers of attorney shall cease to be valid at the moment of the termination of the participation of the entity which issued them to the extent within which the entity holds the status of clearing member.
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 § 48a and § 69a - § 69c 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 7 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.

#### § 15a

1. A participant seeking the status of clearing member for transactions made by another entity to which novation applies shall obtain, before opening client position accounts in which transactions concluded by such entity are to be registered, a written declaration of that entity according to a template defined by KDPW\_CCP where the entity agrees that the participant may perform obligations arising from the clearing of transactions made by that entity and confirms that it has been informed that the types of transactions subject to clearing through novation are set out in the rules.
2. A participant seeking the status of clearing member shall confirm in writing in a declaration provided to KDPW\_CCP, referred to in subpara. 1, that the declaration has been made by authorised representatives of the entity named therein.
3. KDPW\_CCP shall accept declarations referred to in subpara. 1 and information of any modification or revocation thereof or any other events related thereto only from the participant, respectively, seeking or holding the status of clearing member for transactions concerned by such declarations.
4. A participant holding the status of clearing member shall cease to perform obligations arising from the clearing of transactions made by another entity upon the termination or amendment of the participation agreement to that extent.
5. The provisions of subpara. 1-4 shall apply also where a participant, respectively, seeks or holds the status of clearing member for transactions made by another participant.

#### § 15b

Where the obligation to submit transaction reports derives from applicable legal regulations and a participant holding the status of clearing member intends to represent in clearing another entity which executes transactions, the participant shall be obliged to:

- 1/ notify that entity of the submission of reports of transactions executed by that entity by KDPW\_CCP to a trade repository – where the participant has designed KDPW\_CCP as the entity to submit such transaction reports to a trade repository,

2/ ensure that the entity does not duplicate the performance of the obligation of submitting transaction reports.

#### § 15c

1. A participant holding the status of clearing member who intends to post, as margins or contributions to the clearing guarantee fund or the relevant guarantee fund, securities referred to in § 47 subpara. 3 point 4, shall be obliged to:

1/ hold a relevant securities account managed in the relevant depository system for such securities as indicated by the Management Board of KDPW\_CCP in a resolution, or have a collateral agent in such system, and furthermore

2/ if the Management Board of KDPW\_CCP has specified in a resolution other actions which should be performed in accordance with the applicable legal provisions referred to in § 50 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.

2. The provisions of § 9 subpara. 3 shall apply accordingly to the fulfilment of the condition referred to in subpara. 1 point 1.

#### § 15d

1. Subject to subpara. 2, an entity which performs or intends to perform the function of payment agent for a participant holding the status of clearing member indicated by such entity on the basis of a submitted declaration referred to in § 20 subpara. 2 point 4 may limit its consent given in such declaration as a part of a service offered by KDPW\_CCP where such entity sets, in a manner defined in a resolution of the Management Board of KDPW\_CCP, limits on payments resulting from the participation of the participant indicated by such entity in the clearing system, preventing the execution of such payments in the bank account of such entity in excess of such limits. Subject to the safety of trading and legal compliance, the resolution shall define the detailed terms and conditions of the service, including the method of setting and the type of limits on such payments, the term of validity of such limits, the dates when such limits may be set and modified, as well as the terms of communicating set limits and the degree of their utilisation.

2. An entity which performs or intends to perform the function of payment agent for a participant holding the status of clearing member indicated by such entity may use the service provided that it is a participant of the clearing system or another transaction clearing system operated by KDPW\_CCP referred to in § 1 subpara. 5.

3. In order to use the service referred to in subpara. 1, an entity which performs or intends to perform the function of payment agent for a participant holding the status of clearing member shall submit to KDPW\_CCP a declaration to the effect that it intends to use such service in a written application prepared according to a template defined by KDPW\_CCP.

4. KDPW\_CCP shall notify the participant holding the status of clearing member for which the entity that has submitted the application referred to in subpara. 2 performs the function of payment agent that the service referred to in subpara. 1 has been launched. At its request, the participant shall be notified of the set limit on payments arising from the participation of the participant.



5. The entity which performs the function of payment agent using the service referred to in subpara. 1 and the participant for which the entity performs such function shall separately define the scope and method of the entity's use of the service. KDPW\_CCP shall not be required to monitor compliance of the entity and the participant with such scope and method.
6. The relationship in respect of the service referred to in subpara. 1 with the entity performing the function of payment agent for a participant holding the status of clearing member shall be terminated without any declaration when the condition referred to in subpara. 2 is no longer met, which shall be without prejudice to the entity's obligation to perform all of its obligations arising from such relationship in respect of actions performed by KDPW\_CCP before such date and time.
7. The provisions of § 2, § 4, § 4a, § 5, § 6, § 8, § 17, § 18, § 20 subpara. 1 and 6, § 21, § 73 - § 77, § 77a subpara. 1 point 1 and 2, § 83 subpara. 1 point 2, § 81 and § 82 in conjunction with § 83, § 84a - § 84d shall apply accordingly to relationships between KDPW\_CCP and entities which perform or intend to perform the function of payment agent for a participant holding the status of clearing member in respect of the service referred to in subpara. 1 to the extent not governed by the provision above or by a resolution of the Management Board of KDPW\_CCP referred to in subpara. 1.

#### § 16

Institutions domiciled abroad, which perform activities relating to the clearing of securities transactions, which are not subject to supervision by the appropriate body supervising financial institutions in European Union member countries, European Economic Area agreement signatory countries, or OECD member countries, may also become participants of the Central Securities Depository of Poland, on condition that they obtain the consent of the Polish Financial Supervision Authority. The provisions of the rules shall apply in matters arising from the participation of such institutions, provided that the participation agreement concluded with the particular institution does not contain any special provisions.

#### § 17

1. 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 arbitration by the common court of law with jurisdiction over the seat of KDPW\_CCP.
2. Relationships between KDPW\_CCP and participants under participation agreements shall be governed by the laws of the Republic of Poland, subject to § 71 subpara. 2 point 1 as well as § 4a subpara. 1 of the clearing guarantee system rules and § 4a subpara. 1 of the relevant guarantee fund rules.

#### § 18

1. An entity that intends to obtain participation submits 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 two weeks after the date of the submission of the relevant application, described in subpara. 1, to KDPW\_CCP if the entity seeking to conclude the

agreement fulfils the participation requirements specified by the law and by these rules, and the application and supplementary appended documentation meet the formal requirements specified herein.

3. In circumstances where the submitted application, or documents appended to it require completion, or amendment, the deadline described in subpara. 2 shall start on the day on which the entity seeking to conclude a participation agreement 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 entity applying for participation.

3a. If an entity that intends to obtain participation does not fulfil the terms and conditions of participation specified by the law and by the 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.

4. The provisions of subpara. 1 – 3a shall apply accordingly to amendments to participation agreements.

#### § 19

Applications for a participation agreement should contain the following:

1/an indication of the activities the applicant intends to perform as participant within the clearing system, and the type or types of participant status being applied for as part of the performance of these activities, and in addition, if the participation type general clearing member – representative in securities trading or the participation type general clearing member – representative on the derivatives market has been selected, to indicate as appropriate the participant or the entity that is not a participant, for whom the applicant intends to act in that type of participation status,

2/ an indication of the entity or entities that will perform the activities of representative for the applicant in clearing, if the applicant is seeking to obtain the participation type of non-clearing member,

3/ a declaration that the applicant meets the financial conditions, described in § 23 subpara. 2 and that the applicant is familiar with the principles of sending and receiving declarations and information prepared in electronic form, used in relations between KDPW\_CCP and its participants, which are available on the KDPW\_CCP website, and that the applicant has understood the terms and conditions which need to be met by participants in accordance with the principles of § 23 subpara. 3, if the applicant is seeking to obtain the participation status of clearing member,

4/ an indication of the type of transactions for which the applicant is seeking to obtain participation status, and the market on which they will be executed,

5/ an indication of the applicant's identifier (LEI or preLEI), which is a global identifier issued by an entity authorised to register identifiers in the Global Legal Entity Identifier System (GLEIS).

#### § 20

1. The application for a participant agreement shall in addition include:

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

- 2/ a copy of their brokerage licence or licences to conduct other activities related to trading in or registration of financial instruments, that entitle the performance of activities which the applicant intends to perform as part of participation, if such licences are required by the relevant legal regulations, while for foreign investment companies conducting brokerage activities on the territory of the Republic of Poland – an additional declaration showing that conditions have arisen to allow them to begin performing brokerage activities in the territory of the Republic of Poland, defined in Article 117(3), of the Law on trading in financial instruments, or a document from the Polish Financial Supervision Authority (KNF), or a department of the Polish Financial Supervision Authority, confirming that the Authority has received from the appropriate foreign supervisory body notification on the intention to begin performing brokerage activities in the Republic of Poland by that foreign investment company, indicating the date when this notification was received,
- 3/ cards with specimen signatures of the applicant's authorised representatives, as well as copies of power of attorney documents 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 § 17 subpara. 1 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 numbers as well as email addresses,
- 5a/ if an entity that seeks the participation type of non-clearing member, a declaration where the clearing member representing such entity in clearing approves that entity's access to the clearing member's data in GUI in connection with such representation,
- 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 2011, p. 1, as amended) for which the participation agreement is to be concluded, where the applicant is a non-resident within the meaning of the Foreign Exchange Law of 27 July 2002 (consolidated text: Dziennik Ustaw – Journal of Laws of 2022, item 309, as amended),
- 7/ a declaration confirming that the applicant takes special restricting measures under applicable regulations, in particular with respect to persons and entities on sanction lists relating to threats to international peace and security caused by terrorist attacks, published under resolution of the United Nations Security Council, regulations of the Council of the European Union and other regulations applicable to the applicant and applicable in the United States of America and the United Kingdom,
- 8/ a declaration necessary to confirm whether any proceedings are pending against the applicant in connection with the provision of financial services which may impose administrative sanctions on the applicant for any breach of regulations applicable to the applicant or a decision has been issued imposing such administrative sanctions on the applicant,
- 9/ a questionnaire, which is set out in a resolution of the KDPW\_CCP Management Board, required in order

to obtain information on the applicant and to identify the risks of money laundering and terrorist financing related to the business relationships undertaken by the applicant,

10/ a declaration, in accordance with the model set out by KDPW\_CCP, confirming that all requirements under the relevant legislation applicable to the applicant have been met and that there are no formal and legal obstacles on the part of the applicant to conclude the agreement.

2. Subject to subpara. 4, if the application relates to the type of participation related to the status of clearing member, the applicant shall in addition to the documents described in subpara. 1, also submit the following:

1/ a list of staff employed in posts involving transaction clearing, that includes their positions, telephone numbers as well as email addresses,

2/ if the applicant intends to participate in the clearing of transactions referred to in § 9 subpara. 2 point 1 item (a) or (b) or intends to post securities referred to in § 47 subpara. 3 points 1-2 as margins or contributions to the clearing fund or the relevant guarantee fund – a declaration providing the identifier of the applicant in the relevant settlement institution, or indicating an entity that will perform the role of settlement agent for the applicant and the identifier of that entity in the relevant settlement institution,

3/ a declaration indicating the number of the bank account of the applicant, managed in the relevant clearing bank in the given currency in which KDPW\_CCP clears transactions and in which the applicant intends to participate in clearing, or indicating 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 - also the number of the cash account managed for the applicant in TARGET or indicating the entity that will perform the function of payment agent for the applicant and the number of the cash account maintained for it in this system,

4/ declarations by the entities indicated by the applicant, in accordance with the provisions of points 2 and 3, that intend to perform the functions of settlement agent, or payment agent, providing their consent to perform these functions for the applicant and their obligation to perform such functions whenever the systems in which such functions are to be performed are available,

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 § 47 subpara. 3 point 4 as margins or contributions to the clearing guarantee fund or the relevant 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 § 3 point 13 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 § 24 subpara. 3 and § 25 subpara. 2 and 3, 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 § 17 subpara. 2,

b/ a list of financial information referred to in § 28 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 § 28 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 § 28 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. [repealed]

6. If the applicant is a participant of another clearing system referred to in § 1 subpara. 5 and while seeking

participation in such system it has provided the documents referred to in subpara. 1 point 1-3, subpara. 2 point 1-3, point 5, point 6 item (a), point 7 and subpara. 3-4, instead of such documents it may provide a declaration confirming their application to participation in the clearing system referred to in § 1 subpara. 1, unless they have been amended and KDPW\_CCP has not yet been notified thereof.

7. Subject to § 15d, after conclusion of a participation agreement, the declarations referred to in subpara. 2 point 2, 3, 4 and 6 may be amended; however, such amendment shall become effective for KDPW\_CCP no earlier than two days after the date of submission of the relevant declaration by the participant to KDPW\_CCP, unless KDPW\_CCP agrees to a shorter period.

## § 21

Rights arising from the participation agreement, which involve the participation types related to the status of clearing member, may only be transferred with the consent of KDPW\_CCP to another participant holding this status.

### § 21a

1. KDPW\_CCP shall issue to each participant an identifier in the clearing system (institution code) which identifies the scope or scopes of its activity in the clearing system (taking into account the place of establishment, head office or organised part of the participant's enterprise within which the given type of activity is performed).

## § 22

1. The Management Board of KDPW\_CCP may require at any time that a participant provide information necessary to assess whether or not it meets the requirements of participation.
2. Participants shall be obliged to notify KDPW\_CCP immediately of changes to the information described in § 20 subpara. 1-3.
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.

## § 23

1. Participants with the status of clearing member shall meet the appropriate material, technical and financial requirements.
2. Meeting the appropriate financial requirements shall mean that the participant maintains the adequate level of Tier I capital and meets the precautionary requirements referred to in the provisions of § 24 and § 25.
  - 2a. The fulfilment of financial conditions by participants whose primary task is to take measures to promote the stability of the national financial system under the applicable legislation shall consist in their maintaining an adequate amount of capital as required under that legislation.
3. Meeting the appropriate material and technical requirements shall mean the participant maintaining technical and technological equipment, which ensures the participant is able to connect with the IT system

of KDPW\_CCP used to manage the clearing system ensuring that documents can be safely sent to and received from that system in electronic form.

#### § 24

1. The level of Tier I capital held by a participant holding the status of clearing member may not be lower than:

1/ for participants holding this status for the participant type of general clearing member – representative in securities trading and general clearing member – representative on the derivatives market:

- the amount of PLN 50 million and the sum of PLN 5 million for each entity represented by the clearing member in any scope for the clearing of transactions performed by KDPW\_CCP – for banks, credit institutions, and foreign banks within the meaning of the Banking Law,

- the amount of PLN 15 million and the sum of PLN 2 million for each entity represented by the clearing member in any scope for the clearing of transactions performed by KDPW\_CCP – for brokerage houses, foreign investment firms, and foreign legal entities referred to in Art. 115 subpara. 1 of the Law on trading in financial instruments,

- PLN 100 million for a company operating a clearing house, and an entity with a seat outside the territory of the Republic of Poland performing tasks in the scope of clearing transactions made in financial instruments trading;

2/ for participants holding this status exclusively for the participant type of individual clearing member:

- PLN 25 million for banks, credit institutions, and foreign banks within the meaning of the Banking Law,

- PLN 4 million for brokerage houses, foreign investment firms, and foreign legal entities referred to in Art. 115 subpara. 1 of the Law on trading in financial instruments.

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 participant 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, as amended) and which meets such rules.



#### § 25

1. A participant holding the status of 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 participant 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 participant 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 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 participant 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 which meet such rules.

#### § 26

[repealed]

#### § 27

If a participant no longer fulfils the requirements referred to in § 24 or § 25, 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.

#### § 28

1. Participants holding the status of clearing member shall be obliged to provide KDPW\_CCP with the following:

- 1/ an audited annual financial statement along with an auditor's opinion and report – within no more than 15 days after the auditor's report 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 § 24 and § 24 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 § 23 subpara. 2.
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, 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, as amended). 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 participant holding the status of 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 participant 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 submitted to KDPW\_CCP, at the participant's election, in electronic form on the terms defined in the agreements referred to in § 4 subpara. 2 or by e-mail over the internet on the terms defined by the Management Board of KDPW\_CCP in a resolution.

#### § 28a

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 participant, in electronic form on the terms defined in the agreements referred to in § 4 subpara. 2 or by e-mail over the internet on the terms defined by the KDPW\_CCP Management Board by way of a resolution.

#### § 29

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 § 28 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 § 28 subpara. 2, 3, 6 and 7 shall apply accordingly.

#### § 30

If according to the relevant legal provisions applicable in the state of seat of the participant holding the status of 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.

#### § 31

The Management Board of KDPW\_CCP may, by way of resolution, order a participant holding clearing member status to provide, at specified times and over specific periods of time, additional information specified in such resolution concerning the participant's compliance with the requirements referred to in § 24 or § 25 according to the applicable legal provisions where there is a well-founded justification that the activities being carried out by that participant threaten or are likely to threaten the safety of trading.

#### § 32

1. Participants holding the status of clearing member shall be obliged at least once every calendar year to take part in tests as part of the Business Continuity Planning System, organised by KDPW\_CCP.
2. The Business Continuity Planning System shall mean technical and organisational processes used in order to maintain operational continuity, or the fastest possible replication of the key business processes performed by 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 for processing.
3. KDPW\_CCP shall inform participants with the status of clearing member of the date or dates of the tests of the Business Continuity Planning System in a given calendar year, with at least one month's advance notice.

#### § 32a

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 clearing system or arising from participation in the system. Participants holding the status of clearing member shall be obliged to participate in such tests.

2. KDPW\_CCP shall inform participants holding the status of clearing member 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 participants holding the status of clearing member 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.

#### § 32b

Clearing members shall ensure, in an agreement with the entity providing the functions of payment agent or settlement agent to such clearing members, respectively, that such functions are performed in accordance with these rules, in particular that they are performed whenever the systems in which such functions are performed are available.

#### § 32c

1. The participant shall comply with the requirements set out in the applicable legislation on the prevention of money laundering and terrorist financing in connection with the business relationships undertaken by the participant.
2. In the event of a change in the factual or legal situation which has a significant impact on the participant's declaration contained in the questionnaire referred to in § 20 subpara. 1 point 9, the participant shall immediately inform KDPW\_CCP thereof by submitting an updated questionnaire.

#### § 32d

Each participant shall immediately notify KDPW\_CCP of:

- 1/ any special restricting measures taken against it or its client for which it is a counterparty to clearing of transactions accepted in the clearing system under applicable regulations in connection with being put on any sanction list relating to threats to international peace and security caused by terrorist attacks, published under resolution of the United Nations Security Council, regulations of the Council of the European Union and other regulations applicable to the applicant and applicable in the United States of America and the United Kingdom,
- 2/ any proceedings opened against it in connection with the provision of financial services which may impose administrative sanctions on the applicant for any breach of regulations applicable to it or any issued decision imposing such administrative sanctions on it.

#### § 32e

Every clearing member shall:

- 1/ maintain a communication connection which enables the submission and receipt of declarations of will and information in electronic form,
- 2/ regularly test the communication connection referred to in point 1.

