

**Resolution No. 18/1027/24
of the Supervisory Board of Krajowy Depozyt Papierów Wartościowych S.A.
dated 5 April 2024**

amending the Derivatives Trade Repository Rules

Pursuant to § 20 sub-para. 2 point 9 of the Statute, in conjunction with Article 48(5a)(1) of the Act on Trading in Financial Instruments of 29 July 2005 (i.e. Journal of Laws of 2023, item 646, as amended), the Supervisory Board of Krajowy Depozyt Papierów Wartościowych S.A. resolves as follows:

§ 1

The Derivatives Trade Repository Rules attached to Resolution No. 12/510/13 of the Supervisory Board of Krajowy Depozyt Papierów Wartościowych S.A. dated 16 April 2013, as amended, shall be amended as follows:

1/ in § 2:

a/ in sub-para. 1:

- points 1 and 2 shall be replaced by the following:

“1) contract/derivative contract - this shall be understood to mean a derivative instrument referred to in Article 2(5) of EMIR or a position arising from such derivative instrument;

2) counterparty - this shall be understood to mean an entity which is a party to a derivative contract reported to the trade repository;”

- points 10-13 shall be replaced by the following:

“10) KUR - this shall be understood to mean an entity having access to information of derivative contracts under the second sentence of Article 78(7) of EMIR, the participant’s consent and under a non-disclosure agreement signed with KDPW;

11) entity responsible for reporting - this shall be understood to mean an entity that is required by law to report to a trade repository on behalf of a counterparty;

12) authorised entity - this shall be understood to mean an entity authorised to communicate with the trade repository being a participant or an entity holding KUR status;

13) business day – this shall be understood to mean any day of the week other than a Saturday, Sunday or day designated by the European Central Bank as a day on which TARGET does not operate;”

b/ sub-para. 2 and 3 shall be replaced by the following:

“2. KDPW publishes information on its website concerning the following:

1) a detailed procedure of reporting to the trade repository and the procedure of correcting derivative contract reports;

2) the mode of access to trade repository data;

3) the scope and format of messages indicating that the reporting participant has been authorised by the entity responsible for reporting or by the counterparty to report on their behalf.

3. A repository participant shall report in accordance with the requirements regarding the scope, time limits and format of data reported to the trade repository set out in applicable legislation and documents published by the European Securities and Markets Authority (ESMA) pursuant to that legislation.”

2/ w § 3:

a/ sub-para. 1 shall be replaced by the following:

“1.

Eligible as a repository participant is a counterparty or an entity responsible for reporting or an entity authorised by a counterparty or by an entity responsible for reporting to report to the trade repository.”,

b/ in sub-para. 2:

- point 1 item (a) shall be replaced by the following:

“a) report to the trade repository contracts to which it is a party or to which an entity for whose reporting it is responsible is a party or report on behalf of another counterparty, including reporting contracts to which the participant is not a party,”,

- point 2 item (a) shall be replaced by the following:

“a) report to the trade repository contracts to which it is a party or report on behalf of a counterparty being the other party to that participant’s own trade,”,

- point 3 item (a) shall be replaced by the following:

“a) report to the trade repository contracts to which it is a party only on its own behalf,”,

- point 4 shall be replaced by the following:

“4) indirect repository participant – participant not reporting to the trade repository, who is a counterparty or an entity responsible for reporting, and authorised to:

a) access data of derivative contracts to which it is a party or to which an entity for whose reporting it is responsible is a party,

b) correct reported contracts to which it is a party in the mode referred to in § 14 sub-para. 2.”;

3/ in § 4:

a/ sub-para. 1 shall be replaced by the following:

“1. An entity seeking the status of repository participant shall submit a declaration of the intention to sign a relevant agreement in the form of an application addressed to KDPW in writing or electronically (as a document signed with a qualified electronic signature).”,

b/ in sub-para. 2:

- point 3 shall be deleted,

- point 4 shall be replaced by the following:

“4) a declaration to the effect that the applicant is familiar with the content of the rules and the information referred to in § 2 sub-para. 2, and that it undertakes to act in accordance with their content;”,

- after point 4, point 4a shall be added as follows:

“4a) a declaration to the effect that the applicant shall report in accordance with the requirements regarding the scope, time limits and format of data reported to the trade repository set out in applicable legislation and documents published by the European Securities and Markets Authority (ESMA) pursuant to that legislation;”,

- point 5 shall be replaced by the following:

“5) a declaration concerning the place of establishment or the fixed establishment, for which the participation agreement is concluded, within the meaning of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (Official Journal of the European Union L 77 of 23.03.2011), including the applicant’s tax identifier;”,

- point 7 shall be added as follows:

“7) a declaration indicating the counterparty status under EMIR (non-financial counterparty, financial counterparty, CCP, other counterparty).”;

4/ w § 7:

a/ the second sentence of sub-para. 1 shall be deleted,

b/ in sub-para. 2, point 4 shall be added as follows:

“4) a declaration concerning the place of establishment or the fixed establishment, for which the non-disclosure agreement is concluded, within the meaning of Council Implementing Regulation (EU) No 282/2011 of 15 March 2011 laying down implementing measures for Directive 2006/112/EC on the common system of value added tax (Official Journal of the European Union L 77 of 23.03.2011), including the applicant’s tax identifier.”;

5/ § 10 sub-para. 2 and 3 shall be replaced by the following:

“2. Available trade repository communication interfaces include:

1) for participants with the participation types GUR and ZUR - the U2A interface and the A2A interface;
2) for participants with the participation types IUR and PUR, as well as KUR – the U2A interface and the A2A interface available only through an output queue through which they can receive the type of messages dedicated to that queue.

