



DB Securities S.A  
EMIR Article 39(7) Clearing Member Disclosure  
Document

March 2014

*Passion to Perform*



# Clearing Member Disclosure Document

## Introduction

Throughout this document references to “we”, “our” and “us” are references to DB Securities S.A acting as clearing member for securities. References to “you” and “your” are references to the client.

## What is the purpose of this document?

To enable us to comply with our obligations as a clearing member under EMIR<sup>(1)</sup>, which requires that where we are providing services to you that involve us clearing securities through KDPW CCP S.A. , we are obliged to :

- 1) offer you a choice of an individual client account or an omnibus client account ;
- 2) publicly disclose the levels of protection and costs associated with different levels of segregation;
- 3) describe the main legal implications of different levels of segregation.

## Organisation of this document

This document is set out as follows:

1. Part One A provides some background to clearing.
2. Part One B gives information about the difference between the individual client account and the omnibus client account, explains how this impacts on the clearing of your securities and sets out some of the other factors that might affect the level of protection you receive in respect of assets provided to us as margin. In this section we present also the costs connected with selection of the account type.
3. Part One C sets out some of the main insolvency considerations.
4. Part Two provides an overview of the main variations on the different levels of segregation that the CCP offers, together with an explanation of the main implications of each, and sets out links to further information provided by the CCP.

## What are you required to do?

You must review the information provided in this document and the relevant CCP disclosures and confirm to us in writing which account type you would like us to maintain with respect KDPW\_CCP SA where we clear securities for you. We will send you a letter with the short questionnaire where you mark the account type you select and send this questionnaire back to us. If you do not send back the questionnaire within a determined timeframe, we will continue to follow up with you because your written confirmation is required and if we do not obtain it, we will continue to clear your securities, using the existing account structure.

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(1) Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories.



## Part One A: A brief background to clearing

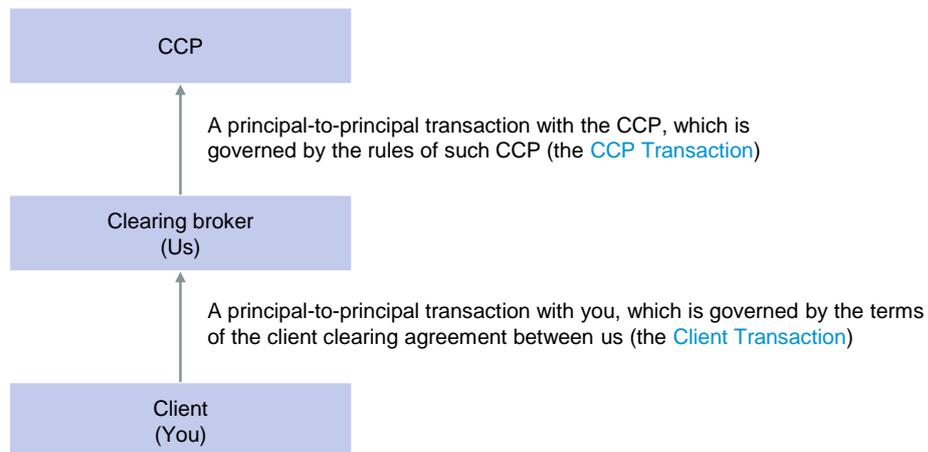
The market distinguishes two main types of clearing models:

- 1) the “agency” model and
- 2) the “principal – to – principal” model.

Our local Central Clearing Counterparty adopted the “principal – to – principal” model. According to this, this documents assumes all transactions are cleared accordingly to this model.

### The “principal – to – principal” clearing model

When clearing transactions for you through a CCP, we usually enter into two separate transactions



The terms of each Client Transaction are equivalent to those of the related CCP Transaction, except that (i) each Client Transaction will be governed by a client clearing agreement<sup>(2)</sup> between you and us and (ii) we will take the opposite position in the CCP Transaction to the position we have under the related Client Transaction.

Under the terms of the client clearing agreement between you and us, a Client Transaction will arise without the need for any further action by either you or us, as soon as the CCP Transaction arises between us and the CCP. Once both of those transactions have been entered into, your transaction is considered to be “cleared”.

