

Decree No. 11/2009. MNB
of (II.27.)
of the Governor of the MNB

on the requirements for the General Terms and Conditions and operating rules of organisations providing central counterparty activities under the Act on Capital Markets

Pursuant to the authorization defined under Article 60(3)(d) of Act LVIII of 2001 on the Magyar Nemzeti Bank, I hereby decree the following:

CHAPTER I
GENERAL PROVISIONS

Article 1

The scope of this Decree shall apply to the organisation entitled to carry out central counterparty activity (hereinafter referred to as ‘central counterparty’) specified under Article 5(1)(83) of Act CXX of 2001 on Capital Markets (hereinafter referred to as ‘Capital Market Act’).

Article 2

For the purposes of this Decree

- a) *collateral calculation period* shall mean the period between the dates of two consecutive adjustments of individual collaterals of the clients by the central counterparty;
- b) *clearing system* shall mean an arrangement specified under Article 5(1)(36) of the Capital Market Act;
- c) *guarantee service* shall mean the obligation undertaken for settlement within the framework of central counterparty activity defined in the Capital Market Act;
- d) *liquid assets* shall mean available funds (account-based money on account or cash), securities convertible into funds upon request, irrevocable and unconditional bank guarantees payable at the first call;
- e) *emergency* shall mean a situation requiring special proceedings, during which the process of performing the central counterparty activity is different from the normal way of doing business specified in the operating rules;

- f) *Rules* shall mean the rules or part of the rules required to provide central counterparty activities that prescribe the regulations specified under this decree and available for the clients of the central counterparty;
- g) *usual market price movements* shall mean price changes expected on the basis of historical price changes in stock exchange products.

CHAPTER II GENERAL REGULATIONS

Article 3

- (1) The Rules shall define the rights and obligations of the clients and of the central counterparty, as well as the procedures in such a way that the legal, financial and operational risks related to the guarantee service and the clearing system clearing the guaranteed transactions shall be clear and unambiguous.
- (2) In its Rules, the central counterparty shall specify:
 - a) the objective and fundamental principles of the operation of the central counterparty and the public documents governing its operation;
 - b) the legal, financial and operational risks borne by the clients and the tools available for risk management purposes;
 - c) the rules and agreements relating to the central counterparty activity, especially the ones connected with the legal risks or the risk management due to the non-resident clients;
 - d) the rules of co-operation with those external organisations which facilitate the complete and smooth performance of clearing and settlement in respect of transactions guaranteed by the central counterparty, in particular including those that carry out outsourced services as specified in the Capital Market Act, provide clearing house activities according to the Capital Market Act and the central securities depository;
 - e) the conditions and rules pertaining to emergency situations;
 - f) the complaint-handling procedures including the deadline, which shall be no longer than 15 business days in each case
 - g) the publication procedure of the Rules, the way of commenting the Rules including the period, during which the clients are entitled to make these comments.

CHAPTER III THE RULES OF UNDERTAKING A GUARANTEE

General regulations

Article 4

- (1) The central counterparty shall determine in its Rules the conditions of having access to the guarantee service as well as of the termination or discontinuance of the service.

- (2) The criteria of having access to the guarantee service shall be determined by the central counterparty in such a way which permits fair and open access.
- (3) By way of derogation from Paragraph (2), denial of access to the guarantee service shall be risk-based, access may be refused if admitting the new client entails such additional risk which endangers the reliable and efficient functioning of the guarantee service and the clearing system clearing the guaranteed transactions.
- (4) If according to Paragraph (3) the access is refused, the denial of access shall be explained in writing to the party that applied for the guarantee service.
- (5) The Rules shall define the deadline for sending the notification specified under Paragraph (4) and the detailed procedure to apply for remedies against the refusal.
- (6) With regard to the level of guarantee service specified under Article 5(3), the same minimum requirements shall apply to all clients receiving the the same level of guarantee service.
- (7) The Rules shall specify
 - a) the markets and/or types of transactions, the settlement of which is guaranteed by the central counterparty;
 - b) by markets and/or types of transactions the type of clearing positions;
 - c) by markets and/or types of transactions the point of time from which the guarantee is undertaken and the precondition required for the guarantee to come into force.
- (8) The Rules shall specify
 - a) the kind of assets available for the central counterparty other than financial assets specified under Article 12, the rules of creating and using them as well as their size;
 - b) the point of time and the precondition of becoming effective the central counterparty's actual performance obligation within the framework of the guarantee undertaken.

