

# Indirect Clearing Risk Disclosure Document

Deutsche Bank  
Wealth Management

## Introduction

Throughout this document references to "we", "our" and "us" are references to Deutsche Bank Luxembourg S.A. as provider of indirect clearing services (the **Direct Client**). References to "you" and "your" are references to you as our client (the **Indirect Client**).

We are providing indirect clearing services to you by clearing exchange traded derivatives (**ETD**) through Deutsche Bank AG, Frankfurt am Main (**DB AG**), as our clearing broker with an EU central counterparty (**CCP**). In that context, the Indirect Clearing RTS<sup>1</sup> requires that we offer you a choice of a basic omnibus indirect client account (also known as net omnibus indirect client account) (a **Basic Omnibus Indirect Client Account**) and a gross omnibus indirect client account (a **Gross Omnibus Indirect Client Account**) (as discussed under "*The types of accounts available*" in Part B below).

For full risk disclosure you should also refer to the disclosures that DB AG and the CCPs are required to prepare. You will find the Disclosure Documents of DB AG and the various CCPs under the following link: <https://www.db.com/company/en/media/emir-mifid2-and-mifir-clearing-member-risk-disclosure-document--direct-and-indirect-clearing-of-listed-derivatives-transactions.pdf>.

Whilst this document will be helpful to you when making the decision between Basic Omnibus Indirect Client Account and Gross Omnibus Indirect Client Account, this document does not constitute legal or any other form of advice and must not be relied on as such. 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 account offerings and those of our clearing broker and CCPs through which we clear ETD 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. Note that issues under laws other than Swiss laws may be relevant to your due diligence. For example, the law governing the CCP rules or related agreements; the law governing the client clearing arrangement between the clearing broker and us; the law of the jurisdiction of the CCP, the law of the jurisdiction of incorporation of the clearing broker; and the law of the location of any assets.

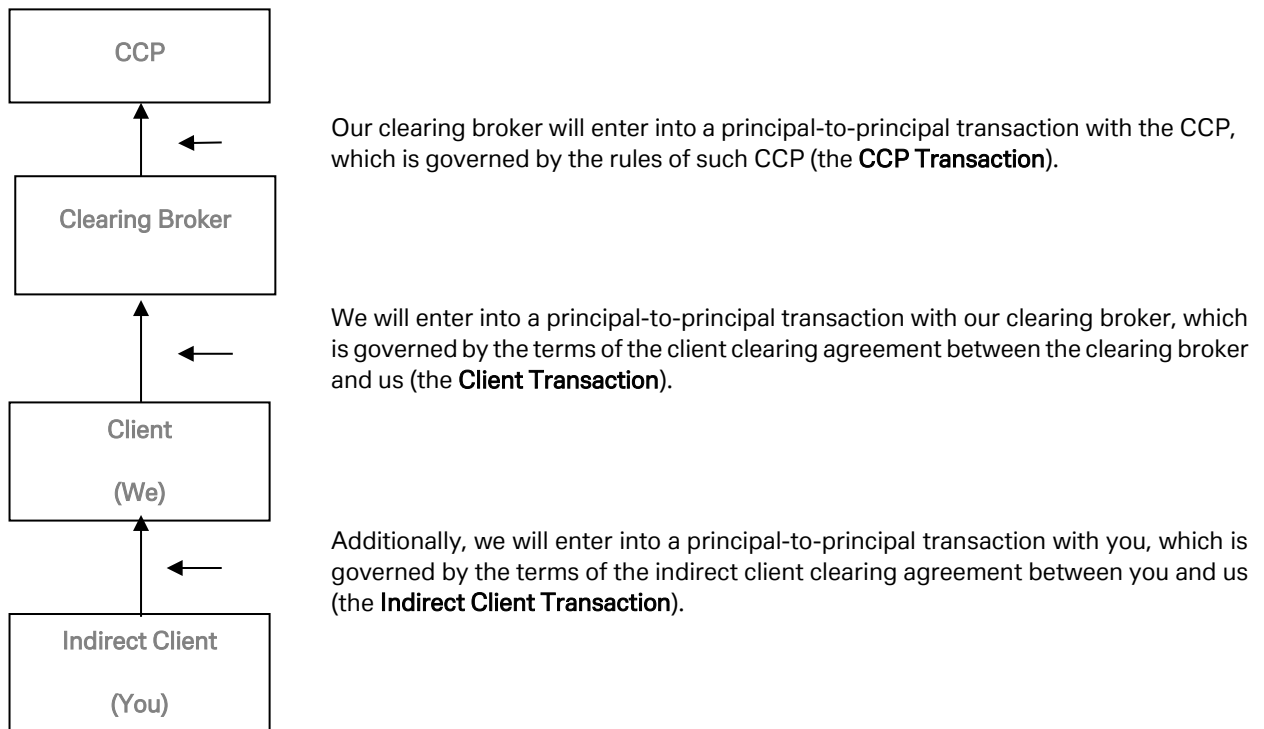
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<sup>1</sup> Commission Delegated Regulation (EU) No. 2017/2154 supplementing Regulation (EU) No 600/2014 with regard to regulatory technical standards on indirect clearing arrangements, and Commission Delegated Regulation (EU) No. 2017/2155 amending Commission Delegated Regulation (EU) No 149/2013 with regard to regulatory technical standards on indirect clearing arrangements.



