

The Association of Global Custodians - Questionnaire - 2008 - 2009 Questionnaire

Poland- National Depository for Securities - View Record

Name	Poland- National Depository for Securities
Contact Name	Anna Zielinska
Address	ul. Ksiazeca 4 00-498 Warszawa
Country	Poland
Phone	+48 22 5379582
Fax	+48 22 6273120
E-mail	anna.zielinska@kdpw.pl
Web Site	www.kdpw.pl

SCOPE, STRUCTURE, OWNERSHIP, CAPITAL, REGULATION AND AUDIT

The purpose of this section is to understand the ownership structure and financial strength of your institution, as well as the level of regulatory and operational supervision to which it is subject.

1. Rule 17f-7, by reference to Rule 17f-4, requires that, for a depository to be eligible to hold securities of U.S. registered investment companies (such depositories hereinafter referred to as "Eligible Securities Depositories"), the depository must be a "system for the central handling of securities where all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of the securities."

In particular, are all securities of a particular class or series of any issuer that are deposited in your institution treated as fungible, and can they be transferred or pledged by bookkeeping entry without physical delivery of the securities?

Yes

2. Rule 17f-7 also requires that an Eligible Securities Depository "acts as or operates a system for the central handling of securities or equivalent book-entries in the country where it is incorporated," or "acts as or operates a transnational system for the central handling of securities or equivalent book-entries."

Does your institution: (Choose all that apply.)

Act as or operate a system for the central handling of securities or equivalent book-entries in the country where it is incorporated? (please answer 2b)

2b. Please specify the types of securities for which you act as or operate a system for the central handling of securities or equivalent book-entries:

equities: domestic and foreign shares, foreign index certificates, investment certificates, rights to shares, subscription rights, warrants, index participation units; debt instruments: T-bonds, international financial institutions bonds, central bank bonds, municipal bonds, domestic and foreign corporate bonds, convertible bonds, bonds with priorities rights, mortgage bonds; derivatives: futures contracts, options.

3. What type of legal entity is the institution? (Choose all that apply.)

Other (please answer 3a)

3a. Please explain:

Joint stock company partly owned by : - Warsaw Stock Exchange - National Bank of Poland - Ministry of State Treasury

4. Is the institution operated as a "for profit" or a "not for profit" organization?

Not for profit

5. Please provide the names of the owners and their ownership interest percentages.

33 % Warsaw Stock Exchange 33 % National Bank of Poland (Central Bank) 33 % Ministry of State Treasury

6. Please answer the following:

6a. What is the date of establishment of the depository? (DD/MM/YY)

07/11/1994

6b. What is the date that the depository's operations began? (DD/MM/YY)

16/04/1991 (until 07/11/1994 as a department of the Warsaw Stock Exchange)

7. Under what regulation or statute is the depository established and governed?

The Trading in Financial Instruments Act, Statute of the KDPW

7a. Is the regulation or statute electronically available?

Yes (please answer 7b)

7b. If regulation or statute is electronically available, please supply web address(es) here or upload document(s) in question 7c.

http://www.knf.gov.pl/en/Images/obrot_03_03_tcm21-4128.pdf

http://www.kdpw.pl/regulacje/pliki/regulacje/Statut_e.pdf

7c. Please supply document(s) here:

7d. Please provide details of the structure and composition of your Board together with their industry experience and responsibilities in governing the depository.

What are the qualifications to become a board member?

The Polish legal system (Code of Commercial Companies) provides for general requirements concerning members of company governing bodies. Qualification requirements concerning specific educational background and professional experience in a given field are set out in certain acts of law governing the operation of entities in a given sector, e.g. banks or some companies of specific character established pursuant to a separate act of law. The Act on Trading in Financial Instruments dated 29 July 2005, pursuant to which the National Depository operates, includes no such provisions with respect to the Board of a company. In such a situation, qualification requirements are set by a body authorized to appoint a Board member. Such qualification requirements depend on the assessment of the company's needs in specific cases.

7e. What are the election procedures?

The President of the Board is appointed and, as the case may be, dismissed by the General Meeting of Shareholders in a secret ballot by an absolute majority of votes (more than half of the votes cast). The General Meeting is valid and may adopt resolutions if at least half of the shares are represented. The shareholders of the company are, in equal parts: the State Treasury represented by the Minister of the State Treasury, the Warsaw Stock Exchange and the National Bank of Poland. Members of the Board, including one or more vice-presidents of the Board, are appointed, at the request of the President of the Board, by the Supervisory Board of the Depository. Such appointment takes place at the meeting of the Supervisory Board in an open vote by an absolute majority of votes cast by the members of the Supervisory Board present at the meeting. The meeting is valid if all members of the Supervisory Board have been notified of the meeting at least 5 days prior to its date and at least half of the members of the Supervisory Board are present. In order to adopt a resolution concerning the appointment or, as the case may be, dismissal of a member of the Board (as well as in other matters), such an item must be included in the agenda of a given meeting.

7f. What is maximum length of time they can serve as a board member?

Such time length is set out in the Articles of Association of the National Depository. It amounts to three years constituting joint term of office of the Board members. The mandates of all Board members expire on the day an Annual Meeting of Shareholders for the previous full financial year of serving as the member is held. Under Polish law there is no limit as to the number of terms of office, however there is a limitation as to the duration of such a term, which in joint stock companies is 5 years.

7g. Who is responsible for regulating the board members?

The number of Board members, the duration of the term of office (in accordance with the statutory norm, no shorter however than 1 year), any additional rights for the President of the Board associated with supervising the work of the Board, as well as the manner of voting, the validity of Board meetings, extension or, as the case may be, limitation of competences of the Board in accordance with the Code of Commercial Companies are set out in the Articles of Association, i.e. by shareholders acting as the General Meeting.

7h. What is the extent of their voting powers?

Each Board member has one vote. Resolutions are adopted by ordinary majority of votes. In the case of a tie, the President of the Board has the casting vote. Each Board member may have a dissenting opinion, if they vote against the resolution. Such a dissenting opinion must be written down in the resolution and legal and factual justification for it must be given.

