

Decree No. 9/2009 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 clearing house activities under the Act on Capital Markets

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

CHAPTER I
GENERAL PROVISIONS

Article 1

- (1) The scope of this Decree shall apply to the organisation (for the purpose of this Decree hereinafter referred to as ‘clearing house’) entitled to carry out the activities or a part thereof specified under Article 334 a–d) of Act CXX of 2001 on Capital Markets (hereinafter referred to as ‘Capital Market Act’).
- (2) If in addition to the clearing house activity the clearing house performs an activity specified under Article 335 (3) a) and/or c) of the Capital Market Act, the provisions of Decree No. 10/2009. (II.27.) of the Governor of the MNB on the requirements for the operating rules of the central securities depository under the Act on Capital Markets shall also apply to the clearing house.
- (3) If in addition to the clearing house activity the clearing house performs an activity specified under Article 335 (3) d) of the Capital Market Act, the provisions of Decree No. 11/2009. (II.27.) of the Governor of the MNB on the requirements for the operating rules of organisations performing central counterparty activities under the Act on Capital Markets (hereinafter referred to as ‘CCP Decree’) shall also apply to the clearing house.

Article 2

For the purposes of this Decree:

- a) *clearing day* shall mean the day when the clearing house is open for performing clearing house activities;

- b) *clearing system* shall mean an arrangement specified under Article 5(1)(36) of the Capital Market Act (hereinafter referred to as ‘system’);
- c) *rolling clearing and settlement* shall mean a clearing and settlement method which allows the clearing and settlement of transactions at a given number of days after the trade date;
- d) *clearing right* shall mean the right to have access to the clearing activity specified in the Capital Market Act;
- e) *liquid assets* shall mean available funds (account-based money or cash), securities convertible into funds upon request, irrevocable and unconditional bank guarantees payable at the first call;
- f) *emergency* shall mean a situation requiring special proceedings, during which the process of performing the clearing house activity is different from the normal way of doing business specified in the operating rules;
- g) *Rules* shall mean the general terms and conditions and operating rules or the part of them required to provide clearing house activities that prescribe the regulations specified under this decree and available for clearing members;
- h) *‘delivery versus payment’ service* shall mean a mechanism which links a transfer of securities (or other financial instruments) and a fund transfer in such a way as to ensure that delivery occurs if, and only if, payment occurs;
- i) *real-time gross settlement* shall mean the settlement method in which processing and settlement takes place on a transaction-by-transaction basis in real time;
- j) *settlement finality* shall mean that the settlement of obligation, either effecting payment or delivering assets, is irrevocable and unconditional.

CHAPTER II GENERAL REGULATIONS

Article 3

- (1) The Rules shall define the parties’ rights and obligations as well as the procedures in such a way that the legal, financial and operational risks of having access to the system shall be clear and unambiguous.
- (2) In its Rules, the clearing house shall specify:
 - a) the objective and principles of the system, as well as public documents regulating the functioning of the system;
 - b) the legal, financial and operational risks borne by the clearing members and the tools available for risk management purposes;

- c) the rules and agreements relating to the legal and regulatory environment of the clearing house, especially the ones connected with the legal risk or the risk management due to the non-resident clearing members;
 - d) in addition to the clearing and settlement procedure under Article 345 (2) b) of the Capital Market Act, the rules of co-operation with those external organisations which facilitate the complete and smooth settlement process, in particular including those that carry out outsourced services as specified in the Capital Market Act and the central securities depository, also including the procedure, rules and conditions of settlement based on the ‘delivery versus payment’ principle;
 - e) the way of determining the schedule of operation, the calendar for clearing days and that for closing days;
 - f) the conditions and rules pertaining to emergency situations;
 - g) in case of operating a system designated under the Act XXIII of 2003 on Settlement Finality in Payment and Securities Settlement Systems (hereinafter the ‘Act on Settlement Finality’), the conditions for non-resident clearing members defined in such a way which ensures full and proven compliance with the requirements set forth for non-resident participants in the Act on Settlement Finality;
 - h) the complaint-handling procedures including the deadline, which shall be no longer than 15 business days in each case
 - i) the publication procedure of the Rules, the way of commenting the Rules including the period, during which the clearing members are entitled to make these comments.
- (3) The schedule of operation of the system, the calendar for clearing days and that for closing days shall at least be made public by the central securities depository on its website.