## Part A: Indirect clearing on a “principal-to-principal” basis

When clearing ETD for you through DB AG as our clearing broker, we enter into two separate transactions. Additionally, our clearing broker will enter into a third transaction directly with the CCP.



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 our clearing broker and us and (ii) our clearing broker will take the opposite position in the CCP Transaction to the position it has under the related Client Transaction. Similarly, the terms of each Indirect Client Transaction are equivalent to those of the related Client Transaction, except that (i) each Indirect Client Transaction will be governed by an indirect client clearing agreement between you and us, and (ii) we will take the opposite position in the Client Transaction to the position we have under the related Indirect Client Transaction.

Under the terms of the client clearing agreement between our clearing broker and us, a Client Transaction will arise without the need for any further action by either our clearing broker or us, as soon as the CCP Transaction arises between our clearing broker and the CCP. Similarly, under the terms of the indirect client clearing agreement between you and us, an Indirect Client Transaction will arise without the need for any further action by either you or us, as soon as the Client Transaction arises between our clearing broker and us. Once all three of those transactions referred to above have been entered into, your transaction is considered to be "cleared".

As the principal to the CCP, our clearing broker is 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.

As the principal to the clearing broker, we are required to provide assets to the clearing broker as margin for the Client transactions that relate to you and to ensure that the clearing broker has as much margin as it requires at any time. We provide such margin assets (the "**Margin Assets**") to the clearing broker by pledging our own account held with our clearing broker to meet our margin obligations towards the clearing broker in respect of the Client Transactions.

Finally, as the principal to us, you are required to provide assets to us as margin for the Indirect Client Transactions and to ensure that we have as much margin as required at any time. To that end, you have entered into a standard form Pledge Agreement and Declaration of Assignment (the "**Pledge**") with us. Under such Pledge, you provide a pledge to us to secure any claim we have against you (including those arising from the Indirect Client Transactions) over all the assets held by you in your custody and cash accounts with us, as specified in the Pledge (the assets pledged to us as security for our claims against you under the Indirect Client Transactions are hereafter referred to as the "**Client Assets**"). We will ask you to keep a sufficient amount of



Client Assets in your custody and cash accounts with us to ensure that our claims against you under the Indirect Client Transactions are fully covered and, to that effect, we may issue margin calls to you as further agreed in the Pledge and the documentation governing the Indirect Client Transactions. We do not use the Client Assets as collateral to meet our own margin requirements towards the clearing broker with respect to the Client Transactions, but use other assets on our books for these purposes as Margin Assets (see above).

