



**ICE Clear Europe**

**Disclosure Statement pursuant  
to Article 39(7) of EMIR**

**Version 1.5**

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## 1. Introduction

- 1.1 This document (the "**Disclosure Statement**") constitutes the disclosure for the purposes of both Article 39(7) of Regulation (EU) No. 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories as applicable in the United Kingdom pursuant to the European Union (Withdrawal) Act 2018 ("**UK EMIR**") and Article 39(7) of Regulation (EU) No. 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories as it applies in the European Union ("**EMIR**") by ICE Clear Europe Limited ("**ICE Clear Europe**", the "**Clearing House**", "**we**" or "**us**"). Capitalised terms used but not defined in this document have the same meaning as set out in the rules of the Clearing House (the "**Rules**").
- 1.2 This Disclosure Statement is provided for information purposes only. It is neither a full description of the clearing services of the Clearing House, its Rules or Applicable Laws nor a recommendation to make use of any service (see "Important Notice" below).

## 2. Segregation and Portability requirements and Disclosure Statement pursuant to Article 39 of EMIR

- 2.1 The Clearing House is subject to various requirements relating to customer segregation and portability pursuant to Article 39 of both UK EMIR and EMIR. EMIR is very similar to UK EMIR for these purposes, with almost identical provisions following the same numbering scheme, as are all other EU laws cited in this Disclosure Statement; such EU laws are not therefore addressed specifically in any further detail in this document. Wherever UK versions of EU legislation are mentioned herein, they should be taken also to include the relevant EU legislation where applicable. UK EMIR outlines the legal requirements in relation to segregation and portability of client positions. In simple terms, these provisions require Central Counterparties ("**CCPs**") to provide clearing members with, at a minimum, two types of client segregation models, which clearing members must then offer to their clients. These client segregation models are as follows:
- 'Omnibus Client Segregation' where a CCP shall offer to keep separate records and accounts enabling each Clearing Member to distinguish in accounts held with the CCP the assets and positions of that clearing member from those held for the accounts of its clients (Article 39(2) of UK EMIR); and
  - 'Individual Client Segregation' where a CCP shall offer to keep separate records and accounts enabling each clearing member to distinguish in accounts held with the CCP the assets and positions held for the account of a client from those held for the account of other clients (Article 39(3) of UK EMIR).
- 2.2 The above are the minimum requirements. UK EMIR does not restrict the ability of CCPs to offer additional segregation options. Article 48(5)-(7) of UK EMIR specifies the contractual commitments and procedures triggered in the event of default of a clearing member and the approach that should be followed with respect to client positions and assets held in any of such clearing member's client accounts.
- 2.3 Technical standards under UK EMIR and the MiFID II (Draft Commission Delegated Regulation (EU) of 22 September 2017 supplementing Regulation (EU) No 600/2014 with regard to regulatory technical standards on indirect clearing arrangements as applicable in the United Kingdom pursuant to the European Union (Withdrawal) Act 2018 (the "**UK MiFIR RTS**"), together with Commission Delegated Regulation (EU) No 149/2013 with regard to regulatory technical standards on indirect clearing arrangements as applicable in the United Kingdom pursuant to the European Union (Withdrawal) Act 2018 (the "**UK EMIR RTS**")) impose certain additional standards for indirect clearing arrangements. In general, "indirect clearing" for this purpose refers to arrangements in which an entity that is itself a customer of a Clearing Member

in turn is an intermediary for one or more of its own customers ("indirect clients") or similar situations involving longer chains of intermediaries.

2.4 The terms on which clearing services are offered to Customers are normally set out in terms of business or similar industry documentation executed between the Clearing Member and its clients. The Rules require Clearing Members to ensure that their Customers have agreed to the relevant Standard Terms which are set out as annexes to the Rules. The Clearing House has reviewed various forms of industry documentation and has set out in Circulars<sup>1</sup> important matters which need to be considered when such documents are executed. It is important that all Customers are bound to the Standard Terms and all amendments thereto if they wish to avail themselves of porting and other protections of clearing. Proposed amendments to the Standard Terms are generally published by Circular.

2.5 Various references are made in this Disclosure Document to the clearing of over the counter FX products. However, this service has yet to be launched.

### 3. ICE Clear Europe: account structure and levels of segregation

3.1 The Clearing House offers the following accounts for its Clearing Members and their Customers:

- (i) Proprietary Accounts, which contain records only of the positions entered into for such Clearing Member for its own account, together with assets provided as margin on that account;<sup>2</sup> and
- (ii) A series of Customer Accounts, which differ depending on the status of the Clearing Member:

*For Clearing Members which are not US CFTC-regulated futures commission merchants or SEC-regulated broker-dealers (FCM/BDs) (e.g. European banks and brokerages):*

- Segregated Customer Omnibus Account for the F&O service ("S" Account in ICE systems) which uses a gross margin model. Additionally, the Clearing House has made available a different, separate Segregated Customer Omnibus Account ("E" Account in ICE systems) for the F&O service which uses a net margin model.
- Segregated Customer Omnibus Account for the CDS service ("C" Account).
- Segregated Customer Omnibus Account for the FX service (a further "C" Account).
- An additional three Segregated Customer Omnibus Accounts, one for the F&O service, one for the CDS service and one for the FX service, (three "F" Accounts), which must be used by Clearing Members who wish to treat Customers that are Affiliates separately which each use a gross margin model. Additionally, the Clearing House has made available a different, separate Segregated Customer Omnibus Account for the F&O service ("R" Account in ICE systems) in order to assist any desire for separate treatment for Customer that are Affiliates which uses a net margin model.
- Segregated TTFCA Customer Omnibus Account for the F&O service, Segregated TTFCA Customer Omnibus Account for the CDS service and Segregated TTFCA Customer Omnibus Account for the FX service (three "T" Accounts) which each use a gross margin model. Additionally, the Clearing House has made available a different,

<sup>1</sup> E.g. Circular C14/055 dated 2 May 2014. Please note that updates to this Circular may be issued from time to time.

