

# Information document

Information document pursuant to Art. 39 (7) of Regulation (EU) No. 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) on the material legal framework conditions for customer account segregation and pursuant to Art. 5 (1) of Delegated Regulation (EU) 2017/2154 of the Commission of 22 September 2017 on the addendum to Regulation (EU) No. 600/2014 (MiFIR-RTS) as well as Delegated Regulation (EU) 2017/2155 of the Commission of 22 September 2017 for amendment of Delegated Regulation (EU) No. 149/2013 with regard to the technical regulation standards for indirect clearing arrangements on the various degrees of segregation and risks relating to customer accounts.

Dated December 2017

Life is full of ups and downs.  
We're there for both.



# Table of contents

## PART 1

- A. BACKGROUND INFORMATION ON CLEARING
- B. DIFFERENCES BETWEEN ACCOUNT SEGREGATION MODELS
- C. EXPLANATORY NOTES ON RELEVANT SECTIONS OF INSOLVENCY LAW
- D. SUPPLEMENTARY EXPLANATORY NOTES ON INDIRECT CLEARING

## PART 2

OVERVIEW OF MATERIAL DIFFERENCES BETWEEN THE VARIOUS CUSTOMER ACCOUNT SEGREGATION MODELS OFFERED BY CCPS

# INTRODUCTION

---

## Definitions

Any reference to “Bank”, “we and “us” in this document means UniCredit Bank AG. Any reference to “CCP” or central counterparty, “clearing member” and “customer” is to be understood as a reference to a central counterparty (CCP), a clearing member and a customer as contemplated by EU Regulation EMIR<sup>1</sup>, any reference to “indirect customer” means an indirect customer as contemplated by the MiFIR-RTS, and any reference to “you” is to be understood in your capacity as customer and/or indirect customer.

“Clearing” in this context means the processing and settlement of derivatives contracts via CCPs, enlisting the services of a clearing member via which the customer or indirect customer obtains access to the CCP.

## Background and purpose of this document

Pursuant to Art. 39 (5) EMIR, clearing members must grant their customers the option when clearing derivatives contracts via a CCP to choose between two different customer account segregation models, namely individual customer account segregation on the one hand, and omnibus customer account segregation on the other (cf. Section B below in this regard, in which the various customer account segregation models are described in greater detail).

In addition, in the case of indirect clearing (cf. Section D below, in which indirect clearing is further described), pursuant to Art. 5 (1) MiFIR-RTS, for indirect clearing of derivatives contracts via a CCP, customers must grant their indirect customers the option to choose between a net omnibus customer account segregation and a gross omnibus customer account segregation (cf. Section D below in this regard). The clearing member is accordingly obliged to offer its customer the option to select between these two omnibus customer account segregation models.

This information document contains the explanatory notes required by EMIR and MiFIR-RTS on the forms of account segregation offered for clearing of derivatives accounts:

Information on the level of protection and the material legal conditions for the respectively offered degree of account segregation, including information on relevant sections of insolvency law of the jurisdiction in question. We will inform you separately as far as the costs associated with the respective customer account segregation model offered are concerned.

<https://www.hypovereinsbank.de/content/dam/hypovereinsbank/cib/pdf/HVB-pricing-guidelines.pdf>

The current version of this information document from time to time as well as the document providing details of the costs involved are available for download from our website.

---

<sup>1</sup> Regulation (EU) No. 648/2012 of 4 July 2012 concerning OTC derivatives, central counterparties and trade repositories.

**What do you need to bear in mind as a customer when selecting the customer account segregation model and when reading this document?**

Before you decide on a certain customer account segregation model, you should use this information document as well as the information made available by the relevant CCPs to obtain an overview of the customer account segregation models on offer, the material differences existing in this regard and the general legal terms and conditions. If you require any supplementary information or legal advice, you will need to engage the services of third parties.

This document is intended to provide you with guidance but does not constitute legal or any other consultancy or advice and should not be perceived as such either. In particular, this presentation necessary under supervisory law does not give rise to any advisory obligations either on the part of the Bank to you as a customer or indirect customer. This document describes the material legal foundations, the effects of which will vary, depending on the facts of each individual case. In addition, it must be borne in mind that the specific design and structure of the customer account segregation model offered necessarily depends on the respective central counterparty (CCP) via which a derivatives contract is cleared. Against this backdrop, in making your decision concerning the choice of the customer account segregation model, you may need further information not contained in this document. It is your responsibility to carefully inspect the relevant parameters, the contractual documentation and all other information made available for you on each of the customer account segregation models offered by us of the CCPs as well as the information on or of the various CCPs via which we clear the derivatives contracts for you. It may be advisable for you to enlist the services of expert consultants. By way of precaution, we wish to advise that the Bank will assume **no liability** for the correctness and completeness of this information document.

## A. BACKGROUND INFORMATION ON CLEARING

---

When clearing via a CCP, in principle a distinction is drawn between two models, one being the “Agency” model and the other the “Principal-to-Principal” model.

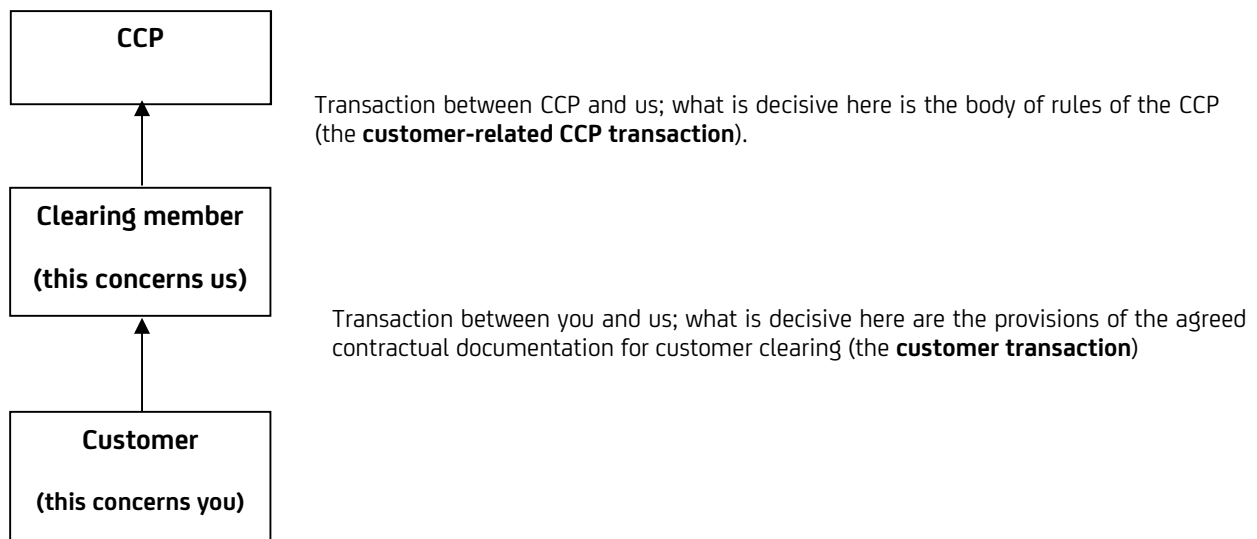
On the European market, most CCPs carry out clearance based on the “Principal-to-Principal” mode; other models are not dealt with in this document.

A system referred to as indirect clearing is not the subject matter of this presentation in Sections A to C (see Section D in this regard).

### The “Principal-to-Principal” clearing model

If the Bank processes a transaction for a customer via a CCP using the “Principal-to-Principal” model in the function as a clearing member, as a rule this will lead to two legal relationships.

One is a legal relationship between the customer and the Bank and the other applies between the Bank and CCP. The legal relationship between the customer and the Bank is based on principle on contractual documentation concluded between the customer and the Bank for customer clearing (customer clearing agreement), while the legal relationship between CCP and the Bank is based on the decisive body of rules of the CCP in question.



As part of clearing within the scope of the principal-to-principal model, based on the CCP body of rules applicable from time to time and on the agreement concerning customer clearing between the Bank and the customer, two transactions arise that are identical in content but mirror images (i.e. comprising opposite positions): One transaction arises between the customer and the clearing member (customer transaction) and a transaction corresponding to the relevant transaction arises between the clearing member and the CCP (customer-related CCP transaction). These transactions identical in content but as mirror images are hereinafter also referred to as “transactions corresponding to one another”.