As the principal to the CCP, we are required to provide assets to the CCP as margin for the CCP Transactions that relate to you and to ensure the CCP has as much margin as it requires at any time. We will therefore ask you for margin and, where you provide it in a form which we cannot transfer to the CCP, we may transform it. If you have provided us with assets as margin, you may face what we call “transit risk” - this is the risk that, if we were to default prior to providing such assets to the CCP, the assets that should have been recorded in your account at the CCP will not have been and will not benefit from the protections described below under “*What happens if we are declared to be in default by a CCP?*”.

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(2) References to “client clearing agreement” in this disclosure shall mean the agreement between you and us that governs the Client Transactions and any ancillary or related documents or agreements agreed and entered into between the parties.



However, in many cases you may not actually face transit risk because the CCPs often call margin from us early in the morning so we will often use our own funds to satisfy the margin call and then seek to recover such amount from you. In these cases, it is rather that we are exposed to you for the interim period. The arrangements between you and us relating to how the margin calls will be funded will be set out in the client clearing agreement between you and us.

If we are not a member of such CCP ourselves, we may enter into a principal-to-principal transaction with another clearing broker, instead of a principal-to-principal transaction with such CCP. Such arrangements are outside the scope of this document.

Please see Part One B for an explanation of how this is relevant to the choice of account types.

### **What happens if we are declared to be in default by a CCP?**

If we are declared to be in default by a CCP, there are two possibilities with respect to the CCP Transactions and assets related to you:

- the CCP will, at your request, try to transfer (**port**) to another clearing broker (a **back-up clearing broker**), such CCP Transactions and assets; or, if this cannot be achieved,
- the CCP will terminate the CCP Transactions that relate to you (see “*What happens if porting is not achieved*” below).

The porting process will differ depending on the CCP but it is likely to involve a close-out (with us) and a re-establishment (with the back-up clearing broker) of the CCP Transactions or a transfer of the open CCP Transactions and related assets from us to the back-up clearing broker. In some cases CCPs will support this structure legally by requiring us to grant a security interest to you over some or all of our related rights against the CCP (the **security interest**) but in other cases where CCPs can rely on EMIR and local legislation, this is not necessary.

### **Central Clearing Counterparty**

The institution responsible for clearing of the transactions executed in the Warsaw Stock Exchange, a Central Clearing Counterparty, is KDPW\_CCP S.A.

KDPW\_CCP S.A. is a modern clearing house and clears transactions using a range of mechanisms which reduce the risk of counterparty default on a systemic basis. Thanks to its new tools (including securities netting, development of the clearing guarantee system, and KDPW\_CCP S.A.’s participation in securities lending as the loan return guarantor).

The standardised solutions used by the KDPW\_CCP S.A. clearing house support dynamic development of the scope and areas of provided services. The creation of KDPW\_CCP S.A. has made a positive impact on the international position of the Polish capital market and has been welcomed by rating agencies, especially owing to reduced counterparty risk.

The implemented modifications have been strongly supported by the Polish financial market infrastructure community. The creation of KDPW\_CCP S.A. follows a decision of the Polish Financial Supervision Authority (KNF) approving the position of KDPW\_CCP S.A.’s capital in the clearing guarantee system and a cap imposed on Clearing Members’ liabilities under additional contributions to the clearing fund. The capital of KDPW\_CCP S.A. may be used to support the clearing of transactions executed on the regulated market.



## Transaction Clearing

Clearing is understood as determining the value of receivables and liabilities of the entities being the parties of transaction clearing based on the documents specifying the terms and conditions of the transaction executed on the Warsaw Stock Exchange, delivered to KDPW\_CCP SA by the Warsaw Stock Exchange.

Transaction clearing takes place on the day of its conclusion unless documents from the Warsaw Stock Exchange are delivered.

The document containing transaction's conditions may be withdrawn only by the Warsaw Stock Exchange until the time settlement instructions are sent to the Central Securities Depository.