<sup>2</sup> For some U.S. Clearing Members or other clearing members which are prevented by applicable law from adopting this structure, affiliate transactions may be recorded in a Proprietary Account, subject to the Clearing Member complying with the requirement under Rule 102(g) to offer customer segregation.

separate Segregated TTFCA Customer Omnibus Account for the F&O service ("K" in ICE systems) which uses a net margin model. Firms which are regulated by the Financial Conduct Authority and subject to the client money and client asset rules in CASS in respect of Customer margin must use these accounts for Customers that have opted out of CASS protections as a result of using title transfer collateral arrangements or otherwise. Such Clearing Members may use one of the other Segregated Customer Omnibus Accounts listed above for those Customers where CASS protections apply in respect of Customer margin.

- Margin-flow Co-mingled Accounts for Segregated Customers ("I" account, which is a group of Accounts). These relate to a group of accounts which are segregated from one another in terms of their collateral and positions, resulting in individual segregation under UK EMIR. However, margin is collected or returned across all "I" accounts pursuant to a single margin call or payment. Each account within the "I" group is typically an individually segregated account ("Individually Segregated Margin-flow Co-mingled Account"), but it is also possible for an account within "I" to be essentially a "private omnibus account" ("Omnibus Margin-flow Co-mingled Account"), for example for groups of Customers that are related companies or funds under common management.
- Margin-flow Co-mingled Accounts for Segregated TTFCA Customers ("J" account, which is a group of Accounts) made available to Non-FCM/BD Clearing Members authorised by the Financial Conduct Authority and to whom the client money rules in CASS apply. These work in the same way as Accounts in "I", but where title transfer is in place between Clearing Members and Customers. Firms which are regulated by the Financial Conduct Authority and subject to the client money and client asset rules in CASS in respect of Customer margin should use these accounts for Customers that have opted out of CASS protections as a result of using title transfer collateral arrangements or otherwise. Such Clearing Members must use the "I" Account for Customers using Margin-flow Co-mingled Accounts where CASS protections apply in respect of Customer margin.
- Sponsored Principal Account, an enhanced form of individual segregation.
- Standard Omnibus Indirect Accounts. These exist for F&O, and in are available for TTFCA and non-TTFCA (e.g. CASS) customers, resulting in a total of up to four different omnibus Accounts using position-keeping account codes "O", "X", "P" and "Y", which may be used for indirect clearing. Both gross (O, P) and net (X, Y) margin options are available.
- Segregated Gross Indirect Accounts ("A" and "B" Accounts). These exist for F&O, apply essentially the same principles as for Margin-flow Co-mingled Accounts, and result in segregation of particular indirect client positions (or related indirect client groups) and margin on a per indirect client (or group thereof) basis. These Accounts use position-keeping account codes "A" and "B" for non-TTFCA and TTFCA clients respectively.

*For Clearing Members which are US CFTC-regulated futures commission merchants or SEC-regulated broker-dealers (FCM/BDs):*

- Non-DCM/Swap Customer Account ("S" Account), for F&O only, for futures and commodity options on non-US markets, such as ICE Futures Europe, ICE Endex and ICE Futures Abu Dhabi, other than any such trades cleared in the DCM Customer Account pursuant to applicable co-mingling orders, The S Account uses a gross margin model. Additionally the Clearing House has made available a separate Non-DCM/Swap Customer Account or General Customer Account ("E") which is the same kind of Account as that in S but uses a net margin model and is available for usage only in circumstances where net margin models are permissible under Applicable Laws;

- Additional position-keeping account linked to a separate Proprietary Account for FCM/BD Clearing Members (the "F" Account), which must be used by Clearing Members to separate proprietary positions of Affiliates which uses a gross margin model; and different Proprietary Accounts ("R" Account in ICE systems) in order to assist any desire for separate treatment for Customer that are Affiliates but can be used for other groups of Segregated Customers which uses a net margin model; any FCM/BD Clearing Member using the F or R account for Affiliates must comply with the requirement of Rule 102(g) to offer individual or omnibus segregation to the affiliated client (including via another Clearing Member if necessary) whose interests are recorded in such an account.
- DCM Customer Account ("W" Account), for F&O only, for futures on US markets, such as ICE Futures US, and any other trades allowed to be cleared in the same account pursuant to applicable co-mingling orders; uses a gross margin model.
- Swap Customer Account ("Z" Account), for OTC products such as CDS and FX; uses a gross margin model.
- The Non-DCM/Swap Customer Account (F&O) has an additional linked position-account "O" which can be used to hold indirect client positions and record these separately from direct client positions, but this does not result in any additional segregation at Clearing House level on an FCM/BD Clearing Member default.
- Note: an "SBS Customer Account" is also available and would map to the Z account, for any SEC-regulated Clearing Member which wishes only to clear single name (but not index) CDS and is not regulated by the CFTC as a Futures Commission Merchant. In addition, a "General Customer Account" is available and would map to an S account, for an FCM/BD Clearing Member that is clearing equity options traded on non-US markets, such as ICE Futures Europe. Neither category is in current usage.

