

**THE RULES OF OPERATION OF THE INVESTOR COMPENSATION SCHEME**  
**(Version valid as at 1 July, 2022)**

**SECTION I**  
**GENERAL PROVISIONS**

**§ 1**

The Rules of Operation of the Compensation Scheme, hereinafter the Rules, specify the detailed rules of operation of the compensation scheme referred to in Section V of the Act of 29 July 2005 on Trading in Financial Instruments.

**§ 2**

Whenever the Rules refer to:

- 1) the Act, this shall be understood to mean the Act referred to in § 1 above,
- 2) KDPW, this shall be understood to mean the joint stock company known as Krajowy Depozyt Papierów Wartościowych S.A.,
- 3) the Authority, this shall be understood to mean the Polish Financial Supervision Authority,
- 4) compensation scheme member, this shall be understood to mean:
  - a) a participant of the depository for securities within the meaning of the Act, whose membership in the compensation scheme is obligatory,
  - b) an entity other than that referred to in a), whose membership in the compensation scheme is obligatory, and which concluded an agreement for participation in that scheme with KDPW,  
as well as:
  - c) a branch of a foreign investment firm entitled to membership in the compensation scheme, where agreement for participation in that scheme was concluded with such a branch after it submitted to KDPW an application to join the compensation scheme,
- 5) average value of assets for a given period, this shall be understood to mean:
  - a) in relation to compensation scheme members being custodian banks – the average value of financial instruments traded in organised trading, registered in investors' accounts, or in omnibus securities accounts,
  - b) in relation to other compensation scheme members - the average balance of investors' funds and the average value of investors' financial instruments, or registered on omnibus securities accounts, which are calculated on the basis of data for the given period in accordance with Articles 137 subparas. 2 - 6 of the Act,
- 6) the costs of operating the compensation scheme, this shall be understood to mean the following costs covered, in accordance with Article 133.3 of the Act, from the assets of the compensation scheme:
  - a) the costs of third-party services incurred in relation to financial operations executed in connection with the management of the compensation scheme's assets, including fees and commissions charged by banks and investment firms,
  - b) the costs of auditing the annual activity report of the compensation scheme,
  - c) the costs of third-party services incurred in order to refund to compensation scheme members a surplus or excess of their contributions, in particular the cost of bank transfers made for this purpose,
  - d) the costs of third-party services incurred in order to return funds from the compensation scheme in relation to cancellation of membership in the compensation scheme, in particular the cost of bank transfers made for this purpose,
  - e) the costs of enforcement proceedings in instances referred to in the second sentence of Article 137.12 of the Act, to the extent they have not been returned,

- f) the costs of announcements referred to in Article 141.1 and in addition the costs of the publications, described in Article 145.1a of the Act,
  - g) the costs of advisory and expert legal and accounting services incurred in order to clarify issues of significance for the proper functioning of the investor compensation scheme,
  - h) the costs of third-party services incurred in order to transfer the amounts to be paid to investors as compensation, in particular the cost of bank transfers made for this purpose,
  - i) the costs of judicial proceedings initiated with the participation of KDPW as a result of claims made by investors, as described in Article 140.7 of the Act, to the extent that they have not been returned,
  - j) the costs of bankruptcy proceedings incurred in relation to payments made by KDPW in favour of the compensation scheme,
  - k) other costs or expenses incurred by KDPW in order to satisfy investors' claims or enforce amounts receivable in the compensation scheme,
  - l) the cost of the fee incurred in connection with the approval of amendments to the Rules by the Polish Financial Supervision Authority,
- 7) cancellation of membership in the compensation scheme, this shall be understood to mean the termination of the compensation scheme participation agreement as a result of satisfying the conditions for exempting a compensation scheme member from participation in the scheme, and in the case of a compensation scheme member being a branch of a foreign investment firm – as a result of excluding such a branch from the compensation scheme or its submission of a notice of termination of the compensation scheme participation agreement,
- 8) services portal, this shall be understood to mean the portal <https://online.kdpw.pl>, available via the KDPW website,
- 9) SWI participant, this shall be understood to mean an SWI participant within the meaning of the Rules of the Information Exchange System adopted by a resolution of the KDPW Management Board.

### **§ 3**

The compensation scheme shall be managed by KDPW, based on the procedures defined in the Act and in the provisions of the Rules.

### **§ 4**

Whenever a number of days is specified in the Rules, the number shall exclude all official holidays specified in the applicable regulations, and Saturdays.