3. The authorised entity shall gain access to the communication interfaces referred to in sub-para. 2 based on the four-character institution code assigned to it by KDPW. At the request of an authorised entity that is a participant reporting to the trade repository, KDPW may assign it more than one institution code.”;

6/ § 10a:

a/ in sub-para. 1, a sentence shall be added at the end as follows:

“The participant shall authorise at least one person to access the trade repository using the U2A interface.”,

b/ after sub-para. 2, sub-para. 2a and 2b shall be added as follows:

“2a. Within the communication channel, authenticated by the certificate referred to in sub-para. 2, KDPW shall make available a pair of communication queues separately for each direction of communication, and an output queue dedicated exclusively to the reception of dedicated messages. The communication queues shall be assigned to entities authorised by KDPW, within the scope of their permissions. Messages not received shall be removed by KDPW from the output queues 100 hours after they have been delivered to the queue.

2b. The primary channel of communication with the trade repository is the U2A interface. KDPW shall deliver all output messages via the U2A channel and, in addition, via the A2A channel if the message to which the return message is linked has been transmitted via this channel.”;

7/ § 11 sub-para. 8 shall be deleted;

8/ § 12 shall be replaced by the following:

“§ 12

1. A derivative contract report shall contain information identified in the required scope of data referred to in § 2 sub-para. 3 presented in the predetermined format.

2. Any failure to complete report fields which are required according to the required scope of data referred to in § 2 sub-para. 3 or any failure to comply with the required data format shall result in the report being rejected by the trade repository.

3. A participant shall use identification codes required by KDPW according to the required scope and format of data referred to in § 2 sub-para. 3 when reporting a derivative contract to the repository.”;

9/ after § 12, § 12a shall be added as follows:

“§ 12a

1. Reporting by a participant reporting on behalf of an entity responsible for reporting or counterparty requires prior transmission to the repository of the dedicated message referred to in § 2 sub-para. 2 point 3. The message should indicate the e-mail address of the entity granting authorisation to report

on its behalf, to which KDPW shall forward information on how the entity confirms the participant's authorisation. A participant may not start reporting until KDPW has received confirmation of the participant's authorisation.

2. In order to obtain the confirmation of the authorisation referred to in sub-para 1, KDPW shall send information to the e-mail address provided by the participant in the message referred to in sub-para. 1 regarding the need to confirm the participant's authorisation through KDPW's dedicated application. The confirmation should be made within a period not exceeding 30 days from the date of transmission by the participant of the message referred to in sub-para. 1. After this deadline, confirmation of the authorisation on the basis of this message shall not be possible.

3. The participant referred to in sub-para. 1 shall inform the entity on whose behalf it is to start reporting of the need to confirm its authorisation to KDPW.

4. KDPW may, at any time, request from the participant or directly from the entity which has given it the authorisation, information or documents confirming the existence of this authorisation. KDPW may also delete from the EMIR Transaction Repository application the relationship between the participant and the entity on whose behalf it is reporting if it becomes aware that the relationship is no longer in force.”;

10/ in § 13:

a/ sub-para. 3 and 4 shall be replaced by the following:

“3. A reporting participant shall receive a return message confirming acceptance of a report to the trade repository or a message rejecting the report no later than required by law upon a check of the notification of the report performed by KDPW.

4. Where a notification of a derivative contract report is accepted after 23:59:59 hours, the report notification shall be deemed to be accepted on the following business day.”,

b/ sub-para. 6 shall be replaced by the following:

“6. KDPW reserves the right to introduce a technical break in the operation of the application.”;

11/ § 16 shall be replaced by the following:

“§ 16

KDPW shall maintain data of a derivative contract in accordance with Article 80(3) of EMIR for 10 years from the contract termination date.”;

12/ § 17 shall be replaced by the following:

“§ 17

1. Access to data of a derivative contract shall be given only to the following:

- 1) a counterparty or an entity responsible for reporting, provided that it is a repository participant;
- 2) a repository participant reporting the contract on behalf of a counterparty or an entity responsible for reporting;
- 3) an entity holding KUR status.

2. KDPW shall give access to data of derivative contracts reported to the trade repository to the authorities authorised under Article 81(3) of EMIR.

