



In accordance with the provisions of Article 39 of EMIR,¹ this Clearing Member Disclosure Statement is being made available to our clients that have clients that may be entitled to the protections of the Indirect Clearing RTS.²

R.J. O'BRIEN & ASSOCIATES, LLC
CLEARING MEMBER DISCLOSURE STATEMENT³
INDIRECT CLEARING

PROTECTION OF CUSTOMER FUNDS
UNDER THE COMMODITY EXCHANGE ACT AND
COMMODITY FUTURES TRADING COMMISSION RULES

I. Introduction

A. The purpose of this document.⁴

We are providing this Clearing Member Disclosure Statement (**Statement**) to you because you have elected to enter into derivatives transactions that may be cleared by a clearing organization that is authorized as a central counterparty in accordance with EMIR (**CCP**).⁵

To enable us to comply with our obligations as a clearing member under the Indirect Clearing RTS, which require that, where we are providing services to you that involve us facilitating the indirect clearing of derivatives through a CCP, we must:

- (i) offer you a choice of a basic omnibus indirect client account or a gross omnibus indirect client account (as described in further detail in Annex I);
- (ii) publicly disclose the levels of protection and costs associated with different levels of segregation;

¹ Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.

² Commission Delegated Regulation (EU) No 2017/2154 supplementing Regulation (EU) No 600/2014 with regard to regulatory technical standards on indirect clearing arrangements

³ Although care has been taken to assure that the information herein is accurate, this Statement is not intended to constitute legal advice. Recipients of this Statement should not act, or refrain from acting, on the basis of the analysis herein without seeking appropriate advice from their own counsel.

⁴ As used throughout this Statement, the terms “we”, “our” and “us” refer to the direct client; the terms “you” and “your” refer to the indirect client.

⁶ The terms “CCP” and “DCO” will be used interchangeably throughout this Statement.

- (iii) publicly disclose the general terms and conditions under which we provide services to you (as described in further detail in Annex II); and
- (iv) describe the main legal implications of different levels of segregation.

We are a clearing member of one or more CCPs located in the European Union (EU) that are authorized by EMIR and which may also be registered with the Commodity Futures Trading Commission (Commission) as a derivatives clearing organization (DCO) in order to provide clearing services in connection with certain derivatives to US persons.⁶ Because we are registered with the Commission as a futures commission merchant (FCM), we must comply with the provisions of the US Commodity Exchange Act (CEA) and the Commission’s rules governing the protection of customer assets and positions, as well as EMIR, MiFIR⁷ and the Indirect Clearing RTS.

Article 30 of MiFIR and the Indirect Clearing RTS set out specific compliance requirements for entities that participate in indirect clearing arrangements in connection with exchange-traded derivatives (ETDs).⁸ In particular, Article 30(1) of MiFIR requires that indirect clearing arrangements should not increase counterparty risk and ensure protections that are of “equivalent effect” to that provided for under EMIR. The term “indirect clearing arrangement” refers to a set of relationships – also called a “chain” – where at least two intermediaries are interposed between an end-client and the relevant CCP. The most basic indirect clearing chain therefore involves the following four entities: the CCP; a clearing member of the CCP; a direct client, *i.e.*, the client of the clearing member that is itself an intermediary; and an indirect client, *i.e.*, the client of the direct client. Longer chains are permitted in certain circumstances.

As a clearing member FCM, we may only be able to provide your clients with the forms of indirect client segregated accounts that comply with the Indirect Clearing RTS in strictly limited circumstances. **Specifically, if you are also an FCM, the Commission’s regulatory regime applicable to us both will preclude us from providing your clients with the form of client segregation required under the Indirect Clearing RTS in the event of our or your insolvency. You and your clients will therefore receive client segregation in compliance with the Commission’s regulatory regime.**

By contrast, if you are not an FCM, we may determine, based on an assessment of the relevant facts and circumstances, that we are able to offer your clients a form of segregated accounts in our books and records that comply with the Indirect Clearing RTS. The relevant CCP will determine the account structure it is prepared to offer to us in such circumstances. Basic details regarding these forms of segregated accounts are provided in Annex I. **Please note that the forms of protection associated with these segregated accounts will not be available in the event of our insolvency, where the Commission’s regulatory regime shall apply.** Your client will only receive the protections associated with these forms of account in the event of your insolvency.

⁶ The terms “CCP” and “DCO” will be used interchangeably throughout this Statement.

⁷ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

⁸ “Exchange-traded derivative” is defined in Article 2(1)(32) of MiFIR to include any derivative traded on an EU regulated market or on any third-country trading venue determined to be “equivalent” to an EU regulated market for purposes of discharging MiFIR’s mandatory trade execution obligations. No such equivalence determinations have yet been made.

This Statement describes at a high level the statutory and regulatory regime under the CEA and applicable Commission rules governing the protection of customer assets and positions with respect to exchange-traded derivatives. In respect of the treatment of margin and collateral at the CCP level, you should refer to the CCP disclosures that the CCPs are required to prepare.

B. Organization of this Statement

This Statement is set out as follows:

- Part II highlights certain significant differences between EMIR and the Indirect Clearing RTS, on the one hand, and Commission rules on the other.
- Part III describes the Commission's regulatory regime for the protection of customer funds.
- Part IV summarizes the rights of a customer to transfer, or port, assets or positions in a business-as-usual context and in the event we default in our obligations to a CCP.
- Part V considers factors to consider in the event of the insolvency of a CCP or other third party.

C. What you are required to do.

You are required to review the information provided in this Statement and the disclosure statement provided by the CCP through which you may clear ETDs.⁹ Where we offer to facilitate indirect clearing services, and you are not an FCM, you will also need to confirm to us whether you intend to provide clearing services through us to your clients and inform us of your clients' choice of indirect client accounts in accordance with our instructions.

