

Clearing Member Disclosure in relation to Client Clearing Services under the European Market Infrastructure Regulation

Introduction

Throughout this document references to “we”, “our” and “us” are references to Morgan Stanley & Co International plc. References to “you” and “your” are references to the client.

What is the purpose of this document?

To enable us to comply with our obligations as a clearing member under EMIR¹, which requires that where we are providing services to you that involve us clearing OTC and/or exchange-traded derivatives through an EU central counterparty (CCP)², we must:

- offer you a choice of an individual client account or an omnibus client account (as discussed further below);
- publicly disclose the levels of protection associated with different levels of segregation; and
- describe the main legal implications of different levels of segregation.

Costs for individual vs omnibus accounts

Information relating to pricing and costs is available via the following link (under the heading “EMIR Public Disclosures”):

<http://www.morganstanley.com/institutional/sales/derivatives.html>

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, explains how this impacts on the clearing of your derivatives and sets out some of the other factors that might affect the level of protection you receive in respect of assets provided to us as margin.
- 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 CCPs offer, together with an explanation of the main implications of each, and sets out links to further information provided by certain CCPs.

What are you required to do?

You must review the information provided in this document and the relevant CCP disclosures and confirm to us in writing (a) 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 (b) 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.

Important

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.

We shall not in any circumstances be liable, whether in contract, tort, breach of statutory duty or otherwise for any losses or damages that may be suffered as a result of using this document. Such losses or damages include (a) any loss of profit or revenue, damage to reputation or loss of any contract or other business opportunity or goodwill and (b) any indirect loss or consequential loss. No responsibility or liability is accepted for any differences of interpretation of legislative provisions and related guidance on which it is based. This paragraph does not extend to an exclusion of liability for, or remedy in respect of, fraudulent misrepresentation.

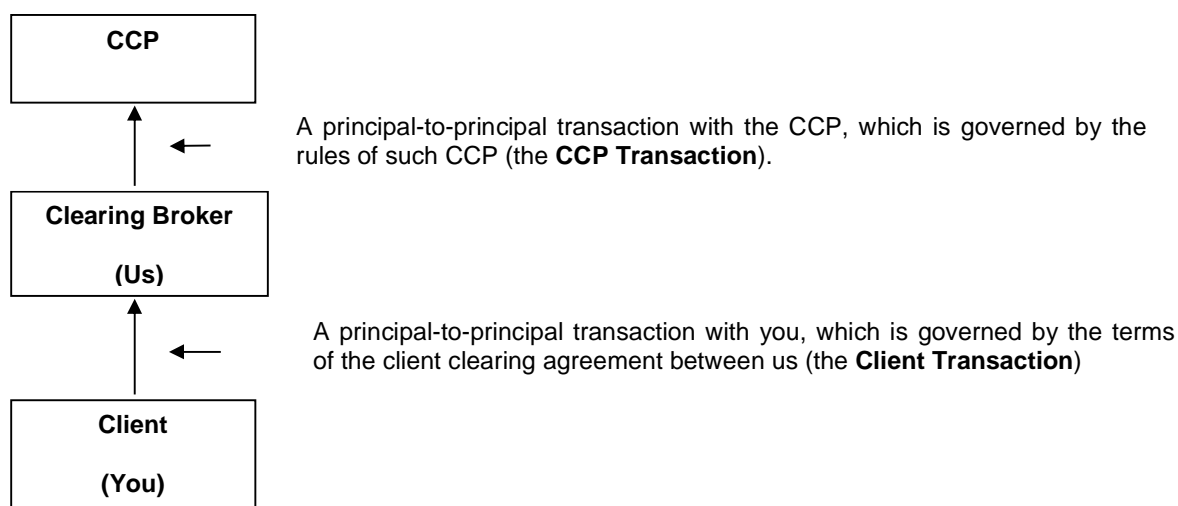
Please note that this disclosure has been prepared on the basis of English law save as otherwise stated. However, issues under other laws may be relevant to your due diligence. For example, the law governing the CCP rules or related agreements; the law of the jurisdiction of incorporation of the CCP; and the law of the location of any assets.

