

Resolution No. 4/891/21
of the Supervisory Board of Krajowy Depozyt Papierów Wartościowych S.A.
dated 10 March 2021

amending the Derivatives Trade Repository Rules

Pursuant to § 20 sub-para. 2 point 9 of the Statute, in conjunction with Article 48 sub-para. 5a of the Act of 29 July 2005 on Trading in Financial Instruments (Journal of Laws of 2021, item 328, as amended), the Supervisory Board of Krajowy Depozyt Papierów Wartościowych S.A. hereby 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. 2, point 5 shall be added as follows:

“5) the scope and format of messages indicating the existence of a relationship between a reporting participant and a counterparty on whose behalf the participant reports to the trade repository.”;

b/ sub-para. 5-7 shall be added as follows:

“5. The provision of information concerning an amendment of the rules by email to the email address of a person authorised by a participant to have access to the trade repository application which enables the exchange of information or messages with KDPW shall be considered effective delivery to such participant.

6. If a participant does not accept an amendment of the rules, it may terminate the service agreement with KDPW subject to the terms of termination laid down in the rules.

7. If a participant does not terminate the participation agreement according to sub-para. 6, the participant shall be deemed to have accepted the amendment of the rules notified to it according to sub-para. 4-5.”;

2/ 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 signed with a qualified or advanced electronic signature.”;

b/ in sub-para. 2, point 6 shall be added as follows:

“6) a declaration whether the applicant will, in connection with obtaining the status of a trade repository participant, transfer to KDPW the details of contracts reported to a trade repository other than KDPW.”;

c/ sub-para. 4-6 shall be replaced by the following:

“4. Subject to sub-para. 5., the documents referred to in sub-para. 3 shall be submitted by the applicant in the original or a copy authenticated by the applicant’s duly authorised representatives, in writing or signed with a qualified or advanced electronic signature.

5. The applicant may submit the documents referred to in sub-para. 3 by email to an email address specified by KDPW. In that case, the applicant shall provide KDPW with a declaration naming the person authorised to submit such documents as well as that person’s email address. Such declaration shall be submitted in writing or signed with a qualified or advanced electronic signature.

6. In the case referred to in sub-para. 5, the applicant shall configure its email, including spam filters, and ensure its technical support to the extent necessary to send documents to the email address specified by KDPW. In the event of any problems with the transmission of documents, the applicant shall immediately notify KDPW of the problem and provide another email address or cancel the declaration submitted pursuant to sub-para. 5 and submit the documents pursuant to sub-para. 4.”;

3/ in § 5, sub-para. 3 shall be added as follows:

“3. Any amendment of an agreement relating to change of the type of participation shall come into force on the first day of the calendar month following the month when the KDPW Management Board passes a resolution changing the type of participation.”;

4/ § 6 sub-para. 1-2 shall be replaced by the following:

“1. A repository participation agreement shall be concluded within 10 business days from the submission of the application to KDPW provided that the application and appended documents meet the conditions specified herein. An agreement is constituted by matching declarations of the parties presented, respectively, by the applicant in the form of an application referred to in § 4 sub-para. 1 and by KDPW in the form of a resolution of the KDPW Management Board referred to in § 5 sub-para. 2.

2. Where a submitted application or appended documents require any amendment or addition, KDPW shall send to the applicant information about the required amendment or addition within 10 business days from the date of submission of the application. In that case, the time limit referred to in sub-para. 1 shall start on the day on which the applicant performed the relevant amendment or addition to the documents.”;

5/ in § 7:

a/ sub-para. 2 point 2 shall be replaced by the following:

“2) copies of powers of attorney and a sample signature card of duly authorised representatives of the applicant where the authority to represent the applicant is not entered in the document referred to in point 1;”;

b/ sub-para. 3 -5 shall be replaced by the following:

“3. Subject to sub-para. 4, the documents referred to in sub-para. 2 shall be submitted by the applicant in the original or a copy authenticated by the applicant’s duly authorised representatives, in writing or signed with a qualified or advanced electronic signature.

4. The applicant may submit the documents referred to in sub-para. 2 point 1-2 by email to an email address specified by KDPW. In that case, the applicant shall provide KDPW with a declaration naming the person authorised to submit such documents as well as that person’s email address. Such declaration shall be submitted in writing or signed with a qualified or advanced electronic signature.

