



**COMMERZBANK**

# Segregation Information

Pursuant to Article 39 (7) EMIR



# Segregation Information Document<sup>1</sup>

## Introduction

Throughout this document references to “Bank” “we”, “our” and “us” are references to the clearing member. References to “Client”, “you” and “your” are references to the client.

## The purpose of this document

To enable us to comply with our obligations as a clearing member under EMIR<sup>2</sup>, which requires that where we are providing services to you that involve us clearing derivatives through an EMIR compliant central counterparty (CCP), we must:

- offer you a choice of an individual client account or an omnibus client account (as discussed under “*The types of account available*” in Part One B below);
- publicly disclose the levels of protection and costs associated with different levels of segregation; and
- describe the main legal implications of different levels of segregation.

We have provided the costs associated with the different levels of segregation separately.

This Document will be updated from time to time. You will find the most recent version on the aforesaid location on our website.

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<sup>1</sup> This document is based on the Clearing Member Disclosure Document issued in February 2014 by the International Swaps and Derivatives Association, Inc (“ISDA”) and Futures and Options Association (“FOA”) hereinafter “ISDA/FOA Clearing Member Disclosure Document”. It is for general information purposes only and does not constitute legal advice. If in doubt, users of this document should seek legal advice. The explanations included in this document are high level summaries and analyses of several complex and/or new areas of law and regulation and arrangements put in place by a series of CCPs, many of which are not yet finalised or fully explained in the public domain.

<sup>2</sup> Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories.

# Organisation of this document

This document is set out as follows:

- Part One A provides some background to clearing.
- Part One B gives information about the difference between the individual client account and the omnibus client account.
- Part One C sets out some of the main insolvency considerations.
- Part Two provides an overview of the main variations on the different levels of segregation that the CCPs offer, together with an explanation of the main implications of each and sets out links to further information provided by the CCPs.

## What is the Client required to do?

You must review the information provided in this document and the relevant CCP disclosures and confirm to us in writing which account type you would like us to maintain with respect to each CCP on which we clear derivatives for you from time to time and whether you agree with the way in which we propose to deal with any excess margin we may hold in relation to an individual client account. We will explain how we would like you to make this confirmation and by when. If you do not confirm within the requested timeframe, we will not be in compliance with our obligations under EMIR, which is not a position we can continue with indefinitely. In the meantime, we will continue to clear your derivatives, either using the existing account structure or an omnibus client account, as this is the most similar of the new account types to the existing account structure.

### Important<sup>3</sup>

Whilst this document will be helpful to you when making this decision, this document does not constitute legal or any other form of advice and must not be relied on as such. This document 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 for you. It is your responsibility 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. You may wish to appoint your own professional advisors to assist you with this.

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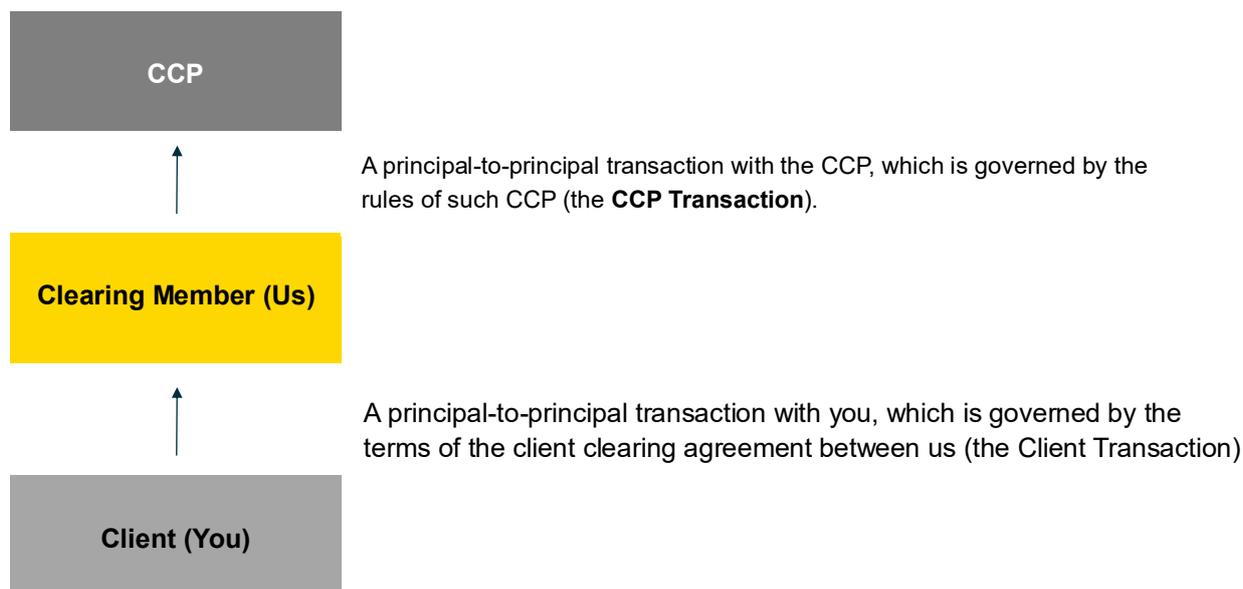
<sup>3</sup> See endnote 1 above.