8. Rule 17f-7 requires that an Eligible Securities Depository "is regulated by a foreign financial regulatory authority as defined under section 2(a)(50) of the Act", with section 2(a)(50) establishing that "foreign financial regulatory authority" means any (A) foreign securities authority, (B) other governmental body or foreign equivalent of a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate the participation of its members in activities listed above."

Who regulates the activities of the depository? (Choose all that apply.)

A governmental body or regulatory organization empowered to administer or enforce laws related to securities matters.

9. Please provide the name of regulatory authority(ies) identified in question 8:

The Polish Financial Supervision Authority (PFSA)

10. Rule 17f-7 requires that an Eligible Securities Depository "is subject to periodic examination by regulatory authorities or independent accountants."

Is the depository subject to periodic examination by: (Choose all that apply.)

Independent accountants?

11. What enforcement actions are available to the regulatory authority(ies) for breach of applicable statute or regulatory requirements? (Choose all that apply.)

Name of Authority #1 (please answer 11a):

The Polish Financial Supervision Authority (PFSA)

11a.

Fines, Other (please answer 11b)

11b. Please explain:

An authorized representative of PFSA shall have the right to review KDPW`s books, documents and other carriers of information; to participate in the meetings of the supervisory board and in the general meetings of shareholders of KDPW. Upon a written request of PFSA, the KDPW management board shall be obliged to convene an extraordinary general meeting of shareholders or to put any matters specified by PFSA on the agenda of the general meetings. In case the management board refuses to do it, PFSA may appeal to a court to convene an extraordinary general meeting. PFSA may order the supervisory board to adopt a resolution concerning a particular matter. PFSA may appeal to a court against any resolution of the general meeting of shareholders or supervisory board, within 30 days of the date of receiving notice of the resolution, if it violates the provisions of law, the provisions of the KDPW's statute, the rules or principles of safety of trading, or if the resolution has been adopted contrary to the provisions of law, provisions of the KDPW's statute or the rules.

Name of Authority #2 (please answer 11c):

11c.

12. Has there been any use of such enforcement actions in the last three years?

No

Capital

13. Are annual financial statements publicly disclosed?

Yes (please answer 13a)

13a. If yes, the AGC requests a copy of the institution's annual report. Is the annual report available electronically?

Yes (please answer 13b)

13b. If yes, please upload the document(s) here or insert web link(s) in question 13d:

13c. If more than one document for 13b, please upload the additional document here:

13d. Please insert web link(s) for 13b here:

http://www.kdpw.pl/informacje/pliki/inf_raporty/raport2007.pdf

Internal Audit

Questions 14 - 16 are new to the questionnaire this year. Thus, your answers from last year have not been populated for these questions.

14. Is an internal audit undertaken in your depository?

Yes (please answer 14a)

14a. If yes, what areas does the audit cover (financials, operations, etc.) and which department in your depository handles it?

The audit covers operations, compliance and partially financials areas. It is handled by the Internal Audit Department.

14b. How frequently does the internal audit occur? (Choose one.)

Two or more times a year (please answer 14d)

14d. Are the results of the internal audit publicly available?

No (please answer 14e)

14e. Please select the statement that most accurately characterizes the results of the last internal audit: (Choose one.)

No material exceptions found.

14g. Please list the date of your last internal audit performed by internal auditors and the period that the audit covered:

25 August - 16 September 2008, the audit covered the period from January 2007 to January 2008

15. Is a financial audit performed by an external party? If yes, which type of entity? (Choose all that apply.)

Yes - Audit firm (please answer 15a), Yes - Regulatory authority (please answer 15a)

15a. If yes, please state name(s) of organization(s) who undertake the financial audit.

PricewaterhouseCoopers Sp. z o. o. Tax audits performed by the Fiscal Audit Office

15b. How frequently does the financial audit occur? (Choose one.)

Annually (please answer 15e), Other (please answer 15d)

15d. If other, please explain:

The Fiscal Audit Office has a right to perform financial audit at any moment.

15e. Are the results of the financial audit publicly available?

Yes (please answer 15g), No (please answer 15g)

15g. Please select the statement that most accurately characterizes the results of the last financial audit: (Choose one.)

No material exceptions found.

15j. Please list the date of your last financial audit performed by independent external auditors and the period that the audit covered:

PricewaterhouseCoopers Sp. z o. o.: March 2008, audit covered January-December 2007 The Fiscal Audit Office: 02 April 2003 - 30 July 2003, audit covered years 2001-2002

16. Is an operational audit performed by an external party? If yes, which type of entity? (Choose all that apply.)

Yes - Regulatory authority (please answer 16a)

16a. If yes, please state name(s) of organization(s) who undertake the operational audit.

The Polish Financial Supervision Authority (PFSA)

16b. How frequently does the operational audit occur? (Choose one.)

Other (please answer 16g)

16g. If other, please explain:

An authorized representative of PFSA shall have right to enter the premises of KDPW and perform an operational audit

at any moment.

16i. Please list the date of your last operational audit performed by independent accountants and the period that the audit covered:

04 November - 21 December 2005; Audit for the period from 1 October 2004 to 30 September 2005

PARTICIPANTS AND PARTICIPATION

The purpose of this section is to understand issues relating to participation in the depository, including eligibility requirements, conditions of participation, and supervision of participants.

17. What types of entities are eligible to become participants and how many of each type are there currently? (Choose all that apply.)

Banks (please answer 17a), Brokers (please answer 17e), Foreign Institutions (please answer 17m), Other entities (please answer 17q)

17a. How many Bank participants are there currently? (then please answer 17b)

37

17b. Please select the features included in the eligibility requirements for Banks. (Choose all that apply.)

Financial Thresholds (please answer 17c), Regulatory Oversight (please answer 17c)

17c. Where can a description of the specific eligibility requirements for Bank participants be found?

The Depository`s regulations

17e. How many Broker participants are there currently? (then please answer 17f)

20

17f. Please select the features included in the eligibility requirements for Brokers. (Choose all that apply.)

