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Regulated markets MIFID II requirements for authorisation – implementation in Poland

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Translations of the Polish regulations are unofficial translations. The only binding versions of the regulations are Polish language versions.

Abbreviations/terms

MIFIR - Regulation (EU) No 600/2014

MIFID - Directive 2014/65/EU

RM – regulated market

CA – Competent Authority

MB – Management Board

SB – Supervisory Board

Overview of Polish regulations on RM

Primary legislation - Act on trading in financial instruments (TFIA)

Section II - Secondary Trading in Financial Instruments Articles 14 – 32a

Administrative sanctions: Article 165, 165b, 165c, 165d, 165f

Criminal sanctions: 178, 178a, 179, 180, 181, 184,

Secondary Legislation - Regulations of the Minister of Finance on:

- detailed requirements applying to a regulated market and to an auction platform,
- detailed requirements applying to an official listings market and to issuers of securities admitted to trading on that market
- detailed criteria relating to meeting by members of the management board and the supervisory board of the company operating a regulated market of the conditions on fitness and properness, knowledge, competence and experience and number of functions executed simultaneously.

Non binding acts relating to RM

Guidelines

Guidelines on the Management of Information Technology and ICT Environment Security in capital market infrastructure entities

https://www.knf.gov.pl/knf/en/komponenty/img/knf_158415_wytyczne_IT_infrastruktura_eng_47463.pdf

Principles

KNF Principles of Corporate Governance for Supervised Institutions (2014) [not apply to the listed companies]

https://www.knf.gov.pl/knf/en/komponenty/img/principles_of_corporate_governance_39736.pdf

Regulated market – Art. 14 TFIA

„1. A regulated market, within the meaning of this Act, shall be a **multilateral trading venue** in financial instruments admitted to such trading, functioning in a regular way which ensures a common and equal access to market information at the same moment to investors by bringing together multiple third-party buying and selling interests in financial instruments, and equal conditions for buying and selling these instruments, organised and under supervision of a competent authority under rules specified in statutory provisions, as well as recognised by the Member State as fulfilling these conditions, and notified to the European Commission as a regulated market.v
(...)”

Legal form, scope of activity

„Article 21.

1. A regulated market may **only** be operated by a **joint stock company**.

2. Subject of activities of a company operating a regulated market may **only** be operating a **regulated market**, operating a **MTF**, operating an auction platform, operating **OTF**, providing **data reporting services** or conducting **other activities within the scope** of organizing trading in financial instruments and activities connected with that trading, without prejudice to sections (3) and (3a).

2a. The company operating a regulated market may provide activity consisting of **distribution of information** about:

1) financial instruments not traded in the trading system operated by the company;

2) commodities admitted to trading by an exchange which are not traded in the system operated by the company;

3) underlying referred to in Article 2(1)(2)(i), to which property rights may refer.

2b. The company operating a regulated market may exercise **activities outsourced** to it by entities belonging to its capital group, provided that:

1) they are consistent with the activity conducted by the company operating the regulated market or

2) consist of other activities related to the activity conducted by the company operating the regulated market and that can be outsourced by the company based on an agreement referred to in Article 16b(1).

Scope of activity,

„Article 21
(...)

3. A company operating a regulated market may also conduct activities within the scope of **education, promotion and information** connected with functioning of **capital market**.

3a. A company operating a regulated market, upon **prior notifying KNF**, may organise **trading in commodities** admitted to trading by an exchange within the meaning of the Act of 26th October 2000 on Commodities Exchanges. Provision of the Act of 26th October 2000 on Commodities Exchanges shall apply to the company organizing trading in commodities admitted to trading by an exchange and to this trading, with an exclusion of Article 5 section (2) and sections (5)-(7), Articles 6-8, Article 9(1) and Article 12 of that Act.

3b. The company operating a regulated market shall enclose to a notification referred to in section (3a) a **rulebook on trading in commodities** admitted to trading by an exchange, to which Article 11 of the Act of 26th October 2000 on Commodities Exchanges shall apply. **KNF shall be notified on every change in the rulebook** on trading in commodities admitted to trading by an exchange.