Based on novation KDPW\_CCP SA is becoming the party of the transaction executed by you on the Warsaw Stock Exchange.

As part of the transaction clearing liquidity guarantee system, KDPW\_CCP SA:

1. collects and manages assets that form margins,
2. collects and manages assets that form the clearing guarantee fund or the relevant guarantee fund,
3. performs mark to market between parties to the transaction,

We, as a Clearing Member, are obliged to deliver margin and contributions to the the transaction clearing liquidity guarantee system. We may require from you to deliver appropriate assets to us, which might be further delivered to KDPW\_CCP S.A. We may also provide our own resources and appropriately charge you for such assets delivery.

Assets of the transaction clearing liquidity guarantee system may be used on the occurrence of an event of default of us.

## Resources of the clearing guarantee system

Resources and precautionary requirements of the clearing guarantee system and Clearing Members comprise four main pillars:

1. Financial and precautionary requirements for participants

KDPW\_CCP participants must comply with financial requirements (including a required level of equity) and precautionary requirements, regularly provide KDPW\_CCP S.A. with financial information defined in the KDPW\_CCP S.A. regulations and calculate indicators under the precautionary standards daily.

2. Margins

Margins cover the risk of clearing transactions of the participant who is responsible for their clearing. Margins are posted individually by Clearing Members.

3. Clearing fund guarantee fund

The clearing guarantee fund is used to secure the proper performance of liabilities arising from the clearing of transactions concluded on the organized market performed by KDPW\_CCP S.A.



#### 4. Own capital of KDPW\_CCP

Own capital of KDPW\_CCP amounts PLN 222.9 million (ca. EUR 54 million) and may be used in case of default of one or more participants.



## Part One B: Your choice of account type and the factors to consider

### Types of account possible to select

DB Securities S.A. offers two types of clearing accounts (both on equities and on derivatives market):

1. individual account
2. omnibus account

In case you become non clearing member of the KDPW\_CCP SA we may offer individual account with full segregation and omnibus account with full segregation

Our own positions at the account in KDPW\_CCP S.A. are always separated from the positions of our clients and held on an Individual Account.

You may select the structure, which is more convenient from your perspective.

### Consequences arising from account type selection

Selecting Individual account means that your positions and assets delivered to CCP are separated from the assets of other clients. In the event of our default margins related to individual account may not be used to settle transactions recorded on the other individual account or other omnibus account. The positions and assets held as margin may be transferred to another Clearing member after making appropriate arrangements with such a new Clearing Member.

In the event of selecting omnibus structure your positions are comingled with other clients' positions at the KDPW\_CCP S.A. Collaterals delivered due to margin requirements are also comingled with other clients' collaterals in such account. All the assets held in an omnibus account may be used for settlement of any transactions recorded in the omnibus account, irrespectively whether initiated by you or any other client. There is very limited possibility to transfer the positions and collaterals to another Clearing Member in the event of our default.

In the event you will become a non-clearing member of the KDPW\_CCP S.A. we may offer opening of individual and omnibus accounts with full segregation.

Positions and collateral registered on individual accounts with full segregation and on omnibus accounts with full segregation can be transferred on demand of clients who are non-clearing members of KDPW\_CCP S.A. to a different Clearing Member if their Clearing Member has defaulted and they have concluded an appropriate agreement with the clearing member taking over their positions and collaterals.

In the case of a Clearing Member's default, a non-clearing member of KDPW\_CCP can place an order to transfer positions and assets contributed as maintenance margin to a different Clearing Member. For this purpose, within the timeframe defined by KDPW\_CCP S.A., the non-clearing member places a written order concerning these positions and assets which also indicates a different Clearing Member to whom they are to be transferred. Simultaneously, the Clearing Member to whom the positions and assets are to be transferred places an order in which it expresses acceptance to take over these positions and assets of the non-clearing member. KDPW\_CCP S.A. carries out the order of positions and assets' transfer as soon as it receives appropriately matching and complete orders.