Financial Thresholds (please answer 17g), Regulatory Oversight (please answer 17g)

17g. Where can a description of the specific eligibility requirements for Broker participants be found?

The Depository`s regulations

17m. How many Foreign Institution participants are there currently?

5

17n. Please select the features included in the eligibility requirements for Foreign Institution participants. (Choose all that apply.)

Financial Thresholds (please answer 17o), Regulatory Oversight (please answer 17o)

17o. Where can a description of the specific eligibility requirements for Foreign Institution participants be found?

The Trading in Financial Instruments Act, the Depository's regulations

17q. If you have selected "Other entities" above, please explain:

- Stock Exchange - Financial institutions other than banks brokers, investing their own funds on the financial instruments market - Foreign CSDs and clearing houses

17r. Indicate how many "Other entities" are currently participants?

3

17s. Please select the features included in the eligibility requirements for the participants referred to above as "Other entities". (Choose all that apply.)

Regulatory Oversight (please answer 17t)

17t. Where can a description of the specific eligibility requirements for participants described above as "Other entities" be found?

the Depository's regulations

18. Are participants required to contribute capital to the depository that would result in ownership of the depository?

No

19. Are prospective participants subject to an initial review and approval process regarding compliance with eligibility requirements?

Yes

Conditions of Participation

20. What governs the relationship between the depository and the participants? (Choose all that apply.)

Relevant law and regulation, Standard participation contract, By-laws of the depository, Rules of the depository

21. Rule 17f-7 requires that an Eligible Securities Depository "holds assets for the custodian that participates in the system on behalf of the Fund under safekeeping conditions no less favorable than the conditions that apply to other participants."

Please confirm that assets of foreign investors held by custodians as participants in the depository are held under safekeeping conditions no less favorable than the conditions that apply to other participants.

Yes

22. How does the depository notify participants of material changes to the conditions of participation? (Choose all that apply.)

By public announcement, Other (please answer 22a)

22a. Please explain:

Electronic information system

Governance of Participants

23. Who enforces compliance with the depository's conditions of participation? (Choose all that apply.)

The depository

24. What enforcement actions are available to the enforcement authority? (Choose all that apply.)

Fines, Restrictions on participation, Suspension of participation, Termination of participation, Other (please answer 24a)

24a. Please explain:

The Depository may caution a participant.

25. Has there been any such enforcement actions in the last three years?

Yes (please answer 25a)

25a. If yes, please explain, including information relative to any suspensions of depository participants:

During the past 3 years following disciplinary measures have been applied vis-a-vis 3 participants: - a fine has been applied twice (as per § 104.1 of the KDPW Rules) because of not addressing the situation resulting from contravention of the principles of participation as a result of i.a. not adjusting the participant's securities recording system to the KDPW rules requirements. - a caution (as per § 104.3 of the KDPW Rules), because of: insufficient care and diligence with respect to performance of the clearing member functions. - an imposition by the KDPW Management Board of a time limit to remedy the condition resulting from the contravention of the regulations setting out the rules for clearing derivatives transactions (as per § 104.1 of the KDPW Rules).

DEPOSITORY FUNCTIONALITY AND SERVICES; USE OF AGENTS

Certain functionalities and services reduce risk to an investor if provided in an efficient manner. The purpose of this section is to identify those functionalities that may potentially be offered by depositories and clearing systems around the world, and ascertain whether they are offered by your institution.

26. For which of the following security types do you serve as a depository or clearing system? (Choose all that apply.)

Government securities, Equities, Corporate bonds, Corporate money market instruments, Others (please answer 26a)

26a. Please name the other security types:

Securities - mortgage bonds, municipal bonds, convertible bonds, central bank bonds, international financial institution bonds, investment certificates, bonds with priorities rights, allotment certificates, structured certificates, pre-emptive rights. Other financial instruments - options, futures contracts, index participation units.

Questions 27 & 28 are new to the questionnaire this year. Thus, your answers from last year have not been populated for these questions.

27. Is the use of the depository in your market compulsory by law or compulsory by market practice for the settlement or safekeeping of all instrument types in your market (e.g. equities, government securities, corporate bonds, money market instruments, warrants, derivatives etc). (Choose all that apply.)

Yes by law for settlement of all instrument types (please answer 27a), Yes by law for safekeeping of all instrument types (please answer 27b)

27a. Please list the instrument types for which it is not compulsory by law to:

(i) settle in your depository

Treasury bills; T-Bills are settled with the Securities Register (operated by the National Bank of Poland)

(ii) safekeep in your depository:

T-Bills are safekept in the Securities Register operated by the National Bank of Poland

27b. Please list the instrument types for which it is not compulsory by market practice to:

(i) settle in your depository

Treasury bills; T-Bills are settled with the Securities Register (operated by the National Bank of Poland)

(ii) safekeep in your depository:

T-Bills are safekept in the Securities Register operated by the National Bank of Poland

28. Settlement and Safekeeping Percentages

28a. Please list by instrument type the percentage of the total market in your jurisdiction (either volume or value) settled within your institution, exclusive of your links with third parties.

100 % - for securities traded on the regulated market

28b. Please list by instrument type the percentage of the total market in your jurisdiction (either volume or value) held in safekeeping within your institution.

100 % - for securities traded on the regulated market

29. Are there any activities performed by a third party on behalf of the depository for the depository participants (e.g., vaulting of physical securities, registration, entitlement processing, etc.)?

No

30. Has any participant suffered any losses in the past three years due to the depository's performance?

No

Other Services

31. Who accepts cash deposits (or makes payment credit accommodations) for depository transactions? (Choose all that apply.)

Central Bank

32. Who processes cash clearing (or draws on credit lines, if applicable) for depository transactions? (Choose all that apply.)

Depository

33. Who controls the movement of cash for cash deposits (or draws on credit lines, if applicable)? (Choose

all that apply.)

Neither/others (please answer 33b)

33b. If others, please explain:

Payment banks, which hold cash accounts at the central bank

34. Who controls the movement of cash for cash clearing (or for draws on credit lines, if applicable)? (Choose all that apply.)