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. You may face “transit risk” in respect of this margin. This is the risk that we default either (a) after receiving margin assets from you but prior to providing such assets to the CCP, in which case the assets will not have been recorded in your account at the CCP and will not benefit from the protections described below or (b) after receiving margin assets back from the CCP but prior to passing them on to you. .

However, in many cases you may not actually face transit risk under (a) because the CCPs often call margin from us early in the morning so we may 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.

Transit risk may be mitigated where we hold margin in transit in the form of cash as client money (see *“What is the impact if we treat cash you transfer to us as client money in accordance with the FCA client money rules?”* below).

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

What if you want to transfer your Client Transactions to another clearing broker?

There may be circumstances where you wish to transfer some or all of your Client Transactions to another clearing broker on a business as usual basis (ie. 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 broker 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 you be automatically ported to a back-up clearing broker?”*

What happens if we are 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 broker (a **back-up clearing broker**), 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 re-establishment (with the back-up clearing broker) of the CCP Transactions or a transfer of the open CCP Transactions and related assets from us to the back-up clearing broker. 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 you be automatically ported to a back-up clearing broker?

No, there will be a number of conditions which must be satisfied before the CCP Transactions and assets that relate to you can be ported to a back-up clearing broker. 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 broker that has agreed to accept the CCP Transactions. You may wish to appoint a back-up clearing broker upfront as part of your clearing arrangements but the back-up clearing broker is unlikely to be able to confirm that it is willing to accept the CCP Transactions until the default occurs. The back-up clearing broker may also have conditions that they require you to meet.

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 broker to put in place new client transactions between itself 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 broker 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 broker, and the back-up clearing broker 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 broker 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 of time 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 of time 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.

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

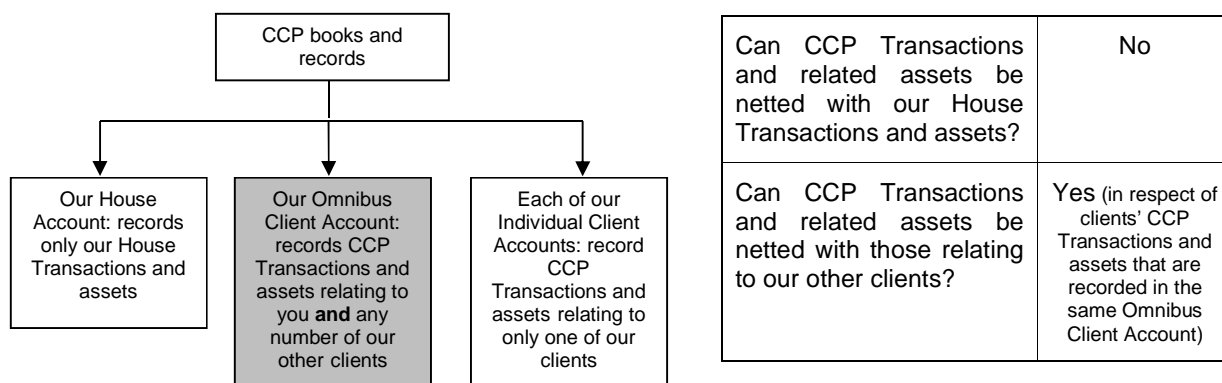
The types of account available

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.³

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 Account⁴

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.



