

# KAZAKHSTAN STOCK EXCHANGE

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## **Agreed on**

with Committee on Regulation and  
Supervision of Financial Market and Financial  
Organizations of the National Bank of the  
Republic of Kazakhstan

on June 29, 2012

Chairman of Committee on Regulation and  
Supervision of Financial Market and Financial  
Organizations of the National Bank of the  
Republic of Kazakhstan

## **Approved**

by decision of Board of Directors of JSC  
"Kazakhstan Stock Exchange"  
(minutes of meeting No. 10 of May 28, 2012)

## **Effective from**

July 1, 2012

K. KOZHAKHMETOV

## **NOTICE**

The Procedure below in English has been translated by employees of Kazakhstan Stock Exchange for information purposes only. In case of any incompliance of this translation with the Rules original version in Russian, the latter prevails.

# **PROCEDURE**

## **of Settling Disputes and Conflicts Emerging During Execution of Transactions in Financial Instruments**

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Almaty

2012

This Procedure of Settling Disputes and Conflicts Emerging During Execution of Transactions in Financial Instruments (hereinafter – the Procedure) defines the competency of the Commission on Settling Disputes and Conflicts (hereinafter – the Commission), principles of its activities, the composition and creation procedure as well as specifies the procedure of consideration and settlement of disputes and conflicts specified by the Procedure.

## CHAPTER 1. GENERAL PROVISIONS

1. The Procedure has been developed in accordance with the legislation of the Republic of Kazakhstan and internal documents of JSC "Kazakhstan Stock Exchange" (hereinafter – the Exchange) for purposes of settling disputes and conflicts emerging due to non-fulfillment by Exchange members and users of the Confirmation system (administrators of trading accounts) of their liabilities in accordance with the Exchange's internal documents in the course of their executing transactions in financial instruments.
2. Terms and definitions used in the Procedure:
  - 1) **Transaction party** – an Exchange member, user of the Confirmation system (administrator of trading accounts);
  - 2) **Appellant** – the Exchange and/or Transaction party initiating consideration of the dispute and conflict by the Commission;
  - 3) **Respondent** – Transaction party who failed to fulfill/fulfilled unduly his liabilities towards the **Appellant**.

The Appellant and Respondent can be named jointly as "parties", or separately as "a party" along the Procedure's text, depending upon the context.

3. All other terms and definitions used in the Procedure correspond with terms and definitions used in the legislation of the Republic of Kazakhstan and internal documents of the Exchange.
4. The Procedure must be observed by all Transaction parties.

## CHAPTER 2. COMPETENCE OF COMMISSION AND PRINCIPLES OF ITS ACTIVITY

5. The Commission is a permanently operating collegial body of the Exchange.
6. The main competence of the Commission is considering and settling of disputes and conflicts between Transaction parties or between a Transaction party and the Exchange, not settled in the way of negotiations/correspondence and emerging due to non-fulfillment by Transaction parties of their liabilities in accordance with internal documents of the Exchange in the course of their executing transactions in financial instruments (hereinafter – disputes/conflicts).
7. The Commission carries out settlement of disputes/conflicts observing the following principles:
  - 1) independence and equal rights of parties to a dispute/conflict;
  - 2) justice and impartiality when settling disputes/conflicts;
  - 3) confidentiality.
8. The commission when settling disputes/conflicts is acting in accordance with the legislation of the Republic of Kazakhstan, internal documents of the Exchange and/or commercial practice.

If relationships of parties to disputes/conflicts are not directly regulated by legal norms of the Republic of Kazakhstan and internal documents of the Exchange, and there are no commercial practice applicable to those relationships, then the Commission shall apply legal norms of the Republic of Kazakhstan regulating similar relationships, and in the absence of such norms it shall settle disputes/conflicts based on general basics, sense and principles of the Civil Code of the Republic of Kazakhstan.