Granting access and terminating the guarantee service

Article 5

- (1) The guarantee service shall be established upon signing the contract for the guarantee service between the central counterparty and the client, and shall be terminated upon the termination of this contract.
- (2) Before signing the contract for the guarantee service, the central counterparty shall verify whether the conditions of the guarantee service have been met based on its Rules and other documents. The central counterparty shall conclude contracts for the guarantee service with clients that fully meet the conditions of having access to the guarantee service.

- (3) The contract for the guarantee service shall specify the guarantee service the client provided with according to its membership in the clearing system, market and/or types of transactions.
- (4) The Rules shall specify
 - a) the cases of suspending, termination and discontinuance of the contractual relationship regarding the guarantee service;
 - b) the way and conditions of suspending the contractual relationship regarding the guarantee service.
- (5) The Rules shall ensure that suspension or termination of the contractual relationship regarding the guarantee service initiated by the client is effected only in the event that the client
 - a) has met all its obligations stemming from the transactions guaranteed by the central counterparty, and
 - b) has arranged transferring its obligations vis-à-vis its clients.

Financial and technical criteria of having access to the guarantee service

Article 6

- (1) The Rules shall specify the financial and technical criteria of having access to the guarantee service, which ensure the reliable and efficient functioning of the central counterparty.
- (2) As financial criteria of having access to the guarantee service, the Rules shall require meeting at least the following:
 - a) the minimum capital requirement determined according to the individual guarantee service levels as specified in Article 5(3) and the continuous compliance with that ;
 - b) making available the guarantee fund contributions and other collaterals required within the framework of the guarantee and collateral system as specified under Article 12, to the extent, in the form and by the deadline determined by the central counterparty;
 - c) making the funds needed for settlement of transactions guaranteed by the central counterparty available according to schedule.
- (3) As the technical criteria of having access to the guarantee service, the Rules shall require meeting at least the following:
 - a) the conclusion of contracts ensuring the clearing and settlement of transactions guaranteed by the central counterparty, notification the central counterparty thereof and the continuous maintenance of the contractual relationship based on those contracts;
 - b) opening of the securities and bank accounts used for settling transactions guaranteed by the central counterparty and fulfilling the guarantee fund contributions and other collateral requirements defined by the framework of the guarantee and collateral system as specified under Article 12, notification the central counterparty thereof as well as the continuous maintenance of these accounts.

- (4) The Rules shall specify the rules for effective monitoring of compliance with the financial and technical requirements by the central counterparty.

CHAPTER IV RISK MANAGEMENT

Management of principle risk related to transactions guaranteed by the central counterparty

Article 7

- (1) The Rules shall clearly state what constitutes a default and what default procedures shall apply.
- (2) The central counterparty shall formulate the default procedures in such a way to provide reliable and efficient clearing and settlement.
- (3) For the event of default of the stock exchange transactions guaranteed by the central counterparty, the Rules shall define rights entitled to the central counterparty, the measures to be taken by the central counterparty as well as the procedure of exercising these rights and measures.
- (4) The Rules shall ensure the possibility of using up the clients' own guarantee fund contributions determined under Article 12 and of other individual collaterals owned by the client, even in the event of the default of a client's customer.
- (5) The Rules shall exclude the possibility of using up the guarantee fund contributions and other collaterals provided by the client's customers in case of the client's own default.
- (6) The Rules shall exclude the possibility of using the guarantee and collateral system specified under Article 12 in all cases other than the default of transactions guaranteed.