## Part One A: A brief background to clearing

The market distinguishes two main types of clearing models: the “agency” model and the “principal-to-principal” model. Most of the CCPs we use adopt the “principal-to-principal” model, and this document assumes all transactions are cleared according to this model.

### The “principal-to-principal” clearing model

When clearing transactions for you through a CCP, we usually enter into two separate transactions:



The terms of each Client Transaction are equivalent to those of the related CCP Transaction, except that (i) each Client Transaction will be governed by a client clearing agreement between you and us and (ii) we will take the opposite position in the CCP Transaction to the position we have under the related Client Transaction.

Under the terms of the client clearing agreement between you and us, a Client Transaction will arise without the need for any further action by either you or us, as soon as the CCP Transaction arises between us and the CCP. Once both of those transactions have been entered into, your transaction is considered to be “cleared”.

As the principal to the CCP, we are required to provide assets to the CCP as margin for the CCP Transactions that relate to you and to ensure the CCP has as much margin as it requires at any time. We will therefore ask you for margin and, where you provide it in a form which we cannot transfer to the CCP, we may transform it. If you have provided us with margin assets, you may face what we call “transit risk” – this is the risk that, if we were to default prior to providing such assets to the CCP, the assets that should have been recorded in your account at the CCP will not have been and will not benefit from the protections described below under “What happens if the Bank is declared to be in default by a CCP?”.

However, in many cases you may not actually face transit risk because the CCPs often call margin from us early in the morning so we will often use our own funds to satisfy the margin call and then seek to recover such amount from you. In these cases, it is rather that we are exposed to you for the interim period. The arrangements between you and us relating to how the margin calls will be funded will be set out in the client clearing agreement between you and us.

If we are not a member of such CCP ourselves, we may enter into a principal-to-principal transaction with another clearing member, instead of a principal-to-principal transaction with such CCP. Such arrangements are outside the scope of this document.

Please see Part One B for an explanation of how this is relevant to the choice of account types.

### **What if the Client wants to transfer the Client Transactions to another clearing member?**

There may be circumstances where you wish to transfer some or all of your Client Transactions to another clearing member on a business-as-usual basis (i.e., in the absence of us having been declared in default by a CCP). We are not obliged to facilitate this under EMIR but we may be willing to do so subject to our ability to transfer the CCP Transactions to which they relate and the margin provided to the CCP in connection with them (which will depend on the relevant CCP's rules) and any conditions set out in our client clearing agreement. You will also need to find a clearing member that is willing to accept such Client Transactions and the related CCP Transactions and assets.

It may be easier to transfer Client Transactions and CCP Transactions that are recorded in an Individual Client Account than those recorded in an Omnibus Client Account (both types of account being described in more detail in Part One B) for the same reasons as set out below under "Will the CCP Transactions and assets relating to the Client be automatically ported to a back-up clearing member?".

### **What happens if the Bank is declared to be in default by a CCP?**

If we are declared to be in default by a CCP, there are two possibilities with respect to the CCP Transactions and assets related to you:

- the CCP will, at your request, try to transfer (port) to another clearing member (a back-up clearing member), such CCP Transactions and assets; or, if this cannot be achieved,
- the CCP will terminate the CCP Transactions that relate to you (see "What happens if porting is not achieved" below).