**TITLE III**  
**TRANSACTION CLEARING**

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

**§ 33**

In managing and performing clearing of transactions, KDPW\_CCP shall:

- 1/ register transactions that are to be cleared and transfers of open positions following transactions executed in the derivatives market in the relevant clearing accounts,
- 2/ calculate the amounts of monetary and non-monetary payments that parties to transaction clearing are obliged to meet,
- 3/ organise and manage the system for securing transaction clearing liquidity, to the extent specified herein,
- 4/ according to the results of the calculations described in subpara. 2, send settlement instructions,
- 5/ [repealed],
- 6/ operate the account system,
- 7/ register in clearing accounts positions arising from transactions that are to be cleared and operations related to such positions,
- 8/ submit transaction reports to the relevant trade repository if a participant holding the status of clearing member has indicated, according to the rules and a resolution of the Management Board of KDPW\_CCP referred to in § 42a subpara. 5 adopted under the rules, KDPW\_CCP as the entity to submit such reports.

**§ 34**

1. Subject to the provisions of subpara. 3, KDPW\_CCP shall perform the clearing of transactions in a given currency if the entity which executed the transaction:

- 1/ is a participant holding the status of clearing member and has carried out the respective obligations described in § 15 subpara. 1, or
  - 2/ is a participant not holding the status of clearing member if within the scope of this transaction the status is held by another participant which has carried out the respective obligations described in § 15 subpara. 1, or
  - 3/ is not a participant, if within the scope of this transaction the status of clearing member is held by another participant which has carried out the obligations described in § 15 subpara. 1.
2. If none of the conditions described in subpara. 1 points 1-3 is applicable to any of the parties to the transaction, KDPW\_CCP shall not perform the clearing of this transaction in any extent.
3. If the principle, described in § 46f subpara.1, shall apply in a given market, then KDPW\_CCP shall perform the clearing of the transaction only in instances described in subpara. 1 points 1 and 2. The principles of subpara. 2 shall apply accordingly.

## § 35

1. If the agreement concluded between KDPW\_CCP and the operator of the regulated market foresees such a possibility, KDPW\_CCP shall, on each day that is a session day or a trading day in a given regulated market, provide participants with on-going information on the scope and amount of the obligations arising from transactions for which these participants hold the status of clearing member, where these transactions have been executed in this market by other entities.
2. If the agreement concluded between KDPW\_CCP and the operator of the regulated market foresees such a possibility, KDPW\_CCP shall receive from participants and send to the operator of a given regular market instructions for blocking the ability to execute in this market, by another entity, transactions for which participants submitting such instructions hold the status of clearing member, and instructions relating to the removal of this blocking, subject to subpara. 4.
3. If the agreement concluded between KDPW\_CCP and the operator of the alternative trading system foresees such a possibility, KDPW\_CCP shall provide participants holding the status of clearing member for transactions executed by other entities with on-going information about transactions they have executed in the system or shall accept from participants holding the status of clearing member within such scope and send the operator of the alternative trading system instructions relating to the blocking of the ability to execute within the system transactions by another entity, and instructions relating to the removal of this blocking, subject to subpara. 4.
4. If an entity that executes transactions is represented in clearing by more than one participant holding the status of clearing member within the same scope, KDPW\_CCP shall send instructions relating to the blocking of the ability to execute transactions by that entity, and instructions relating to the removal of this blocking, referred to in subpara. 2 and 3, received only from the participant holding the status of default participant within such scope, provided that the agreement referred to, respectively, in subpara. 2 and 3 foresees such a possibility.
5. If the agreement concluded between KDPW\_CCP and the operator of the regulated market or organiser of the alternative trading system foresees such a possibility, KDPW\_CCP shall provide clearing members with services allowing them to set limits on orders submitted by entities that they represent in clearing on the regulated market or in the alternative trading system, as necessary to monitor the activity of such entities on such market or in such trading, and allowing such participants directly to execute instructions referred to in subpara. 2-4. In that case:
  - 1/ the provisions of subpara. 4 shall apply accordingly to direct execution of such instructions,
  - 2/ the provisions of § 4 subpara. 2 shall not apply to the setting of such limits and the direct execution of such instructions, unless the Management Board of KDPW\_CCP decides otherwise in a resolution,
  - 3/ direct execution of instructions referred to, respectively, in subpara. 2-4 may involve, in particular, the blocking of the option of making transactions on the regulated market or in the alternative trading system by the entity represented in clearing if this would cause the limits set by the participant holding the status of clearing member for such transactions to be exceeded,
  - 4/ such services may be provided through the operator of the regulated market or organiser of the alternative trading system which has entered into an agreement with KDPW\_CCP provided that the Management Board of KDPW\_CCP so decides in a resolution,



5/ participants who use such services shall separately agree with the entities indicated by such participants and represented by such participants in clearing on the regulated market or in the alternative trading system on the scope and method of their use of such services. KDPW\_CCP is not required to monitor the compliance of participants and of such entities with such scope and method, in particular to monitor limits set on orders submitted by entities represented by participants in clearing on the regulated market or in the alternative trading system, or the direct execution of instructions referred to in subpara. 2-4, respectively,

6/ the provision of such services shall not replace KDPW\_CCP's actions involving the provision of information referred to in subpara. 1 and 3 or preclude KDPW\_CCP's sending of instructions according to subpara. 2-4 unless the agreement concluded between KDPW\_CCP and the operator of the regulated market or organiser of the alternative trading system provides otherwise.

6. The Management Board of KDPW\_CCP shall define in a resolution, subject to the safety of trading and legal compliance, the detailed terms and conditions of the provision of the services referred to in subpara 5, including the conditions on which the participant may launch and discontinue the services, the conditions on which the services may be provided, the method of setting and the types of limits on orders submitted by entities represented by the participant in clearing on the regulated market or in the alternative trading system, the method of direct execution of instructions referred to in subpara. 2-4, respectively, the definition of electronic communications relevant to the provision of such services, the terms and conditions of use of technical tools enabling the provision of such services, subject to the granting of the required licence or sublicense to the user as necessary to use such services, as well as the terms and conditions of technical support for such tools.

7. The services referred to in subpara. 1-5 shall be provided for a fee as per the Table of Fees attached in Appendix 1 to the rules.

### § 36

1. The registration of the transaction made in the regulated market, or alternative trading system, in the clearing system shall take place at the instant of the introduction to this system of the clearing instruction relating to the transaction.

2. The registration of an on-demand loan concluded in the negotiated lending system in the clearing system shall take place at the instant of the introduction to this system of the clearing instruction relating to the conclusion of the loan. The loan shall be deregistered from the clearing system:

1/ at the instant of receipt from the Central Securities Depository of Poland of information that the settlement of the granting of the loan was not made in due time owing to a shortage in the relevant account which prevented the execution of the settlement instruction sent by KDPW\_CCP, or

2/ at the instant of expiration of obligations arising from the concluded on-demand loan relating to the return of loaned securities and the return of the required collateral amount.

3. Clearing instructions shall be considered to have been introduced to the clearing system at the instant of their delivery to KDPW\_CCP, in accordance with the requirements described in § 38, subparas. 2 and 3, subject to subpara. 4.

4. At the instant of the introduction to the system of a clearing instruction submitted by an entity which operates a regulated market or an alternative trading system, respectively, KDPW\_CCP shall immediately verify the terms of the transaction concerned by such instruction. KDPW\_CCP shall refuse to register the transaction and notify immediately the entity which operates the regulated market or the alternative trading system, respectively, if the contents of the clearing instruction do not comply with these rules or resolutions adopted under these rules or the transaction cannot be settled on time according to the terms of the transaction defined in such instruction.

5. KDPW\_CCP shall register repo transactions in the clearing system provided that they can be cleared on an on-going basis according to the rules and the Detailed Rules of Transaction Clearing (organised trading).

### § 37

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

### § 37a

1. Subject to subpara. 2 and 3, non-cash debits and credits arising from transactions in securities executed in the regulated market or the alternative trading system through novation of such transactions shall be cleared, as elected by the participant holding the status of clearing member for such transaction in the manner defined in a resolution of the KDPW\_CCP Management Board, by determining:

1/ the clearing payment referred to in Article 45h subpara. 3 point 1 of the Law on Trading in financial instruments, separately for each transaction (gross non-cash clearing), or

2/ the clearing payment referred to in Article 45h subpara. 3 point 1 of the Law on Trading in financial instruments in such a way that the non-cash debits and credits of the participant holding the status of clearing member arising from the cleared transaction are summed up on its side with non-cash debits and credits of such participant arising from other transactions which are also cleared in such manner, separately where it acts as the buyer and separately where it acts as the seller (aggregate non-cash clearing), or

3/ the clearing payment referred to in Article 45h subpara. 3 point 2 or 3 of the Law on Trading in financial instruments respectively by recalculating the non-cash debits and credits as appropriate, to form a single net debit or a single net credit (non-cash netting).

2. If a participant fails to elect the manner of clearing non-cash debits and credits referred to in subpara. 1 to the extent of cleared transactions, KDPW\_CCP shall perform gross non-cash clearing of such transactions.

3. To the extent of repo transactions, KDPW\_CCP shall only perform gross non-cash clearing of such transactions.

## § 37b

1. Cash netting shall cover cash debits and credits of a participant holding the status of clearing member in a given currency of clearing, arising from all transactions accepted for clearing to be executed on the same date, subject to subpara. 1a.
  - 1a. Cash credits arising from the settlement of an opening leg of a repo transaction shall not be included in cash netting if the settlement date of such transactions is set on the day when they are accepted for clearing in the clearing system according to the contents of clearing instructions.
2. Non-cash netting shall cover non-cash debits and credits of a participant holding the status of clearing member arising from transactions accepted for clearing referred to in § 37a subpara. 1 provided that:
  - 1/ the participant demonstrates, in the manner referred to in § 37a subpara. 1, the application of non-cash netting to such transactions,
  - 2/ such transactions are to be settled on the same date,
  - 3/ the securities under such transactions are marked by the Central Securities Depository of Poland with the same identifier in the securities depository,
  - 4/ they are not repo transactions.
3. Non-cash netting shall only be performed to the extent of cleared transactions registered in clearing accounts designated by the participant holding the status of clearing member for such transactions.
4. For participants described in § 11 subpara. 1 points 2 and 3, respectively, cash netting and non-cash netting shall be performed separately for debits and credits arising from transactions executed on the own account of those participants, and for debits and credits arising from transactions executed on account of their clients.
5. Entities which shall make a net payment and entities which shall receive a net payment shall be identified as a result of cash netting and non-cash netting, respectively.
6. Cash credits subject to cash netting and non-cash netting, respectively, in connection with the clearing of a transaction shall be cancelled, respectively:
  - 1/ for transactions in securities - upon the settlement of the transaction performed in the relevant settlement institution on the basis of a settlement order provided by KDPW\_CCP for the transaction up to the amount defined by such institution;
  - 2/ for transactions in derivatives:
    - a/ upon the bank account maintained by the clearing bank being debited or credited, respectively, on the basis of a settlement order provided to the relevant payment system or a transfer order provided to the clearing bank, or
    - b/ if the outcome of netting does not require a settlement order or transfer order referred to in item (a) to be submitted – upon the registration in the clearing accounts of the status resulting from the clearing of such transactions performed by KDPW\_CCP and a notification of records in such accounts given to participants holding the status of clearing member for which such accounts are maintained.
7. KDPW\_CCP shall register the outcome of netting in clearing accounts immediately after netting.
8. Cash netting and non-cash netting performed by KDPW\_CCP shall require no additional declarations of the transaction clearing counterparties.

9. In case of an event of default, the Management Board of KDPW\_CCP may decide, by way of resolution, that particular transactions are excluded from the principle of non-cash netting. In such cases, the payment obligations shall be calculated separately for each excluded transaction.

#### § 37c

1. Aggregate non-cash clearing shall be performed only to the extent of cleared transactions registered in clearing accounts designated by the participant holding the status of clearing member for such transactions.

2. Aggregate non-cash clearing shall cover debits and credits of a participant holding the status of clearing member arising from transactions accepted for clearing referred to in § 37a subpara. 1 provided that:

1/ the participant demonstrates, in the manner referred to in a resolution of the KDPW\_CCP Management Board, the application of aggregate non-cash clearing to such transactions,

2/ such transactions are to be settled on the same date,

3/ the securities under such transactions are marked by the Central Securities Depository of Poland with the same identifier in the depository system.

3. As a result of performed aggregate non-cash clearing, KDPW\_CCP shall issue a settlement instruction to settle the transactions so cleared by indicating aggregate credits and debits arising from such transactions separately where the participant acts as the buyer and as the seller. 4. In case of an event of default, the Management Board of KDPW\_CCP may decide, by way of resolution, that particular transactions are excluded from the principle of aggregate non-cash clearing. The provisions of § 37b subpara. 8, the second sentence shall apply respectively.

#### § 37d

As a result of performed gross non-cash clearing, KDPW\_CCP shall issue a settlement order separately for each transaction so cleared.

#### § 37e

Clearing payments referred to in Article 45h subpara. 3 point 1, 2 or 3 of the Law on Trading in financial instruments, determined as a result of transaction clearing, may be partly paid to the clearing counterparty which is the creditor on the day on which the transaction should be settled according to the regulations of the relevant settlement institution if such transaction cannot be settled in full on such day due to the lack of assets in the depository account, the bank account, the omnibus securities account, the securities account or the cash account. In the case of partial payment, the obligation arising from the cleared transaction shall survive to the extent that the creditor is not yet satisfied as a result of settlement performed by the relevant settlement institution.

#### § 37f

If, as a result of settlement performed by the relevant settlement institution, clearing payments are not fully paid on the day on which the transaction should be settled according to the regulations of the relevant settlement institution, the other clearing counterparty shall not withhold its payment determined as a

result of the transaction clearing unless the counterparty which does not pay in full is in default and the settlement order for such transaction is effectively cancelled in the system operated by such institution.

### § 38

1. Debits and credits of participants who are parties to transaction clearing settlement shall be calculated on the basis of clearing instructions delivered to KDPW\_CCP:

- 1/ for transactions executed in the regulated market – by the respective regulated market operator,
- 2/ for transactions executed in the alternative trading system – by the system organiser,
- 3/ for on-demand loans concluded in the negotiated lending system – by the Central Securities Depository of Poland.

2. The structure and form of the clearing instructions, described in subpara. 1, points 1 and 2, as well as the terms and procedures for their delivery to KDPW\_CCP, shall be defined by KDPW\_CCP in consultation, respectively, with the relevant regulated market operator, or alternative trading system organiser.

3. The structure and form of the clearing instructions, described in subpara. 1, point 3, as well as the terms and procedures for their delivery to KDPW\_CCP, shall be defined by KDPW\_CCP in consultation with the Central Securities Depository of Poland.

### § 39

1. The clearing of a transaction shall take place on the date of its execution and, for an on-demand lending agreement concluded in the negotiated lending system – also on the date of its termination, on condition that the clearing instruction was delivered on that date to KDPW\_CCP no later than the time determined in the Detailed Rules of Transaction Clearing (organised trading).

2. The KDPW\_CCP Management Board shall decide the start time of transaction clearing by way of resolution.

### § 39a

1. A clearing instruction entered into the clearing system may be recalled from the system only by the entity referred to in § 38 subpara. 1 which has delivered the document, subject to § 43e subpara. 1.

2. A recall may be made:

1/ if the clearing instruction being recalled concerns a transaction in securities – until KDPW\_CCP has sent to the relevant settlement institution a settlement order for the transaction referred to in § 33 point 4 item (a),

2/ if the clearing instruction being recalled concerns a transaction in derivatives – until KDPW\_CCP has started the clearing of such transactions.

### § 39b

KDPW\_CCP shall clear on-demand loans concluded in the negotiated lending system provided that KDPW\_CCP is authorised to take actions defined in the rules and in resolutions issued on the basis of the Rules, as well as in the Rules of the Central Securities Depository of Poland referred to in Article 50 of the

Act on Trading in Financial Instruments, and in regulations issued by the Management Board of the Central Securities Depository of Poland on its basis.

#### § 40

1. Subject to the provisions of subpara. 2, the relevant settlement institution for transactions executed in a given regulated market, or in a given alternative trading system shall be indicated by the entity managing this market or managing this system, in the agreement described in § 1 subpara. 2.
2. A participant holding the status of clearing member may indicate another relevant settlement institution, than the one determined according to the principles described in subpara. 1, for transactions covered by this status, executed by that participant or by an entity represented by that participant in clearing performed by KDPW\_CCP, provided that KDPW\_CCP is a participant of the settlement institution authorised to submit settlement instructions. For transactions executed in markets operating in the territory of the Republic of Poland, such an indication will require the participant to submit a declaration confirming the notification of the Polish Financial Supervision Authority of the intention to assign the settlement of the transactions to a settlement institution indicated by the participant and the expiry of the deadline for opposition by the Polish Financial Supervision Authority.

#### § 41

1. The settlement instructions for transactions in securities, shall be sent by KDPW\_CCP to the relevant settlement institution within the proper deadline to enable the settlement processing of the transaction on the day on which the settlement should take place in accordance with the rules of such institution.
2. In instances where the relevant settlement institution is the Central Securities Depository of Poland, KDPW\_CCP shall send the settlement instructions for transactions in securities:
  - 1/ in instances of the settlement of transactions executed in the regulated market or the alternative trading system, whose settlement date is set after the day when they are accepted for clearing in the clearing system according to the contents of clearing instructions, for settlement in the multibatch system, on the first settlement session on which on the day, described in subpara. 1, settlement is processed for transactions executed in the regulated market or the alternative trading system;
  - 1a/ in instances of the settlement of transactions other than repo transactions, executed in the regulated market or the alternative trading system, whose settlement date is set on the day when they are accepted for clearing in the clearing system according to the contents of clearing instructions, immediately for settlement in the multibatch system, on the settlement session on which on the day, described in subpara. 1, set in the clearing instruction, settlement is processed for such transactions;
  - 1b/ in instances of the settlement of repo transactions, executed in the regulated market or the alternative trading system, whose settlement date is set on the day when they are accepted for clearing in the clearing system according to the contents of clearing instructions, for settlement in the multibatch system, on the settlement session on which on the day, described in subpara. 1, set in the clearing instruction, settlement is processed for such transactions, on the date determined in the Detailed Rules of Transaction Clearing (organised trading);

2/ in instances of the settlement of on-demand loans concluded in the negotiated lending system – immediately for settlement in the multibatch system, on the settlement session on which on the day, described in subpara. 1 in the clearing instruction, settlement is processed for such loans.

3. KDPW\_CCP shall send settlement instructions, in such a way that the Central Securities Depository of Poland can settle such transactions on the side of KDPW\_CCP (as a settlement counterparty):

1/ in the case of an opening leg of a repo transaction, without the option of partial settlement of such transaction by the settlement institution,

2/ in the case of other transactions in securities, with the option of partial settlement of such transaction by the settlement institution,

unless after a settlement fail of the transaction concerned by the submitted settlement instruction, a clearing member requests the option of partial settlement of the opening leg of a repo transaction according to the rules, KDPW\_CCP decides otherwise in the instruction due to an event of default of the participant which is a clearing counterparty of the transaction concerned by the sent settlement instruction in connection with the rules of operation of the system managed by the settlement institution or for other reasons justified by proper operation of the clearing system.

4. Immediately upon the settlement of a transaction performed by the relevant settlement institution on the basis of a settlement instruction for transactions in securities, KDPW\_CCP shall register the outcome of such settlement in the relevant clearing account on the basis of information received from that institution. In the event of settlement suspension of a transaction in securities by such institution, KDPW\_CCP shall immediately register the outcome of such suspension in the relevant clearing account on the basis of information received from that institution.

#### § 41a

1. Cash payments in respect of participation in the clearing system in a given currency which are not executed according to an instruction sent to the relevant settlement institution shall be executed in the cash account indicated according to § 20 subpara. 2 point 3 managed in the clearing bank or in TARGET 2 respectively.