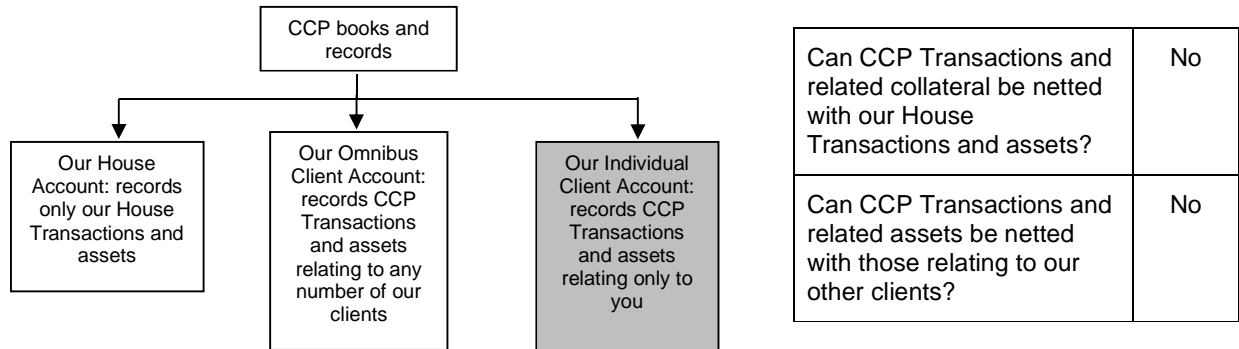
The CCP will agree not to net the CCP Transactions relating to you with our House Transactions or any CCP Transactions not recorded in the same Omnibus Client Account, nor use the assets relating to such CCP Transactions with respect to any House Transaction or CCP Transaction recorded in any other account.

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*⁵

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 those relating to any of our other clients.



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.

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 and additional features of Individual Client Accounts that may be available at different CCPs.

Affiliates

We treat our affiliates in the same way as clients when complying with EMIR. This means that affiliates also have a choice between types of account. Although not prohibited by EMIR, we do not expect to include affiliates in the same Omnibus Client Account as other clients.

Other factors that may impact on the level of protection you receive in respect of assets that you provide to us as margin for Client Transactions

There are a number of 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 or not cash that you transfer to us is treated as client money in accordance with the FCA client money rules;
- 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.

The rest of Part One B sets out further details for each of these variables and their implications under English Law.

Would you 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 classes of Omnibus Client Accounts:

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

It may theoretically 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. However, as noted above under “*Will the CCP Transactions and assets relating to you be automatically ported to a back-up clearing broker?*”, it is likely to be difficult to achieve porting in relation to any Omnibus Client Account.

Will you 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 and will not necessarily be the same type of assets that the CCPs will accept from us for the CCP Transactions.

Do you provide assets to us 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 to you 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. 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, 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.

What is the impact if we treat cash you transfer to us as client money in accordance with the FCA client money rules?

This question is separate to the question of what level of segregation you want and results from the FCA's client money regime rather than EMIR. However, if we hold your cash as client money, your choice of account type could impact how any cash balance returned to us (or our insolvency practitioner) on our default is treated. Whether or not we will treat cash collateral that we receive from you or on your behalf as client money will be set out in the client clearing agreement related to the applicable Client Transaction. We may not treat cash as client money where we are a bank or you provide cash to us on a title transfer basis (see under "*Do you provide assets to us on a title transfer or a security interest basis?*" above).

If we do treat cash transferred to us as client money, then we will follow the FCA client money rules in respect of such cash. In this case, unless we are declared to be in default by a CCP, the FCA client money rules apply in the same way to cash you provide to us as margin for Client Transactions as they apply to cash we treat as client money in relation to other types of business. We will be permitted to transfer client money held as margin to a CCP.

However, if we are declared to be in default by a CCP and the CCP cannot port or return the balance to you directly and the balance has instead to be returned to us (or our insolvency practitioner) for the account of our clients (see "*What happens if porting is not achieved*" in Part One A above), there are some important differences in how the FCA client money rules would apply.

- If you select an Individual Client Account, then to the extent that any cash is paid to us by the CCP for your account, it will not form part of the client money pool and will instead be distributed to you.