As a contracting partner (“Principal”), the Bank is responsible to the CCP for hedging the risks arising from the customer-related CCP transaction by providing assets as collateral. The Bank must also ensure - possibly through additional contributions - that the total value of the items of collateral made available to the CCP with regard to the customer-related CCP transactions covers the total risk of the CCP arising from the relevant customer-related transactions at all times. In the process, in the case of the collateral and/or contribution payments to be provided, CCPs regularly distinguish between a contribution payment made in advance (initial margin) and the subsequent contribution payments geared to the constantly

changing cash value of the customer-related CCP transactions (variation margin). The assets to be provided by the Bank to the CCP for performance of the initial and variation margin (collectively referred to as margins) must meet the suitability criteria stipulated by the respective CCP from time to time.

On the basis of the customer clearing agreement, the Bank, in turn, will request items of collateral (margins) for the customer transactions from the customer. In certain circumstances, the Bank may call for further items of collateral or a higher margin from the customer than that requested by the CCP from the Bank with regard to the customer-related CCP transactions. In this case, the value of the assets provided by a customer to the Bank as a margin for customer transactions may exceed the value of the assets provided by the Bank to the CCP as a margin for the relevant customer-related CCP transactions (surplus margin payments). With regard to such surplus margin payments, the Bank is subject to special requirements (cf. below in this respect)

Should the assets provided by the customer as a margin not meet the requirements of the CCP, then such assets - possibly in accordance with the agreements entered into between the customer and the Bank - may be replaced by the Bank with assets that meet the requirements of the CCP.

In particular if the assets that the customer transfers in payment of the margin to the Bank by way of full transfer of rights (cf. below in this regard), assets may be exposed to the risk of the Bank defaulting before such assets are forwarded to the CCP and booked to the customer account with the relevant CCP ("pass-through risk"). In the event of such a default within the period from the transfer of the assets to the Bank until they are passed on and booked to the customer account opened to this end with the CCP the assets would not be covered by the protection afforded by the relevant customer account segregation model selected by the CCP. You will find further explanatory notes on this subject in the Section "What happens if the Bank defaults according to the body of rules of a CCP?"

In practice, such a pass-through risk will only exist in exceptional cases. After all, the very fact alone that the requirements of the CCP may call for payment of an intra-day margin at very short notice and at points in time outside the customer's usual office hours, bank will frequently pay the margin requested by the CCPs initially from their own resources and will only request the customer for assets at a later stage.

**What should be borne in mind if the customer wishes to transfer (port) its customer-related CCP transactions to another clearing member?**

The customer may have an interest in transferring some or all of its customer transactions in the ordinary course of its business (i.e. without the Bank having defaulted in accordance with the body of rules of the CCP) to some other clearing member (non-default-related transfer/porting). Such a non-default-related transfer must be distinguished from a transfer on default of the clearing member as contemplated by Art. 48 EMIR. In particular, under EMIR there is no obligation for CCPs or clearing members to allow such a non-default-related transfer to be made. Whether and in what situations a non-default-related transfer can be carried out therefore depends on the arrangements made in this regard between the customer and the Bank as well on the body of rules of the CCP possibly affected by such a transfer. The customer willing to make the transfer must additionally find a clearing member who is prepared to assume the customer-related CCP transactions and customer transactions and to make the necessary arrangements with that clearing member for the assumption and continuation of the customer-related CCP transactions and customer transactions. The details in this context depend on the decisive agreements between the customer and the new clearing member as well as the relevant bodies of rules of the CCPs concerned, if applicable.

As a rule, a non-default-related transfer of customer-related CCP transactions booked to an omnibus customer account and the relevant customer transactions will be more difficult than in the case of transactions booked to a single customer account. You will find further particulars below on the related question "Are customer-related CCP transactions automatically transferred to a replacement clearing member?"

**What happens if the clearing member defaults according to the body of rules of a CCP?**

If a CCP, according to its body of rules, identifies the default of the clearing member, then the CCP basically has two options to deal with the customer-related CCP transactions and the assets made available as a margin to this end:

- With the approval of, or if requested by the customer, the CCP may attempt to transfer (port) the customer-related CCP transactions and the assets made available as a margin to this end to some other clearing member (substitute clearing member).
- If a transfer is not possible - for whatever reasons - the CCP will terminate the customer-related CCP transactions (see below: "What happens if a transfer (porting) is not possible?").

The process for carrying out a transfer of customer-related CCP transactions may differ, depending on the CCP in question. In some cases, the transactions can be transferred along with the relevant margin from the past account set up by the Bank with the (subject to the degree of segregation selected by the customer) to another account set up by the substitute clearing member with the CCP and the relevant degree of segregation. In other cases, the transactions are terminated and settled in order to use the settlement proceeds to initiate new customer-related CCP transactions of the substitute clearing member.

To facilitate the transfer of customer-related CCP transactions, some CCPs, - depending on the jurisdictions involved in each individual case – provide for the clearing member to call for special collateral rights relating to entitlements to return transfers concerning the assets provided as a margin to the CCP.

**Are customer-related CCP transactions and assets automatically transferred to a substitute clearing member?**

No, a number of conditions need to be met before the customer-related CCP transactions and the assets provided as a margin for these can be transferred to a substitute clearing member. These conditions are specifically defined in the body of rules of the relevant CCP. A key prerequisite is the approval of the transfer by the customer.

Moreover, in any event the customer will require a substitute clearing member who, in turn, has agreed to the transfer of the customer-related CCP transactions. The customer can already determine a substitute clearing member in advance. However, generally this substitute clearing member will not be able to firmly commit itself to an assumption of customer-related CCP transactions already before the original clearing member has defaulted but will make such assumption dependent on the fulfilment of certain prerequisites. There may also be a possibility for customers to agree directly with the relevant CCP (depending on its body of rules) that it may determine a substitute clearing member if the actual clearing member defaults.

It is less probable that a transfer of customer-related CCP transactions on default of the clearing member can take place if a customer has not determined a substitute clearing member in advance and has not made an arrangement with the respective CCP on the determination of a substitute clearing member either.

If a transfer takes place, then the customer-related CCP transactions to be transferred will generally be terminated in accordance with the provisions of the underlying customer clearing agreement. It can safely be assumed that in order to continue the customer-related CCP transactions transferred to a substitute clearing member, the customer transactions corresponding to the customer-related CCP transactions will need to be newly established between such substitute clearing member and the customer. The details in this context depend on the decisive agreements between the customer and the substitute clearing member as well as the relevant bodies of rules of the CCPs concerned, if applicable.

Whether and to what extent customer-related CCP transactions and associated assets provided as a margin can be transferred to a substitute clearing member if the Bank defaults will also depend on the customer account segregation model selected by the customer:

In the case of omnibus customer account segregation (as described in greater detail in Section B), a transfer of the customer-related CCP transactions booked to the relevant omnibus customer account and the margin made available to this end will generally be possible only if all customers whose transactions are booked to the relevant omnibus account reach an

agreement on the same substitute clearing member and on the transfer to such substitute clearing member. In addition, the substitute clearing member concerned must also agree to the assumption of all customer-related CCP transactions booked to omnibus customer account to be transferred. Against this backdrop, it can safely be assumed that a transfer in the case of the omnibus customer account segregation can be carried out successfully less frequently than in the case of an individual customer account segregation.

**What happens if a transfer (porting) is not possible?**

Each CCP is entitled to determine a period of time within which a transfer must have been successfully executed (transfer period). If the transfer does not take place within this period, then the CCP will be entitled to actively restrict its risks in connection with the customer-related CCP transactions. This may include a liquidation of positions and assets received by way of a margin. The transfer period is stipulated in the body of rules of the CCP and can vary from one CCP to another.

If a customer wishes a transfer of customer-related CCP transactions, then that customer must submit a corresponding declaration to the CCP along with evidence that the remaining requirements for transfer can be fulfilled within the transfer period determined by the CCP. The details, including the form of declaration and evidence of fulfilment of the prerequisites, are provided in the body of rules of the relevant CCP.

If a customer submits no declaration, then the CCP will terminate the customer-related CCP transactions in accordance with the body of rules of the CCP and net the individual items to create a uniform receivable for settlement (termination and final statement). If the termination and final statement give rise to a payment obligation of the CCP, the latter may, if it is aware of the identity of the customer and can determine the pro-rata share attributable to the customer, the CCP can disburse this amount directly to the customer. If the CCP is not aware of the identity of the customer entitled and/or it cannot determine to what share of the claim for settlement the customer is entitled, the CCP will pay the amount calculated to the Bank (or its receiver in insolvency) for the customer's account.

The probability of a CCP being able to disburse such an amount directly to the customer is substantially higher if the customer selects an individual customer account segregation model (described in greater detail in Section B), as in this case, as a rule the CCP will know the customer's identity and the extent of the amounts to which it is possibly entitled on termination and drawing up the final statement.