Depository

35. Please indicate services you provide. (Choose all that apply.)

In order to avoid fails, an automatic securities lending facility - if requested - is provided for. (please answer 35a), Collateral handling in support of activities including securities lending, overdraft coverage, cash management, repurchase agreements, etc. Please provide details. (please answer 35c), Same day turnaround settlements., Information on distribution of new issues (IPO, Privatization)., Other (please answer 35d)

35a. Automatic securities lending facility is provided for: (Choose all that apply.)

Other (please answer 35b)

35b. If other please explain:

banks and brokers acting as clearing members, optionally also for participants which are not clearing members and take part in post-transaction settlement

35c. Collateral Handling: please provide details:

Securities lending, derivatives instruments, repo transactions, settlement guarantee fund. For repo transactions: - collateral transferred onto purchaser's account, - collateral blocked on seller's account, - collateral blocked on purchaser's account.

35d. If other services, please explain:

The tasks of the National Depository include, in particular: registration of securities admitted to trading on the regulated market, supervising the compliance between the size of an issue with the number of outstanding securities, performing the issuers' obligations in favour of the persons entitled by virtue of the securities held, clearing and settling transactions conducted on the regulated and non-regulated markets, risk management, organising and managing the Pension Guarantee Fund, managing the compulsory Investor Compensation Scheme, processing of transfer payments between open-ended pension funds.

36. What procedures are in place for the processing of corporate action entitlements? (Choose all that apply.)

Credited to the securities account upon actual receipt by the depository.

37. What procedures are in place for the processing of interest and dividends?(Choose all that apply.)

Credited to the cash account upon actual receipt by the depository.

Linkages With Other Central Securities Depositories (CSD) or International Central Securities Depositories (ICSD)

Questions 38 - 40 are new to the questionnaire this year. Thus, your answers from last year have not been populated for these questions.

38. Please list all depositories or settlement systems to which you have an electronic link.

OeKB (Austria), KELER (Hungary), Clearstream Banking Luxembourg, Euroclear Bank, EVK (Estonia), CSDP SR (Slovakia)

39. Are procedures and controls (firewalls) in place to avoid systemic collapse or contamination if one of the linked entities should experience business interruptions for whatever reason?

Other (please answer 39a)

39a. Please explain:

The links are provided via a SWIFT workstation and there is no direct linkage between the Depository's and the other entity's systems. The workstation is secured with standard SWIFT security system.

40. Has a business interruption recovery plan been developed in the event the linkages should become inoperable for any reason?

Yes

ACCOUNT STRUCTURES AND RECORDKEEPING

The purpose of this section is to identify the nature of accounts; the naming convention is employed, the level of segregation achieved, accessibility in the event of bankruptcy and the frequency of reporting generated from them.

41. Are participants permitted to maintain more than one account at the depository?

Yes (please answer 41a)

41a. If yes, please indicate number: (Choose one.)

More than one account (please answer 41b and indicate how many)

41b. If more than one account what is the maximum?

One account for each security, for each type of participation and each type of account.

42. Are participants required/permitted to segregate assets held for their own benefit from those they hold for their clients?

Yes (please answer 42a)

42a. If yes, is segregation required or simply permitted?

Required (please answer 42b)

42b. How does segregation occur? (Choose all that apply.)

By separately designated participant accounts.

43. Does the depository permit its participants to open accounts in the participant's own nominee name(s)?

No

44. In the event a participant's single account is blocked for any reason (e.g., insolvency, penalties, violations, liens), would securities held in the account on behalf of the participant's clients be accessible:

44a. By the participant's clients?

Yes (please answer 44b)

44b. If yes, please describe briefly how clients of participants would access their securities and whether there would be any delay in their ability to do so:

Any securities charges (i.e.: liens) made on accounts managed by KDPW may only affect those accounts where the participant's own securities are registered. As a result of this a charge cannot limit access by a client of that participant to securities registered on the securities account managed by that participant. In the same way, the insolvency of a participant does not in itself lead to restriction of access by a client, since the client's securities do not make up the property of the participant, nor do they form that participant's assets. Only where the participation status of a given participant is suspended can their clients have difficulties in access to securities they own which are registered on the securities accounts managed by that participant, since during the suspension period, all accounts managed for that participant in KDPW are suspended as well (this is the fundamental nature of participation). In such case (suspension of participant) Polish Financial Supervision Authority may take a decision to transfer securities from accounts managed by this participant to another participant (who gave its consent to it), where they are immediately accessible to the clients. The same situation may arise in the event of cancellation of participation. Moreover, the same temporary difficulties can be assumed for clients of indirect participant in case of suspension or cancellation of participation for direct participant conducting activity for the latter.

44d. By the intervening authorities controlling insolvency or other proceedings?

No

44g. By the participant's creditors?

No

44j. By the depository's creditors?

No

45. In what form does the depository maintain records identifying the assets of each participant? (Choose all that apply. Please refer to "Help" for clarification.)

Computer file (please answer 45b), Computer tape (please answer 45b)

45b. In which format is the source data maintained?

IBM AS-400

46. Rule 17f-7 requires that an Eligible Securities Depository "provides periodic reports to its participants with respect to its safekeeping of assets, including notices of transfers to or from any participant's account."

Does the depository make available periodic safekeeping reports to participants, including notices of transfers to or from the participant's account?

Yes (please answer 46b)

46b. If yes, please indicate the scheduled frequency: (Choose one.)

Daily

47. What is your document retention policy for documents described in previous question? (Choose one.)

5 years

SETTLEMENTS

The purpose of this section is to identify the model of settlement employed, the relationship between cash and securities, and the basis on which participants meet their obligations.

48. The Committee on Payment and Settlement Systems of the Bank for International Settlements (BIS) has identified three common structural approaches or models for linking delivery and payment in a securities settlement system. Please indicate which model your procedures most closely resemble (Please refer to details on the models within the "Help" section located below this question): (Choose all that apply.)

Model 1 - Gross, Simultaneous Settlements of Securities and Funds Transfers. (please answer 48a), Model 2 - Gross Settlements of Securities Transfers Followed by Net Settlement of Funds Transfers. (please answer 48a)

48a. How do your settlement procedures vary from the model chosen above?