### **§ 4a**

1. Subject to the provisions of sub-paragraphs 2 – 4 and 6, in order to conclude an agreement for participation in the compensation scheme, an entity shall submit to KDPW, in writing or electronically (in the form of a document signed with a qualified electronic signature), an application to join the compensation scheme, which shall be accompanied by:

- 1) a copy of a valid excerpt from the register in which the applicant is entered,
- 2) a declaration, submitted in writing or electronically (in the form of a document signed with a qualified electronic signature), on the scope of activities for which the applicant is seeking to conclude an agreement for participation in the compensation scheme,
- 3) copies of power of attorney documents in instances where the right to represent the applicant by the persons signing does not derive from the documents specified in point 1, and if the entity submits the application in writing, also cards with specimen signatures of such persons,
- 4) a statement, submitted in writing or electronically (in the form of a document signed with a qualified electronic signature), specifying a bank, which participates in the securities depository and in the inter-

bank settlement system operated by the National Bank of Poland, through which the applicant intends to make contributions to the compensation scheme.

2. The statement referred to in sub-paragraph 1.4 may be made after the compensation scheme participation agreement has been entered into, in which case the compensation scheme member must make the statement prior to its first contribution to the scheme.

3. A branch of a foreign investment firm, which has become a member of the compensation scheme as a result of submitting to KDPW an application to join the scheme under Article 136.1 of the Act, is obliged to provide the documents referred to in sub-paragraph 1 immediately on filing the application referred to in subpara. 2.

4. In the case of a compensation scheme member being a branch of a foreign investment firm, the obligation to submit the document referred to in sub-paragraph 1.2 shall be performed by submitting to KDPW a copy of the relevant license issued by the authority regulating its operation, accompanied by a written statement to the effect that the conditions for conducting brokerage activities in Poland by a foreign investment firm, as provided for under Article 117.3 of the Act, have been met, or by a document issued by the Authority or the Authority's office confirming that the Authority has been notified by the relevant foreign regulator of the foreign investment firm's intention of commencement of brokerage activities in Poland, and specifying the date of such notice.

4a. An agreement for participation in the compensation scheme shall be concluded on condition of receipt of the proper licence from the Authority by the applicant and if the applicant starts to provide services which are linked to the obligation of participation in the compensation scheme, without the requirement of obtaining a licence, on condition of fulfilment of other requirements defined by law as necessary to start to provide such services.

4b. Immediately on receipt of the licence or fulfilment of requirements necessary to start to provide services, respectively, the member of the compensation scheme shall be obliged to provide KDPW with a copy of the licence or documents confirming fulfilment of the requirements, described in 4a.

5. A compensation scheme member shall be obliged to immediately notify KDPW of any changes to the details included in the documents referred to in sub-paragraph 1 point 1, 3 and 4, as well as in sub-paragraph 4b, in particular concerning any change to the scope of its activities which is linked to the obligation of participation in the compensation scheme. The compensation scheme member shall append documents stating up-to-date information to such information provided to KDPW.

6. The requirement referred to in sub-paragraph 1 point 1 shall not apply to an excerpt from the National Court Register. However, in the event of any problems with uninterrupted access to information included in the National Court Register via a generally accessible ICT network, regardless of the reasons, KDPW may call upon a member or an entity applying for participation to provide a current excerpt from the National Court Register or a computer printout referred to in sub-paragraph 1 point 1, and make further actions conditional thereon.

#### **§ 4b**

1. The documents referred to in § 4a.1-4a.5 shall be provided to the KDPW in the original or in the form of a properly certified copy.

2. A 'properly certified copy' shall mean:

1) in relation to official documents – a copy certified as being identical to the original by an authorised official or a notary public,

2) in relation to private documents – a copy certified as being identical to the original by a notary public or, in the case of documents containing declarations made by the institution or body submitting the copy, also a copy certified as being identical with the original by an authority representing that institution or body.

3. The documents referred to in sub-paragraph 1 may also be submitted to KDPW in the form of scans prepared from the originals of those documents or their copies duly certified, provided that in

order to certify compliance with the source document the scan should be accompanied by qualified electronic signatures affixed in accordance with the representation rules of the entity submitting the scan to KDPW.

#### § 4c

1. In relations between KDPW and the members of the compensation scheme, the following information and declarations shall be sent in electronic form:

- 1) resolutions of the KDPW Management Board that define the amount of the fee on the basis of which the amount of the mandatory annual contributions to the compensation scheme is set,
- 2) the notices described in Article 137 sub-paragraph 9 of the Act,
- 3) the information described in § 9 sub-paragraph 1,
- 4) the information described in § 10 sub-paragraph 1 and 2,
- 5) the information described in § 13 sub-paragraph 3,
- 6) the information described in § 13c,
- 7) the information described in § 17 sub-paragraph 1,
- 8) the semi-annual reports on the management of the assets of the compensation scheme described in § 17 sub-paragraph 2,
- 9) the information described in § 17 sub-paragraph 4.

2. The information and declarations referred to in sub-paragraph 1 shall be transmitted and received by compensation scheme members using the U2A interface of the Compensation Scheme application accessible via the services portal.