5. In the case referred to in sub-para. 4, the applicant shall configure its email, including spam filters, and ensure its technical support to the extent necessary to send documents to the email address specified by KDPW. In the event of any problems with the transmission of documents, the applicant shall immediately notify KDPW of the problem and provide another email address or cancel the declaration submitted pursuant to sub-para. 4 and submit the documents pursuant to sub-para. 3.”;

6/ in § 12, sub-para. 6 shall be added as follows:

“6. For a reporting participant to report on behalf of a counterparty, a dedicated message referred to in § 2 sub-para. 2 point 5 shall first be sent to the trade repository. By transmitting such message successfully, the participant confirms that it is authorised to report on behalf of such counterparty.”;

7/ § 13 sub-para. 1 shall be replaced by the following:

“1. A contract shall be reported to the repository according to Article 9 of EMIR.”;

8/ § 17 sub-para. 3-5 shall be replaced by the following:

“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 date of archiving data of the contract, by means of available communication interfaces.

4. Data of a contract shall be archived not earlier than 12 months after the date of termination of the derivative contract.

5. Archived data of a derivative contract shall be made available upon request of an authorised entity within not more than 3 business days from the date of the request.”;

9/ § 24 sub-para. 5 shall be replaced by the following:

“5. Liability of KDPW for compensation of losses incurred by a repository participant 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.”;

10/ § 30 sub-para. 1 shall be replaced by the following:

“1. KDPW may terminate a participation agreement effective immediately (deprivation of participation) if a participant presents a risk to the proper operation of the repository or is in persistent and serious breach of obligations arising from the participation agreement.”;

11/ in § 31:

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

“1. A repository participant may terminate a participation agreement with a notice of one month effective at the end of a calendar month, subject to sub-para. 3.”;

b/ sub-para. 3 shall be added as follows:

“3. If a participant has active contracts in the trade repository at the date and time of a termination notice, 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.”;

12/ in Appendix 1 – Table of Fees, part I Participation fee:

a/ in point 1.1, the column Rules for calculating and charging fees shall be replaced by the following:

Rules for calculating and charging fees
<p>Annual fee charged in advance. Where the participation agreement is concluded in the first half of a calendar year, the fee for that year is charged in the full amount; however, where the agreement is concluded in the second half of a calendar year, the fee for that year is charged at ½ of that amount.</p> <p>The fee referred to in point 1.1.2.1. and 1.1.2.2. is calculated on the basis of a declaration, submitted not later than 15 December of the year preceding the calendar year for which the fee is to be calculated or, for entities seeking participation, before obtaining participation, concerning the declared number of counterparties on whose behalf the participant is to submit reports and the total number of trades and positions to be reported to the trade repository in each following calendar year.</p> <p>If the declared number of counterparties or the total number of trades and positions is exceeded after the participation fee is calculated for the financial period, a fee will be charged to the participant in an amount equal to the difference between the fee paid by the participant and the fee due according to point 1.1.2. of the Table of Fees.</p>

Where participation is terminated without change of the participation type in the first half of a calendar year, ½ of the fee charged for that year is refunded; however, where participation is terminated in the second half of a calendar year, no portion of the fee charged for that year is refunded.

In case of termination of participation due to change of the participation type in the first half of a calendar year, the fee for the year is charged at ½ of the amount due for the previous participation type and ½ of the amount due for the new participation type.

In case of termination of participation due to change of the participation type in the second half of a calendar year, the fee for the year is charged in the full amount for the previous participation type.

In the case of investment fund companies, funds and sub-funds managed by the company are considered a single counterparty if a link between such entities is established using LEIs in the Global LEI System.

b/ in point 1.5, the column Rules for calculating and charging fees shall be replaced by the following:

Rules for calculating and charging fees

Fee charged on a monthly basis in arrears to a reporting participant for each new trade and for each new position reported within the month, for each counterparty to a contract.

The fee calculated for each month is rounded off downwards to PLN 0.01.

The fees under point 1.5 of the Table of Fees are calculated on the basis of the participant's declaration on reporting high volumes of trades.

The fees are calculated from the first day of the month following the month when the declaration is filed.

If a participant withdraws the declaration, fees are calculated according to points 1.2 and 1.3 of the Table of Fees from the first day of the month following the month when the declaration is withdrawn. In that case, point 1.4 of the Table of Fees applies only to fees calculated after the declaration is withdrawn.

§ 2

The amendments of the Rules referred to in § 1 shall come into force 14 days after the publication of the amendments of the Rules on the KDPW website except the amendments referred to in § 1 point 1 (a) and point 6 which shall come into force on 10 April 2021.

§ 3

This Resolution shall come into force on the day of its adoption.

Adrian Kalisz

Chairman of the KDPW S.A. Supervisory Board