If the CCP terminates the customer-related CCP transactions, then as a rule the customer transactions corresponding to these will likewise be terminated and netted to create a uniform claim for settlement. In this case, the termination and final statement will be handled in accordance with the customer clearing agreement. In the process, as a rule the calculations and evaluations will be assumed that the CCP carried out with regard to the customer-related CCP transactions. Should the customer have a claim for settlement on the Bank after termination and the final statement being rendered, any payments made directly by CCP to the customer will be deducted from such claim for settlement.



## B. DIFFERENCES BETWEEN THE ACCOUNT SEGREGATION MODELS

### Available account types

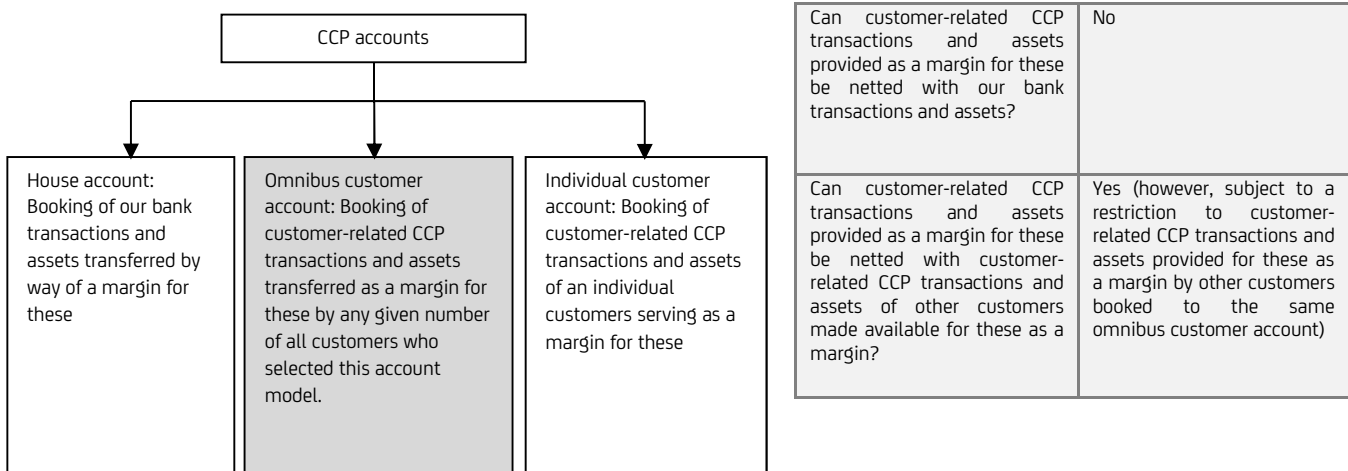
If, in this information document, reference is made to accounts or account types, this always means the accounts opened by the Bank for customer-related CCP transactions with the CCP and managed by the latter. The CCP keeps these accounts in order to book the customer-related CCP transactions and the assets made available by way of a margin for this purpose.

There are two different basic forms of account types: omnibus customer accounts and individual customer accounts. Moreover, some CCPs offer sub-variants of these two customer account models.

A characteristic feature of all account segregation models is that bank transactions are segregated from customer transactions: Transactions that we (as a bank) clear for our own account (bank transactions) and assets that we provide as a margin for these transactions are segregated in the account management of the CCP from customer-related CCP transactions (including margin) that we clear for customers.

### Omnibus customer account segregation<sup>2</sup>

In the case of the omnibus customer account segregation model, customer-related CCP transactions and assets provided as a margin to this end are delineated from bank transactions and/or booked separately from these. However, at the same time, in the case of an omnibus customer account, all customer-related CCP transactions (including the assets provided for these by way of a margin) are booked by those customers of a bank who opted for the omnibus customer account.



In the case of the omnibus customer account segregation model, CCPs must ensure that the customer-related CCP transactions booked to the relevant omnibus customer account cannot be netted with bank transactions or any other customer-related CCP transactions not booked to the same omnibus customer account. This also applies accordingly to the assets made available for these by way of a margin.

However, the customer-related CCP transactions booked to the same omnibus customer account and assignable to various customers can be netted with one another (if the prerequisites for such netting apply in accordance with the CCP's body of

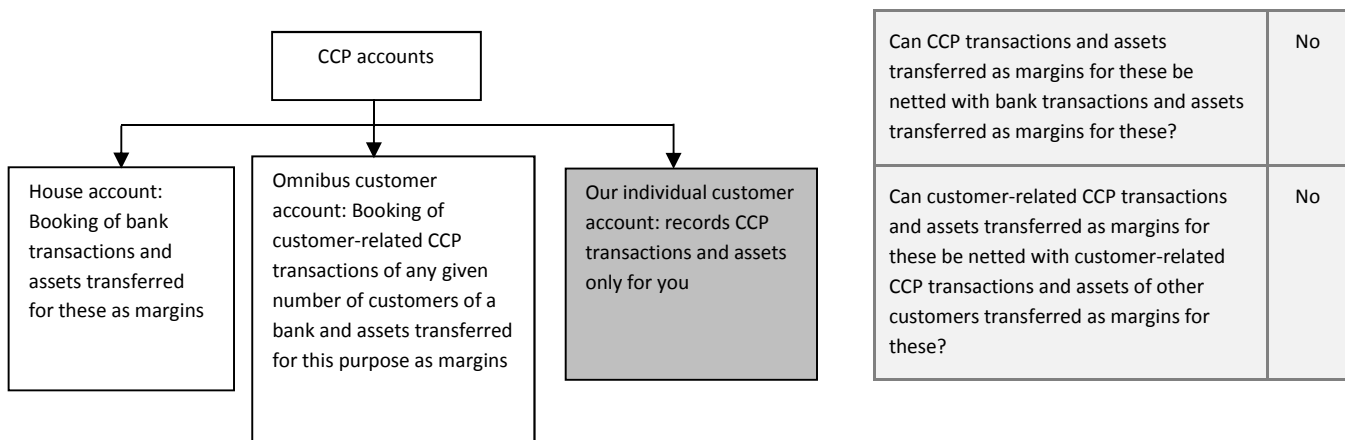
<sup>2</sup> EMIR Regulation Article 39 (2). read in conjunction with Article 39 (9)

rules). This accordingly also applies to assets booked to the same omnibus customer account, no matter for which of the CCP customer transactions booked hereunder they were transferred as a margin.

We wish to point out that we treat other companies from our Group exactly the same as our customers when it comes to fulfilment of the EMIR requirements for clearing and the account segregation models. This means that our Group member companies also select between the various account forms and therefore can also use the same omnibus customer account with other customers.

### Individual customer account segregation

Under this account model, the customer-related CCP transactions assignable to a certain customer and the assets provided for this purpose as a margin are not only booked separately from the bank transactions but also from the customer-related CCP transactions assignable by all other customers as well as the assets provided as a margin to this end.



CCPs must ensure in the case of individual customer account segregation - and in the case of the omnibus customer account segregation - that the customer-related CCP transactions booked to the relevant individual customer account as well as the assets transferred for this purpose as margins cannot be netted with the bank transactions and the assets made available for these as margins.

In addition, in the case of this customer account model, - unlike the omnibus account model - CCPs must also ensure that the customer-related CCP transactions and the assets made available for these as margins cannot be netted with customer-related CCP transactions booked to other individual customer accounts or an omnibus customer account along with the assets of other customers made available for this purposes as margins.

### **Other aspects to be taken into account with the customer account segregation model and the associated level of protection for assets made available as margins**

The level of protection for assets made available as margins depends on a number of factors. These include the following:

- The decision in favour of an omnibus customer account or an individual customer account (as explained in the Section "Available account types" above)
- When selecting an omnibus customer account, the selection of the variant of the omnibus account possibly offered by the CCP concerned
- The ways and means in which the assets to be made available as a margin are provided, such as by way of full transfer of rights, as a pledge or some other manner
- Whether the Bank claims a higher margin from customers than the CCP
- Whether the Bank returns assets to customers when the margin is reduced, where such assets are of the same kind as those previously made available by the customer as margins
- The decisive law applicable to the Bank and the relevant CCP, in particular insolvency law.

### **Do you prefer a gross or net omnibus customer account?**

CCPs are only obliged to offer one form of omnibus customer account segregation and individual customer account segregation. However, some CCPs have developed different variants of omnibus customer account segregation models that offer different stages of segregation from time to time.