3. Compensation scheme members who are also SWI participants may also transmit and receive the information and declarations referred to in sub-paragraph 1 points 3-6 using the A2A interface authenticated by a certificate issued under the provisions of the rules referred to in sub-paragraph 2 point 9.

4. Communication using the A2A interface referred to in sub-paragraph 3 shall take place in accordance with the terms and conditions set out in agreements concluded between KDPW and compensation scheme members who are also SWI participants, recognising the effectiveness of submitting declarations and transmitting information in electronic form.

5. The rules of gaining access to the Compensation Scheme application by a person authorised by a compensation scheme member to act on behalf of that member, the rules of opening an access account by such person, and the rules of performing the authentication process are set out in the Rules of Access to Information Systems of Krajowy Depozyt Papierów Wartościowych, adopted by a resolution of the KDPW Management Board.

6. The person referred to in sub-paragraph 5 may gain access to the Compensation Scheme application as a person authorised to:

- 1) communicate directly with KDPW on behalf of a compensation scheme member (user role), or
- 2) give other persons, who apply for access to the application as a user, authorisation to communicate directly with KDPW on behalf of the compensation scheme member, and revoke such authorisation by, respectively, granting or withdrawing access to the application (administrator role).

7. The person referred to in sub-paragraph 6 point 1 shall be a person authorised by the compensation scheme member to:

- 1) send to KDPW, on behalf of the member, information referred to in sub-paragraph 1 point 3 and 4,
- 2) receive from KDPW information referred to in sub-paragraph 1 point 1-2 and 5-9, and receive and transmit to KDPW all information and declarations made in the relationship between KDPW and the compensation scheme member. By granting an authorisation to the person referred to in sub-paragraph 6 point 1, the member acknowledges the effectiveness of the delivery of information delivered to that person at the e-mail address referred to in sub-paragraph 8.

8. Information and declarations transmitted by a compensation scheme member to KDPW using the U2A interface shall be deemed to have been delivered at the time they are effectively recorded in the

Compensation Scheme application. Information and declarations delivered by KDPW to the member shall be deemed to have been delivered at the time of sending the member an email notification that the information has been posted in the application. The e-mail address for delivery of notifications shall be the address indicated as the mailing address in the online form for granting the person referred to in sub-paragraph 6 point 1 access to the Compensation Scheme application. Such address shall be confirmed by the member as the address for delivery of notifications by submitting a declaration on granting the person referred to in sub-paragraph 6 point 1 authorisation to act on its behalf, and where access is granted by a person authorised by the member, referred to in sub-paragraph 6 point 2, such person shall confirm it by granting access to the application. KDPW shall not provide a compensation scheme member with access to archival information published in the application.

9. When accessing the Compensation Scheme application, a compensation scheme member shall authorise at least one person to act on its behalf in the application as administrator.

10. Requests to gain access on behalf of a compensation scheme member to the Compensation Scheme application as administrator shall be accepted or rejected only by KDPW, and requests to gain such access as a user shall be accepted or rejected only by a person authorised by the member to act in the application as administrator, subject to sub-paragraph 11.

11. Requests to gain access to the Compensation Scheme application on behalf of a compensation scheme member as a user, submitted by a person who is the only person authorised to act on its behalf in the application as administrator, shall be accepted or rejected by KDPW.

12. Only KDPW may revoke access of a person authorised to act in the Compensation Scheme application as administrator; access from a person authorised to act as user may be revoked by a person authorised by a compensation scheme member to act as administrator or by KDPW.

13. KDPW may order a technical break in the operation of the Compensation Scheme application.

14. If for any reason whatsoever the compensation scheme member is unable to send information in accordance with the principles described in sub-paragraph 2 or sub-paragraph 3, the member should send this information to KDPW in writing. Information communicated by the member in writing shall be deemed to have been delivered when posted at a Polish post office or, if communicated by other means, when delivered to the registered office of KDPW.

## **SECTION II PROCEDURES AND RULES GOVERNING CONTRIBUTIONS TO THE COMPENSATION SCHEME**

### **§ 5**

The resolution of the KDPW Management Board specifying the rates on the basis of which mandatory annual contributions to the investor compensation scheme are determined shall be communicated to compensation scheme members and published on the KDPW website immediately following its approval, however, not later than by the end of the calendar year preceding the year in which the contribution is to be made.

### **§ 6**

1. Contributions to the compensation scheme shall be made by crediting the KDPW account with the National Bank of Poland.

1a. In justified circumstances, at the request of a member that is not a bank performing brokerage activities, or a custodian bank, KDPW may consent to the payment being credited onto another bank account belonging to KDPW, however, such an account may not be managed by a bank belonging to the same capital group, as defined in the provisions of the Accountancy Act of 20 September 1994, to which the member making the payment belongs.

2. The payment date shall be the day on which the account referred to, respectively in subpara.1 or subpara. 1a, is credited.