#### What if you want to transfer your Indirect Client Transactions to another Direct Client?

There may be circumstances where you wish to transfer some or all of your Indirect Client Transactions to another Direct Client or another clearing broker on a business as usual basis (i.e. in the absence of us having been declared in default by a clearing broker). We are not obliged to facilitate this under the Indirect Clearing Rules but we may be willing to do so subject to our ability to transfer the Client Transactions to which your Indirect Client Transactions relate to another direct client designated by you and willing to accept such Indirect Client Transactions and/or the related Client Transactions. Therefore you will need to find another direct client or clearing broker that is willing to accept the Indirect Client Transactions and/or the related Client Transactions.

It may be easier to transfer Indirect Client Transactions and Client Transactions that are recorded in a Gross Omnibus Indirect Client Account than those recorded in a Basic Omnibus Indirect Client Account (both types of account being described in more detail in Part B) for the same reasons as set out below under "*Will the Client Transactions relating to you be automatically ported to a back-up clearing broker or back-up Direct Client?*"

#### What happens if we are declared to be in default by a clearing broker?

If we are declared to be in default by a clearing broker, there are two possibilities with respect to the Client Transactions:

- i. with respect to **Gross Omnibus Indirect Client Accounts**, the clearing broker will, at your request, try to transfer (**port**) to another clearing broker (a **back-up clearing broker**) or another Direct Client (a **back-up Direct Client** and together with the back-up clearing broker a **back-up entity**), the Client Transactions related to you. The porting process will involve a close out (with us) and a re-establishment (with the back-up entity) of the Client Transactions, or a transfer of the open Client Transactions from us to the back-up entity (and, as the case may be, a transfer of the open CCP Transactions from the clearing broker to another clearing broker) ; or
- ii. if porting cannot be achieved with respect to Gross Omnibus Indirect Client Accounts and in any default with respect to Basic Omnibus Indirect Client Accounts, the clearing broker will terminate and liquidate the Client Transactions and CCP Transactions that relate to you and, to the extent that the clearing broker cannot validly transfer the liquidation proceeds directly to you, the clearing broker will transfer the liquidation proceeds to us on your behalf (see "*What happens if porting is not achieved*" below).

The porting process will differ depending on the clearing broker but it is likely to involve a close-out (with us) and a re-establishment (with the back-up entity) of the Client Transactions or a transfer of the open Client Transactions and related assets from us to the back-up clearing entity. In some cases clearing brokers 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 clearing broker (the security interest) but in other cases where clearing brokers can rely on the Indirect Clearing RTS and local legislation, this may not be necessary.

#### Will the Client Transactions relating to you be automatically ported to a back-up entity?

No. The type of account and level of segregation you choose will have an impact on the ability to port Client Transactions to a back-up entity upon our default.

#### Choice of **Basic Omnibus Indirect Client Account**:

If you choose a Basic Omnibus Indirect Client Account (described in more detail in Part B), porting will not be available.

#### Choice of **Gross Omnibus Indirect Client Account**:



If you choose a Gross Omnibus Indirect Client Account, there will be a number of conditions which must be satisfied before the Client Transactions that relate to you can be ported to a back-up entity. These conditions will be set by the clearing broker and will include obtaining your consent. In all cases you will need to have a back-up entity that has agreed to accept the Client Transactions. You may wish to appoint a back-up entity upfront as part of your clearing arrangements but the back-up entity is unlikely to be able to confirm that it is willing to accept the Client Transactions until the default occurs. The back-up entity may also have conditions that they require you to meet. You may also be able to agree with the clearing broker that it may choose a back-up entity on your behalf. If you have not appointed a back-up entity prior to our default, or agreed with the clearing broker that it may appoint one on your behalf, then this may mean that porting is less likely to occur.

If porting is achieved, your Indirect Client Transactions with us will terminate in accordance with our indirect client clearing agreement. We would expect your back-up entity to put in place new indirect client transactions/client transactions between itself and you. However, note that the method how the porting is implemented depends (i) on the documentation entered into between you and us and (ii) on the documentation you enter into with your back-up entity.