The client money pool is the mechanism through which our insolvency practitioner would normally gather together the client money relating to most of our clients for which we hold

client money, wherever it is held, and from which it would distribute that client money in accordance with the FCA client money rules.

- If you select an Omnibus Client Account, any cash paid to us by the CCP for the account of our clients is likely to form part of the client money pool and be subject to the normal client money rules on distribution.⁶ However, there may be some exceptions to this, including where (a) we do not hold any excess margin (see under “*How will any excess margin we call from you be treated?*” below) in relation to the Omnibus Client Account and (b) the CCP can tell us how the money paid to us should be allocated between the clients in the Omnibus Client Account.

How will any excess margin we call from you be treated?

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 which is directly related to particular Client Transactions and 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 margin on to the relevant CCP. The details of this will be set out in the client clearing agreement between you and us.

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 you get back the same type of asset as you originally provided to us 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.

In the event of our default, the extent of your rights in relation to the CCP, if any, will depend on the particular CCP. 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.

This risk is present regardless of what type of client account you select.

Part One C: What are the main insolvency considerations?

General insolvency risks

If we enter into insolvency proceedings, you may not receive all of your assets back or retain the benefit of your positions and there are likely to be time delays and costs (e.g. funding costs and legal fees) connected with recovering those assets. These risks, which are briefly described in this Part One C, arise in relation to both Individual Client Accounts and Omnibus Client Accounts.

The following factors contribute to these risks:

- the extent of your rights in relation to the relevant CCP, if any, will depend on the particular CCP;
- you will only have contractual claims against us (i.e. rather than being able to recover particular assets as owner);
- our insolvency proceedings are most likely to be a version of a process called administration (although it is possible for us to enter into liquidation and other proceedings). In administration, subject to a few exceptions, you will not be able to take any action against us without court or insolvency official consent (which can be a time consuming process with an uncertain outcome) though close-out netting rights are likely to be protected; and
- any stage of a cleared transaction (e.g. Client Transactions, CCP Transactions and porting) may be challenged by our insolvency official if, broadly speaking, it was not on arm's length terms.

Please also note that:

- insolvency law may override the terms of contractual agreements, so you should consider the legal framework as well as the terms of disclosures and legal agreements (though in the UK, legislation reduces this risk, as described in the section "*Companies Act 1989, Part VII*" below); and
- a large part of your protection comes from CCP arrangements and the legal regimes surrounding them. Therefore, you should understand these in order to evaluate the level of protection that you have on our default. It is important that you review the relevant disclosures by the CCP in this respect; and

Insolvency of CCPs and others

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

In relation to CCP insolvency, broadly speaking our (and therefore your) rights will depend on the law of the country in which the CCP is incorporated (i.e. not necessarily English law) and the specific protections that the CCP has put in place. You should review the relevant CCP disclosures carefully in this respect and take legal advice to fully understand the risks in this scenario.

In addition, please note the following:

- we expect that an insolvency official will be appointed to manage the CCP. Our rights against the CCP will depend on the relevant insolvency law and/or that official;

- it will be difficult or impossible to port CCP Transactions and related margin, so it would be reasonable to expect that transactions will be terminated at CCP level. The steps, timing, level of control and risks relating to that process will depend on the CCP, its rules and the relevant insolvency law. However, it is likely that there will be material delay and uncertainty around when and how much assets or cash we will receive back from the CCP. Subject to the bullet points below, it is likely that we will only receive back only a percentage of assets available depending on the overall assets and liabilities of the CCP;
- it is unlikely that you will have a direct claim against the CCP because of the principal-to-principal model described in Part One A;
- under the client clearing agreement, Client Transactions will terminate at the same time as the matching CCP Transactions unless the relevant CCP rules provide otherwise. This will result in a net sum owing between you and us. However, your claims against us are limited recourse so that you will only receive amounts from us in relation to Client Transactions if we receive equivalent amounts from the CCP in relation to relevant CCP Transactions;

If recovery of margin in this scenario is important, then you may wish to explore “bankruptcy remote” or “physical segregation” structures offered by some CCPs. These tend to be offered only in relation to Individual Client Accounts and generally involve either:

- you or us retaining assets in your/our name and only giving a security interest over that margin to the CCP (i.e. it allows the CCP to apply margin if we default but should keep the assets out of the CCP's insolvency if it defaults); or
- the CCP holding the assets in a blocked or controlled margin account and giving a security interest (or similar legal right) over the margin back to us, to you and/or to a trustee on our behalf.

