

Resolution No. 32/641/24
of the KDPW_CCP S.A. Supervisory Board
dated 26th June 2024

Pursuant to Article 48(15) of the Act of 29 July 2005 on Trading in Financial Instruments (consolidated text: Journal of Laws of 2024, item 722, as amended) and § 15(2)(13) of the Statute of KDPW_CCP S.A., the Supervisory Board of KDPW_CCP S.A. hereby resolves as follows:

§ 1

The Rules of Transaction Clearing (non-organised trading), attached to Resolution No. 21/55/12 of the Supervisory Board of KDPW_CCP S.A. of 29 August 2012. (as amended), shall be amended as follows:

1/ in § 1:

a/ point 2 shall be replaced by the following:

"2/ settlement agent, this shall be understood to mean an entity being a participant of the depository system operated by Krajowy Depozyt Papierów Wartościowych S.A. or another entity indicated by KDPW_CCP in the Detailed Rules of the OTC Clearing System which has consented for its depository account managed in that system to be used to adjust assets posted in securities as margins required of such clearing member and as its contributions to the OTC guarantee fund, excluding assets which are securities referred to in § 79 subpara. 3 point 4,";

b/ point 3 shall be replaced by the following:

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

c/ point 9 shall be replaced by the following:

"9/ clearing instruction, this shall be understood to mean a settlement order within the meaning of the 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: Journal of Laws of 2024, item 585) which is, respectively:

a/ a document containing the terms of a transaction in a structure and format agreed with the entity operating an electronic platform, received from that platform, or
b/ an instruction confirming the acceptance of an offer to conclude a transaction for the opposite position, submitted by a clearing member in accordance with these rules and the Detailed Rules of the OTC Clearing System in the service of closing positions on demand referred to in § 90 subpara. 1,”;

d/ point 23 shall be replaced by the following:

“23/ **electronic platform**, this shall be understood to mean, respectively, a trading platform or a confirmation platform, designated by KDPW_CCP S.A. in the Detailed Rules of the OTC Clearing System, being an electronic system organised by another entity, other than a regulated market or an alternative trading system, which matches parties concluding transactions within the system (trading platform) or instructions concerning concluded transactions submitted by participants of the system (confirmation platform) in a way resulting in, respectively, conclusion or confirmation of conclusion of such transactions,”;

e/ point 29 shall be replaced by the following:

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

f/ point 44 shall be replaced by the following:

“44/ **transaction**, this shall be understood to mean the legal relationship resulting from, respectively:
a/ a derivative transaction within the meaning of these rules, concluded on an electronic platform operated outside organised trading within the meaning of these rules or confirmed on such platform in a matter designating its conclusion,
b/ a transaction concluded within the transaction clearing liquidity guarantee system operated by KDPW_CCP,
c/ novation of a transaction referred to, respectively, in letter (a) or (b),”;

g/ point 55 shall be replaced by the following:

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

h/ points 18a, 22, 26, 38, 42, 48, 48a and 54d shall be deleted;

2/ § 9 shall be deleted;

3/ § 10 subpara. 1 shall be replaced by the following:

“1. KDPW_CCP is an entity which, with regard to transactions accepted to the OTC clearing system, acts as the central counterparty within the meaning of the Act on the Finality of Settlement in Payment Systems and Securities Settlement Systems and the Rules of Supervision of those Systems of 24 August 2001, between clearing members representing, respectively, party A (who takes a long position) and party B (who takes a short position).”;

4/ § 11 subpara. 3 shall be replaced by the following:

“3. In relations concerning mutual obligations between KDPW_CCP and clearing members which are clearing counterparties of transactions created as a result of KDPW_CCP entering the rights and obligations arising from cleared transactions referred to in § 10 subpara. 4, the obligations of KDPW_CCP arising from such relations concerning mutual obligations shall not include any accessory payments, in particular interest for delayed cash payments, liquidated damages for non-performance or undue performance of a payment.”;

5/ § 12 subpara. 4 shall be replaced by the following:

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

6/ § 13 subpara. 1 shall be replaced by the following:

