

Clearing Member Risk Disclosure for Derivative Client Clearing Services Under the European Market Infrastructure Regulation and Markets in Financial Instruments amending Regulation – Direct and Indirect Clearing

1. Who should read this document and why?

- 1.1. This document should be reviewed by clients whose derivatives transactions (including both OTC and exchange-traded derivatives) are cleared by Morgan Stanley & Co. International plc (“**MSI plc**” or “**clearing member**”) on an EU-domiciled central counterparty (an “**EU CCP**”) authorised or registered under the European Market Infrastructure Regulation (“**EMIR**”). It should also be reviewed by clients whose clients (“**indirect clients**”) would like their derivatives transactions to be indirectly cleared by MSI plc on an EU CCP authorised or registered under EMIR.
- 1.2. This document contains important information for clients making a choice between omnibus and individual segregation for direct clearing and basic omnibus indirect and gross omnibus indirect segregation for indirect clearing, each for each such EU CCP. The document should be reviewed by clients prior to making any election in that regard for themselves or on behalf of and as instructed by indirect clients. Clients and, where applicable, indirect clients should also review information provided by such EU CCPs regarding their segregation offerings, which includes further information on the legal and other implications of particular segregation models and applicable insolvency laws – links to such information have been included below.
- 1.3. Indirect clearing arrangements can involve any of the following chains:
 - (a) CCP – clearing member – client – indirect client;
 - (b) CCP – clearing member – client – indirect client – second indirect client; or
 - (c) CCP – clearing member – client – indirect client – second indirect client – third indirect client.

In the case of sub-paragraph (a), a chain of this length is only permitted where the client is an authorised credit institution or an investment firm or an entity established in a country outside of the EU that would be considered to be either such entity if established in the EU.

In the case of sub-paragraph (b), a chain of this length is only permitted where (i) each of the client and the indirect client are either an authorised credit institution or an investment firm or an

entity established in a country outside of the EU that would be considered to be either such entity if established in the EU, and (ii)(A) the clearing member and client are part of the same group, but the indirect client is not part of that group; or (B) the client and the indirect client are part of the same group, but neither the clearing member nor the second indirect client is part of that group.

In the case of sub-paragraph (c), a chain of this length is only permitted where (i) each of the client, the indirect client and the second indirect client are either an authorised credit institution or an investment firm or an entity established in a country outside of the EU that would be considered to be either such entity if established in the EU, and (ii)(A) the clearing member and client are part of the same group, but the indirect client is not part of that group; and (B) the indirect client and the second indirect client are part of the same group, but the third indirect client is not part of that group.

Given the complexity of these chains, the disclosure set out below assumes a chain as set out in paragraph 1.3(a) above.

- 1.4. An omnibus or individual account for direct clearing and basic omnibus indirect or gross omnibus indirect account for indirect clearing at one EU CCP may have certain features which distinguish it (sometimes fundamentally) from such accounts at other EU CCPs. In some cases, an EU CCP may offer more than one variety of omnibus or individual account for direct clearing and basic omnibus indirect or gross omnibus indirect account for indirect clearing. This can make selecting the appropriate account a particular challenge for clients. It is important that clients review both this document and the information provided by EU CCPs regarding their segregation models. Should clients have questions on these models, Morgan Stanley can provide assistance and, if helpful, obtain input from the relevant EU CCP – please contact your usual account representative.
- 1.5. This document does not constitute legal or any other form of advice and must not be relied on as such. It provides high level summaries of some key issues, but does not constitute a detailed analysis of all issues which may be relevant in a choice between account types. Clients and, where applicable, indirect clients should conduct their own due diligence and instruct their own professional advisors as appropriate.