Model 1 applicable to the settlement in RTGS of transactions in T-bonds and central bank bonds and to T-bonds auction transactions

Question 48 Help:

Model 1 - Gross, Simultaneous Settlements of Securities and Funds Transfers. These systems settle transfer instructions for both securities and funds simultaneously on a trade-by-trade (gross) basis, with final (irrevocable and unconditional) transfer of securities from the seller to the buyer (delivery) occurring at the same time as final transfer of funds from the buyer to the seller (payment). The securities settlement system maintains securities accounts and funds accounts for participants. Transfer of securities and cash are made by book-entry.

Model 2 - Gross Settlements of Securities Transfers Followed by Net Settlement of Funds Transfers. These systems settle securities transfer instructions on a trade-for-trade (gross) basis, with final transfer of securities from the seller to the buyer (delivery) occurring throughout the processing cycle, but settle funds transfer instruction on a net basis, with final transfer of funds from the buyer to the seller (payment) occurring at the end of the processing cycle.

The securities settlement system maintains securities accounts for participants, but funds accounts are usually held by another entity (often a commercial bank or the central bank). Securities are transferred by book-entry, such transfer being final at the instant the entries are made on the securities settlement system's books. The corresponding funds transfers are irrevocable, but not final. During the processing cycle, the system calculates running balances of funds debits and credits, the balance being settled at the end of the processing cycle when the net debit and net credit positions are posted on the books of the commercial bank or central bank that maintains the funds accounts. Settlement of funds accounts may occur once a day or several times a day.

Model 3 - Simultaneous Net Settlement of Securities and Funds Transfers. These systems settle transfer instructions for both securities and funds on a net basis, with final transfer of both occurring at the end of the processing cycle.

Settlement may occur once a day or several times a day. The securities settlement system maintains securities accounts for participants. Funds accounts may be maintained by another entity, either a commercial bank or the central bank.

During a processing cycle, running balances of debits and credits to funds and securities accounts are calculated. All funds and securities transfers are provisional until the end of the processing cycle, at which time book-entry transfer of securities take place. If and only if all participants have sufficient balances of funds and securities, final transfers of the net securities balances and net funds balances are executed.

49. Are the cash and security movements simultaneous?

Yes

OWNERSHIP OF SECURITIES

The purpose of this section is to determine how ownership of securities is represented, the ways the depository maintains ownership or control of securities held in the depository, and the extent to which ownership of assets held by the depository is separated from the proprietary assets of the depository.

This section also considers the process by which the ownership of securities is transferred in the depository and the existence of any liens or claims on the depository securities (such as a clearing lien) that would affect the ownership of depository securities.

50. How are depository eligible securities held by the depository?

Securities in the depository are held in dematerialized form.

51. If depository eligible securities are certificated, can depository eligible securities be held outside of the depository?

Not applicable

52. If securities are dematerialized:

May dematerialized security positions be re-certificated and held outside the depository?

Yes (please answer 52a)

52a. Are the securities held: (Choose all that apply.)

Through book-entry at the depository

52d. If the securities held by the depository are recorded by book entry at the registrar, are the securities registered only to the depository, with the depository providing the function of recording ownership on a centralized basis for the market? (Choose all that apply.)

Other (please answer 52l)

52i. If the securities held with the depository are recorded by book-entry at the registrar, what are the control features at the registrar for transfer of registrar positions to and from the depository (e.g., authentication procedures, reconciliation, confirmation of position at registrar)? Please describe:

not applicable

52l. If other, please explain:

not applicable (book-entry is at the depository)

53. Rule 17f-7 requires that an Eligible Securities Depository "maintains records that identify the assets of each participant and segregate the system's own assets from the assets of participants."

Does the depository maintain records that identify the assets of each participant and segregate the system's own assets from the assets of participants?

Yes

54. Does the law protect participant assets from claims and liabilities of the depository?

Yes

55. Can the depository assess a lien on participant accounts? (A lien would entitle the depository to take and hold or sell the securities of the participant in payment of a debt.)

Yes (please answer 55a)

55a. If yes, for what reasons are liens or similar claims imposed? (Choose all that apply.)

Other (please answer 55b)

55b. Please describe:

The securities on the participant's proprietary account may be used to collateralize an automatic securities loan for the participant if the participant (borrower) fails to provide sufficient collateral. KDPW may also sell collateral to close out a loan (to buy securities to be returned to the lender) if the borrower fails to do it. Also the securities subject to transactions settled using the Settlement Guarantee Fund remain at the sole disposal of the KDPW and may be disposed of in instances where the participant fails to provide the adequate amount of receipts to the Fund.

55c. Please indicate the limits of this lien as indicated below: (Choose one.)

The lien is limited to securities in the participant's proprietary account.

55e. If a lien is placed on a participant's account which has been designated for its clients, will the depository select certain securities to be subject to the lien?

Other (please answer 55n)

55j. For accounts designated as client accounts, do procedures exist to restrict the placement of liens only to obligations arising from safe custody and administration of those accounts?

Other (please answer 55m)

55m. If other, please explain:

Not applicable

55n. If other, please explain:

Not applicable

56. Transfer of Legal Ownership

Does the depository have legal authority to transfer title to securities?

Yes (please answer 56a)

56a. When does title or entitlement to depository securities pass between participants? (Choose one.)

Other (please answer 56b)

56b. Please describe:

The title to depository securities passes in the moment of booking these securities on the securities account kept by participant. Entries in securities accounts kept by participants and arising as a result of transactions shall be made on the basis of documents proving settlement of these transactions in the KDPW.

Datasheet Progress

Part 1 Completed

The Association of Global Custodians - Questionnaire - 2008 - 2009 Questionnaire

 Poland- National Depository for Securities - View Record

Name

Poland- National Depository for Securities

HANDLING OF SECURITIES OUTSIDE THE DEPOSITORY ENVIRONMENT

The purpose of this section is to consider the process (and any risk inherent within such a process) that involves the safekeeping of client assets while they are being removed from a depository and being lodged into a depository.

