

# **NASDAQ OMX BALTIC**

## **RULES OF THE FORMATION AND USE OF THE GUARANTEE FUND**

**JULY 2013**

**As an integrated marketplace for trading securities NASDAQ OMX Baltic unifies and offers trading services from the following exchanges: NASDAQ OMX Tallinn AS, NASDAQ OMX Riga, AS and AB NASDAQ OMX Vilnius (hereinafter all together NASDAQ OMX Baltic).**

**The common securities market necessitates a common set of rules and approaches. NASDAQ OMX Baltic exchanges have adopted separate harmonised official sets of rules, but with some differences due to national legislation issues. These Guarantee Fund Rules give a compiled single format rulebook which reflects terms and conditions of formation and usage of Guarantee Funds of NASDAQ OMX Baltic exchanges. Differences in the rules mentioned above are highlighted and set out below each relevant Clause. For the avoidance of doubt, in legal matters the texts of the rules in local languages should be taken as a legal ground.**

RULES OF THE FORMATION AND USE OF THE GUARANTEE FUND  
NASDAQ OMX BALTIC EXCHANGES

**CONTENTS**

1.	General Provisions	2
2.	Formation of the Guarantee Fund and contributions into it	4
3.	Recalculation of contributions	6
4.	Use of the assets of the Guarantee Fund	7
5.	Restoration of the Guarantee Fund	9
6.	Reimbursement of contribution	9

## **RULES OF THE FORMATION AND USE OF THE GUARANTEE FUND**

### **1. General provisions**

- 1.1. These Rules of the Formation and Use of the Guarantee Fund (hereinafter the „Rules“) shall provide the ground conditions and procedure for formation, management and use of the Guarantee Fund.
- 1.2. The Guarantee Fund is established for guaranteeing the execution of transactions with financial instruments (also „securities“) conducted on the market as described in the Rules.
- 1.3. For the purposes of these Rules, **„Baltic Exchanges“** shall mean NASDAQ OMX Tallinn, NASDAQ OMX Vilnius and NASDAQ OMX Riga (separately also as „Baltic Exchange“).
- 1.4. For the purposes of these Rules, **the „Home Exchange“** of a Member shall mean – in the case of an investment firm or a credit institution is registered in one of the Baltic State (the Republic of Estonia, the Republic of Latvia and the Republic of Lithuania), the Baltic Exchange operating market in that Baltic State where the investment firm or credit institution is registered. In the case of an investment firm or credit institution is registered outside the Baltic States, that Baltic Exchange to whom the application for membership status was filed first.
- 1.5. These Rules regulate, at the extent not regulated by laws:
  - 1.5.1. formation and management of the Guarantee Fund;
  - 1.5.2. calculation of the size of a Member’s contribution into the Guarantee Fund and its payment;
  - 1.5.3. use of the assets of the Guarantee Fund;
  - 1.5.4. liability of a Member for failure to meet its financial obligations with regard to the Guarantee Fund;
  - 1.5.5. restoration of the Guarantee Fund.
- 1.6. To facilitate compliance with the requirements for guarantee funds of Baltic Exchanges by those Members who have acquired the membership on at least two Baltic Exchanges and considering that the Baltic Exchanges have harmonized the rules and requirements for the guarantee funds to the extent possible, the Baltic Exchanges have entered into a cooperation agreement on the managing of the guarantee funds (hereinafter the **„Cooperation Agreement“**), on the basis of which the Baltic Exchanges keep common records and accounting of contributions payable to guarantee funds of Baltic Exchanges. In accordance with the provisions of the Cooperation Agreement, the Home Exchange shall:
  - 1.6.1. notify the Member of the amount of the necessary contributions to be made to the guarantee fund of other Baltic Exchange;
  - 1.6.2. arrange the transfer of the Member’s contribution that has to be transferred into the guarantee fund of other Baltic Exchange,

RULES OF THE FORMATION AND USE OF THE GUARANTEE FUND  
NASDAQ OMX BALTIC EXCHANGES

provided the Member has transferred to the Home Exchange the contribution payable;

- 1.6.3. inform the Member of the refunding of the assets in the guarantee fund of other Baltic Exchange and ensure the disbursement of these assets to the Member or the transfer of the assets into that guarantee fund of the other Baltic Exchange into which the Member has to make an additional contribution;
- 1.6.4. organise, in cooperation with other Baltic Exchanges, the calculation of periodic contributions, based on the trading activity of the Member in the Baltic Exchanges and inform the Member about the amount of the calculated periodic contribution. If necessary, the Home Exchange shall make a transfer from the Guarantee Fund to a guarantee fund of another Baltic Exchange;
- 1.6.5. if necessary convert contributions into the currency used to account the assets of Guarantee Fund, using the official exchange rate of the corresponding Baltic State.
- 1.6.6. coordinate the information exchange relating to the requirements of the guarantee funds of the other Baltic Exchanges and provide the Member with other information related thereto.