## **§ 7**

The rules set forth in § 6 shall also apply in instances referred to in Article 137.9 and 137.10 of the Act.

## **§ 8**

1. KDPW shall keep a register of compensation scheme members' contributions, income from other sources specified in the provisions of the Act and of the Rules, as well as income earned thereon and profits from re-investments. In the said register, contributions made by compensation scheme members shall be divided into portions paid in respect of investors' funds and portions paid in respect of investors' financial instruments, or those registered on omnibus securities accounts.
2. The share of individual compensation scheme members in the value of profits generated on the contributions and other income from sources specified in the provisions of the Act and of the Rules shall be paid in proportion to the share of the relevant member's contributions in the total value of contributions to the compensation scheme.
3. Income generated from reinvestment shall be assigned on a pro-rata basis, according to the value of the profits assigned in accordance with subpara. 2, and the total value of these profits. 4. *[Repealed]*

## **§ 9**

1. At the latest by 10 December of each calendar year, compensation scheme members shall notify KDPW of the average value of assets for the last 11 calendar months, including information on investors' funds, the value of financial instruments held by investors, or those registered on omnibus securities accounts, and the number of investors being their clients covered by the compensation scheme, as at 30 November of that year.
2. A branch of a foreign investment firm which is a member of the compensation scheme shall in addition submit to KDPW, within the time-limit set forth in subpara.1 above, a statement specifying the amounts and the scope of cover provided by the compensation scheme operating in the country of its establishment. At the request of KDPW, the relevant member shall forthwith clarify any ambiguities in its statement.

## **§ 10**

1. At the latest by 31 January of each calendar year, compensation scheme members shall notify KDPW of:
  - 1) the amount of the annual mandatory contribution and the amount of the instalments for the first and second calendar quarter,
  - 2) the average value of assets for the period of 12 months of the previous calendar year, including the separate classification of the average balance of investors' funds and the average value of investors' financial instruments. or those registered on omnibus securities accounts
2. At the latest by 31 July of each calendar year, compensation scheme members shall notify KDPW of:
  - 1) the updated amount of the mandatory annual contribution and the amount of the instalments for the third and fourth calendar quarter,
  - 2) the average value of assets for the second half year of the previous calendar year and the first half year of the current calendar year, including the separate classification of the average balance of investors' funds and the average value of investors' financial instruments, or those registered on omnibus securities accounts.

### **§ 10a**

1. The information, described in § 9 subpara. 1 and in § 10 subpara. 1 and 2 shall be sent by compensation scheme members in a format and message structure pre-defined by KDPW. KDPW shall indicate the necessary format or message structure for the information on its website at least one month prior to the deadline set for sending this information.
2. KDPW shall determine the templates for the forms to be used to deliver the information described in § 9 sub-paragraph 1 and in § 10 sub-paragraph 1 and 2, in instances where the information cannot be transferred in the manner described in § 4c sub-paragraph 2 or 3. The provisions of the second sentence of sub-paragraph 1 shall apply accordingly with respect to the templates for these forms.

### **§ 11**

Immediately on expiry of the time-limits for making contributions to the compensation scheme, KDPW shall notify the Authority of the amounts of annual contributions referred to in § 10, as well as the amounts of instalments paid by individual compensation scheme members.

## **SECTION III PAYMENTS TO INVESTORS FROM THE COMPENSATION SCHEME**

### **§ 12**

1. Subject to sub-paragraph 2 below, payments to investors from the compensation scheme shall be made in accordance with the provisions of Articles 132, 133, 139, 140, 141, 143 and 145 of the Act, in the manner provided for therein.
2. The rules and procedures governing the payment of compensation to investors who entered into contracts with foreign investment firms conducting brokerage activities in Poland in the form of a branch shall be defined by KDPW in accordance with the provisions of Articles 136.9 - 136.12 of the Act.
3. In connection with the payments of compensation to investors, KDPW shall liaise, in accordance with the relevant provisions of the law and by exercising all due diligence required in professional trading, respectively, with the judge commissioner, official receiver, appointed manager, the management board of the compensation scheme member, general partners in limited partnerships [*spółka komandytowa*] and limited joint-stock partnerships [*spółka komandytowo-akcyjna*] being members of the compensation scheme, persons authorised to represent a compensation scheme member operating in the form of a professional partnership [*spółka partnerska*] or general partnership [*spółka jawna*], or with an institution operating a compensation scheme in the country of establishment of a compensation scheme member being a foreign investment firm conducting brokerage activities in Poland in the form of a branch, and the relevant regulator in that country.

### **§ 13**

1. The amount of any payment from the compensation scheme made in accordance with its purpose shall reduce, at the time of making such payment, the value of assets assigned in the register referred to in § 8 to the entity to which the relevant payment-triggering event described in Article 133.2 of the Act is attributable. To the extent the amount of compensation payment exceeds the value of assets assigned to that entity, it shall reduce the value of assets assigned to individual compensation scheme members, pro rata to the share of the assets assigned to individual members in the total value of the compensation scheme's assets.