3.2 Clearing Members and their clients should note that:

- The various types of Customer Accounts have different characteristics, including as to the level of segregation or risk mutualisation and attendant risks. The various types of accounts, their characteristics and availability are summarised in Table 1.
- The rights and liabilities and levels of segregation or mutualisation relating to each type of Customer Accounts are set out in the Rules and Procedures.
- Customer Accounts are designed to comply with different legal requirements applicable in the jurisdictions where the Clearing House is regulated.
- For all types of Customer Accounts, there is no mutualisation of risks with the proprietary positions of the Clearing Member carrying the Customer Account or with the risks on other Customer Accounts.
- Different costs apply in respect of the different types of Customer Accounts, as specified in the Clearing House's published fees schedules.
- Customer Accounts are designed to cater for different types of Clearing Member, product, level of segregation and risk mutualisation and other factors, including consideration of the following distinctions:

- **FCM/Non-FCM:** Some accounts are available only to Clearing Members that are regulated in the U.S. by the Commodity Futures Trading Commission (CFTC) as futures commission merchants or by the Securities and Exchange Commission (SEC) as broker-dealers ("FCM/BDs"). Please note that the Margin-flow Co-mingled Accounts for Segregated Customers and Individual Segregation through Sponsored Principal Accounts are not currently available to FCM/BD Clearing Members. These differences arise due to the regulatory and legal requirements applicable to ICE Clear Europe and its Clearing Members in the U.S., which mandate a different segregation regime to that applicable in Europe.
- **F&O/CDS/FX:** Some accounts are available only in respect of one or more of the particular product classes cleared by ICE Clear Europe. The relevant products are futures & options ("F&O"), credit default swaps ("CDS") and (once launched) over-the-counter foreign exchange derivatives ("FX"). Some Accounts – in particular those offering individual segregation under EMIR – will include contracts for all relevant products. Omnibus accounts for Non-FCM/BD Clearing Members are all Contract Category specific (other than any "private" Omnibus Margin-Flow Co-mingled Accounts within "I" or "J"). Such omnibus accounts have been designed to the extent possible to ensure that Customers who only clear a particular product are not exposed to losses on other products. For FCM/BD Clearing Members, the segregation of Contract Categories is more restricted as a result of applicable legal and regulatory requirements.
- **Individual segregation versus omnibus segregation:** Some accounts (i.e. Sponsored Principal Accounts and Individually Segregated Margin-flow Co-mingled Accounts) are individually segregated accounts for the purposes of UK EMIR, in that a single Customer is interested in the particular account, where the only Contracts recorded in the account relate to that Customer and collateral on that account may be applied only against losses on such Contracts. In such an account, there is no mutualisation of the liabilities or assets recorded in the account for one Customer with any liabilities or assets relating to other Customers. A Customer is not exposed to losses on other Customers' accounts. There are also omnibus accounts for the purposes of UK EMIR, in which multiple Customers are interested, where the Contracts recorded in the account relate to multiple Customers and assets in the account collateralise the obligations arising from all Contracts capable of being recorded in the account. Each Customer using such an account is subject to mutualised risk on the assets and positions of other Customers using the account.
- **Indirect client clearing or direct client clearing:** In indirect clearing, the ultimate client has at least two intermediaries between itself and the Clearing House: the Customer and Clearing Member. Whilst UK EMIR, the UK EMIR RTS and the UK MiFIR RTS impose various requirements aiming at reducing risks for users of such structures, indirect clearing is intrinsically more risky than direct clearing because the end-customer is potentially exposed to the insolvency or failure of two different intermediaries and collateral needs to pass via two entities prior to reaching the Clearing House or being returned to the Customer. This can add to costs, delays in receiving or transferring assets, transit risks and insolvency risks. Moreover, the Clearing House has no relationship with Customers and so is in no position to check their standing or resources, this being a Clearing Member responsibility. Indirect clients may elect for "standard" or "gross"

segregation at client, Clearing Member and Clearing House level, as set forth in UK EMIR, the UK EMIR RTS and the UK MiFIR RTS. The Clearing House has made available separate Accounts for purposes of indirect clearing, in which indirect clients are kept separate from Accounts used by clients for their own positions on a Clearing Member default. Some of these are omnibus accounts, in which multiple clients and indirect clients are interested, whilst others are individually segregated accounts dedicated to the particular client through which indirect clients have access. However, for indirect clients of FCM/BD Clearing Members, only position-keeping omnibus accounts are available, due to U.S. legal restrictions and those position-keeping accounts offer no post-default segregation of indirect clients from clients upon the default of an FCM/BD Clearing Member.