9. Any interference with the Commission's activities on the part Transaction parties interested in the Commission's consideration of the dispute/conflict is not allowed.
10. In case of impossibility to settle a dispute/conflict by way of negotiations/correspondence and solve the dispute/conflict by the Commission in the way provided by the Procedure, the Exchange discloses to parties of the dispute/conflict information (data) on each of them.

### CHAPTER 3. COMPOSITION AND STRUCTURE OF COMMISSION

11. Only a physical person can be a member of the Commission.
12. The Commission consists of three members of the Commission and the secretary of the Commission (hereinafter – the Secretary).
13. The Commission includes on a permanent basis with the voting right the following members of the Commission:
  - 1) the Chairman of the Commission (hereinafter – the Chairman) or person entitled to substitute the Chairman, in case of his absence (hereinafter – the person substituting the Chairman);
  - 2) a member of the Commission out of members of the Exchange's Board of Directors.

This member of the Commission cannot be an employee (representative) of a Transaction party and/or its affiliated person, acting as a party of a dispute/conflict and he is appointed at the discretion of the Chairman or person substituting the Chairman in case of his absence;
  - 3) a member of the Exchange's Management Board, supervising the Exchange's structural unit whose main activity is organizing and conducting of trades or regulation of the currency market and market of derivatives and other financial instruments (hereinafter – the Supervisor) depending on the subject of dispute/conflict;
14. The Chairman and the person substituting the Chairman are elected by the Exchange's Board of Directors out of independent directors of the Exchange's Board of Directors.

The term of office of the Chairman and the person substituting the Chairman is determined by the Exchange's Board of Directors.

In case of termination for any reasons of authorities of an independent member of the Exchange's Board of Directors which is the Chairman (the person substituting the Chairman), authorities of such independent director of the Exchange's Board of Directors as Chairman (the person substituting the Chairman) are terminated simultaneously with his authorities as an independent director of the Exchange's Board of Directors.
15. The Chairman (the person substituting the Chairman) carries out the following responsibilities:
  - 1) specifying the date and time of the Commission's meeting (hereinafter – the Meeting);
  - 2) conducting the Meeting;
  - 3) organizing the work of the Commission;
  - 4) other functions provided for by the Procedure.
16. The Commission member mentioned in sub-item 2) item 13 of this chapter is appointed by the Chairman or person substituting the Chairman, based on the subject of the dispute and conflict.

When appointing this Commission member, the Chairman (person substituting the Chairman) must act in line with principles of independence and impartiality, as well as not allow and solve a potential or real conflict of interests and interestedness between the parties of the dispute/conflict and this Commission member.
17. In case of absence of the Supervisor, a member of the Management Board shall carry out his responsibilities in accordance with the President's order on distribution of responsibilities and authorities between members of the Management Board.

18. The Secretary is appointed out of the Exchange's employees based on the President's order. The Secretary carries out the following responsibilities:
- 1) carrying out preparatory measures related to conducting of Meetings;
  - 2) ensuring of preparation of materials on the subject of a dispute/conflict;
  - 3) taking the minutes of a Meeting;
  - 4) other responsibilities provided for by the Procedure.
- The Secretary does not have the voting right when the Commission takes decisions on disputes/conflicts.
19. When considering disputes/conflicts the Commission may invite to its Meeting employees of the Exchange's units – as the initiator of consideration and settlement of a dispute/conflict, according to item 24 of the Procedure, as well as experts for provision of clarifications/materials regarding the subject of a dispute/conflict.
20. The Commission may invite to its Meeting a representative of JSC "Central Securities Depository" (hereinafter – Central Depository) in case for a settlement and a decision on the respective dispute/conflict provision of clarifications, data and/or materials from Central Depository is required.
- In that case the Central Depository shall on its own, according to its own procedure appoint its representative for participation in the Commission's Meeting and let the Chairman and Secretary know.
21. Persons mentioned in items 19 and 20 of this chapter, must attend the Meeting in order to participate therein.

