

# Morgan Stanley Europe SE (“MSESE”) Indirect Clearing Offering Criteria

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

- 1.1. This document should be reviewed by clients of MSESE (an “**Indirect Client**”) who would like MSESE to act as the direct client of a clearing member (the “**Clearing Member**”) for the purposes of an indirect clearing arrangement wherein such Indirect Client’s exchange-traded derivatives transactions are indirectly cleared by such Clearing Member on an EU domiciled central counterparty (“**EU CCP**”) authorised under the European Markets Infrastructure Regulation (“**EMIR**”)¹.
- 1.2. The Indirect Clearing RTS (as defined below) requires MSESE, as a direct client of a Clearing Member, to, *inter alia*, offer Indirect 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, Indirect Clients should review this document in conjunction with the “EMIR/MiFIR Segregation Risks Public Disclosure” at the following link under the heading “Derivatives Clearing Disclosures” on <http://www.morganstanley.com/disclosures>, which is also relevant in the context of MSESE acting as a direct client and offering indirect clearing services to Indirect Clients and should be read by Indirect Clients as if it included the following modifications:
  - Paragraph 2.7 (*Basic Omnibus Indirect Client Account*) should be read as if the below text immediately followed paragraph (b):

“(c) *at the level of the direct client, an omnibus account is opened with transactions (including corresponding assets) held for the account of its indirect clients. This means such transactions will be segregated from any transactions (including corresponding assets in the direct client’s accounts) relating to any indirect 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 direct client’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.*”
  - Paragraph 2.8 (*Gross Omnibus Indirect Client Account*) should be read as if the below text immediately followed paragraph (b):

“(c) *at the level of the direct client, an omnibus account is opened with transactions (including corresponding assets) held for the account of its indirect clients, in which the direct client will ensure that the*

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¹ 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.

*positions of an indirect client do not offset the positions of another indirect client and the assets of an indirect client cannot be used to cover the positions of another indirect client. This means such transactions will be segregated from any transactions (including corresponding assets in the direct client'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 direct client'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; and any transactions (including corresponding assets in the direct client's accounts) relating to any indirect clients that have opted for the same gross omnibus indirect client account.”*

- Paragraph 5.4 (*Return of amounts directly to client*) should be read as if the below sentence replaced the last sentence of the second paragraph:

*“If this is not possible, which is likely to be the case with indirect clients that have opted for a basic omnibus indirect client account, the clearing member will return such amounts to the direct client, for the account of the indirect clients, which may mean that such indirect clients are left with unsecured claims in relation to such amounts with respect to the direct client.”*

- 1.3. 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 MSESE is prepared to offer indirect clearing services as a direct client 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 Indirect Clients. Indirect Clients should conduct their own due diligence and instruct their own professional advisors as appropriate. Should Indirect Clients have questions on the content of this document, MSESE can provide assistance – Indirect Clients should contact their usual account representative.
- 1.4. 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 2(1)(a) 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 direct client 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. This document constitutes MSESE’s disclosure for the purposes of the Indirect Clearing RTS in MSESE’s capacity as a direct client.

## **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.

A basic omnibus segregated account is an account in which the assets and positions held by MSESE as a direct client 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 MSESE as a direct client 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 4.2 to 4.3 apply to the provision of indirect clearing services in relation to both types of accounts, but for gross omnibus segregated accounts MSESE requires 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 an Indirect Client satisfies the conditions described in paragraph 4.2 below, MSESE will be able to offer such Indirect Client indirect clearing services as a direct client of a clearing member at certain EU CCPs – details for which are specified in the Annex hereto – on the terms described below, other than in relation to over-the-counter (OTC) derivatives.

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

- (a) The Indirect Client must execute all documentation determined as being necessary by MSESE, in order for MSESE to provide indirect clearing services. In executing such documentation, the Indirect Client acknowledges that it has read and understood all disclosure statements with respect to its trading activities that MSESE has provided to it, including the appropriate disclosure statement on indirect clearing.
- (b) Indirect Clients will not be permitted to offer indirect clearing services to their own clients.
- (c) 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 MSESE of indirect clearing services to an Indirect Client:

#### **(a) Margin terms:**

(i) **Margin calls:** Generally, an Indirect Client will receive a single, consolidated margin call representing all of its activity across EU CCPs, to be settled by the Indirect Client on a net settlement basis.