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

#### § 41b

1. Immediately upon a cash payment on the basis of a settlement instruction for transactions in derivatives, KDPW\_CCP shall register the outcome of such settlement in the relevant clearing account on the basis of information received from the clearing bank.

2. If KDPW\_CCP receives a notification of failure to make a cash payment referred to in subpara. 1 when due, KDPW\_CCP shall immediately notify the participant holding the status of clearing member thereof.

#### § 42

[repealed]



**§ 42a**

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 clearing instructions, actions taken in the 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 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 IA****TRANSFERS ON DEMAND OF PARTICIPANTS HOLDING THE STATUS OF CLEARING MEMBER****§ 42b**

1. Subject to subpara. 2 – 3 and subpara. 10, a participant holding the status of clearing member may request:
  - 1/ the transfer of positions arising from transactions concluded on the derivatives market, 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 by the Management Board of KDPW\_CCP in a resolution, by:
  - 1/ the participant holding the status of 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's 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.
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 § 43c 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 § 43c subpara. 3,
  - 3/ KDPW\_CCP shall cease to have credits or debits, respectively, towards the participant referred to in subpara. 2 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 4. 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:
- 1/ execute the instructions entered into the clearing system within the time limit set by the Management Board of KDPW\_CCP in a resolution,
  - 2/ check that the content of the instructions referred to in subpara. 2 matches within the time limit set by the Management Board of KDPW\_CCP in a resolution.
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 participants 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 relevant settlement institution for the positions being transferred, or

4/ as a result of their execution, the balance of liabilities of either participant submitting the instructions referred to in subpara. 2 would exceed the transaction limit.

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

1/ claims for the return of financial collateral established by the participant 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 participant 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.

#### § 42c

1. Subject to subpara. 2 and subpara. 6, a participant holding the status of clearing member may request the transfer of positions 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 by the Management Board of KDPW\_CCP in a resolution, by the participant holding the status of 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 by the Management Board of KDPW\_CCP in a resolution.

4. The participant holding the status of 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 participant 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 transaction limit.

7. If the positions being transferred, referred to in subpara. 1, have been registered in the clearing system for transactions concluded by a non-clearing member, KDPW\_CCP shall no longer be obliged towards the participant holding the status of clearing member to perform the actions referred to in § 69a - § 69c.

#### § 43

1. [repealed]

2. [repealed]

3. Instructions referred to § 42b 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 by the Management Board of KDPW\_CCP in a resolution.

4. An instruction referred to in § 42c subpara. 2 may be cancelled by the participant who sent the instruction to KDPW\_CCP before the time set by the Management Board of KDPW\_CCP in a resolution.

## SECTION II NOVATION

#### § 43a

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

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

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

3/ in the alternative trading system operated by the Warsaw Stock Exchange excluding transactions in securities made outside the standard trading systems,

4/ in the alternative trading system operated by BondSpot S.A. excluding transactions in securities made outside the standard trading systems,

5/ on other regulated markets and in other alternative trading systems operated by entities which have concluded agreements with KDPW\_CCP concerning performance of clearing of transactions made therein.

2. Novation shall not apply to transactions made on regulated markets or in alternative trading systems operating outside the territory of the Republic of Poland to which novation may not apply under the foreign law governing such transactions.

**§ 43b**

1. Transactions referred to in § 43a subpara. 1 shall be accepted for clearing upon the registration of transactions in the clearing system referred to in § 36 subpara. 1 (time of novation).
2. A transaction shall be accepted for clearing on the condition precedent whereby the requirements set out in § 34 subpara. 1 points 1, 2 or 3 are met for the transaction and on the condition subsequent whereby a clearing instruction is not effectively recalled from the clearing system by the entity which has submitted it.
3. If KDPW\_CCP accepts a repo transaction for clearing and securities in such transaction are repurchased before the repurchase date, KDPW\_CCP may terminate the repo transaction early and, unless such transaction is terminated before the repurchase date of such securities, KDPW\_CCP shall have a cash credit or debit, respectively, in exercise of rights attached to the securities in the repo transaction.

**§ 43c**

1. A clearing payment determined as a result of the clearing of a transaction referred to in § 43 subpara. 1 shall be made according to the contents of the transaction determined on the basis of the clearing instruction, including without limitation a one-off payment, periodic payments, or the payment of a difference, subject to § 43f.
2. Upon the novation of a transaction referred to in § 43a subpara. 1, KDPW\_CCP shall have, respectively, credits or debits exclusively towards the other transaction clearing counterparty.
3. Upon novation, the transaction clearing counterparty shall have, respectively, credits or debits towards KDPW\_CCP and if it represents another entity in clearing, then also towards that entity.

**§ 43d**

Novation of transactions referred to in § 43a subpara. 1 shall be performed separately for credits and debits arising from each transaction and according to its contents set out in the clearing instruction.

**§ 43e**

1. Where a clearing instruction is effectively recalled from the clearing system according to § 39, the novation of the transaction shall be cancelled by KDPW\_CCP.
2. Upon effective recall of a clearing instruction, KDPW\_CCP shall inform the clearing counterparties to the transaction concerned by the document that the novation of the transaction has been cancelled. Transaction clearing counterparties which represent in clearing other entities which are counterparties to the transaction shall immediately notify such entities that the novation of the transaction has been cancelled.
3. As a result of cancellation of the novation of a transaction:
  - 1/ the novation of the transaction shall be deemed null and void,
  - 2/ KDPW\_CCP and the transaction clearing counterparties shall have no credits or debits as a result of the novation of the transaction.

**§ 43f**

1. If counterparties to the transaction referred to in § 43a subpara. 1 did not determine in due time the detailed mode of its execution, in particular the amount of each partial payment or the dates of partial payments, or if the person authorised to choose a payment according to the contents of the transaction did not make the choice in due time, KDPW\_CCP shall be authorised, upon the acceptance of the transaction for clearing, to determine the mode of payment, subject to subpara. 2.
2. Payments arising from transactions referred to in § 43a subpara. 1 shall be made according to the rules defined by the relevant settlement institution to which KDPW\_CCP sends the settlement order of the transaction.

**§ 43g**

1. From the time of novation:
  - 1/ cash netting and non-cash netting arising from transaction clearing and participation in the transaction clearing guarantee system shall be allowed only on the terms set out according to § 37-37b,
  - 2/ KDPW\_CCP shall be exclusively authorised to determine credits and debits based on cash netting and non-cash netting,subject to the regulations of the relevant settlement institution to which the settlement order concerning the payments is sent.
2. A transaction clearing counterparty shall not transfer any rights created as a result of novation of the transaction referred to in § 43a subpara. 1 to another entity without the consent of KDPW\_CCP.
3. No other entity may accept any obligations created as a result of novation of the transaction referred to in § 43a subpara. 1 without the consent of KDPW\_CCP.

**§ 43h**

If non-performance or undue performance by a participant which is a transaction clearing counterparty of its obligation arising from novation of the transaction, in particular delayed performance of such obligation, causes a property loss to KDPW\_CCP, the participant shall repair it.

**§ 43i**

The provisions of § 46f subpara. 5-7 shall apply accordingly to transactions where KDPW\_CCP has taken over rights and obligations.

**§ 43j**

1. KDPW\_CCP shall be authorised to perform obligations arising from a transaction to which novation applies as referred to in § 43a subpara. 1 by making a replacement payment, referred to in Article 45h(4) of the Act on Trading in Financial Instruments (replacement payment) in cases and on the terms set out in the rules.
2. A clearing member who represents another entity concluding transactions in clearing shall ensure that the right referred to in subpara. 1 may be effectively enforced for such entity.

**§ 43k**

The provisions of the rules and resolutions of the Management Board of KDPW\_CCP issued under the rules, which set out the rules and the terms and conditions of performing by KDPW\_CCP of the clearing of transactions referred to in § 43a subpara. 1 to which novation applies, the procedure for securing their clearing, the procedure and mode of lifting the suspension of transaction settlement, and the rules and the scope of liability of KDPW\_CCP, shall have precedence in relations with KDPW\_CCP in case of any conflict or divergence with the provisions of other agreements concluded by the transaction counterparty or transaction clearing counterparty.

**SECTION III**  
**ACCOUNT SYSTEM****§ 43m**

1. KDPW\_CCP shall operate clearing accounts in the clearing system, used to register:
  - 1/ positions arising from transactions registered in the clearing system,
  - 2/ operations concerning positions referred to in point 1,
  - 3/ balances arising from the netting of 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 executed by a participant holding the status of clearing member on its own account (own position accounts),
  - 2/ transactions executed by a participant holding the status of clearing member on its clients' account and executed by other entities represented by the participant in the clearing system (client position accounts).
3. KDPW\_CCP shall maintain collateral accounts in the 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.
4. KDPW\_CCP shall maintain registration devices in the account system (aggregate accounts), opened on request of a participant holding the status of clearing member, which are not clearing accounts, used to reflect records made in clearing accounts maintained for such participant, which are designated by it. KDPW\_CCP shall open a collateral account assigned to every aggregate account.
5. Aggregate accounts may only be used to reflect records made in client position accounts or own position accounts, respectively, or corresponding aggregate accounts.
6. Where KDPW\_CCP opens a collateral account referred to in subpara. 4 assigned to an aggregate account, such account only:
  - 1/ shall be used to register the initial margin for positions registered in designated clearing accounts linked to such aggregate account,
  - 2/ shall be linked to clearing accounts designated by the participant and shall have the legal effect defined in the rules to the extent of assets deposited as margins referred to in subpara. 1.



## § 43n

1. The account system shall be maintained by KDPW\_CCP according to the following principles:
  - 1/ respecting the types of participation of participants holding the status of clearing member,
  - 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 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 clearing system.
5. The principle of completeness shall mean that all actions referred to in § 43m 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 clearing system.

## § 43o

1. KDPW\_CCP shall assign attributes to each clearing account as determined in a resolution of the Management Board of KDPW\_CCP, subject to subpara. 2.
2. A participant holding the status of 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 or group of clients of such participant on the basis of an instruction submitted by the participant which intends to open a clearing account, subject to subpara. 3. 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 under the rules referred to in § 1 subpara. 5, the participant shall define in the 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 is seeking the assignment of a client identification number to a group of clients which includes such client.
3. If an aggregate account has been opened at the request of a participant and it is assigned to clearing accounts indicated by it, KDPW\_CCP shall assign a client identification number which is an attribute of the aggregate account to a group of clients previously identified by such clearing accounts. In this case, it is assumed that the clearing system identifies only a group of clients with the client identification number which is an attribute of the aggregate account.
4. Clearing accounts and collateral accounts linked to them which are 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.
5. [repealed]

**§ 43p**

1. Records in the account system shall only be made by KDPW\_CCP.
2. KDPW\_CCP shall record in clearing accounts positions arising from a transaction accepted to the clearing system upon the entry into the system of a clearing instruction.
3. When a repo transaction is recorded in repo accounts, KDPW\_CCP shall record both the opening leg and the closing leg in such accounts.

**§ 43r**

1. A clearing account shall be opened on the basis of an instruction of a participant holding the status of 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. If a participant holding the status of clearing member is to clear transactions on its clients' account, it shall open the relevant client position account.
3. [repealed]

**§ 43s**

1. Records in an aggregate account shall be made at the same time that records are made in an assigned clearing account.
2. A participant shall indicate the relevant clearing accounts to be assigned to the aggregate account. The provisions of § 43o subpara. 1 and 2 and § 43r subpara. 1 shall apply accordingly to the opening of aggregate accounts.
3. Aggregate accounts shall not be used to perform actions in the account system on the basis of a clearing instruction.

**§ 43t**

KDPW\_CCP shall store information about records made in the account system 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.

**§ 43u**

Participants holding the status of clearing member shall maintain records referred to in Article 39.4 of EMIR, including for cleared transactions in derivatives, derivatives accounts, under the Regulation, and according to the applicable legislation binding on the participant, and apply the rules referred to in § 43n subpara. 1 points 2-5 to such records and accounts, provided that the principle of simultaneity shall imply that:

- 1/ entries in such records shall be made by such participants immediately upon receipt from KDPW\_CCP of documents confirming a specific action in clearing accounts, and
- 2/ entries made by participants holding the status of clearing member in derivatives accounts shall correspond to entries made in corresponding clearing accounts opened by such participants,

unless the applicable legislation binding on the participant provides otherwise.

**SECTION IV**  
**TRANSACTION CLEARING LIQUIDITY GUARANTEE SYSTEM**  
**PART 1 GENERAL**

**§ 44**

1. Subject to the provisions of subpara. 2 and § 1 subpara. 2 and 3, the transaction clearing liquidity guarantee system operated by KDPW\_CCP covers the following:

1/ transactions created as a result of novation and transactions concluded by KDPW\_CCP within the system and in accordance with the provisions of this Section,

2/ transactions referred to in § 43a subpara. 2, to which novation does not apply.

2. The Management Board of KDPW\_CCP may define in a resolution the types of transactions executed in the regulated markets or alternative trading systems, described in subpara. 1 point 2, which are not covered by the transaction clearing liquidity guarantee system operated by KDPW\_CCP. The resolution of the Management Board of KDPW\_CCP adopted in this matter may only indicate those types of transactions which meet at least one of the following criteria:

1/ the significant details of these transaction are determined between entities that send execution offers in a given market prior to these offers being made,

2/ these transactions are executed outside standard listing systems in a given market.

**§ 44a**

1. Coverage of transactions referred to in § 44 subpara. 1 point 2 to which novation does not apply by the transaction clearing liquidity guarantee system organised by KDPW\_CCP shall mean that KDPW\_CCP undertakes to perform, at the expense of its own capital, the actions referred to in Part 9 "Actions taken with resources of the transaction clearing liquidity guarantee system in the case of an identified default", in cases referred to in the rules. The provisions of § 43b, § 43g subpara. 1, § 43i, § 43j and § 43k shall apply accordingly to such transactions.

2. For transactions other than transactions referred to in § 44 subpara. 1, KDPW\_CCP shall only send settlement orders to the relevant settlement institution, subject to the provisions of Section V "Negotiated Lending Clearing Liquidity Guarantee System."

**§ 45**

1. To the extent to which they impose particular obligations on clearing members in relation to their responsibility for the correct performance of obligations arising from the clearing of transactions, the provisions of this Section shall not apply to participants who in the scope of these transactions, do not hold the status of clearing member.

2. The provisions of this Section shall in no way apply to transactions which are secured using the transaction clearing liquidity system managed by KDPW\_CCP. Whenever the provisions of this Section refer to transactions, this shall mean only those transactions secured by this system.

**§ 46**

1. As part of the transaction clearing liquidity guarantee system, KDPW\_CCP:

- 1/ collects and manages assets that form margins,
- 2/ collects and manages assets that form the clearing guarantee fund or the relevant guarantee fund,
- 3/ performs mark to market between parties to the transaction executed in the derivatives market,
- 3a/ performs mark to market between parties to a repo transaction in order to pay an interest coupon,
- 4/ together with the Central Securities Depository of Poland, organises an automatic securities lending and borrowing system and the negotiated lending system.

**§ 46a**

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

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

- 1/ the Central Securities Depository of Poland 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 Central Securities Depository of Poland,
- 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 referred to in subpara. 1.

**§ 46b**

1. Assets of the transaction clearing liquidity guarantee system may be used on the occurrence of an event of default and in cases referred to in the provisions of this Section, provided that such assets shall be first used to meet liabilities arising from transactions. Assets of the transaction clearing liquidity guarantee system shall be understood as all assets which according to the applicable legal regulations and the provisions of the rules may be used to meet liabilities in respect of participation in the clearing system.

2. If a defaulting participant is a participant of another clearing system operated by KDPW\_CCP, any surplus formed by the participant's own assets posted as collateral against the execution of all transactions cleared by the participant or transactions concluded and cleared on own account of the participant, remaining after the participant's debits arising from participation in such other system are cleared, shall be used in clearing in the clearing system as assets of the transaction clearing liquidity guarantee system within the meaning of the rules.

3. In case of the occurrence of an event of default and the need to take actions set out in this Section, KDPW\_CCP shall notify the defaulting participant of such actions being taken in electronic form or, if this is not possible, in any form.

**§ 46c**

1. KDPW\_CCP shall be authorised to manage the resources contributed to the transaction clearing liquidity guarantee system, including the resources of the clearing guarantee fund or the relevant 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 contributed to the transaction clearing liquidity guarantee system, other than revenue earned from the management of cash contributed in EUR, shall be transferred to participants holding the status of clearing member 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 clearing system, referred to in § 1 subpara. 1 or subpara. 5, respectively, KDPW\_CCP may credit it towards such obligations instead of transferring it to the participant.
3. As a remitter of the withholding tax on revenue earned by clearing members who are non-residents, KDPW\_CCP shall charge the withholding tax in the maximum amount applicable under Polish law prior to transferring to such members any revenue referred to in subpara. 2, any benefits from securities and any payment from the issuer received for the redemption or cancellation of such securities.

**§ 46d**

1. A participant with the participation type described in § 11 subpara. 1 point 2, used for activities described in § 11 subpara. 3 point 1, holding a depository account managed in the settlement institution that processes the settlement of transactions executed by that participant, shall be obliged to enable that settlement institution to transfer securities from that participant's proprietary account onto the account of the participant's clients to the extent necessary to perform obligations arising from the clearing of transactions executed by that participant on the order of the client.
2. The obligation, described in subpara. 1, shall arise on condition that the relevant settlement institution shall apply the measures described in subpara. 1.

**§ 46e**

1. Subject to subpara. 2, as part of the mark to market activities, described in § 46 point 3 and point 3a, KDPW\_CCP shall determine the party to the transaction, which on a given day, in accordance with the conditions of this transaction, respectively, holds a financial advantage or interest coupon or is obliged to provide such advantage or interest coupon, as well as the value of this advantage.
2. KDPW\_CCP shall perform the actions referred to in subpara. 1 to the extent of interest coupons provided that the record date of such coupon falls in the period starting on the settlement date of the opening leg of the repo transaction (inclusive) and the payment date of the coupon is set no later than the settlement date of the closing leg of the repo transaction set according to the terms of the transaction (exclusive).

**§ 46f**

1. If in a given market, in accordance with the law in force in the country in whose territory that market is operated and in accordance with the rules in force in that market, the entity performing the clearing of

transactions executed in that market becomes the counterparty to these transactions, without the necessity to submit any form of declaration of the acceptance of the terms of each such transaction, or to express the intention to execute these transactions on the same terms that they are executed, KDPW\_CCP may conclude an agreement with the entity organising this market to provide clearing services for transactions executed in this market, on condition that the rules in force in this market require all entities admitted to executing transactions there to conclude a prior participation agreement with KDPW\_CCP, as the entity performing clearing on their behalf.

2. The requirement, described in subpara. 1, may be performed by acquiring participation related to the status of clearing member, or by acquiring the participation type of non-clearing member.

3. In instances of the conclusion of an agreement for the clearing of transactions in the market, described in subpara. 1, the terms and conditions of clearing services provided by KDPW\_CCP for these transactions, the method used to guarantee the transaction clearing, the rules and methods used by KDPW\_CCP to eliminate the suspension of transaction settlement, as well as the terms and conditions and scope of the liability of KDPW\_CCP, shall all be exclusively regulated by these rules and the resolutions of the KDPW\_CCP Management Board issued on the basis of these rules. The provisions of the preceding sections shall apply to these matters, subject to the provisions of subpara. 4-7.