2. Any payments of compensation shall reduce first the contributions to the scheme, and shall be charged to the portions of contributions calculated in accordance with the second sentence of § 8.1 pro rata to their value. The term "contributions to the scheme" in the preceding sentence means annual contributions of a compensation scheme member, as well as annual contributions made by other entities to the extent they have been assigned, under the relevant provisions of the Rules, to that compensation scheme member in the register referred to in § 8.

3. KDPW shall inform the members of the compensation scheme of the decrease in the value of the assets recorded in their name in the register, described in § 8 subpara. 1, following payments from the scheme in a given calendar month. This information shall be sent within 10 days of the end of each calendar month in which the payment was made.

**SECTION IIIa**  
**PROCEDURES AND RULES GOVERNING THE REFUND OF EXCESS ANNUAL**  
**CONTRIBUTION PAYMENTS**

**§ 13a**

1. In order to ascertain whether or not a refund of excess annual contribution payments should be made to a compensation scheme member, KDPW, each time after having obtained the information referred to in § 10.1 and 10.2., shall calculate:

1) the amount of contribution which entitles the relevant compensation scheme member to an exemption from the obligation to make annual contributions to the scheme.

2) the total amount of annual contributions made by individual compensation scheme members and annual contributions made by other entities, to the extent that such contributions are assigned, in the register referred to in § 8, to individual scheme members, as well as the extent to which the total amount of contributions has been reduced by compensation payments to investors, the costs of operating the compensation scheme and the compensation scheme management fees.

2. The amount of contribution referred to in sub-paragraph 1.1 shall be calculated on the basis of figures reported by the compensation scheme member under, respectively, § 10.1.2 or § 10.2.2, separately for investors' funds and investors' financial instruments, or those registered on omnibus securities accounts.

3. If the comparison of figures referred to in sub-paragraph 1.1 and 1.2 shows excess annual contribution payments from a compensation scheme member, KDPW Management Board shall refund the excess at the latest by the last business day of the last month of the calendar quarter in which the excess was revealed, subject to the provisions of sub-paragraphs 4 and 5.

4. The excess shall not be refunded in instances referred to in the second sentence of Article 137.20 of the Act, and if the rates for contributions to the compensation scheme are increased under Article 137.10 of the Act prior to the excess refund date.

5. If a compensation scheme member's contributions exceed the threshold for suspending the obligation to make annual contributions in respect of investors' funds or investors' financial instruments, or those registered on omnibus securities accounts only, then the resulting annual contribution excess shall be first applied against the instalment of the annual contribution payable by the compensation scheme member in respect of those assets for which the obligation to make annual contributions to the scheme was not suspended, and which is payable within the time-limit applicable, in accordance with sub-paragraph 3, to refunds of excess payments.

**§ 13b**



1. Refunds of the excess annual contribution payments shall be credited to the bank account held with the National Bank of Poland indicated by the participant in accordance with the provisions of § 4a, subpara 1.4.

1a. In justified circumstances, at the request of a member that is not a bank performing brokerage activities, or a custodian bank, KDPW may refund the excess onto another bank account indicated by the member, however, such an account may not be managed by a bank belonging to the same capital group, as defined in the provisions of the Accountancy Act of 20 September 1994, to which the member making the payment belongs.

2. The refund of the excess shall take place once the bank account, referred to respectively in subpara. 1 or subpara. 1a, is credited.

### **§ 13c**

KDPW shall notify the relevant compensation scheme member and the Authority of the existence and amounts of excess annual contribution payments in respect of investors' funds or investors' financial instruments, or those registered on omnibus securities accounts:

1) by 28 February of each calendar year, if the existence of the excess was ascertained on the basis of the information referred to in § 10.1, or

2) by 31 August of each calendar year, if the existence of the excess was ascertained on the basis of the information referred to in § 10.2.

## **SECTION IV**

### **THE MANAGEMENT OF THE COMPENSATION SCHEME ASSETS**

#### **§ 14**

The assets of the compensation scheme may only be invested in:

1) securities issued by the State Treasury or the National Bank of Poland,

2) bonds and other debt securities issued by local government institutions, public companies or other entities, if the securities issued by them, in which assets are invested, are admitted to trading on a regulated market,

3) mortgage bonds issued by mortgage banks,

4) uncertificated bank securities and deposits on bank accounts with domestic banks within the meaning of the Banking Act of 29.08.1997 [*Ustawa z dnia 29.08.1997 r. - prawo bankowe*], having equity not lower than the equivalent of the amount of € 100 million,

5) investment fund units or investment certificates admitted to trading on a regulated market if, according to the fund's constitutional rules governing the allocation of assets, at least 80% of the fund's assets must be invested in financial instruments described in sub-paragraphs 1-4.