- 1.7. The Guarantee Fund shall not have the status of a legal entity. The contributions paid into the Guarantee Fund shall be kept segregate from the Exchange assets and may be used only for guaranteeing the execution of transactions. The monetary assets of the Guarantee Fund and the securities purchased for them shall be held in separate cash and securities accounts opened with the institution who upon the law has the right to keep Guarantee Fund assets.

Specific wording of Clause 1.7 for NASDAQ OMX Riga:

- 1.7. The monetary assets of the Guarantee Fund and the securities purchased for them shall be held in separate cash and securities accounts opened with the institution who upon the law has the right to keep Guarantee Fund assets. If upon law there is no defined institution that has the right to keep Guarantee fund assets, the institution shall be decided by the Board of the Exchange.

Specific wording of Clause 1.7 for NASDAQ OMX Vilnius:

- 1.7. The Guarantee Fund shall not have the status of a legal entity. The monetary assets of the Guarantee Fund are owned by the Members and the Exchange manages these assets as a trust. The contributions paid into the Guarantee Fund shall be kept segregate from the Exchange assets and may be used only for guaranteeing the execution of transactions according to the manner prescribed in these Rules and Cooperation Agreement. The monetary assets of the Guarantee Fund and the securities purchased for them shall be held in separate cash and securities accounts opened with the institution who upon the law has the right to keep Guarantee Fund assets.

RULES OF THE FORMATION AND USE OF THE GUARANTEE FUND  
NASDAQ OMX BALTIC EXCHANGES

- 1.8. The Member shall make contributions to the Guarantee Fund into the account specified by the Exchange in the amount and in accordance with the procedure provided for herein.
- 1.9. Income from keeping, or using of the assets of the Guarantee Fund as well as paid interest shall be accumulated into the Guarantee Fund and used to cover the costs related to the managing of the Guarantee Fund.

Specific wording of Clause 1.9 for NASDAQ OMX Vilnius:

- 1.9. Income from using the assets of the Guarantee Fund as well as paid interest for keeping the assets, also default interest indicated in Clause 2.9 shall be accumulated into the Guarantee Fund and used to cover the costs related to the managing of the Guarantee Fund.

**2. Formation of the Gurantee Fund and contributions into it**

- 2.1. The Guarantee Fund shall be set up of contributions payable by Members and other funds which are transferred to the Guarantee Fund as provided by Rules. Types of contributions are:

- 2.1.1. Initial contribution: the Member shall pay initial contribution into the Guarantee Fund when obtaining the Member status of the Baltic Exchange for the first time.

The amount of initial contribution shall be subject to the number of the Baltic Exchanges where membership is obtained. The initial contribution payable by the Member altogether is EUR 5000 (minimum contribution at all times). Upon obtaining the Member status this will be divided in proportion to the number of Baltic Exchanges where membership status is attained; so in case the Member has or applies a membership only on Exchange (one Baltic Exchange), the amount of initial contribution is EUR 5000; in case Member has or applies the membership on 2 Baltic Exchanges (Exchange and another Baltic Exchange), the amount of initial contribution is divided for two and is EUR 2500 per Baltic Exchange and in case Member has or applies the membership on all 3 Baltic Exchanges, the amount of initial contribution is divided for three and is EUR 1668 for Home Exchange and EUR 1666 for another 2 Baltic Exchanges.

A Member who has or applies for membership on more than one Baltic Exchange shall pay the contribution payable into the different Baltic Exchange guarantee funds, to the Home Exchange who, in accordance with the Cooperation Agreement and these Rules, shall arrange the transfer of received payments to the given Baltic Exchange.