CHAPTER III **Clearing system**

General regulations

Article 4

- (1) The clearing house shall determine in its Rules the conditions of having access to the system and making use of the clearing house’s services as well as of the termination or discontinuance of the membership in the system.
- (2) The criteria of having access to the system and making use of the clearing house’s services shall be determined by the clearing house in such a way which permits fair and open access.
- (3) By way of derogation from Paragraph (2), denial of access to the system shall be risk-based, access may be refused if admitting the new member entails such additional risk which endangers the reliable and efficient functioning of the system.

- (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 membership in the system.
- (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) If there is, the Rules shall specify the type of membership in the system.
- (7) With regard to the type of membership specified under Paragraph (6), the same minimum requirements shall apply to the same type of clearing members of the same type of membership.

Granting access and terminating the business relationship with the clearing members in the system

Article 5

- (1) The membership in the system shall be established upon signing the contract for clearing house services between the clearing house and the clearing member, and shall be terminated upon the termination of this contract.
- (2) Before signing the contract under Paragraph (1), the clearing house shall verify whether the conditions of membership in the system have been met based on its Rules and other documents. The clearing house shall conclude contracts for clearing house services with clearing members that fully meet the conditions of having access to the system.
- (3) The contract under Paragraph (2) shall specify the services the clearing member provided with according to the market and/or types of transactions and according to its membership in the system under Article 4(6).
- (4) The Rules shall specify
 - a) the cases of suspension, termination and discontinuance of the membership in the system;
 - b) the way and conditions of suspension and termination of the membership in the system.
- (5) The Rules shall ensure that suspension or termination of the membership initiated by the clearing member is effected only in the event that the clearing member
 - a) has met all of its obligations stemming from the contract for clearing house services, and
 - b) has arranged transferring its obligations vis-à-vis its clients.

Article 6

- (1) With respect to transactions guaranteed by the central counterparty, the clearing house shall establish and maintain contractual relationship regarding the provision of clearing house services with those who

- a) conclude and credibly verify the conclusion of the contract for guarantee service with the central counterparty cooperating with the clearing house specified under Article 5 of the CCP Decree ,
 - b) continuously meet the conditions of the central counterparty under Paragraph (a) defined in the Rules of the central counterparty as well as under Article 6 of the CCP Decree.
- (2) In its Rules the clearing house shall determine the procedures in the event that the contract for guarantee service with the central counterparty is terminated.

Financial and technical criteria of having access to the membership in the system

Article 7

- (1) The Rules shall specify the financial and technical criteria of having access to the membership in the system, especially those ensuring the reliable and efficient functioning of the system.
- (2) As financial criteria of having access to the membership in the system, the Rules shall require meeting at least the following:
- a) the minimum capital requirement and the continuous compliance with that;
 - b) making available the guarantee fund contributions and other collateral required within the framework of the guarantee and collateral system as specified under Article 14, to the extent, in the form and by the deadline determined by the clearing house;
 - c) making the funds needed for the settlement available according to schedule.
- (3) As technical criteria of having access to the membership in the system, the Rules shall require meeting at least the following:
- a) the conclusion of contracts ensuring the clearing and settlement of the transactions, as well as the continuous maintenance of the contractual relationship based on these contracts;
 - b) opening of the securities and bank accounts used for settling transactions and fulfilling the guarantee fund contribution and other collateral requirement defined by the framework of the guarantee and collateral system as specified under Article 14, notification the clearing house 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 participation requirements by the clearing house.

**CHAPTER IV
ROLLING CLEARING AND SETTLEMENT**

Article 8

- (1) In its Rules, the clearing house shall ensure that the final settlement of transactions – with the exception of cases entailed on the clearing member – shall occur no later than the third clearing day following the trade day (T+3).
- (2) In its Rules, the clearing house shall ensure that the confirmation of trades between the clearing members occur no later than the trade day.
- (3) Any derogation from Paragraph (2) shall only be possible if it is justified by the type of membership in the system.
- (4) Should there be need for matching settlement instructions resulting from the clearing of the transactions, the clearing house shall ensure that the matching occurs no later than the clearing day before the specified settlement date.