- **TTFCA between Clearing Member and Customer:** Some accounts may only be used in circumstances where the Clearing Member and Customer establish a title transfer financial collateral arrangement ("TTFCA") between them in respect of clearing at the Clearing House. Use of TTFCA generally means that Customers are unsecured creditors of their Clearing Member, which generally introduces greater risks of a loss of collateral on a Clearing Member failure, compared to using statutory or legal asset segregation regimes. Certain other accounts are available only in circumstances where there is no TTFCA between the Clearing Member and Customer such that client segregation requirements (e.g., as those in the FCA's client money rules) apply.
- **Segregation Requirements for FCM/BD Customer Accounts:** Customer Accounts available to FCM/BD Clearing Members are subject to segregation requirements under the U.S. Commodity Exchange Act and applicable regulations, including requirements that customer property in such accounts be segregated from proprietary assets of the Clearing Member and proprietary assets of the Clearing House. Assets recorded in such Customer Accounts constitute customer property for the purposes of applicable CFTC regulations and U.S. insolvency laws.
- **Pledged Collateral Account:** In relation to Customer Accounts of FCM/BD Clearing Members, assets may, subject to execution by the Clearing Member of a Pledged Collateral Addendum with the Clearing House, be designated as held in Pledged Collateral Accounts under which certain assets are transferred pursuant to a New York law pledge, in accordance with U.S. market practices and regulatory requirements. In relation to all other Customer Accounts, assets must be provided to the Clearing House on a TTFCA basis. Use of TTFCA generally means that Clearing Members are unsecured creditors of the Clearing House, which may introduce greater risks of a loss of collateral on a Clearing House failure, compared to using a Pledged Collateral Account.
- **Net / gross:** Some accounts are margined on a net basis, such that offsetting positions of different Customers are taken into account for purposes of Margin calls. Other accounts are margined on a gross basis, such that offsetting positions of different Customers are subject to Margin requirements without any offsetting being taken into account in calculating Margin. Net margin accounts will generally have a cheaper cost of clearing than gross margin accounts. This is because the margin requirement on a gross margined account will be likely to be higher than on a net margined account. In omnibus accounts, the margin provided by a Clearing Member is pooled in respect of all



Contracts recorded in the account, effectively resulting in any ultimate claims of Customers of a Clearing Member also being pooled in respect of any entitlements to return of margin and "fellow customer risk". Because the margin models differ between net and gross margin accounts and the diversity of clients recorded in them and their positions may differ, there may be different outcomes for such accounts (e.g. whether or not the portfolio is directional or off-setting, or under-margined or over-margined) on a default, which may not be predictable with any certainty in advance. In an individually segregated account, there is no such pooling.

- **Excess Margin:** The Clearing House allows excess Margin to be posted on any Customer Account, other than certain accounts of FCM/BD Clearing Members. If a Customer uses an individually segregated account, the Clearing Member is further required to pass all excess Margin held by it on to a clearing house. This is not required for assets not in the form of Permitted Cover. Details of when this may or may not occur may be set out in the relevant client clearing agreement. If a Customer uses an omnibus account, the Clearing Member is not required to pass any excess Margin on to the Clearing House. Depending on the terms on which excess Margin is held at Clearing Member level, the Customer may take credit risk on its Clearing Member.
- **Back-to-back principal, agency or sponsored:** In Customer Accounts with Non- FCM/BD Clearing Members the Customer will contract with the Clearing Member (under a "Customer-CM Transaction") and the Clearing Member will also contract with the Clearing House on a back-to-back basis pursuant to a cleared Contract. The terms of Contracts are set out in the Rules. The core terms of Customer-CM Transactions are set out in the Standard Terms applicable to the relevant cleared product. In Sponsored Principal accounts, a Customer will act as a Sponsored Principal and contract directly with the Clearing House, with a Clearing Member acting as a Sponsor for the account. The Sponsor and Sponsored Principal will each be jointly and severally liable to the Clearing House for performance of the cleared Contracts. The Sponsor may take on operational roles for the payment of Margin, as agreed. There is a Customer-CM Transaction for such accounts mirroring the Contract but reflecting the Sponsor's obligations. For FCM/BD Clearing Members, the Clearing Member contracts as agent for the Customer and is obliged itself also to perform the Contract to the CCP as principal.
- **Triparty Collateral:** Triparty collateral arrangements involving a CSD, the Clearing House and a Clearing Member may be established as a structure for the transfer of Margin to and from the Clearing House subject to the terms set out in the Finance Procedures and Deed of Guarantee and Indemnity.
- **Collateral purchase agreement:** In relation to a Proprietary and Margin-flow Co- mingled Account used for F&O Contracts only, the Clearing House may enter into a collateral purchase agreement with a third party collateral purchaser under which the Clearing House will agree to offer for sale to the third party collateral purchaser certain Triparty Collateral provided as Margin on such Account, in the event of the F&O Clearing Member being declared a Defaulter under the Rules. Any proceeds of such sale will be included in the relevant net sum following an Event of Default.

ICE CLEAR EUROPE EMIR DISCLOSURE

Name of account	ICE position account code	Available to FCM/BD Clearing Members?	Available to Non-FCM/BD Clearing Members?	Contract Categories	Level of segregation under EMIR	Direct or indirect clients	TTFCA between Clearing Member and Customer?	Client money/ CASS acceptable?	TTFCA or Pledged Collateral Account between Clearing House and Clearing Member	Gross or net Margin	Excess Margin required to be held at Clearing House?	Back-to-back principal, agency or sponsored
Segregated Customer Omnibus Account For F&O	S	No	Yes	F&O	Omnibus	Direct	No TTFCA	Yes	TTFCA	Gross	No	Back-to-back principal
Segregated Customer Omnibus Account For F&O	E	No	Yes	F&O	Omnibus	Direct	No TTFCA	Yes	TTFCA	Net	No	Back-to-back principal
Additional Segregated Customer Omnibus Account for F&O for Affiliate positions	F	No	Yes	F&O	Omnibus	Direct	Either TTFCA or no TTFCA (but not both)	Yes	TTFCA	Gross	No	Back-to-back principal
Additional Segregated Customer Omnibus Account for F&O for Affiliate positions	R	No	Yes	F&O	Omnibus	Direct	Either TTFCA or no TTFCA (but not both)	Yes	TTFCA	Net	No	Back-to-back principal
Segregated TTFCA Customer Omnibus Account For F&O	T	No	Yes	F&O	Omnibus	Direct	TTFCA	No	TTFCA	Gross	No	Back-to-back principal