2. What are the segregation requirements of EMIR and the Indirect Clearing Regulations?

- 2.1. EMIR requires clearing members of EU CCPs to offer clients a choice between omnibus and individual segregation of positions and collateral, in relation to cleared derivatives transactions and related accounts maintained at the EU CCPs. EU CCPs must offer clearing members accounts which provide this omnibus and individual segregation. This applies for both OTC and exchange-traded derivatives. Clearing members must make this offer in relation to each EU CCP for which they provide derivatives clearing services to clients.
- 2.2. Additionally, the Commission Delegated Regulation (EU) 2017/2155 amending Commission Delegated Regulation (EU) No 149/2013, in the context of cleared OTC derivatives (the “**EMIR Indirect Clearing RTS**”) and Commission Delegated Regulation (EU) No 2017/2154 supplementing Regulation (EU) No 600/2014, in the context of exchange-traded derivatives (the “**MiFID Indirect Clearing RTS**”, together with the EMIR Indirect Clearing RTS, the “**Indirect Clearing Regulations**”) require clearing members of EU CCPs, where providing indirect clearing services through an EU CCP, to open and maintain a *basic omnibus indirect account* or a *gross omnibus indirect account* in relation to indirectly cleared derivatives transactions and related accounts maintained at such EU CCPs. EU CCPs must open and maintain basic omnibus indirect accounts and gross omnibus indirect accounts as required. The Indirect Clearing

Regulations apply to both OTC and exchange-traded derivatives. Clearing members must open and maintain such accounts in relation to each EU CCP for which they provide indirect clearing services.

- 2.3 EMIR and Commission Delegated Regulation (EU) No 2017/589 supplementing Directive 2014/65/EU require clearing members to inform prospective and existing clients about the levels of protection and costs associated with the different levels of segregation, please see MSI plc's Clearing Member Pricing Disclosure Under The European Market Infrastructure Regulation and The Markets in Financial Instruments amending Regulation – Direct and Indirect Clearing.
- 2.4 For clients with exchange-traded derivatives clearing accounts at MSI plc, cash collateral is subject to client money protection where client or indirect client positions are held in omnibus segregated accounts (in the case of direct client positions) and basic omnibus indirect client accounts (in the case of indirect client positions). This is the case for both EU and non-EU CCPs. If clients elect an individual segregated account (in the case of direct client positions) or a gross omnibus indirect client account (in the case of indirect client positions) at an EU CCP, however, collateral will not be held as client money and will be subject instead to the segregation protections of EMIR and the MiFID Indirect Clearing RTS, respectively. There are differences between client money segregation and segregation pursuant to EMIR or the MIFID Indirect Clearing RTS. These differences and the benefits and risks relating to this choice are discussed in more detail in paragraph 4.4 below.
- 2.5 Omnibus segregated accounts: These are accounts where the derivative positions and associated collateral assets of *multiple clients* are recorded in a *single omnibus account* at the EU CCP.

Omnibus accounts will typically have some degree of cross-netting or other mutualisation risk between the clients, whose positions and collateral are recorded in the same account, meaning that if the EU CCP or clearing member defaults there is a risk that losses associated with one client's positions and/or collateral may impact other clients in the omnibus account. The positive value of one client's positions may be netted against the negative value of another client's positions. Collateral is held on a pooled basis, so on a default the net liquidating value of collateral provided by one client may impact other clients in the omnibus account. The specific aspects of this risk will depend on the type of omnibus account offered by the relevant EU CCP and clearing member.

The minimum segregation requirement for an omnibus account under EMIR is that the positions and collateral in the account should be ring-fenced (on both an EU CCP default and a clearing member default) from losses associated with other (house or client) accounts of the clearing member – full mutualisation of risk within the account is permitted. However, beyond mandating the separation of house and client positions and collateral, EMIR does not prescribe a single type of omnibus account, and different EU CCPs may have different offerings which potentially reduce some omnibus account risks that may otherwise exist. Please see below for more detail on this.

- 2.6 Individual segregated accounts: These are accounts where the positions and collateral of a *single client* are recorded in a *client-specific account* at the EU CCP.

As with omnibus accounts, they are ring-fenced (on both an EU CCP default and a clearing member default) from other (house or client) accounts of the clearing member. As there are no other client positions or collateral in the omnibus account, however, the individual client does not have any mutualisation risk for that individual account relating to other client activity.

For individual accounts, EMIR requires that clearing members post excess collateral received from the client to the EU CCP, to be recorded in the individual account. For this purpose "excess

collateral” means, in relation to an individual account, the amount of collateral that the clearing member requires the client to provide to it for positions in the individual account, over and above the amount required by the relevant EU CCP.

This position contrasts with omnibus accounts (including a basic omnibus indirect or a gross omnibus indirect account) where the clearing member is not required to pass any excess margin on to the CCP. Depending on the terms on which the clearing member holds excess margin, clients and indirect clients may take credit risk on the clearing member in respect of it.

- 2.7 **Basic Omnibus Indirect Client Account:** These are accounts where the derivative positions and associated collateral assets of *all clients of clients* (or additional clients further down the chain as permitted by the Indirect Clearing Regulations) (i.e. indirect clients) opting for this sort of account are recorded in a *single basic omnibus indirect account* at the EU CCP.