- 2.1.2. Periodic contributions: payable in the amount determined in accordance with the methodology provided in Calculation Guidelines approved by the Exchange, taking into account the trading activity of the Member in last six (6) months (the half-year contribution).
- 2.1.3. Extraordinary contributions: the grounds, amount of and the procedure of payment thereof shall be determined upon an

RULES OF THE FORMATION AND USE OF THE GUARANTEE FUND  
NASDAQ OMX BALTIC EXCHANGES

individual decision of the Exchange, taking into account the increase in trading activity or other relevant circumstances that have been indicative of the necessity to increase the amount of the Guarantee Fund.

- 2.1.4. Other contributions to be made in accordance with the Rules.
- 2.2. All contributions, except initial contribution, payable by the Member into the Guarantee Fund shall be made not later than within three (3) business days after receiving notification from the Home Exchange, unless there is other term specified in notification.
- 2.3. A person applying for the membership status of the Exchange shall make the initial contribution into the Guarantee Fund not later than on the day on which the Exchange takes the decision about the granting of the Member status. If the Member has not paid the initial contribution into the Guarantee Fund, the Exchange shall not allow the Member to perform transactions within the Trading System of the Exchange.
- 2.4. In case the Member of some Baltic Exchange acquires a member status also at another Baltic Exchange, the amount contributed by the Member to guarantee funds shall be distributed in proportion to the number of Exchanges, and the Home Exchange shall transfer the pertaining amount to the guarantee fund of the respective Baltic Exchange in the procedure provided for in the Cooperation Agreement.
- 2.5. If the Member has a member status in more that one Baltic Exchange (including Home Exchange), the contribution of the Member into the guarantee funds shall be considered made as of the moment when this contribution is paid into the guarantee fund of the Home Exchange.
- 2.6. The principles for determining the amount of contributions of the Exchange Guarantee Fund and the terms of payment shall be established by the Board of the Exchange, taking into account the legislative requirements, if applicable, on the size of the Guarantee Fund, trading activity, volume and number of transactions on the market, assessment of solvency of the Member, if possible as well as other possible relevant circumstances and risks and the overall situation on the market.
- 2.7. In the cases provided by the Rules, the Exchange shall be entitled to require, if necessary, that Member make additional contributions to the Guarantee Fund at the dates, degree and procedure as laid down by the Board of the Exchange.
- 2.8. If the Member has not made the extraordinary contribution (2.1.3) into the Guarantee Fund in case the Exchange has determined the necessity of such contributions or if the Member has not made the periodic contribution (2.1.2) calculated by the Exchange in due time, the Board of the Exchange has a right to take the following actions:
- 2.8.1. to request the Member to make immediately the periodic or extraordinary contribution into the Guarantee Fund;
- 2.8.2. to suspend completely or partially the trading of the Member until the Member pays the periodic or extraordinary contribution determined by the Exchange into the Guarantee Fund;

- 2.8.3. to apply other measures (e.g. to request the depositing of additional assets with a credit institution or to provide any other collateral).
- 2.9. In case a Member fails to make a timely transfer of contributions, it shall pay into the Guarantee Fund a default interest for delay set out in Price List due for each delayed day. Payment of the default interest for delay shall not release the Member from the obligation to transfer contributions specified in Rules. Paid interest shall be used according to clause 1.9.

### **3. Recalculation of contributions**

- 3.1. The Home Exchange shall at least twice a year, after the end of each calendar half-year, carry out the calculations of the amount of the contribution paid by the Member and determine the periodic contribution to be paid. Based on the results of such recalculation, the Exchange, in relation to the Members it acts as a Home Exchange:
  - 3.1.1. shall notify the Member that no additional payment has to be made - if the recalculated contribution (result of recalculation) is less than by 250 EUR or 5% higher than the total amount of the Member contributions into the Guarantee Fund;
  - 3.1.2. shall submit to the Member an additional payment claim - if the recalculated contribution (result of recalculation) is more than by 250 EUR or 5% higher than the total amount of the Member contributions into the Guarantee Fund;
  - 3.1.3. shall notify the Member of the possibility to apply for a refund of the difference between the previously paid contribution and the amount of the recalculated contribution - if the recalculated contribution (result of recalculation) is more than by 250 EUR or 5% lower than the total amount of the Member contributions into the Guarantee Fund;
- 3.2. If necessary, the Home Exchange has the right to organise the recalculation of periodic contributions of the Members at any time. In particular, this necessity may be caused by a changed market situation on the Exchange or other Baltic Exchanges, acquisition or waiver of additional memberships in other Baltic Exchanges by the Member, a justified application from another Baltic Exchange, or any other contingency situation.
- 3.3. In the case referred to in clause 3.1.3, the Member shall notify the Home Exchange of the intention to request a refund of the overage of the contribution no later than within twenty (20) days from receiving the notification. The Home Exchange shall arrange the repayment of the overage within ten (10) business days. If the Member does not submit a notification of its intention to request a refund of the overage of the periodic contribution within the term specified in the preceding sentence, refund of the overage may be claimed only after clarification of the results of the next recalculation of the periodic contribution. Until the non-refunded overage has been paid out according to the procedure