#### **CHAPTER 4. PREPARATORY PROCEDURES**

22. Consideration and settlement of a dispute/conflict by the Commission can be initiated by a Transaction party or Exchange.
23. In case consideration and settlement of a dispute/conflict by the Commission has been initiated by a Transaction party, then such Transaction party should present a written petition at the Exchange's location. In this case the petition must be signed by the Appellant's CEO or person executing his responsibilities, and it must contain the following data:
- 1) name and location of the Appellant;
  - 2) subject of the dispute/conflict;
  - 3) justification of own position;
  - 4) indication on consideration of a dispute/conflict by the Commission;
  - 5) other data at the Appellant's discretion.
24. In case, consideration of a dispute/conflict by the Commission has been initiated by the Exchange, then the head of the structural unit involved in the dispute/conflict upon agreement with the member of the Management Board supervising such unit shall provide to the Secretary a written petition where the following data are indicated:
- 1) the name of the structural unit of the Exchange;
  - 2) subject of the dispute/conflict;
  - 3) justification of his position;
  - 4) indication of consideration of the dispute/conflict by the Commission;
  - 5) other data at the discretion of the head of the structural unit and/or member of the Management Board supervising such unit.

25. The secretary forwards the petition to the Chairman (person substituting the Chairman) so that he fixes the date and time of the Meeting.
26. The place of the event is the Exchange's location.
27. The date and time of the Meeting are fixed by the Chairman (person substituting the Chairman), not later than 5 (five) working days after the day of arrival of the petition, given the chance of ensuring quorum at the Meeting.
28. The Secretary, after the Chairman (person substituting the Chairman) has fixed the date and time of the Meeting, shall notify Commission members, employees of the Exchange and Central Depository (in case of their participation in the Meeting according to items 19 and 20, chapter 3 of the Procedure), as well as send written notifications on fixing of the date and time of the Meeting to parties of the dispute/conflict. In doing so, apart from the notification provided for by this item also a copy of the Appellant's petition shall be sent to the Respondent.
29. The Secretary as part of his/her responsibilities may send to the Exchange's structural units written requests for provision of data and materials (conclusions) necessary for consideration by the Commission regarding the subject of the dispute/conflict and request their provision. This being the case, structural units of the Exchange must assist the Secretary in his/her collecting and preparing materials regarding the subject of the dispute/conflict and provide all necessary data and materials (conclusion) in written form signed by the head of structural unit.
30. The Secretary provides to members of the Commission, Exchange employees and representative of the Central Depository (in case of their participation in the Meeting according to items 19 and 20 chapter 3 of the Procedures) all necessary data and materials (conclusions) regarding the subject of the dispute/conflict not later than 3 (three) working days before the date of the Meeting.
31. A Commission member must beforehand notify the Chairman and the Secretary of the impossibility of his participation in the Meeting
32. In case of impossibility of a Commission member's participating in the Meeting, the secretary shall notify the person entitled to substitute such Commission member according to items 14, 16 and 17 chapter 3 of the Procedure, of the necessity of taking part in the Meeting, as well as send to him all data and materials (conclusions) regarding the subject of the dispute/conflict.
33. During consideration by the Commission of a dispute/conflict the presence of parties at the Commission's meeting and participation therein are mandatory.
34. In case one of the parties of a dispute/conflict cannot take part in the Meeting, it shall be obliged to notify the Commission no later than 3 (three) working days before the Meeting's fixed date of the impossibility to take part in the Meeting, and it may petition to the Chairman as on moving the date and time of the Meeting fixed earlier to another date and considering the dispute/conflict without its participation.  