At the level of the clearing member, the clearing member will open and maintain a basic omnibus indirect account for each client corresponding to its basic omnibus indirect account at the relevant EU CCP. In relation to a single client, such client’s basic omnibus indirect account at the clearing member will record all of the derivative positions and associated collateral assets of *all of such client’s indirect clients* opting for such account, on a commingled basis.

Basic omnibus indirect accounts will have cross-netting or other mutualisation risk between the indirect clients whose positions and collateral are recorded in the same account (which, at the level of the CCP, might include indirect clients of other clients of the clearing member), meaning that if the EU CCP¹, clearing member¹ or client defaults, there is a risk that losses associated with one indirect client’s positions and/or collateral may impact other indirect clients participating in the same omnibus account. The positive value of one indirect client’s positions may be netted against the negative value of another indirect client’s positions. Collateral is held on a pooled basis, so on a default of the EU CCP, clearing member or the client the net liquidating value of collateral provided by one indirect client is likely to impact other indirect clients in the basic omnibus indirect account. The specific aspects of this risk will depend on the type of basic omnibus indirect account offered by the relevant EU CCP and clearing member.

The minimum segregation requirements for basic omnibus indirect accounts under the Indirect Clearing Regulations are that:

- (a) at the level of the EU CCP, a segregated account is opened for the exclusive purpose of holding transactions (including corresponding assets) of the indirect clients of the clearing member. This means such transactions will be segregated from any transactions (including corresponding assets in the CCP’s accounts) relating to the clearing member’s house transactions, any transactions (including corresponding assets in the CCP’s accounts) relating to a client’s own account or for the own account of one or more of the clearing member’s other clients (regardless of whether any such client has opted for an individual segregated account or omnibus segregated account) and any transaction (including corresponding assets in the CCP’s accounts) relating to any indirect clients who have opted for a gross omnibus indirect client account. Full mutualisation of risk within the basic omnibus indirect account is permitted (including of indirect clients of other clients of the clearing member); and
- (b) at the level of the clearing member, an omnibus account is opened with transactions (including corresponding assets) held by a client for the account of its indirect clients. This means such transactions will be segregated from any transactions (including

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Note that some EU CCP services may not maintain these same levels of segregation upon a default of the EU CCP or clearing member. See paragraph 3 below.

corresponding assets in the CCP's accounts) relating to the clearing member's house transactions, any transactions (including corresponding assets in the clearing member's accounts) relating to a client's own account or for the own account of one or more of the clearing member's other clients (regardless of what accounts they have opted for), transactions (including corresponding assets in the clearing member's accounts) relating to any clients of the clearing member's 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 the clearing member's accounts) relating to any indirect clients that have opted for a gross omnibus indirect client account. Full mutualisation of risk within a basic omnibus indirect client account is permitted.

However, beyond this, the Indirect Clearing Regulations do not prescribe a single type of basic omnibus indirect account, and different EU CCPs and, consequently clearing members, may have different offerings which potentially reduce some omnibus account risks that may otherwise exist. Please see paragraph 3 below for more detail on this.

- 2.8 Gross Omnibus Indirect Client Account: These are accounts where the derivative positions and associated collateral assets of all indirect clients opting for this sort of account are recorded in a *single gross omnibus indirect account* at the EU CCP.

At the level of the clearing member, the clearing member will open and maintain a gross omnibus indirect account for each client corresponding to its gross omnibus indirect account at the relevant EU CCP. In relation to a single client, such client's gross omnibus indirect account at the clearing member will record all of the derivative positions and associated collateral assets of *all of such client's indirect clients* opting for such account, such that there is no offset between the positions of one indirect client with the positions of another indirect client in such account. The clearing member will provide to the CCP on a daily basis all necessary information to allow the EU CCP to identify the positions held for the account of each indirect client so that the EU CCP is able to calculate the margin requirement separately in relation to each such indirect client, the EU CCP may then collect the sum of those margins on a gross basis.

Gross omnibus indirect accounts will have some degree of mutualisation risk between the indirect clients whose positions and collateral are recorded in the same account. This is because, whilst the CCP will agree not to net any transactions of an indirect client with any other transactions, the collateral held by the CCP in relation to such account (regardless of which indirect client it was provided in respect of) will not be allocated to any specific indirect client – the CCP will ensure it has enough collateral to cover the aggregate of each indirect client's net positions, but will not tag any assets to any specific indirect client.