The porting process will differ depending on the CCP, but it is likely to involve a close-out (with us) and a reestablishment (with the back-up clearing member) of the CCP Transactions or a transfer of the open CCP Transactions and related assets from us to the back-up clearing member. In some cases, CCPs will support this structure legally by requiring us to grant a security interest to you over some or all of our related rights against the CCP (the security interest) but in other cases where CCPs can rely on EMIR and local legislation, this is not necessary.

## **Will the CCP Transactions and assets relating to the Client be automatically ported to a back-up clearing member?**

No, there will be several conditions which must be satisfied before the CCP Transactions and assets that relate to you can be ported to a back-up clearing member. These conditions will be set by the CCPs and will include obtaining your consent. In all cases you will need to have a back-up clearing member that has agreed to accept the CCP Transactions. You may wish to appoint a back-up clearing member upfront as part of your clearing arrangements but the back-up clearing member is unlikely to be able to confirm that it is willing to accept the CCP Transactions until the default occurs. The back-up clearing member may at least also have further conditions that they require you to meet. You may also be able to agree with the CCP that it may choose a back-up clearing member on your behalf. If you have not appointed a back-up clearing member prior to our default, or agreed with the CCP that it may appoint one on your behalf, then this may mean that porting is less likely to occur.

If porting is achieved, your Client Transactions with us will terminate in accordance with our client clearing agreement. We would expect your back-up clearing member to put in place new client transactions between it and you.

The type of account and level of segregation you choose will have an impact on the ability to port CCP Transactions and assets to a back-up clearing member upon our default.

If you choose an Omnibus Client Account (described in more detail in Part One B), in most cases, all of our clients who have CCP Transactions and assets relating to them recorded in the same Omnibus Client Account will have to agree to use the same back-up clearing member, and the back-up clearing member will have to agree to accept all of the CCP Transactions and assets recorded in that Omnibus Client Account. It is therefore likely to be difficult to achieve porting in relation to an Omnibus Client Account.

It should be easier to achieve porting if you choose an Individual Client Account (described in more detail in Part One B), because you can appoint a back-up clearing member with respect to just your CCP Transactions and the related assets.

## **What happens if porting is not achieved?**

Each CCP is permitted to specify a period after which, if it has not been able to achieve porting, it will be permitted to actively manage its risks in relation to the CCP Transactions. This period will vary across CCPs. If you want to port your CCP Transactions, you will need to notify the CCP and show that you can satisfy the other conditions within this period.

Otherwise, the CCP will terminate the CCP Transactions and perform a close-out calculation in respect of them in accordance with the CCP rules. If there is an amount owed by the CCP in respect of the CCP Transactions, to the extent that the CCP knows your identity and how much of that amount relates to you, the CCP may pay such amount directly to you. If the CCP does not know your identity and/or does not know how

much of the amount relates to you, the CCP will pay it to us (or our insolvency practitioner) for the account of our clients.

It is more likely that a CCP will be able to pay any such amount directly to you if you select an Individual Client Account (described in more detail in Part One B). This is because your identity will typically be disclosed to the CCP in this case.

If the CCP terminates the CCP Transactions, then the Client Transactions between us are also likely to terminate. The termination calculations in respect of those Client Transactions will be performed in accordance with the client clearing agreement between us and such calculations will likely mirror those performed by the CCP in respect of the CCP Transactions. If you are due a payment from us as a result of the close-out calculations in respect of our Client Transactions, the amount due from us to you will be reduced by any amount that you receive (or are deemed to receive) directly from the CCP.

Please see Part One C for a consideration of the main insolvency considerations.