57. How are eligible securities lodged in the depository system? (Choose all that apply.)

Other (please answer 57a)

57a. Please describe:

Securities are lodged into the depository system on the basis of a securities registration contract concluded by the issuer with KDPW. When KDPW registers the securities in the depository system, they become dematerialised and they exclusively exist in the form of electronic records on depository accounts managed by KDPW and securities accounts managed by its participants. The securities which were previously in the material form should be deposited with KDPW or its participant before registration. As a result of the registration any records made by KDPW or its participant for the securities deposited before in the material form become electronic records in the depository system.

58. When are securities lodged into the depository reflected in a participant's depository account? (Choose all that apply.)

Securities are reflected in the participant's depository account immediately upon delivery to the depository.

59. How long does it usually take to lodge securities with the depository? (Choose one.)

1 to 2 days

60. During the process of lodging securities into the depository, can the securities:

Be traded?

No (please answer 60c)

60a. During the process of lodging securities into the depository, can the securities:

Be settled?

No (please answer 60d)

60b. During the process of lodging securities into the depository, can the securities:

Have ownership transferred?

Other (please answer 60e)

60c. If they cannot be traded, or if you answered other, please explain:

see above

60d. If they cannot be settled, or if you answered other, please explain:

see above

60e. If ownership cannot be transferred, or if you answered other, please explain:

Rights from securities are created from the moment the securities are registered on the securities account and the owner of the securities account is entitled to these rights. These securities only exist in the form of electronic records on depository accounts and securities accounts. Trade in these securities is only possible with the registration of these securities on the securities account. However, as regards securities issued in paper form which are to be registered in KDPW, the ownership in these securities may be transferred up until the moment of their registration in KDPW. Yet, the transfer is made outside of the depository system.

61. Are securities immediately available for delivery upon transfer to the depository?

Yes

62. Please describe briefly the arrangements/procedures/facilities you maintain to ensure that eligible securities held at the depository are handled at least as efficiently as compared to securities held outside the depository, particularly in relation to income, corporate actions and proxy services.

Not applicable

63. How are eligible securities removed from the depository? (Choose one.)

Other (please answer 63a)

63a. Please specify:

The withdrawal of securities from the depository takes place when the issuer decides to do it. However, the issuer needs the approval of the PFSA to do it. Moreover, the withdrawal of equities is possible when the issuer's insolvency is declared or it cannot be declared owing to the fact that the issuer's assets are not able to cover the costs of the insolvency proceeding. As a result of the PFSA approval or the binding insolvency declaration or the binding resolution that rejects the application for insolvency because the issuer's assets are not able to cover the costs of the insolvency proceeding, KDPW indicates the date when its participants are obliged to deliver the data of the shareholders to the issuer.

64. How long does it usually take to remove securities from the depository? (Choose one.)

3 days to 1 week

65. While the securities are being removed from the depository, can they:

65a. Be traded? (Choose one)

No (please answer 65b)

65b. Please explain:

Until securities are physically issued to those entitled to them, or deposited in physical form in a bank or brokerage office, which has set up a register of securities owners, they cannot be traded. The transfer of ownership in securities in material form will require the change of holder of the document.

65c. Be settled?

No (please answer 65d)

65d. Please explain:

see 65b

65e. Have ownership transferred?

No (please answer 65f)

65f. Please explain:

see 65b

STANDARD OF CARE

The purpose of this section is to understand the responsibility and liability that the depository has in providing services to its participants/members in the settlement and clearing of securities and/or cash, and to understand what type of protections exist for participants in the event of a participant failure/default.

Depository Liability

66. Does the depository accept liability (independent of any insurance coverage) for the following:

66a. Reconciliation errors with the registrar and/or the issuer?

Yes (please answer 66b)

66b. If yes, please check all of the following that apply:

The depository assumes liability for direct losses

66e. Theft of securities (either physical certificate or electronically from accounts at the depository) from the depository?

Yes (please answer 66f)

66f. If yes, please check all of the following that apply:

The depository assumes liability for direct losses

66i. Failure of the depository's systems that result in direct damages or losses to participants because they cannot use either securities or funds?

Yes (please answer 66j)

66j. If yes, please check all of the following that apply:

The depository assumes liability for direct losses

66m. Any loss caused by the depository due to errors, omissions or fraud that cause direct damages or losses to participants?

Yes (please answer 66n)

66n. If yes, please check all of the following that apply:

The depository assumes liability for direct losses

66q. The depository acting as the central counterparty?

Other (please answer 66t)

66t. If other, please explain:

KDPW performs CCP functions for both the cash and the derivatives markets by providing cash netting, anonymity and organizing guarantee funds, although, because there is no novation concept in the Polish law, KDPW does not act as a counterparty to the transaction in a legal sense.

66u. Does the depository guaranty settlement?

Yes (please answer 66v)

66v. Please explain how this is accomplished. What are the procedures and safeguards that permit the depository to guaranty settlement?

The settlement guarantee funds administered by KDPW from participant's contributions guarantees the settlement of transactions concluded by them in the regulated market and the alternative market. It consists of functionally separate parts, of which each contains assets used for the safeguarding of the settlement of transactions concluded in specific markets or for the safeguarding of settlement of specific types of transactions. Besides, the Depository collects margins for derivatives transactions, i.e. an initial settlement margin (which determines the number of positions of a certain value the participant may take) and a maintenance margin for every position taken.

66x. Force majeure events, acts of God, or political events, etc.?

No

66+. In all cases where the depository assumes responsibility for direct or indirect or consequential losses, is the depository's liability limited by a standard of care determination?

Yes (please answer 66*)

66*. Please define the standard of care applied:

A greater degree of effort is expected from KDPW, measured by recognising the professional nature of the depository functions carried out by KDPW.

67. Do the depository's written contracts, rules, or established practices and procedures provide protection against risk of loss of participant assets by the depository in the form of?

67a. Indemnification

No

67d. Insurance

No

67g. Acknowledgement of liability for losses caused by depository's own actions.