#### **(ii) Eligible margin:**

Both cash and non-cash margin shall be transferred to MSESE on a title transfer basis. Accordingly, MSESE shall become the full owner of the transferred assets and shall be entitled to use those assets for the purposes of its own business, subject to an obligation to return to the Indirect Client assets which are equivalent to those which are transferred.

(b) **Triggering default management provisions:** The Clearing Member is required to promptly liquidate assets and positions relating to its Indirect Clients upon MSESE's default. Upon such liquidation, the Clearing Member

will calculate separate liquidation amounts in respect of MSESE's proprietary positions and the positions of Indirect Clients.

(c) **General terms:**

- (i) MSESE will commit to honour all obligations of the Indirect Client towards the Clearing Member with regard to the transactions entered into in relation to indirect clearing services.
- (ii) MSESE will keep separate records and accounts that enable MSESE to distinguish between its own assets and positions and those held for the account of Indirect Clients.
- (iii) As permitted by the Indirect Clearing RTS, MSESE will assign a basic omnibus segregated account to Indirect Clients that have not chosen an account within a reasonable period of time (such period of time to be established by MSESE). The Indirect Client may elect to choose a different type of account at any time by requesting so in writing to MSESE (subject to any additional requirements and charges to be imposed in relation to such change).
- (iv) MSESE will, in accordance with the choice of its Indirect Clients (or in accordance with the assignation described in paragraph 4.3(c)(iii) above), request the Clearing Member to open and maintain in the CCP either a basic omnibus segregated account or a gross omnibus segregated account.
- (v) In accordance with Article 5(6) of the Indirect Clearing RTS, MSESE is required to provide Indirect Clients with sufficient information to allow such Indirect Clients to identify the Clearing Member and EU CCP used to clear the Indirect Clients' positions. For such details, please refer to the Annex attached hereto, as amended from time to time.

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 MSESE of indirect clearing services to Indirect Clients that wish to elect a gross omnibus segregated account:

- (a) **Information (general):** In order to allow the Clearing Member to calculate separate margin requirements for each Indirect Client, the Indirect Client will be required to provide MSESE with all information necessary to allow MSESE, each Clearing Member and each relevant EU CCP to make those calculations.
- (b) **Information (default):** As a condition to MSESE providing an Indirect Client with indirect clearing services in relation to gross omnibus segregated accounts, and in order to allow the Clearing Member to facilitate "porting" or the direct return of assets to Indirect Clients following a default by MSESE (including its insolvency), MSESE will need:
  - (i) to establish with the Indirect Client and the Clearing Member suitable arrangements achieving this that are legally robust and are satisfactory to MSESE; and

- (ii) to ensure that MSESE's offering of indirect clearing facilitates the provision by it (or someone on its behalf) to the Clearing Member of all information the Clearing Member might require to effect such "porting" or direct return of assets (including the identity of Indirect Clients and all data the Clearing Member might require to effect all know-your-customer and anti-money laundering checks on such Indirect Clients).
- (c) **Pricing:** MSESE has set out in MSESE's "Clearing Member Pricing Disclosure for Direct and Indirect Clearing" the factors relevant to the cost of opening and maintaining a gross omnibus segregated account at each EU CCP in the context of MSESE acting as a clearing member. Such factors are also relevant in the context of MSESE acting as a direct client and opening and maintaining such accounts at a Clearing Member as part of MSESE's indirect clearing services.

## 5. Legal documentation

- (a) **General:** Full, detailed and complete legal documentation will need to be entered into between MSESE and the Indirect Client in order for MSESE 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 MSESE and the Indirect Client.
- (b) **Specific provisions:** In addition, this legal documentation will also include additional overlay arrangements appointing agents, trustees or creating security to facilitate "porting" or the direct return of assets to Indirect Clients on MSESE's default.

## Annex

### Clearing Member and EU CCP Information

Clearing Member	EU CCP
BNP Paribas Securities Services S.C.A. <sup>2</sup>	ATHEXClear
Dom Maklerski Banku Handlowego S.A.	GIR KDPW
Banco Santander S.A. <sup>2</sup>	OMIClear
Morgan Stanley & Co. LLC	ICE Clear Europe (IFED market only)
Morgan Stanley & Co. International plc	ICE Clear Europe (excluding ICE Endex market), LCH.Clearnet Limited, LMEClear

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<sup>2</sup> It is our intention to offer Indirect Client indirect clearing services as a direct client of this clearing member at the corresponding EU CCP.