As a result, on a default of the EU CCP², the clearing member² or the client, the net liquidating value of collateral provided by one indirect client may impact other indirect clients in the gross omnibus indirect account, because each indirect client will only be entitled to its pro rata share such liquidating value – in other words, indirect clients participating in this account will be subject to mutualisation risk on the collateral posted by other indirect clients. The specific aspects of this risk will depend on the type of gross omnibus indirect account offered by the relevant EU CCP and, consequently, the clearing member.

The minimum segregation requirements for gross omnibus indirect accounts under the Indirect Clearing Regulations are as follows:

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Note that some EU CCP services may not maintain these same levels of segregation upon a default of the EU CCP or clearing member. See paragraph 3 below.

- (a) at the level of the EU CCP, a segregated account is opened for the exclusive purpose of holding transactions (including corresponding assets) of the indirect clients of each client held by the clearing member. This means such transactions will be segregated from any transactions (including corresponding assets in the CCP's accounts) relating to the clearing member's house transactions, any transactions (including corresponding assets in the CCP's accounts) relating to a client's own account or for the own account of one or more of the clearing member's other clients (regardless of what accounts they have opted for), any transactions (including corresponding assets in the CCP's accounts) relating to any indirect clients that have opted for a basic omnibus indirect client account and transactions (including corresponding assets in the CCP's accounts) relating to any clients of the clearing member's 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; and
- (b) at the level of the clearing member, an omnibus account is opened with transactions (including corresponding assets) held by a client for the account of its indirect clients, in which the clearing member will ensure that the positions of an indirect client do not offset the positions of another indirect client. This means such transactions will be segregated from the clearing member's house transactions, any transactions (including corresponding assets in the clearing member's accounts) relating to a client's own account or for the account of one or more of the clearing member's other clients (regardless of whether you or they have opted for an individual segregated account or an omnibus segregated account); any transactions (including corresponding assets in the clearing member's accounts) relating to any indirect clients that have opted for a basic omnibus indirect client account; and any transactions (including corresponding assets in the clearing member's accounts) relating to any indirect 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, beyond mandating the separation of house and client positions and collateral in this way, the Indirect Clearing Regulations do not prescribe a single type of gross omnibus indirect account, and different EU CCPs may have different offerings which potentially reduce some omnibus account risks that may otherwise exist. Please see paragraph 3 below for more detail on this.

3. CCP, clearing member or client default

- 3.1 A key risk for clients is the default of the clearing member. If a clearing member is declared to be in default by an EU CCP:
 - (a) the EU CCP may, at a client's request, try to transfer the client's positions and assets to another clearing member ("porting"); or, if this cannot be achieved,
 - (b) the EU CCP will terminate the cleared transactions relating to the client and perform a close-out calculation, taking into account the value of those transactions and the proceeds of liquidating associated collateral.
- 3.2 A client of a clearing member also face the risk that an EU CCP defaults. In this case, porting is unlikely to be available and it is likely that transactions will be terminated and a close-out calculation will be performed.
- 3.3 A risk for indirect clients is the default of the clearing member, EU CCP or the client. Under the Indirect Clearing Regulations clearing members should establish procedures to manage the default of a client providing indirect clearing services, this includes:

- (a) for basic omnibus indirect client accounts:
 - (i) prompt liquidation of assets and positions including liquidation of those assets and positions at the relevant EU CCP; and
 - (ii) to communicate to the indirect client the default of the client and the expected period of time to liquidate the assets and positions of those indirect clients,
- (b) for gross omnibus indirect client accounts:
 - (i) steps necessary to transfer the indirect client's assets and positions to another client or clearing member ("porting");
 - (ii) liquidation of the assets and positions of that indirect client and the steps to pay each indirect client such proceeds; and
 - (iii) to communicate to the indirect client the default of the client and the expected period of time to liquidate the assets and positions of those indirect clients.

A client should have arrangements in place to ensure that, if it defaults, its indirect clients are informed of this and, if required by the clearing member, all information it holds in respect of its indirect clients is made immediately available to the clearing member, including the identity of the indirect clients.

