

Morgan Stanley & Co. International plc  
("MSI plc")  
Indirect Clearing Offering Criteria

## 1. Who should read this document and why?

- 1.1. This document should be reviewed by clients of MSI plc ("**Direct Clients**") whose clients ("**Indirect Clients**") would like their derivatives transactions to be indirectly cleared by MSI plc on an EU domiciled central counterparty ("**EU CCP**") authorised under European Markets Infrastructure Regulation ("**EMIR**").<sup>1</sup> The Indirect Clearing RTS (as defined below) requires MSI plc to, *inter alia*, offer Direct Clients at least a choice between holding their positions and assets in a basic net omnibus account structure and a gross omnibus account structure (each as more fully described below). For this reason, Direct Clients should review this document in conjunction with the "EMIR/MiFIR Segregation Risks Public Disclosure" available at the following link under the heading "Derivatives Clearing Disclosures": <http://www.morganstanley.com/disclosures>
- 1.2. 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 the key terms upon which we are prepared to offer indirect clearing services and some of the key issues and criteria that should be met, but does not constitute a detailed analysis of all issues which may be relevant to Direct Clients. Direct Clients should conduct their own due diligence and instruct their own professional advisors as appropriate. Should Direct Clients have questions on the content of this document, MSI plc can provide assistance – Direct Clients should contact their usual account representative.
- 1.3. The below is disclosure, and is subject to detailed legal documentation.

## 2. What are the requirements of the Indirect Clearing RTS?

In accordance with Article 4(1) of the Commission Delegated Regulation (EU) No 2017/2154 of 22 September 2017 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements (the "**Indirect Clearing RTS**") a clearing member that facilitates indirect clearing services should do so on reasonable commercial terms and shall publicly disclose the general terms and conditions under which it provides those services. Such terms shall include the minimum financial resources and operational capacity requirements for Direct Clients that provide indirect clearing services to Indirect Clients. This document constitutes our disclosure for the purposes of the Indirect Clearing RTS in our capacity as a clearing member.

## 3. Basic omnibus segregated accounts and gross omnibus segregated accounts

The Delegated Regulation contemplates two types of accounts for the purposes of the provision of indirect clearing services to indirect clients: the basic omnibus segregated account and the gross omnibus segregated account.

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<sup>1</sup> Indirect clearing on UK CCPs is currently subject to the MiFID requirements described in this document. We anticipate that this will change as a result of Brexit but that substantially similar rules are likely to continue to apply. This disclosure will be updated as appropriate.

A basic omnibus segregated account is an account in which the assets and positions held by you on behalf of all Indirect Clients opting for such account are held. A gross omnibus segregated account is an account in which the assets and positions held by Direct Clients on behalf of all Indirect Clients opting for such account are held and in relation to which the positions of one Indirect Client do not offset the positions of another Indirect Client and the assets of one Indirect Client cannot be used to cover the positions of another Indirect Client.

For the purposes of the below disclosure, paragraphs 4.1 to 4.3 apply to the provision of indirect clearing in relation to both account types of accounts, but for gross omnibus segregated accounts we require additional conditions to be satisfied, as more fully described in paragraph 4.4.

#### **4. Indirect clearing offering criteria:**

**4.1 Scope of indirect clearing services offered:** If a Direct Client satisfies the conditions described in 4.2 below, they will be permitted to offer indirect clearing services to their Indirect Clients at EU CCPs on the terms described below, other than:

- (a) in relation to over-the-counter (OTC) derivatives; and
- (b) at certain other EU CCPs where the chain of parties involved is not a chain permitted by the Delegated Regulation, for example because of the length of the chain, or the parties in the chain. For example, MSI plc is unable to offer indirect clearing services to Direct Clients at ATHEXClear, GIR KDPW and OMIClear and MSI plc will require Direct Clients to close-out any trades entered into with Indirect Clients in relation to indirect clearing services that would otherwise require MSI plc to clear at these CCPs.

#### **4.2 Minimum Client Requirements:**

- (a) The Direct Client must meet the requirements of Article 2 of the Indirect Clearing RTS.
- (b) The Direct Client will be required to meet MSI plc's commercial requirements and risk assessment criteria including, but not limited to, confirmation to MSI plc's satisfaction that the Direct Client meets its requirements with respect to minimum financial resources, to be determined as appropriate for the Direct Client's business and experience, the nature of the trading in which the Direct Client intends to engage and the Direct Client's broader relationship with MSI plc. The Direct Client must agree to provide MSI plc with such financial information as MSI plc may request from time to time and to notify MSI plc promptly of any material change in the financial condition of the Direct Client.
- (c) The Direct Client will be required to meet MSI plc's operational and technological requirements relevant to the facilitation of indirect clearing processes including, but not limited to, the ability to distinguish between trades that are executed as proprietary positions of the Direct Client or on behalf of Indirect Clients.
- (d) MSI plc must have completed and be comfortable with appropriate legal analysis in the jurisdiction of incorporation of the Direct Client, such that MSI plc is able to understand, *inter alia*, the operation of local insolvency law in that jurisdiction and the associated impact on its ability to comply with the provisions of the Indirect Clearing RTS.