# Part One B: Your choice of account type and the factors to consider

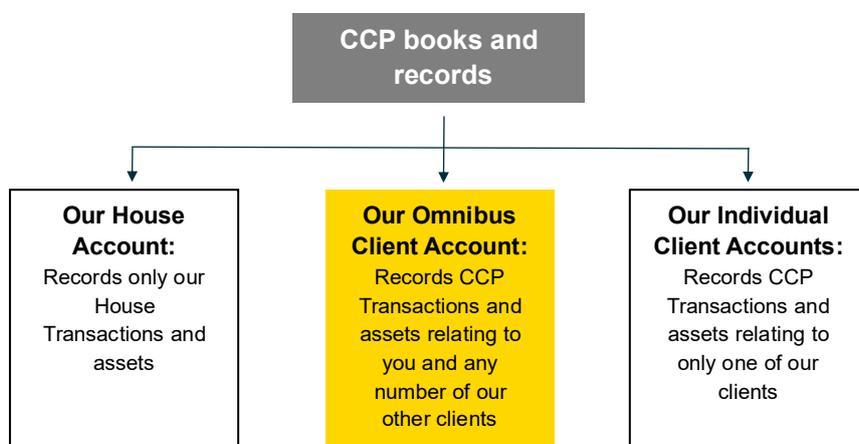
## The types of account available

Reference to accounts means the accounts in the books and records of each CCP. The CCP uses these accounts to record the CCP Transactions that we enter into in connection with the clearing of your related Client Transactions and the assets that we provide to the CCP in respect of such CCP Transactions<sup>4</sup>.

There are two basic types of client account available – Omnibus Client Accounts and Individual Client Accounts. Some of the CCPs then offer different levels of segregation within those as described in Part Two of this document.

### ***Omnibus Client Account***<sup>5</sup>

Under this account type, the CCP Transactions and assets that relate to them in the CCP's accounts are segregated from any CCP Transactions we have cleared for our own account (our **House Transactions**) and any assets we have provided as margin for those House Transactions at the CCP. However, the CCP Transactions and assets that relate to you will be commingled with the CCP Transactions and assets relating to any of our other clients that are recorded in the same Omnibus Client Account.



*Can CCP Transactions and related assets be netted with our House Transactions and assets?*

- No

*Can CCP Transactions and related assets be netted with those relating to our other clients?*

- Yes (provided the other clients' CCP Transactions and assets are recorded in the same Omnibus Client Account)

<sup>4</sup> This meaning is derived from Article 39(9) EMIR.

<sup>5</sup> This description is based on Articles 39(2) and 39(9) EMIR.

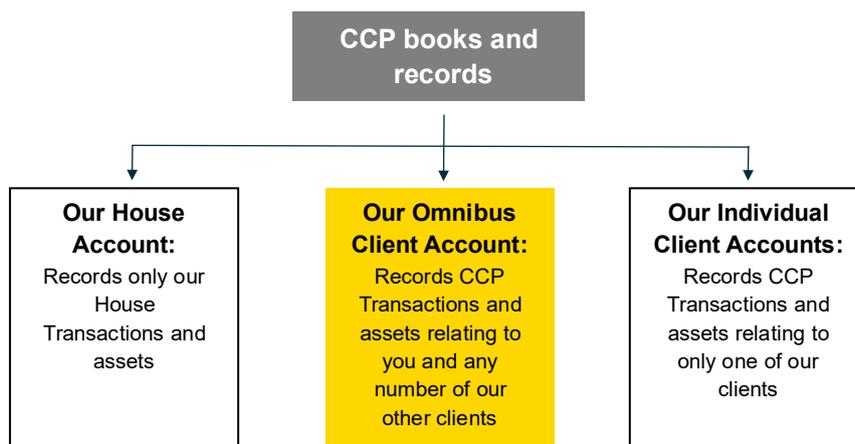
The CCP will agree not to net the CCP Transactions relating to you with our House Transactions or any CCP Transactions not recorded in the same Omnibus Client Account, nor use the assets relating to such CCP Transactions with respect to any House Transaction or CCP Transaction recorded in any other account.

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

Please see Part Two for an overview of the risks you may face if you choose an Omnibus Client Account and for details of the different levels of segregation that may be available at different CCPs.

### **Individual Client Account <sup>6</sup>**

Under this account type, the CCP Transactions and assets that relate to you in the CCP's accounts are segregated from those relating to our House Transactions and to the CCP Transactions and assets that relate to any of our other clients.



*Can CCP Transactions and related assets be netted with our House Transactions and assets?*

- No

*Can CCP Transactions and related assets be netted with those relating to our other clients?*

- No

The CCP will agree not to net the CCP Transactions relating to you with our House Transactions, nor use the assets relating to such CCP Transactions in relation to our House Transactions.