4. In becoming a counterparty for transactions executed in the market, described in subpara. 1, KDPW\_CCP shall assume the responsibility for making the related payment exclusively on behalf of a participant holding the status of clearing member and representing the other party to the transaction in clearing performed by KDPW\_CCP.

5. In instances where the settlement in a relevant settlement institution of a transaction ("transaction A"), executed in a market, described in subpara. 1, is suspended because KDPW\_CCP did not execute the payment arising from this transaction, which was caused by an identical payment, as regards asset and amount, not being executed on behalf of KDPW\_CCP by a defaulting participant as a result of another transaction ("transaction B") executed in this market, whose settlement was also suspended, then the payment relating to transaction A shall be processed by KDPW\_CCP on the date of the elimination of the suspension of settlement of transaction B, and in the event of cancellation by KDPW\_CCP of the instruction to settle, in accordance with the rules - on the date of the settlement of, respectively, the securities sale or purchase transaction by KDPW\_CCP in order to perform settlement on behalf of the participant being the counterparty to the clearing of transaction A.

6. If in the instance, described in subpara. 5, the Management Board of KDPW\_CCP shall take advantage of the right to adopt a resolution on the execution of the replacement payment on behalf of the participant being the counterparty to the clearing of transaction A, the execution of this payment shall release KDPW\_CCP from the obligations arising from transaction A.

7. In the circumstances described in subpara. 5, KDPW\_CCP shall not be obliged to process any consequential payments in relation to the main payment arising from transaction A, and in particular KDPW\_CCP shall not be obliged to pay any penalty interest for any delay in executing the cash payment arising from this transaction, or to provide restitution as a result of its suspension.

## § 46g

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

1. Subject to the second sentence of subpara. 3 and subpara. 4, the market value of securities traded on the organised market which are posted as margins or contributions to the clearing guarantee fund or the relevant guarantee fund shall be determined as follows:

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 2 to the rules.

3. The market value of securities, deposited as margins or contributions to the clearing guarantee fund or relevant 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, deposited as margins or contributions to the clearing guarantee fund or relevant 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, deposited as margins or contributions to the clearing guarantee fund or relevant 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.

5a. The market value of securities referred to in § 47 subpara. 3 point 4, deposited as margins or contributions to the clearing guarantee fund or relevant guarantee fund, shall be calculated according to the current market data available from services of information agencies indicated by the Management Board of KDPW\_CCP in a resolution 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, deposited as margins or contributions to the clearing guarantee fund or relevant guarantee fund, calculated according to subpara. 1-5 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 rules laid down by the Management Board of KDPW\_CCP in a resolution.

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 a resolution the entity which operates the relevant depository system for securities posted as margins or contributions to the clearing guarantee fund or the relevant guarantee fund where the market value of such securities is determined through such entity.

#### § 46h

1. The market value of the underlying instrument arising from a transaction in derivative instruments to which novation applies shall be calculated according to the following principles:

1/ if the underlying instrument is a security, the value shall be calculated according to § 46g subpara. 1-6,

2/ if the underlying instrument is a foreign currency, the value shall be calculated in the Polish currency according to the current market value of that currency determined according to rules laid down by the Management Board of KDPW\_CCP in a resolution.

2. For underlying instruments other than referred to in subpara. 1 points 1 and 2 arising from transactions in derivative instruments to which novation applies, their market value shall be calculated according to the terms of trading for the derivative instruments concerned by the underlying instrument.

## **PART 2 MARGINS, THE CLEARING GUARANTEE FUND, THE RELEVANT GUARANTEE FUND**

### **§ 47**

1. Margins take the form of initial margin and initial deposit. Such margins shall cover liabilities arising from transactions and arising from non-execution or undue execution of such transactions.

2. Initial margins and initial deposits may consist of cash or securities 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 Chapter and resolutions of the Management Board of KDPW\_CCP adopted under the rules, in the following currencies:

1/ PLN,

2/ EUR.

3. Securities accepted by KDPW\_CCP within the meaning of subpara. 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 condition that these have been indicated in the list of securities described in § 47a subpara. 4. When indicating securities in the list, KDPW\_CCP shall take into account, without limitation, the issuer's credit risk level, the expected dispersion of ownership of such securities, the volatility of the price of such securities, and their liquidity, subject to subpara. 4.

4. KDPW\_CCP may indicate securities referred to in subpara. 3 point 4 in the list of securities described in § 47a subpara. 4 provided that:

1/ the provisions of the rules to the extent of the conclusion of the agreement referred to in § 50 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 § 50 subpara.

2 point 1,

2/ under the applicable legal provisions referred to in § 50 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 § 50 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, as amended).

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 Chapter and the resolution of the Management Board of KDPW\_CCP adopted under the rules, subject

to § 42b and § 69b,

2/ shall constitute financial collateral referred to in Art. 1 in conjunction with Art. 5 subpara. 1 point 1 of the Law on certain financial collateral of 2 April 2004 (consolidated text: Dziennik Ustaw – Journal of Laws from 2022, item 133).

6. A margin shall be deposited in cash on the terms defined by the Management Board of KDPW\_CCP in a resolution and by means of debiting the relevant bank account designated by the participant.

7. A participant depositing a margin in cash shall ensure that cash in the relevant bank account 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 exchange trading session on the day following transaction clearing.

8. If there is a shortage of cash in the relevant bank account maintained in the clearing bank 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 § 20 subpara. 2 point 3 of the rules.

10. 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.

10a. Any surplus contributed by a clearing member on account of a given margin to the relevant account held for the KDPW\_CCP in excess of the required amount of the margin shall also constitute financial collateral contributed on account of that margin.

11. Margins shall be calculated by KDPW\_CCP in the Polish currency. The Management Board of KDPW\_CCP shall define in a resolution the detailed rules of calculating margins.

#### § 47a

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 during the exchange trading session the value of securities and cash in EUR which constitute a margin and the haircut rate.

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

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

6. KDPW\_CCP shall inform participants holding the status of clearing member of any change of haircut rates immediately following an update.

7. Where a margin comprises securities referred to in § 47 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 § 46g 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.

#### § 47b

1. The value of Treasury bonds ceases to be recognised in any form 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 these bonds.

2. The value of Treasury bills ceases to be recognised in any form when calculating the value of margins, starting on the second day prior to the redemption of these bills.

2a. The provisions of subpara. 1 shall apply to securities referred to in § 47 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 ceases to be recognised in any form 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 participant holding the status of clearing member or by an entity of the participant's group of companies, within the meaning of Article 3 subpara. 1 point 44 of the Accountancy Act of 29 September 1994 (consolidated text: Dziennik Ustaw - Journal of Laws from 2023, item 120, as amended), or securities for which the participant or such entity has granted a guarantee or surety to perform obligations arising thereunder shall not be recognised to any degree when calculating the value of margins posted by the participant. If a merger, split or take-over of the participant or another entity which has issued securities posted by the participant as margins or the acquisition of a significant block of shares of the participant or such entity or another event causes an effect through which securities become securities issued by the participant that has posted them as margins or by an entity of the participant's group of companies, within the meaning of Article 3 subpara. 1 point 44 of the Accountancy Act, the value of such securities shall cease to be recognised to any degree when calculating the value of posted margins as of the second day after it comes to the attention of KDPW\_CCP.

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, 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 participant holding the status of 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, 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 financial instruments posted by a clearing member as a contribution to the clearing guarantee fund or the relevant guarantee fund, respectively.

#### § 47c

[repealed]

#### § 48

1. The initial margin shall be posted by participants holding the status of clearing member for transactions executed in securities trading, or for transactions executed in the derivatives market.

2. An initial margin may only be used to meet obligations arising from positions registered in clearing accounts which have been assigned by the participant 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.

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

1/ cover the participant's potential future exposure as a result of the identification of its event of default,

2/ reflect the participant's current exposure arising from actual changes of market prices,

3/ cover the risk arising from the liquidity of financial instruments and the concentration of positions to the extent of the participant's exposure, and

4/ cover the risk arising from the correlation between the participant's exposure and its credit risk.

3a. The value of the initial margin required from a participant shall be updated on each day when KDPW\_CCP clears transactions.

4. The initial margin shall be posted by a participant holding the status of clearing member both for transactions executed in securities trading, as well as for transactions executed in the derivatives market. Such margin shall be calculated separately for the following types of transactions:

1/ repo transactions concluded in trading in securities,

2/ transactions other than repo transactions concluded in trading in securities,

3/ transactions concluded in the derivatives market.

5. The provisions of subpara. 4 shall not prevent the use by KDPW\_CCP of that portion of the initial margin posted by the clearing member, which was calculated according to the value of that clearing member's liabilities arising from transactions of one type, in order to enforce that clearing member's obligations arising from the clearing of transactions of another type, provided that they are registered in a clearing account assigned to the collateral account designated according to subpara. 1.
6. In the event of a clearing member's non-fulfilment of the requirements defined in § 24 and § 25 or obtaining reliable information of events which may result in such circumstances in near future or a participant's non-performance of undue performance of its obligations arising from a participation agreement, the Management Board of KDPW\_CCP may, upon giving prior notification to the participant, adopt a resolution increasing, for a fixed period of time, but no longer than three months, the value of its obligations in respect of initial margins calculated on the basis of a factor set in the resolution, but no more than 100% of their existing value. The time limit for which the value of obligations in respect of margins calculated for the participant is increased may be extended for another fixed period of time, but no longer than three months, if the situation referred to in the preceding sentence continues.
7. 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 KDPW\_CCP Management Board may lower these ratios for a limited period by means of a resolution.

#### § 48a

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 participant holding the status of clearing member together with positions registered in such clearing account in the events described in § 69a - § 69c within the scope defined therein. KDPW\_CCP shall be authorised under the power of attorney referred to in § 15 subpara. 1 point 4 item (b) to perform actions defined therein in order to exercise such right.

#### § 49

1. The initial deposit is posted by a participant holding the status of clearing member for all transactions cleared by that participant.
2. An initial deposit is first posted by a participant 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 this Chapter and resolutions of the Management Board of KDPW\_CCP adopted under the rules, 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 KDPW\_CCP Management Board may lower these ratios for a limited period by means of a resolution.

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

#### § 50

1. In instances where collateral, described in the provisions of this Part, is posted in the form of securities, then KDPW\_CCP shall have the right to dispose of these securities according to the purpose for which the collateral served, from the moment when the securities were 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 § 47 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 § 47 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 within the time limit set by the Management Board of KDPW\_CCP in a resolution. Upon such transfer, KDPW\_CCP and the participant holding the status of clearing member posting the margin shall enter into an agreement of transfer of ownership of such instruments 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 § 47 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. The Management Board of KDPW\_CCP shall indicate, in a resolution, 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 by the Management Board of KDPW\_CCP in a resolution, 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 related to the establishment or release of such collateral may only be taken through the entity which operates the relevant depository system for such securities, under an agreement concluded with it by, respectively, KDPW\_CCP, the participant or its collateral agent.

3. In instances referred to in § 42b and § 69b, 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 with KDPW\_CCP concludes an agreement with another entity in order to cause the establishment or release of such collateral, it shall ensure that the provisions of the agreement are not in contradiction with the provisions of the rules and of resolutions of the Management Board of KDPW\_CCP adopted under the rules.

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

5. A participant holding the status of clearing member may demand the release of collateral, either in full, or in part, when the value of that participant's posted collateral is higher than the collateral required, or in instances where in order to release the collateral, equivalent collateral in alternative form was posted in accordance with the relevant rules.

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 participants holding the status of clearing member 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 clearing system, referred to in § 1 subpara. 1 or subpara. 5, respectively, 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 Part is formed by securities, KDPW\_CCP shall be entitled to request the participant holding the status of 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 in order to enable the collateral posted in such securities to be released.

10. Subject to subpara. 2 point 5, the Management Board of KDPW\_CCP shall define in a resolution the detailed terms of the posting of securities as initial margin or initial deposit as well as the detailed terms of their return.

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

§ 50a  
[repealed]

§ 50b

1. Securities posted by a participant holding the status of clearing member in respect of margins or contributions to the clearing guarantee fund or the relevant guarantee fund shall be included in the calculation of the value of margins or contributions to the clearing guarantee fund or the relevant 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 clearing guarantee fund or the relevant guarantee fund, and taking into account collateral within 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 clearing guarantee fund or the relevant 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 § 47a subpara. 4 in the manner defined in § 48 subpara. 7 and § 49 subpara. 3, in the clearing guarantee fund rules and in the relevant 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 clearing guarantee fund or the relevant 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 § 47a 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 § 47 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 § 47a 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 § 47a 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 § 47a 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, credited at the day towards margins or contributions to the clearing guarantee fund and the relevant 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 clearing guarantee fund and the relevant guarantee funds, 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 § 47a subpara. 4, issued by the entities of the group of the type of issuer, credited at the day towards margins or contributions to the clearing guarantee fund and the relevant 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 clearing guarantee fund and the relevant guarantee funds, 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 clearing guarantee fund and the guarantee funds, 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 clearing guarantee fund and the relevant guarantee fund to the value of margin requirements and required contributions to the clearing guarantee fund and the relevant 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.

#### § 50c

1. A participant holding the status of clearing member, that intends to post assets as margins, a contribution to the clearing guarantee fund or the relevant 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, contributions to the clearing guarantee fund or the relevant 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.

#### § 50d

1. KDPW\_CCP shall organise and manage a clearing guarantee fund to ensure the proper performance of obligations arising from transactions executed in the regulated market.

2. Contributions to the clearing guarantee fund shall be paid in by participants holding the status of clearing member for transactions executed in the regulated market.

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

4. The rules that describe the creation and operation of the clearing guarantee fund in matters not regulated herein, shall be defined in the rules of the clearing guarantee fund.

#### § 50e

1. KDPW\_CCP manages the relevant guarantee fund for alternative trading systems where transactions cleared by KDPW\_CCP are executed, under the rules of the ATS guarantee fund.

2. Contributions to the relevant guarantee fund referred to in subpara. 1 are paid in by participants holding the status of clearing member for transactions guaranteed using such fund.

3. Contributions to the relevant guarantee fund referred to in subpara. 1 shall be calculated by KDPW\_CCP in the Polish currency.

4. The rules that describe the creation and operation of the relevant guarantee fund referred to in subpara. 1 in matters not regulated herein, shall be defined in the rules of the ATS guarantee fund.

#### § 50f

The assets of the clearing guarantee fund, as well as the assets of the relevant guarantee fund, shall secure the obligations arising from transactions covered by the clearing guarantee fund or the relevant guarantee fund, respectively, and arising from the non-execution or undue execution of such transactions.

### **PART 3 RISK MONITORING**

#### § 51

1. Based on the information provided by the operator of the market, KDPW\_CCP shall calculate the updated value of liabilities arising from transactions executed in that market, the realisation of which is the responsibility of each participant.

2. The total value of the initial deposit and the initial margin posted by the participant, to the extent of clearing a given type of transactions concluded on the regulated market or in the alternative trading system, determines the maximum value of the position which may be registered in the clearing system as a result of acceptance into the system of transactions concluded by the participant or by entities

represented by it to such extent in clearing performed by KDPW\_CCP (transaction limit). The value of positions referred to in the preceding sentence shall be understood to mean the sum of the currently determined value of assets due from the participant holding the status of clearing member:

1/ as an initial margin, determined on the basis of positions registered in the clearing system as a result of acceptance into the system of a given type of transactions concluded on the regulated market or alternative trading system, and

2/ as marking-to-market of transactions less the value of credits due to the participant in respect of the marking-to-market of transactions concluded by it on its own account on the market.

3. In the event that the value of positions referred to in subpara. 2 exceeds the transaction limit, KDPW\_CCP shall call the participant to eliminate the breach by adjusting the initial deposit or initial margin immediately, no later than within 30 minutes after the participant becomes aware of the limit being exceeded. If the participant fails to eliminate the breach within such time limit, the provisions of subpara. 5 and 6 shall apply. In that event, KDPW\_CCP may also refuse further acceptance for clearing of transactions to which the participant is a clearing counterparty, and take actions described in § 35 subpara. 2.

4. The participant may be obliged to ensure that the total number of positions in derivatives of a given series, or derivatives of all series based on the same underlying instrument, opened following transactions executed in the derivatives market, for which the participant holds the status of clearing member, shall not exceed the level known as the engagement limit, which may be determined by the KDPW\_CCP Management Board by means of a resolution.

5. Exceeding the transaction limit, or the engagement limit, shall be sufficient to justify the closing of positions by KDPW\_CCP to the extent necessary to return levels to the proper limits. If the exceeding of the engagement limit is the result of circumstances outside the control of the participant, then KDPW\_CCP will prepare to close the positions, if the participant does not take measures to eliminate this situation without delay.

6. KDPW\_CCP may close certain derivatives positions opened on the account of a given entity, after issuing a demand to close these positions to the participant holding the status of clearing member, if the total value or number of derivatives positions of a given series or, in derivatives instruments of all series based on the same underlying instrument of that entity, exceeds the level determined by the KDPW\_CCP Management Board by means of a resolution, known as the investor's engagement limit. This limit may not be set at a level higher than the engagement limit, described in subpara. 4.

7. The closing of the positions, described in subpara. 5 and 6, shall take place using the assets posted by the participant for initial deposit, and if these should prove insufficient, then the assets posted by that participant for initial margin shall be used for this purpose.

## § 52

[repealed]

## § 53

[repealed]

§ 53a  
[repealed]

§ 53b  
[repealed]

#### **PART 4 SECURITIES LENDING AND BORROWING SYSTEMS**

##### **§ 54**

1. The automatic securities lending and borrowing system is organised by KDPW\_CCP together with the Central Securities Depository of Poland in order to prevent the suspension, or to eliminate the suspension of transaction settlement performed by the Central Securities Depository of Poland.
2. Securities lending agreements as part of the automatic securities lending system shall be concluded through the Central Securities Depository of Poland. The terms and conditions of securities lending agreements within the system, the obligations arising from these agreements, the method of collateralisation and the return of the securities loans to the lender, as well as the rules for compensating the securities lender using the loan collateral and using the collateral to cover other liabilities, shall be defined in the Rules of the Central Securities Depository of Poland, described in Article 50 of the Law on trading in financial instruments, and rules adopted by the Management Board of the Central Securities Depository of Poland on the basis of provisions of this Law.
3. A participant who joins the automatic securities lending system or whose settlement agent joins the system shall ensure that a securities lending agreement concluded by it or by its settlement agent acting on its behalf is taken only in instances where:
  - 1/ the Central Securities Depository of Poland determines that a transaction settlement instruction submitted by KDPW\_CCP cannot be executed owing to a shortage of securities, or
  - 2/ the Central Securities Depository of Poland suspends the settlement of a transaction, performed according to a settlement instruction submitted by KDPW\_CCP, owing to a shortage of securities.
4. The transfer of securities in order to execute a securities lending agreement concluded as part of the automatic securities lending system between persons on whose behalf the participant is acting, as well as between such persons and the participant, or between the participant and that participant's settlement agent, shall take place within the transaction clearing liquidity guarantee system.
5. In instances where the settlement of transactions for which participants holds the status of clearing member is processed by a settlement institution other than the Central Securities Depository of Poland, KDPW\_CCP may organise an automatic securities lending system in co-operation with such institution after having informed the participants thereof. In that case, the terms laid down in subpara. 1-3 shall apply accordingly to such system.