### What happens if porting is not achieved?

Each clearing broker 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 Client Transactions. This period of time will vary across clearing brokers. If you want to port your Client Transactions (where possible), you will need to notify the clearing broker and show that you can satisfy the other conditions within this period.

Otherwise, the clearing broker will terminate the Client Transactions and perform a close-out calculation in respect of them in accordance with the client clearing agreement. If there is an amount owed by the clearing broker in respect of the Client Transactions, the clearing broker will attempt to pay such amount directly to you if you have chosen a Gross Omnibus Indirect Client Account. If the clearing broker does not succeed in this attempt or if you have chosen a Basic Omnibus Indirect Client Account, the clearing broker will pay it to us (or our insolvency practitioner) for the account of our clients.

If the clearing broker terminates the Client Transactions, then the Indirect Client Transactions between you and us are also likely to terminate. The termination calculations in respect of those Indirect Client Transactions will be performed in accordance with the indirect client clearing agreement between you and us and such calculations will likely mirror those performed by the clearing broker in respect of the Client Transactions. If you are due a payment from us as a result of the close-out calculations in respect of our Indirect 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 clearing broker.

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

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

### The types of accounts available

Reference to accounts means the accounts in the books and records of our clearing broker. The clearing broker uses these accounts to record the Client Transactions that we enter into in connection with the clearing of your related Indirect Client Transactions.

There are two basic types of indirect client accounts available – **Basic Omnibus Indirect Client Accounts** and **Gross Omnibus Indirect Client Accounts**.

### Basic Omnibus Indirect Client Account

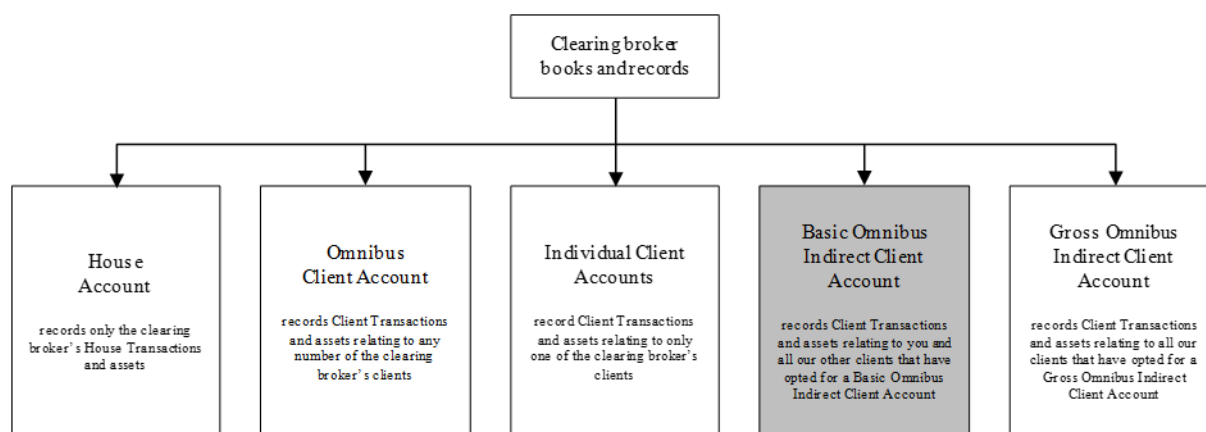
Under this account type, at the level of the clearing broker, the Client Transactions relating to you are segregated from:

- any transactions the clearing broker has cleared for its own account (the clearing broker's **House Transactions**) and any of their assets;



- any Client Transactions (including corresponding assets in the clearing broker's accounts) relating to us or the account of one of the clearing broker's other Direct Clients (regardless of whether they/we have opted for an individual client account or omnibus client account);
- any Client Transactions (including corresponding assets in the clearing broker's accounts) relating to any clients of the clearing broker'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 Client Transactions (including corresponding assets in the clearing broker's accounts) relating to any of our clients or any clients of the clearing broker's other clients that have opted for a Gross Omnibus Indirect Client Account.

