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RESOLUTION No. 16

“Procedures for the imposition of cash penalties on failing Clearing Members in accordance with Commission Delegated Regulation (EU) 2018/1229 and Commission Delegated Regulation (EU) 2017/389”

Codified to include the decisions dated 31.01.2022 and 20.02.2023 of the Board of Directors.

THE BOARD OF DIRECTORS

OF ATHENS EXCHANGE CLEARING HOUSE S.A. (ATHEXCLEAR)

(Meeting 215/31-1-2022)

Having regard to:

- a) article 19 of Commission Delegated Regulation (EU) 2018/1229 and Commission Delegated Regulation (EU) 2017/389,
- b) article 2.2 of Part 2, Section IV of the Rulebook for Clearing Transactions in Book-Entry Securities (henceforth the “Securities Clearing Rulebook”),
- c) article 2.2 of Part 2, Section IV of the Rulebook for Clearing Derivatives Transactions (henceforth the “Derivatives Clearing Rulebook”),

d) the need to set out the procedure for the imposition of cash penalties on failing Clearing Members and any technical matter and necessary detail relating to the calculation, collection and distribution of the aforesaid cash penalties as well as the relevant objection procedure.

HEREBY RESOLVES AS FOLLOWS

1. Scope – General terms

1. ATHEXClear implements the procedure for imposing cash penalties on failing Clearing Members in accordance with the preamble hereof and the specific provisions set out below.

2. For the purposes of this resolution, the settlement fail of Regulation (EU) 909/2014 and as set out in the ATHEXCSD Rulebook (article 1, Part 1, Section I) refers to the non-occurrence of settlement or partial settlement by a Clearing Member, acting also as a Participant, in the Dematerialised Securities System (DSS) due to a lack of Securities or cash on the intended settlement date in the following cases where the underlying cause involves:

a) transactions in Securities which are concluded in the Securities Market and the Alternative Market of ATHEX.

b) obligations to deliver Securities which arise on maturity of a Derivative or exercise of a right deriving from a Derivative listed on the Derivatives Market of ATHEX, as well as

c) obligations to deliver Securities which arise on exercise of a right to return Securities in the framework of Securities Lending Products of ATHEX.

2. Procedure for the imposition of cash penalties on failing Clearing Members in connection with trade settlement fails

1. In cases of settlement fails in accordance with the preceding paragraph, cash penalties are imposed on the basis of trades not settled by the Clearing Member as applicable. If the settlement fail arises from the Securities Market of ATHEX or the Alternative Market of ATHEX, cash penalties are imposed on the aforesaid failing Clearing Member also in respect of that part of delivery which pertains to Securities that are blocked in the relevant settlement of the Clearing Member as coverage limit in accordance with article 4.3.2.2, Part 4, Section V of the ATHEXCSD Rulebook.

2. For the purposes hereof, a settlement fail in connection with the fails cases set out in paragraph 1 is ascertained by ATHEXClear by means of its access to the DSS in accordance with paragraph 4, article 4.2, Section V of the ATHEXCSD Rulebook.

3. Cash penalties in cases where provision has been made for an exception on the basis of ESMA guidelines do not fall within the scope of the calculation of cash penalties and in this regard no cash penalties are calculated.

4. In compliance also with the provisions of par. 12, article 7 of Regulation (EU) 909/2014, as of the date of opening of insolvency proceedings against a Participant, ATHEXClear shall apply the following:

a) Cash penalties will not be calculated in cases where a settlement fail is caused by a Clearing Member in a state of insolvency.

b) Cash penalties that had already been calculated for settlement instructions in which the insolvent Clearing Member participated up until the aforesaid date will not be included in the aggregate net amounts for which provision is made in article 17 of Commission Delegated Regulation (EU) 2018/1229, but will be calculated by ATHEXClear separately and placed at the disposal of the party having a legitimate interest in order for the latter to be informed accordingly, such as, by way of indication, to the liquidator or trustee in bankruptcy.

c) Cash penalties will not be calculated in respect of settlement instructions involving close-out transactions which are carried out on behalf of the insolvent Clearing Member.

5. With regard to the procedure for the imposition of cash penalties and the procedure for lodging objections against them, the terms of the text “ECSDA CSDR Penalties Framework (Last updated October 2021)” shall be applicable. For the purposes of examining objections, an Objections Committee shall be formed, consisting of three (3) members, and more specifically two (2) from the clearing and risk management services of ATHEXClear and one (1) from the settlement service of ATHEXCSD. The Committee shall decide on objections by majority in the first and last instance following submission of an objection in writing which is transmitted by the Clearing Member to ATHEXClear in accordance with its procedures.

6. In cases where the Objections Committee rejects an objection, ATHEXClear collects the relevant cash amounts from the failing Clearing Member in accordance with paragraph 7.

7. More specifically, the timeline of actions with regard to the procedure for imposing cash penalties, in accordance with the ECSDA CSDR Penalties Framework, is as follows:

a) For daily penalties, Clearing Members may lodge an objection up until the 10th Penalties Business Day, in the sense of the ECSDA CSDR Penalties Framework, of the month following the month in which the settlement fail of the Clearing Member occurred, and request cancellation, recalculation or reallocation of the penalty to the counterparty,

submitting to ATHEXClear the relevant application with the type of request and the reasons for the objection in accordance with the latter's procedures. Objections after the 10th Penalties Business Day of the month following the month in which the settlement fail of the Clearing Member occurred will not be considered by ATHEXClear. Each time that an objection is accepted by ATHEXClear and the cash penalty is modified, the Clearing Member will be notified of the modification on the following business day by means of the reporting it receives from ATHEXClear.

b) On the 14th Penalties Business Day, in the above sense, of the month following the month in which the settlement fail of the Clearing Member occurred, the failing Clearing Member will be informed about the cash penalties that have been calculated, without prejudice to any objection procedure of point a), by means of the reporting sent to it by ATHEXClear in accordance with its procedures.

c) On the 18th Penalties Business Day, in the above sense, of the month following the month in which the settlement fail of the Clearing Member occurred, ATHEXClear collects – from the failing Clearing Member that has a debit balance of cash penalties – the relevant cash amounts due and distributes them to the respective Clearing Members with a credit balance of cash penalties. If the 18th¹ day falls on a public holiday in Greece, the cash operations in respect of the penalties will be performed on the day after the public holiday. To facilitate Clearing Members with regard to the precise dates for the generation of monthly reports on penalties as well as operations for their collection / distribution, a relevant calendar has been posted on the website of ATHEXCSD.

Entry into force

1. This resolution shall be published on the website www.athexgroup.gr. This resolution shall enter force as of its publication, i.e. as of 01.02.2022.
2. The disclosure of this resolution is subject to the formalities of article 2.7, Part 2, Section I of the Securities Clearing Rulebook and article 2.6, Part 2, Section I of the Derivatives Clearing Rulebook.

¹ Point (c) of paragraph 7 of article 2 was amended as above by virtue of decision 231/20.02.2023 of the Board of Directors with effect as of 01.03.2023 provided that the revised document "ECSDA CSDR Penalties Framework" will be published within March 2023.