D. Important

Although this Statement will be helpful to you, this Statement does not constitute legal or any other form of advice and must not be relied on as such. This Statement provides a high level analysis of several complex and/or new areas of law, whose effect will vary depending on the specific facts of any particular case, some of which have not been tested in the courts. It does not provide all the information you may need to make your decision on which account type or level of segregation is suitable. It is your responsibility and the responsibility of your clients to review and conduct your own due diligence on the relevant rules, legal documentation and any other information provided to you on each of our client account offerings and those of the various CCPs on which we clear derivatives for you and your clients. You and your clients may wish to appoint your own professional advisors to assist with this.

We will not in any circumstances be liable, whether in contract, tort, breach of statutory duty or otherwise for any losses or damages that may be suffered as a result of using this Statement. Such losses or damages include (a) any loss of profit or revenue, damage to reputation or loss of any contract or other business opportunity or goodwill, and (b) any indirect loss or consequential loss. No responsibility or liability is accepted for any differences of interpretation of legislative provisions and

⁹ Further information on this topic may be found on the clearing member's website at <https://sgildisclosure.societegenerale.com/en/>.

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related guidance on which it is based. This paragraph does not extend to an exclusion of liability for, or remedy in respect of, fraudulent misrepresentation.

Please note that this disclosure has been prepared on the basis of US law except as otherwise stated. However, issues under other laws may be relevant to your due diligence, including for example, the law governing the CCP rules or related agreements; the law governing the clearing arrangement between you and us; the law governing our insolvency; the law of the jurisdiction of incorporation of the CCP; and the law of the location of any assets.

II. Significant Differences Between EU Rules and Commission Rules

As noted above, the primary focus of this Statement is the Commission's regulatory regime for the protection of customer funds. Nonetheless, throughout this Statement, we identify certain differences and similarities between the manner in which derivatives transactions generally are cleared in the EU, including as required by EMIR and the Indirect Clearing RTS, and in which they are cleared under the Commission's regulatory regime. At the outset, we highlight the following:

- In the EU, cleared derivatives transactions are generally entered into using the "principal model." That is, the clearing member enters into two separate but related transactions: (i) a principal transaction with its client; and (ii) an equal and opposite principal transaction with the CCP. Under the Commission's regulatory regime, transactions are entered into using the "agency model." That is, the clearing member FCM, as agent for its customer, enters into one transaction with the CCP. The clearing member FCM does not enter into a separate transaction with its customer.
- In the EU, customer assets may be transferred to a clearing member on either a title transfer basis or a security interest basis. Under the Commission's regulatory regime, customer assets may only be transferred on a security interest basis.
- Under the Indirect Clearing RTS, clearing members must offer their direct clients a choice between a basic omnibus indirect client account and a gross omnibus indirect client account (as described in further detail in Annex I). Under the Commission's regulatory regime, clearing member FCMs may provide only US omnibus client segregation to their FCM direct clients. The forms of omnibus client segregation permitted under Commission rules differ in certain respects from the forms of indirect client segregation that comply with the Indirect Client RTS. The Commission's regulatory regime may not necessarily preclude a clearing member FCM from providing forms of indirect client segregation to their non-FCM direct clients in accordance with the Indirect Client RTS. **However, the protections associated with these forms of segregated accounts will only be given effect in the event of the default of the non-FCM direct client.**
- Under EMIR and the Indirect Clearing RTS, affiliates are treated as customers and may be part of the same omnibus client account as all other customers. Under the Commission's regulatory regime, the accounts of FCMs and their affiliates must be treated as proprietary accounts and may not be commingled with customer accounts. This reflects the Commission's view that accounts that are subject to common control with the FCM may pose the same risk to customer funds as an FCM's own accounts.

III. Customer Protection Regime

We may receive assets from you to margin: (i) exchange-traded derivatives executed on a designated contract market (**DCM**) registered with the Commission;¹⁰ or (ii) exchange-traded derivatives executed on a regulated market.¹¹ We are required to post assets with the CCP as margin to support your open positions within the time prescribed by the CCP.¹²

Under Commission rules, customer collateral received to margin exchange-traded derivatives executed on a DCM may not be commingled with funds received to margin exchange-traded derivatives on a regulated market.¹³ As discussed below under *Transfer, or porting, of customer assets and positions*, the prohibition on commingling assures that customer assets are better protected in the event of an FCM clearing member bankruptcy.

A. US Derivatives Exchanges

The provisions of the CEA that provide for the segregation of customer funds held to margin, guarantee or secure futures and options on futures contracts traded on or subject to the rules of a US derivatives exchange require an FCM to “treat and deal with all money, securities and property received by such [FCM] to margin, guarantee or secure the trades or contracts of any customer of such [FCM] or accruing to such customer as a result of such trades, as belonging to such customer.”¹⁴ Exchange-traded derivatives customer funds: (i) must be separately accounted for and may not be commingled with our funds or be used to margin, guarantee, or secure any trades or contracts of any other customer or person; and (ii) may be commingled in an omnibus account with a bank or trust company or with the DCO that clears exchange-traded derivatives on our behalf.

In addition, FCMs are required to create and maintain books and records concerning: (i) the identity of their customers; (ii) the positions held on behalf of each such customer; and (iii) the collateral deposited by each customer to margin such positions.

At the CCP level, however, the clearing member FCM is not required to provide the CCP with information to identify the positions of, and the market value of the collateral posted by, each

¹⁰ Certain CCPs also clear futures and options on futures contracts listed for trading on US designated contract markets. For example, ICE Clear Europe clears futures and options on futures contracts listed for trading on ICE Futures US. LCH Limited is permitted by the scope of its DCO registration to – but does not currently – clear futures and options on futures contracts listed for trading on DCMs.