“1. KDPW_CCP shall not be liable for non-performance or undue performance:

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

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

7/ § 14 - § 16 shall be replaced by the following:

“§ 14

1. The following legal entities may be participants:

1/ investment firms,

2/ domestic banks,

3/ foreign investment firms,

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

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

1/ are holders of a bank account in the Polish currency in the relevant clearing bank, and where they intend to participate in clearing in EUR – also a bank account maintained in EUR in TARGET, or have a payment agent maintaining such account in such bank or in such system, respectively, and
2/ are referred to in subpara. 1 points 1-3 and, in the case referred to in subpara. 1 point 4, provided that they are a credit institution or foreign bank within the meaning of the Banking Law – Act of 29 August 1997, or a foreign legal person, referred to in Article 115(1) of the Law.

§ 15

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

§ 16

The following types of participation status are admitted:

1/ general clearing member – where the clearing member being a financial institution referred to in § 14 subpara. 1 points 1-4 is liable in the OTC clearing system for transactions:
a/ concluded by itself on its own account and then confirmed on an electronic platform, and
b/ concluded by another entity on its own account and then confirmed on an electronic platform;
2/ individual clearing member – where the clearing member being a financial institution referred to in § 14 subpara. 1 points 1-4 is liable in the OTC clearing system for transactions concluded by itself on its own account and then confirmed on an electronic platform,
3/ non-clearing member - where the participant not being a clearing member acting with the participation type referred to in point 1 or 2 is a client of a clearing member authorised to require KDPW_CCP to perform the actions referred to in § 110a - § 110c, respectively.”;

8/ § 17 shall be deleted;

9/ § 23 subpara. 2 shall be replaced by the following:

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

1/ a list of staff involved in transaction clearing that includes their positions, telephone numbers as well as e-mail addresses,
2/ if the applicant intends to post securities referred to in § 79 subpara. 3 point 1-3 as margins or contributions to the OTC guarantee fund:
a/ a declaration providing the identifier of the applicant in the relevant settlement system or designating an entity that will perform the role of settlement agent for the applicant and the identifier of that entity in the relevant settlement system,
b/ a declaration of the entity indicated by the applicant according to letter (a) that intends to perform the functions of settlement agent, providing its consent to perform these functions for the applicant and undertaking to perform these functions in the duration of availability of the systems in which these functions are performed,”;

10/ § 24a shall be replaced by the following:

“§ 24a

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

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

11/ § 41 shall be replaced by the following:

“§ 41

1. If a transaction concluded or confirmed on an electronic platform, which has been registered in the OTC clearing system, is inconsistent with the contents of the clearing instruction entered to the OTC clearing system or with the provisions of the rules, of which KDPW_CCP did not know and could not know despite exercising due care at the time of registration of the transaction, this shall mean that:

- 1/ the transaction has not been accepted to the OTC clearing system,
- 2/ the clearing member and KDPW_CCP have at such time entered into a legal relationship whose contents are consistent with the contents of the instruction and the provisions of the rules. In that case, the clearing instruction shall constitute a declaration of will of the clearing member consenting to enter such legal relationship.

2. Payments arising from a transaction shall be made according to the rules set out by the entity which operates the relevant payment system to which KDPW_CCP sends the transaction settlement order.”;

12/ § 42 subpara. 1 shall be replaced by the following:

“1. After the time of novation:

- 1/ netting of payments between KDPW_CCP and the clearing counterparties of transactions shall only be allowed under the terms set out in the rules,
- 2/ the entity exclusively authorised to determine the net credits and debits shall be KDPW_CCP, subject to § 115 subpara. 1 and subject to the regulations of the payment system to which the settlement order concerning such payments is sent.”;

13/ § 44 shall be deleted;

14/ § 45 shall be replaced by the following:

“§ 45

In organising and operating the OTC clearing system, KDPW_CCP shall:

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

- 2/ calculate the amounts of cash and non-cash payments that clearing counterparties of transactions or KDPW_CCP are obliged to meet,
- 3/ maintain the account system,
- 4/ register in clearing accounts positions arising from transactions that are to be cleared and operations related to such positions,
- 5/ submit reports of derivative transactions to the relevant trade repository where the participant has designated, according to the rules and the Detailed Rules of the OTC Clearing System, KDPW_CCP as the entity to submit such reports,
- 6/ within the scope defined in the rules, organise and manage the transaction clearing liquidity guarantee system,
- 7/ depending on the result of calculations referred to in point 2, send settlement orders to the payment system or transfer orders to the relevant clearing bank.”;

15/ § 48 shall be replaced by the following:

“§ 48

KDPW_CCP may refuse acceptance of a transaction for clearing in the OTC clearing system where:

- 1/ a party concluding the transaction is not a clearing counterparty for such transaction or has no clearing member representing it in clearing to such extent,
- 2/ a clearing instruction, the terms of the transaction determined on its basis, derivative instruments or securities concerned by the transaction do not fulfil the requirements set out in the rules and the Detailed Rules of the OTC Clearing System,
- 3/ the electronic platform is not designated by KDPW_CCP or does not fulfil the requirements set out in the rules and the Detailed Rules of the OTC Clearing System and in the agreement concluded with KDPW_CCP,
- 4/ the collateral limit set for the clearing member has been breached and it has not adjusted the margin within the time limit according to § 87 subpara. 3,
- 5/ in the event referred to in § 87 subpara. 6 and 7,
- 6/ conditions which give rise to occurrence of an event of default occur on the part of the participant which is a clearing counterparty of the transaction,”;

16/ § 49 subpara. 1 shall be replaced by the following:

“1. KDPW_CCP shall make cash payments in respect of participation in the OTC clearing system in a given currency:

- 1/ directly, by submitting settlement orders to the relevant payment system, including a system that is a part of TARGET, or transfer orders to the relevant clearing bank, or
- 2/ through the agency of a payment agent that submits settlement orders to the relevant payment system, including a system that is a part of TARGET, or transfer orders to the relevant clearing bank.”;

17/ § 54 subpara. 2 shall be replaced by the following:

“2. A clearing member shall define the attributes of clearing accounts maintained for it, in particular the client identification number. The client identification number shall be assigned to a client of such participant or a group of clients of such participant on the basis of an instruction submitted by the

participant which intends to open a clearing account. If a participant's client already has an appropriate identifier in the clearing system operated by KDPW_CCP for transactions executed in organised trading, the participant shall define in the OTC clearing system the same attribute of the clearing account in which transactions executed by the client or on the client's account will be registered, unless it applies for a client identification number for a group of clients including such client.”;

18/ § 57 subpara. 3 shall be deleted;

19/ § 59 subpara. 7 shall be deleted;

20/ § 60 shall be replaced by the following:

“§ 60

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

1/ respectively, debiting or crediting the bank account maintained by the relevant clearing bank on the basis of a settlement order submitted to the relevant payment system or a transfer order submitted to the relevant clearing bank, or

2/ where the result of netting does not require the submission of a settlement order or a transfer order referred to in point 1 – at the time of registration in clearing accounts of the balance resulting from clearing performed by KDPW_CCP for such transactions and notification of the clearing members for which the accounts are maintained of the records in such accounts.”;

21/ § 62 shall be replaced by the following:

“§ 62

As part of the marking to market of transactions where a settlement amount is determined under the terms of the transaction, KDPW_CCP shall determine the party that on the given day, under the terms of the transaction determined according to the Detailed Rules of the OTC Clearing System is, respectively, entitled to receive the settlement amount or obliged to deliver the settlement amount. The provisions of § 49 shall apply accordingly.”;

22/ § 64 subpara. 2 shall be replaced by the following:

“2. KDPW_CCP shall determine in the Detailed Rules of the OTC Clearing System the number of clearing sessions, if more than one session is organised on each day, as well as the duration of a clearing session on each day in which transaction clearing is performed in the OTC clearing system.”;

23/ § 65 shall be replaced by the following:

“§ 65

A clearing instruction introduced to the OTC clearing system shall not be withdrawn from the system once it has been delivered to the system.”;