CHAPTER V RISK MANAGEMENT

Management of principal risk related to securities transactions

Article 9

- (1) The Rules shall provide the possibility of settling stock exchange and over-the-counter transactions based on the ‘delivery versus payment’ principle.
- (2) The Rules shall ensure the settlement finality of transactions specified under Paragraph (1) as follows:
 - a) if the clearing and settlement is based on netting, the final settlement shall occur – with the exception of cases entailed on the clearing member – by the pre-defined time specified in the Rules,
 - b) in the case of transactions other than those specified under point a), the possibility of real-time gross settlement is to be provided ensuring – unless otherwise disposed by the clearing member – that the clearing and the final settlement are effected simultaneously.
- (3) The Rules shall clearly state what constitutes a default and what default procedures should apply.
- (4) The clearing house shall formulate the default procedures in such a way to provide reliable and efficient clearing and settlement.
- (5) For the event of default, the Rules shall define the rights entitled to the clearing house as well as the procedure of exercising these rights.
- (6) The Rules shall ensure the possibility of using up the clearing member’s own guarantee fund contributions determined under Article 14 and of other individual collaterals owned by the clearing member, even in the event of the default of a clearing member’s client.

Operating a securities lending system, management of the risks of securities lending

Article 10

- (1) In the event that the clearing house operates a securities lending system, its Rules shall define:
 - a) the terms and conditions of participating in the securities lending system,
 - b) the operational procedures of the securities lending system, with special regard to the procedures to be applied in the event of a failure to meet the obligation of returning the securities,
 - c) the method of calculation and daily re-valuation of the collateral eligible for securities lending, and
 - d) the collateral eligible for securities lending and the way of providing the collateral.
- (2) The Rules shall specify the financial and technical criteria of participating in the securities lending system, ensuring the reliable and efficient functioning of the securities lending system.
- (3) The financial and technical criteria of participating in the securities lending system shall be determined by the Rules in such a way which permits fair and open access.
- (4) The Rules shall define the collateral eligible for securities lending exclusively in liquid assets in order to ensure their prompt availability upon request.
- (5) The list of collateral eligible for securities lending and the risk control measures shall at least be made public by the clearing house on its website.

Management of risks related to granting credit

Article 11

- (1) The Rules of the clearing house shall define the conditions of providing credit specified under Article 3 (1) b) of Act CXII of 1996 on Credit Institutions and Financial Enterprises (hereinafter referred to as 'Act on Credit Institutions') which can be granted on the basis of Article 335 (3) e) and Article 335/A (2) of the Capital Market Act for only the settlement of transactions cleared by the clearing house, including the rules of posting collateral exclusively in liquid assets, which ensures at least full collateralisation .
- (2) The Rules shall define the collateral eligible for credit operations specified in the Act on Credit Institutions and related to the clearing house activity exclusively in liquid assets in order to ensure their prompt availability upon request.
- (3) The list of eligible collateral defined under Paragraph (2) and the risk control measures shall at least be made public by the clearing house on its website.

- (4) If the clearing house provides credit specified in the Act on Credit Institutions related to its clearing house activity, in addition to the list of eligible collateral and the way of posting the collateral, it shall also define other tools to manage the risks taken.
- (5) In order to manage the risk described under Paragraph (4), the Rules shall define the rights of the clearing house and the measures it can take in the event of a failure to repay the credit specified in the Act on Credit Institutions related to the clearing house activity. The Rules shall also define the procedure of exercising these rights and measures.