¹¹ Each of Eurex Clearing AG, ICE Clear Europe, LCH Limited and LCH SA clears futures and options on futures contracts listed for trading on one or more regulated markets.

¹² In practice, such margin is generally required to be paid to the CCP early in the morning, although the CCP may call for additional margin during any trading day. Consequently, we will frequently meet a CCP’s margin requirements using our own funds and then call you for margin. In the ordinary course, we will expect you to meet any call for margin by the end of the day on which the call is made. If you provide margin in a form that is not accepted by the CCP, we may transform it. The arrangements between you and us relating to how margin calls will be funded will be set out in our customer agreement with you.

¹³ In addition, any customer collateral we receive to margin cleared swaps may not be commingled with funds received to margin exchange-traded derivatives executed on either a DCM or a regulated market.

¹⁴ The obligation to treat customer collateral as belonging to the customer requires that all such collateral be received on a security interest basis. Customer collateral may not be received on a title-transfer basis.

customer, and the CCP is not required to create and maintain such books and records. Rather, the CCP is entitled to treat the omnibus account as a single customer.

As discussed below under *Transfer, or porting, of customer assets and positions*, because the CCP is entitled to treat the omnibus account as a single customer, a customer's ability to transfer the customer's positions and related margin upon the default of a clearing member FCM may be limited. Moreover, in the event a clearing member FCM defaults in its obligations to a CCP and there is a shortfall in the customer funds required to be held in the customer omnibus account, the CCP may, but is not required to, liquidate all positions held in the omnibus account and apply the proceeds thereof to meet the FCM's obligations to the CCP with respect to the customer omnibus account.¹⁵

B. Non-US Derivatives Exchanges

We may be a clearing member of a CCP for the purpose of clearing transactions executed on a non-US derivatives exchange. The CEA does not specifically provide for the segregation of customer funds held to margin, guarantee or secure futures and options on futures contracts traded on or subject to the rules of a non-US derivatives exchange. Nonetheless, at the FCM level, the Commission's rules establish a regulatory regime that is comparable to the provisions governing US exchange-traded derivatives customer funds. Customer funds held for the purpose of trading non-US exchange-traded derivatives: (i) must be separately accounted for and may not be commingled with our funds or be used to margin, guarantee, or secure any trades or contracts of any other customer or person; and (ii) may be commingled in an omnibus account with a bank or trust company or with the CCP that clears exchange-traded derivatives on our behalf. In addition, we are required to maintain books and records concerning: (i) the identity of our customers; (ii) the positions held on behalf of each such customer; and (iii) the collateral deposited by each customer to margin such positions.

At the CCP level, however, the rules of the jurisdiction otherwise governing the treatment of customer funds would ordinarily apply. In the case of an EMIR-authorized CCP, customer funds would be held in an omnibus client account.

C. Excess Customer Funds

Commission rules do not expressly authorize a CCP to adopt (or prohibit a CCP from adopting) rules permitting a clearing member FCM to maintain its excess customer funds with the CCP. If a CCP were to adopt such rules, the CCP would not be required to identify such funds to particular customers within the customer omnibus account. In the event a clearing member FCM defaults in its obligations to the CCP and there is a shortfall in the customer funds required to be held in the customer omnibus account, the CCP may apply the excess customer funds that it is holding to meet the FCM's obligations to the CCP with respect to the customer omnibus account.

D. Indirect Clearing

If you have clients and are also an FCM, then the Commission's customer protection regime described in the remainder of this section III shall apply in all cases to the clearing services we offer you and your clients.

¹⁵ As further discussed below, the assets held in the customer omnibus account may not be used to meet any other obligations of the FCM to the clearing member.

If you have clients but are not an FCM, then we may determine that we are able to open and maintain segregated accounts for your clients in a form that complies with the Indirect Clearing RTS. A basic description of the indirect client account structures under the Indirect Clearing RTS is provided in Annex I. Any such accounts may give your clients additional protections in the event of your insolvency.

However, in the event of our insolvency, the mandatory commodity broker liquidation provisions of the US Bankruptcy Code and the Commission's rules described in section IV below will apply. In other words, in the event of our insolvency, the positions in any accounts that we may open that comply with the Indirect Clearing RTS, and the related assets, will be ported or liquidated pursuant to the requirements of the US Bankruptcy Code and the Commission's rules rather than in accordance with the Indirect Clearing RTS.

IV. Transfer, or porting, of customer assets and positions

A. Transfers to another FCM in a business-as-usual context

The rights and obligations of FCMs and their customers with respect to the transfer of customer assets and positions to another FCM in a business-as-usual context are the same whether the customer is trading (i) exchange-traded derivatives executed on a DCM, or (ii) exchange-traded derivatives executed on a regulated market. In particular, Commission rules prohibit us from transferring your assets and positions to another FCM without your consent.

In a business-as-usual context, *i.e.*, we are not in default, you may request at any time that all or a portion of your assets and positions be transferred to another FCM clearing member that has agreed to accept your account. National Futures Association (NFA) Compliance Rule 2-27 provides that, within two business days after receiving a customer's request to transfer the customer's account, or within such further time as may be necessary in the exercise of due diligence, the FCM clearing member carrying the account must confirm to the FCM clearing member receiving the account all balances in the account and all open positions. Within three business days of the day such confirmation is due, or within such further time as may be necessary in the exercise of due diligence, the FCM clearing member carrying the account must effect the transfer of the balances and positions to the receiving FCM clearing member.

NFA Compliance Rule 2-27 is applicable to all FCMs and each type of customer account.

