

Amendments to IRGiT regulations

Summary

IRGiT SA ("IRGiT") has amended the Regulations of the Exchange Clearing House (ECH) (Commodity Market) ("ECH Regulations"), including:

- introduction of the definition of Infringement and a catalog of actions that IRGiT can take if a case of Infringement by a Clearing House Member is found,
- update of the provisions regarding the operating principles of Guarantee Funds,
- clarification of the provisions allowing a Clearing House Member to act as a representative of an Exchange Member,
- update of the provisions on measures to maintain order and disciplinary measures,
- changes to the Table of Fees and Charges.

The amendments shall come into force as of 1 April 2021.

Details of the amendments

1. Amendments regarding Infringement

The amendment introduces a new concept of "Infringement", defined in § 2 item 38) of the ECH Regulations as a situation wherein a Clearing House Member poses a risk, or the existing circumstances reveal a risk that such House Member may pose a reasonable threat to the security of trading or the correct operation of the clearing system. The purpose of the amendment is to replace the existing concept of "insolvency" of a Clearing House Member and to allow IRGiT to take adequate actions to prevent negative effects of a Clearing House Member's inability to meet its obligations.

The catalog of situations which may be considered an Infringement is based on international standards followed, among others, by CCP clearing houses, but also reflecting the specific character and scope of IRGiT's activities. Pursuant to § 17 sec. 1 item 8) of the ECH Regulations, each Clearing House Member is obliged to promptly notify the Clearing House about any circumstances arising on its part that result in an Infringement or can be reasonably expected to result in an Infringement. The catalog of precautionary measures that IRGiT may take in an event of an Infringement is given in §

54 of ECH Regulations. Relative to the previous wording of the ECH Regulations, this provision has been supplemented to allow IRGiT to:

- a) update and demand contribution to the Guarantee Fund,
- b) block the possibility of placing buy or sell orders for clearing of which such Clearing House Member is responsible on all or selected markets, groups or individual instruments,
- c) refuse to accept for clearing any transactions to which the Clearing House Member involved in the Infringement is a clearing party,
- d) liquidate any assets existing in non-cash form, contributed by such Clearing House Member to the clearing guarantee system, or decide not to continue to accept any non-cash collateral provided by such Clearing House Member,
- e) take other actions specified in the Detailed Clearing and Settlement Rules.

The extended catalog of measures now available to IRGiT significantly increases the security of the clearing guarantee system, by providing a comprehensive toolbox which allows the potential exposure of a Clearing House Member in respect of which an Infringement has been found to be mitigated or to counteract any further growth of such exposure.

Pursuant to sec. 4 § 54 of the ECH Regulations, IRGiT shall immediately notify any Infringement found to the Polish Power Exchange and the Polish Financial Supervision Authority, as well as to other entities, if it is required to ensure security of clearing, following the principles stipulated in the pertinent resolution of IRGiT Management Board.

In connection with the introduction of the concept of "Infringement", § 22 and § 36 sec. 3 have also been amended.

2. Amendments regarding the Guarantee Fund

The ECH Regulations regarding the Guarantee Fund (§ 43 - § 45n) have been amended in order to update the operating principles of IRGiT's Guarantee Funds as follows:

- a) introduction in § 45 - § 45d of a division and schedule of tasks executed by IRGiT in respect of the calculation of monthly contributions to the Guarantee Fund (update) and tasks executed in respect of the relevant payments and disbursements to Clearing House Members (regulation),
- b) introduction in § 45f of a definition of the Guarantee Fund's balances management, taking account of the principles of transfer and distribution of the proceeds ensuing from the management of these balances to the individual Clearing House Members,
- c) clarification of the wording of § 45g as regards setting and regulating replacement payments into the Guarantee Fund, including in particular the possibility to set and regulate such payments under the standard procedure of updating contributions into the Guarantee Fund,
- d) introduction in § 45h sec.1 of an obligation to reimburse the funds received from the Guarantee Fund by an entity which caused an Infringement and generated a loss,
- e) laying down in § 45h sec. 2 of the principles of how the funds paid by an entity which caused an Infringement and generated a loss in the clearing guarantee system should be reimbursed to the Clearing House Members whose Guarantee Fund balances have been utilized.