3c. **KNF, within 30 days** from the day of receipt of the notification referred to in section (3a) or from the day of obtaining an information on a change in the rulebook on trading in commodities admitted to trading by an exchange, **may object** to a launch of organising by the company operating a regulated market trading in commodities admitted to trading by an exchange or to continue it, **if it could endanger security of trading in financial instruments or trading in commodities admitted to trading by an exchange**.

Use of identification, Equity

„Article 21. 4. (repealed).

4a. The company operating a regulated market and an entity operating a foreign regulated market shall have the **exclusive right to use an identification** of the operated regulated market with an indication “**regulated market**” or “**exchange of financial instruments**”, and in case of organising trading in securities an identification of the operated regulated market with an indication “**securities exchange**”, and to use these indications within conducted activities, advertisements or advertising information.

5. The company operating a regulated market shall have an exclusive right **to include in its firm** indication „**regulated market**” or „**exchange of financial instruments**”, and in case of organizing trading in securities – an indication “securities exchange”.

6. (repealed).

7. **Equity** of the company operating a regulated market shall amount to no less than **PLN 10 000 000.**”

8. The amount of **equity**, referred to in section (7), should be **increased** to the level necessary for **proper operation of MTF or OTF**, taking into account the character and scope of transactions concluded in the systems and the scope and the level of the **risks**, on which each of the systems are exposed to.

Criminal sanctions for unlawful use of the identification of the exchange

Criminal sanction

„Article 178a.

Any person who is not entitled to and uses marking referred to in Article 21 sections (4a) and (5), shall be liable to a **fine** of up to **PLN 5 000 000** or a **penalty of imprisonment no longer than 2 years, or** to both of these penalties **jointly.**”

Shareholders of a regulated market

„Article 22.

1. Shares of a company operating a regulated market may **only** be **registered** [no bearer shares] shares.
 2. **Shares** of a company operating a regulated market may **only be acquired by** the State Treasury, investment firms, banks, investment funds corporations, managing entities of alternative collective investment undertakings within the meaning of Act on Investment Funds conducting their activity on the basis of an authorisation, insurance undertakings, comprehensive pension corporations and issuers of securities traded on this regulated market. **Other domestic or foreign legal persons** may acquire shares of a company operating a regulated market **upon KNF's approval**.
 3. Provisions of sections (1) and (2) shall **not apply** if:
 - 1) a company operating a regulated market is a **public company**;
 - 2) **securities are not traded** on a regulated market operated by this company.
- (...)”

Shareholders of a regulated market (2)

„Article 22.

(...)

4. A company operating a regulated market shall **immediately after obtaining an authorisation** to operate a regulated market **publish a list of shareholders** of this company with an indication of:

- 1) first **name, surname** and **domicile** – in case of natural persons,
 - 2) **name or firm** and **registered office** – in case of legal persons and organizational units without legal personality, and
 - 3) **amount of shares** held by particular shareholders and resulting from these shares **share in the total vote** and in **share capital** of the company operating a regulated market.
5. An obligation referred to in section (4), shall apply to shareholders holding shares representing **no less than 5% of the total vote** or **no less than 5% of the share capital** of that company operating a regulated market.
6. The company operating a regulated market shall **immediately publish** information covering **changes** in data contained in a list referred to in section (4).”

Notifications on intention to acquire shares of a regulated market

„Article 24.

1. **KNF shall be notified** on an **intention** to **directly** or **indirectly** acquire or take up shares of a company operating a regulated market in an amount:

1) representing **no less than 5%** of the **total vote** or of **share capital**, or

2) resulting in reaching or exceeding **5%, 10%, 15%, 20%, 25%, 33% or 50%** of the total vote or of the share capital

- taking into account that holding shares of a company operating a regulated market by **entities that belong to the same capital group** shall be **considered as** holding them by **one entity**.