B. Transfers when the FCM clearing member is in default under DCO rules but not in bankruptcy.

1. Exchange-traded derivatives. Because a CCP will not have information with respect to value of the assets and positions on behalf of a clearing member FCM's exchange-traded derivatives customers, such customers will not have an opportunity to request that their positions and related margin be transferred to an FCM clearing member that the customer selects. In these circumstances, the CCP may attempt to transfer the assets and positions held in the customer omnibus account to one or more non-defaulting FCMs.

In this regard, EMIR Article 48(5) instructs a CCP to "commit itself to trigger the procedures for the transfer of the assets and positions held by the defaulting clearing member for the account of its clients to another clearing member designated by all of those clients, on their request and without the consent of the defaulting clearing member." However, that other clearing member is required to accept those assets and positions "only where it has previously entered into a contractual relationship with the clients by which it has committed itself to do so." Once transferred to a non-defaulting FCM clearing member, the customer will be able to request that the customer's account be transferred to an FCM clearing member that the customer selects.

2. Indirect Clearing. As described earlier, where we offer indirect clearing services to direct clients that are FCMs, indirect client positions will be held in our normal customer omnibus account and will be subject to the treatment described above in the event of our non-insolvency default. Where we offer indirect clearing services to non-FCM direct clients, the Indirect Clearing RTS provide for one or more indirect clients in a gross omnibus indirect client account to port independently of other indirect clients in the same account in the event of a direct client default. An indirect client in a gross omnibus indirect client account may therefore request that its positions and related assets be transferred by the clearing member to a backup direct client or clearing member of its choice. The

Indirect Clearing RTS do not provide for a similar right to request porting for any indirect client in a basic omnibus indirect client account and, therefore, porting will ordinarily not be available for such indirect clients.

C. Treatment of exchange-traded derivatives customer assets and positions when an FCM is placed in bankruptcy

1. In general. If an FCM is placed in bankruptcy, the FCM is liquidated in accordance with the commodity broker liquidation provisions of the US Bankruptcy Code and the Commission's rules.

2. Transfer of customer assets and positions. Once a clearing member FCM has filed for, or is otherwise placed in bankruptcy, a CCP may not transfer, or port, the positions and assets of non-defaulting customers to another FCM except as directed by the trustee and confirmed by the Bankruptcy Court. In addition, the trustee in bankruptcy, in coordination with the CCP, will attempt to effectuate the transfer of all customer positions together with the money, securities, or other property held to margin the commodity contracts.

In the event customer accounts cannot be transferred, however, or only a partial transfer is accomplished, the trustee is further instructed to liquidate all remaining open positions. The Bankruptcy Code requires that losses arising in any account class of a defaulting FCM must be shared ratably among the members of that account class.

3. Authority of a CCP in the event of a shortfall in the exchange-traded derivatives customer omnibus account. If, upon the bankruptcy of a clearing member FCM, there is a shortfall in the exchange-traded derivatives customer omnibus account caused by the default of one or more customers, Commission rules permit, but do not require, the CCP to net and liquidate the positions held in the customer omnibus account and to use the proceeds of such liquidation to meet the defaulting clearing member FCM's obligations to the CCP with respect to the omnibus account.¹⁶ The proceeds from the liquidation of the exchange-traded derivatives customer omnibus account may not be used to meet any other obligations of the clearing member FCM to the CCP.

D. Rights and Obligations of CCPs and Clearing Members Under EMIR and the Indirect Clearing RTS

The rights and obligations of clearing members, their clients and CCPs under EMIR and the Indirect Clearing RTS differ in certain respects from the rights and obligations available under the CEA and the Commission's regulatory regime. We note immediately below three significant differences.

1. As noted earlier, under EMIR Article 48(5), a CCP may transfer the assets and positions of a defaulting clearing member in an omnibus client segregated account only if all of the clients that comprise the omnibus client segregated account had previously designated another clearing member. Under the Commission's regulatory regime, the consent of the clients would not be necessary. Rather, the CCP, in coordination with the CFTC, would identify one or more non-defaulting clearing members that would be willing to accept the omnibus account. Once the omnibus account is transferred, each customer would be able to request that the customer's account be transferred to a clearing member FCM that the customer selects.

¹⁶ The CCP is authorized to net and liquidate such positions even if the Bankruptcy Court has appointed a trustee in bankruptcy.

2. Under EMIR Article 48(5), a CCP must also commit to transfer the assets and positions held by a defaulting clearing member in an omnibus client segregated account for a predefined period of time after the clearing member becomes insolvent. Under the US Bankruptcy Code, once a clearing member FCM has filed for bankruptcy, a CCP may not transfer client assets or positions without the consent of the bankruptcy trustee.

3. EMIR Article 48(7) provides that, where a balance is owed by the CCP in respect of a client segregated account of a defaulting clearing member, such amount must be readily returned directly to the relevant client, where such client's identity is known to the CCP, or otherwise to the defaulting clearing member for the account of its clients. These "leapfrog" payment provisions also apply to the return of proceeds in respect of an indirect client segregated account by the CCP to the direct client for the account of its indirect clients, where the identity of the relevant client is known. Under the Commission's regulatory regime and the US Bankruptcy Code, the bankruptcy trustee is responsible for liquidating the positions of non-porting customers of an insolvent FCM and distributing the liquidation proceeds ratably to customers.

V. Insolvency of CCPs and others

Except as set out in this section, this Statement deals only with our insolvency. You may also not receive all of your assets back or retain the benefit of your positions, if other parties in the clearing structure default – *e.g.*, the CCP itself, a custodian or a settlement agent.

In relation to CCP insolvency, broadly speaking our (and therefore your) rights will depend on the law of the country in which the CCP is incorporated and the specific protections that the CCP has put in place.¹⁷ You should review the relevant CCP disclosures carefully in this respect and take legal advice to fully understand the risks in this scenario.