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

The remainder of this Part One C describes certain implications of our insolvency. As noted above, these risks arise in relation to both Individual Client Accounts and Omnibus Client Accounts.

Margin rights

If you provide assets to us by way of security interest and we have not exercised a right of use over those assets, then you should have a legal right to recover the balance of those assets (after settling your obligations to us) ahead of other creditors. However, please note that, depending on the exact set up of our security arrangements, it may be that some preferential creditors will still have a prior claim to your assets. Such creditors are likely to include, amongst others, our insolvency official (e.g. in respect of its costs and expenses), a relatively small amount of unsecured creditors, some employee salaries and pension contributions.

If you have retained the assets (e.g. in a custody account over which you have given us a security interest) then you will have the best chance of recovering them. If you have transferred the assets to our name by way of security (e.g. by giving us a mortgage over the assets) then you bear more risk if there is a shortfall in any of the assets that we are holding. Generally speaking, your risk of loss will be

highest in relation to non-client money cash margin; lower in relation to securities held by us in an omnibus account; and lower still if securities are segregated in our books and records and at custody level identifying you as the client.

The actual result will be highly fact specific and will depend on, amongst other things, the exact terms of our legal arrangements; how we have operated accounts; and claims that other intermediaries (e.g. custodians and settlement systems) have to those assets.

As an exception to this general position, we would also expect client money protection (please see Part One B) to be effective in our insolvency.

We do not expect the above position to change materially if you have an Individual Client Account or an Omnibus Client Account.

Companies Act 1989, Part VII

Part VII applies because we are an English company (generally speaking, it does not apply to non-English companies) and gives specific protection against some of the legal risks that arise on our insolvency. Generally speaking, if we are declared in default by a CCP that has the benefit of Part VII protection, then our insolvency official cannot challenge actions taken by the CCP against us under its default rules:

- to settle our CCP Transactions or to transfer those CCP Transactions and related assets to a back-up clearing broker; and, in the case of a transfer of CCP Transactions
- to transfer our Client Transactions with you and related assets to the same back-up clearing broker.

This Part VII protection generally applies to actions taken by English CCPs that have been (re)authorised by the European Securities and Markets Authority (**ESMA**). It can also protect actions taken by non-English CCPs that have been authorised by ESMA with two limitations – it only protects the position/asset transfers contemplated in EMIR (not other actions taken under default rules) and those rules need to have been approved by the Bank of England (and the authorisation not withdrawn).

In either case, Part VII focuses on protecting counterparties from our default. It is not clear that it would provide any wider protection – eg. if the CCP itself became insolvent.

Please note that Part VII is a complex piece of legislation and this summary is not a substitute for detailed legal analysis – particularly of Part VII in the context of the relevant CCP's regulatory authorisations and default rules - with your professional advisors.

Please see below an outline of some specific insolvency risks and related Part VII commentary.

Close-out netting

If we default and the CCP cannot port the CCP Transactions and collateral (e.g. because a back-up clearing broker cannot be found) then we would expect it to terminate and net our CCP Transactions and apply related assets.

You and we would want this to work differently from normal, bilateral close-out netting that would apply to all positions and assets between us and the CCP. If close-out netting were to apply in such a general manner, positions and assets in client accounts relating to you would be netted with our house account or another client account at the CCP.

There is a risk that this netting across accounts could happen automatically as a result of ordinary English insolvency law. However, to the extent that the CCP has Part VII protection, this should not occur.

