



On approval of the Rules for the implementation of clearing activities on transactions with financial instruments

Unofficial translation

Resolution of the Board of the National Bank of the Republic of Kazakhstan of October 29, 2018 No. 254. Registered with the Ministry of Justice of the Republic of Kazakhstan on November 29, 2018 No. 17822.

Unofficial translation

In pursuance of the Law of the Republic of Kazakhstan "On Securities Market", the Board of the National Bank of the Republic of Kazakhstan **hereby RESOLVES:**

Footnote. Preamble - as amended by the Resolution of the Board of the Agency of the Republic of Kazakhstan for Regulation and Development of Financial Market dated 26.06.2023 No. 63 (shall be enforced ten calendar days after the date of its first official publication).

1. To approve the Rules for the implementation of clearing activities on transactions with financial instruments.

2. The normative legal acts of the Republic of Kazakhstan, as well as structural elements of some normative legal acts of the Republic of Kazakhstan shall be declared to be no longer in force according to the list in compliance with the appendix to this resolution.

3. The Department of Regulation of Non-Banking Financial Organizations (Kosherbayeva A.M.) in the manner established by the legislation of the Republic of Kazakhstan shall provide:

1) jointly with the Legal Department (Sarsenova N.V.) the state registration of this resolution with the Ministry of Justice of the Republic of Kazakhstan;

2) within ten calendar days from the date of state registration of this resolution, its direction in Kazakh and Russian languages to the Republican State Enterprise on the Right of Economic Management "Republican Center of Legal Information" for official publication and inclusion in the Reference Control Bank of Regulatory Legal Acts of the Republic of Kazakhstan;

3) placement of this resolution on the official website of the National Bank of the Republic of Kazakhstan after its official publication;

4) within ten working days after the state registration of this resolution, submission to the Legal Department of the information on the implementation of measures provided for in subparagraphs 2), 3) of this paragraph and item 4 of this resolution. .

4. Within ten calendar days after the state registration of this resolution, the Department on the Protection of the Rights of Consumers of Financial Services and External Communications (Terentyev A. L.) shall direct its copy for official publication in periodicals.

5. Deputy Chairman of the National Bank of the Republic of Kazakhstan Zh. B. Kurmanov shall be responsible for the control over the execution of this resolution.

6. This resolution shall come into effect upon the expiration of ten calendar days after the day of its first official publication.

*Chairman
of the National Bank*

D. Akishev

Approved.
by Resolution № 254
of the Board of Directors
of the National Bank.
of the Republic of Kazakhstan
29 October 2018

Rules for the implementation of clearing activities on transactions with financial instruments

Chapter 1: General provisions

1. The Rules for carrying out clearing activities on transactions with financial instruments (hereinafter referred to as the Rules) have been developed in pursuance of the Law of the Republic of Kazakhstan “On Securities Market” (hereinafter referred to as the Law) and determine the terms and procedure of clearing activities on transactions with financial instruments.

Footnote. Paragraph 1 - as amended by the Resolution of the Board of the Agency of the Republic of Kazakhstan for Regulation and Development of Financial Market dated 26.06.2023 No. 63 (shall be enforced ten calendar days after the date of its first official publication).

2. For the purposes of the Rules, the following concepts shall be used:

1) Settlement organization - central depository and (or) stock exchange and (or) clearing organization and (or) other organization holding a license for transfer operations;

2) Clearing organization - an organization holding a license for clearing activities on transactions in financial instruments and a central depository;

3) collateral - money (tenge, foreign currency), securities and other financial instruments of clearing participants used to ensure fulfillment of obligations of the clearing participant under the trades under which clearing activities are carried out;

4) net position (net position) - a position of the clearing participant under the trades in a financial instrument, determined as a result of offsetting of the claims and obligations of the clearing participant resulting from the trades in this financial instrument;

5) Authorized body - authorized body on regulation, control, and supervision of the financial market and financial organizations.

3. The organizational structure of a clearing organization shall include subdivisions, the main functions of which are:

- 1) performance of clearing activities under transactions with financial instruments;
- 2) investment of margin contributions and money included in the guarantee or reserve funds of the clearing organization and other collateral;
- 3) processing and distribution of information on the results of clearing activities on transactions with financial instruments;
- 4) software and hardware support of the clearing organization's activities;
- 5) risk management of the clearing organization;
- 6) monitoring of financial standing of clearing participants, as well as their compliance with the clearing organization's rules;
- 7) organization of settlements (payments) on transactions with financial instruments (if the clearing organization has a license for transfer operations);
- 8) internal audit and control.