##### **§ 54a**

1. The negotiated lending system is organised by KDPW\_CCP together with the Central Securities



Depository of Poland in order to prevent the suspension or to eliminate the suspension of settlement of transactions guaranteed by the transaction clearing liquidity guarantee system and to secure the return of loans concluded in the automatic securities lending system.

2. Participation in the negotiated lending system shall be voluntary.

3. Subject to subpara. 4, KDPW\_CCP shall accept on-demand loans concluded in the negotiated securities lending system into the clearing system if its counterparties are entities which:

1/ fulfil the conditions set out in the Rules of the Central Securities Depository of Poland described in Article 50 of the Law on trading in financial instruments, and

2/ hold the status of clearing member within such scope and have performed the obligations described in § 15 subpara. 1, or have a clearing member which holds such status and has agreed to clear such transactions and has performed the obligations described in § 15 subpara. 1, subject to subpara. 5.

4. On-demand securities loans shall be concluded as part of the negotiated securities lending system through the Central Securities Depository of Poland. The detailed terms and conditions of concluding negotiated securities lending agreements within the system, the obligations arising from such agreements and the method of their performance shall be defined in the Rules of the Central Securities Depository of Poland, described in Article 50 of the Law on trading in financial instruments, and rules adopted by the Management Board of the Central Securities Depository of Poland on the basis of provisions of this Law.

4. A participant who joins the system or whose settlement agent joins the system shall ensure that the conclusion of a loan in the system by it or by the settlement agent acting on its behalf only takes place in instances where:

1/ it determines that there is a shortage of securities in the relevant account which prevents the execution of a settlement instruction sent by KDPW\_CCP for transactions guaranteed by the transaction clearing liquidity guarantee system or which prevents the settlement of the return of a loan concluded in the automatic securities lending system, or

2/ owing to a shortage of securities, the Central Securities Depository of Poland suspends:

a/ the settlement of transactions guaranteed by the transaction clearing liquidity guarantee system performed according to a settlement instruction sent by KDPW\_CCP, or

b/ the settlement of the return of a loan concluded in the automatic securities lending system.

6. A participant holding the status of clearing member may consent to participation in clearing of on-demand loans concluded on the lender's side by another entity if it has designated, according to § 20 subpara. 2 point 2-4, respectively:

1/ the lender as the entity to perform the function of settlement agent to the extent of on-demand loans concluded by such entity in the negotiated securities lending system and

2/ the payment agent for the settlement of transactions for the lender as the entity to perform the function of payment agent to the extent of contractual collateral.

7. The transfer of securities in order to execute an on-demand securities lending agreement concluded as part of the negotiated securities lending system between persons on whose behalf the participant is acting, as well as between such persons and the participant, or between the participant and that participant's settlement agent, shall take place within the transaction clearing liquidity guarantee system.

8. KDPW\_CCP shall send to the Central Securities Depository of Poland a settlement instruction concerning

the return of a loan, upon the receipt from the Central Securities Depository of Poland of a clearing instruction concerning the termination of a loan. If the participant fails to adjust the margins referred to in § 72c subpara. 2, or a contribution to the relevant guarantee fund, referred to in Appendix 3 to the rules, KDPW\_CCP shall send to the Central Securities Depository of Poland, prior to receiving the clearing instruction, an early termination order for an on-demand loan.

9. In instances of suspension of settlement related to the return of an on-demand loan concluded in of the negotiated securities lending system due to a shortage of securities on the borrower's side, the participant obliged to clear the on-demand loan on the lender's side shall transfer to the bank account indicated by KDPW\_CCP cash in the required amount of the contractual collateral determined according to the provisions of the rules of the Central Securities Depository of Poland, referred to in § 50 of the Law on trading in financial instruments, in order for KDPW\_CCP to take measures in the negotiated lending clearing liquidity guarantee system, referred to in § 72b subpara. 1. From the instant that KDPW\_CCP takes over such assets, they shall constitute collateral in the transaction clearing liquidity guarantee system managed by KDPW\_CCP.

10. In instances where a participant is a clearing counterparty to an on-demand loan concluded in the negotiated securities lending system by another entity, KDPW\_CCP shall accept from the participant and send to the Central Securities Depository of Poland an instruction to block in the system the option of such entity concluding on-demand loans for which the participant holds the status of clearing member.

## **PART 5 PARTICIPANTS' PREVENTION OF SUSPENSION OF TRANSACTION SETTLEMENT AND MEASURES ARISING FROM DEFAULT UNDER THIS OBLIGATION**

### **§ 55**

1. In case of a lack of coverage in the bank account designated by a defaulting participant or other event which causes the inability to perform the cash obligations of that participant in the relevant bank account, that participant shall immediately take actions necessary to restore the ability to perform its cash obligations arising from the clearing of transactions including without limitation by ensuring coverage in the relevant bank account.

2. A defaulting participant 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/ submit to the entity operating the regulated market or the alternative trading system an instruction to block the ability of concluding transactions on that market or in that system in which such participant is to be indicated as a counterparty to clearing,

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

3/ cancel settlement instructions, if they have been sent previously.

**§ 55a**

1. Participants shall be obliged to ensure that the settlement of a transaction to which they are a clearing counterparty is not suspended. In particular, a clearing member shall be obliged to purchase securities as part of a securities lending agreement concluded as part of the relevant securities lending system organised by the relevant settlement system in order to prevent the suspension of the settlement of a transaction owing to a shortage of securities, unless the prevention of suspension of transaction settlement is possible by other means.
2. A defaulting participant 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 settlement institution has taken the action referred to in Art. 45f subpara. 1 of the Law on trading in financial instruments. At the instant of receipt from the settlement institution of information which suggests that such obligations have not been met timely and the settlement institution has taken the action referred to in Art. 45f subpara. 1 of the Law 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 clearing guarantee fund or the relevant 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 whose assets were used to repair the loss.
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.

**§ 55b**

1. If KDPW\_CCP submits a settlement instruction referred to in § 33 point 4 without the option of partial settlement of the transaction concerned by that instruction, the defaulting participant may request KDPW\_CCP, no later than the time limit set in the Detailed Rules of Transaction Clearing (organised trading) and on the terms defined therein, to enable settlement using the partial settlement mechanism applied by the settlement institution.
2. KDPW\_CCP shall execute the request of a defaulting participant referred to in subpara. 1 on the last business day of the extension period referred to in § 56a subpara. 1 unless KDPW\_CCP decides otherwise in connection with:
  - 1/ the occurrence of an event of default on the part of a participant who is a counterparty to the clearing of the transaction concerned by the submitted settlement instruction, or
  - 2/ the operating conditions of a system operated by the settlement institution, or

3/ suspension of the settlement of the opening leg and setting the expected settlement date of the closing leg of a repo transaction within 30 business days after the expected settlement date of such opening leg, or

4/ other reasons justified by the operating conditions of the clearing system.

3. If the opening leg is settled in part, credits and debits arising from the closing leg of the repo transaction shall be reduced up to the settlement amount of the opening leg. In that case, KDPW\_CCP shall recall the settlement instruction to the extent of the closing leg and submit a new settlement instruction taking into account such reduction.

#### § 55c

A defaulting participant shall be obliged in connection with the suspension of the settlement of a transaction to which it is a clearing counterparty:

1/ to pay cash penalties imposed by the settlement institution for the suspension of the settlement of the transaction, referred to in Article 7(2) CSDR,

2/ to reimburse any expenses paid by KDPW\_CCP as a result of actions taken in accordance with the rules in connection with such suspension of the settlement of the transaction (in particular, transaction and banking fees and commissions, losses incurred by KDPW\_CCP resulting from the withdrawal of a settlement order for an affected transaction or the suspension of the execution of such settlement order), unless a fee is set for such actions as referred to in the Table of Fees, up to a maximum amount equivalent to the initial margin required to secure the clearing of such a transaction (KDPW\_CCP shall inform participants of the costs that arise in connection with the suspension of settlement of the affected transaction),

3/ to pay fees referred to in the Table of Fees,

4/ to make a cash payment in an amount determined according to the rules, if the open market buy-in is unsuccessful in whole or in part or proves impossible (compensation),

5/ to reimburse the difference in the price of securities in an amount determined according to the rules, if such difference arises due to the purchase of securities in an open market buy-in and their price is higher than the price of the transaction whose settlement is suspended, including additional payments arising from such transactions,

6/ to pay cash entitlements, in the amount and on the terms defined in the rules, in respect of property benefits lost by a participant affected by default or by its client which such participant or its client would obtain by exercising a property right attached to securities in the affected transaction, provided that:

a/ such right was exercised in direct connection with a corporate action other than a general meeting, understood as an action:

- initiated in accordance with applicable legal provisions by the issuer of the securities in the affected transaction or an authorised third party, previously published in accordance with applicable legal provisions, such as profit distributions, tender offers concerning sale or exchange of securities,

- addressed to all beneficial owners of securities which meet the criteria set in accordance with applicable legal provisions,

- as a result of which beneficial owners of securities may, at their election, exercise the property right attached to such securities, and
  - necessary to exercise a specific property right attached to such securities in a way which requires a participant affected by default or its client to declare the intention of exercising such right (optional corporate action),
- b/ such value is not included in the calculation of the payment referred to in point 4 or the amount or entitlements arising from the cleared transaction,
- c/ the property benefit is not delivered or compensated by the settlement institution to a participant affected by default or its client and, if the participant has a settlement agent, also to such agent, and
- d/ the participant affected by default or its client was entitled to exercise a right attached to securities in the affected transaction in connection with the corporate action but could not do so as a result of suspension of the settlement of the affected transaction in whole or in part (additional buyer protection),
- 7/ to repay cash or non-cash entitlements attached to securities in the affected transaction due as a result of recording the rights of beneficial owners of such securities and the amount of such entitlements on the day when the settlement of the affected transaction was suspended in whole or in part or to pay adequate cash compensation in that regard, on the terms defined by the settlement institution.

#### § 55d

1. If an open market buy-in undertaken to settle a transaction concluded in trading in securities, other than a repo transaction, is unsuccessful or is considered ineffective to the extent of the settlement of such transaction, the participant responsible for the suspension of the settlement of such transaction shall pay compensation in an amount equal to:
  - 1/ if the suspension of the settlement of the transaction concerns settlement instructions which are to be executed to the extent of cash payments, the difference between the market value of securities in the transaction whose settlement is suspended at the business day preceding the payment of the cash compensation and the settlement amount included in the unexecuted settlement instructions if such settlement amount is lower than the market value,
  - 2/ if the suspension of the settlement of the transaction concerns settlement instructions which are not to be executed to the extent of cash payments, the difference between the market value of securities in the transaction whose settlement is suspended at the business day preceding the payment of the cash compensation and the market value of such financial instruments at the transaction date if the market value of such financial instruments at the transaction date is lower than their market value at the business day preceding the payment of the compensation.
2. The market value of securities and the elements covered by paid compensation shall be determined according to Implementing Regulation 2018/1229.
3. KDPW\_CCP shall inform clearing members who are counterparties to clearing of the market value of securities referred to in subpara. 2 and the value of an element reflecting the fluctuations of the foreign exchange rate, credits arising from the issuer's obligations relating to such security, and accrued interest.
4. The compensation referred to in subpara. 1 shall also constitute the replacement payment.

**§ 55e**

1. If a settlement institution suspends the settlement of the opening leg of a repo transaction and the expected settlement date of the closing leg is set within 30 business days after the expected settlement date of such opening leg, a participant affected by default may request KDPW\_CCP to shorten the settlement date of the closing leg of such repo transaction according to these rules. Such request may be presented to KDPW\_CCP in the extension period referred to in § 56a subpara. 1 starting on the date of the suspension of the settlement of such transaction by the settlement institution (inclusive of such date) according to the Detailed Rules of Transaction Clearing (organised trading).
2. Upon the receipt of a request referred to in subpara. 1 from a participant affected by default, KDPW\_CCP shall immediately inform the defaulting participant thereof. If the defaulting participant fails to present a declaration opposing the shortening of the settlement date of the closing leg of the repo transaction within the time limit set in the Detailed Rules of Transaction Clearing (organised trading), it shall be deemed to accept the shortening of that date in such a way that the closing leg is settled on the business day following the day on which the defaulting participant could present such declaration.
3. If a defaulting participant presents a declaration referred to in subpara. 2 to KDPW\_CCP according to the Detailed Rules of Transaction Clearing (organised trading), it shall liquidate the suspension of the settlement of the opening leg of the repo transaction no later than the business day following the day of presentation of such declaration. If that time limit expires without such liquidation, the defaulting participant shall be deemed to accept the shortening of the settlement date of the closing leg in such a way that the closing leg is settled two business days after the day on which the defaulting participant could present the declaration referred to in subpara. 2.
4. If KDPW\_CCP identifies an event of default of a defaulting participant, it shall no longer be eligible to present the declaration referred to in subpara. 2.
5. The provisions of § 55f subpara. 1 shall apply accordingly if circumstances referred to in subpara. 2-4 arise.
6. A clearing member who represents another entity concluding repo transactions in clearing shall ensure that the actions referred to in subpara. 1-3 are effective in relation to such entity.

**§ 55f**

1. If an open market buy-in undertaken to settle the opening leg of a repo transaction is unsuccessful or is considered ineffective to the extent of the settlement of such transaction:
  - 1/ the participant responsible for the suspension of the settlement of the opening leg of a repo transaction shall pay compensation in an amount equal to interest arising from the repo transaction accrued for the period from the day when the opening leg should have been settled (inclusive of such day) to the day when KDPW\_CCP pays such compensation to a participant affected by default (exclusive of such day) and if the settlement date of the closing leg falls before the payment date of such compensation, then to the day when such closing leg should have been settled (exclusive of such day). A negative repo rate shall not be included in the calculation of amount of such compensation,

2/ KDPW\_CCP may shorten the settlement date of the closing leg of a repo transaction in such a way that the closing leg is settled on the business day following the day when KDPW\_CCP notifies the participant who is the other counterparty to clearing of the shortening of that date,

3/ mutual credits and debits arising from the opening leg and the closing leg of the repo transaction shall be netted so that the counterparties to clearing are not required to pay any amounts other than the compensation referred to in point 1 above or to deliver securities arising from the repo transaction.

2. If an open market buy-in undertaken to settle the closing leg of a repo transaction is unsuccessful or is considered ineffective to the extent of the settlement of such transaction, the participant responsible for the suspension of the settlement of the closing leg of the repo transaction shall pay compensation in an amount equal to:

1/ the difference between:

a/ the maximum value arising from the market value of securities in the closing leg whose settlement is suspended adjusted for the value of the interest coupon (if either counterparty to clearing is entitled to receive such coupon in the period of the suspension of the settlement of such transaction) and the value equal to the purchase price of the securities in the opening leg and

b/ the value arising from the repurchase price of securities in the closing leg,

plus

2/ interest arising from the repo transaction, subject to subpara. 3.

3. If a positive repo rate is set in a transaction, compensation in an amount equal to interest arising from such transaction referred to in subpara. 2 point 2 shall be deemed paid.

4. The compensation referred to in subpara. 1 and 2 shall also constitute the replacement payment.

5. The provisions of § 55e subpara. 6 shall apply accordingly if circumstances referred to in subpara. 1-3 arise.

#### § 55g

1. KDPW\_CCP shall charge from defaulting participants cash penalties referred to in Article 7(2) CSDR imposed and calculated by a settlement institution in connection with the suspension of settlement and subsequently distribute collected cash penalties among participants affected by default.

2. KDPW\_CCP may perform the actions referred to in subpara. 1 through a settlement institution.

### **PART 6 OPEN MARKET BUY-IN OPERATIONS**

#### § 56

1. KDPW\_CCP shall take actions described in this Part in order to purchase securities in a transaction whose settlement is suspended by concluding repurchase transactions in such securities.

2. KDPW\_CCP shall notify clearing members who are counterparties to the clearing of a transaction whose settlement is suspended of the cost of the purchase of securities in open market buy-in operations unless such cost derives from the Table of Fees.

3. KDPW\_CCP shall perform open market buy-in operations with due diligence justified by market conditions prevailing on the date of such operations.



## § 56a

1. KDPW\_CCP shall perform open market buy-in operations in order to repurchase securities if it is possible and no event of default is identified, and unless the participant responsible for the suspension of the settlement of the transaction due to a shortage of securities liquidates the suspension within:
  - 1/ four business days after the expected settlement date of the transaction, if the transaction is in shares,
  - 2/ seven business days after the expected settlement date of the transaction, if the transaction is in securities other than shares(extension period).
2. If an open market buy-in is unsuccessful or impossible, a participant affected by default may request KDPW\_CCP to defer the open market buy-in until an appropriate later date determined according to Implementing Regulation 2018/1229 (deferred period). If no such request is delivered to KDPW\_CCP within the time limit set in the Detailed Rules of Transaction Clearing (organised trading), the participant affected by default is deemed to opt for compensation.

## § 56b

1. On the business day after the expiry of the extension period, KDPW\_CCP shall suspend the execution of the settlement order for a transaction whose settlement is suspended and perform a preliminary verification to check whether an open market buy-in is possible for the cleared transaction.
2. An open market buy-in is deemed impossible if financial instruments in the transaction whose settlement is suspended no longer exist.
3. An open market buy-in is deemed unsuccessful if it concerns a repo transaction where the settlement of the opening leg is suspended and the expected settlement date of the closing leg is set within 30 business days after the expected settlement date of such opening leg.
4. If an open market buy-in is impossible or cannot be performed, KDPW\_CCP shall notify the participant affected by default and the defaulting participant thereof. Upon receipt of such notification, respectively, by the defaulting participant and the participant affected by default:
  - 1/ the defaulting participant may not require KDPW\_CCP to perform a payment arising from the transaction whose settlement is suspended,
  - 2/ the participant affected by default may not require KDPW\_CCP to perform a payment arising from the transaction whose settlement is suspended,
  - 3/ the participant affected by default is eligible to receive compensation on the terms laid down in CSDR and these rules.
5. If compensation is to be paid under CSDR, KDPW\_CCP shall, no later than two business days after the completion of an open market buy-in or after the expiry of the deferred period:
  - 1/ determine the amount of compensation and notify the defaulting participant and the participant affected by default thereof,
  - 2/ recall the settlement instruction for the transaction whose settlement is suspended to the extent that it concerns the open market buy-in which is not possible and subsequently, if compensation is to be paid, collect the compensation from the defaulting participant and pay it to the participant affected by default.
6. Compensation shall be paid in the currency of the transaction whose settlement is suspended.

## § 56c

1. If an open market buy-in is possible, KDPW\_CCP notifies the defaulting participant and the participant affected by default thereof on the business day following the expiry of the extension period.
2. Upon receipt of the notification referred to in subpara. 1, the defaulting participant may perform the obligation arising from the transaction whose settlement is suspended only as follows:
  - 1/ deliver securities in the transaction to the open market buy-in agent referred to in Article 24 of Implementing Regulation 2018/1229, subject to the agent's prior consent, or
  - 2/ deliver securities in the transaction whose settlement is suspended to KDPW\_CCP provided that KDPW\_CCP accepts the offer of such defaulting participant referred to in § 56d subpara. 2 according to the rules.
3. Upon receipt of the notification referred to in subpara. 1
  - 1/ the defaulting participant may not require KDPW\_CCP to perform a payment arising from the transaction whose settlement is suspended,
  - 2/ the participant affected by default may require KDPW\_CCP to perform a payment arising from the transaction whose settlement is suspended only according to the rules.