There are two main degrees of segregation within the omnibus customer accounts:

- "Net" means that the margin requested by the CCP for customer-related CCP transactions on the basis of the customer-related CCP transactions booked to the omnibus customer account is requested as a net figure. This means that the CCP will net the positions of all customers of the Bank who opted for an omnibus customer account with one another, and the margin will be calculated only on the basis of the net amount resulting from such netting.
- "Gross" means that the margin requested by the CCP for customer-related CCP transactions on the basis of the customer-related CCP transactions booked to the omnibus customer account is requested as a gross figure. This means that the CCP keeps separate records of the positions of each individual customer of the Bank who opted for an omnibus customer account and calculates the margin separately for each customer.

The transfer of customer-related CCP transactions and the assets made available for these as a margin may be simpler both in the event of the transfer not being due to default but also when a transfer takes place due to a default on the part of the Bank if you decide in favour of a gross omnibus customer account (if offered by the CCP). If CCPs requested the margin on a gross basis, the probability is greater that the CCP will have sufficient assets available to transfer adequate assets for each individual CCP transaction as a margin to a substitute clearing member. It should be noted in this context, however, that the customer account segregation models of the various CCPs may vary quite significantly. To be able to assess the differences between the various models and sub-variants, you will therefore need to take account of the CCPs' information on their specific customer account segregation models.

### Margin payment in cash or securities?

As explained in the section "The 'Principal-to-Principal' clearing model" in Section A, as a clearing member we are basically obliged vis-à-vis the CCP to transfer assets provided by the customer as a margin to the CCP. However, as likewise explained, CCPs - only accept assets that meet the - requirements specified in their bodies of rules as a margin. Generally, this will only be cash in certain currencies and particularly liquid non-cash assets.

The question as to which assets we as a bank accept as a margin from you as a customer for the customer transactions will depend on the rules and regulations, taking account of market customs and practice, agreed with you for customer clearing, including the further agreements possibly made in this connection for the provision of margins. In the process, the requirements agreed with you may differ from those of the CCPs. Accordingly, it cannot be ruled out that the assets we accept from you as a margin for the customer transactions will not be adequate for the margin requirements of the CCPs. This may lead to our exchanging the margin paid by you – based on the arrangements made with you – for assets accepted by the CCP.

### Providing a margin by way of full transfer of rights or under a pledge

#### Passage of ownership on full transfer of rights

Should the provision of assets take place as a full transfer of rights in accordance with the agreements entered into with you, the customer will lose its ownership on transfer of the items of collateral to the Bank (assets under full transfer of rights). The Bank will book the assets of the respective customer for the relevant customer transaction accordingly under full transfer of rights. The customer will receive a corresponding claim for return transfer if the customer's margin obligation is reduced or terminated.

The Bank may be entitled, depending on the customer account segregation model, to transfer assets to the CCP other than the assets transferred by the customer under full transfer of rights.

If the customer is entitled to a return transfer claim on the Bank, the latter will transfer similar assets back in accordance with the arrangements made with the customer.

If the customer is entitled to a claim for return transfer against the Bank, the customer will be exposed to the risk of the Bank not satisfying this claim for return transfer of similar assets. Unless a default by the Bank occurs simultaneously as contemplated by the CCP's body of rules, in the event of such non-performance the customer will not have a right of recourse against the CCP or to the assets booked with CCP as a margin for customer-related CCP transactions. In this case, the customer will be restricted to the general rights as a creditor of the Bank. This risk will decrease if a simultaneous default occurs as contemplated by the body of rules of the CCP, because in this case the protective measures of the CCP will apply to the relevant customer account segregation model in question. The specific scope of protection and, in particular, the specific claims to which the customer is entitled in this case in relation to the CCP will vary, depending on the CCP involved.

#### Pledge

If assets to be provided as a margin are made available by way of a pledge, the customer will retain the ownership to the assets pledged. The Bank may realise the assets pledged if the customer falls into delay with its obligations to the Bank and the pledge matures for realisation.

The provision of collateral – depending on the law applicable to the transfer of assets – may also be subject to other rules. If, for example, a pledge is based on English law (security interest) the following will apply:

In this case, the customer may grant the Bank rights of use to the assets pledged. Until such time as such a right of use is exercised, the assets pledged will remain the property of the customer. If such right of use is exercised - e.g. by transfer of assets to a CCP, - then ownership of the assets will pass from the customer to the Bank. From this point in time, the customer will assume risks in relation to the Bank that correspond to a transfer of full rights. The circumstances in which the Bank can

exercise such a right of use to assets pledged and the purposes for which the Bank may use assets are governed by the customer clearing agreement.

#### **Surplus margins called for by the Bank**

According to the EMIR and possibly also the decisive bodies of rules of the CCPs, the Bank may be subject to special obligations for dealing with margins rendered by the customer that go beyond a margin requested by a CCP from the Bank (surplus margin payments). If a customer opts for an individual customer account and if the Bank collects surplus margin payments from the customer, the Bank is required to pass on such surplus margin payments to the CCP. What is not part of this obligation and needs to be distinguished from it is collateral or margin made available to the Bank by the customer for purposes other than the collateralisation of outstanding positions of the customer with the CCP. Moreover, the Bank is not obliged to forward surplus margin paid to a CCP if it consists of assets that do not meet the suitability criteria for margin as defined by the relevant CCP. In particular, - unless as otherwise arranged between the Bank and the customer - there will be no entitlement to convert such assets into assets that meet the suitability criteria. The details in this regard are governed by the clearing agreement between the customer and the Bank.

If the Bank accepts margin in the form of a guarantee in the Bank's favour, then the Bank will not be obliged to forward assets to the CCP to an extent that exceeds the guarantee sum of the margin requested by the CCP for the customer-related CCP transactions.

The Bank is not required to pass on any surplus margin payments to the CCP if the customer selects an omnibus customer account. In this case, - depending on the ways and means in which the surplus margin payments of the Bank were provided (in particular whether transfer of full rights or pledge applies), - the customer may be exposed to the above-mentioned risk of default with regard to its claims for return transfer.

#### **Return of similar assets**

In certain circumstances, the customer clearing agreement between the customer and the Bank governs the question as to whether the Bank is obliged to transfer only such assets back to the customer that meet certain minimum requirements relating to similarity with the assets originally made available as a margin.

If such minimum requirements were agreed, it should be noted that in the event of a default by the Bank, the customer may receive assets by return transfer that do not meet these minimum requirements. The reasons for this is that CCPs are granted broad discretionary scope concerning the liquidation and appraisal of assets and the ways and means of fulfilment of claims for return transfer of assets in the event of default of a clearing member. In addition, the CCP will generally not be aware of the arrangements made between a bank and its customers concerning the provision of collateral or margin and the resulting requirements concerning the similarity of the assets to be transferred in return. This risk exists regardless of the customer account separation model selected by the customer.

## C. INFORMATION ON INSOLVENCY LAW

---

### General insolvency risks

In the event of a default by the Bank, particularly insolvency, customers must anticipate that their customer transactions will not be continued and they will not receive all their assets back again. In addition, delays and additional costs need to be anticipated in this connection (e.g. financing costs and legal fees). These risks apply both to individual customer accounts as well as to omnibus customer accounts, namely for the following reasons:

- In principle, customers have no direct claims on CCP in the event of the Bank defaulting; a different situation may apply in connection with the transfer (porting) possibilities granted by CPS and any other customer protection measures. Claims on the bank would be part of the insolvency proceedings.
- An insolvency case against the Bank would be applied for by the [German] Federal Financial Supervisory Authority (BaFin); (please note that in addition to insolvency proceedings, there may also be other measures under supervisory law with regard to the Bank). In insolvency proceedings, all the authority regarding the Bank's insolvency assets are vested in the insolvency administrator and all legal steps must be initiated against the latter or with its approval (this may be a time-consuming process with an uncertain outcome).
- Each legal act (including customer transactions or CCP transactions as well as the provision of margin) may be challenged by the insolvency administrator if the statutory preconditions prevail. As regards the special features in the event of a transfer (porting), reference is made to the explanatory notes below on Art. 102b of the EC Insolvency Ordinance (EGInsO).

Please be sure to note the following as well:

- Only the insolvency of the Bank is dealt with in this information document. You may likewise not receive assets back or not in full if other participants in the clearing default – e.g. the CCP, a depositary bank or other agencies.
- A large proportion of the customer protection provisions is contained in the body of rules of the CCPs and the applicable law from time to time. It should be noted in the process that a number of jurisdictions may be of relevance in certain circumstances. You should therefore obtain an overview in this regard and, in particular, you should include the information made available by the respective CCPs from time to time in your decision when selecting the customer account segregation model and the inherent level of protection.

Against the backdrop of the complexity arising when multiple jurisdictions are involved, it may be sensible to obtain legal advice in this regard.