However, the Client Transactions that relate to you will be commingled with the Client Transactions relating to any of our other clients that have also opted for a Basic Omnibus Indirect Client Account and which are recorded in the same Basic Omnibus Indirect Client Account.



The clearing broker will agree not to net the Client Transactions relating to you with its House Transactions or any Client Transactions not recorded in the same Basic Omnibus Indirect Client Account.

However, both we and the clearing broker net the Client Transactions that are recorded in the same Basic Omnibus Indirect Client Account.

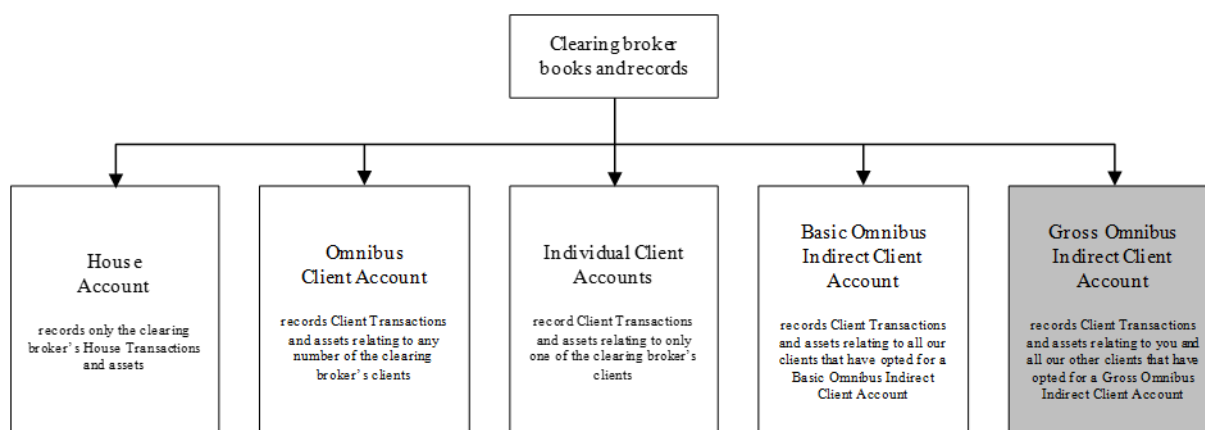
### Gross Omnibus Indirect Client Account

Under this account type, at the level of the clearing broker, the Client Transactions relating to you are segregated from:

- any House Transactions and any of their assets;
- any Client Transactions (including corresponding assets in the clearing broker's accounts) relating to us or the account of one of the clearing broker's other Direct Clients (regardless of whether they/we have opted for an individual client account or omnibus client account);
- any Client Transactions (including corresponding assets in the clearing broker's accounts) relating to any of our clients or clients of the clearing broker's other clients that have opted for a Basic Omnibus Indirect Client Account; and
- any Client Transactions (including corresponding assets in the clearing broker's accounts) relating to any clients of the clearing broker'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.

However, the Client Transactions that relate to you will be commingled with the Client Transactions relating to any of our other clients that have also opted for a Gross Omnibus Indirect Client Account and which are recorded in the same Gross Omnibus Indirect Client Account.





The clearing broker will agree not to net Client Transactions relating to you with its House Transactions, the Client Transactions relating to us or the clearing broker's other Direct Clients, the Client Transactions of the clearing broker's other Direct Clients' clients or any Client Transactions relating to our other clients (regardless of whether they are recorded in the same Gross Omnibus Indirect Client Account).

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

- whether you choose a Basic Omnibus Indirect Client Account or a Gross Omnibus Indirect Client Account (as discussed under "*The types of accounts available*" above);
- 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 the clearing broker, us and the CCP.