24/ § 66 - § 67 shall be deleted;

25/ § 70a subpara. 10 shall be replaced by the following:

“10. KDPW_CCP may refuse to execute a transfer of positions or a transfer of positions and collateral, respectively, where:

- 1/ it has identified an event of default on the part of either of the clearing members referred to in subpara. 2, or
- 2/ prior to concluding that the instructions referred to in subpara. 2 match, a relevant instruction has been sent to the clearing bank or to the relevant payment system, including a system which is a part of TARGET, 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 settlement instruction has been sent to another system for the positions being transferred or assets used as collateral for such positions, or
- 4/ the instructions referred to in subpara. 2 were delivered after the end of the clearing session on the day when the transfer of positions or the transfer of positions and collateral, respectively, is to be executed according to the content of such instructions, or
- 5/ as a result of their execution, the balance of liabilities of either participant submitting the instructions referred to in subpara. 2 would exceed the collateral limit.”;

26/ § 73 shall be replaced by the following:

“§ 73

In the transaction clearing liquidity guarantee system, KDPW_CCP shall:

- 1/ collect and manage assets that form margins,
- 2/ collect and manage assets that form the OTC guarantee fund,
- 2a/ determine the amount of variation margin and the amount of entitlements from such margin,
- 3/ monitor risks arising from transactions accepted for clearing and take actions aiming to mitigate such risks,
- 4/ provide the service of closing positions on demand within the scope defined in these rules and the Detailed Rules of the OTC Clearing System,
- 5/ perform the auction operation within the scope defined in these rules and the Detailed Rules of the OTC Clearing System,
- 6/ take actions aimed to make payments arising from the clearing of transactions in case of:
 - a/ non-execution of cash payments arising from transaction clearing within the time limit determined by the parties to the transaction,
 - b/ occurrence of an event of default which justifies immediate termination of the agreement.”;

27/ § 76 shall be deleted;

28/ § 82 subpara. 2 shall be replaced by the following:

“2. The value of the initial margin required from a participant shall be calculated using the risk parameters determined in accordance with the Detailed Rules of the OTC Clearing System in relation to the participant’s obligations arising from transactions whose clearing is secured by the margin (participant exposure) in order to:

- 1/ cover the participant’s potential future exposure following the identification of the participant’s

event of default,

2/ reflect the participant's current exposure resulting from actual market price movements,

3/ cover risks arising from the liquidity of financial instruments and concentration of positions to the extent of the participant's exposure.";

29/ in § 87:

a/ subpara. 1 shall be replaced by the following:

"1. KDPW_CCP shall monitor risks arising from transactions accepted for clearing among others by means of:

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

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

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

b/ subpara. 8 shall be deleted;

30/ § 89 shall be deleted;

31/ § 95 subpara. 1 shall be replaced by the following:

"1. KDPW_CCP may suspend the performance of actions for a clearing member in the service of closing positions on demand if KDPW_CCP finds that the conclusion of the transaction for the opposite position will cause the collateral limit set for the participant to be exceeded.";

32/ § 98 subpara. 1 shall be replaced by the following:

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

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

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

3/ the derivative instrument concerned by the transaction shall correspond to the kind and parameters of the derivative instrument concerned by the affected transaction.";

33/ § 100 shall be replaced by the following:

"§ 100

If a settlement order submitted to the relevant payment system in order to make a cash payment arising from the clearing of a derivative transaction or a transfer order delivered according to the

agreement with the relevant clearing bank for that purpose has not been executed in due time due to a lack of coverage in the bank account of the defaulting participant or the payment agent designated by it maintained in the relevant clearing bank or in TARGET, KDPW_CCP shall submit settlement orders for the affected transaction in such a way that the outstanding obligations of the participant can be performed using its cash credits arising from such transactions. In that case, the credits shall be netted against the outstanding obligations of the participant.”;

34/ § 101 shall be deleted;

35/ § 102 shall be replaced by the following:

“§ 102

1. Where the defaulting participant fails to ensure, on the day when its cash obligations arising from the clearing of transactions are due to be performed, coverage in the relevant bank account maintained by the relevant clearing bank or in TARGET, necessary to perform in due time, respectively, a settlement order in the relevant payment system, including a system that is a part of TARGET, or a transfer order in the relevant clearing bank or in TARGET, KDPW_CCP shall, on that day, take actions necessary to make the cash payment arising from the clearing of a derivative transaction to the participant affected by default. The defaulting participant may not demand from KDPW_CCP the payment resulting from the content of such instruction.
2. Where margins posted by the defaulting participant referred to in subpara. 1 prove insufficient, its cash obligations shall be performed in the following order:
 - 1/ using the contribution paid in by the participant to the OTC guarantee fund,
 - 2/ using the dedicated resources I in the amount calculated according to § 78a subpara. 2 and 3,
 - 3/ using the remaining assets of the OTC guarantee fund, subject to § 107a,
 - 4/ using the dedicated resources II in the amount calculated according to § 78a subpara. 2a and 3.
3. If it is necessary to use the margins posted by the defaulting participant in accordance with subpara. 1 and 2, such margins shall be used in the following order, where KDPW_CCP reserves the possibility to use the assets in a different order:
 - 1/ initial deposit, and then
 - 2/ initial margin.
4. KDPW_CCP shall not be liable to the extent that the cash obligations of the defaulting participant have been performed using margins and the assets of the OTC guarantee fund.”;

36/ § 103 shall be deleted;

37/ § 104 subpara. 3 shall be replaced by the following:

“3. Positions referred to in subpara. 1 shall be closed using assets posted by the participant as margins, subject to § 102 subpara. 3. Where such assets prove insufficient, such positions shall be closed using assets contributed to the OTC guarantee fund and own assets of KDPW_CCP in the order and in the amount set out in § 102 subpara. 2. Where these assets are also insufficient, the positions shall be closed according to § 108 a subpara. 1 and § 109 subpara. 1-3.”;

38/ § 105 - § 106 shall be deleted;

39/ § 107 shall be replaced by the following:

“§ 107

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

40/ § 108 shall be deleted;

41/ § 109 shall be replaced by the following:

“§ 109

1. Where actions of KDPW_CCP described in the preceding provisions of this Section do not result in performance of the obligation arising from the clearing of a derivative transaction, KDPW_CCP shall be obliged to perform such obligation using its own assets to the extent that it is not performed despite such actions, subject to § 108a and § 108b.
2. Only participants affected by default who are the other clearing counterparty of the affected transaction shall be creditors of KDPW_CCP in respect of the obligation referred to in subpara. 1 and in § 78a.
3. The obligation of KDPW_CCP referred to in subpara. 1 and in § 78a shall not include any accessory payments, in particular interest for a delayed cash payment or compensation for damage or harm suffered as a result of non-performance in due time of an obligation arising from the clearing of a derivative transaction.”;

42/ § 110 shall be replaced by the following:

“§ 110

1. Where actions referred to in the preceding provisions of this Section are performed using own assets of KDPW_CCP:
 - 1/ where such assets have been used to perform actions referred to in § 102 subpara. 1, § 104 subpara. 1, § 107 subpara. 1, KDPW_CCP shall be entitled to claim reimbursement of such assets from the defaulting participant, or
 - 2/ KDPW_CCP shall be entitled to claim from the defaulting participant reimbursement of costs or compensation for losses incurred as a result of actions taken as referred to in the preceding provisions of this Section, in particular reimbursement of incurred charges arising from public law made as a result

of such actions, broker's fees and other direct costs.