## § 56d

1. KDPW\_CCP shall perform open market buy-in operations to the extent that the settlement of a cleared transaction is suspended by the settlement institution by providing:
  - 1/ the open market buy-in agent with instructions to purchase the quantity of securities in the transaction which is not delivered by the defaulting participant on the terms of the agreement between KDPW\_CCP and such agent, or
  - 2/ clearing members with instructions containing a proposal to purchase the quantity of securities in the transaction which is not delivered by the defaulting participant on the terms defined in the Detailed Rules of Transaction Clearing (organised trading). KDPW\_CCP may limit the number of clearing members whom it provides with proposals to purchase securities.
2. Each clearing member who receives a proposal to purchase securities may, on the terms defined in the Detailed Rules of Transaction Clearing (organised trading), provide KDPW\_CCP with an offer of a transaction in securities defined in the proposal (repurchase transaction) which is binding until the completion of the open market buy-in. By presenting such offer, the clearing member accepts that the transaction will be presented for clearing in the clearing system and accepts the effect referred to in subpara. 3.
3. If KDPW\_CCP accepts the terms of a received offer of a repurchase transaction, KDPW\_CCP shall:
  - 1/ provide the clearing member with a confirmation of the conclusion of such repurchase transaction (the transaction is concluded upon delivery of the confirmation to the clearing member), and subsequently
  - 2/ record the transaction in the clearing system,
  - 3/ send settlement instructions to the settlement institution in order to settle the transaction in such securities.

**§ 56e**

The Detailed Rules of Transaction Clearing (organised trading) lay down the specific terms and conditions of submitting proposals to purchase securities and offers of repurchase transactions.

**§ 56f**

As a result of an open market buy-in, KDPW\_CCP shall deliver securities within the following time limits, subject to § 56a subpara. 2:

- 1/ four business days after the extension period, if the transaction whose settlement is suspended is in shares,
- 2/ seven business days after the extension period, if the transaction whose settlement is suspended is in securities other than shares (delivery period).

**§ 56g**

1. In an open market buy-in, KDPW\_CCP shall, at the end of each business day, notify the participant affected by default and the defaulting participant if the open market buy-in is unsuccessful.
2. If an open market buy-in operation results in the purchase of securities, KDPW\_CCP shall, at the end of the business day when it receives such securities:
  - 1/ notify the participants who are counterparties to the clearing of the transaction and the settlement institution of the quantity and price of purchased securities,
  - 2/ deliver securities purchased in the open market buy-in to the participant affected by default and recall the settlement instruction concerning the transaction whose settlement is suspended to the extent that the participant affected by default is satisfied.
3. If the opening leg is settled in part as a result of an open market buy-in, credits and debits arising from the closing leg of the repo transaction shall be reduced up to the settlement amount of the opening leg. In that case, KDPW\_CCP shall recall the settlement instruction to the extent of the closing leg and submit a new settlement instruction taking into account such reduction.

**§ 56h**

1. If the price of securities in a repurchase transaction is higher than the price of the transaction whose settlement is suspended, KDPW\_CCP shall:
  - 1/ determine the difference in price and notify the defaulting participant thereof, and subsequently 2/ debit the difference to the defaulting participant.
2. The difference in price referred to in subpara. 1 point 1 shall be paid:
  - 1/ together with additional payments arising from the repurchase transaction and the transaction whose settlement is suspended,
  - 2/ on the day when the repurchase transaction is settled and the securities purchased in such transaction are delivered to the participant affected by default.

3. If the price of securities in a repurchase transaction is lower than the price of the transaction whose settlement is suspended, KDPW\_CCP shall not be required to credit the difference in price to the defaulting participant.

## **PART 7 ADDITIONAL BUYER PROTECTION**

### **§ 57**

1. Subject to subpara. 2 and 3 and § 57a subpara. 1-3, if the buyer of securities in a cleared transaction is eligible, as a result of an optional corporate action, to exercise a property right attached to such securities in connection with such corporate action and the settlement date of the transaction is such that the right may be exercised, the clearing member who is a counterparty to the clearing of such transaction and who buys the securities may present a declaration to KDPW\_CCP, according to the Detailed Rules of Transaction Clearing (organised trading) and within the time limit set therein, to the effect that it or its client intends to exercise the property right attached to such securities in connection with such optional corporate action and use additional buyer protection defined in the rules, if the exercise of such right requires it or its client to declare the intention to exercise it and it or its client intends to do so.

2. The right referred to in subpara. 1 shall be available if a participant affected by default or its client is unable, as a result of suspension of the settlement of a transaction, to exercise when due a property right attached to securities in such transaction in whole or in part in connection with an optional corporate action.

3. KDPW\_CCP shall not be required to perform entitlements in connection with an optional corporate action to the extent that a participant affected by default or its client:

a/ could exercise when due a right attached to securities in the affected transaction in connection with such optional corporate action but did not do so,

b/ could not exercise when due a right attached to securities in the affected transaction in connection with such optional corporate action for reasons which are not directly connected with the suspension of the settlement of such transaction.

### **§ 57a**

1. If a clearing member fails to take the measures referred to in § 57 subpara. 1 within the required time limit, this shall be deemed to imply that:

1/ it or its client waives additional buyer protection,

2/ KDPW\_CCP is not obliged to perform entitlements in respect of a property benefit lost in connection with the optional corporate action.

2. The right referred to in § 57 subpara. 1 shall not be available if the value of the benefit which a participant affected by default or its client would obtain in connection with an optional corporate action is to be or has been included:

a/ in the calculation of the amount of compensation in accordance with the CSDR or the amount of entitlements arising from the affected transaction,

b/ by the settlement institution which is to transfer the obtained property benefit or compensation for its

amount to the participant affected by default or its client and if the client has a settlement agent, then also to such agent.

3. The right referred to in § 57 subpara. 1 shall not be available to:

- 1/ the defaulting participant who is responsible for the suspension of the settlement of the transaction,
- 2/ upon the identification, prior to the submission of the declaration referred to in § 57 subpara. 1, of an event of default of any participant who is a counterparty to the clearing of the transaction.

4. KDPW\_CCP shall immediately notify the clearing member who is a counterparty to clearing and who sells securities of additional buyer protection extended to the cleared transaction.

#### § 57b

1. If a participant affected by default or its client is unable, as a result of suspension of the settlement of a transaction, to exercise property rights attached to securities in the affected transaction in connection with an optional corporate action and the participant takes when due the measures referred to in § 57 subpara. 1, KDPW\_CCP shall:

- 1/ calculate the amount of the entitlement referred to in § 55c subpara. 6 according to subpara. 2,
- 2/ notify the defaulting participant of the amount of such entitlement, and then
- 3/ debit the defaulting participant with the entitlement and pay it to the participant affected by default.

2. The entitlement referred to in § 55c subpara. 6 shall be equal to:

- 1/ if the exercise of the right attached to securities in the affected transaction whose settlement is suspended results in the exchange of such securities or their sale in exchange for a property entitlement according to the terms of the optional corporate action – the difference between the amount of such entitlement which a participant affected by default or its client would obtain if it exercised the right attached to the securities in the affected transaction and the amount of the entitlement arising from the affected transaction,
- 2/ if the exercise of the right attached to securities in the affected transaction whose settlement is suspended results in the receipt of a property entitlement without concurrent exchange or sale of such securities according to the terms of the optional corporate action – the amount of such entitlement which a participant affected by default or its client would obtain if it exercised the right attached to the securities in the affected transaction whose settlement is suspended,  
and the amount of such entitlement shall be calculated according to the Detailed Rules of Transaction Clearing (organised trading).

- 3. The entitlement referred to in § 55c subpara. 6 shall be paid, respectively: 1/ on the day when the securities purchased in the open market buy-in are delivered to the participant affected by default or no later than two business days after the buy-in is closed if such securities are bought in full,
- 2/ no later than two business days after the settlement of the suspended transaction if all securities in the transaction are delivered by the defaulting participant before the open market buy-in starts,
- 3/ on the day when compensation is paid to the participant affected by default or no later than two business days after the buy-in is closed if securities in the affected transaction are not bought in full.

4. The entitlement referred to in § 55c subpara. 6 shall be paid in the currency of the transaction whose settlement is suspended.

**PART 8 AUCTIONS IN THE EVENT OF TERMINATION OF A PARTICIPATION AGREEMENT BY KDPW\_CCP  
EFFECTIVE IMMEDIATELY****§ 58**

1. KDPW\_CCP may perform an auction in order to close out the positions of a defaulting participant arising from transactions concluded in trading in securities which are recorded in the clearing system.
2. An auction on the terms defined in this Part shall be performed in the event that KDPW\_CCP terminates the participation agreement with the defaulting participant effective immediately.
3. KDPW\_CCP shall perform operations referred to in subpara. 1 with due diligence justified by market conditions prevailing on the date of such operations.

**§ 58a**

1. KDPW\_CCP shall perform auctions to the extent of positions identified by KDPW\_CCP which are recorded in clearing accounts managed for the defaulting participant and KDPW\_CCP shall for this purpose provide the other clearing members with instructions containing a proposal to open positions in order to close out the positions of the defaulting participant. KDPW\_CCP may limit the number of clearing members whom it provides with proposals to open positions on the terms defined in the Detailed Rules of Transaction Clearing (organised trading).
2. Each clearing member who receives a proposal to open positions may provide KDPW\_CCP with an offer of a transaction which is binding until the completion of the auction. By presenting such offer of a transaction, the clearing member accepts that the transaction will be presented for clearing in the clearing system and accepts the effect referred to in subpara. 3.
3. If KDPW\_CCP accepts the terms of a received offer of a transaction, KDPW\_CCP shall:
  - 1/ provide the clearing member with a confirmation of the conclusion of such transaction (the transaction is concluded upon delivery of the confirmation to the clearing member), and subsequently
  - 2/ record the transaction in the clearing system,
  - 3/ send settlement instructions to the settlement institution in order to settle the transaction in such securities.

**§ 58b**

The Detailed Rules of Transaction Clearing (organised trading) lay down the specific terms and conditions of submitting proposals to open positions and offers of transactions.

**§ 58c**

KDPW\_CCP may terminate any actions taken during an auction without stating its reasons.

**§ 58d**

1. The defaulting participant shall reimburse any costs of an auction paid to third parties (including transaction and banking fees and commissions) in connection with actions taken according to the rules and the Detailed Rules of Transaction Clearing (organised trading).

2. KDPW\_CCP shall, after completing an auction and closing the processing of an event of default, document, at the written request of the defaulting participant, all costs paid as referred to in subpara. 1.
3. The cost of an auction shall be paid from margins posted by the defaulting participant and if such resources are insufficient, from the resources of the clearing guarantee fund or the relevant guarantee fund and from own resources of KDPW\_CCP, in the amount and in the order determined according to the provisions of Part 9 of the rules.

**PART 9 ACTIONS USING THE RESOURCES OF THE TRANSACTION CLEARING LIQUIDITY GUARANTEE  
SYSTEM UPON IDENTIFICATION OF AN EVENT OF DEFAULT**

§ 58e

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:
  - 1/ prior to using resources contributed to the clearing guarantee fund or the relevant guarantee fund, respectively, excluding the contribution of the participant on whose part the event of default has occurred, with resources constituting dedicated resources I, taking into account the allocation according to subpara. 3,
  - 2/ after using all resources contributed to the clearing guarantee fund or the relevant guarantee fund, respectively, with resources constituting dedicated resources II, taking into account the allocation according to subpara. 3.
2. KDPW\_CCP shall allocate for dedicated resources I own funds in an amount representing at least 25% of the KDPW\_CCP capital requirement, taking into account the allocation according to subpara. 3.
- 2a. KDPW\_CCP shall allocate for dedicated resources II own funds in an amount representing 25% of the KDPW\_CCP capital requirement, taking into account the allocation according to subpara. 3.
3. The amount of the funds constituting dedicated resources I and dedicated resources II, respectively, shall be calculated taking into account the allocation of such funds in relation to the clearing guarantee fund, the relevant guarantee fund or other guarantee fund organised under the rules referred to in § 1 subpara. 5, proportionally to the value of each of these funds. KDPW\_CCP shall announce the allocation rules on its website.
4. If assets constituting dedicated resources I and dedicated resources II, respectively, are used according to the provisions of the rules, KDPW\_CCP shall immediately take actions necessary to replenish such dedicated resources up to the amount referred to in subpara. 2 or subpara 2a, respectively, within one month of the day when such resources are used.
5. KDPW\_CCP shall inform participants holding the status of clearing member of:
  - 1/ the current amount of assets constituting dedicated resources I and dedicated resources II and the allocation of such resources on its website or via the SEI system or the GUI system;
  - 2/ 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 participant holding the status of clearing member.



**§ 58f**

1. If assets deposited as margins or contributions to the clearing guarantee fund or the relevant guarantee fund in a currency other than the currency required for the settlement of transactions need to be used in accordance with the rules, 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 according to the rules, 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.

**§ 59**

1. In instances where the settlement of a transaction executed as part of securities trading, performed in the relevant settlement institution on the basis of an instruction from KDPW\_CCP, has been suspended owing to a shortage of cash on the participant's bank account, or the bank account of a payment agent indicated by the participant, managed in the relevant clearing bank or in TARGET, KDPW\_CCP shall send to a settlement institution the settlement instructions relating to other transactions whose settlement is performed after the suspension in such a manner that the debits of that participant which have not been met may be realised using the cash credits arising from these transactions. In such instances, the credits shall be netted with the as yet unrealised debits of the participant.
2. In instances where the credits of the participant, described in subpara. 1, shall prove insufficient to eliminate the suspension of transaction settlement caused by that participant, KDPW\_CCP shall, immediately after the receipt of information on suspension of transaction settlement from the settlement institution, cancel the settlement instruction on the behalf of that participant, sent to the relevant settlement institution. At the moment of the cancellation of the instruction to settle the transaction on behalf of the participant, described in subpara. 1, it may not require KDPW\_CCP to perform a payment arising from the content of such instruction. Then KDPW\_CCP shall initiate measures intended to sell the securities that form the transaction and perform settlement of the affected transaction on behalf of the participant affected by default. Such measures shall be taken:
  - 1/ according to § 56d, applicable accordingly, provided that KDPW\_CCP shall send an order to sell securities to the agent or a proposal of selling securities to clearing members, or
  - 2/ by submitting an order to sell securities on the regulated market or in the alternative trading system if so allowed by the agreement between KDPW\_CCP and the operator of the regulated market or the alternative trading system.
3. In instances, described in subpara. 2, the costs of executing a securities sale transaction shall be covered using the margins posted by the participant, described in subpara. 1, and if these should prove insufficient, also from the assets of the respective clearing guarantee fund, or the relevant guarantee fund, in the order and in the amount laid down in subpara. 4 and § 58e subpara. 1.

4. Subject to subpara. 5, any potential differences in the price of securities between the sale transaction executed according to the provisions of subpara. 2, and the transaction for which settlement was suspended, if the price difference reflects a profit, shall be transferred to KDPW\_CCP and used to perform other obligations on behalf of participants affected by default, however, if the price difference incurs a loss, then the difference shall be covered from margins posted by the defaulting participant and after the resources have been used, in sequence from:

- 1/ the contribution of that participant to the clearing guarantee fund or the relevant guarantee fund, 2/ the dedicated resources I in the amount calculated according to § 58e subpara. 2 and 3,
- 3/ other resources of the clearing guarantee fund or the relevant guarantee fund,
- 4/ the dedicated resources II in the amount calculated according to § 58e subpara. 2a and 3.

5. Where the costs of the execution of the securities sales transaction were covered using the assets of the clearing guarantee fund, or the relevant guarantee fund, any potential profit from the price difference between the securities, described in subpara. 4, shall be added to the assets of the fund.

6. In the case of the necessity to use margins posted by the defaulting participant according to the principles described in subpara. 3 or 4, these margins shall be used in the following order, where KDPW\_CCP reserves the option of using the assets in another order, in particular in the case of transactions recorded in client position accounts:

- 1/ initial deposit,
- 2/ initial margin.

7. The shortage of cash on the bank account of a payment agent shall also apply in circumstances where the cash liabilities of the participant cannot be fully realised using cash on that account as a result of these liabilities exceeding the relevant debit limits determined by the payment agent, or as a result of other actions taken by the clearing bank or the central bank which operates a payment system in TARGET, the payment agent or the competent authority resulting in the inability to use these cash assets to realise the cash obligations of the participant in full.

## § 60

1. In the event that it shall not be possible to cancel the instruction to perform transaction settlement on behalf of participant, described in § 59 subpara. 1, the cash liabilities of that participant shall be met using the margins posted by that participant. In such instances, the provisions of § 59 subpara. 3 – 5 shall not apply; however, the provisions of § 59 subpara. 6 shall apply accordingly.

2. If the margins posted by the participant, described in § 59 subpara. 1, shall prove insufficient, the cash liabilities of that participant shall be met in sequence from:

- 1/ the contribution of that participant to the clearing guarantee fund or the relevant guarantee fund, 2/ the dedicated resources I in the amount calculated according to § 58e subpara. 2 and 3,
- 3/ other resources of the clearing guarantee fund or the relevant guarantee fund,
- 4/ the dedicated resources II in the amount calculated according to § 58e subpara. 2a and 3.

3. KDPW\_CCP shall have no obligations in connection with a transaction whose settlement has been suspended to the extent that the cash obligations of the participant referred to in § 59 subpara. 1 arising

from such transaction have been met with the resources of the clearing guarantee fund or the relevant guarantee fund.

4. Securities that form the transaction whose settlement was performed using the assets of the clearing guarantee fund, or the assets of the relevant guarantee fund, become part of the pool of assets of that fund. KDPW\_CCP may sell these securities. In such instances, the credit payment from the sale transaction shall become part of the pool of assets of the fund whose assets were used. These securities may be used for other purposes, in particular in order to meet liabilities arising from transaction clearing, however on condition that cash assets of equal value will be added to the fund of which they became part.

#### § 60a

1. In the event that a settlement instruction provided to a clearing bank to perform a cash payment arising from the clearing of a transaction in derivatives has not been performed when due as a result of a shortage of coverage in the bank account of the participant or a payment agent indicated by it, maintained in the relevant clearing bank, the provisions of § 59 subpara. 1 shall apply accordingly.

2. If a participant referred to in subpara. 1 fails to ensure, on the date when its cash debits arising from the clearing of a transaction in derivatives fall due, the coverage in the relevant bank account maintained by the clearing bank, sufficient for the settlement instruction to be executed in the clearing bank when due, KDPW\_CCP shall identify an event of default and take actions necessary to meet the cash payment arising from the clearing of such transaction to the non-defaulting participant using margins posted by the defaulting participant. The provisions of § 59 subpara. 2 second sentence and subpara. 6 shall apply accordingly. In that case, KDPW\_CCP may take measures referred to in § 69 subpara. 1-3.

3. If the margins posted by the defaulting participant, described in subpara. 1, prove insufficient, the cash debits of that participant shall be met in sequence from:

- 1/ the contribution of that participant to the clearing guarantee fund or the relevant guarantee fund,
- 2/ the dedicated resources I in the amount calculated according to § 58e subpara. 2 and 3,
- 3/ other resources of the clearing guarantee fund or the relevant guarantee fund,
- 4/ the dedicated resources II in the amount calculated according to § 58e subpara. 2a and 3.

4. KDPW\_CCP shall have no obligations to the extent that the cash debits of the defaulting participant have been met with margins and the resources of the clearing guarantee fund or the relevant guarantee fund.

