

## DISCLAIMER

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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, 20.02.2023 and 17/06/2024 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) the provisions of article 19 of Commission Delegated Regulation (EU) 2018/1229 and Commission Delegated Regulation (EU) 2017/389, **as amended and in force<sup>1</sup>**,
- b) the provision of article 2.2 of Part 2, Section IV of the Rulebook for Clearing Transactions in Book-Entry Securities (henceforth the “Securities Clearing Rulebook”),

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<sup>1</sup> Point a) of the Preamble was amended as above by virtue of decision 250/17.06.2024 of the Board of Directors with effect as of 02.09.2024

c) the provisions of article 2.2 of Part 2, Section IV of the Rulebook for Clearing Derivatives Transactions (henceforth the “Derivatives Clearing Rulebook”),

d) The terms of the document "ECSDA CSDR Penalties Framework" of the "EUROPEAN CENTRAL SECURITIES DEPOSITORY ASSOCIATION" (ECSDA), as applicable from time to time.<sup>2</sup>

e) 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 and allocation of the aforesaid cash penalties as well as the relevant objection procedure.

## HEREBY RESOLVES AS FOLLOWS

### 1. Scope – General terms<sup>3</sup>

1. ATHEXClear **participates in** 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 (**definition 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.

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<sup>2</sup> New point d) was added to the Preamble as above by virtue of decision 250/17.06.2024 of the Board of Directors with effect as of 02.09.2024.

<sup>3</sup> Par. 1 and 2 of Article 1 were amended as above by virtue of decision 250/17.06.2024 of the Board of Directors with effect as of 02.09.2024.

## 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 paragraph 2 of Article 1<sup>4</sup>, 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. ATHEXClear sends to ATHEXCSD a file with the details of the settlement instructions for which there was a settlement failure in the Clearing System on the settlement day, so that ATHEXCSD can proceed with the calculation and allocation of cash penalties to the Clearing Member, or another Participant involved in the relevant settlement<sup>5</sup>.

4. ATHEXCSD informs about the penalties through reports that it sends to ATHEXClear in accordance with its procedures<sup>6</sup>.

5. ATHEXClear reconciles the cash penalties based on its own calculation of the penalties from the Clearing System and the data received from ATHEXCSD. In the event that ATHEXClear identifies a discrepancy (existence of balances in the net amounts of the penalties, either credits or debits), ATHEXClear informs ATHEXCSD of the corrections that need to be made in the allocation of the cash penalties<sup>7</sup>.

6. ATHEXCSD informs ATHEXClear of any objections submitted in writing by a Clearing Member or another Participant involved in the settlement. These objections are examined by the competent officers of ATHEXClear's Clearing Unit, jointly with ATHEXCSD, who shall decide on

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<sup>4</sup> Par. 1 of Article 2 was amended as above by virtue of decision 250/17.06.2024 of the Board of Directors with effect as of 02.09.2024.

<sup>5</sup> Par. 3 of Article 2 was amended as above by virtue of decision 250/17.06.2024 of the Board of Directors with effect as of 02.09.2024.

<sup>6</sup> Par. 4 of Article 2 was amended as above by virtue of decision 250/17.06.2024 of the Board of Directors with effect as of 02.09.2024.

<sup>7</sup> Par. 5 of Article 2 was amended as above by virtue of decision 250/17.06.2024 of the Board of Directors with effect as of 02.09.2024.

the objections in the first and final instance. ATHEXCSD shall transmit the outcome to the Clearing Member or another Participant involved in the relevant settlement<sup>8</sup>.

7. The calculation of cash penalties does not apply, and thus no cash penalties are calculated, in cases where an exemption is provided based on the applicable national and Union legislation, as well as any relevant recommendations, instructions, or guidelines that may be issued by ESMA.

Additionally, in the event of the initiation of insolvency proceedings against a Participant, in accordance with the relevant provisions of Regulation (EU) 909/2014, ATHEXClear, in accordance with the relevant provisions of the Clearing Regulations, shall apply the following from the date of commencement of the above-mentioned insolvency proceedings:

a) Settlement instructions are not sent by ATHEXClear to ATHEXCSD in the event of a settlement failure caused by a Clearing Member in a state of insolvency, and cash penalties are not calculated by ATHEXCSD.

b) Cash penalties that had already been calculated from ATHEXCSD 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 ATHEXCSD 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) Settlement instructions related to close-out transactions carried out on behalf of an insolvent Clearing Member are not subject to the calculation of cash penalties. These instructions are sent by ATHEXClear to ATHEXCSD with special marking.<sup>9</sup>

## Entry into force

1. This resolution shall be published on the website [www.athexgroup.gr](http://www.athexgroup.gr). This resolution shall enter force as of its publication, i.e. as of 31.01.2022.

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.

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<sup>8</sup> Par. 6 of Article 2 was amended as above by virtue of decision 250/17.06.2024 of the Board of Directors with effect as of 02.09.2024.

<sup>9</sup> Par. 7 of Article 2 were amended as above by virtue of decision 250/17.06.2024 of the Board of Directors with effect as of 02.09.2024.