### **Costs associated with selection of an account type**

DB Securities S.A. will charge the Client when deciding to select individual structure on equities market. It results from the fact that in this type of selection, we will not provide our own collateral to KDPW CCP S.A. Having regard to the above, the Client will be obliged to:

1) provide his own collateral directly to KDPW CCP S.A. and pay us for the services relating to (i) keeping the accounts of securities and cash, (ii) transaction clearing.



## Part One C: Governing Law and description of main legal consequences of bankruptcy of a Clearing Member and assets segregation

### Exclusion of the assets used in the securities settlement system

Pursuant to Article 5 of the Act of 24 August 2001 on Settlement Finality in Payment and Securities Settlement Systems and the Rules of Oversight of these Systems ("Settlement Finality Act"), legal consequences arising from a declaration of bankruptcy or a foreign bankruptcy proceedings being opened against Clearing Member domiciled in the Republic of Poland shall be determined by the Polish law.

Bankruptcy issues are governed by the Act of 28 February 2003 on Bankruptcy and Restructuring Law ("Bankruptcy Law").

Pursuant to Article 66.1 of the Bankruptcy Law, the bankruptcy estate of Clearing Member shall not include the assets of the bankrupt listed in Article 80 of the Bankruptcy Law as well as other assets necessary to perform obligations resulting from the participation in the securities settlement system, which arose prior to the declaration of bankruptcy. In order to perform the obligations, the operator of the system shall be empowered to dispose of such assets.

### Collateral in case of clearing member bankruptcy

Pursuant to Article 80 of the Bankruptcy Law, referred to above, the declaration of bankruptcy of Clearing Member shall not prevent the use of:

1. funds and financial instruments within the meaning of the Act of 29 July 2005 on Trading in Financial Instruments ("Act on Trading in Financial Instruments"), deposited and recorded on the Clearing Member's clearing account, which are not encumbered with a right in rem in favour of a third party,
2. financial instruments recorded on the Clearing Member's clearing account as a collateral security for a bank credit extended with the payment system or securities settlement system if such credit may be disbursed under an existing loan agreement – for the purpose of performing the Clearing Member's settlement orders entered into the clearing system at the latest on business day starting on the date bankruptcy is declared.

Pursuant to Article 67 of the Bankruptcy Law, the collateral security established in connection with the participation in a securities settlement system provided shall not be included in the bankruptcy estate clearing member that has provided the collateral in case of bankruptcy.

### Settlement order in case of case of Clearing Member bankruptcy

Pursuant to Articles 136 and 137 of the Bankruptcy Law, if a Clearing Member is declared bankrupt, the legal consequences of a settlement order resulting from it being entered into the system and the results of netting shall be legally enforceable and binding on third parties if the order was entered into the system prior to the declaration of bankruptcy.

Article 67 of the Act on Trading in Financial Instruments provides that the assets of the default fund (which secures the clearing of transactions made on a regulated market) are a joint property of the others clearing members. Initiating bankruptcy or insolvency or Clearing Member shall not produce legal consequences concerning the default fund.



Asset segregation allows for the above mentioned mechanisms to be used in the event of initiating bankruptcy, recovery, enforcement or liquidation proceedings as well as taking other legal measures against Clearing Member.

### **Close out netting regarding derivatives**

According to Article 85 of the Bankruptcy Law, if a frame agreement, to which the bankrupt is a party, stipulates that specific contracts for futures, financial instrument lending or financial instrument buybacks shall be concluded within the frame agreement and that the termination of the frame agreement shall result in the termination of all specific contracts concluded within the frame agreement:

- 1) the claims arising under the specific contracts concluded within the frame agreement shall not be included in the arrangement; and
- 2) the trustee shall not have the right, referred to in Article 98, to renounce the frame agreement.

Either party may terminate the frame agreement, subject to the settlement of accounts between the parties, as set forth in the agreement. A setoff of the claims resulting from the settling of accounts between the parties is admissible. Articles 98 and 99 (which authorize the trustee to request performance of selected agreements to which the bankrupt is a party or to rescind selected agreements, also known as cherry-picking) shall not apply to specific contracts for futures, financial instrument lending or financial instrument buybacks, even if they were not concluded within the frame agreement.