2. Buying or taking up shares of an entity that directly or indirectly holds shares of a company operating a regulated market shall be **understood as an indirect acquisition** of a company operating a regulated market, if it results in reaching or exceeding 50% of the total vote or 50% of the share capital in this entity.

(...)”

Notifications on intention to acquire shares of a regulated market (2)

„Article 24. (...)

3. Within **3 months from receiving** a notification referred to in section (1) **KNF shall be entitled to object** to a planned direct or indirect acquisition or taking up shares of a company operating a regulated market, **if the entity** that intends to acquire or take up shares of the company operating a regulated market **might exert a negative influence on sound and stable management of a regulated market**. If KNF does not object within the set timeframe, **KNF may set a date until which** acquiring or taking up shares of a company operating a regulated market **may be executed**.

3a. Acquiring or taking up shares according to conditions indicated in the notification may be executed:

1) after expiry of a deadline referred to in section (3) – in case no objection has been lodged by KNF, or

2) within a timeframe set by KNF – in case no objection has been lodged by KNF, but a timeframe has been set by KNF within which acquiring or taking up shares of a company operating a regulated market may be executed.

4. Exercising voting rights from shares of a company operating a regulated market acquired or taken up without notifying KNF, after notifying yet before expiry of a deadline referred to in section (3), despite an objection lodged by KNF or with a violation of a timeframe set by KNF within which acquiring or taking up shares may be executed, shall **be ineffective**.

(...)

Notifications on intention to acquire shares of a regulated market (3)

„Article 24. (...)

5. In case an entity acquiring shares of a company operating a regulated market is a **foreign** investment firm, a foreign bank or a foreign insurance undertaking which has been granted an authorisation to operate by a competent supervisory authority of **other Member State**, **KNF shall obtain an opinion** about this entity from a supervisory authority that granted authorisation for that entity.

6. Provision of section (5) shall accordingly apply if an entity acquiring shares of a company operating a regulated market is a parent entity towards an entity referred to in section (5), or an entity exerting a substantial influence within the meaning of Article 96(3) on an entity referred to in section (5), as well as in case of an indirect acquisition of an entity, the shares of which are subject of an acquisition, would become a subsidiary from the acquirer or an entity on which the acquirer would begin exerting a substantial influence within the meaning of Article 96(3).

(...)

Notifications on intention to acquire shares of a regulated market (4)

„Article 24. (...)

7. A **notification referred to in section (1)**, shall include **indication of an amount of shares** that the acquirer intends to buy, **their share in equity** and **number of votes** that the acquirer will obtain at a general meeting, as well as a **statement**, given subject to a criminal liability, on the **source of funds** assigned to financing of the acquisition or taking up of shares of a company operating a regulated market. An entity that submits a statement shall also include a clause with the following wording: “I am aware of criminal liability for submitting a false statement”. Such a clause shall pose a substitute for an instruction of the public body on criminal liability for perjury.

8. **Lack of an objection** lodged **by KNF** within the deadline referred to in section (3), shall **mean an approval** for acquisition of shares of a company operating a regulated market under conditions specified in the notification.”

Authorisation of a regulated market

„Article 25.

1. Operating a regulated market shall require obtaining KNF's **authorisation**, granted **upon an application** of a concerned entity.
2. An application for an authorisation to operate a regulated market **shall include**:
 - 1) firm and registered office of the company;
 - 2) personal data of members of the **management board** and **supervisory board** of a company operating a regulating market as well as of **other persons responsible for launching operations** of the regulated market, **or** for the **management** thereof;
 - 3) **expected amount of own funds** and **credits** assigned to launching operations of a regulated market, as well as **determining mode of financing its operations**;
 - 4) information on an amount and **structure of own funds** and **sources of their income**;
 - 5) **indication** of an **entity** or entities that, on the basis of an agreement with the company, will provide **clearing and settlement** of transactions concluded on a regulated market operated by the company, as well as rules **according to which clearing and settlement** of transactions **will be executed** by this entity or by these entities;
 - 6) information on prospective **location** of the regulated market as well as on **technical measures** enabling function of the market, in particular providing **constant connectivity with entities referred to in item 5;**”

Authorisation of a regulated market (2)

„Article 25.(1):

(...)