- (e) The Direct Client must execute all documentation determined as being necessary by MSI plc, in order for MSI plc to provide indirect clearing services. In executing such documentation, the Direct Client acknowledges that it has read and understood all disclosure statements with respect to its trading activities that MSI has provided it, including the appropriate disclosure statement on indirect clearing.
- (f) MSI plc must have the opportunity to review and agree the general terms and conditions under which the Direct Client offers clearing services to its Indirect Clients.
- (g) For gross omnibus segregated accounts, all of the requirements set out in the paragraph entitled “Additional requirements and terms and conditions for gross omnibus segregated accounts” below.

4.3 **Terms of indirect clearing service:** The following minimum terms will apply to the offering by MSI plc of indirect clearing services to a Direct Client:

(a) **Margin terms:**

- (i) **Margin calls:** Generally, a Direct Client will receive a single, consolidated margin call representing all of its activity across EU CCPs, to be settled by the Direct Client on a net settlement basis.
- (ii) **Eligible margin:** Other than in the case of a gross omnibus segregated account, MSI plc will accept as eligible collateral the same collateral MSI plc has agreed is eligible for current Direct Client proprietary positions.
  - (I) **Cash:** When cash margin is transferred to MSI plc, such margin will be transferred to MSI plc as “client money” in accordance with the UK Financial Conduct Authority’s client asset protection rules (“**CASS**”). In this context, CASS provides that money held by MSI plc as Direct Client money will be ring-fenced from MSI plc’s insolvency estate upon an MSI plc administration or liquidation and will instead be held on trust for the benefit of the relevant Direct Clients.
  - (II) **Non-cash:** If MSI plc agrees to accept non-cash margin, such margin will be held by MSI plc as custodian. MSI plc will be permitted to rehypothecate, use or otherwise permit the grant of security over the non-cash assets transferred by a Direct Client to MSI plc.
- (iii) **Security Interest:** Non-cash margin and cash margin transferred to MSI plc as “client money”, MSI plc will require each Direct Client to grant a security interest in favour of MSI plc over all such margin.

- (b) **Triggering default management provisions:** MSI plc is required to promptly liquidate assets and positions relating to Indirect Clients upon a Direct Client’s default. Upon such liquidation, MSI plc will calculate separate liquidation amounts in respect of the Direct Client’s proprietary positions and the positions of its Indirect Clients.

4.4 **Additional requirements and terms and conditions for gross omnibus segregated accounts:** In addition to the above terms, the following terms apply to the provision by Direct Clients of indirect clearing services to Indirect Clients that wish to elect a gross omnibus segregated account:

- (a) **Information (general):** In order to allow MSI plc to calculate separate margin requirements for each Indirect Client, the Direct Client will be required to provide MSI plc with all information necessary to allow MSI plc and each relevant EU CCP to make those calculations.
- (b) **Information (default):** As a condition to MSI plc providing a Direct Client with indirect clearing services in relation to gross omnibus segregated accounts, and in order to allow MSI plc to facilitate “porting” or the direct return of assets to indirect clients following a default by the Direct Client (including its insolvency), the Direct Client will need:
  - (i) to establish suitable arrangements achieving this that are legally robust and are satisfactory to MSI plc, and provide MSI plc with legal memoranda (on which we can rely) in relation to all relevant jurisdictions to our satisfaction, detailing the enforceability of such arrangements and that such arrangements comply with the Delegated Regulation; and
  - (ii) to ensure that the Direct Client’s offering of indirect clearing facilitates the provision by it (or someone on its behalf) to MSI plc of all information we might require to effect such “porting” or direct return of assets (including the identity of its Indirect Clients and all data MSI plc might require to effect all know-your-customer and anti-money laundering checks on those Indirect Clients).
- (c) **Pricing:** The “Clearing Member Pricing Disclosure for Direct and Indirect Clearing” sets out the factors relevant to the cost of opening and maintaining a gross omnibus segregated account at each EU CCP.

## 5. Legal documentation

- (a) **General:** Full, detailed and complete legal documentation will need to be entered into in order for a Direct Client to provide indirect clearing services to its Indirect Clients, reflecting the above terms and conditions. This will be in the form of additional terms incorporated into or appended to the existing Customer Agreement between MSI plc and the Direct Client.
- (b) **Specific provisions:** In addition, this legal documentation will also include the following:
  - (i) representations from the Direct Client as to its compliance with the Delegated Regulation;
  - (ii) indemnities and exculpatory provisions, relating to losses we may incur or liability we may incur from or in relation to the Direct Client’s provision of indirect clearing services to its Indirect Clients; and
  - (iii) any additional overlay arrangements appointing agents, trustees or creating security to facilitate “porting” or the direct return of assets to Indirect Clients on the Client’s default.

**For further information on the points outlined in this document, please contact the Morgan Stanley Client Clearing sales team via the following email address: [Idsaleslon@morganstanley.com](mailto:Idsaleslon@morganstanley.com).**