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<sup>6</sup> This description is based on Articles 39(3) and 39(9) EMIR.

Further, and in contrast to an Omnibus Client Account, the CCP will agree not to net the CCP Transactions relating to you that are recorded to an Individual Client Account with those of any other client recorded to any other account, nor use the assets related to such CCP Transactions in relation to the CCP Transactions relating to any of our other clients.

Please see Part Two for an overview of the risks you may face if you choose an Individual Client Account.

## **Affiliates**

We treat our affiliates in the same way as clients when complying with EMIR. This means that our affiliates also have a choice between types of account. An affiliate may be part of the same Omnibus Client Account as other clients.

## **Other factors that may impact on the level of protection the Client receives in respect of assets that the Client provides to the Bank as margin for Client Transactions**

There are several factors that, together, determine the level of protection you will receive in respect of assets that you provide to us as margin for Client Transactions:

- whether you choose an Omnibus Client Account or an Individual Client Account (as discussed under “The types of account available” above);
- whether, if you choose an Omnibus Client Account, you would want a gross or net account;
- in each case, whether such assets are transferred by way of title transfer or security interest;
- whether we call any excess margin from you or you pay excess margin to us;
- whether you will get back the same type of asset as you provided as margin; and
- the bankruptcy and other laws that govern us and the CCP.

## **Would the Client prefer a gross or net Omnibus Client Account?**

While the CCPs are only required to offer one type of Omnibus Client Account (and one type of Individual Client Account), some of them have developed a range of accounts within these two types with features that provide different degrees of segregation. These are discussed in more detail in Part Two. There are two main levels of segregation within Omnibus Client Accounts:

- Net is where the margin called by the CCP in respect of the CCP Transactions is called based on the net CCP Transactions recorded in the Omnibus Client Account.
- Gross is where the margin called by the CCP Transactions is called based on the gross CCP Transactions recorded in the Omnibus Client Account.

It may be easier to port CCP Transactions and their related assets, both in business as usual and default circumstances, if you choose a gross Omnibus Client Account than if you choose a net Omnibus Client Account. This is because the CCP is more likely to have sufficient assets to facilitate the porting of the CCP Transactions that relate to you and those that relate to another client separately if it has called the margin on a gross basis. That said, different CCPs’ accounts have been designed in different ways and so you should

consider the CCP's information about the specific accounts to understand the exact differences. Please see Part Two for more details on this.

### **Will the Client provide cash or non-cash assets as margin for the Client Transactions?**

As noted under "*The principal-to-principal*" clearing model" in Part One A, as a clearing member of the CCP, we are required to transfer assets to the CCP in respect of the CCP Transactions related to your Client Transactions. CCPs only accept certain types of liquid cash and non-cash assets as margin.

As is market practice, we will decide what types of assets to accept from you as margin for your Client Transactions. This will be set out in the client clearing agreement between us. What we will accept from you as margin for the Client Transactions will not necessarily be the same type of assets that the CCPs will accept from us for the CCP Transactions, in which case we may provide you with a collateral transformation service, under which we transform the assets you provide to those which we can pass onto the CCP.

### **Does the Client provide assets to the Bank on a title transfer or a security interest basis?**

As is market practice, we will decide the basis on which we are willing to accept assets from you. This will be set out in the client clearing agreement between us.

#### ***Title Transfer***

Where the client clearing agreement provides for the transfer of assets by way of title transfer, when you transfer assets (**Transferred Assets**) to us, we become the full owner of such assets and you lose all rights in such assets. We will record in our books and records that we have received such Transferred Assets from you with respect to the applicable Client Transaction. We will be obliged to deliver equivalent assets to such Transferred Assets (**Equivalent Assets**) in the circumstances set out in the client clearing agreement.

We may either transfer such Transferred Assets on to the CCP with respect to the CCP Transaction related to the Client Transaction, or we may transfer other assets to the CCP with respect to such CCP Transaction.