In addition, please note the following:

- We expect that an insolvency official will be appointed to manage the CCP. Our rights against the CCP will depend on the relevant insolvency law and/or that official.
- It will be difficult or impossible to port positions and related margin, so it would be reasonable to expect that they will be terminated at CCP level. The steps, timing, level of control and risks relating to that process will depend on the CCP, its rules and the relevant insolvency law. However, it is likely that there will be material delay and uncertainty around when and how much assets or cash we will receive back from the CCP. Subject to the bullet points below, it is likely that we will only receive back only a percentage of assets available depending on the overall assets and liabilities of the CCP.
- It is unlikely that you will have a direct claim against the CCP.
- Under the terms of our customer agreement, we are not liable to you in the event of the default of a CCP or other third party not under our control.
- If recovery of margin in this scenario is important, then you should explore “bankruptcy remote” or “physical segregation” structures offered by some CCPs. However, these tend to be offered only in relation to accounts subject to individual client segregation.

It is beyond the scope of this disclosure to analyse such options but your due diligence on them should include analysis of matters such as whether other creditors will have priority claims to margin; whether margin or positions on one account could be applied against margin or positions on another account (notwithstanding the contractual agreement in the CCP’s rules); the likely time needed to recover margin; whether the margin will be recovered as assets or cash equivalent; and any likely challenges to the legal effectiveness of the structure (especially as a result of the CCP’s insolvency).

¹⁷ The CCPs with respect to which we provide indirect clearing services may change over time. As of December 2017, we provide access to the following CCPs: ICE Europe (UK), LME (UK), Eurex (Germany), and Euronext (France). Updated information is available by contacting mifid@rjobrien.com.

ANNEX I

Forms of Indirect Client Segregated Account

As noted in the accompanying Clearing Member Disclosure Statement, if you have clients and are not yourself an FCM, we may determine, based on an assessment of the relevant facts and circumstances, that we are able to offer your clients a form of segregated accounts that comply with the Indirect Clearing RTS.

Under the Indirect Clearing RTS, there are two basic types of indirect client accounts available at the CCP level: the Basic Omnibus Indirect Client Accounts and Gross Omnibus Indirect Client Accounts. We have included below a general overview of the most common segregation approaches taken by CCPs relevant to our provision of indirect clearing services, but note that the approach taken by each CCP may differ. We therefore refer you to the relevant CCP disclosures which set out the treatment of margin and collateral at that CCP.

Clearing members then open and maintain accounts corresponding to the relevant indirect clearing accounts at the CCP level as described in more detail below.

1. CCP Level

1.1 ICE Clear Europe

ICE Clear Europe has determined that it is only able to offer us the following form of account structure in connection with our provision of indirect clearing services. Rather than establishing a new form of segregated accounts, ICE Clear Europe will provide us with a new form of position-keeping account that is linked to our existing, Commission-compliant omnibus accounts. This new position-keeping account is designed to record positions relating to your clients and will include the positions of your clients that have chosen a basic, as well as a gross, level of segregation under the Indirect Clearing RTS. As today, our customer accounts will be margined on a gross basis.

The existence of this new position-keeping account at the CCP level will not prevent us from establishing Basic Omnibus Indirect Client Accounts and/or Gross Omnibus Indirect Clients Accounts for your clients in our own books and records. However, as described in greater detail in the accompanying Clearing Member Disclosure Statement, in the event of *our* insolvency, the mandatory commodity broker liquidation provisions of the US Bankruptcy Code and the Commission's customer protection rules will apply to our customer accounts at ICE Clear Europe, including in respect of your clients and the positions referable to them and recorded in the new indirect clearing position-keeping account.

By contrast, in the event of *your* insolvency, these mandatory provisions of US law will not apply. Instead, we will be responsible for managing your default in accordance with the requirements of the Indirect Clearing RTS. The position data in the new indirect client position-keeping account at the CCP level should be specific enough for us to ensure that the requirements of the Indirect Clearing RTS are met in the event of your insolvency, including: liquidation of indirect client positions at the CCP level; calculation of net liquidation proceeds on a basic, or gross, indirect omnibus account basis and the return of such proceeds to you for the account of your clients or, where possible, directly to your clients; and facilitation of porting for your clients that have chosen a gross level of segregation.

1.2 Other CCPs

Other CCPs may determine that they are able to open and maintain for us forms of segregated indirect client accounts that specifically reflect the features of Basic Omnibus Indirect Client Accounts and Gross Omnibus Indirect Client Accounts. The principal characteristics of each form of segregated account are summarized below.

1.2.1 Basic Omnibus Indirect Client Account¹⁸

Under this account type, at the level of the CCP, the transactions (including the corresponding assets in the CCP’s accounts) relating to your clients that have opted for a Basic Omnibus Indirect Client Account are segregated from:

- our proprietary transactions (including corresponding assets in the CCP’s accounts);
- any transactions (including corresponding assets in the CCP’s accounts) relating to your own account or the account of one of our other clients; and
- any transactions (including corresponding assets in the CCP’s accounts) relating to any of your clients or any clients of our other clients that have opted for a Gross Omnibus Indirect Client Account.