A relevant clause is used within the OTC clearing system in the participation agreement (which is a frame agreement within the meaning of Article 85 of the Bankruptcy Law) in order to minimize risk to participants and to KDPW\_CCP S.A. arising from financial transactions cleared in the OTC clearing system and from payments made within the system. The clause included in KDPW\_CCP S.A. regulations applies in the event of termination of a participation agreement upon the occurrence of an event of default on the part of the participant or KDPW\_CCP S.A. as defined in the Rules of Clearing Transactions (Non-organised Trading). Default events include the insolvency of a participant or the initiation of bankruptcy proceedings against KDPW\_CCP S.A.

### **Legal consequences arising due to asset segregation for Clearing Members:**

- 1) possibility of differentiation within the clearing system between positions and assets of clients and positions and assets of clearing members, KDPW\_CCP S.A. and other clients;
- 2) no possibility of free offsetting within the clearing system of positions in separated accounts;
- 3) possibility of transferring positions together with collateral on the terms and in the events set out in the Rules of Clearing Transactions (Organized Trading and Non-organized Trading);
- 4) possibility of using margins recorded in collateral accounts only for separated clearing accounts to which these are assigned;
- 5) possibility of using the close-out netting clause in the event referred to in Article 85 of the Bankruptcy Law;
- 6) possibility for a non-clearing member being the client of a Clearing Member representing it in clearing to receive funds recorded in a separate collateral account remaining after the maintenance margin has been used to execute a transaction,
- 7) possibility for KDPW\_CCP to use funds of a defaulting clearing member deposited in a deposit account, omnibus account, securities account, cash account or bank account in order to settle transactions to which it is a clearing party, especially in the event of the participant's bankruptcy.



## Part two variations on the different levels of segregation that the CCP offers

### Clearing accounts – position segregation

Position segregation at KDPW\_CCP S.A. is strictly connected with the structure of the system of clearing accounts and their application. Clearing accounts have their unique characteristics depending on whether the entries made on these accounts apply to the registration of positions in organized or OTC trading.

Clearing members' house accounts are always of individual accounts' (IND) nature. On house accounts only the clearing member's positions are registered.

Clients' positions can be registered on the following clearing accounts:

1. individual (IND) in the case of clearing transactions of an individual client with whom KDPW\_CCP has no contractual relation,
2. individual with full segregation (IFS) in the case of clearing transactions of an individual client who concluded a participation agreement with KDPW\_CCP for a membership type – non-clearing member (NCM),
3. omnibus (OMB) in the case of clearing on one account transactions of many clients with whom KDPW\_CCP has no contractual relation,
4. omnibus with full segregation (OFS) in the case of clearing on one account transactions of many clients who concluded participation agreements with KDPW\_CCP for a membership type – non-clearing member (NCM).

### Calculating margins

For each clearing account a separate margin requirement is calculated. Moreover, for each clearing account a separate collateral account is established.

However, provided a given client has two or more clearing accounts on which the clearing of his transactions is carried out, the margin requirement is calculated separately for each clearing account, but collateral is registered on one collateral account maintained for this client.

Collateral posted to a given collateral account cannot be used for covering margin requirement related to a different collateral account. Positions and collateral registered on individual accounts with full segregation and on omnibus accounts with full segregation can be transferred on demand of clients who are non-clearing members of KDPW\_CCP to a different clearing member if their clearing member has defaulted and they have concluded an appropriate agreement with the clearing member taking over their positions and collateral.

For more detailed information of the KDPW\_CCP S.A. segregation structure please refer to the KDPW\_CCP S.A. web page:

[http://www.kdpwccp.pl/en/Members/Documents/Segregation\\_EN\\_02\\_2014.pdf](http://www.kdpwccp.pl/en/Members/Documents/Segregation_EN_02_2014.pdf)



## Important

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It is your responsibility to review and conduct your own due diligence on the relevant laws, legal documentation including Regulations of KDPW CCP S.A .documentation. Before entering into any arrangement you should be aware that certain transactions give rise to substantial risks and are not suitable for all investors.

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