### Protection by Article 102b EGInsO

For measures of a CCP regarding administration, clearance and other settlements of customer positions as well as the transfer thereof and the application and return grant of customer collateral, the special provisions of Article 102b of the introductory act to the Insolvency Ordinance (EGInsO) are applicable. This provision takes precedence over the general principles of German insolvency law. The measures encompassed by Art. 102b EGInsO are not subject to insolvency being challenged. Nevertheless, in certain circumstances legal acts not dealt with in Art. 102b EGInsO but associated with such measures might be challenged by the insolvency administrator.

### Measures of the BaFin pursuant to the German Banking Act (Kreditwesengesetz - KWG) as well as the German Restructuring and Settlement Act (Sanierungs- und Abwicklungsgesetz - SAG)

In certain circumstances, particularly if the stability of the financial system or the Bank's existence as a going concern is endangered, the BaFin or the settlement authority may order a transfer of the assets and liabilities of the Bank or the partial transfer of part of the assets and part of the liabilities to some other legal entity.

Moreover, the federal government could order a moratorium in the event of severe hazards to the economy as a whole.

### **Impacts on the margin**

The general rule is that your risk of loss regarding the provision of margin by way of a full transfer of rights is highest and your risk in providing collateral rights in terms of which you retain ownership of the assets (e.g. pledge) is lower. Depending on applicable law, however, there may be deviations and special features in this regard.

In principle, it should be noted that an individual customer account segregation presupposes a full transfer of rights concerning the margin. However, the inherent risk in this regard is to be reduced by the commitment of the clearing member to pass on the margin to the CCP (see "Surplus margin requested by the Bank"). As a rule, therefore, individual customer account segregation applies to the pass-through risk (see "The 'Principal-to-Principal' clearing model" in this regard).

Which specific risks of loss exist, how high these are and whether third-party claims to the assets may exist depends to a high degree on the circumstances of each individual case and the actual facts and circumstances.

### **Termination and settlement**

If the customer-related CCP transactions cannot be transferred (ported) along with the margin provided in this connection to a substitute clearing member if the Bank happens to default, the relevant customer-related CCP transactions will be terminated and the individual transactions will be netted to create a uniform claim for settlement.

However, the level of protection offered by the respective customer account segregation model in this case depends on the circumstances of the individual case, applicable insolvency law and the actual facts and circumstances.

For various standard agreements on customer clearing, legal opinions on the effectiveness of the respective provisions on termination and settlement (close-out netting) are prepared or further developed. It is sensible and recommended to draw on these expert opinions for your decision between the customer account segregation models offered and to obtain further legal advice if necessary.

Irrespective and in supplementation of the above, we wish to advise that the termination options in the event of the Bank defaulting may be restricted in the customer clearing agreement compared to the corresponding provisions in other standard contractual documentation records. Only in this way can a synchronisation be ensured, by and large, between the customer transaction and the customer-related CCP transaction; this synchronisation is an indispensable prerequisite for effective customer account segregation.

**Insolvency of CCPs and others**

Even though only the Bank's insolvency is dealt with in this information document, we wish to advise that a default by the CCP, some other clearing member or possibly other agencies, may also impair your customer transactions and the rights to your assets.

Generally speaking the rights of the Bank and your rights in the event of a default will depend on the laws of the country in which the CCP is domiciled and on the relevant protective measures of the CCP. For further details in this regard, please refer to the information published by the respective CCPs.

IN THIS CONNECTION, IT MAY BE SENSIBLE TO OBTAIN LEGAL ADVICE IN THIS RESPECT.



## D. SUPPLEMENTARY BACKGROUND INFORMATION ON INDIRECT CLEARING

---

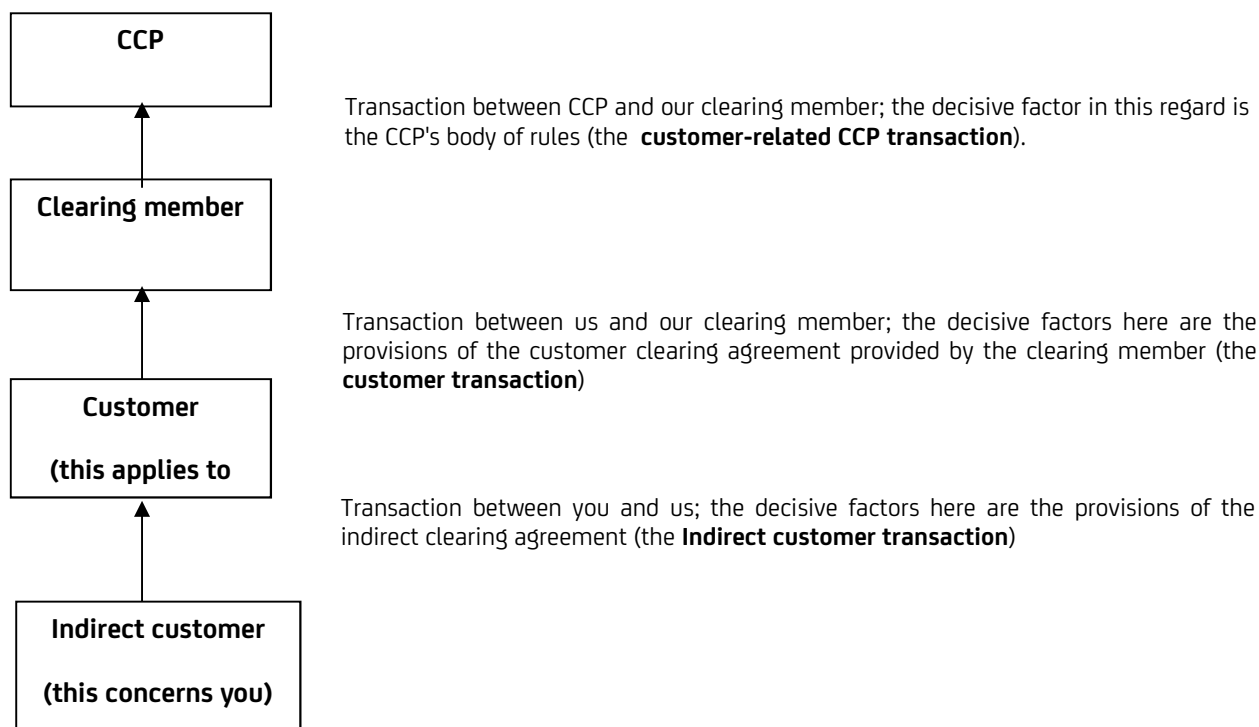
### What is indirect clearing?

The Bank may offer you clearing services for derivatives contracts via a CCP also by way of indirect clearing for certain derivatives contracts. In the case of indirect clearing, we do not act as a clearing member. Instead, we enlist the services of our clearing member to clear transactions of our bank customers via a CCP. Based on the principal-to-principal model described under Section A. ("The 'Principal-to-Principal' clearing model"), accordingly in this constellation we are the customer and you are the indirect customer.

If the Bank processes and settles a transaction via a CCP for an indirect customer by way of indirect clearing, as a rule this will lead to three legal relationships.

One will exist between the Bank and the indirect customer; one will exist between the Bank and the clearing member and finally one between the clearing member and the CCP. In this context, the legal relationship between the Bank and you as an indirect customer is generally based on contractual documentation between the Bank and you for indirect customer clearing (indirect customer clearing agreement). Our legal relationship with the clearing member is based on the contractual documentation of the clearing member for customer clearing (customer clearing agreement). The legal relationship between the CCP and the clearing member is subject to the decisive body of rules of the relevant CCP.

Our contractual position and our risks therefore correspond to the position of a customer described above in Sections A. to C. As our risks also apply to you as an indirect customer, you should therefore also be aware of the risk position of the customer and study Sections A to C. above carefully.



In the case of clearing within the scope of the principal-to-principal model, based on the respective CCP body of rules applicable, the contractual documentation of the clearing model with us and the indirect customer clearing agreement entered into between you and us, as a rule three identical transactions in terms of content but otherwise mirrored transactions arise (i.e. with opposite positions of the respective other party): A transaction between the customer and the Bank (indirect customer transaction), a transaction corresponding to the indirect customer transaction between the Bank and the clearing member (customer transaction with a mirrored position of the Bank) and a transaction corresponding to the customer transaction between the clearing member and CCP (customer-related CCP transaction, with a mirrored position of the clearing member). These transactions identical in content but as mirror images are hereinafter also referred to as “transactions corresponding to one another”.