#### § 61

1. In instances where the actions of KDPW\_CCP prove insufficient to ensure that the cash liabilities of the defaulting participant arising from transaction clearing may be met in full, or where the actions initiated by KDPW\_CCP in accordance with the rules do not result in the sale of all the securities that form the transaction whose settlement has been suspended, or if such actions cannot be initiated for reasons beyond the control of KDPW\_CCP, then the Management Board of KDPW\_CCP guided by the safety and liquidity of clearing shall determine, by means of a resolution, respectively, not to perform, or to cease the further performance of these actions, or not to meet the cash liabilities of the participant in the manner described in the provisions of § 60 subpara. 1 and 2, and to meet on behalf of the participant affected by

default the replacement payment on terms and in an amount corresponding to compensation calculated for such transaction.

1a. A replacement payment referred to in subpara. 1 shall be paid no later than two days after KDPW\_CCP completes actions aiming to close out all positions of the defaulting participant.

1b. A replacement payment shall be paid in the currency of transaction settlement.

2. If the resolution, described in subpara. 1, forms the basis to cease the further performance of the actions, described in the first sentence of § 59 subpara. 2, the amount of the replacement payment shall be determined in relation to the number of securities, which following these actions, it did not prove possible to sell.

3. In order to execute the cash payment, described in subpara. 1, KDPW\_CCP shall use margins, contributions to the clearing guarantee fund or the relevant guarantee fund and own funds of KDPW\_CCP, in the order and in the amount referred to in § 59 subpara. 4 and 6 and § 58b subpara. 1.

4. Meeting the replacement payment shall release KDPW\_CCP from all obligations towards participants that are parties to the clearing of transactions, whose settlement has been suspended on account of the defaulting participant, described in § 59 subpara. 1, where these obligations arise from the execution of the transaction, or its acceptance for clearing.

#### § 61a

If there is, despite a performed auction referred to in Part 8 of the rules, an open repo transaction of the defaulting participant, KDPW\_CCP may shorten the settlement date of the opening leg or the closing leg, respectively, in such a way that mutual credits and debits arising from such repo transaction are netted. In that case, § 55f subpara. 1 shall apply accordingly.

#### § 62

1. If a clearing member fails to perform its cash debits arising from marking to market in respect of compensation or cash payment referred to in § 55c subpara. 4-7, respectively, due to lack of coverage in the relevant bank account maintained by the clearing bank, sufficient for the settlement instruction to be executed in the clearing bank when due, KDPW\_CCP shall identify an event of default and take actions necessary to meet the cash payment to the participant affected by default using margins posted by the defaulting participant. The provisions of § 59 subpara. 2 second sentence and subpara. 6 shall apply accordingly. In that case, KDPW\_CCP may take measures referred to in § 69 subpara. 1-3.

2. If the margins posted by the defaulting participant referred to in subpara. 1 prove insufficient, the cash debits of that participant shall be met in the following sequence:

1/ from the contribution of that participant to the clearing guarantee fund or the relevant guarantee fund,

2/ from the dedicated resources I in the amount calculated according to § 58e subpara. 2 and 3,

3/ from other resources of the clearing guarantee fund or the relevant guarantee fund,

4/ from the dedicated resources II in the amount calculated according to § 58e subpara. 2a and 3.

3. KDPW\_CCP shall have no obligations to the extent that the cash debits of the defaulting participant have been met with margins and the resources of the clearing guarantee fund or the relevant guarantee fund.

## § 63

[repealed]

## § 64

1. In the event that a defaulting participant whose event of default is identified by KDPW\_CCP is responsible for the suspension of transaction settlement caused by a shortage of securities, KDPW\_CCP shall take actions referred to in Part 6 “Open market buy-in operations” provided that:

1/ such actions shall be performed as an auction in the event of termination of the participation agreement with the defaulting participant by KDPW\_CCP effective immediately and the provisions of the rules governing such auctions shall apply,

2/ KDPW\_CCP shall not be bound by the time limits set in Part 6 “Open market buy-in operations”,

3/ the participant affected by default may not request the deferral of the open market buy-in until an appropriate later date,

4/ payments made in such actions shall be in the currency of the transaction settlement and shall release KDPW\_CCP from all obligations to participants who are counterparties to the clearing of the transaction whose settlement is suspended by the defaulting participant.

To settle such transaction, KDPW\_CCP may submit an order to sell securities on the regulated market or in the alternative trading system if so allowed by the agreement between KDPW\_CCP and the operator of the regulated market or the alternative trading system.

2. If the cash credit position of the defaulting participant is insufficient to complete actions referred to in Part 6 “Open market buy-in operations”, including the payment of compensation or the reimbursement of a difference in price, the purchase of these securities shall be financed from margins posted by that participant and if these provide insufficient, also from resources of the clearing guarantee fund or the relevant guarantee fund, respectively, in the sequence and amount referred to in § 59 subpara. 4 and § 58e subpara. 1. The provisions of § 59 subpara. 6 shall apply accordingly.

3. KDPW\_CCP shall have no obligations in connection with a transaction whose settlement has been suspended to the extent that the obligations of the defaulting participant arising from such transaction have been met with the resources of the clearing guarantee fund or the relevant guarantee fund, respectively.

## § 65

1. If, as a consequence of circumstances for which KDPW\_CCP is not responsible, the actions taken by KDPW\_CCP, after having identified an event of default of the defaulting participant, cannot result in the full performance of the obligation arising from the clearing of a transaction accepted into the clearing system, despite:

1/ use of resources in the order and in the amount set out in § 58e subpara. 1 to 3 and § 59 subpara. 4, KDPW\_CCP may request other clearing members to reduce the value of the financial benefits or interest coupons referred to in § 46e subpara. 1 to which such clearing members are or will be entitled,

2/ the auction operation carried out for the third time or actions taken in organised trading for a period of three days in order to perform such obligation, KDPW\_CCP may request the other clearing members to

terminate in whole or in part the cleared transactions to which they are the other clearing counterparty.

2. Actions taken on the regulated market shall be deemed not to result in the performance of an obligation arising from the clearing of a transaction accepted to the clearing system if, despite the orders placed by KDPW\_CCP in organised trading, no transaction is concluded and:

1/ the clearing members have been informed by KDPW\_CCP of the actions taken and of the orders placed by KDPW\_CCP,

2/ the clearing members are members of the relevant market or trading system on which the orders are placed or have the possibility to place orders through another entity, and

3/ the market operator offers the possibility to match the orders of KDPW\_CCP and clearing members or their intermediaries.

3. Any change of the conditions referred to in subpara. 1 point 1 and 2 shall only cover positions registered on participants' own accounts.

4. Before requesting clearing members to change the conditions referred to in subpara. 1 point 1 and 2, KDPW\_CCP shall:

1/ inform the clearing members that the actions taken so far have not resulted in the performance of the obligation arising from the clearing of the transaction accepted to the clearing system and therefore, within the indicated time limit, it shall organise an auction operation or place an order in organised trading for the last time, as the case may be;

2/ where actions are taken in organised trading, call on clearing members who are not members of the relevant market or trading system to inform KDPW\_CCP of their inability to place orders on that market no later than the end of the day on which they receive the call. In the absence of such information by this deadline, the clearing member shall be deemed to have been able to place orders on that market or trading system.

5. In order to request clearing members to change the conditions referred to in subpara. 1 point 1 or 2, KDPW\_CCP shall send them a proposal specifying in particular:

1/ the positions that are covered by the proposal for this change of conditions,

2/ the deadline by which the clearing members are to declare whether they agree or disagree with the change in those conditions,

3/ the deadline by which the conditions referred to in subpara. 1 point 1 or 2 are to be changed,

4/ in the event of a change of the conditions referred to in subpara. 1 point 1:

a/ the value reduction distribution ratio, determined in accordance with the provisions of the Detailed Rules of Transaction Clearing (organised trading),

b/ the period during which the change of the conditions of the transaction is to be effective,

5/ in the event of a change of the conditions referred to in subpara. 1 point 2 – the limit up to which the positions may be closed, determined in accordance with the provisions of the Detailed Rules of Transaction Clearing (organised trading).

6. Any change of the conditions referred to in subpara. 1 point 1 and 2 shall require the consent of the clearing members who are a clearing counterparty to at least 2/3 of the value of the positions recorded in the clearing system that are affected by the change, whereby:

1/ the clearing members shall be required to declare whether or not they give their consent,

2/ the clearing members who do not give a timely declaration of such consent or of failure to give such consent shall not be included in the calculation of the qualified majority referred to above requiring such consent (i.e., the value of the positions to which they are a clearing counterparty shall be disregarded in that calculation).

7. The consent referred to in subpara. 6 shall mean that:

1/ in the event of a change of the conditions referred to in subpara. 1 point 1, KDPW\_CCP shall not be obliged to pay, respectively, the financial benefits or interest coupons referred to in § 46e subpara. 1 in respect of marking to market of transactions in an amount exceeding the established value reduction distribution ratio, and the clearing member shall remain obliged to KDPW\_CCP in full to pay such benefits or coupons calculated in that period in respect of marking to market,

2/ in the event of a change of the conditions referred to in subpara. 1 point 2, KDPW\_CCP shall not be obliged to execute the cleared transaction in the amount specified in the agreed limit, and the clearing member which is the other clearing counterparty to the transaction shall remain obliged to KDPW\_CCP in full.

8. Any change of the conditions referred to in subpara. 1 point 1 and 2 shall take place within the deadline specified in the proposal referred to in subpara. 5, provided that the clearing members give their consent in accordance with subpara. 6. KDPW\_CCP shall immediately inform the clearing members of:

1/ the number of clearing members who:

a/ have made declarations on the change of conditions referred to in subpara. 1 point 1 and 2,

b/ have given consent to a change of those conditions,

c/ have not given consent to a change of those conditions,

2/ a change or no change of the conditions referred to in subpara. 1 point 1 and 2 and, in the event of a change to such conditions, confirmation of the date and time when such conditions are changed.

9. The Detailed Rules of Transaction Clearing (organised trading) set out detailed principles and procedures for the change of the conditions referred to in subpara. 1 point 1 and 2, including on the submission of a proposal to change those conditions and on the consent given by clearing members referred to in subpara. 6.

#### § 65a

1. If KDPW\_CCP identifies an event of default with respect to a defaulting participant and initiates the actions referred to in this section, KDPW\_CCP may withhold payments to clearing members of:

1/ all resources of the transaction clearing liquidity guarantee system,

and

2/ the financial benefits or interest coupons referred to in § 46e subpara. 1 to which such clearing members are or will be entitled,

until such actions have been completed and the positions of the defaulting participant have been closed out, but no later than for a period of 10 business days from the date on which such event of default is identified.

2. KDPW\_CCP shall:

1/ inform all clearing members of the withholding of payments of resources referred to in subpara. 1,



- 2/ calculate, on an ongoing basis, the financial benefits or interest coupons referred to in § 46e subpara. 1 of the rules to which such clearing members are or will be entitled during the period in which the payment of such benefits and coupons is withheld,
- 3/ at the end of the period during which the payment of the resources referred to in subpara. 1 is withheld, pay these resources to the clearing members, whereby the financial benefits and interest coupons calculated on each day shall be offset to form a single cash credit.

#### § 66

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 clearing system referred to in § 1 subpara. 1 or subpara. 5, respectively, the amount of own funds of KDPW\_CCP decreases to 110% of the set KDPW\_CCP capital requirement, KDPW\_CCP shall immediately notify participants holding the status of clearing member thereof. In that event, prior to using other own funds, KDPW\_CCP shall call such participants to make additional contributions to the clearing guarantee fund or the relevant guarantee fund, not greater than 100% 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 clearing guarantee fund or the relevant guarantee fund, respectively, 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.

#### § 66a

The obligation of KDPW\_CCP arising as a result of novation of a transaction or coverage of a transaction by the transaction clearing liquidity guarantee system shall expire to the extent that it is performed with the participant's margins, resources of the clearing guarantee fund or the relevant guarantee fund. KDPW\_CCP shall not be required to return such amounts.

#### § 67

1. In instances where the actions, described in the provisions of this Section, cannot be fully performed using the assets described therein, then KDPW\_CCP shall assume the obligation for the performance of these actions using its own proprietary assets, to the extent that the actions have not been completely performed despite the use of these assets, subject to § 65 and § 66.
2. The creditors of KDPW\_CCP as regards the obligations, described in subpara. 1 and in § 58b subpara. 1, are exclusively participants holding the status of clearing member.

3. The obligations of KDPW\_CCP, described in subpara. 1 and § 58b subpara. 1, shall not apply to any indirect payments, in particular payment of interest for delay in meeting a cash payment, or restitution following the suspension of transaction settlement.

#### § 68

1. In instances of the performance of the actions according the provisions of this Section:

1/ KDPW\_CCP shall have the right to demand a refund of own resources used to perform such actions from the defaulting participant,

2/ the ownership of the securities purchased for the resources of the transaction clearing liquidity guarantee system shall be acquired by KDPW\_CCP in order to meet obligations to the participant affected by default,

3/ KDPW\_CCP shall have the right to receive the cash payment from the transaction for which the defaulting participant is the other counterparty to clearing and shall not be required to settle with the defaulting member to such extent,

4/ KDPW\_CCP shall not be obliged to settle with the defaulting member or the member affected by default, any profits arising from potential differences between the prices of securities purchased using the resources of the transaction clearing liquidity guarantee system between the transaction whose settlement has been suspended and the their purchase by KDPW\_CCP, other than where required under these rules,

5/ KDPW\_CCP shall have the right to demand a refund from the defaulting participant to the extent of the cost of closing out positions which is not covered by such participant, including differences in prices, paid according to the provisions of the rules,

6/ KDPW\_CCP shall not be required to cover any loss arising from the use of the resources of the transaction clearing liquidity guarantee system in order to perform actions in accordance with the provisions of this Part.

2. If any surplus of funds remains after meeting all obligations to participants affected by default and obligations arising from actions performed in accordance with the provisions of this Part, such surplus shall be credited to KDPW\_CCP provided that:

1/ such surplus shall be credited to KDPW\_CCP to the extent that KDPW\_CCP used its own resources, resources of the clearing guarantee fund or resources of the relevant guarantee fund,

2/ to the extent that such surplus derives from the use of resources of the clearing guarantee fund or resources of the relevant guarantee fund, it shall be credited to the reserve resources of such fund.

#### § 69

1. In instances where the participant, who in relation to holding the status of clearing member is obliged to supplement or post initial deposit, initial margin, contributions to the clearing guarantee fund, or the relevant guarantee fund, or payment following marking to market, does not perform this obligation, or does not perform it properly, KDPW\_CCP shall initiate the process of closing positions registered in the clearing system that are the result of the acceptance into the system of transactions executed on the account of this participant, using the initial deposit and initial margin, corresponding to these positions,

for this purpose. Other positions for which the participant holds the status of clearing member, will also be closed using these assets, if these positions were not secured using initial margin.

2. If the assets, described in subpara. 1, shall prove insufficient, contributions to the clearing guarantee fund or the relevant guarantee fund and own funds of KDPW\_CCP, in the order and in the amount referred to in § 59 subpara. 4 and 6 and § 58b subpara. 1-3, shall be used to close these positions. In instances where these assets are still insufficient, the provisions of § 67 subpara. 1-3 shall apply to close these positions.

3. The defaulting participant shall reimburse the cost of closing out positions paid to third parties (including transaction fees and commissions). The cost of closing out positions shall be paid according to subpara. 2. After completing the processing of an event of default, KDPW\_CCP shall document, at the written request of the defaulting participant, all costs paid.

4. In the event of an order by the Polish Financial Supervision Authority, described in Article 89 subpara. 4 of the Law on trading in financial instruments, KDPW\_CCP shall transfer client positions secured using initial margins onto the accounts of a participant holding the status of clearing member, indicated in that order, and shall retain these margins as initial margins posted by that participant.

#### **PART 10 SECURING POSITIONS ARISING FROM TRANSACTIONS CONCLUDED BY A NON-CLEARING MEMBER AND MEASURES SECURING SUCH POSITIONS (PORTING)**

##### **§ 69a**

1. In the event that, following the performance of the actions referred to in Part 9 “Actions using the resources of the transaction clearing liquidity guarantee system upon identification of an event of default”, 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 participant acting with the participation type of 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 participant holding the status of clearing member on whose part the event of default has occurred.

2. In the event referred to in subpara. 1, the defaulting participant shall not be entitled to raise claims against KDPW\_CCP for return of assets referred to in subpara. 1.

##### **§ 69b**

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 the designated clearing account and the linked collateral account 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 the identification of an event of default, on the basis of matching instructions for the transfer of positions and assets referred to in subpara. 1, to the designated clearing account and the linked collateral account 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 system operated by the relevant settlement institution the settlement instruction for transferred positions arising from transactions accepted to the clearing system and submit a new settlement instruction for such positions. 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 system operated by the relevant settlement institution.

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 § 43c 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 § 43c 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 § 15 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 § 15 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 participant acting with the participation type of 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 in the Detailed Rules of Transaction Clearing (organised trading).

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 via SEI, GUI 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 institution and it cannot be effectively recalled from the system operated by the settlement institution, 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 participant 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.

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 participant 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.

#### § 69c

1. If positions registered in a clearing account arise from transactions which have not been executed by the same entity, the provisions of § 69b shall apply accordingly if:

1/ all entities which have executed transactions registered in the clearing account are participants represented in the 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 § 69b 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.

2. If a defaulting participant represents an entity being a participant with a participation type other than that of non-clearing member, the provisions of subpara. 1 and § 69b shall apply accordingly.

#### § 70

[repealed]

#### § 71

[repealed]

§ 72  
[repealed]

§ 72a  
[repealed]

## **SECTION V**

### **Negotiated Lending Clearing Liquidity Guarantee System**

#### **§ 72b**

1. The negotiated lending clearing liquidity guarantee system, referred to in Article 48, subpara. 3, point 3 of the Act of Trading in Financial Instruments, organised by KDPW\_CCP, shall cover on-demand loans concluded via the Central Securities Depository of Poland in the negotiated lending system but only to the extent of the return of loaned securities and the return of the required amount of collateral provided by the parties to the loan according to the provisions of the Rules of the Central Securities Depository of Poland described to in Article 50 of the Act of Trading in Financial Instruments (contractual collateral).

2. Assets deposited in the negotiated lending clearing liquidity guarantee system, referred to in subpara. 1, may be used to the extent referred to in subpara. 1, upon the identification of an event of default of a participant holding the status of clearing member who is a party to a loan agreement concluded in the negotiated lending system, according to the provisions of Section VI Part 4 "Transaction clearing liquidity guarantee system", which shall apply accordingly, subject to § 72f, § 72g and provided that wherever margins are referred to therein, this shall be understood to mean the margins referred to in § 72c subpara. 2.