ICE CLEAR EUROPE EMIR DISCLOSURE

Name of account	ICE position account code	Available to FCM/BD Clearing Members?	Available to Non-FCM/BD Clearing Members?	Contract Categories	Level of segregation under EMIR	Direct or indirect clients	TTFCA between Clearing Member and Customer?	Client money/ CASS acceptable?	TTFCA or Pledged Collateral Account between Clearing House and Clearing Member	Gross or net Margin	Excess Margin required to be held at Clearing House?	Back-to-back principal, agency or sponsored
Segregated TTFCA Customer Omnibus Account For F&O	K	No	Yes	F&O	Omnibus	Direct	TTFCA	No	TTFCA	Net	No	Back-to-back principal
Segregated Customer Omnibus Account For CDS	C	No	Yes	CDS	Omnibus	Direct	No TTFCA	Yes	TTFCA	Gross	No	Back-to-back principal
Additional Segregated Customer Omnibus Account for CDS for Affiliate positions	F	No	Yes	CDS	Omnibus	Direct	Either TTFCA or no TTFCA (but not both)	Yes	TTFCA	Gross	No	Back-to-back principal
Segregated TTFCA Customer Omnibus Account For CDS	T	No	Yes	CDS	Omnibus	Direct	TTFCA	No	TTFCA	Gross	No	Back-to-back principal
Segregated Customer Omnibus Account For FX	C	No	Yes	FX	Omnibus	Direct	No TTFCA	Yes	TTFCA	Gross	No	Back-to-back principal

ICE CLEAR EUROPE EMIR DISCLOSURE

Name of account	ICE position account code	Available to FCM/BD Clearing Members?	Available to Non-FCM/BD Clearing Members?	Contract Categories	Level of segregation under EMIR	Direct or indirect clients	TTFCA between Clearing Member and Customer?	Client money/ CASS acceptable?	TTFCA or Pledged Collateral Account between Clearing House and Clearing Member	Gross or net Margin	Excess Margin required to be held at Clearing House?	Back-to-back principal, agency or sponsored
Additional Segregated Customer Omnibus Account for FX for Affiliate positions	F	No	Yes	FX	Omnibus	Direct	Either TTFCA or no TTFCA (but not both)	Yes	TTFCA	Gross	No	Back-to-back principal
Segregated TTFCA Customer Omnibus Account for FX	T	No	Yes	FX	Omnibus	Direct	TTFCA	No	TTFCA	Gross	No	Back-to-back principal
Margin-flow Co-mingled Accounts (Segregated Customers)	I	No	Yes	All, in same account	Individually segregated (but can be used as "private omnibus")	Direct	No TTFCA	Yes	TTFCA	N/A	Yes	Back-to-back principal
Margin-flow Co-mingled Accounts (TTFCA Customers)	J	No	Yes	All, in same account	Individually segregated (but can be used as "private omnibus")	Direct	TTFCA	No	TTFCA	N/A	Yes	Back-to-back principal

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Individually Segregated Sponsored Account	[Exists on systems as a clearing member with own set of codes]	No	Yes	All, in same account	Individually segregated	Direct or indirect	Either TTFCA or no TTFCA	Yes	TTFCA	N/A	Yes	Sponsored
Standard Omnibus Indirect Account For F&O	O	No	Yes	F&O	Omnibus	Indirect	No TTFCA	Yes	TTFCA	Gross	No	Back-to-back principal
Standard Omnibus Indirect Account For F&O	X	No	Yes	F&O	Omnibus	Indirect	No TTFCA	Yes	TTFCA	Net	No	Back-to-back principal
Standard TTFCA Omnibus Indirect Account For F&O	P	No	Yes	F&O	Omnibus	Indirect	TTFCA	No	TTFCA	Gross	No	Back-to-back principal
Standard TTFCA Omnibus Indirect Account For F&O	Y	No	Yes	F&O	Omnibus	Indirect	TTFCA	No	TTFCA	Net	No	Back-to-back principal

ICE CLEAR EUROPE EMIR DISCLOSURE

Name of account	ICE position account code	Available to FCM/BD Clearing Members?	Available to Non-FCM/BD Clearing Members?	Contract Categories	Level of segregation under EMIR	Direct or indirect clients	TTFCA between Clearing Member and Customer?	Client money/ CASS acceptable?	TTFCA or Pledged Collateral Account between Clearing House and Clearing Member	Gross or net Margin	Excess Margin required to be held at Clearing House?	Back-to-back principal, agency or sponsored
Segregated Gross Indirect Accounts (Segregated Customers)	A	No	Yes	F&O	Individually segregated (but can be used as "private omnibus")	Indirect	No TTFCA	Yes	TTFCA	N/A	No	Back-to-back principal
Segregated Gross Indirect Accounts (TTFCA Customers)	B	No	Yes`	F&O	Individually segregated (but can be used as "private omnibus")	Indirect	TTFCA	No	TTFCA	N/A	No	Back-to-back principal
DCM Customer Account	W	Yes	No	F&O	Omnibus	Direct	No TTFCA	No	Pledged Collateral Account	Gross	Not yet	Agency
DCM Customer Account	P	Yes	No	F&O	Omnibus	Indirect	No TTFCA	No	Pledged Collateral Account	Gross	No	Agency
Non-DCM/Swap Customer Account	S	Yes	No	F&O	Omnibus	Direct	No TTFCA	No	Pledged Collateral Account	Gross	Not yet	Agency
Non-DCM/Swap Customer Account	O	Yes	No	F&O	Omnibus	Indirect	No TTFCA	No	Pledged Collateral Account	Gross	Not yet	Agency