The Indirect Clearing Regulations do not set out any requirements as to protections or procedures that should be available on the default of the clearing member or EU CCP in the context of indirect clearing. As a result, some EU CCPs have established rules which provide that, upon a default of the EU CCP and/or the clearing member, all positions in the indirect client account may be netted, even where such account is a gross omnibus indirect account, and all margin in the account may be used to offset the liabilities in the account. Clients and indirect clients should conduct their own due diligence and instruct their own professional advisors as appropriate to understand the precise nature of the account structure (and the risks of it) that they sign up to.

4. Different types of omnibus and individual segregated accounts

- 4.1. While EMIR sets a minimum standard for omnibus and individual segregated accounts, there are varieties of such accounts which, while all meeting the applicable minimum standard for EMIR purposes, differ in certain respects. We have set out below some key features of omnibus and individual segregated accounts at EU CCPs, which may vary from one EU CCP (or EU CCP model) to another.

In addition, two different versions of the omnibus segregated account are reflected in the two indirect client accounts required under the Indirect Clearing Regulations, which envisage one gross omnibus indirect account in the form of the Gross Omnibus Indirect Client Account and one omnibus account that may be net in the form of the Basic Omnibus Indirect Client Account.

- 4.2. Net omnibus accounts: For certain omnibus segregated accounts (including the Basic Omnibus Indirect Client Account in relation to Indirect Clearing), the EU CCP will calculate collateral requirements across all client positions (and, where applicable, indirect clients of clients) recorded in the account. The positive value of certain client positions (and, where applicable, indirect clients) may offset the negative value of other client positions (and, where

applicable, indirect clients), so that the EU CCP calls the clearing member for collateral on a net basis across all positions in the omnibus account. However, the clearing member will call each client for collateral based on *its* exposure to the individual client (or its indirect clients) in isolation.

This will result in the aggregate amount of collateral called by the clearing member from its clients (and, where applicable, indirect clients of clients) being greater than that called by the EU CCP from the clearing member. EMIR and the Indirect Clearing Regulations permit the amount by which the gross aggregate collateral called by the clearing member exceeds the net amount called by the EU CCP to be held by the clearing member and not passed on to the EU CCP.

4.3. Gross omnibus accounts: Certain omnibus segregated accounts (including the Gross Omnibus Indirect Client Account in relation to Indirect Clearing) will operate on a gross collateral basis, meaning that the EU CCP's collateral requirement will be determined by reference to each individual underlying client's (and, where applicable, such indirect client's) positions in isolation, i.e. there will be no netting of exposures across clients (and, where applicable, indirect clients) and the EU CCP's collateral requirement will be determined on a gross basis across all clients (and, where applicable, such indirect clients) whose positions are in the omnibus account. However, please refer to paragraph 3 above for discussion as to the position on default.

4.4. Client money protection:

(a) *Exchange-traded ("listed") derivatives – omnibus accounts*: For exchange-traded derivative clients, cash collateral called for positions held in *net* omnibus segregated accounts (including, in the case of indirect client clearing, the Basic Omnibus Indirect Client Account in relation to Indirect Clearing) is treated by MSI plc as "client money", subject to the provisions and protections of the UK Financial Conduct Authority's client asset protection rules ("**CASS**") and the client clearing agreement. In summary, CASS provides that money held by MSI plc as client money will be ring-fenced from its proprietary insolvency estate upon its administration or liquidation, and held on trust for the benefit of relevant clients – meaning that those clients should not be exposed to MSI plc insolvency risk in relation to that cash. However, while clients whose money is held by MSI plc as client money will benefit from this protection, the risk of any shortfall in the client money pool is borne by those clients on a pro rata basis. Such shortfalls may occur if a bank, CCP or other party where client money is held defaults and does not repay the full client money balance to MSI plc. The Financial Conduct Authority is currently preparing revisions to CASS, which may impact the nature of this shortfall pooling risk. Cash collateral received from a client which is not transferred on to a net omnibus account (e.g. because the account is a net omnibus account (with the gross minus net being held by MSI plc), or where the cash has not yet been transferred on to or received back from the relevant CCP) will be held by MSI plc in client money accounts at third party banks. As such, relevant clients will benefit from MSI plc insolvency protection in relation to excess collateral not transferred on to a CCP, or cash "in transit" to or from a CCP.