However, the transactions (including corresponding assets in the CCP’s accounts) relating to your clients that have opted for a Basic Omnibus Indirect Client Account will be commingled with the transactions (including corresponding assets in the CCP’s accounts) relating to any of your other clients and any clients of our other clients that have opted for a Basic Omnibus Indirect Client Account and which are recorded in the same Basic Omnibus Indirect Client Account.

| | |
|--|---|
| Can transactions recorded in a Basic Omnibus Indirect Client Account and related collateral be netted with our proprietary transactions and assets? | No |
| Can transactions recorded in a Basic Omnibus Indirect Client Account and related assets be netted with those relating to you or our other clients? | No |
| Can transactions recorded in a Basic Omnibus Indirect Client Account and related collateral be netted with those relating to your other clients? | Yes (provided the transactions and assets of your other clients are recorded in the same Basic Omnibus Indirect Client Account) |
| Can transactions recorded in a Basic Omnibus Indirect Client Account and related collateral be netted with those relating to clients of our other clients? | Yes (provided the transactions and assets of our other clients’ clients are recorded in the same Basic Omnibus Indirect Client Account) |

Prior to our default, the CCP will agree not to net the transactions relating to your indirect clients that have opted for a Basic Omnibus Indirect Client Account with our proprietary transactions or any

¹⁸ This description is based on Articles 4(2)(a) and 4(4)(a) of the Indirect Clearing RTS. Please note that we have based our analysis on the minimum requirements as set out in the Indirect Clearing RTS. Therefore, we have assumed that positions in a Basic Omnibus Indirect Client Account would be held on a net basis and margin would also be collected on a net basis.

transactions not recorded in the same Basic Omnibus Indirect Client Account, nor use the assets relating to such transactions with respect to our proprietary transactions or any transactions recorded in any other account.

However, both we and the CCP may net the transactions that are recorded in the same Basic Omnibus Indirect Client Account. The assets provided in relation to the transactions recorded in the same Basic Omnibus Indirect Client Account can be used in relation to any transaction (whether it relates to your indirect clients or indirect clients of any of our other clients) credited to that Basic Omnibus Indirect Client Account.

1.2.2 Gross Omnibus Indirect Client Account¹⁹

Under this account type, at the level of the CCP, the transactions (including the corresponding assets in the CCP’s accounts) relating to your clients that have opted for a Gross Omnibus Indirect Client Account are segregated from:

- our proprietary transactions (including corresponding assets in the CCP’s accounts);
- any transactions (including corresponding assets in the CCP’s accounts) relating to your own account or that of one of our other clients;
- any transactions (including corresponding assets in the CCP’s accounts) relating to any of your clients or any clients of our other clients that have opted for a Basic Omnibus Indirect Client Account; and
- any transactions (including corresponding assets in the CCP’s accounts) relating to any clients of our other clients that have also opted for a Gross Omnibus Indirect Client Account and which are recorded in a different Gross Omnibus Indirect Client Account.

However, the transactions (including corresponding assets in the CCP’s accounts) relating to your indirect clients that have opted for a Gross Omnibus Indirect Client Account will be commingled with the transactions (including corresponding assets in the CCP’s accounts) relating to any of your other clients that have opted for a Gross Omnibus Indirect Client Account and which are recorded in the same Gross Omnibus Indirect Client Account. Within the Gross Omnibus Indirect Client Account, the CCP will keep separate records of the positions of each of your clients that has opted for a Gross Omnibus Indirect Client Account. The CCP will also calculate the margining requirement separately for each of your clients that has opted for a Gross Omnibus Indirect Client Account and collect the aggregate of each such margin requirement.

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| Can transactions recorded in a Gross Omnibus Indirect Client Account and related collateral be netted with our proprietary transactions and assets? | No |
| Can transactions recorded in a Gross Omnibus Indirect Client Account and related assets be netted with those relating to you or our other clients? | No |
| Can transactions recorded in a Gross Omnibus Indirect | The transactions relating to any one of your |

¹⁹ This description is based on Articles 4(2)(b) and 4(4)(b) of the Indirect Clearing RTS.

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| <p>Client Account and related collateral be netted with those relating to your other clients?</p> | <p>clients that has opted for a Gross Omnibus Indirect Client Account will not be netted with the transactions relating to any of your other clients.</p> <p>However, the collateral of any one of your clients that has opted for a Gross Omnibus Indirect Client Account may be used to cover transactions of your other clients to the extent it is recorded in the same Gross Omnibus Indirect Client Account.</p> |
| <p>Can transactions recorded in a Gross Omnibus Indirect Client Account and related collateral be netted with those relating to clients of our other clients?</p> | <p>No</p> |

Prior to our default, the CCP will agree not to net the transactions relating to your clients that have opted for a Gross Omnibus Indirect Client Account with our proprietary transactions, your transactions, the transactions relating to our other clients or any transactions relating to your other clients (regardless of whether they are recorded in the same Gross Omnibus Indirect Client Account).

The CCP will also agree not to use the assets relating to the transactions relating to your clients that have opted for a Gross Omnibus Indirect Client Account with respect to any of our proprietary transactions, your transactions, the transactions relating to our other clients or any transactions relating to your other clients provided that they are not recorded in the same Gross Omnibus Indirect Client Account. However, the assets provided in relation to the transactions relating to one of your clients that have opted for a Gross Omnibus Indirect Client Account may be used by both the CCP and us in relation to any transaction relating to your other clients that have also opted for a Gross Omnibus Indirect Client Account.

2. Clearing Member Level

Where we determine that we are able to offer your clients a form of segregated accounts that comply with the Indirect Clearing RTS, we will be able to open and maintain in our books and records the forms of segregated account described below, regardless of the account structure offered by the relevant CCP. **However, the protections associated with these forms of segregated accounts will only be given effect in the event of *your* insolvency; in the event of *our* insolvency, the mandatory commodity broker liquidation provisions of the US Bankruptcy Code and the Commission’s rules described in the accompanying Clearing Member Disclosure Statement will apply.**

2.1 Basic Omnibus Indirect Client Account²⁰

At the level of the clearing member, we may open and maintain Basic Omnibus Indirect Client Accounts. Under this account type, the transactions (including the corresponding assets in our accounts) relating to your clients that have opted for a Basic Omnibus Indirect Client Account are segregated from:

²⁰ This description is based on Articles 4(2)(a) and 4(4)(a) of the Indirect Clearing RTS. Please note that we have based our analysis on the minimum requirements as set out in the Indirect Clearing RTS. Therefore, we have assumed that positions in a Basic Omnibus Indirect Client Account would be held on a net basis and margin would also be collected on a net basis.