No

67j. Other

Yes (please answer 67k)

67k. Please explain (then please answer 67l):

There is no risk of loss of assets registered on KDPW accounts. Rights to securities arise as a result of entries on securities accounts, which are in effect carried out by the participants themselves. The assets of their clients are safeguarded using a compensation scheme, which is administered by KDPW and used to pay compensation to clients in the event of the bankruptcy of a participant or fraudulent dealings by participants.

671. Please provide details of the relevant sections of the contracts, rules or practices where this information is found.

Compensation Scheme Regulation, art. 132-146 of the Trading in Financial Instruments Act, Rules of Compensation Scheme

68. Is the depository immune from legal action in its own jurisdiction?

Other (please answer 68a)

68a. If other, please explain:

According to the article 6 pt 4 of the Bankruptcy and Restitution Law the legal persons which have been established on the basis of the provisions of a Parliament Act cannot be declared bankrupt. The Depository is such a legal person.

Security Control

69. How do participants receive information (view actual settlement of trades, movement of securities on their accounts, etc.) and see the status of their accounts? (Choose all that apply.)

Other (please answer 69a)

69a. Please explain:

Participants have access to the Electronic System of the Information Distribution (ESDI)

70. Do participants have access to affect their holdings, including confirming and affirming trades, movement of securities on their accounts, etc.?

Yes (please answer 70a)

70a. How is access given to participants? (Choose all that apply.)

Other (please answer 70c)

70c. Please explain:

Participants have access to the Electronic System of the Information Distribution (ESDI)

71. Regarding data security:

71a. Are passwords used by participants to access their accounts?

Other (please answer 71b)

71b. If other, please explain:

Participants have access to the Electronic System of the Information Distribution (ESDI). Data security in ESDI is based mainly on cryptography (data encipherment), however user passwords are also used.

71c. Does each user have a unique user ID?

Yes

71e. Are passwords regularly changed?

Other (please answer 71g)

71g. If other, please explain:

Individual cryptographic keys are changed once a year. There is no need to change user passwords.

71h. Is there a user lock-out after a pre-set number of unsuccessful User ID attempts?

No

72. Does the depository communicate with other market entities such as stock exchanges, payment systems, clearing houses, etc., by secured linkages?

Yes (please answer 72a)

72a. Please explain:

Warsaw Stock Exchange, National Bank of Poland, Polish Financial Supervision Authority, MTS CeTO

73. How does the depository communicate with other market entities?

73a. Stock Exchanges (Choose all that apply.)

Secured, leased, dedicated telephone line

73b. Payment Systems (Choose all that apply.)

Secured, leased, dedicated telephone line

73c. Clearing Houses (Choose all that apply.)

Not applicable

73d. Registrars (Choose all that apply.)

Not applicable

74. How is access to the physical building controlled? (Choose all that apply.)

By guards, By electronic keys/personal ID card, By alarm system

75. What are the vault security procedures for the safekeeping of physical paper? (Choose all that apply.)

Not applicable; no vault is maintained

Participant Default Protections Resulting from a Participant Failure

76. If a participant defaults, how is the loss covered? (Choose all that apply?)

The depository guaranty fund covers the loss

77. During the past three years, has there been a situation where a participant defaulted which resulted in a significant loss?

No

78. Does the depository have a guaranty fund independent of stock exchange or other market guarantees?

Yes (please answer 78a)

78a. If yes, please respond to the following questions:

What is the size of the fund (then please answer 78b)?

The size of the cash market guarantee fund is changing. It is from 18,5 to 70,3 mln USD (average for the period January - September 2008: 38,1 mln USD). The size of guarantee fund for derivatives market is from 9,2 to 23,8 mln USD (average 17,8 mln USD for the period January-September 2008).

78b. How is the size of the fund determined? (Choose one.)

By participant volume

78d. How is the fund financed? (Choose one.)

Contributions from participants (please answer 78f)

78f. If so, what is the amount or percentage per participant?

The contribution from participant having a clearing member status is calculated on the basis of the appropriate algorithms provided in Appendices to the Settlement Guarantee Fund Rules of the NDS. The present algorithm is in force from July 2007.

78h. Who is covered by the fund? (Choose all that apply.)

Direct depository participants only

78j. When is the guaranty fund used? (Choose all that apply.)

When a direct participant defaults, Other (please answer 78k)

78k. If other, please explain:

The guaranty fund for regulated markets is also used to guarantee the return of securities borrowed through automatic

securities loans provided to avoid fails of transactions guaranteed by the fund.

79. Does the depository have forms of oversight management for assessing and monitoring of the following? (Choose all that apply.)

Participant eligibility requirements, Participant volumes, Participant financial strength, Collateral requirements for participants (please answer 79b), Settlement controls that minimize or eliminate the risk of default by a participant (please answer 79d), Other forms of risk management used for assessing and monitoring participant exposures (please answer 79i)

79b. Please explain the requirements:

Collateral taken from participants operating in the derivatives market and participating in the securities lending and borrowing system organised by KDPW.

79d. What type or types of settlement controls (Choose all that apply.)

Simultaneous DVP (please answer 79g)

79g. Please explain:

Settlement of securities is effected after the confirmation of cash settlement in the central bank.

79i. Please explain briefly how these work:

KDPW uses monitoring system for transaction and position limits. Transaction limit is calculated comparing current liabilities (i.e. margins, futures mark-to-market and options premiums) to current collateral. If transaction limit exceeds 100%, there is an alert generated and margin call sent to the participant. Position limit is used for futures contracts with physical delivery.

80. Does the stock exchange have default protections that extend to the depository, such as the following? (Choose all that apply.)

Other (please answer 80a)

80a. Please explain:

The Depository maintains a guaranty fund for stock exchange transactions.

BUSINESS RECOVERY PLAN

This section is intended to identify key aspects of the depository's Business Recovery Plan (BRP), including testing requirements and past results, expected recovery time periods, and the independent review and validation (if any) of the BRP.

81. Do you have a formal business recovery plan?

Yes (please answer 81a)

81a. Does your Business Recovery Plan include: (Choose all that apply.)