3. The fact that negotiated loans are guaranteed in the negotiated lending clearing liquidity guarantee system referred to in subpara. 1 shall mean that:

1/ KDPW\_CCP shall take, in the negotiated lending clearing liquidity guarantee system, referred to in subpara. 1, actions referred to in the provisions of § 58e - § 69c, in the events set out in those provisions, using for this purpose assets deposited as margins, referred to in § 72c subpara. 2, contributions to the relevant guarantee fund, and own resources, in the sequence and in the amount determined in accordance with point 2 item (b) and § 58e subpara. 2 and 3, § 59 subpara. 4, § 60 subpara. 2, § 61 subpara. 3, § 62 subpara. 2, § 64 subpara. 2, subject to § 54a subpara. 9, § 72f and § 72g,

2/ subject to § 54a subpara. 9, KDPW\_CCP is obliged to:

a/ cover any loss in the event of default under obligations arising from cleared loan agreements to the extent that they are guaranteed in the negotiated lending clearing liquidity guarantee system, referred to in subpara. 1, before using assets deposited with the relevant guarantee fund, with the exception of a contribution paid in by the defaulting participant, with assets which constitute the own capital of KDPW\_CCP, designated for such purpose according to § 58b subpara. 2, in the amount determined according to § 58b subpara. 3. The provisions of § 58b shall apply accordingly, and

b/ take, at the expense of other own resources, actions referred to in the provisions of § 59 subpara. 4, § 60 subpara. 2, § 61 subpara. 1 and 3, § 62 subpara. 2, § 64 subpara. 6, § 67 subpara. 1, in the event that



such actions, taken according to those provisions, do not result in meeting an obligation arising from the clearing of a negotiated loan, to the extent guaranteed in the negotiated lending clearing liquidity guarantee system, referred to in subpara. 1, subject to § 66, which shall apply accordingly.

4. The provisions of § 43b, § 43g subpara. 1, § 43j and § 43k subpara. 2 shall apply accordingly to loan agreements concluded in the negotiated lending system.

#### § 72c

1. As part of the negotiated lending clearing liquidity guarantee system, referred to in § 72b, subpara. 1, KDPW\_CCP:

1/ collects and manages assets that form margin deposits,

2/ collects and manages assets that form the relevant guarantee fund, referred to in Appendix 3 to the rules.

2. Margins shall be deposited in the negotiated lending clearing liquidity guarantee system, referred to in § 72b, subpara. 1, and shall include:

1/ initial deposit for loans, and

2/ initial margin for loans.

3. The provisions of § 47 - § 50c shall apply accordingly to margins referred to in subpara. 2.

#### § 72d

1. In the negotiated lending clearing liquidity guarantee system, referred to in § 72b subpara. 1, KDPW\_CCP shall maintain the relevant guarantee fund, referred to in Appendix 3 to the rules.

2. The objective of the fund, referred to in subpara. 1, is to secure the meeting of obligations arising from an on-demand loan concluded in the negotiated lending system to the extent of the return of loaned securities and the return of the required amount of contractual collateral.

3. Contributions to the fund, referred to in subpara. 1, shall be paid in by participants holding the status of clearing member for on-demand loans concluded in the negotiated lending system.

4. Contributions to the fund, referred to in subpara. 1, shall be calculated by KDPW\_CCP in the Polish currency.

5. The detailed rules of the formation and use of the fund, referred to in subpara. 1, are set out in the on-demand lending guarantee fund rules, attached in Appendix 3 to the rules.

#### § 72e

The resources of the relevant guarantee fund, referred to in Appendix 3 to the rules, shall be used upon the identification of an event of default and in the events referred to in Chapter IV "Transaction Clearing Liquidity Guarantee System".

#### § 72f

1. To the extent that the cash credits of a defaulting participant for which KDPW\_CCP identifies an event of default are insufficient to purchase securities necessary to eliminate the suspension of settlement related to the return of an on-demand loan concluded in the negotiated lending system, the purchase of

these securities shall be financed in the first place from contractual collateral provided to KDPW\_CCP according to § 54a subpara. 9, and if it is insufficient, then in the sequence and the amount determined according to subpara. 3 and § 59 subpara. 4, § 64 subpara. 2, § 72b subpara. 3 point 2.

2. In the event of a replacement payment, KDPW\_CCP shall use the assets referred to in subpara. 1, in the sequence and the amount determined according to subparas. 1 and 3 and § 59 subpara. 4, § 61, subpara. 1, § 65 subpara. 2, § 72b subpara. 3 point 2.

3. If the margins referred to in § 72c subpara. 2 need to be used, such margins shall be used before the assets which constitute the own resources of KDPW\_CCP and the assets of the relevant guarantee fund, in the following sequence:

1/ initial deposit for loans, and

2/ initial margin for loans.

#### § 72g

1. The provisions of these rules concerning liquidation of the suspension of settlement of repo transactions and the calculation and payment of compensation in the event of suspension of the settlement of repo transactions by the settlement institution shall apply accordingly to on-demand loans, provided that the calculation of compensation shall take into account the amount of the contractual collateral, provided according to § 54a, subpara. 9. Such compensation shall also be the replacement payment and meeting such payment shall relieve KDPW\_CCP from all obligations arising from the provision of the contractual collateral.

2. In instances of identification of an event of default of a defaulting participant, in settlement suspension of such participant's return of an on-demand loan concluded in the negotiated lending system, in order to make the replacement payment, KDPW\_CCP shall use the contractual collateral provided to KDPW\_CCP according to § 54a, subpara. 9, and the margins posted by the participant, described in § 72c, subpara. 2, the assets of the relevant guarantee fund, and own resources, in the sequence referred to in § 72f.

#### § 72h

KDPW\_CCP shall be authorised to the extent defined in the provisions of § 46a and § 46c, which shall apply accordingly, and it may perform its obligations through the mediation of the Central Securities Depository of Poland, to the extent and in the mode set out in those provisions.

#### § 72i

To the extent not regulated by this Section, the provisions of Section IV "Transaction Clearing Liquidity Guarantee System" shall apply accordingly.

### **TITLE IV**

#### **FEES**

#### § 73

1. The types of fees, the rules for setting them and the amounts charged, unless described in the provisions of this Chapter, are contained in Appendix No. 1 to the rules, referred to hereinafter as the Table of Fees.

2. Changes to the amount of the fees indicated 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 these fees, being fees to which any potential charges arising from public law should be added.

#### § 74

1. At the 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.
2. KDPW\_CCP shall immediately notify the participants of any reduction or waiver of fees defined in the Table of Fees.

#### § 74a

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.

#### § 75

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.

#### § 76

Reduced fees shall be charged from a participant holding the status of clearing member that, under an agreement concluded with the operator of the regulated market or alternative trading system, performs functions consisting in buying or selling specific financial instruments on its own account for purposes related to maintenance of liquidity or organisation of trading on the market, or from a participant that represents in the clearing of transactions performed by KDPW\_CCP a person that performs such functions, where the Table of Fees so provides, in the amount laid out therein, provided that the conditions laid down by the Management Board of KDPW\_CCP in a resolution are met, subject to § 74.

#### § 77

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 V**

### **TERMINATION OF PARTICIPATION**

#### **§ 77a**

1. A participation agreement may be terminated:

- 1/ on request of a participant, effective two weeks from the date of the request, subject to subpara. 2 - 6,
- 2/ by agreement of the parties,

3/ according to a unilateral declaration made by KDPW\_CCP in the procedure of termination effective immediately – in the event of default,

4/ subject to subpara. 4 - 6, on the basis of a declaration of the clearing member in the procedure of termination of the agreement 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 clearing system,  
or

- making a replacement payment in order to perform an obligation arising from a transaction cleared in the clearing system

within 45 calendar days from the day after the day on which KDPW\_CCP becomes obliged to make the payment to the clearing member affected by default, 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 – Act of 28 February 2003 (consolidated text: Journal of Laws of 2022, item 1520, as amended),

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 2022, item 1467, 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 participant holding the status of clearing member, or the participant is obliged to make payments in respect of participation in the clearing system, a participation agreement may be terminated in the case referred to in subpara. 1 point 1 only following the deletion of such positions from the clearing system and the performance of all obligations arising from participation in the system.

3. Termination of the participation agreement in the case referred to in subpara. 1 point 1 shall be effective unless KDPW\_CCP identifies an event of default of any participant holding the status of clearing member within two weeks after the submission of the request by the participant. If KDPW\_CCP identifies an event of default of any participant holding the status of clearing member, the termination of the participation agreement on request of the participant referred to in subpara. 1 item 1 shall be effective once KDPW\_CCP completes the actions referred to in § 59 et seq. and the participant performs all obligations arising from participation in the clearing system, including the obligation to make the required contribution to the clearing fund or the relevant guarantee fund.

4. A clearing member for which KDPW\_CCP has identified an event of default and initiated any of the actions described in § 77c 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, in accordance with the notice referred to in § 77c subpara. 3, all its obligations arising from transactions accepted for clearing for which the participant is a clearing counterparty and arising from its participation in the transaction clearing liquidity guarantee system.

5. If KDPW\_CCP has activated a recovery plan as referred to in Article 9(1) of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties and amending Regulations (EU) No 1095/2010, (EU) No 648/2012, (EU) No 600/2014, (EU) No 806/2014 and (EU) 2015/2365 and Directives 2002/47/EC, 2004/25/EC, 2007/36/EC, 2014/59/EU and (EU) 2017/1132:

1/ it shall inform clearing members thereof;

2/ it may propose to a clearing member that is a party to the obligation, in respect of which KDPW\_CCP has not made a payment in accordance with the payment rules, another means of performing that obligation, in particular deferring the payment date or amending the content of that obligation. Where such participant agrees to this, the provisions of subpara. 1 point 4 item a) shall not apply to that participant unless KDPW\_CCP has failed to perform the obligation subject to that arrangement as a result of circumstances for which it is responsible.

6. A participant shall not be entitled to unilaterally terminate the participation agreement in connection with a change in the conditions referred to in § 65 subpara. 1 point 1 or 2 or the exercise by KDPW\_CCP of the rights referred to in § 65a subpara. 1. In such a case, the provisions of subpara. 1 point 4 item a) shall not apply.

#### § 77b

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 § 77 subpara. 1 point 4 on the part of KDPW\_CCP.

#### § 77c

1. If an event of default occurs on the part of a participant holding the status of clearing member, KDPW\_CCP may:

- 1/ terminate the participation agreement concluded with such participant (cancellation of participation) together with transactions accepted for clearing for which the participant is a clearing counterparty, effective at the time determined according to subpara. 2, and close out positions registered in the clearing accounts managed for such participant and take actions referred to in § 59 et seq.;
- 2/ refrain from carrying out the participation agreement concluded with the defaulting participant in the procedure defined in § 83,
- 3/ refuse to accept for clearing any further transactions in whose clearing the defaulting participant would participate unless another participant holds the status of clearing member for such transactions and has been designated to clear them.

2. In the case of cancellation of participation, all liabilities of the clearing member in respect of its participation in the 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 participant electronically via SEI and, if delivery of the notice in this way is not possible, 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 participant in any manner.

4. In the case of cancellation of participation, KDPW\_CCP shall take the actions referred to in this Chapter and in Chapter III "Transaction Clearing" Section IV "Transaction Clearing Liquidity Guarantee System", including actions aimed to meet liabilities to a participant with the participant type of non-clearing member referred to in § 69a - § 69c.

5. Credits of KDPW\_CCP and the participant whose participation is being 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 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. KDPW\_CCP shall perform netting with due diligence justified by market conditions prevailing on the date of netting, on the basis of current market data (in particular foreign exchange rates, reference rates, volatility levels and prices of financial instruments), determined according to the rules, and if such data are unavailable or cannot be obtained – on the basis of current market data available in services of information agencies or obtained from other financial institutions, including quotations (closing prices) received from banks for a transaction with the same parameters as the transaction subject to the valuation.

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

- 1/ provide the participant with the result of netting and information on the date of its registration by KDPW\_CCP in its systems,
- 2/ at its written request, document all data used by it to perform such actions.

8. The provisions of subpara. 1-7 shall not limit KDPW\_CCP's right to claim damages on terms laid down in legal provisions referred to in § 17 subpara. 2.

#### § 77d

1. In case of occurrence of any of the circumstances referred to in § 77a subpara. 1 item 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 clearing system,
- 3/ each clearing member shall be entitled to terminate the participation agreement effective immediately, together with transactions accepted to the 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 § 77a subpara. 1 item 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 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 § 77a subpara. 1 item 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 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. § 77e according to the provisions thereof.

4. Credits of KDPW\_CCP and of the clearing member referred to in subpara. 1 arising from transactions accepted for clearing in the 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 § 77e unless they are subject to exclusion according to the applicable legal provisions referred to in § 17 subpara. 2. As a result of the netting of mutual debits according to § 77e, 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.

5. 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 § 17 subpara. 2.

#### § 77e

1. A clearing member referred to in § 77d subpara. 1 that has terminated the participation agreement effective immediately in case of occurrence of any of the circumstances referred to in § 77a subpara. 1 item 4 on the part of KDPW\_CCP shall be entitled to calculate the closing amount at the day referred to in § 77d 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 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 § 77d subpara. 4.

3. If the 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 date of the calculation.

5. Non-cash payments shall be calculated by a clearing member according to § 72.

6. The total value of the debits and credits arising from transactions accepted for clearing in the 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 current market data.

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 § 77e 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 § 77d 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 VI**

### **MEASURES FOR MAINTAINING ORDER AND DISCIPLINE**

#### **§ 78**

1. Measures for maintaining order and discipline shall include:

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

2. If a participant holding the status of clearing member contravenes the principles of participation by failing to carry out or by improperly carrying out its 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 § 22 subpara. 3 in due time, or
- b/ fails to provide the additional information referred to in § 31 in due time, or
- c/ fails to provide the information referred to in § 27 in due time, or
- d/ is in breach of the principles referred to in § 9 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 adjust a contribution (including an additional contribution) to the clearing guarantee fund or the relevant guarantee fund,

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 unless:

- a/ it is a breach referred to in point 1 items (a)-(f), 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.

#### § 78a

The provisions of this Chapter 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 clearing system and to claim damages on terms laid down in legal provisions referred to in § 17 subpara. 2.

#### § 78b

1. Special fees shall be paid by participants holding the status of clearing member to KDPW\_CCP.
2. The provisions of § 74a and § 75 shall apply to special fees.
3. The amount of special fees is laid down in the Table of Fees.

#### § 79

1. Subject to subpara. 4, should there be grounds to impose the fine referred to in § 78 subpara. 2, the Management Board of KDPW\_CCP shall notify the participant concerned of the breach, specifying precisely how it occurred and specifying 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 § 78 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 § 78 subpara. 2 shall not be imposed in such cases.
4. If a participant fails to provide the information referred to in § 28 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 § 78 subpara. 2 without first performing the actions referred to in subpara. 1.

#### § 80

1. The resolution passed by the Management Board of KDPW\_CCP concerning the imposition of the fee referred to in § 78 subpara. 2 shall immediately be delivered to the participant concerned.
2. The resolution on imposing the fee shall be carried out within 10 days of its being delivered to the participant.

**§ 81**

1. The participant levied a fee on the basis of § 78 subpara. 2 may, within 7 days of the receipt of the Management Board's resolution 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.

**§ 82**

1. The resolution of the Supervisory Board of KDPW\_CCP concerning appeals shall be adopted no later than 3 months after its submission. 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 issued 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.

**§ 83**

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 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 § 78 subpara. 2 point 1, the participant has not remedied the condition of breach or taken an action or inaction defined by the Management Board of KDPW\_CCP in order to prevent any further breach or has taken it inadequately,
  - 4/ the clearing member consistently and systematically fails to deliver securities to the securities settlement system operated by the settlement institution, as referred to in Article 7(9) CSDR, being responsible for the suspension of settlement of transactions due to a shortage of securities, or
  - 5/ 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, if the financial situation of a participant raises doubts as to the participant's ability to meet obligations arising from transaction clearing in a timely manner, or if as a result of the improper performance of responsibilities applicable to the status of clearing member, a participant contravenes the legal provisions relating to the system for securing transaction clearing liquidity, or is in persistent breach of reporting obligations defined in these rules.
  - 2a. The threat referred to in subpara. 1 point 1 shall also arise in the event that KDPW\_CCP identifies a risk of money laundering and terrorist financing associated with the business relationships undertaken by the participant, in particular in connection with information on the application of restrictive measures to the participant in accordance with the relevant legal provisions, information on the initiation of proceedings in connection with the provision of financial services on the basis of which administrative sanctions may be applied to the participant for breach of the legal provisions applicable to the participant, or information

on the issuance of a decision on the application of such administrative sanctions to the participant.

3. The suspension of participation is for a specified period, no longer than 6 months. The previous participant status shall be restored on the basis of a decision taken by the Management Board of KDPW\_CCP, by way of resolution, before or on expiry of the aforementioned period, unless a different decision concerning further participation has been taken before the expiry of that period.

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 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 § 81 and § 82 shall apply.

#### § 83a

In instances described in § 83 subpara. 1, KDPW\_CCP shall submit to the Central Securities Depository of Poland an instruction to block in the negotiated lending system the option of concluding on-demand loans by the participant participating in the system who poses a threat to the safety of trading or proper operation of the clearing system or by other entities represented by that participant within the scope of such transactions in the clearing system.

#### § 84

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 clearing system until the time of suspension, and  
2/ the participant from its obligations arising from its activities in the clearing system until such time. The provisions contained herein shall apply accordingly.

### TITLE VII

#### COMPLAINT HANDLING PROCEDURE

#### § 84a

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 clearing guarantee fund or the relevant 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 clearing system,  
2/ matters concerning the application of measures for maintaining order and discipline referred to in § 78 subpara. 1 point 1-3.

#### § 84b

1. A participant to whom a service referred to in the rules, resolutions issued under the rules, the rules of the clearing guarantee fund or the relevant guarantee fund is provided or a participant obligated to pay a

fee set in the Table of Fees may submit to KDPW\_CCP 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.

#### § 84c

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.

#### § 84d

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 VIII**

#### **INTERIM AND FINAL PROVISIONS**

#### § 85

Participants holding the status of clearing member with the participant type of representative, clearing member – own transactions, clearing member – derivatives accounts shall, as of the effective date of the amendments to the rules approved by the Polish Financial Supervision Authority which form the basis for

the modification of the designation of such participant types, conduct activities in the clearing system with the participant type of general clearing member – representative in securities trading, individual clearing member, and general clearing member – representative on the derivatives market, respectively.

#### § 86

A participant that is a non-resident within the meaning of the Foreign Exchange Law and did not provide the declaration referred to in § 20 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.

#### § 87

If according to the relevant legal provisions applicable in the state of seat of a participant holding the status of 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 § 20 subpara. 1 point 6 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.

#### § 88

Clearing members shall harmonise the following with amended provisions of the rules or resolutions adopted under the rules:

1/ internal procedures applicable in connection with their activity in the clearing system,  
2/ agreements concluded with clients whereby they agree to represent such clients in the clearing system,  
3/ agreements concluded with entities performing for them the function of payment agent, settlement agent or collateral agent, respectively,  
within two weeks after KDPW\_CCP's publication of amended provisions of the rules or resolutions adopted under the rules on its website unless the provisions of the rules, resolutions adopted under the rules or resolutions implementing amended provisions require otherwise.

#### § 89

A clearing member shall immediately notify its clients who have signed the declarations referred to in § 15a subpara. 1 of the amendments to the rules referred to in § 85 subpara. 1 and § 86 subpara. 1.

#### § 90

The provisions of the rules concerning the obligation to pay cash penalties, referred to in Article 7(2) CSDR, charging such penalties from defaulting participants and distributing them to participants affected by default, shall apply as of the date of coming into force of the CSDR provisions governing such cash penalties.

#### § 91

In the event that any amendments are made to the rules which introduce an obligation for clearing members or entities applying for participant status to provide additional documents, participants who, on



the effective date of such amendments, hold that status shall be obliged to provide KDPW\_CCP with such documents within two weeks of receiving a request to that effect from KDPW\_CCP and, if the documents are to be provided in accordance with a template drawn up by KDPW\_CCP, after KDPW\_CCP has made that template available to the participants, unless a longer deadline results from the content of the Supervisory Board's resolution on such amendment to the rules.