You bear our credit risk with respect to our obligation to deliver Equivalent Assets to you. This means that if we were to fail, unless we are declared to be in default by the CCP, you will have no right of recourse to the CCP or to any assets that we transfer to the CCP and you will instead have a claim against our estate for a return of the assets along with all our other general creditors. Even if we are declared to be in default by the CCP, the extent of your rights in relation to the CCP, if any, will depend on the particular CCP.

#### ***Security Interest***

Where the client clearing agreement provides for the transfer of assets by way of security interest, when you transfer assets to us, you retain full beneficial ownership of such assets. Such assets are transferred to us on the basis that the assets still belong to you, but you have granted us a security interest with respect to such assets.

We may enforce that security interest if you default in your obligations to us. Absent the exercise of any right of use by us (see below), only at the point of such enforcement would title in such assets or their liquidation value transfer to us. We will record in our books and records that we have received such assets from you with respect to the applicable Client Transaction.

Prior to any such default, and if the governing law of the client clearing agreement allows it, you may also give us a right to use such assets. Until such time as we exercise such right of use, the assets continue to belong to you. Once we exercise the right of use, (e.g., by posting the assets to a CCP), the assets will cease to belong to you and in effect become our asset, at which point you will bear our credit risk in a similar way to the title transfer arrangements. The circumstances in which we may exercise such right of use and the purposes for which we may use any assets will be set out in the client clearing agreement between us.

### **How will any excess margin the Bank calls from the Client be treated? <sup>7</sup>**

We are required to treat excess margin in a particular way in relation to an Individual Client Account. Excess margin is any amount of assets we require from you or you provide to us in respect of a Client Transaction that is over and above the amount of assets the CCP requires from us in respect of the related CCP Transaction.

If you choose an Individual Client Account, we are required to pass all excess margins on to a CCP. If you provide us with assets which are not related to your individually segregated clearing activities at a particular CCP and such assets are not dedicated to cover your current positions with that CCP, then we do not need to post such assets on to that CCP. Also, if the excess margin you provide to us is not in the form of assets which are eligible to be posted to the CCP (in accordance with the CCP's rules), unless we agree otherwise, we have no obligation to transform such assets into assets that would be eligible to be posted to the CCP. The details of this will be set out in the client clearing agreement between you and us.

If you provide us with collateral in the form of a bank guarantee in our favour, we are not required to post on to the CCP an amount of assets equal to the value of the portion of the bank guarantee which exceeds the amount of margin we have called from you in respect of the relevant Client Transaction(s).

If you choose an Omnibus Client Account, we are not required to pass any excess margin on to the CCP. Depending on the terms on which we hold excess margin, you may take credit risk on us in respect of it.

### **Will the Client get back the same type of asset originally provided to the Bank as margin for a Client Transaction?**

In a business-as-usual situation, whether we will deliver the same type of asset to you that you originally provided to us will be governed by the client clearing agreement between us.

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<sup>7</sup> This section refers to excess margin as described in Article 39(6) and the ESMA Questions and Answers on EMIR dated February 2014.

In the event of our default, if you are due a payment, you may not receive back the same type of asset that you originally provided to us. This is because the CCP is likely to have wide discretion to liquidate and value assets and make payments in various forms, and also because the CCP may not know what form of asset you originally provided to us as margin for the Client Transaction and as a result of any asset transformation services we may provide. This risk is present regardless of what type of client account you select.

Please see Part One C for a consideration of the main insolvency considerations.

# Part One C: Information on insolvency law

## General insolvency risks

If we default, in particular, if we enter into insolvency proceedings, you may not receive all of your assets back or be able to maintain your Client Transaction; and there are likely to be time delays and costs (e.g. funding costs and legal fees). These risks arise in relation to both Individual and Omnibus Client Accounts because:

- in general, except for CCP-specific porting solutions and its other client protection measures, if any, you will not have any rights directly against the CCP, whilst claims against us will be the subject of the insolvency proceedings;
- our insolvency proceedings will be opened and controlled by Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) (BaFin), the German financial supervision authority (although it is possible that BaFin could order other regulatory measures in respect of us). In such insolvency proceedings, all powers in respect of our insolvent estate are with the insolvency administrator of our insolvent estate and all legal actions must be taken against or with the consent of the insolvency administrator (which can be a time-consuming process with an uncertain outcome); and
- any legal action (including Client Transactions, CCP Transactions or posting of margin) may be challenged by the insolvency administrator over our insolvent estate, provided the legal grounds for such a challenge are satisfied. Please see the section below on Article 102b EGIInsO for the exemption for porting procedures.