ICE CLEAR EUROPE EMIR DISCLOSURE

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Non-DCM/Swap Customer Account	E	Yes	No	F&O	Omnibus	Direct	No TTFCA	No	Pledged Collateral Account	Net	Not yet	Agency
Swap Customer Account	Z	Yes	No	CDS and FX	Omnibus	Direct	No TTFCA	No	Pledged Collateral Account	Gross	Not yet	Agency
General Customer Account	S	Yes	No	F&O	Omnibus	Direct	No TTFCA	No	Pledged Collateral Account	Gross	Not yet	Agency
General Customer Account	E	Yes	No	F&O	Omnibus	Direct	No TTFCA	No	Pledged Collateral Account	Net	Not yet	Agency
SBS Customer Account (if used)	Z	Yes	No	CDS only (if only single name CDS and no indices or FX are cleared in "Z" by a BD)	Omnibus	Direct	No TTFCA	No	Pledged Collateral Account	Gross	Not yet	Agency
Additional account for F&O for Affiliate positions—Proprietary Account	F	Yes	No	F&O	Proprietary Account	Direct or indirect	TTFCA	No	TTFCA	Gross	Not yet	Depends on documentation with client.

ICE CLEAR EUROPE EMIR DISCLOSURE

Name of account	ICE position account code	Available to FCM/BD Clearing Members?	Available to Non-FCM/BD Clearing Members?	Contract Categories	Level of segregation under EMIR	Direct or indirect clients	TTFCA between Clearing Member and Customer?	Client money/ CASS acceptable?	TTFCA or Pledged Collateral Account between Clearing House and Clearing Member	Gross or net Margin	Excess Margin required to be held at Clearing House?	Back-to-back principal, agency or sponsored
Additional account for F&O for Affiliate positions– Proprietary Account	R	Yes	No	F&O	Proprietary Account	Direct or indirect	TTFCA	No	TTFCA	Net	Not yet	Depends on documentation with client.



#### 4. Clearing Member default and porting

- 4.1 Different means of segregation of assets and different features of Customer Accounts result in different risks affecting each different kind of account. These risks are of particular relevance on an Event of Default being declared by the Clearing House in respect of a Clearing Member. At the outset, it should be noted that the Clearing House (except in a few technical exceptions such as for Sponsored Principal Accounts and FCM/BD Clearing Member agency structures) contracts only with and has relationships with only Clearing Members and not Customers.
- 4.2 Customer clearing has been designed to facilitate the transfer of Contracts (i.e. those between the Clearing House and Clearing Member) and related Customer- CM Transactions on an Event of Default occurring in relation to the Clearing Member carrying such Contracts. Margin on Customer Accounts may also be transferred to a Transferee Clearing Member subject to various conditions, to the extent that the same is not needed to meet losses on an Account. Where no Transferee Clearing Member is prepared to accept the relevant Contracts and Customer-CM Transactions in a timely manner, the Contracts would be closed out (see "Liquidation and net sums" below). Porting is governed generally by Rule 904 and the Standard Terms.
- 4.3 The effectiveness of any Customer segregation regime in the context of a particular Clearing Member default and the timing of any return or transfer of Customer assets will depend on numerous factors and circumstances outside the Clearing House's control that may be difficult to predict. Such factors may include the prior actions of the Clearing Member or Customer and their personnel, the state of a Clearing Member's internal books and records, the location and custody of relevant assets, the actions and cooperation of insolvency or administration officials, courts, regulators and other Customers and the outcomes of legal proceedings. The type of Customer Account used, place of business of the Clearing Member, place of business of the Customer and place of business of other Customers using a Customer Account may also have an impact on the ability of ICE Clear Europe to port Contracts, Customer-CM Transactions or Margin to a Transferee Clearing Member. Porting of Contracts will generally occur by way of termination of Contracts and Customer-CM Transactions with the Defaulter and the establishment of new, equivalent Contracts and Customer-CM Transactions with a Transferee Clearing Member, pursuant to the Rules and Standard Terms in accordance with Applicable Laws. Porting of Margin is generally subject to greater legal and practical constraints and would take place pursuant to and subject to the Rules, Standard Terms and/or Applicable Laws. If a Customer has provided collateral to a Clearing Member for Customer-CM Transactions that is in excess of the value of the Margin and Surplus Collateral held at the Clearing House, the amount of the excess will remain an unsecured claim on the Clearing Member and will not be ported.
- 4.4 There will be a number of conditions which must be satisfied before Contracts, and Customer-CM Transactions or related Margin can be ported to a Transferee Clearing Member. These conditions include that porting does not result in a Customer Account being under-margined, that the relevant client is not itself in an insolvency or administration process and that porting is not illegal and would not expose ICE Clear Europe to liabilities or legal challenges. Also, a consenting Transferee Clearing Member will need to have been found on time and porting documentation requires execution on time. In order for positions to be ported on an Event of Default of a Clearing Member, a Customer needs to have appointed a non-defaulting replacement Clearing Member in writing who is prepared to act as Transferee Clearing Member. If no Transferee Clearing Member is appointed on time, the Clearing House may liquidate the positions.
- 4.5 As a practical matter, porting of margin is likely to be more feasible for Customers using individual segregation, since only the consent of a single Customer is needed. For an omnibus account, porting of the entire account to a Transferee Clearing Member requires the consent of all Customers interested in the Account. Porting of individual Customer Contracts may be

possible, depending upon the facts, although is not guaranteed nor is it agreed to contractually by the Clearing House. Porting only of Contracts (without any Margin) may be more likely to be an alternative outcome for an omnibus account. Additionally, the likelihood of porting being successful may be enhanced where the client has pre-existing arrangements (e.g. legal and operational) in place with a Transferee Clearing Member, such as Customers having set up clearing arrangements with two or more Clearing Members and discussed the potential for porting in advance. Customers are recommended to consider putting such arrangements in place.