(b) *Exchange-traded derivatives – individual accounts*: For exchange-traded derivative clients, cash collateral called for positions held in *individual* segregated accounts (or, in the case of indirect client clearing, Gross Omnibus Indirect Client Accounts) will not be treated by MSI plc as "client money". While such cash is still subject to the individual segregated account provisions of EMIR (or the Gross Omnibus Indirect Client Account provisions of the MiFID Indirect Clearing RTS, as the case may be), it will be subject to MSI plc insolvency risk while in transit to or from a CCP.

- (c) *OTC derivatives*: For clients with OTC derivative clearing accounts (whether positions are held in omnibus (including indirect accounts) or individual segregated accounts), MSI plc takes full title to collateral and cash is not held by MSI plc as client money.

4.5. Omnibus accounts with enhanced position protection: The gross omnibus accounts referred to in paragraphs 4.2 and 4.3 above may have enhanced segregation features which, while they do not allow that omnibus account to qualify as an individually segregated account for EMIR purposes, mitigate certain risks for clients which might otherwise exist in a minimum EMIR-standard omnibus account. For example, sub-accounts may be established within the omnibus account, which will record the positions of a single individual underlying client. The EU CCP's rulebook may serve to ring-fence these individual sub-accounts from other sub-accounts, so that on an EU CCP or clearing member default, positions in an individual sub-account cannot be netted against positions in other sub-accounts. Some client mutualisation risk may still occur, however, as (notwithstanding client-specific position sub-accounts) the collateral provided by all clients in the omnibus account may be treated by the EU CCP as a single pool, with a proportion of the value of the aggregate pool being allocated to each sub-account. This value allocation process constitutes a degree of mutualisation risk for clients in relation to collateral, i.e. the liquidation value of collateral provided by all clients will impact the value of the pool, and thus the value of an individual client's allocation from that pool. The Gross Omnibus Indirect Client Account in relation to Indirect Clearing reflects some of these enhanced segregation features, as is required under the Indirect Clearing Regulations. The CCP will keep separate records of the positions of each indirect client that has opted for such account, calculate the margining requirement separately for each indirect client that opted for a gross omnibus indirect account and collect the sum of those margins on a gross basis. However, as set out in paragraph 3 above, the level of segregation effected by such accounts may not apply following an EU CCP default or clearing member default, depending on the rules of the relevant EU CCP.

4.6. Individual segregated accounts with enhanced collateral segregation: In many cases, full title in collateral will be passed to the relevant EU CCP (i.e. a "title transfer collateral arrangement"). In such cases, neither MSI plc nor the relevant underlying client(s) will retain any legal or beneficial interest in such collateral; rather, MSI plc, as clearing member, will have a claim against the EU CCP for redelivery of equivalent collateral. This claim is subject to the segregation requirements of EMIR and the Indirect Clearing Regulations, meaning that for omnibus accounts there will be some degree of mutualisation risk, and for individual accounts there should be no mutualisation risk. However, even for individual accounts the claim for redelivery of collateral will be subject to the termination and close-out provisions of the EU CCP's rulebook following a default of the clearing member (if porting is not successful) or EU CCP, so that the claim will be given a value and included in the close-out netting calculation, leaving a net cash amount owed either by the EU CCP or the clearing member in relation to the account. Such arrangements do not preserve any proprietary/ownership rights of the client in relation to a particular collateral asset.

By contrast, some EU CCPs may offer enhanced collateral segregation structures, whereby title in relevant collateral is not passed to the EU CCP and the relevant client's proprietary interest in the collateral is ring-fenced, and thus preserved in the event of a default by the EU CCP or clearing member. Such arrangements may involve holding collateral at third party custodians, subject to multi-party collateral control and security arrangements. Specific details will vary between EU CCPs, and should be considered further where relevant.

5. Key risk comparison

As outlined above, the key differences in the risks borne by clients when electing a particular omnibus or individual segregated account may depend on the specific features of the accounts offered by the relevant EU CCP. However, below is a summary of some of the key implications.

- 5.1. Mutualisation risk: Mutualisation risk refers to the risk that (i) assets provided to the CCP in respect of the transaction between the CCP and the clearing member related to a client and/or assets provided to the clearing member in respect of transactions relating to indirect clients, could be used to cover losses on transactions relating to another client or indirect client (as the case may be) and/or (ii) the positive value of transactions relating to a client or indirect client is used to offset the negative value of transactions relating to another client or indirect client.

As mentioned above, omnibus accounts will represent a greater mutualisation risk as regards client positions and collateral. Depending on the relevant segregation model offered by the CCP, however, this risk may be reduced so that, for example, one client's positions are not exposed to the performance of another client's positions.