7) an obligation [declaration] of **at least 6 investment firms** to provide services on this regulated market;

8) **a list of shareholders** of companies holding shares entitling to exercise **no less than 5%** of the total vote or representing at least no less than of the equity of the company with an indication of share in the company's total vote or in equity.

2a. The application for an authorisation to operate a **MTF** by the company operating a regulated market includes information referred to in Articles 2 and 3 of **regulation 2016/824**.

2b. The application for an authorisation to operate an **OTF** by the company operating a regulated market includes information referred to in Articles 2 and 6 of **regulation 2016/824**. In case when, according to the application for an authorisation, wholesale energy products which must be executed through physical delivery are to be traded on the OTF, the application includes also information about such products to the extent which is required according to the provisions of regulation 2016/824 in relations to the classes of assets referred to in Article 1(2) of the regulation.

2c. Information referred to in section (2a) and (2b) are provided also in electronic form in the format described in Article 9 of regulation 2016/824.

(...)

Authorisation of a regulated market (4)

„Article 25

3. The following should be attached to the application:

- 1) articles of association of the company;
- 2) organisational rulebook of the company;
- 3) rulebook of a regulated market;
- 4) economic-financial feasibility study of the operation of the regulated market for the next 3 years;
- 5) the conditions of conducting a due diligence assessment referred to in Article 7(2) of regulation 2017/584;
- 6) the conditions of conducting a risk-based assessment referred to in Article 7(3) of regulation 2017/584;
- 7) the conditions for conducting the conformance tests referred to in Article 9 of regulation 2017/584;
- 8) the conditions of conducting the stress tests referred to in Article 14 of regulation 2017/584;
- 9) the business continuity plan referred to in Article 16 of regulation 2017/584;
- 10) the conditions and arrangements, referred to in Article 18(3) of regulation 2017/584;
- 11) the principles and conditions, referred to in Article 21 of regulation 2017/584;
- 12) procedures as well as description of **details and systems** referred to in Article 16(1) of Regulation 596/2014 [detection and notification of market manipulation]

Authorisation of a regulated market (5)

„Article 25

3. The following should be attached to the application: (...)

13) Documents and information demonstrating fulfilling of conditions referred to in Articles 2-5, Article 7 (1, 5 and 6), Article 8, Article 10(2), Articles 11-13, Article 15, Article 16 (4 and 5), Article 17, Article 18 (1 and 2), Article 19, Article 20 and Article 23 (1 and 2 of regulation 2017/584;

14) agreements and draft agreements regulated by Article 6 of regulation 2017/584.

3a. In case the company intends also to organise a **MTF or OTF**, it shall also attach to its application, **on the KNF request, rulebook** of this **MTF** or the **rulebook of the OTF**.

4. (repealed).

5. Upon granting an authorisation, KNF shall approve articles of association and the rulebook of the regulated market.”

Requirements for management bodies

Article 25a.

1. The management board of a company operating a regulated market shall comprise of persons with **higher education, no less than three years of professional experience on a managerial position in financial market institutions or entities providing services for financial market institutions relating to the main activity of those institutions**, an unblemished reputation within the extent of performed functions as well as with knowledge, competence and experience necessary to manage the company operating the regulated market.

2. If a company operating a regulated market organises a **MTF or OTF**, requirements referred to in section (1) shall apply to persons managing this activity.

3. Provision of section (2) shall not apply in case this **MTF or OTF** is managed by board members of a company operating a regulated market.

(...)”