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

### Type of assets provided as margin for the Client Transactions

As is market practice, we will decide what types of assets to accept from you as margin for your Indirect Client Transactions. This will be set out in the indirect client clearing agreement between you and us. What we will accept from you as margin for the Indirect Client Transactions (the Client Assets) may not be the same type of assets that we provide to the clearing brokers as margin (the Margin Assets).

### Impact of providing margin to us on a security interest basis

As a result of the structure of how we hold margin assets on your behalf through the clearing chain (see "*Indirect clearing on a "principal-to-principal" basis*" above), you retain full legal and beneficial ownership of the Client Assets. Such assets are booked on a cash or custody account that you hold with us and these assets still belong to you. However, your power of disposal could in some circumstances be limited as you have granted us a pledge as a security interest with respect to such assets.

We may enforce the pledge if you default in your obligations to us. Absent the exercise of any right of use by us, only at the point of such enforcement would we be entitled, to the extent agreed in the Pledge as the relevant pledge agreement between you and us, to exercise a right of private sale by transferring title in such assets or their liquidation value to us or a third party in exchange for their market value, which may be set-off against the debt owed to us. We will record in our books and records that we have received such assets from you with respect to the applicable Indirect Client Transaction. To the extent that the market value of the pledged assets exceeds the debt owed to us, we must return, after completion of such enforcement, the excess to you.



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

Excess margin is any amount of assets we require from you or you provide to us in respect of an Indirect Client Transaction that is over and above the amount of assets the clearing broker requires from us in respect of the related Client Transaction.

Under the Indirect Clearing RTS, excess margin should be treated in accordance with the terms of the indirect client clearing agreement between you and us. As regards the Client Assets provided as excess margin, you will retain title to such Client Assets and your interests will be treated in the same way as any other cash or securities held on accounts with us, which are pledged under the Pledge



## Part 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 arise in relation to both Basic Omnibus Indirect Client Accounts and Gross Omnibus Indirect Client Accounts because:

- i. you will not have any rights directly against the CCP; except for clearing broker-specific porting solutions described earlier and the comments below under "*Margin rights*", you will not have any rights directly against the clearing broker; and you will only have contractual claims against us (i.e. rather than being able to recover particular assets as owner)
- ii. our insolvency proceedings are most likely to be insolvency proceedings opened and controlled by Commission de surveillance du secteur financier (CSSF), the Luxembourgish financial supervision authority (although it is possible that CSSF could order other measures in respect of us). In such insolvency proceedings you will generally not be able to take any action against us. All powers in respect of our insolvent estate are with the insolvency administrator of our insolvent estate and all actions have to be taken against or with the consent of the insolvency administrator (which can be a time consuming process with an uncertain outcome); and
- iii. any stage of a cleared transaction (e.g. Indirect Client Transactions, Client Transactions and porting) may be challenged by the insolvency liquidator in a claw-back action before the competent Swiss court if, broadly speaking, it was not on arm's length terms and therefore classified as an impairment of creditors. If successful, the court has broad powers to unwind or vary all of those stages.

Please also note that:

- i. 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;
- ii. 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 relevant clearing broker and the CCP in this respect.

### Insolvency of clearing brokers, CCPs and others

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 clearing broker, the CCP, a custodian or a settlement agent.

In relation to a clearing broker or CCP insolvency, broadly speaking, our (and therefore your) rights will depend on the law of the country in which the clearing broker or the CCP is incorporated and the specific protections that the clearing broker or the CCP has put in place. You should review the relevant disclosures carefully in this respect and take legal advice to fully understand the risks in these scenarios. In addition, please note the following:

- i. we expect that an insolvency official will be appointed to manage the clearing broker or the CCP. Our rights against the clearing broker or the CCP will depend on the relevant insolvency law and/or that official;
- ii. If it is not possible to port Client Transactions and/ or CCP Transactions and related margin, it would be reasonable to expect that they will be terminated at the level of the clearing broker and/ or the CCP. The steps, timing, level of control and risks relating to that process will depend on the clearing broker and/ or the CCP, the applicable rules or agreements 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 clearing broker or the CCP. Subject to the bullet points below, it is likely that we





will receive back only a percentage of assets available depending on the overall assets and liabilities of the clearing broker or the CCP;