In its role as a contracting partner, the Bank is obliged to provide margin to the clearing member to hedge the risks arising from the customer transactions (see A. above: “The 'Principal-to-Principal' clearing model”). The Bank provides this margin separately from items of collateral for your own bank transactions included in the clearing process via the clearing member. In this regard, the Bank must ensure - with additional contributions where necessary - that the total value of the assets provided with regard to indirect clearing for the indirect customers as margin covers the total risk arising from the relevant customer transactions at all times. The assets to be provided by the Bank to the clearing member for paying the initial margin and variation margin must meet the suitability criteria determined by the clearing member and will thus be subject to its risk deductions.

Based on the indirect customer clearing agreement, the Bank, in turn, will request collateral or margin for the indirect customer transactions from the indirect customer. In certain circumstances, in doing so the Bank may request more collateral or higher margin from the indirect customer than the clearing member requests from the Bank or the CCP from the clearing member (surplus margin payments).

Should the assets provided by the customer as margin not meet the requirements of the clearing member or of the CCP, these assets may - possibly and in accordance with the agreements made in this regard between the indirect customer and the Bank - be exchanged by the Bank for assets that meet the parameters of the clearing member and/or the CCP.

If assets are transferred by the indirect customer in payment of the margin to the Bank by way of full rights transfer (cf. Section B. above: “Provision of margin by way of transfer of full rights or as a pledge”), the indirect customer will be subject to the risk of the Bank defaulting before such assets are passed on via the clearing member to the CCP and booked to the customer account with the relevant CCP (“pass-through risk”). In the event of such default within the period from the transfer of the assets to the Bank until such time as they are forwarded and booked to the customer account opened to this end with the CCP via the clearing member, the assets would not be covered by the protection selected for the relevant customer account segregation model selected by the CCP.

A similar pass-through risk applies to the Bank as a customer of the clearing member in the event of its default (further details can be found in Section A. “What happens in the event of a default of the clearing member according to the body of rules of a CCP?”). If the Bank sustains a loss in this connection, the indirect customer will be exposed to the risk of having to bear this loss internally in relation to the Bank.

In practice, such a pass-through risk will only exist in exceptional cases. After all, the fact that the CCP may be required to pay margin intra-day, at very short notice and at points in time outside the customers' usual office hours, banks frequently pay the margin requested by clearing members and CCPs initially from their own resources and only request assets from the indirect customer on a subsequent basis.

### **What account models are available in indirect clearing?**

In indirect clearing, the Bank is legally obliged to offer you the choice between a net omnibus customer account and a gross omnibus customer account. In case the indirect customer does not notify the Bank of its selection, the Bank will be entitled to assign a degree of segregation of its own choice to the indirect customer. In doing so, the Bank will probably assign a net omnibus customer account to the indirect customer. The indirect customer should note that this selection by the Bank may result in a lower level of protection of the indirect customer. However, the indirect customer can call for a change to the segregation model selected at any time.

In both omnibus customer account segregation models, customer-related CCP transactions and assets provided for these as margin at CCP level will be delineated and/or booked separately from (i) the transactions of the clearing member and its other customers and (ii) bank transactions. However, at the same time, in the case of an omnibus customer account, all customer-related CCP transactions (including the assets provided for these by way of a margin) are booked by all indirect customers of the Bank who opted for the relevant omnibus customer account.

Further explanatory notes in this regard can be found in Section B under “*Omnibus customer account segregation*”. The descriptions in this section also apply accordingly in the field of indirect clearing.

In the case of the omnibus customer account segregation, the clearing members must ensure at their level that the Bank's customer transactions relating to indirect accounts cannot be netted with Bank transactions. This also applies accordingly to the assets made available for these by way of a margin.

In the case of the net omnibus customer account, the customer-related CCP transactions of various indirect customers booked to the same omnibus account with the CCP can be netted with one another (if the prerequisites for such netting apply according to the body of rules of the CCP). This accordingly also applies to the assets booked to the same net omnibus customer account as margin with regard to the indirect customers, no matter for which of the customer-related CCP transactions booked were transferred by the clearing member by way of margin. Further information is available under: “Do you prefer a gross or net omnibus customer account? What is the difference?”

We wish to point out that within the scope of indirect clearing, we treat other companies from our Group exactly the same as our indirect customers. This means that our Group member companies also select between the various account forms and therefore can also use the same omnibus customer account with other indirect customers.

### **What other aspects need to be taken into consideration when selecting the customer account segregation model and the associated level of protection for assets made available as a margin?**

The level of protection for assets made available as margin depends on a number of factors. These include the following:

- The decision in favour of a net or gross omnibus customer account or, if offered at all in the field of indirect clearing, an individual customer account
- The ways and means in which the assets to be made available to the Bank as a margin are provided, such as by way of full transfer of rights, as a pledge or in some other manner
- Whether the Bank claims a higher margin from indirect customers than the clearing member and/or the CCP
- Whether the Bank returns assets to indirect customers when the margin is reduced, where such assets are of the same kind as those previously made available by the indirect customer as margins
- The decisive law applicable to the Bank, the clearing member and the relevant CCP, in particular insolvency law.

**Do you prefer a gross or net omnibus customer account? What is the difference?**

Within the omnibus customer accounts for indirect clearing, there are two important differences for the level of protection of the indirect customer as regards the degree of segregation of positions and margin:

- “Net” means that the margin requested by the CCP for customer-related CCP transactions on the basis of the CCP transactions booked to the omnibus customer account is requested as a net figure. This means that at the level of the CCP and that of the clearing member, it is not possible to assign the margin provided to a certain indirect customer. Moreover, as a rule the indirect customers are not known to the clearing member and the CCP.
- “Gross” means that the margin requested by the CCP for customer-related CCP transactions on the basis of the CCP transactions booked to the omnibus customer account is requested as a gross figure. This means that at the level of the CCP and that of the clearing member, a calculation is made of the safety requirements per indirect customer and the customer-related CCP transactions or customer transactions booked to the gross omnibus customer account concerning this indirect customer. Accordingly, for the CCP and the clearing member, the indirect customer also is identifiable by the CCP and the clearing member, and the margin provided can be assigned with the aid of the information available to the Bank on its indirect customers to a certain indirect customer.

In the case of the net omnibus customer account, the Bank and the clearing member are not obliged by law to carry out a transfer of the indirect customer transactions to another account or clearing member if the Bank defaults. Instead, the Bank's customer transactions are terminated and settled by the clearing member on the basis of the customer clearing agreement. A termination settlement is executed between the Bank and the clearing member and, regularly, also between the Bank and the indirect customer, and in each case a uniform settlement claim is determined, taking account in particular of any (surplus) margin payments made by way of full rights transfer (see below: “What happens if the clearing member terminates and settles the Bank's transactions if the Bank defaults?”)

The clearing member is not obliged by law to pay a uniform settlement of the Bank against the clearing member to the indirect customer. Instead, the clearing member will pay surplus amounts to the Bank, for the account of the indirect customer. The insolvency-proof nature of this payment for the account of the indirect customer depends on the insolvency law applicable to the Bank. You are therefore subject to the risk that your claims for refund, in particular of surplus margin payments to the Bank, constitute an unsecured insolvency claim and may be forfeited to a substantial degree (see below “What happens if the clearing member terminates and settles the Bank's transactions if the Bank defaults?”).

In the case of the gross omnibus customer account, the clearing member will provide for procedures to facilitate a transfer of the indirect customer transactions and customer transactions of the Bank to another customer or clearing member (see below: “What happens if the Bank defaults in its role as a customer?”). However, there is no obligation on the clearing member also to ensure a transfer in factual or legal terms. In principle, in the case of a gross omnibus customer account, there is the possibility of a transfer owing to the individual assignability of the indirect customer transactions and the margin provided for this. However, legal uncertainties exist, depending on the applicable insolvency jurisdiction, which means that termination and settlement of the indirect customer transactions are not improbable. In this case, the previously described insolvency risks of the indirect customers also exist in this case (also see below: “What happens if the clearing member terminates and settles the Bank's transactions if the Bank defaults?”).

**Margin payment in cash or securities?**

The question as to which assets we as a bank will accept from you as an indirect customer as a margin for indirect customer transactions depends on the arrangements made with you, taking account of market customs and practice, including possible collateral-related deductions in the case of securities. In the process, the requirements agreed with you may differ from those of the clearing members and the CCPs. Consequently, it cannot be ruled out that the assets that we accept from you as a margin for the indirect customer transactions do not meet the suitability criteria for margin determined by the clearing members and the CCPs. This may lead to our exchanging the margin paid by you – based on the arrangements made with you – for assets accepted by our clearing members and the CCPs.

**Providing a margin by way of full transfer of rights or under a pledge?**

Please refer to Section B. in this regard: “Providing a margin by way of full transfer of rights or under a pledge”. The explanatory notes there apply accordingly to indirect clearing.