Footnote. Paragraph 3 - as amended by the Resolution of the Board of the National Bank of the Republic of Kazakhstan dated 07.10.2019 No. 165 (shall be enforced ten calendar days after the date of its first official publication).

4. A clearing organization combining the organization of trading in securities and other financial instruments with clearing activities or depository activities with clearing activities shall ensure the availability:

- 1) of a separate subdivision (subdivisions) in the organizational structure for performing functions within clearing activities on transactions with financial instruments;
- 2) of separate premises at the subdivision (subdivisions) carrying out clearing activities on transactions with financial instruments, as well as systems for collecting, registration and recording of information for carrying out clearing activities on transactions with financial instruments.

The subdivision (subdivisions) carrying out clearing activities on transactions with financial instruments, and the employees of this subdivision (these subdivisions) shall not be assigned the functions of subdivisions of the stock exchange or the central depository, performing other types of professional activities in the securities market, as well as the function, specified in subparagraph 2) of paragraph 3 of the Rules.

Footnote. Paragraph 4 - as amended by the Resolution of the Board of the National Bank of the Republic of Kazakhstan dated 07.10.2019 No. 165 (shall be enforced ten calendar days after the date of its first official publication).

5. When a clearing organization combines the activities related to the organization of trading with securities and other financial instruments with the clearing activities, it shall be allowed to combine the functions of the subdivisions specified in subparagraphs 2), 3), 4), 5), 6) and 8) of paragraph 3 of the Rules, with the subdivisions of the organizer of the trades performing similar functions.

6. The requirements of the Rules shall apply to the clearing organization performing the functions of a central counterparty.

6-1. The clearing organization shall accept, record and control the sufficiency of collateral within the framework of the system for ensuring the completion of settlements in the interbank system of payment cards in accordance with the internal documents of the clearing organization and the agreement concluded between the clearing organization and the National Bank of the Republic of Kazakhstan.

Footnote. The Rules have been supplemented by paragraph 6-1 pursuant to the Resolution of the Board of the Agency of the Republic of Kazakhstan for Regulation and Development of Financial Market dated 26.06.2023 (shall be enforced ten calendar days after the date of its first official publication).

Chapter 2 Clearing Members

7. The procedure and conditions for assignment (suspension, withdrawal) of the status of a clearing participant of the auction shall be established by the rules of the clearing organization.

8. Clearing Members shall:

1) provide the clearing organization with the information on their activities required for monitoring of the financial condition of the clearing participants, as well as the compliance of the clearing participants with the requirements of the clearing organization's rules to the extent, procedure, and terms stipulated by the clearing organization's rules;

2) pay contributions and fees of the clearing organization in the manner prescribed by the clearing organization's rules.

9. The Clearing Organization shall notify the authorized body of all cases of assignment, suspension (resumption) of validity and withdrawal of the status of the Clearing Member no later than the next business day after the occurrence of such case.

10. The Authorized Body shall notify the Clearing Organization of suspension or termination of the Clearing Member's license on the day of sending the relevant notification to such Clearing Member.

The Clearing Organization shall not serve (terminate service) the Clearing Member, whose license has been suspended or terminated from the date of receipt of such notification, except for the cases stipulated by subparagraph 9) of paragraph 1 of Article 48-1 of the Law of the Republic of Kazakhstan dated August 31, 1995 "On Banks and Banking Activities in the Republic of Kazakhstan" and paragraph 6 of Article 51 of the Law.

11. The Clearing Organization shall carry out procedures to settle the fact of full or partial non-fulfillment or improper fulfillment of obligations of the Clearing Member (for the purpose of forced liquidation of its open positions, including in case of suspension or termination of the Clearing Member's license) by way of:

1) submission of orders and conclusion of transactions with financial instruments in the trading system of the stock and (or) commodity exchange or in the unorganized securities market on behalf of this clearing participant and on behalf of bona fide clearing participants;

2) Execution of trades on behalf of such clearing participant and bona fide clearing participants with the clearing organization without consent of such clearing participants and (or) performance of other actions in accordance with the procedure and on the terms determined by the clearing organization rules.

Obligations of the clearing participant who allowed their full or partial non-fulfillment or improper fulfillment shall be fulfilled by the clearing organization in accordance with the rules of the clearing organization.

12. Settlement of the fact of full or partial non-fulfillment or improper fulfillment of obligations of the clearing participant shall be carried out for all insolvent clearing participants.

In case of settlement of the fact of full or partial non-fulfillment or improper fulfillment of the clearing participant's obligations, the procedure for use of the funds constituting the guarantee or reserve fund of the clearing organization shall be determined by the internal documents of the clearing organization.