provided in this clause, the overage shall be treated as a contribution to the Guarantee Fund and could be used in accordance with the Rules.

#### **4. Use of assets of the Guarantee Fund**

- 4.1. The Exchange has a right to use the assets of the Guarantee Fund for guaranteeing the execution of transactions by ensuring the settlement in cases if the transaction is non-executable due to the insolvency of a Member or delayed settlement may endanger the regular and reliable continuous and safe operation of the market.

For the purposes of these Rules, insolvency involves the bankruptcy proceedings, the declaration of a moratorium, the decision of a competent institution to restrict the right of disposal of Member's monetary or financial instruments or any other similar proceedings, which lead to restrictions on the disposal of the assets owned by a Member or, under the decision of the Exchange, other insolvency cases and temporary payment difficulties.

Specific wording of Clause 4.1 for NASDAQ OMX Riga:

- 4.1. The Exchange has a right to use the assets of the Guarantee Fund for guaranteeing the execution of transactions by ensuring the settlement in cases if the transaction is non-executable due to the insolvency of a Member or delayed settlement may endanger the regular and reliable continuous and safe operation of the market.

For the purposes of these Rules, the solvency problems means the insolvency proceedings, the decision of a competent institution to restrict the right of disposal of Member's monetary or financial instruments or any other similar proceedings, which lead to restrictions of payment execution.

- 4.2. The assets of the Guarantee Fund shall be used exclusively for ensuring the transactions made on the Exchange by Automatic Order Matching (Automatically Matched Trade) for the purposes on the Member Rules to the extent as allowed by the amount of the Guarantee Fund as at a particular moment of time.
- 4.3. The assets of the Guarantee Fund shall not be used:
- 4.3.1. to ensure settlement for the transactions entered into outside the Order Book and reported to the Exchange pursuant to the Member Rules (Manual Trades)
  - 4.3.2. to ensure settlement for the Automatically Matched Trades concluded on the Exchange in case the Buyer and the Seller is one and the same Member of the Exchange (i.e. both, Buy and Sell Order have been placed by the same Member);
  - 4.3.3. to ensure settlements for transactions concluded within the Trading System of the Exchange during the initial placement of financial instrument or during buy-back offer.
- 4.4. The Exchange shall use the assets of the Guarantee Fund pursuant to the procedure established in these Rules so as to ensure the execution of the transaction. The Exchange shall resolve usage of Guarantee Fund



RULES OF THE FORMATION AND USE OF THE GUARANTEE FUND  
NASDAQ OMX BALTIC EXCHANGES

as soon as possible within two (2) weeks as of the settlement date initially determined for the transaction.

- 4.5. Upon using the assets of the Guarantee Fund, the Exchange, shall adhere to the following order:
- 4.5.1. In the first order – a contributions paid to the Guarantee Fund by a Member who has caused the use of the Guarantee Fund;
  - 4.5.2. In the second order – proportionally the contributions paid by other Members to the Guarantee Fund;
  - 4.5.3. In the third order – other funds of the Guarantee Fund;
  - 4.5.4. If the use of the Guarantee Fund has been caused by a Member specified in clause 1.6., the Exchange may, in addition to the contributions specified in sub-clause 4.5.1, also use in the first order the contributions made by such Member to the other Baltic Exchange guarantee fund provided the other Baltic Exchange has given its consent to this effect, after being convinced that the contributions of the Member concerned are not required for securing transactions on that Baltic Exchange.
- 4.6. Securities acquired on the assets of the Guarantee Fund in the course of ensuring settlement of the transactions shall, under the decision of the Baltic Exchange, be sold as soon as possible after their acquisition. The assets received from their sale shall be transferred into the Guarantee Fund .
- 4.7. Use of the assets of the Guarantee Fund shall be decided by the relevant body or by the employee appointed by the Exchange.