Notifications and petitions provided for in this item are provided to the Secretary at the Exchange's location and forwarded by the Secretary to all members of the Commission.
35. In case the Chairman decides on moving the date and time of the appointed Meeting, including based on item 27 of this chapter and/or petition of one of the parties of the dispute/conflict according to item 34 of this chapter. The Secretary notifies all participants of the Meeting and parties of the dispute/conflict in the way provided for in item 28 of this chapter.
36. In case of unjustified (without notice) absence of one of the parties of a dispute/conflict, the Commission may consider the dispute/conflict and decide on it without participation of the party absent from the Meeting or move the consideration of the dispute/conflict to the next Meeting.
37. In case of unjustified (without notice) absence of a party/parties from the Meeting concerning one subject of a dispute/conflict for two and more times, the Chairman or person substituting the Chairman may petition:
  - 1) to the Exchange's Board of Directors as on exclusion of an Exchange member absent from the Meeting from members of the Exchange;

- 2) to the Exchange's Management Board as on exclusion of a Confirmation system user (administrator of trading accounts) from users of the confirmation system.
38. Prior to conducting a Meeting authorities of representatives of parties of a dispute/conflict must be confirmed by appropriate documents according to the legislation of the Republic of Kazakhstan.
39. Exchange of documents, including those provided for in this article (applications, notifications, petitions), between the Exchange and a party/parties of a dispute/conflict is carried out by means of a courier and/or registered mail with notifications of handing-in or in another way providing for acknowledgment of receipt and handing-in of the relevant delivery.
40. The term for turning to the Commission must not exceed 30 calendar days from the moment/day of the instance of the Respondent's violation of his responsibilities regarding the transaction with financial instruments leading to a dispute/conflict.

#### **CHAPTER 5. MEETING OF COMMISSION**

41. Meetings of the Commission on consideration of disputes/conflicts are held only in person.
42. The Commission may consider a dispute/conflict and take decision upon it only if all members of the Commission are present according to item 12 chapter 3 of the Procedure.

Each member of the Commission has one vote. The Commission's decisions are taken by the simple majority of votes of Commission members present at the Meeting.
43. Transfer of the voting right by a Commission member, including to another Commission member is not allowed.
44. At the appointed time of conducting the Meeting, the Chairman (person substituting the Chairman) opens the Meeting, announces the composition of the Commission, Exchange employees and representative of the Central Securities Depository invited (in case of their participation in the Meeting according to items 19 and 20 of the chapter 3 of the Procedure) and the Secretary, as well as introduces the parties and subject of the dispute/conflict.

The Secretary reports to the Commission, whose representatives out of persons notified on the dispute/conflict are present and/or absent, which data on reasons for the absence (in case of absence of a party to the dispute/conflict) there are.
45. The Commission listens to clarifications of parties to the dispute/conflict on the subject of the dispute/conflict. In the course of the Meeting the Commission may ask questions to parties of the dispute/conflict, as well as request from the parties the dispute/conflict presentation of additional materials/data, necessary for a complete and comprehensive consideration of the dispute/conflict.

The Commission listens to clarifications of Exchange employees and representative of the Central Securities Depository invited (in cases of their participation in the Meeting in accordance with items 19 and 20 chapter 3 of the Procedure), who may be asked questions.
46. After examining materials provided by parties of the dispute/conflict and clarification of all circumstances related to the dispute/conflict, the Commission shall take on independent decision-making without participation (presence) of parties to the dispute/conflict.
47. After the Commission took a decision the Chairman (person substituting the Chairman) announces to parties to the dispute/conflict the results of the consideration and the Commission's decision on the relevant dispute/conflict and declares the Meeting closed.
48. The Commission's decision on the relevant dispute/conflict is formalized in the minutes which should be composed and signed by the Chairman (person substituting the Chairman) and Secretary within 5 (five) working days after the day of conducting the Meeting and should contain the following data:
  - 1) date, time and place of conducting the Meeting;
  - 2) data on persons participated in the Meeting;
  - 3) subject of the dispute/conflict;

- 4) decision and voting results on such decision;
  - 5) other data regarding the Commission's decision.
49. In case of impossibility to consider the dispute/conflict within one Meeting, the Chairman (person substituting the Chairman) may postpone/appoint an additional date of conducting the Meeting, which is announced to all participants of the Meeting and registered in the minutes.
50. The Commission's minutes are stitched into the book of minutes which is kept by the Secretary.
51. The Secretary upon request from any member of the Commission is obliged to provide him with the minutes of the Commission's Meeting for information and/or hand out him an extract from the minutes of the Commission's Meeting signed by the Secretary and sealed by the Exchange's stamp.
52. Extracts from the minutes of the Commission's Meeting signed by the Secretary and sealed by the Exchange's stamp are provided to parties to the dispute/conflict upon their written request.