Requirements for management bodies (2)

The sections 4-15 of Article 25a relate to the following requirements on management body:

- Ensuring the increase of qualifications necessary for proper execution of duties,
- Number of members of Management Board (MB) and Supervisory Board (SB) dependent on individual circumstances and character, scale and complexity of the activity,
- Member of MB or SB of RM of significant importance (size, organisational structure, character, scope and complexity of activity) can perform at the same time not more than:
 - 1) one function of MB and two functions of SB or
 - 2) four functions of SB.
- One function is understood as:
 - 1) functions in MB or SB executed in entities belonging to the same capital group
 - 2) functions in MB or SB executed in entities in which the company operating the regulated market has directly/indirectly shares which entitle the company (independently or together with other entities) to 10 % of votes or 10% of share capital (not applies to the representatives of State in MB/SB)
- On a request of MB, the KNF may agree for 1 additional MB/SB function for MB/SB member (conditions apply)

Requirements for management bodies (3)

- If justified by size, organisational structure, character, scale, complexity of activity – obligation to set up a **nomination committee (at least 3 SB members)**
- The nomination committee may use the resources necessary, including external advice

Authorisation – other rules

Conditions for refusal of authorisation

(Article 26)

KNF shall refuse to grant an authorisation to operate a regulated market:

- if from an analysis of the application and from documents attached to it results that the entity submitting the application does **not guarantee performance of activities in a manner that will not endanger security of trading in financial instruments or that will properly secure interests of participants of that trading,**
- if MB or SB members or other persons responsible for launching of the operations or for managing of the market do not meet the requirements for MB/SB or do not warrant efficient and safe management of the regulated market.

(Article 26a)

KNF shall refuse to grant an authorisation for an entity operating a regulated market to operate respectively MTF or OTF if:

- the application does not meet the requirements mentioned in Article 25 (2a) or (2b)
- documents attached do not comply (the content) with the legal requirements or actual state
- the analyses of application/documents show that the applicant will not ensure the operation of activity covered by the application in a way:
 - compliant with legal obligations for MTF/OTF
 - safe for trading in financial instruments or
 - properly protecting the interests of market participants involved in the trading.

Post-authorisation – other KNF powers towards RM

1. **Changes in the MB of RM** – requires KNF approval (on request of an organ responsible for appointing of MB of RM). Refusal if safety of trading endangered or interests of participants not protected
2. Change in **clearing and settlement entity** for the RM requires notification to KNF
3. A **participant** who is entitled to conclude transactions on the RM, may choose another **settlement** entity than those used by the RM. Such intention should be notified to KNF
4. KNF within 3 months from notification (point 2 or 3 above) may **object** if the entity does not meet the requirements prescribed in Article 18 (1b)
5. In case an entity providing clearing / settlement does not meet the requirement in Article 18(1b), KNF may in a form of an administrative decision to order to cancel the agreement with such entity (KNF may determine a date for cancellation of the agreement); the same refers to situation in point 3.
6. The SB of RM on a request of MB approves the rulebook of RM. The SB also approves changes. Detailed content of the rulebook in Article 28(2)
7. The **changes** in the **Statutes** of the company operating the RM and **the rulebook of RM** requires **KNF approval**.
8. The company needs to **notify** KNF about changes in data provided in the application.
9. KNF may authorise the company operating RM to:
 - Provide DRSP services
 - Provide auction platform activities

Post-authorisation – other KNF powers towards RM (2)

- The KNF Chairman or appointed representatives may:
 - Enter the premises of the company operating RM (analyse books, documents other data sources)
 - Participate in the meetings of SB and in the General meeting of shareholders
- On a request of KNF Chairman or appointed person – the persons representing the company must provide copies of documents and provide statements
- The same relate to the auditor and auditor representatives
- On a written request of KNF, the MB of the company is obliged to:
 - Convene the general meeting of shareholders
 - Include items requested by KNF in the agenda of the general shareholder meeting.
- The KNF may require the SB of RM taking immediately a resolution in a given matter (not later than 10 days)
- In case there are doubts on audited financial statements/financial information – KNF may request additional control of the documents (on expense of the company operating RM – if the case was justified)
- The auditor needs to pass to MB/SB without delay important information (justified suspicion of breach of law, fair trading rules or interests of participants, danger for the business continuity, refusal to issue opinion).