Management of risks related to clearing members

Article 12

- (1) The Rules shall specify the cases when the clearing house is obliged or entitled to suspend a clearing member's clearing right, and shall define the procedure of exercising this obligation and right.
- (2) If the clearing house prescribes data supply for the clearing member, the Rules shall define the concrete contents, way and deadline of the data supply required of the clearing member.
- (3) The data supply required under Paragraph (2) shall be defined in the Rules in such a way to ensure the clearing house's effective monitoring the clearing member's reliable operation, with special regard to the continuous compliance with the own capital adequacy requirement specified under point a) of Article 7(2).
- (4) The Rules shall ensure the clearing house's right of supervision at the clearing member, 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 clearing member,
 - c) when an increase in the risk related to the membership in the system is established.
- (5) The Rules shall ensure the central counterparty's right to take measures against a clearing member other than to terminate the contract for clearing house services and/or suspend the clearing right.
- (6) The Rules shall define the cases of exercising the right to take measures as specified under Paragraph (5) as well as the measures to be taken in each case.
- (7) The Rules shall specify the right of the clearing member for remedies and the detailed procedure to apply for them in case of the measures defined under Paragraph (1) and (5) taken at the discretion of the central counterparty.

Rules of emergency-handling

Article 13

- (1) The operational procedures regarding emergency-handling which concern clearing members shall be specified in rules (hereinafter referred to as 'rules of emergency-handling').
- (2) The clearing members 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 cooperation with other organisations facilitating the clearing and settlement, with special regard to the harmonisation of operating hours in those very special cases when those are extended.

CHAPTER VI GUARANTEE FUNDS AND OTHER COLLATERALS

Article 14

- (1) The Rules shall clearly define the types and rules of posting and using up individual collateral of clearing members and guarantee funds.
- (2) The size of individual collateral, the method of calculating it and if applicable, the individual parameters of the calculation shall be determined in the Rules or some other way, but on the website of the clearing house at least.
- (3) The Rules of the clearing house 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 clearing house on its website.
- (5) The Rules shall define the order of making use of the guarantee funds and other collateral.
- (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 clearing member's default the clearing

member's own disposable financial resources placed at the clearing house and/or at the central securities 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 collateral always precedes the use of guarantee funds.

CHAPTER VII SECURITIES SERVICES PROVIDED TO THE MAGYAR NEMZETI BANK

Article 15

If the clearing house provides services to the Magyar Nemzeti Bank (hereinafter referred to as 'MNB') relating to the MNB's basic tasks, the Rules shall define the calendar for closing days and the operating hours harmonized with the MNB.

CHAPTER VIII BASIC PRINCIPLES OF DETERMINING FEES

Article 16

- (1) The Rules of the clearing house 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 the fee and the due date,
 - c) 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,
 - d) 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 clearing member to freely decide on the use of individual services.
- (3) There shall only be differences in the fees, commissions and/or prices charged by the clearing house on the basis of the size of the turnover, the content of the service provided and the type of communication method chosen.
- (4) The rules under Paragraph (1) to (3) shall not be applied to the activities incidental to clearing house activities specified in the Capital Market Act.

CHAPTER IX GENERAL PROVISIONS REGARDING THE PUBLICATION OF THE RULES

Article 17

- (1) The Rules and their amendments, not including the rules of emergency-handling specified under Article 13 and their amendments, shall be published and made continuously available by the clearing house on its website.
- (2) The clearing house shall provide the clearing members 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 clearing house shall give at least 5 business days for the clearing members to make their comment specified under Paragraph (2), or at least 10 business days in case of a comprehensive or lengthy amendment.
- (4) The clearing house shall only be allowed not to apply the procedure described under Paragraph (2) in the following cases:
 - a) in case of the Rules on 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 operation of the clearing house.
- (5) Taking Paragraph (1) into account, the Rules shall at least be made available in Hungarian, and if it is justified by the composition of the clearing members, at least in a language used generally in accepted international financial markets.

CHAPTER X CLOSING PROVISIONS

Article 18

- (1) This Decree shall enter into force on 28 February 2009.
- (2) Organisations performing clearing house activity on the territory of the Republic of Hungary when this Decree enters into force shall meet the requirements specified in this Decree no later than within 6 months from the entry into force of this Decree.
- (3) Simultaneously to the entry into force of this Decree, Decree No. 2/2006. (II.15.) of the Governor of the MNB on the requirements in respect of the General Terms and Conditions and operating rules of organisations providing clearing house activities under the Act on Capital Markets shall be repealed.

Article 19

- (1) Article 18(3) shall be repealed on 1 March 2009.
- (2) Article 18(2) shall be repealed on 2 September 2009.
- (3) Article 19 shall be repealed on 3 September 2009.