As regards indirect clearing, in the event of a full rights transfer you should bear the following special features in mind:

- The Bank is entitled in principle to transfer other assets to the clearing member in lieu of those under full rights transfer by the indirect customer. The same may apply to the clearing member and its margin payments to the CCP in relation to the Bank as a customer of the clearing member. In this case, your items of collateral may in certain circumstances be protected only “in terms of their value”.
- To the extent that the indirect customer exercises a claim for return transfer against the Bank, the indirect customer will be exposed to the risk of the Bank not fulfilling the claim for return transfer of assets similar in kind. Unless a default by the Bank occurs simultaneously as contemplated by the indirect customer clearing agreement, in the event of such non-performance the customer will not have a right of recourse against the clearing member or the CCP or to the assets booked with CCP as a margin for customer-related CCP transactions. In this case, the indirect customer will be restricted to the general rights as a creditor of the Bank and will depend on the level of protection of the omnibus customer account selected as well as possible transfer measures of the clearing member in the case of a gross omnibus customer account model. The specific scope of protection and, in particular, the specific claims to which the customer is entitled in this case in relation to the clearing member will vary, depending on the relevant clearing member.

**How does the Bank treat surplus margin payments requested?**

In the case of an omnibus customer account, the Bank is not obliged to pass on any surplus margin payments by the indirect customer to the CCP via the clearing member. In this case - depending on the manner in which the surplus margin payments were provided to the Bank (in particular whether by full rights transfer or under a pledge) - the indirect customer may be exposed to the previously described risk of the Bank defaulting with regard to the indirect customer's claims for return transfer.

**Will similar assets be returned, and are there any risks if the Bank defaults?**

In certain circumstances, according to the indirect customer clearing agreement between the indirect customer and the Bank that the latter is obliged to transfer only such assets back to the indirect customer that meet certain minimum requirements relating to similarity with the assets originally made available as a margin.

If such minimum requirements were agreed, then it should be borne in mind that if the Bank defaults, the indirect customer will probably only receive amounts of money back, unless in the case of a gross omnibus account, a transfer is made to some other customer or to a clearing member. The reason for this is that the clearing member will terminate and settle the Bank's customer transactions as the Bank's customer if the Bank defaults and will determine a uniform settlement amount in cash. A different outcome will apply, however, if the indirect customer provides the Bank with margin by way of a pledge (see above in Section B. “Providing margin by way of full rights transfer or as a pledge”).

**What must be borne in mind if the indirect customer wishes to transfer (port) its indirect customer transactions to another customer or to a clearing member?**

The indirect customer may have an interest in transferring some or all of its indirect customer transactions in the ordinary course of business (i.e. without the Bank defaulting) to another customer or to a clearing member (non-default-related transfer/porting). Such a non-default-related transfer must be distinguished from a transfer in the event of the Bank or the clearing member defaulting as contemplated by Art. 48 EMIR. In particular, under EMIR and MiFIR there is no obligation on the Bank to facilitate such a non-default-related transfer.

Whether and under which preconditions a non-default-related transfer can be executed will therefore depend on the arrangements made between the indirect customer and the Bank as well as the parameters laid down by the clearing member and the body of rules of the CPPs possibly affected by such transfer. Moreover, the indirect customer willing to engage in a transfer must find some other customer or a clearing member ready to assume the transactions to be transferred and to make the necessary arrangements with such customer or clearing member to assume and continue the transactions to be transferred.

**What happens if the Bank defaults in its role as a customer?**

If the Bank defaults, then this will have an impact both on contractual relations between the Bank and the clearing member as well as on contractual relations between the Bank and the indirect customer. The contractual relationship in place will govern the prerequisites for determining a default and the consequences thereof.

These will depend on the omnibus customer account selected:

- In the case of the gross omnibus customer account, the clearing member can attempt - with the approval of or on request by the indirect customer - to transfer (or port) the customer transactions as well as the indirect customer transactions along with the assets provided for these by way of margin to some other customer (substitute customer) or some other clearing member (substitute clearing member). If a transfer is not possible - for whatever reasons - then the clearing member will most probably terminate the customer transactions, and this means that the indirect customer transactions between the Bank and you on the basis of the indirect customer clearing agreement will probably likewise be terminated (see below: "What happens if a transfer (porting) should not be possible?").

The process for carrying out a transfer of customer transactions and indirect customer transactions may differ, depending on the clearing member in question. It is possible that the transactions corresponding to one another are transferred along with the associated margin to a substitute customer or a substitute clearing member on the basis of an omnibus customer account model with a corresponding degree of segregation. It is also possible, however, that the transactions corresponding to one another will be terminated and settled in order to initiate new substitute transactions with the settlement payment by means of the substitute customer or substitute clearing member.

To facilitate the transfer of transactions, it may be legally necessary - depending on the jurisdictions in each individual case - for the Bank as a defaulting customer to provide special collateral rights to any return transfer claims to which the Bank may be entitled with respect to the assets provided as a margin to the clearing member to be made available in favour of the indirect customer.

- In the case of a net omnibus customer account, no transfer generally takes place. Instead, the clearing member will terminate the customer transactions with the Bank and issue a final statement and determine a uniform settlement claim. In consequence, the indirect customer transactions between the Bank and you will probably also be terminated and settled in terms of a uniform settlement claim (see below "What happens if a transfer (porting) should not be possible?"). The clearing member is not obliged by law to fulfil a uniform settlement claim by the Bank on the clearing member or by direct payment to the indirect customers. The clearing member is only obliged to pay a settlement amount possibly payable to the Bank for the account of the respective indirect customer.

In the event of termination and settlement, the clearing member will probably close the customer-related CCP transactions and use the settlement payments and released margin in connection with these as a basis for determining the uniform settlement claim between the clearing member and the Bank.

**Are customer transactions and indirect customer transactions automatically transferred to a substitute customer or a substitute clearing member in the Bank defaults under the gross omnibus account segregation model?**

No, a number of conditions need to be met before transactions and assets made available for these by way of margin can be transferred to a substitute customer or a substitute clearing member. These conditions are individually stipulated in the indirect customer documentation with the clearing member, the customer and the indirect customer.

In addition, in each case the indirect customer will need a substitute customer or a substitute clearing member that agreed to the assumption of the transactions. The indirect customer can already determine a substitute customer or a substitute clearing member in advance. This substitute customer or this substitute clearing member will generally not be able to commit itself to the assumption of transactions already prior to the Bank defaulting; instead, the assumption will be subject to the fulfilment of certain preconditions.

It is less probable that a transfer of transactions can take place in the event of the Bank defaulting if an indirect customer did not determine a substitute customer and substitute clearing member and the in advance concerning the transfer.

If a transfer occurs, then the indirect customer transactions and customer transactions may initially be terminated in certain circumstances. It can therefore not be rule out that the transactions transferred for continuation to a substitute customer or a substitute clearing member will then need to be newly established between such substitute customer and substitute clearing member. The details, however, vary according to the decisive agreements between the clearing member, customer, indirect customer as well as substitute customer and substitute clearing member.

In addition, you should study the porting design and organisation by the clearing member and the body of rules of the CCP. It is possible that a transfer is only provided for if all indirect customers whose transactions are booked to the relevant gross omnibus customer account agree to the same substitute customer or substitute clearing member and/or to the transfer of such substitute clearing member. Against this backdrop, it should be anticipated that a transfer will only be successful very rarely.

In the event of a transfer, the relevant CCPs themselves will not carry out any transfer measures in relation to the clearing member and will only identify the transfer as such in their systems if it was carried out via a gross omnibus customer account in accordance with the instructions of the clearing member.

**What happens if a transfer is not possible in the case of a gross omnibus customer account?**

The clearing member can provide for certain periods and conditions for a transfer. If the transfer does not take place within this period, or if the conditions for the transfer have not been fulfilled or if a transfer fails due to legal obstacles, the clearing member will probably be entitled to terminate and settle the customer transactions regarding the indirect customer and to take account of the assets received as a margin when issuing the statement (see below: "What happens if the clearing member terminates and settles the Bank's transactions if the Bank defaults?").

The terms and conditions for transfer can vary from one clearing member to another.

If an indirect customer wishes a transfer of transactions, then that customer must submit a corresponding declaration to the clearing member along with evidence, if required, that the remaining requirements for transfer can be fulfilled within the transfer period determined by the clearing member. The details, including the form of declaration and evidence of fulfilment of the prerequisites, are provided in the agreement between the clearing member, the Bank and the indirect customer.