13. All obligations of the clearing participant of the clearing organization for transactions executed before the date of receipt of the notification of the authorized body on suspension or revocation of the clearing participant's license shall be subject to fulfillment on the terms and according to the procedure established by the rules of the clearing organization.

14. Obligations for transactions shall be terminated by the occurrence of net obligations (net claims) of the clearing participant in respect of other clearing participants - its counterparties under the trades or central counterparty. The amount of the said net obligations (net claims) shall be calculated in accordance with the clearing organization's rules, and the relevant notice of the calculated amount shall be sent to the clearing participant in the form of an electronic document or using other means of communication, including the clearing organization's software and hardware.

15. The Clearing Organization shall send to the Clearing Member, whose license has been suspended or terminated, as well as to its counterparties the notice of termination of obligations and (or) replacement of obligations with new obligations arising as a result of procedures for settlement of the fact of full or partial non-fulfillment or improper fulfillment of obligations of the Clearing Member no later than on the business day following the date of termination of obligations, and (or) replacement of obligations with new obligations for such transactions.

16. Refund to the clearing participant shall be made by the clearing organization within 3 (three) business days after receipt by the clearing organization of the letter of refund from the clearing participant containing payment details.

Refund to the clearing participant shall be made by the clearing organization in the manner and on the terms stipulated by the clearing organization's rules.

Chapter 3 Clearing operations

17. The Clearing Organization shall collect, process and store the information on the trades under which such Clearing Organization performs clearing services, its reconciliation, correction in case of discrepancies, change of details of the parties to the trade or performance of other actions in the course of settlement of default on transactions under the terms and according to the procedure determined by the Clearing Organization's rules.

In order to carry out clearing activities on transactions with financial instruments, the clearing organization shall conclude contracts with the settlement organization, the organizer of the trades and (or) commodity exchange, the terms and conditions of which stipulate the procedure for exchange of information between the parties to the contract and performance of agreed procedures in the process of realization by the parties of their rights and obligations.

18. The Clearing Organization shall store the information and documents related to clearing activities and shall make daily backup copies of such information.

The backup copies shall be subject to protection against unauthorized access to the information and shall be kept in the reserve technical center of the clearing organization until their replacement with updated backup copies.

19. The clearing organization shall ensure that the backup technical center is always ready for immediate activation. The backup technical center shall meet the following requirements:

1) contains backup copies of the information related to the clearing activity identical to the main information;

2) contains a copy of the software and hardware of the clearing organization used in the course of clearing activities on transactions with financial instruments;

3) is located at least twenty five kilometers from the clearing organization's location;

4) is provided with the communications necessary for the performance of the clearing organization's activities;

5) if it is impossible to perform clearing at the location of the clearing organization, it shall be possible to perform clearing no later than on the next business day after the occurrence of such a situation.

20. The clearing organization may use the reserve center of the central depository or stock exchange.

21. To perform clearing on transactions of clearing participants concluded in the trading system of the trading organizer and (or) on the commodity exchange, the clearing organization shall ensure reliable accounting of the parameters of such transactions.

Footnote. Paragraph 21 - as amended by the Resolution of the Board of the National Bank of the Republic of Kazakhstan dated 07.10.2019 No. 165 (shall be enforced ten calendar days after the date of its first official publication).

22. The Clearing Organization shall carry out its activities to reduce the risks of the participants due to the multilateral offset of obligations and claims arising from the concluded transactions.

23. Excluded by the Resolution of the Board of the National Bank of the Republic of Kazakhstan dated 07.10.2019 No. 165 (shall be enforced ten calendar days after the date of its first official publication).

24. The procedure and conditions for making settlements on transactions with financial instruments, on which clearing activities are carried out, shall be determined by the clearing organization's rules.

To organize settlements (payments) on transactions with derivative financial instruments and (or) currency, the clearing organization shall open accounts for accounting of financial instruments in accordance with the requirements of the clearing organization's internal documents.

To perform actions in the settlement of a default on a transaction in financial instruments the clearing organization shall open accounts for the accounting of these financial instruments with settlement organizations, including the central depository.

Footnote. Paragraph 24 - as amended by the Resolution of the Board of the National Bank of the Republic of Kazakhstan dated 07.10.2019 No. 165 (shall be enforced ten calendar days after the date of its first official publication).

25. Claims and (or) obligations of clearing participants shall be calculated by the clearing organization and transferred to the settlement organization by transferring the order for settlements (payments) by one of the following methods:

1) in real time on the basis of each separate trade without offsetting of claims and obligations for transactions of clearing participants in the order of their registration in the trading system of the trade organizer or at the commodity exchange;

2) at the end of the trading session at the end of which the claims and obligations of the clearing participants are offset and their net positions are determined after the clearing session

26. The clearing organization shall prepare a report following the results of clearing activities for clearing participants in the manner and within the terms determined by the clearing organization's rules.