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

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

43/ in § 110b:

a/ subpara. 4 shall be deleted;

b/ subpara. 13 shall be replaced by the following:

“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 and assets used as collateral for such positions has been sent to another system and it cannot be effectively recalled from the system, or

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

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

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

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

44/ § 111 subpara. 1 shall be replaced by the following:

“1. A participation agreement may be terminated:

- 1/ on the basis of a declaration of a clearing member, effective two weeks from the date of the request, subject to subpara. 2-6,
- 2/ by agreement of the parties,
- 3/ on the basis of a declaration of KDPW_CCP, effective immediately, in case of occurrence of an event of default,
- 4/ subject to subpara. 4-6, on the basis of a declaration of a clearing member, effective immediately, in case of occurrence of any of the following events:
 - a/ KDPW_CCP has not made a payment in accordance with the rules in respect of making a clearing payment determined as a result of the clearing of a transaction in the OTC clearing system within 45 calendar days after the day on which KDPW_CCP becomes obliged to make the payment to the clearing member affected by default, referred to in § 102 subpara. 1, respectively, provided that the obligation to make such payment has not expired and has not been terminated with the consent of the clearing member that is the creditor, the time limit of such obligation has not changed with the consent of such clearing member, it has not been cancelled and has not expired due to statute of limitation,
 - b/ bankruptcy of KDPW_CCP has been declared or a motion for bankruptcy has been dismissed because the assets of KDPW_CCP are insufficient to pay the cost of the procedure or are only sufficient to pay such cost,
 - c/ the Management Board or the liquidator of KDPW_CCP has filed a motion for declaration of bankruptcy of KDPW_CCP,
 - d/ an entity which is a creditor of KDPW_CCP has filed a motion for declaration of bankruptcy of KDPW_CCP and at least one of the following conditions is met at the same time: the motion has not been withdrawn, dismissed, returned or rejected within 60 calendar days after its submission for reasons other than those listed in Article 13 of the Bankruptcy Law of 28 February 2003,
 - 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 of 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.”;

45/ § 113 subpara. 1 shall be replaced by the following:

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

- 1/ terminate the participation agreement concluded with the participant effective immediately (cancellation of participation), together with transactions accepted for clearing for which the participant is a clearing counterparty, effective as of the time determined according to subpara. 2, and
 - a/ close positions registered in clearing accounts maintained for the participant by means of the auction operation,
 - b/ perform the actions referred to in § 100 et seq.,

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

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

46/ § 121 subpara. 2 shall be replaced by the following:

“2. A threat referred to in subpara. 1 point 1 occurs specifically where the financial situation of the participant arouses doubts as to the participant’s ability to meet obligations arising from transaction clearing in a timely manner or where the participant is in breach of the legal regulations governing the operation of the OTC clearing system or the provisions of the rules governing the transaction clearing liquidity guarantee system or where, as a result of undue performance of obligations applicable to the status of clearing member, the participant is in persistent breach of reporting obligations defined in the rules.”;

47/ in the OTC Guarantee Fund Rules in Appendix 2 to the Rules:

a/ § 3 subpara. 1 shall be replaced by the following:

“1 The assets of the OTC guarantee fund may be used for the purposes of covering losses which exceed losses that shall be covered with required margins, in the cases defined in the Rules, including in particular:

1/ to meet the cash payments to the participant being the other clearing counterparty where the defaulting participant has not fulfilled the cash payment obligations arising from clearing of a transaction guaranteed by the OTC fund,

2/ to perform marking to market of transactions in derivatives covered by the OTC guarantee fund.”;

b/ Appendix 1 point I.1. shall be replaced by the following:

“1. Calculation of uncovered risk, separately for own portfolios of the clearing member (i.e., all positions arising from transactions registered in own position accounts of the clearing member) and for client portfolios (i.e., all positions arising from transactions registered in client position accounts of the clearing member), for stress-test scenarios defined by KDPW_CCP. Uncovered risk under a stress-test scenario is equal to the difference between the hypothetical loss on a portfolio (determined by KDPW_CCP as the difference between the value of the portfolio under the stress-test scenario, taking into account the additional cost of closing a position due to liquidity and concentration risk in stressed conditions, and the value of the portfolio as at the end of day in the clearing system) and the value of the initial margin requirement, provided that uncovered risk of client portfolios of clearing members has a floor value equal to zero”.

1.

§ 2

This resolution shall enter into force two weeks after its publication by the Management Board of KDPW_CCP S.A. and the Polish Financial Supervision Authority’s decision referred to in Article 49(1a)

of 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, containing this resolution attached thereto.

Tomasz Bardziłowski

Chairman of the Supervisory Board