- 4.6 Porting may also occur in relation to indirect clearing arrangements on the default of a client, so as to protect the indirect client. However, the protection of indirect clients is generally speaking a Clearing Member responsibility and the Clearing House's role would be limited to updating its records. Such porting is not addressed further here; Clearing Member disclosures should be reviewed for relevant information.

## **5. Post-default porting period**

- 5.1 As set out in the Standard Terms, in the event of an ICE-Declared Default, there will be a minimum period, after the Clearing House has issued a Default Notice naming a Clearing Member, for Customers and their Transferee Clearing Members to notify the Clearing House of their agreement that Contracts and/or Margin can be Transferred to a Transferee Clearing Member pursuant to the Default Portability Rules ("Porting Notice"). For Customers other than Sponsored Principals, a Porting Notice must be received by the Clearing House within 4 hours of the Default Notice being published in order to be assured of being acted upon, subject to certain restrictions.
- 5.2 In order for any Porting Notice to be valid, it must: (A) be in writing; (B) concern and be duly authorised and executed by a Customer who would not, if it were a Clearing Member, be capable of being declared a Defaulter; (C) concern and be duly authorised and executed by a Transferee Clearing Member who is not a Defaulter; (D) be delivered to the Clearing House electronically in the form and to the address specified by the Clearing House; (E) concern positions which have not already been closed out or Transferred; and (F) otherwise comply with the requirements of Part 9 of the Rules.
- 5.3 In the case of an Individually Segregated Margin-flow Co-mingled Account, Individually Segregated Sponsored Account or Segregated Gross Indirect Account, a Porting Notice must be in respect of the single Customer interested in the Account in order to be valid. In the case of a Customer Account that is neither an Individually Segregated Margin-flow Co-mingled Account, an Individually Segregated Sponsored Account nor a Segregated Gross Indirect Account, the Porting Notice must be in respect of and executed by all Customers interested in the Account in order to be valid. Subject to the conditions for porting mentioned in paragraph 4.4, the Clearing House will act upon Porting Notices received by it within the 4-hour period specified above. The Clearing House may also act upon other Porting Notices received by it after the end of such periods, at its discretion but it is not obliged to do so. Customers and Transferee Clearing Members should be aware that due to operational constraints and depending on market conditions, it may not be possible for the Clearing House to process all Porting Notices (whether received within the 4-hour period or thereafter) within a reasonable period of time. Porting Notices received within the 4-hour period will be prioritised over any other notice. The Clearing House will not be obliged to comply with any Porting Notice which has not been acted upon by it: (A) if the Default Notice was issued before 13:00 hrs on a Business Day prior to the close of business on the same Business Day; (B) if the Default Notice was issued on a day which is not a Business Day prior to close of business on the next following Business Day; or (C) if the Default Notice is issued after 13:00hrs on a Business Day prior to noon of the next following Business Day.

- 5.4 At the end of the applicable porting period, the Clearing House may, at its sole discretion, terminate any open Contracts and related assets of the Defaulter or undertake other Transfers under consents provided for in the Rules and the Standard Terms. The Rules and the Standard Terms contain consents from Customers to porting of Contracts and/or Margin to *any* solvent Clearing Member, which may be used if porting to a Clearing Member of choice is not possible for any reason.
- 5.5 Customer positions and related Margin recorded in different kinds of Customer Accounts may be capable of being left open for different periods after the minimum porting period prior to liquidations becoming necessary. This is because some Customer Accounts may be "in the money" following the default, meaning they can be kept open for longer to allow porting, whilst others may bear losses and require fast liquidation. For omnibus accounts, the ability of the positions in the account to withstand market movements following a default will depend upon the effect of market valuations of all the positions in the account and the extent to which the positions in the account are balanced, which are likely to be factors outside the control of any single Customer. It is also possible that, despite the additional protections that segregation brings, an individually segregated account may require earlier liquidation than an omnibus account if the positions in the account are directional and lose money following a default.