Management of market risks

Article 8

- (1) The Rules of the central counterparty shall define such an individual collateral system of clients, which covers at least the following market risks:
 - a) the possible loss of new stock exchange positions not covered by collaterals yet,
 - b) in case of existing open positions:
 1. the actual market price movements occurred during the latest collateral calculation period,
 2. the usual market price movements to be expected during the next collateral calculation period.
- (2) In order to reduce the risks arising from unexpected and extraordinary changes in prices, the Rules shall entitle the central counterparty to
 - a) carry out valuation at technical prices and order intraday provision of funds in case of price movements exceeding the price change ranges set by it,

- b) call upon the client, in cases specified in its Rules, to take measures defined in the central counterparty's Rules necessary to reduce its risk.
- (3) Should it be justified on the basis of the extent of the market risks, the central counterparty shall be entitled to valuation at technical prices and order intraday provision of funds even in cases other than the ones specified under Paragraph (2).
- (4) The central counterparty shall set the price change ranges specified under point a) of Paragraph (2) by product or maturity and at least make public on its website.

Special risk management of futures and options

Article 10

- (1) In case of guaranteed futures and options and in order to limit risks thereof, the Rules of the central counterparty shall define a limit system that is appropriate to constrain the risks arising from concentrated market shares and the disproportionately high risk-taking compared to the client's own equity.
- (2) The central counterparty shall continuously monitor the compliance with the limit system specified under Paragraph (1), and shall define in its Rules its right to take measures in the event of a breach of the limit system, the measures to be taken in each case and their rules of application.

Management of risks related to clients

Article 10

- (1) The Rules shall define the concrete contents, way and deadline of the data supply required of the client by the central counterparty.
- (2) The data supply obligation required under Paragraph (1) shall be defined in the Rules in such a way to ensure the central counterparty's effective monitoring the client's reliable operation, with special regard to the continuous compliance with the own capital adequacy requirement specified under point a) of Article 6(2).
- (3) The Rules shall ensure the central counterparty's right of supervision at the client, including on-site inspections,
 - a) in order to check the compliance with the provisions of the Rules,
 - b) in case of a breach of the Rules by a client,
 - c) when an increase in the risk related to the participation in the clearing system is established.
- (4) The Rules shall ensure the central counterparty's right to take measures against a client other than to terminate the contract for guarantee service.
- (5) The Rules shall define the cases of exercising the right to take measures as specified under Paragraph (4) as well as the measures to be taken in each case.

- (6) The Rules shall specify the right of the client for remedies and the detailed procedure to apply for them in case of the measures defined under Paragraph (4) taken at the discretion of the central counterparty.

Rules of emergency-handling

Article 11

- (1) The operational procedures regarding emergency-handling which concern the clients shall be specified in rules (hereinafter referred to as 'rules of emergency-handling').
- (2) The clients shall be informed of the rules of emergency-handling.
- (3) The rules of emergency-handling shall define:
 - a) the types and criteria of emergencies;
 - b) the rules of establishing and announcing of emergencies;
 - c) the circumstances and consequences of implementing the emergency-handling procedures as well as the tasks and responsibilities of the parties in the course of the implementation;
 - d) the possibility of deviating from the pre-determined procedures;
 - e) the way of communication in emergencies, the possible alternative communication channels as well as the rules of compilation and updating of the contact list containing the name and the availability of contact persons designated for emergencies.
- (4) The rules of emergency-handling shall define the way of co-operation with the other organisations facilitating the clearing and settlement.