Back-up of all computer files, Off-site data storage, Back-up files stored and locked, Off-site operations facility, Other (please answer 81h)

81b. Please identify both the frequency and the last date of testing for the following third party:

Depository participants/members

once a year The last date of testing: 27-28 September 2008

81c. Please identify both the frequency and the last date of testing for the following third party:

Stock exchange

more than once a year The last date of testing: 27-28 September 2008

81d. Please identify both the frequency and the last date of testing for the following third party:

Central bank

more than once a year The last date of testing: 27-28 September 2008

81e. Please identify both the frequency and the last date of testing for the following third party:

Local brokers

once a year The last date of testing: 27-28 September 2008

81f. Please identify both the frequency and the last date of testing for the following third party:

Any other third party

Pension funds and pension societies - once a year The last date of testing: 27-28 September 2008

81h. If other, please explain:

82. How quickly can the main system be reactivated in the event of an outage? (Choose one.)

1 - 4 hours

83. If a back-up system exists, how quickly can the back-up system be activated in the event of the main system failing? (Choose one.)

1 - 4 hours

84. Will the depository publicly announce any system interruption?

Yes (please answer 84a)

84a. To whom will the depository disclose any system interruptions? (Choose all that apply.)

To the depository regulators, To all direct participants, Other (please answer 84d)

84b. If so, please list webpage address:

84d. Please explain:

In case of cash settlement disruption - National Bank of Poland. Pension funds and pension societies

84e. How will the depository disclose any system interruptions? (Choose all that apply.)

By e-mail, By telephone, Other (please answer 84f)

84f. Please explain:

Electronic System of the Information Distribution (ESDI), fax

85. In the past three years, has it been necessary to activate the recovery plan in a live situation?

Yes (please answer 85a)

85a. If yes, how much time was needed to implement the recovery plan? (Choose one.)

Less than 1 hour (please answer 85b)

85b. How much time was needed to recover and restore business to normal operations? (Choose one.)

1 - 4 hours (please answer 85c)

85c. What was the impact to the market? (Choose all that apply.)

All securities settlements took place as scheduled on the same day with good value, All cash settlements took place as scheduled on the same day with good value

PERFORMANCE, INSURANCE, AND LOSS

This section is intended to identify the level of insurance maintained by the depository, and the extent to which coverage would extend to financial loss incurred by participants and their clients, including but not limited to losses resulting from operating performance, security breaches, and employee negligence or misconduct.

86. Has there been any material loss by the depository during the past three years?

No

87. Has the depository been subject to any litigation involving a participant during the past three years?

No

88. Has the depository realized revenues sufficient to cover expenses during the past three years? (Choose one.)

Yes for all three years

89. Does the depository maintain a reserve for operating losses?

Other (please answer 89b)

89b. If other, please explain:

KDPW does not maintain the dedicated reserve capital for covering the operational losses as it is not required by the Polish regulations. There are no account reserves created for eventual operational losses. Account reserves are created only for probable losses. However KDPW does maintain supplementary and reserve capital, created by annual deductions from profit, which are dedicated to cover eventual losses.

90. Has the regulatory body with oversight responsibility for the depository issued public notice that the depository is not in current compliance with any capital, solvency, insurance or similar financial strength requirements imposed by such regulatory body?

No

90b. In the case of such a notice having been issued, has such notice been withdrawn, or, has the remedy of such noncompliance been publicly announced by the depository?

Other (please answer 90e)

90e. If other, please explain:

Not applicable

91. Does the depository have insurance for Default?

No

92. Does the depository have insurance for Fidelity?

No

93. Does the depository have insurance for Operational Errors?

No

94. Does the depository have insurance for Errors and Omissions?

No

95. Does the depository have insurance for Computer Fraud?

No

96. Does the depository have insurance for the Premises?

Other (please answer 96c)

96c. If other, please explain:

The Depository has insurance for the off-site backup location premises. The owner of the main premises building has the insurance for the building.

97. Does the depository have any other insurance?

Yes (please answer 97a)

97a. If so, what is it for?

There is an insurance for fire and other events, such as break-ins and theft, robbery and destruction, for all risks relating to fittings and portable equipment (laptop computers, portable telephones), property insurance in transit in Polish territory, civil liability as a result of managing offices.

97b. What is the amount of the coverage?

Full property insurance - reproduction value.

97c. What is the amount of the deductible?

-

98. Who is the insurance carrier? If more than one insurance carrier, please list each carrier here and provide your responses to questions 98a and 98b in corresponding order.

WARTA S.A. - Insurance company

98a. Who is the insurance carrier's parent company, if applicable? (If inapplicable, simply type n/a.)

n/a

98b. What is the term of the policy?

-

98c. Who does the insurance cover? (Choose all that apply.)

Depository

99. If you feel that you would like to provide additional details on any of the given answers, feel free to provide any additional comments here (maximum of 5,000 characters) or prepare an additional document identifying the question(s) you are commenting on and upload the document under 99a:

In 2005 KDPW implemented an operational risk management model. Measurements are held on a quarterly basis. Since 1 January 2006 a central register of operating risk events has been in operation. In 2006 KDPW started to estimate potential financial losses. The estimation is made on a quarterly basis, based on conducted operational risk measurements and actual financial data from the company's operations. This allows for optimization of the risk management strategy. Operations are under way in order to insure the company against operational risk - currently KDPW has full property insurance (buildings, equipment, computer and telecommunications systems) up to their recovery value. There's a plan to start the BBB, PI, CC and D&O insurances in the 1st. half of 2009.

99a. Upload document here:

PUBLIC AVAILABILITY

100. The AGC encourages respondents/depositories to make their answers to this questionnaire publicly available. Will you be making your response publicly available? (For additional guidance, please review the help feature to this question.)

Yes (please answer 100a)

100a. If yes, how will you be making it publicly available: (Choose all that apply.)

Web site (please answer 100b)

100b. Please provide web site address of publicly available questionnaire:

<http://www.edit.kdpw.com.pl:81/en/kdpw/publications/Pages/Questionnaires.aspx>

100j. Please be sure your contact details are updated. Your contact information is located in the first section of Part One within this questionnaire.