

## Key aspects of KDPW direct participant default procedures

**Public information issued in accordance with Article 41(2) of Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012**

### TABLE OF CONTENTS

I	DEFINITIONS .....	1
II	GENERAL .....	1
III	PARTICIPANT DEFAULT COMMITTEE .....	2
IV	MEASURES TAKEN .....	2
IV.1.	IDENTIFIED PARTICIPANT DEFAULT .....	3
IV.2.	DISTRIBUTION OF INFORMATION IN THE EVENT OF IDENTIFIED PARTICIPANT DEFAULT .....	3
IV.3.	OPERATIONAL MEASURES TAKEN IN THE EVENT OF IDENTIFIED PARTICIPANT DEFAULT .....	3
IV.4.	PERIODIC TESTING AND REVIEW OF PARTICIPANT DEFAULT RULES .....	3

#### **I Definitions**

- 1) CSDR – Regulation (EU) No 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012;
- 2) CSDR RTS 2017/392 – Commission Delegated Regulation (EU) 2017/392 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories;
- 3) Participant – KDPW direct participant;
- 4) Default – an event defined in Article 2(1)(26) CSDR (also: “participant default”);
- 5) Defaulting participant – a participant referred to in § 104(1) of the KDPW Rules;
- 6) KDPW – Krajowy Depozyt Papierów Wartościowych S.A.

#### **II General**

1. In the event of participant default, NBP provides the notification of declaration of bankruptcy or opening of restructuring of the Participant in accordance with Article 13 of the Act of 24 August 2001 on Settlement Finality in Payment and Securities Settlement Systems.
2. The procedure for notification of declaration of bankruptcy or opening of restructuring of the Participant by NBP is laid down in the Regulation of the Council of Ministers of 3 October 2014 concerning notifications given to the National Bank of Poland, the Polish Financial Supervision Authority and operators of payment and securities settlement systems.
3. KDPW's procedures relating to received notifications of declaration of bankruptcy or opening of restructuring of the Participant are laid down in § 104 of the KDPW Rules.

### **III Participant Default Committee**

1. KDPW has established a Participant Default Committee ("Committee").
2. The Committee co-ordinates internal measures taken by KDPW units in the event of participant default or threatened participant default.
3. The Committee is comprised of directors of KDPW units including:
  - 1) Director of the Operations Department,
  - 2) Director of the Surveillance Department,
  - 3) Director of the Legal Department,
  - 4) Director of the Trade Repository Department,
  - 5) Director of the Finance Department.
4. The Committee is responsible for measures taken in the event of participant default.
5. The Committee handles events which could result in participant default, in particular arising from any of the following circumstances:
  - 1) a permanent shortage of cash is identified in the participant's bank account in the clearing bank or in the bank account of the participant's paying agent, necessary to cover its debits in respect of settlement;
  - 2) the participant discontinues its operations, in whole or in part, following withdrawal of PFSA's broker licence or PFSA's securities account operator licence, withdrawal of a banking licence, opening of the participant's liquidation, or other similar events;
  - 3) it becomes known that PFSA has decided to suspend the participant or a motion has been filed with a court for declaration of bankruptcy of the participant by a member or members of its management board or other persons authorised to represent the participant.
6. In the event of participant default, the KDPW S.A. Management Board passes a resolution, on the request of the Committee, suspending its participation and indicating whether the suspension of participation concerns all or some of the activities of the participant under the participation agreement.

### **IV Measures taken**

**IV.1. Identified participant default**

1. Participant default is identified on the basis of NBP's notification to such effect, given in accordance with the Act on Settlement Finality in Payment and Securities Settlement Systems.
2. If KDPW becomes aware of any of the aforementioned circumstances which may lead to participant default, measures are taken to closely monitor the participant concerned by such circumstances. The Committee is informed of monitoring results.

**IV.2. Distribution of information in the event of identified participant default**

1. If it becomes aware of participant default, KDPW immediately informs PFSA of the type of activity and participation type of the defaulting participant under the participation agreement with KDPW and provides other information concerning material risks which may arise from the participant default. KDPW provides the information referred to in section IV.3(3) to PFSA immediately when identified.
2. Measures taken or to be taken by KDPW concerning the defaulting participant are first communicated to PFSA and the defaulting participant.
3. KDPW decisions concerning the defaulting participant are also communicated to:
  - 1) NBP,
  - 2) other participants, including CCP clearing houses and other CSDs,
  - 3) entities operating trading systems having contractual relations with KDPW,
  - 4) ESMA.

**IV.3. Operational measures taken in the event of identified participant default**

1. In the event of identified participant default, KDPW takes measures defined in § 104 of the KDPW Rules.
2. When requesting the KDPW Management Board to take measures necessary to suspend participation, the Committee takes into account an assessment of the situation of the defaulting participant.
3. When assessing the situation of the defaulting participant, the following information concerning the participant is considered without limitation:
  - 1) the total number and value of settlement orders awaiting settlement,
  - 2) the type of transactions and financial instruments concerned by the settlement orders awaiting settlement,
  - 3) the value of other debits related to participation in the depository system,
  - 4) the number of the participant's clients, if known to KDPW.

**IV.4. Periodic testing and review of participant default rules**

1. KDPW tests and evaluates the effectiveness and practicality of implemented participant default rules at least on an annual basis.

2. Test scenarios include testing parameters, in particular the participant's size, type of activity and type of participation in KDPW.
3. Test results are communicated to PFSA and NBP.
4. Summary test results and considered modifications, if any, are communicated to participants.