Specific wording of Clause 4.7 for NASDAQ OMX Tallinn:

- 4.7. Use of the assets of the Guarantee Fund shall be decided by the Member of the Management Board or by the employee appointed by the Exchange.

Specific wording of Clause 4.7 for NASDAQ OMX Riga:

- 4.7. Use of the assets of the Guarantee Fund shall be decided by the Board of the Exchange.
- 4.8 Upon the request of the other Baltic Exchange and the consent of the Exchange, the contributions paid into the Exchange Guarantee Fund by Member that operates on more than one Baltic Exchange may be used to secure the transactions made by that Member on another Baltic Exchange. The Exchange shall grant the consent provided in the previous sentence only in the case where the related contributions of the Member are not required to secure transactions on the Exchange and shall not endanger the regular and reliable operation of the market.. The contributions given by the Exchange to the disposal of the other Baltic Exchange shall be repaid at the first possibility to the Exchange Guarantee Fund.

## **5. Restoration of the Guarantee Fund**

- 5.1. The Member whose non-executed obligations had been covered from the funds of the Guarantee Fund shall repay into the Guarantee Fund the payment made out from the Guarantee Fund. The Member shall also reimburse all other costs related to the use of the Guarantee Fund as well as fees for every day. The reimbursements referred to above shall be made by the Member in the amount, within the deadline and in accordance with the terms and conditions determined by the Exchange.
- 5.2. The repayments paid in accordance with the provisions of clause 5.1 above, shall be transferred to the Guarantee Fund and accounted in the Members' separate records according to the amount of assets used from the Guarantee Fund. In first order, the used assets of other Members shall be reimbursed.
- 5.3. In case the Member whose non-executed obligations had been covered from the funds of the Guarantee Fund fails to reimburse the payments made from the Guarantee Fund and other costs related to the use of the Guarantee Fund and fees provided in sub-clause 5.1 within the specified term, the Exchange shall have the right request for additional collateral (bank guarantee, pledge of securities) and payment of penal interest from the amount due at the rate laid down by the Exchange for every delayed day.
- 5.4. If assets of the Guarantee Fund paid by all the Members are used, partially or to full extent, to ensure the settlement of transactions, and the defaulting Member fails to reimburse the funds of Guarantee Fund, the Members shall renew the contributions to Guarantee Fund. The amount of extraordinary contributions, in aggregate during a year, may not exceed a double amount of the whole contribution held in Guarantee Fund after the last recalculation by the Member (*maximum limit of the monetary amount that cannot be exceeded by restoration claims*). The said condition shall not be applicable to the defaulted Member who caused the use of Guarantee Fund assets.
- 5.5. If assets of the Guarantee Fund paid by all the Members are used, partially or to full extent, to ensure the settlement of transaction, the Exchange shall send the information on use of the assets of the Guarantee Fund and the procedure of the supplement of the Guarantee Fund to all the Members.
- 5.6. In case the size of the Guarantee Fund falls below statutory minimum level, if applicable, the Exchange shall restore the Guarantee Fund within a three (3) months time to at least the minimum statutory by requiring that Members make additional equal contributions to the Exchange Guarantee Fund. The maximum limit of the monetary amount that cannot be exceeded by restoration claims laid down in clause 5.4, shall be applicable to this case.

## **6. Reimbursement of contribution**

- 6.1. A Member who terminates its membership at the Exchange or if its membership has been cancelled, has the right to demand reimbursement of the contribution to Guarantee Fund. If the contribution of the Member has been, by a resolution of the Exchange

RULES OF THE FORMATION AND USE OF THE GUARANTEE FUND  
NASDAQ OMX BALTIC EXCHANGES

used to settle its debt to the Exchange, another Member or an investor, the Exchange Management Board shall determine the amount to be reimbursed, taking into account the amount of payments made from the Guarantee Fund. The contribution by the Member shall be returned, taking into account previous sentence, upon relevant request of the Member, after all the transactions that have been concluded or reported on the Exchange on behalf of the Member and its obligations against the Guarantee Fund are settled.

- 6.2. A resolution concerning the reimbursement of the contribution shall be made within three (3) months of the date specified in sub-clause 6.1. The part of the contribution that is to be reimbursed shall be returned to the Member within ten (10) business days after the adoption of the said resolution.