Please also note that:

- this disclosure deals only with our insolvency. You may also not receive back some or all of the assets if other parties in the clearing structure default – e.g., the CCP itself, a custodian or a settlement agent;
- a large part of your protection comes from CCP arrangements and the applicable legal regime. In certain circumstances, multiple legal regimes may be relevant. You should therefore get an overview of this; in particular, you should review the relevant CCP disclosures in making your decision on the segregation model in order to evaluate the level of protection that you would have.

In the light of the potential complexity caused by a possible interaction of multiple legal regimes, it may be prudent to take legal advice on this matter.

## Protection from Article 102b EGInsO

You should also note the provisions of Article 102b Introduction Code to the German Insolvency Code (**EGInsO**)<sup>8</sup> will apply to measures taken by a CCP to administer, close out or otherwise settle or transfer client positions as well as those with regard to the use and return of client collateral. Article 102b EGInsO overrules the generally applicable principles of German insolvency law and the measures covered by it are not subject to a challenge under German insolvency law. Nevertheless, in circumstances where the relevant measure is not covered by Article 102b EGInsO, the insolvency administrator could challenge any related legal action.

## Measures by BaFIN pursuant to the German Banking Act (Kreditwesengesetz)

In specific circumstances, in particular in the case of a risk for the stability of the financial system (Gefahr für die Stabilität des Finanzsystems), BaFin may instruct that our assets and liabilities be spun-off (as a whole or in part) (Ausgliederung) to another credit institution.

Additionally, the German Federal Government (Bundesregierung) could order a moratorium on credit institutions generally if the financial difficulties of credit institutions could lead to serious consequences for the German economy taken as a whole.

## Margin rights

Generally, your risk of loss will be highest if you had posted margin on a title transfer basis and lower if you had retained ownership over the posted margin (for example, on a security interest basis). There may be variations and exemptions here due to the respective applicable law.

We understand that CCPs require that margin be posted on a title transfer basis for Individual Client Accounts.

The actual risk of loss, its magnitude and whether there may be third party claims on the assets will be highly fact specific.

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<sup>8</sup> Article 102b of the Induction Code to the German Insolvency Code (EGInsO) is in force since 16 February 2013 and was implemented into German law in connection with the default procedure set out in article 48 of Regulation (EC) 648/2012 (European Market Infrastructure Regulation or EMIR). As the provisions of article 102b of the Induction Code to the German Insolvency Code (EGInsO) are only in force and effect since 16 February 2013, no case law or academic commentary is available discussing its application, affects on porting procedures or affects on insolvency law and insolvency proceedings.

## **Termination and close-out netting**

If we default and the CCP cannot port the CCP Transactions and the associated collateral to a back-up clearing member, then we would expect it to terminate and net our CCP Transactions.

The protection which the respective segregation models would have provided in this scenario would depend on the specific facts of the particular case and the applicable insolvency law.

Industry-wide legal opinions are being prepared on the effectiveness of the termination and close-out netting provisions in standard client clearing agreements. You should seek access to such opinions in deciding between the different segregations models offered and take further legal advice as needed.

Additionally, please also note that your freedom to close out Client Transactions is more restricted under the client clearing agreement than in other standard arrangements with equivalent provisions. This is needed to match the treatment of CCP Transactions and Client Transactions as much as possible; we understand that for CCPs this matching is an indispensable prerequisite for an effective segregation of the client account.

## **Insolvency of CCPs and others**

Although this disclosure deals only with our insolvency, please note that the default of the CCP, a custodian or a settlement agent may impact your Client Transaction and rights over assets.

In relation to CCP insolvency, in general, the rights of the Bank and Client 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. You should review the relevant CCP disclosures for details in this respect.

It may be prudent to seek legal advice, in this regard.

## Part Two: CCP client account structures<sup>9</sup>

As noted in Part One B, each CCP may offer at least one Omnibus Client Account and/or at least one Individual Client Account by changing some of the features. This Part Two contains an overview of the main levels of segregation within each account type of which we are aware that the CCPs offer, together with an overview of the main protections afforded by and the main legal implications of each.