#### **§ 15**

1. Assets of the compensation scheme may be allocated without any limits to the securities referred to in § 14.1.

2. The value of the investments referred to in § 14.2 may not be higher than 15% of the total value of the compensation scheme's assets, it being noted that the value of investments in securities issued by a single issuer may not be higher than 5% of the total value of the compensation scheme's assets.

3. The value of the investments referred to in § 14.3 may not be higher than 10% of the total value of the compensation scheme's assets in the case of mortgage bonds and 15% in the case of public covered bonds, it being noted that the value of investments in bonds issued by a single mortgage bank may not be higher than 5% of the total value of the compensation scheme's assets.

4. The value of the investments referred to in § 14.4 may not be higher, in aggregate for bank securities and deposits, than 35% of the total value of the compensation scheme's assets, it being noted that no more than 8% of the total value of the compensation scheme's assets may be deposited in a single bank.

5. The value of the investments referred to in § 14.5 may not be higher, in aggregate for investment fund units and investment certificates, than 25% of the total value of the compensation scheme's assets, it being noted that no more than 5% of the total value of the compensation scheme's assets may be invested in instruments issued by funds operated by the same investment fund company.

6. The value of non-received profits from the management of the compensation scheme's assets shall not be included in the value of the compensation scheme's assets used as the basis for calculating the limits referred to in sub-paragraphs 1-5.

#### **§ 16**

1. It shall be permissible to temporarily exceed the limits specified in § 15 if in connection with making payments from the compensation scheme, making contributions by compensation scheme members, refunding excess annual contribution payments or exercising rights attached to securities. The exceeding of the limits should not continue for longer than 30 days.

2. If, due to circumstances beyond KDPW's direct control, the limits referred to in § 15 are exceeded, KDPW shall take measures aimed at adjusting its investment activity to those limits, accordingly, in a commercially reasonable manner. The exceeding of the limits should not continue for longer than 60 days.

#### **§ 17**

1. KDPW shall notify each compensation scheme member of the amount of profits generated in a given month and assigned to the member concerned at the latest by the fifth day of the following month.

2. KDPW shall provide compensation scheme members with semi-annual reports on the management of the compensation scheme's assets, which shall include in particular information on the structure of investments and types of financial instruments purchased, as well as an itemised report of the costs of operation of the compensation scheme prepared at least at the level of detail required by the cost categories indicated in § 2 point 6 item (a)-(l). These reports shall be made available until the last day of the month following the end of each calendar half-year.

3. The information referred to in sub-paragraph 2 for the period of twelve months shall be included in the compensation scheme's activity report, which shall be drawn up, audited and approved in accordance with the provisions of the Act.

4. In particularly justified cases, KDPW may provide compensation scheme members with information indicating the costs of operating the compensation scheme incurred in a reference period shorter than the semi-annual period referred to in sub-paragraph 2. The provisions of sub-paragraph 2 concerning the scope of provided information shall apply accordingly.

### **SECTION IVa PROCEDURES FOR COMPENSATION SCHEME MEMBERS' COMPLIANCE WITH THEIR OBLIGATIONS**

#### **§ 17a**

In order to ensure the compensation scheme members' compliance with their obligations, KDPW:

1) issues, under the provisions of Article 137.12 of the Act, writs of execution against compensation scheme members who are in arrears with the payment of contributions to the compensation scheme,

and submits such writs of execution, accompanied by petitions to initiate enforcement proceedings, to law enforcement authorities,

1a) informs the Authority, according to the provisions of Art. 137, subpara. 12a of the Act, on the members of the compensation scheme obliged to make annual contributions, and the amounts of these contributions.

2) takes measures referred to in Section IVb,

3) immediately notifies the Authority of each case in which the measures referred to in Section IVb are taken against a compensation scheme member,

4) provides support for the regulatory body referred to in Article 136.3 of the Act in taking measures ensuring proper compliance by a branch of a foreign investment firm being a compensation scheme member with obligations resulting from its membership in the scheme,

5) takes other measures available under the provisions of the Act or these Rules, which may help achieve that objective.

## **SECTION IVb MEASURES FOR MAINTAINING ORDER AND DISCIPLINE**

### **§ 17b**

Measures for maintaining order and discipline shall include:

- 1) reprimands and notices for compliance with the obligation referred to in § 17c,
- 2) the fine referred to in § 17d,
- 3) interest referred to in the first sentence of Article 137.12 of the Act,
- 4) exclusion from the compensation scheme.

### **§ 17c**

In the case of a compensation scheme member's non-compliance with an obligation arising from membership in the scheme, the KDPW Management Board shall reprimand such compensation scheme member and serve a notice for compliance.