27. The Settlement Organization on the basis of the received orders shall make calculations (payments) and notify the Clearing Organization thereof.

Chapter 4. Disclosure of information on the clearing organization's activities

28. The Clearing Organization shall ensure disclosure of information on its activities and free access to information that does not constitute a trade secret in the securities market to all interested parties by publishing (placing) the said information on a permanent basis on its Internet resource in the Kazakh and Russian languages.

29. The following information shall be disclosed on the Clearing Organization's website:

1) general information on the clearing organization (composition of the clearing organization's bodies, surname, name, patronymic (if any) of the clearing organization's executives, location, contact numbers);

2) constituent documents;

3) rules of the clearing organization;

4) rules for investment of margin contributions and money included in the guarantee or reserve funds of the clearing organization and other collateral of clearing participants;

5) information on clearing participants indicating the name of the clearing participant, date and number of the license issued by the authorized body, date of assignment, suspension, withdrawal of the clearing participant status, grounds for suspension, withdrawal of the clearing participant status;

6) the results of investment of margin contributions and money included in the guarantee or reserve funds of the clearing organization and other collateral of clearing participants on an annual basis;

7) name of the organizers of the trades and (or) commodity exchanges and other entities serviced by the clearing organization with an indication of markets, types of financial instruments and trades (trading methods) accepted for servicing by the clearing organization;

8) name of settlement organizations;

9) information subject to disclosure in accordance with the legislation of the Republic of Kazakhstan on the securities market, joint stock companies and clearing organization rules.

Internal documents of the clearing organization shall determine the rules for investment of margin contributions and money included in the guarantee or reserve funds of the clearing organization and other collateral of the clearing participants.

Appendix
to resolution № 254 of the
Board of Directors
of the National Bank.
of the Republic of Kazakhstan
29 October 2018

List of normative legal acts of the Republic of Kazakhstan, as well as structural elements of some normative legal acts of the Republic of Kazakhstan deemed to have lost their force

1. Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 58 dated 24 February 2012 "On Approval of the Rules of Clearing Activities on Transactions with Financial Instruments" (registered in the Register of State Registration of Regulatory Legal Acts under No. 7555, published on 23 June 2012 in Kazakhstanskaya Pravda newspaper, No. 199-200 (27018-27019)).

2. Paragraph 1 of Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 205 "On Amendments and Additions to Certain Regulatory Legal Acts of the

Republic of Kazakhstan on Clearing Activities with Financial Instruments" dated July 4, 2012 (registered in the Register of State Registration of Regulatory Legal Acts under No. 7870, published on October 31, 2012, in Kazakhstanskaya Pravda newspaper, No. 375-376 (27194-27195)).

3. Paragraph 5 of the List of the Regulatory Legal Acts of the Republic of Kazakhstan on the activities of the trade organizer, which are amended and supplemented, approved by Resolution № 98 of the Board of the National Bank of the Republic of Kazakhstan dated May 27, 2014 "On amendments and addenda to some regulatory legal acts of the Republic of Kazakhstan on the activities of the trade organizer" (registered in the Register of State Registration of Regulatory Legal Acts under № 9621, published on August 11, 2014 in Adilet, the Information and Legal System).

4. Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 10 dated January 28, 2016 "On Approval of the Rules for Implementation of the Activities of the Central Counterparty" (registered in the Register of State Registration of Regulatory Legal Acts under No. 13297, published on March 14, 2016 in Adilet, the Information and Legal System).

5. Paragraph 4 of the List of Regulatory Legal Acts of the Republic of Kazakhstan on the issues of the financial market and financial organizations, which are amended and supplemented, approved by Decree № 12 of the Board of the National Bank of the Republic of Kazakhstan dated January 28, 2016 "On Amendments and Addenda to Some Regulatory Legal Acts of the Republic of Kazakhstan on the Financial Market and Financial Organizations" (registered in the Register of State Registration of Regulatory Legal Acts under № 13308, published on March 14, 2016 in Adilet, the Information and Legal System).

6. Resolution of the Board of the National Bank of the Republic of Kazakhstan No. 146 dated 30 May 2016 "On Amendments and Additions to Certain Regulatory Legal Acts of the Republic of Kazakhstan on the Issues of Reduction of Permits and Simplification of Permitting Procedures" (registered in the Register of State Registration of Regulatory Legal Acts under No. 14208, published on 5 October 2016 in Adilet, the Information and Legal System).