A similar risk occurs between us and you in relation to Client Transactions if English law were to automatically set off Client Transactions and collateral relating to all CCPs, rather than netting Client Transactions and collateral relating to each CCP separately, as provided in the client clearing agreement. Whilst the resulting termination amount should represent our net exposure to each other, it would make porting difficult or impossible.

It is arguably unclear whether Part VII provides protection in this case. However, there are certain industry-wide legal opinions that are being prepared on the effectiveness of close-out provisions in standard client clearing agreements. You should seek legal advice and/or access to such opinions for more information in this respect.

Please also note more generally that your freedom to close out Client Transactions is more limited under the client clearing agreement than in other arrangements that you may be used to.

Porting - prohibition

As mentioned above, under the principal-to-principal model, we are the CCP's counterparty, not you.

As a result, when CCP Transactions and assets are transferred to a back-up clearing broker, there is a risk of insolvency challenge because our rights have effectively been taken from us on or around the time of our insolvency. Applicable laws may not permit this and there is a risk that the courts may therefore not permit, or may unwind, any porting and related Client Transactions with your back-up clearing broker.

We expect the risk of challenge to be low in relation to CCP Transactions and matching transfer of Client Transactions that are ported in accordance with the default rules of a CCP that has Part VII protection.

Porting - preferential creditors

As mentioned under "*What happens if we are declared to be in default by a CCP?*" in Part One A, a CCP's porting structure may be based on or supported by a security interest. This can take different forms but generally involves us creating security over our rights against the CCP in relation to an Individual Client Account or Omnibus Client Account to hold the security on your behalf. In addition to any Part VII protection, the security interest should support the argument that these assets are not part of our insolvency estate (i.e. are not to be shared with our other creditors).

Mismatch of CCP/Client Transactions and assets

It could be that our net assets in relation to CCP Transactions do not match our net obligations to you in relation to the matching Client Transactions. This can slow down or make porting impossible either operationally or legally.

For example, it may occur at CCP level as a result of Fellow Client Risk (see the explanation of this term in Part Two of this document) in an Omnibus Client Account, with the result that there are insufficient assets available for porting to satisfy our obligations to you in relation to the Client Transactions.

Banking Act 2009

The Banking Act applies because we are an English company that falls within its scope. As a result, in serious circumstances, we may be nationalised or we (or any of our assets and liabilities) may be

transferred to a third party by a combination of the Treasury, Bank of England or FCA. In that case, your counterparty and/or your counterparty risk may change. It is unlikely that you will be able to stop such transfer or to enforce any early termination rights against us as a result of such transfer.

Part Two: CCP client account structures

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 each CCP we use where available. You may also need to seek professional advice to understand the differences in detail. However, we hope that the questions raised and factors described in both parts of this document will help you to know which questions to ask and to understand the impact of the answers you receive.

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:

| Risks used to compare each account type and level of segregation | Explanation of risk |
|---|---|
| Transit Risk | Whether you are exposed to us at any point in the process of providing or receiving margin in respect of Client Transactions. |
| Fellow Client Risk | 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. |
| Porting Liquidation Risk | 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. |
| Haircut Risk | 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. |

| Risks used to compare each account type and level of segregation | Explanation of risk |
|--|---|
| Valuation Mutualisation Risk | 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. |
| CCP Insolvency Risk | Whether you are exposed to the insolvency or other failure of the CCP. |