**CHAPTER V
GUARANTEE FUNDS AND OTHER COLLATERALS**

Article 12

- (1) The Rules shall clearly define the types as well as the rules of posting and using up the guarantee funds owned by the clients and the central counterparty together and the individual collateral of clients.
- (2) The size of individual collateral, the way of calculating it and if applicable, the individual parameters of their calculation shall be determined in the Rules or some other way, but on the website of the central counterparty at least.
- (3) The Rules of the central counterparty shall state that the guarantee funds and other collateral required within the framework of the guarantee and collateral system specified in the Capital Market Act shall be provided exclusively in liquid assets in order to ensure their prompt availability upon request.
- (4) The list of eligible collateral and the risk control measures shall at least be made public by the central counterparty on its website.

- (5) The Rules shall define the order of making use of the guarantee funds and other collateral as well as the other financial assets specified under Article 4(8)(a).
- (6) When defining the order under Paragraph (5) it shall be taken into account that based on the Capital Market Act in the event of the client's default the client's own disposable financial resources placed at the clearing house and/or at the central depository can be used up as well.
- (7) When defining the order specified under Paragraph (5), the Rules shall ensure that
 - (a) the financial resources owned or provided by the defaulted party are used first, and
 - (b) the use of own disposable financial resources specified under Paragraph (6) and of the individual collaterals always precedes the use of guarantee funds and of the other financial assets available for the central counterparty as specified under Article 4(8)(a).

CHAPTER VI BASIC PRINCIPLES OF DETERMINING FEES

Article 13

- (1) In its Rules, the central counterparty shall clearly specify
 - a) the services related to the fees, commissions and/or prices to be paid,
 - b) the basis of the fee, the way of paying of the fee and the due date,
 - c) the fees, commissions and/or prices to be paid for undertaking the guarantee, in case of default of the guaranteed transactions as well as other fees and commission related to the guarantee service of the central counterparty,
 - d) the discounts and rebates relating to the fees, commissions and/or prices to be paid, if any, as well as the conditions of those discounts and rebates,
 - e) the method of calculating the fees, commissions and/or prices to be paid.
- (2) In accordance with point a) of Paragraph (1), the Rules shall define the fees in a way that sets prices separately by services to enable the client to freely decide on the use of individual services.
- (3) The Rules shall determine the fees for undertaking guarantee at least according to the individual guarantee service levels as specified under Article 5(3) and according to the activities performed by the central counterparty.
- (4) There shall only be differences in the fees, commissions and/or prices charged by the central counterparty on the basis of the size of the turnover, the contents of the service provided and the type of communication method.

CHAPTER VII GENERAL PROVISIONS REGARDING THE PUBLICATION OF THE RULES

Article 14

- (1) The Rules and their amendments, not including the rules of emergency-handling specified under Article 11 and their amendments, shall be published and made continuously available by the central counterparty on its website.
- (2) The central counterparty shall provide the clients with the Rules and their amendments before they come into force, and allow a reasonable amount of time for them to comment on the Rules or the changes in the Rules.
- (3) The central counterparty shall give at least 5 business days for the clients to make their comments specified under Paragraph (2), or at least 10 business days in case of a comprehensive or lengthy amendment.
- (4) The central counterparty shall only be allowed not to apply the procedure described under Paragraph (2) in the following cases:
 - a) in case of the Rules about the fees, commissions and/or prices or their amendment;
 - b) if the type and/or the size of risk management tools varies;
 - c) if the amendment of the Rules according to Paragraph (2) hinder the reliable and smooth functioning of the clearing and settlement.
- (5) Taking Paragraph (1) into account the Rules shall at least be made available at least in Hungarian, and if it is justified by the composition of the clients, at least in a language used generally in accepted international financial markets.

CHAPTER VIII CLOSING PROVISIONS

Article 15

- (1) This Decree shall enter into force on 28 February 2009.
- (2) Organisations performing central counterparty activity on the territory of the Republic of Hungary when this Decree enters into force shall meet the requirements specified in this Decree not later than within 6 months from the entry into force of this Decree.

Article 16

- (1) Article 15(2) shall be repealed on 2 September 2009.
- (2) Paragraph (1) shall be repealed on 3 September 2009.