#### **CHAPTER 6. SETTLEMENT OF A DISPUTE/CONFLICT BY WAY OF CONCLUDING AN AMICABLE AGREEMENT**

53. At any stage of consideration of a dispute/conflict, but before the Commission takes a decision, parties to the dispute/conflict may conclude an amicable agreement.
54. The Commission uses all possibilities available for settling dispute/conflict by way of concluding an amicable agreement.
55. Parties to the dispute/conflict having reached an amicable agreement may turn to the Commission with an application for its approval.

An application for approval of the amicable agreement is entered into the minutes of the Commission's Meeting which is accompanied by one copy of the amicable agreement signed by authorized representatives of parties to the dispute/conflict and sealed by the parties' stamps.

56. The Commission approves the amicable agreement if it does not contradict the legislation of the Republic of Kazakhstan, internal documents of the Exchange and does not rights and lawful interests of other persons.

In case of conclusion of an amicable agreement by the parties, the Commission ceases considering the dispute/conflict.

#### **CHAPTER 7. CEASING CONSIDERATION OF DISPUTE/CONFLICT**

57. The Commission ceases to consider a dispute/conflict without taking a decision on the subject matter in the following cases:
- 1) the Appellant waives his claim, only if the Respondent does not object to cessation of consideration of a dispute/conflict due to his having a lawful interest in settling the dispute/conflict in substance;
  - 2) the amicable agreement reached by parties to the dispute/conflict has been approved by the Commission;
  - 3) a party/parties of the dispute/conflict was/were excluded from Exchange members, as well as in case of loss by a Confirmation system user of the confirmation (by the trading account administrator) of his status;
  - 4) there is an effective decision of a court of general jurisdiction or arbitration court taken on a dispute/conflict between the same parties, on the same subject and on the same grounds;
  - 5) a dispute/conflict between the same parties, on the same subject and on the same grounds has already been considered by the Commission.

## **CHAPTER 8. EXECUTION OF COMMISSION'S DECISIONS**

58. A decision of the Commission is an expert assessment of specialists in the field of stock market.
59. The Commission's decision is subject to execution by parties to the dispute/conflict.
60. In case a party/parties to the dispute/conflict does/do not agree with the Commission's decision, each of the parties may exercise its right to protection of its interests according to the standard procedure in courts of the Republic of Kazakhstan in accordance with the legislation of the Republic of Kazakhstan.
61. Parties to the dispute/conflict may use the Commission's decision as an expert assessment in the course of execution of its rights according to item 60 of this chapter.

## **CHAPTER 9. FINAL PROVISIONS**

62. The Procedure is reviewed and updated upon necessity, due to changes in the legislation of the Republic of Kazakhstan and internal documents of the Exchange.
63. The Procedure comes into effect from July 1, 2012, provided it has been approved by the government body executing regulation and supervision of the financial market and financial organizations.  

In case of the Procedure's approval later than the date indicated in part 1 of this item, the Procedure will be put into effect from the moment (date) of its approval by the government body.
64. In all which is not governed by the Procedure, the Exchange acts in accordance with the legislation of the Republic of Kazakhstan.
65. If any of the Procedure's norms becomes invalid that will not affect other norms of the Procedure. The invalid norm is replaced by the one legally admissible and regulating the relevant relationship between parties to a dispute/conflict.

President

K. Damitov