### **§ 17d**

1. If a compensation scheme member fails to submit within the deadline information or a statement referred to in § 9.1, 9.2, 10.1 or 10.2, the KDPW Management Board shall impose a PLN 5,000 fine payable to the scheme, unless conditions are satisfied for the member's membership in the compensation scheme to be cancelled.

2. The fine referred to in sub-paragraph 1 above shall not apply if the compensation scheme member concerned submits the relevant information or statement within the time limit set in the reprimand referred to in § 17c, or if the compensation scheme member notifies KDPW prior to the expiry of the time-limit for submitting the information or statement of the reasons preventing the member from complying with that obligation (provided that such reasons are uncontrollable events for which the member is not liable), demonstrates remedial action taken and specifies the expected timescale for removal and compliance.

3. The fine referred to in sub-paragraph 1 above shall be paid within 10 days of when the resolution of the KDPW Management Board imposing the same is served on the compensation scheme member.

### **§ 17e**

1. The compensation scheme member fined under § 17d.1 may submit an appeal to the KDPW Supervisory Board within 7 days of being served the relevant resolution of the KDPW Management Board. The appeal shall be submitted through the KDPW Management Board.
2. Submission of an appeal shall not prevent the enforcement of the resolution of the KDPW Management Board imposing the fine.

#### **§ 17f**

1. The Supervisory Board's resolutions concerning appeals shall be adopted not later than 3 months of the date of their submission. Resolutions adopted by the KDPW Supervisory Board shall be final.
2. A change of circumstances occurring after the KDPW Management Board has adopted its resolution shall not provide grounds for reversing the resolution. In such instances, the member concerned may apply to the KDPW Management Board to review the case.

#### **§ 17g**

The grounds for and amounts of the interest referred to in the first sentence of Article 137.12 of the Act shall be calculated in accordance with that provision.

#### **§ 17h**

The measure involving the cancellation of membership in the compensation scheme shall be applied solely to compensation scheme members being branches of foreign investment firms. The measure shall be applied in the manner defined in Article 136.3 - 136.5 of the Act.

#### **§ 17i**

1. KDPW shall immediately notify the Authority of each case in which the measures referred to in this Section are taken, and specify the relevant grounds.
2. KDPW shall notify the Authority of a compensation scheme member's compliance with the obligation the non-performance of which resulted in applying the measures defined in this Section.

### **SECTION V**

#### **CANCELLATION OF MEMBERSHIP IN THE COMPENSATION SCHEME**

#### **§ 18**

1. Subject to § 19.1, if the membership of a compensation scheme member is cancelled, the entity whose membership was cancelled shall be refunded, from the compensation scheme's assets, the amount assigned to that member in the compensation scheme's register referred to in § 8 on the day when its membership was cancelled.
2. The refund of the funds referred to in sub-paragraph 1 shall be made in cash, within three months of the occurrence of any of the events defined in Article 135.2 of the Act or any other event referred to in § 2.7. If until the day when membership of the compensation scheme is cancelled, the events described in Art. 133, subpara. 2 of the Act took place, relating to any member of the compensation scheme, the deadline described in the previous sentence shall commence from the day of the end of the compensation payments.
  - 2a. An entity whose participation in the compensation scheme has terminated shall, before the deadline for reimbursement, make a declaration to KDPW concerning its knowledge of the existence

or non-existence of claims of investors who are clients of that entity which may be subject to satisfaction from the assets of the compensation scheme.

3. The KDPW Management Board shall resolve to withhold certain funds in the compensation scheme and suspend the refund procedure referred to in subpara.1 above if, prior to effecting the refund, described in subpara.2, unsatisfied investor claims are revealed for investors who are clients of the entity whose membership has been cancelled, and which may have been satisfied using the assets of the compensation scheme. In such instances, as well as the instances described in subpara. 2, second sentence, the refund of the funds shall be performed after all such claims have been satisfied, unless the funds have been used up for that purpose.

### **§ 19**

1. The funds referred to in § 18.1 shall not be refunded if the membership in the compensation scheme was cancelled as a result of a merger of the member concerned with another entity, or as a result of company division resulting in discontinuation of the member's legal existence.

2. In instances referred to in sub-paragraph 1, the value of assets of the scheme assigned in the register referred to in § 8 to the member whose membership was cancelled on the day of such cancellation shall be assigned to the entity or entities which assumed the rights and obligations of the previously existing compensation scheme member following the merger or division, in the manner reflecting the scope of rights and obligations assumed under the membership relationship.

3. For the purposes of the settlement of profits referred to in § 8.2 and 8.3, the funds assigned to an entity under sub-paragraph 2 shall be treated as equivalent to that entity's own contributions to the compensation scheme, including for the period prior to the date of such assigning.

### **§ 19a**

1. If a compensation scheme member sells the enterprise obliged to make contributions to the scheme, it shall be presumed that the member's rights resulting from payments made prior to such sale were included in the assets of the undertaking sold, unless the contrary is expressed in the sale agreement, or - in absence of explicit provisions in the agreement - in unanimous declarations of the parties thereto.