3. Entities referred to in sub-para. 1 shall have access to information of a derivative contract from the date of notification of a made contract until the expiry of a period of 10 years from the date of its termination, exclusively using the U2A interface. The content of the reports, feedback and messages transmitted by KDPW to authorised entities shall be available in this interface within 30 days of their posting in the application.”;

13/ § 18a shall be replaced by the following:

“§ 18a

1. In order to enable a counterparty or an entity responsible for reporting to perform the obligation referred to in Article 9 of EMIR, KDPW shall verify data contained in a derivative contract to the extent

of their conformity with data provided by the other counterparty to the derivative contract to the KDPW trade repository or other trade repository.

2. KDPW shall make available information on reported derivative contracts in respect of each business day, including the reconciliation status of those contracts, as the case may be, to a counterparty that is a participant, an entity responsible for reporting that is a participant, a participant reporting on behalf of a counterparty or an entity responsible for reporting and an entity with KUR status. The scope, mode and form in which the information is made available are determined by law, the rules and the non-disclosure agreement.

3. Entities referred to in subpara. 2 shall not disclose or use such information other than in order to enable the counterparty or the entity responsible for reporting to perform the obligation referred to in Article 9 of EMIR.”;

14/ § 24 sub-para. 5 shall be replaced by the following:

“5. Liability of KDPW for compensation of losses incurred by a repository participant, an entity responsible for reporting or a counterparty in connection with any inability to accept a derivative contract report for technical reasons shall be excluded unless such loss is caused by wilful misconduct or gross negligence.”;

15/ § 31 sub-para. 3 shall be replaced by the following:

“3. If a reporting participant has active contracts in the trade repository at the effective date of termination, the participation agreement shall be terminated not earlier than the day when the last such contract is closed or the day when the details of such contracts are transferred to a trade repository other than KDPW.”;

16/ in Appendix 1 to the Rules – Table of Fees:

a/ point 1.2 in section I. Fees charged to GUR and ZUR reporting participants shall be replaced by the following:

1.2. Fee for reporting a trade or position to the repository	Fee charged on a monthly basis in arrears to a reporting participant, calculated for each new trade and for each new position recorded in the trade repository in a given calendar month on behalf of each counterparty to a contract.
1.2.1. Fee for reporting a trade or position in a contract other than that referred to in point 1.2.2 - PLN 0.046 for each trade or position	The fee amount is calculated according to the principles described in 1.2.1 and 1.2.2 for a given month is rounded down to the full PLN 0.01.
1.2.2 Fee for reporting a trade or position in an OTC contract – PLN 0.138 for each trade or position	An OTC contract is understood as a contract for which the participant populates the “Venue of Execution” field with the MIC of a market that is not a regulated market or a market of a third country considered an equivalent market.

b/ section IV. Other fees shall be replaced by the following:

IV. Other fees	
<p>4.1. Fee for a change of LEI or natural person identification code used in a report based on information obtained from another trade repository or reporting participant:</p> <p>4.1.1. in the event of a change of no more than 50,000 records – PLN 1,000</p> <p>4.1.2. in the event of a change of more than 50,000 records - PLN 1,200, increased by PLN 200 each time the number of records changed exceeds another 50,000.</p>	<p>Fee charged to the reporting participant for a particular transaction. For the purposes of the charge, the record is considered to be the field in the repository database in which the LEI being changed is entered.</p>
<p>4.2. Fee for transferring one counterparty's data to another repository:</p> <p>4.2.1. in the event of data transfers involving no more than 10,000 reports - PLN 1,000,</p> <p>4.2.2. in the event of data transfers involving more than 10,000 reports - PLN 1,200, increased by PLN 200 each time the number of reports exceeds another 10,000</p>	<p>Fee charged for data transfers carried out on the basis of a single participant instruction.</p>
<p>4.3. Fee for issuing and maintaining an institution code</p> <p>4.3.1. in the case of a participant with the status of general reporting participant, for issuing the eighth and each subsequent institution code - PLN 170</p> <p>4.3.2. in the case of a participant with the status of ordinary reporting participant or individual reporting participant, for issuing the second and each subsequent institution code – PLN 170</p>	<p>Monthly fee charged in arrears for each month the institution code is maintained, with the full amount charged for the month in which the code is issued.</p>

§ 2

1. The amendments to the Rules referred to in § 1 shall become effective on 29 April 2024, with the exception of the amendments referred to in § 1(16), which shall become effective on 1 May 2024.
2. Participants who, as at the effective date of the amendments to the Rules, report contracts to the trade repository on behalf of other entities on the basis of a reported relationship, pursuant to § 12(6) of the Rules before the amendment, shall obtain confirmations of existing reporting authorisations, pursuant to the procedure set out in § 12a of the Rules, no later than 7 June 2024. After this deadline, reporting on behalf of an entity that has not confirmed a participant authorisation shall not be possible.

§ 3

The resolution shall enter into force on the date of its adoption.

Adrian Kalisz

Chairman of the KDPW S.A. Supervisory Board