The descriptions given in this Part Two are very high level and consider the typical features of these account types and levels of segregation. However, the particular characteristics of the accounts will affect the exact levels of protection they offer and the legal implications so you must review the information provided by the CCPs to fully understand the risks of the specific account we maintain in relation to you at each CCP. Each CCP is required to publish information about the account structures it offers and we have provided a link to the relevant part of the website of certain CCPs<sup>10</sup>.

The descriptions have been prepared on the basis of publicly available disclosure documents made available by a selection of CCPs. We are not responsible for, and do not accept any liability whatsoever, for any content or omissions or inaccuracies contained in the information produced by any CCP.

The Annex seeks to compare the main account types and levels of segregation against the following risks:

<b>Risks used to compare each account type and level of segregation</b>	<b>Explanation of risk</b>
<b>Transit Risk</b>	Whether you are exposed to us at any point in the process of providing or receiving margin in respect of Client Transactions.
<b>Fellow Client Risk</b>	Whether assets provided to the CCP in respect of CCP Transactions related to you could be used to cover losses in CCP Transactions relating to another client.
<b>Liquidation Risk</b>	Whether, if the CCP Transactions and assets relating to them were to be ported, there is a risk that any non-cash assets would be liquidated into cash. If this were to happen, the value given to such assets by the CCP may differ from what you perceive to be the full value of the assets.

<sup>9</sup> In preparing the ISDA/FOA Clearing Member Disclosure Document, reference was made to the client account disclosure documentation made available on the websites of the following CCPs: LCH Clearnet Limited, Eurex Clearing AG, NASDAQ OMX Clearing and CME Clearing Europe Limited as of 24 October 2013.

<sup>10</sup> The links are to the documents used in the ISDA/ FOA Clearing Member Disclosure Document to prepare the summary in Part Two. It is not clear whether these are the documents published by the CCPs pursuant to Article 39(7) and we assume they may be updated in due course in any event.

Risks used to compare each account type and level of segregation	Explanation of risk
<b>Haircut Risk</b>	Whether the value of the assets that relate to CCP Transactions might be reduced or not increase by as much as you expect because the CCP applied a haircut that did not properly reflect the value of the asset.
<b>Valuation Mutualisation Risk</b>	Whether the value of the assets that relate to CCP Transactions could be reduced or not increase by as much as you expect because the assets posted in relation to other clients' CCP Transactions have decreased in value.
<b>CCP Insolvency Risk</b>	Whether you are exposed to the insolvency or other failure of the CCP.

### Typical client account characteristics

Risk Type	Omnibus Net Account	Omnibus Gross Account	Individual Segregated Account
<b>Transit Risk</b>	Yes	Yes	Yes
<b>Fellow Client Risk</b>	Yes	Yes	No
<b>Liquidation Risk</b>	Yes (unless the CCP is able to port the assets recorded in the account or is able to transfer the assets to you without needing to liquidate some or all of them first).	Yes (unless the CCP is able to port the assets recorded in the account or is able to transfer the assets to you without needing to liquidate some or all of them first).	Yes (unless the CCP is able to port the assets recorded in the account or is able to transfer the assets to you without needing to liquidate some or all of them first).
<b>Haircut Risk</b>	Yes	Yes	Yes
<b>Valuation Mutualisation Risk</b>	Yes	Yes	No
<b>CCP Insolvency Risk</b>	Yes	Yes	Yes

## Links to CCP disclosure documents

Please note that these links have been included for convenience only. In the event that any of them do not work, you should contact the relevant CCP directly.

Eurex Clearing AG:

[Client Asset Protection under EMIR \(eurex.com\)](https://www.eurex.com/Client-Asset-Protection-under-EMIR)

LCH Clearnet:

[LCH.Clearnet Account SA and LTD.pdf](#)

Nasdaq OMX:

<http://www.nasdaqomx.com/europeanclearing/newsmandatorychanges/segregationportability>

### Reference:

**This document is based on the Clearing Member Disclosure Document issued in February 2014 by the International Swaps and Derivatives Association, Inc. and Futures and Options Association.**