Typical client account characteristics

| | Net Omnibus Client Account | Gross Omnibus Client Account | Individual Client Account |
|--|--|---|---|
| Who will the CCP Transactions recorded in the account relate to? | Net Omnibus Client Accounts record assets and CCP Transactions that relate to you and the assets and CCP Transactions that relate to one or more of our other clients. | Gross Omnibus Client Accounts record assets and CCP Transactions that relate to you and the assets and CCP Transactions that relate to one or more of our other clients. | Only assets and CCP Transactions that relate to you may be recorded in an Individual Client Account. |
| Which losses can assets recorded in the account be used for? | Assets that are provided to the CCP as margin for a CCP Transaction recorded in a Net Omnibus Client Account may be used to cover any losses in that account, whether such losses relate to the CCP Transactions relating to you or CCP Transactions relating to another client. | Assets that are provided to the CCP as margin for the CCP Transactions recorded in a Gross Omnibus Client Account may be used to cover any losses in that account, whether such losses relate to the CCP Transactions relating to you or CCP Transactions relating to another client. | Assets that are provided to the CCP as margin for CCP Transactions recorded in an Individual Client Account may only be used to cover losses in that account. |
| Will the CCP know which CCP Transactions and types of assets relate to you? | The CCP may not know which CCP Transactions and assets recorded in a Net Omnibus Client Account relate to you. | The CCP may not know which CCP Transactions and assets recorded in a Gross Omnibus Client Account relate to you. | Yes |

| | Net Omnibus Client Account | Gross Omnibus Client Account | Individual Client Account |
|--|---|---|--|
| Will the CCP record the assets provided by value only or will it identify the type of asset provided? | The CCP may identify in its records the type of asset provided as margin for the Net Omnibus Client Account but will not be able to identify which type of assets relate to any client's CCP Transactions within that Net Omnibus Client Account. | The CCP may identify in its records the type of asset provided as margin for the Gross Omnibus Client Account but is unlikely to be able to identify anything other than the value of the assets provided in respect of any client's CCP Transactions within that Gross Omnibus Client Account. | The CCP is required to identify in its records the type of asset provided as margin for an Individual Client Account. |
| Will the CCP Transactions recorded in the account be netted? | It is likely that the CCP Transactions recorded in the account will be netted. In this case, CCP Transactions that relate to you would be netted with CCP Transactions that relate to our other clients whose CCP Transactions are recorded in the same Net Omnibus Client account. | No. | CCP Transactions are likely to be netted, but may not be netted against the CCP Transactions relating to any of our other clients. |
| Will the margin be calculated on a gross or net basis? | The margin will be calculated on a net basis. | The margin will be calculated on a gross basis across all clients in the same Gross Omnibus Account (but using each such client's net position). | The margin requirement for an Individual Client Account will typically be calculated on a net basis. |

| | Net Omnibus Client Account | Gross Omnibus Client Account | Individual Client Account |
|---|--|--|---|
| Will you have to enter into any documentation or operational arrangements directly with the CCP? | You may have to enter into legal documentation to which the CCP is party. It is possible but unlikely that you will have to set up any operational arrangements with the CCP directly. | You may have to enter into legal documentation to which the CCP is a party. It is possible but unlikely that you will have to set up operational arrangements with the CCP directly. | You may have to enter into legal documentation to which the CCP is a party. It is also possible that you will have to set up some operational arrangements with the CCP directly. |
| Transit Risk | Yes | Yes | Yes |
| Fellow Client Risk | Yes | Yes | No |
| Porting Liquidation Risk | 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). |
| Haircut Risk | Yes | Yes | Yes |
| Valuation Mutualisation Risk | Yes | Yes | No |
| CCP Insolvency Risk | Yes | Yes | Yes |

| | Net Omnibus Client Account | Gross Omnibus Client Account | Individual Client Account |
|--|--|--|---|
| How likely it is that porting will be achieved if we default? | There is a significant risk that porting will not be achieved in respect of positions and assets recorded in a Net Omnibus Client account. | There is a significant risk that porting will not be achieved in respect of positions and assets recorded in a Gross Omnibus Client account. | If you have satisfied all of the CCP's and back-up clearing member's conditions, porting is more readily facilitated in the event of our default. |