- our proprietary transactions;
- any transactions (including corresponding assets in our accounts) relating to your own account or that of one of our other clients;
- any transactions (including corresponding assets in our accounts) relating to any clients of our other clients that have also opted for a Basic Omnibus Indirect Client Account and which are recorded in a different Basic Omnibus Indirect Client Account; and
- any transactions (including corresponding assets our accounts) relating to any of your clients or any clients of our other clients that have opted for a Gross Omnibus Indirect Client Account.

However, the transactions (including corresponding assets in our accounts) relating to your clients that have opted for a Basic Omnibus Indirect Client Account will be commingled with the transactions (including corresponding assets in our accounts) relating to any of your other clients that have also opted for a Basic Omnibus Indirect Client Account and which are recorded in the same Basic Omnibus Indirect Client Account.

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| Can the transactions and related collateral relating to your clients that have opted for a Basic Omnibus Indirect Client Account be netted with our proprietary transactions and assets? | No |
| Can the transactions and related assets relating to your clients that have opted for a Basic Omnibus Indirect Client Account be netted with those relating to you or our other clients? | No ²¹ |
| Can the transactions and related collateral relating to your clients that have opted for a Basic Omnibus Indirect Client Account be netted with those relating to your other clients? | Yes (provided the transactions and assets of your other clients are recorded in the same Basic Omnibus Indirect Client Account) |
| Can the transactions and related collateral relating to your clients that have opted for a Basic Omnibus Indirect Client Account be netted with those relating to clients of our other clients? | No |

We will not net the transactions relating to your clients that have opted for a Basic Omnibus Indirect Client Account with our proprietary transactions or any transactions not recorded in the same Basic Omnibus Indirect Client Account, nor use the assets relating to such transactions with respect to any of our proprietary transactions or transaction recorded in any other client account.

However, we may net the transactions that are recorded in the same Basic Omnibus Indirect Client Account. The assets provided in relation to the transaction credited to that Basic Omnibus Indirect Client Account can be used in relation to any transaction credited to that Account.

2.2 Gross Omnibus Indirect Client Account²²

²¹ Please note that the clearing agreement between you and us may allow us to apply any positive liquidation balance of your proprietary account to any negative liquidation balances owed in respect of your clients' accounts.

At the level of the clearing member, we may open and maintain Gross Omnibus Indirect Client Accounts. Under this account type, the transactions (including the corresponding assets in our accounts) relating to your clients that have opted for a Gross Omnibus Indirect Client Account are segregated from:

- our proprietary transactions;
- any transactions (including corresponding assets in our accounts) relating to your own account or that of one of our other clients;
- any transactions (including corresponding assets in our accounts) relating to any of your clients or any clients of our other clients that have opted for a Basic Omnibus Indirect Client Account; and
- any transactions (including corresponding assets in our accounts) relating to any clients of our other clients that have also opted for a Gross Omnibus Indirect Client Account and which are recorded in a different Gross Omnibus Indirect Client Account.

However, the transactions (including corresponding assets in our accounts) relating to your clients that have opted for a Gross Omnibus Indirect Client Account will be commingled with the transactions (including corresponding assets in our accounts) relating to any of your other clients that have also opted for a Gross Omnibus Indirect Client Account and which are recorded in the same Gross Omnibus Indirect Client Account.

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| Can transactions recorded in a Gross Omnibus Indirect Client Account and related collateral be netted with our proprietary transactions and assets? | No |
| Can transactions recorded in a Gross Omnibus Indirect Client Account and related assets be netted with those relating to you or our other clients? | No ²³ |
| Can transactions recorded in a Gross Omnibus Indirect Client Account and related collateral be netted with those relating to your other clients? | The transactions relating to any one of your clients that has opted for a Gross Omnibus Indirect Client Account will not be netted with the Client Transactions relating to any of your other clients. However, the collateral of any one of your clients that has opted for a Gross Omnibus Indirect Client Account may be used to cover transactions of your other clients to the extent it is recorded in the same Gross Omnibus Indirect Client Account |
| Can transactions recorded in a Gross Omnibus Indirect Client Account and related collateral be netted with those | No |

²² This description is based on Articles 4(2)(b) and 4(4)(b) of the Indirect Clearing RTS.

²³ Please note that the clearing agreement between you and us may allow us to apply any positive liquidation balance of your proprietary account to any negative liquidation balances owed in respect of your clients' accounts.

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| relating to clients of our other clients? | |
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We will not net the transactions relating to your clients that have opted for a Gross Omnibus Indirect Client Account with our proprietary transactions, your transactions, the transactions relating to our other clients or any transactions relating to your other clients (regardless of whether they are recorded in the same Gross Omnibus Indirect Client Account).

Neither will we use the assets relating to the transactions relating to your clients that have opted for a Gross Omnibus Indirect Client Account with respect to any of our proprietary transactions, your transactions, the transactions relating to our other clients or any transactions relating to your other clients provided that they are not recorded in the same Gross Omnibus Indirect Client Account. However, we may use the assets provided in relation to the transactions relating to one of your clients that have opted for a Gross Omnibus Indirect Client Account in relation to any transaction relating to your other clients that have also opted for a Gross Omnibus Indirect Client Account.