**What happens if the clearing member terminates and settles the Bank's transactions if the Bank defaults?**

If the clearing member terminates and settles the customer transactions with the Bank, generally the indirect customer transactions corresponding to these between the Bank and you will likewise be terminated and settled by means of a uniform settlement claim. In this case, the termination and final statement will be handled in accordance with the indirect customer clearing agreement.

On the basis of the customer clearing agreement, the clearing member will determine a uniform settlement claim between the clearing member and the Bank, taking account in particular of any (surplus) margin payments made by way of full transfer of rights. In this connection, the clearing member will also include its closing-out expenses in relation to the CCPs regarding the customer-related CCP transactions as well as the margin held by it and made available by the Bank. If termination and settlement lead to a payment obligation arising on the part of the clearing member, then the following will apply, depending on the degree of segregation:

- In the case of the gross omnibus customer account, the clearing member can pay out this amount directly to the indirect customer if it can determine the extent of the share attributable to the indirect customer. If the clearing member is not aware of the identity of the indirect customer and/or cannot determine its identity or pay the full amount to the indirect customer (for whatever reason), then the clearing member will pay the amount calculated to the Bank (or its insolvency administrator for the account of the indirect customer).
- In the case of the net omnibus customer account, the clearing member will disburse the amount calculated to the Bank (or the latter's insolvency administrator) for the account of the indirect customer.

A uniform settlement claim will then likewise be determined between the Bank and the indirect customer, based on the indirect customer clearing agreement. In the process, as a rule the calculations will be assumed that the clearing member carried out with regard to the customer transactions. If the margin was provided by way of full rights transfer, then the value of the margin provided will also be entered in the calculation of the uniform settlement claims.

If, upon termination and settlement, the customer should have a uniform settlement claim against the Bank owing to the indirect customer clearing agreement, then the assertion of this claim may be subject to the applicable insolvency law. The indirect customer will probably have an unsecured insolvency claim on the Bank. Moreover, the extent to which the indirect customer participates in the payment by the clearing member to the Bank (or its insolvency administrator) for the account of the indirect customer depends on the applicable insolvency law.

In the case of a gross omnibus customer account, in addition any payments directly made by the clearing member to the indirect customer will be deducted from a uniform settlement claim of the indirect customer on the Bank.



### **What risks exist if the clearing member defaults?**

In the event of a default by the clearing member, the explanatory notes in Section A under “What happens if the clearing member defaults according to the body of rules of a CCP?” and “Are customer-related CCP transactions and assets automatically transferred to a substitute clearing member?” apply accordingly to the risks of an omnibus account segregation. If the Bank sustains a loss in this connection, the indirect customer will be exposed to the risk of having to bear this loss internally in relation to the Bank.

### **What additional insolvency risks exist in the case of indirect clearing?**

The explanatory notes in Section C. basically apply to indirect clearing, subject to the following special features:

- In principle, indirect customers have no direct claims on the CCP and the clearing member engaged by the Bank if the latter defaults; other rules may apply in connection with the transfer (porting) options granted by a clearing member in the case of a gross omnibus customer account.
- You will possibly not receive assets or not in full also if the clearing member defaults and you are internally obliged in relation to the Bank to bear the accompanying consequences.
- A substantial part of customer protection provisions arises not from the bodies of rules of the CCPs and the applicable law from time to time, but from an additional agreement with the clearing member, the Bank and you and/or the applicable law in each case. It should be noted in the process that a number of jurisdictions may be of relevance in certain circumstances. You should therefore obtain an overview in this regard and, in particular, you should include the information made available by the respective clearing members and the Bank from time to time in your decision when selecting the customer account segregation model and the inherent level of protection.
- The extent to which Art. 102b EGI<sub>NSO</sub> applies to porting measures of a clearing member is not known at present.

Against the backdrop of the complexity arising when multiple jurisdictions are involved, it may be sensible to obtain legal advice in this regard.

# OVERVIEW OF MATERIAL DIFFERENCES BETWEEN THE VARIOUS CUSTOMER ACCOUNT SEGREGATION MODELS OFFERED BY CCPS

As explained in Section 1 B, each CCP must offer at least an omnibus customer account segregation and at least an individual customer account segregation. The design and organisation of the account segregation offered may vary from CCP to CCP. This Section 2 specifies the most important degrees of segregation within the account types offered by CCPs to our knowledge. Moreover, in the overview we explain the material risks in connection with customer account segregation and assign these to the various customer account models.

The explanatory notes below are general in nature and describe typical features of account types and degrees of segregation. However, special features of the respective accounts have an influence on the level of protection offered as well as on the consequences thereof in particular. For this reason, you will need to examine the information made available by the CCPs in order to fully understand the risks of each account model. Each CCP is required to publish information on the account structures offered by it, and we have listed a link below on each section of the website of selected CCPs engaged by us.

The comparison below of main account types and degrees of segregation as well as the relevant risk description were prepared on the basis of publicly available information documents made available by a selection of CCPs. We are not responsible and can therefore assume no liability for any content, omissions or imprecision within the information prepared by a CCP.

Risks drawn on for comparison purposes of the individual account types and degrees of segregation	Explanation of the risk
Pass-through risk	Whether you are exposed to the risk of the Bank defaulting at any point in time of the process of providing or accepting margins for customer transactions.
Risk assumption for other customers	Whether the assets made available for your customer-related CCP transaction in the event of insolvency can also be used for CCP transactions of other customers.
Liquidation risk	Whether in the case of a transfer (porting) of customer-related CCP transactions and associated margins there is the risk of non-cash assets being liquidated in cash. In such a case, the liquidation value / proceeds may differ from the value you consider to be the full value of the assets.
Haircut risk	Whether the evaluation of the assets made available by you corresponds to your assessment or whether the CCP has applied a safety deduction ("haircut") leading to a (substantially) different appraisal.
Communitarisation risk	Whether the value of the assets for your CCP transactions develops otherwise than you expect because the assets for CCP transactions referred to other customers have depreciated.
CCP insolvency risk	Whether you are exposed to a risk in the event of insolvency or any other default of the CCP.

	Net omnibus customer account	Gross omnibus customer account	Individual customer account
<b>Pass-through risk</b>	YES	YES	YES
<b>Risk assumption for other customers</b>	YES	YES	NO
<b>Liquidation risk</b>	YES (unless the CCP is able to transfer the assets kept in the account to another clearing member or to transfer the assets to you without having to liquidate some or all of these assets first).	YES (unless the CCP is able to transfer the assets kept in the account to another clearing member or to transfer the assets to you without having to liquidate some or all of these assets first).	YES (unless the CCP is able to transfer the assets kept in the account to another clearing member or to transfer the assets to you without having to liquidate some or all of these assets first).
<b>Haircut risk</b>	YES	YES	YES
<b>Communitarisation risk</b>	YES	YES	NO
<b>CCP insolvency risk</b>	YES	YES	YES

## APPENDIX

---

### Finding places of the information documents of selected CCPs

The following finding places have merely been added for your convenient guidance. If the links do not take you to the relevant web page of the CCP, please contact the CCP direct to obtain the documents desired.

#### **Eurex Clearing AG:**

<http://www.eurexclearing.com/clearing-en/risk-management/client-asset-protection>

#### **LCH Clearnet Ltd:**

<https://www.lch.com/resources/rules-and-regulations/regulatory-responses/response-consultation-esma-indirect-clearing>

#### **LCH Clearnet SA:**

<https://www.lch.com/resources/rules-and-regulations/regulatory-responses/response-consultation-esma-indirect-clearing>

#### **ICE Clear Europe Ltd.**

<https://www.theice.com/clear-europe/client-clearing>

#### **Cassa di Compensazione e Garanzia S.p.A.**

<https://www.lseg.com/markets-products-and-services/post-trade-services/ccp-services/ccg/emir/segregation-and-portability>

This information document was prepared by UniCredit Bank AG in line with the “Information document pursuant to Art. 39 (7) of Regulation (EU) No. 648/2012 on OTC derivatives, central counterparties and trade repositories (EMIR) on the material legal foundations for customer account segregation and in accordance with Art. 5 (1) of Delegated Regulation (EU) 2017/2154 of the Commission of 22 September 2017 for amendment of Regulation (EU) No. 600/2014 (MiFIR-RTS) as well as Delegated Regulation (EU) 2017/2155 of the Commission of 22 September 2017 for amendment of Delegated Regulation (EU) No. 149/2013 with regard to technical regulation standards for indirect clearing agreements on the various degrees of segregation and risks of customer accounts”, which was published by the Bundesverband deutscher Banken (BdB) in December 2017.

UniCredit Bank AG  
Corporate & Investment Banking  
[www.unicredit.eu](http://www.unicredit.eu)

Life is full of ups and downs.  
We're there for both.