2. If a compensation scheme member's company is divided by means of separation, where as a result of such division the enterprise obliged to make contributions to the scheme is assigned to another entity, it shall be presumed that the rights of the divided member resulting from payments made prior to such division were included in the assets of the undertaking assigned, unless the contrary is expressed in the terms of division.

3. If the presumptions referred to in sub-paragraphs 1 or 2 are not disproved, the provisions of § 19.2 and 19.3 shall apply accordingly, it being noted that the process of assigning referred to in § 19.2 shall relate to the value of assets of the compensation scheme assigned to the selling member or the divided member, and shall be carried out for the benefit of the purchasing or acquiring entity, respectively, based on balances as at the day of the sale or separation.

## **SECTION VI COMPENSATION SYSTEM MANAGEMENT FEE AND COSTS OF OPERATING THE COMPENSATION SCHEME**

### **§ 20**

1. KDPW shall charge a quarterly fee for the management of the compensation scheme set at 0.2% of the value of the shares apportioned to each participant in the registry, described in § 8, subpara. 1,

according to the balance on the last day of each calendar quarter; with respect to a participant, whose participation in the investor compensation scheme has terminated in a given calendar quarter – according to the balance on the date immediately preceding on the date of the termination of participation in the investor compensation system .

2. The amount of the fee, described in subpara. 1 cannot exceed the following values of the income allocated to a participant in a given calendar quarter, according to the provisions of § 8, subparas. 2 and 3:

1) 25% - in instances where on the date of the calculation of the fee determined according to the provisions of subpara. 1, the applicable reference price defining the interest on basic open market operations managed by the National Bank of Poland exceeds 4%;

2) 35% - in instances where on the date of the calculation of the fee determined according to the provisions of subpara. 1, the applicable reference price defining the interest on basic open market operations managed by the National Bank of Poland exceeds 1.5%, however, does not exceed 4%;

3) 50% - in instances where on the date of the calculation of the fee determined according to the provisions of subpara. 1, the applicable reference price defining the interest on basic open market operations managed by the National Bank of Poland does not exceed 1.5%.

3. The fee referred to in sub-paragraph 1 shall be collected from the assets of the compensation scheme on the first business day of the calendar quarter, which is not a Saturday, for the previous quarter; with respect to a participant, whose participation in the investor compensation scheme has terminated in a given calendar quarter –on the date of the termination of participation in the investor compensation system. The fee shall be covered first from the profits and income referred to in § 8.2 and 8.3 and second from the contributions to the compensation scheme, and shall be charged to the portions of contributions calculated in accordance with the second sentence of § 8.1 pro rata to their value.

3a. Where members sending the information, described in § 9 sub-paragraph 1, or in § 10 sub-paragraph 1 or sub-paragraph 2, do so in breach of the requirements described in § 4c sub-paragraph 2 or 3 or in the first sentence of § 10a sub-paragraph 1, on condition that the reasons for the breach are not the responsibility of KDPW, then KDPW shall levy a fee of PLN 600 for each delivery of such information.

3b. The fee described in sub-paragraph 3a shall be paid by the member not later than the 21<sup>st</sup> day of the calendar month following the month in which the member sent the information in breach of the requirements described in § 4c sub-paragraph 2 or 3 or in the first sentence of § 10a sub-paragraph 1.

4. KDPW shall charge each member a monthly fee of PLN 750 for the performance of other duties, not described in sub-paragraph 1, arising from the operation of the compensation scheme. The fee shall be calculated in an amount proportionate to the number of days in the month when the entity was a compensation scheme member.

5. The fee, described in subpara. 4, shall be paid by participants not later than the 21 day of each calendar month, in arrears for the previous month.

6. VAT shall be added to the fees, described in subpara. 1, 3a and 4, if required on the basis of the relevant legal rules in force.

## **§ 20a**

1. The cost of operating the compensation scheme shall be charged to funds assigned to individual compensation scheme members pro-rata to the share of the value of such funds in the total value of the assets of the compensation scheme. The costs shall be covered first from the profits and income referred to in § 8.2 and 8.3 and second from the contributions to the compensation scheme, and shall be charged to the portions of contributions calculated in accordance with the second sentence of § 8.1 pro rata to their value.

2. The KDPW Management Board shall submit to the KDPW Supervisory Board monthly statements on the amount and type of costs, referred to in § 2.6, incurred for the operation of the compensation scheme.

**SECTION VII  
FINAL PROVISIONS**

**§ 21**

1. In 2001, the date referred to in § 10.1 shall be 31 March.
2. The information referred to in § 9 shall first be submitted in 2001.

**§ 22**

These Rules shall come into force on the day of their approval by the Authority.