- 5.2. Porting: EMIR and the Indirect Clearing Regulations contemplate that positions of a client or clients and an indirect client or indirect clients may be ported from one clearing member to another back-up clearing member following a clearing member default event and in the case of indirect clearing, from one client to another back-up client or clearing member following a client default event. The likelihood that porting is successful will depend on a number of factors, for example:

- (a) *Availability of a back-up clearing member and, in the case of indirect clearing, client*: For net omnibus accounts, in addition to achieving mutual agreement between clients and indirect clients (as applicable) to a proposed porting arrangement, it may be challenging to find a single back-up clearing member or, in the case of indirect clearing, client or clearing member who will accept all positions and collateral associated with the omnibus account, and all necessary client clearing relationships or indirect clearing relationships, as applicable. This is a particular challenge for Basic Omnibus Indirect Client Accounts and is not required by the Indirect Clearing Regulations. For direct clearing, the difference between the gross amount of collateral called by the defaulting clearing member and the net amount called by the EU CCP (as described in more detail above) will be held by the defaulting clearing member, but any back-up clearing member may require an equivalent amount of collateral from the underlying clients as a condition to accepting porting. For indirect clearing, the difference between the gross amount of collateral called by the defaulting client and/or clearing member and the net amount called by the EU CCP (as described in more detail above) will be held by the defaulting clearing member or client, but any back-up clearing member or client may require an equivalent amount of collateral from the indirect clients as a condition to accepting porting. For gross omnibus accounts with enhanced segregation (including the gross omnibus indirect client account), if the relevant EU CCP's rulebook permits and the contractual arrangements facilitate, it may be possible for a single underlying client's or indirect client's positions and collateral (more specifically, the value attributed to their collateral, as described in more detail above) to be ported to a back-up clearing member or client without needing to port other clients' or indirect clients, as applicable positions and collateral.
- (b) *Compliance with transfer requirements under EU CCP rules*: A client and indirect client may only port positions in compliance with the transfer period and other requirements specified in the EU CCP's rulebook. Once such transfer period has expired, the EU CCP will be able to liquidate positions and collateral and will no longer be required to facilitate porting. In order to facilitate porting it may be possible for the client (with an individually segregated account) to act as an interim clearing member, pending an ultimate successful porting to a back-up clearing member. This will be subject to the conditions of the relevant EU CCP rulebook (for example, a requirement to contribute to the EU CCP's default fund).

- 5.3 Liquidation risk: If positions cannot be successfully ported, they will be subject to the default-related close-out provisions of the relevant EU CCP's rulebook or clearing arrangements dealing with indirect client clearing. If positions are liquidated 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 clients or indirect clients perceive to be the full value of the assets. Other clients and indirect clients may post different assets which may impact the value of the assets in the omnibus account on liquidation.
- 5.4. Return of amounts directly to client: In the case of direct clients, where porting is not successful and the relevant client is known to the EU CCP, the EU CCP may be able to return excess amounts due from the EU CCP in relation to an individual account directly to the relevant client. If this is not possible, the EU CCP will return such amounts to the clearing member for the account of its clients.

Similarly, in the case of indirect clients, where porting is not successful, the clearing member may be able to return excess amounts due from the clearing member in relation to assets and positions of an indirect client to the relevant indirect client. If this is not possible, the clearing member will return such amounts to the client for the account of the indirect clients.

- 5.5. Transit risk: Transit risk is where a client is exposed to the clearing member, and in relation to an indirect client, where the indirect client is exposed to the client or clearing member, at any point in the process of providing or receiving margin in respect of Client Transactions. This is a risk under all of the different accounts described above.

As discussed in paragraph 4.4 above, MSI plc will treat cash collateral as client money *only* for exchange-traded derivatives held in *omnibus* segregated accounts. Only those clients will benefit from client money protection to mitigate collateral transit risk.

6. **Operational and legal risks**

A number of EU CCP segregated account structures (and all of the indirect client account structures) are new, from both an operational and legal perspective for the CCP, the clearing member and the clients. In that regard, operational risks are hard to quantify. Clients and indirect clients should ensure that relevant operational processes and requirements are carefully assessed prior to implementing a segregation election, and that appropriate testing is undertaken. Additionally, the positions described in this document are based on interpretation of what is required under EMIR and the Indirect Clearing Regulations, which may change as further guidance is produced by the relevant regulators.