- iii. it is unlikely that you will have a direct claim against the clearing broker or the CCP because of the principal-to-principal model described in Part A; if such direct claim / payment were agreed between you, us and the clearing broker, in insolvency proceedings initiated against us, such contractual arrangement would not be enforceable under Swiss bankruptcy laws, because it would be a breach of the principle that all the assets and liabilities of the insolvent debtor form part of the insolvency estate; in Swiss insolvency proceedings, claims forming part of the bankruptcy estate can no longer be validly discharged by payment to the debtor, but must be paid into the bankruptcy estate, and the insolvent debtor can no longer dispose of its assets (i.e. any claim we have against the clearing broker belongs to our insolvency estate and the clearing broker may not discharge its obligation by paying such amount directly to you);
- iv. under the indirect client clearing agreement, Indirect Client Transactions will terminate at the same time as the matching Client Transactions unless our clearing agreement with the clearing broker provides otherwise;
- v. the termination calculations in respect of those Indirect Client Transactions will be performed in accordance with the indirect client clearing agreement between you and us and such calculations will likely mirror those performed by the clearing broker in respect of the Client Transactions;
- vi. if you are due a payment from us as a result of the termination of the Indirect Client Transactions, the amount due from us to you will be owed in addition to any claims you have in respect of the return of the Client Assets held by us;
- vii. if we have a claim against you resulting from the termination of the Indirect Client Transactions, we may liquidate or foreclose into the Client Assets to satisfy such claim; where the proceeds resulting from the liquidation of the Client Assets exceed our claims against you resulting from the Indirect Client Transactions, you may claim from us the excess by which the liquidation proceeds exceed our claim (see *"If porting does not occur, will your entitlements in positions and margin assets be segregated from our insolvency estate?"* above); and
- viii. you will not have any claims in respect of Margin Assets, but you only have an entitlement to the return of any Client Assets in excess of any claims we may have against you, i.e. after we complete any private sale of Client Assets pledged to us under the Pledge (see *"What happens if porting is not achieved?"* above).



## Margin rights

On the basis that you provide assets to us by way of security interest, 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.

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.

We do not expect the above position to change materially if you have a Basic Omnibus Indirect Client Account or Gross Omnibus Indirect Client Account.

## Close-out netting

If we default and the clearing broker cannot port the Client Transactions (e.g. because a back-up entity cannot be found), then we would expect it to terminate and net our Client 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 clearing broker – e.g. assets on an Gross Omnibus Indirect Client Account relating to you could be netted with our house or another indirect client account at the clearing broker. There is a risk that this netting across accounts could happen automatically as a result of ordinary Swiss insolvency law or the automatic termination may be agreed as part of the contractual arrangement.

A similar risk occurs between us and you in relation to the Indirect Client Transactions. It is most likely to materialise in a pre-porting period during which Swiss law may automatically set off Indirect Client Transactions relating to one clearing broker with Indirect Client Transactions relating to another. This risk arises regardless of what you and we may provide for in our clearing documentation. Whilst the resulting termination amount should represent our net exposure to each other, it will make porting difficult or impossible. However, as a result of the structure how we hold margin assets on your behalf through the clearing chain (see "*Indirect clearing on a principal-to-principal basis*" above), the Client Assets will not be part of such set off or netting.

## Porting – limitations

As mentioned above (under Part One A "*What happens if porting is not achieved?*"), except in specific (e.g. physically segregated) structures, a clearing broker only owes us (not you) obligations in relation to Client Transactions.

As a result, when these contracts are transferred to a back-up entity, 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 Indirect Client Transactions with this back-up entity.

## Mismatch of CCP/Client Transactions and assets

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