The amendments described above incorporate the results of analyses conducted by IRGiT after the incidents of a Clearing House Member's insolvency in November 2019 and March 2020.

3. Amendments regarding a representative of an Exchange Member

In connection with the amendments to the wording regarding the financial service provided to Clearing House Members which act as representatives of Exchange Members pursuant to § 9 sec. 2 item 3) of the ECH Regulations, amendments have been

introduced to clarify the ECH Regulations as regards clearing and settlement of entities conducting such activities in the Clearing House.

Pursuant to sec. 4 and 5 § 23 of the ECH Regulations, transactions concluded by a represented Exchange Member, as well as the liabilities and receivables resulting from the clearing of these transactions and related to the clearing guarantee system, will be recorded in separated trading accounts and clearing accounts kept for this type of activities of the Clearing House Member.

The amendments to § 39 sec. 7 and 8 clarify that collateral margins paid by a Clearing House Member performing clearing for represented Exchange Members will be calculated separately for each represented Exchange Member.

More precise wording has also been given to the provisions on the operation and liability of Clearing House Members (§ 37 sec. 11, § 47 sec. 6, § 52 sec. 3, § 52 sec 3), to clarify that they also apply to them in their role of representing an Exchange Member.

The amendments to § 54a clarify that automatic closing of positions held by a Clearing House Member who represents an Exchange Member applies to all the positions that a given Clearing House Member is responsible for, including the positions of the Exchange Member they represent.

4. Amendments regarding measures to maintain order and disciplinary measures

The amendments to Chapter X of the ECH Regulations are designed to update the provisions on measures to maintain order and disciplinary measures that IRGiT may apply against Clearing House Members.

In § 61 sec. 2 of the ECH Regulations, an amendment has been made to the charge that IRGiT may impose on a Clearing House Member if the Member infringes on the Clearing House membership rules. To date, the charge was PLN 10,000 and could be imposed multiple times if the Infringement was not removed within the time limit specified by IRGiT. As a result of the new amendment, the charge imposed by IRGiT Management Board will be PLN 100,000. Moreover, § 62 sec. 2 of the ECH Regulations, allowing the fee to be imposed multiple times for the same infringement, has been deleted.

In order to unify the rules applicable to ECH members and the Clearing and Settlement House Members, § 63 sec. 1 of the ECH Regulations now allows a Clearing House

Member on which the infringement charge has been imposed to appeal to IRGiT Supervisory Board.

5. Amendments to the Table of Fees and Charges

In connection with the amendments made as regards the measures to maintain order and disciplinary measures that IRGiT may use against a Clearing House Member which has been found in Infringement of the House's membership rules, the disciplinary charges given in section III item 1 and item 2 of the Table of Fees and Charges, i.e. the charge for causing a suspension in clearing of exchange commodities and the charge for causing limiting direct payments in clearing of exchange commodities have been deleted. According to the amendment made to § 53 sec. 3 of the ECH Regulations, the charge referred to in § 61 sec. 2 may be imposed on a Clearing House Member responsible for a limiting direct payment.

The charge for handling accounting documents outside of the self-invoicing system, stipulated in Section III item 13 of the Table of Fees and Charges of the ECH Regulations, has been amended as well. The charge of PLN 10 for each document was introduced to the ECH Regulations alongside the introduction by IRGiT of the free-of-charge self-billing service. The charge has not been changed since it was introduced to the Table of Fees and Charges of the ECH Regulations, i.e. from 2012. As from 1 April 2021, in keeping with the earlier announcements, the charge for handling accounting documents outside of the self-invoicing system will be PLN 50 for each document.

Should you have any questions, do not hesitate to contact us.

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