Additional features that may be available for Individual Client Accounts

Some CCPs may offer additional Individual Client Accounts with special features that have been designed to mitigate certain of the risks identified under “*Typical account structures*” above. Below is a high level overview of some of the common additional features. The extent to which any risks are mitigated by these additional features, if at all, will depend on the structures used by an individual CCP. Again, therefore, you must review the information provided by the CCPs in order to evaluate the actual risks to you and you may need some professional advice. It is likely that these additional features will only be available to certain types of clients that meet each CCP’s requirements. These additional features are not required by EMIR. Accordingly, not all CCPs will offer them nor are we obliged to facilitate access to them.

| Additional feature | High level overview of the additional feature | Which risks might this feature mitigate? |
|--------------------------------|---|--|
| Extended porting period | <p>In the event of our default, this feature has been designed to allow more time for porting to be achieved.</p> <p>For a set period of time (decided by the CCP) following our default, the CCP Transactions and assets that relate to you will continue to be held in an account which the CCP will identify as directly relating to you. If you find a back-up clearing broker, these CCP Transactions and assets will then be transferred to one of their client accounts. If you do not find a back-up clearing broker, they will be terminated and the close-out value returned to you.</p> <p>Where the CCP treats the Client as an interim Clearing Member, it is possible that the CCP may expect you to contribute to the default fund and may require additional margin, including variation margin, to be provided in respect of the CCP Transactions transferred to you.</p> <p>It is possible that you may have to set up such accounts as the CCP requires and have the ability to make payments directly to the CCP. The CCP may also have an additional list of requirements that you will have to satisfy to be able to use the extended porting period.</p> | <p>This may make porting more likely to be achieved.</p> |

| | | |
|---|--|---|
| Separate custody account (in the name of the CCP) for the assets that have been provided as margin for positions relating to you | <p>The assets relating to your positions are held in a separate account (in the CCP's name) at the CCP's custodian from any other assets held for the CCP.</p> <p>It is likely that you will have to enter into additional legal documentation with us and the CCP.</p> | <p>This may make porting more likely to be achieved.</p> |
| Ability for you to keep assets required as margin for positions relating to you in a custody account in your name. | <p>It is likely that you will have to enter into additional legal documentation and security arrangements with us and the CCP, and any custodian or settlement bank used under this structure.</p> <p>This additional feature may be restricted to certain types of non-cash assets.</p> <p>The custodian may be specified by or require the approval of the CCP.</p> <p>There will be additional operational requirements that you will need to meet in order to use this type of additional feature.</p> | <p>Transit Risk</p> <p>CCP Insolvency Risk</p> <p>This may make porting more likely to be achieved.</p> |
| Ability for you to post margin directly to the CCP. | <p>You may be able to post margin directly to the CCP rather than you posting it to us, and us in turn posting it on to the CCP.</p> <p>This form of account may require you to have an account with particular custodians and settlement banks. The custodians and settlement banks are likely to be specified by the CCP.</p> <p>You will have to enter into additional legal documentation with us and the CCP.</p> <p>There will be additional operational requirements which you will need to meet in order to use this type of additional feature.</p> | <p>Transit Risk</p> |

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.

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.

Nasdaq OMX:

<http://www.nasdaqomx.com/europeanclearing/accounts>

¹ Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories.

² The ESMA Questions and Answers on EMIR dated November 2013 confirm that EU clearing members of non-EU CCPs are not required to comply with Article 39 when offering client clearing on non-EU CCPs.

³ This meaning is derived from Article 39(9) EMIR.

⁴ This description is based on Articles 39(2) and 39(9) EMIR.

⁵ This description is based on Articles 39(3) and 39(9) EMIR.

⁶ This paragraph uses the term “is likely to” because client money might not form part of the client money pool where the circumstances set out in CASS 7A.2.4(3)(c) exist. The document does not accommodate the concept of sub-pools as proposed in FCA CP 13/5 but this section would also need to be updated to reflect them if they were used and a separate sub-pool disclosure document prepared.