ANNEX II

Terms and Conditions Indirect Clearing Arrangements

In accordance with the provisions of the Regulatory Technical Standards on Indirect Clearing Arrangements under MiFIR²⁴ and EMIR²⁵, we are required to disclose the general terms and conditions pursuant to which we provide our clients indirect clearing services with respect to exchange-traded derivatives contracts that are cleared by a central counterparty authorized in the European Union (“EU CCP”).²⁶ Such terms and conditions are set out in detail in the agreement, including all schedules and appendices thereto, that we enter into with you (the “**Agreement**”).

The term “**indirect clearing services**” refers to the circumstances where: (i) we access an EU CCP through a clearing member of that EU CCP; and/or (ii) we are a clearing member of an EU CCP and you are an intermediary with clients of your own.²⁷

In significant part, the terms and conditions identified below are required in order for us to comply with relevant provisions of the Commodity Exchange Act and the rules of the Commodity Futures Trading Commission (“**CFTC**”) and the self-regulatory organizations with jurisdiction over our futures-related business. If we facilitate clearing in respect of Non-US Listed Equity Options at an EU CCP, we must also comply with relevant provisions of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission (“**SEC**”) and the self-regulatory organizations with jurisdiction over our securities-related activities. (All such laws and rules, as applicable, are collectively referred to herein as the “**rules**”.) For example, the rules require that we must:

- take reasonable steps to know our clients in accordance with applicable law, including Anti-Money Laundering and “know your customer” rules;
- establish risk-based limits on each client’s orders;
- conduct business only with or through an intermediary that is registered with the CFTC or SEC, as applicable (or not required to be registered);

²⁴ Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012.

²⁵ Regulation (EU) No. 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives central counterparties and trade repositories.

²⁶ “**Exchange-traded derivative**” is defined in Article 2(1)(32) of MiFIR to include any derivative traded on an EU regulated market or on any third-country trading venue determined to be “equivalent” to an EU regulated market for purposes of discharging MiFIR’s mandatory trade execution obligations. No such equivalence determinations have yet been made. Where applicable, when used herein this term also includes equity options listed for trading on an EU regulated market (“**Non-US Listed Equity Options**”).

²⁷ Article 5(6) of the Indirect Clearing RTS requires a direct client to “provide its indirect clients with sufficient information to allow those indirect clients to identify the CCP and the clearing member used to clear their positions.” The Indirect Clearing RTS does not require that such information be included in the same document with the above terms and conditions. An FCM, for example, could direct its clients to the firm-specific disclosure statement under Commission Rule 1.55(k), which requires an FCM to provide information regarding its business on behalf of its customers, “including types of customers, markets traded, international businesses, and clearinghouses and carrying brokers used.”

- obtain a first priority security interest in all exchange-traded derivatives contracts and all cash and securities deposited to margin such contracts; and
- confirm that our clients have received and understood certain prescribed disclosures.

A general description of the principal terms and conditions governing our relationship with our clients is set out below. The actual provisions of the Agreement are more detailed. Moreover, please note that the specific terms and conditions of the Agreement that we enter into with any client may differ depending on our analysis of the risks that such client's trading activities may present.

Before providing indirect client services to you, we will generally require, subject to the terms and conditions contained in the Agreement, that you:

- provide us with such information that we may request in order to verify your identity as required by law or as we may otherwise require for account opening purposes.
- confirm to our satisfaction that you meet our minimum financial and operational requirements appropriate for your business, experience and the nature of the trading in which you intend to engage; you must agree to provide us with such financial information, including a current financial statement, as we may request from time to time and to notify us promptly of any material change in your financial condition.
- confirm to our satisfaction that you have full power and authority to enter into the Agreement and to enter into the transactions contemplated thereby for your account or on your behalf.
- confirm to our satisfaction that you have obtained all registrations or licenses, if any, that you may require to conduct business and that you remain in good standing with all relevant regulatory and self-regulatory authorities.
- acknowledge that you have read and understood all disclosure statements with respect to your trading activities that we have provided you, including the appropriate Disclosure Statement on Indirect Clearing.
- acknowledge that all exchange-traded derivatives transactions effected for your account or on your behalf are subject to "**Applicable Law**", including exchange and clearing organization rules that require your consent to be subject to the jurisdiction of the markets on which you trade, and that you will conduct all activities subject to the Agreement in accordance with such Applicable Law.
- agree that we may, in our sole discretion, limit the size of your positions, refuse to accept any order or transaction, or require you to transfer your account to another firm.
- agree to meet all margin calls with respect to exchange-traded derivatives contracts that we clear for your account or on your behalf in such form and amounts and within such time as we may determine, consistent with Applicable Law.
- grant us a lien and first priority security interest and right of set-off in all exchange-traded derivatives contracts and all cash, securities and other property ("**collateral**") that you deposit with us to margin, guarantee or secure all exchange-traded derivatives contracts that we clear for your account or on your behalf. You must grant us the right to borrow, pledge, repledge, hypothecate, rehypothecate, loan or invest any such collateral.

- acknowledge that, upon an event of default, as that term is defined in the Agreement, we will have certain rights as set out in the Agreement, including the right, in addition to any remedy otherwise available in law or equity, to liquidate any or all exchange-traded derivatives contracts held in your name or on your behalf by any lawful means and to apply any collateral to meet any amounts you owe us.
- acknowledge that we will not be liable to you for any losses that may be incurred except insofar as such losses are a direct result of our negligence, willful misconduct or fraud and, further, that in no event will we be liable for any consequential, indirect or punitive damages.
- agree that the Agreement will be interpreted in accordance with the laws of the State of Illinois and submit to the jurisdiction of the courts in the State of Illinois and the federal courts in the Northern District of Illinois. You must waive any right to a jury trial.