## **6. Liquidation and net sums**

- 6.1 In the event that porting cannot be achieved due to losses incurred on a Customer Account, inability to find a Transferee Clearing Member, market conditions or otherwise, the Clearing House will close-out or terminate the positions. Pursuant to the Standard Terms, the Clearing House's termination of Contracts with the Clearing Member results in an automatic and contemporaneous termination of the related Customer-CM Transactions. After terminations are complete and all losses and assets are identified and evaluated, the Clearing House must declare a "net sum" separately for each Customer Account as owing to or from the Clearing Member. For Customer Accounts, this net sum will be calculated under Rule 905 taking into account the following amounts (among others and subject to the exceptions described below): (i) any losses or gains on the close out of Contracts (taking into account any mark-to-market margin previously provided); (ii) costs and losses of the Clearing House; (iii) original margin or initial margin, including any available surplus collateral; (iv) any payments due relating to physical settlement; (v) available guaranty fund of the defaulting Clearing Member; (vi) any other amounts, such as unpaid fees or fines; and (vii) any available surplus Proprietary Account margin of the Clearing Member. The use of initial or original Margin provided in respect of Customer Accounts for the purposes of calculating a net sum is restricted under Applicable Laws. For example, on an individually segregated account, no positions or Margin of other Customers can be offset against those of the Customer interested in that individually segregated account; and the same is true for Segregated Gross Indirect Accounts. For the Swap Customer Account of an FCM/BD Clearing Member, there are certain protections under Part 22 of the CFTC regulations, which is commonly referred to as the "legally segregated, operationally commingled" or "LSOC" rule. Under LSOC, the initial or original Margin attributable to one Customer may not be used to cover the losses from another Customer's positions, but protection is by reference to the value of all assets on the Customer Account, not to particular assets posted by particular Customers. Each Customer Account is segregated from the Proprietary Account of the Clearing Member and from each other Customer Account throughout the liquidation and net sum process. The only exception is that any excess assets on the Proprietary Account (after calculating the relevant net sum) or Guaranty Fund Contributions of the Defaulter may be used to meet a loss or shortfall on any Customer Account.
- 6.2 Customers whose trades are cleared in an omnibus account should note that, in the event of the assets for a particular Customer Account not being enough to cover losses, the losses on that Customer Account will effectively be mutualised amongst Customers interested in that account. The application of Guaranty Fund Contributions between particular accounts of the Defaulter is a matter reserved in part to the discretion of the Clearing House and would be

exercised so as to minimise any losses to the Clearing House and its non-defaulting Clearing Members in the first instance.

- 6.3 In the event of liquidation, the Clearing House will calculate a net sum separately for each different Customer Account (including for each different individually segregated Customer Account). If the net sum is an amount payable to the Clearing House, it will claim this amount from the Clearing Member and pass the loss through the "default waterfall" under the Rules. If the net sum is an amount payable by the Clearing House, the Clearing House will transfer the net sum to the relevant payee(s). Such payees may be Customers; direct payments (so called "leapfrog payments") to Customers are more likely to be possible in relation to an individually segregated account than an omnibus account and may be constrained by applicable insolvency laws in the Clearing Member jurisdiction. Where amounts are not transferred directly to a Customer following a Clearing Member default, such assets would be paid or transferred to the Defaulter or its Insolvency Practitioner. There may be consequent delays for Customers in claiming such assets or competing claims by third parties over such assets may exist. Even in the case of direct transfers to Customers, an Insolvency Practitioner may assert claims against a Customer, and litigation may be a risk. Importantly, Customer Account Margin is segregated from the Proprietary Account of the Clearing Member throughout the default process.
- 6.4 In relation to indirect clearing, "leapfrog payments" are also possible from Clearing Members to indirect clients on a client default. However, such matters are a Clearing Member responsibility and not the responsibility of the Clearing House, except as is necessary to release relevant funds or assets to the Clearing Member for such purposes upon close out of the corresponding positions at Clearing House level. Such leapfrog payments are not addressed further here; Clearing Member disclosures should be reviewed for relevant information.

## 7. Other Risks: Clearing Member Disclosures

- 7.1 Clearing Members of ICE Clear Europe are required to provide Customers with a risk disclosure statement. Many are basing this on the FIA/ISDA Article 39(7) Clearing Member Disclosure document, which is available from those market associations. Customers should refer to their Clearing Member statement and consider the FIA/ISDA document for a discussion of general risks relating to clearing and for specific issues related to the Clearing Member being used. Various risks, not discussed in detail here, are addressed in the FIA/ISDA document, including, but not limited to, transit risk, fellow client risk, liquidation risk, haircut risk, valuation mutualisation risk and risks related to indirect clearing. The Clearing House takes no responsibility for the accuracy or completeness of Clearing Member or FIA/ISDA disclosures in this regard.

ICE Clear Europe notes as follows concerning CCP insolvency risks, including for purposes of complying with article 15 of Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse as applicable in the United Kingdom pursuant to the European Union (Withdrawal) Act 2018 ("**UK SFTR**") and Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse ("**SFTR**"):

- Users of the Clearing House are unsecured creditors. The Clearing House generally receives assets on a TTFCA basis. This is the case for all Clearing Members and Sponsored Principals, except for those FCM/BD Clearing Members which have executed a Pledged Collateral Addendum in respect of their Customer Accounts. Users of the Clearing House which provide collateral on a TTFCA basis are unsecured creditors. The Clearing House will have full rights of ownership (including all the rights of usage that come with ownership) in respect of such TTFCA assets.
- For Margin transferred under a Pledged Collateral Addendum by FCM/BD Clearing Members, the Clearing House has rights of use and appropriation over such assets which if exercised will result in any ownership interest of the Clearing Member being replaced by a contractual claim to the assets and the Clearing Member in question

becoming an unsecured creditor. However, these rights are exercisable only following an Event of Default occurring in respect of the Clearing Member, whether or not this is declared.

- On an Insolvency of the Clearing House, the Rules provide for separate net sums to be calculated in respect of each different Proprietary Account and Customer Account on a segregated basis in the same way as on a Clearing Member default. However, there is no client money regime, client asset protection or secured arrangement over TTFCA collateral offered by the Clearing House.
- ICE Clear Europe also maintains a fully funded Guaranty Fund into which Clearing Members and ICE Clear Europe contribute. This is funded on a TTFCA basis by all Clearing Members. The Guaranty Fund is required, as a minimum under EMIR, to include sufficient assets to enable ICE Clear Europe to withstand under extreme but plausible market conditions losses in respect of either the largest Clearing Member or the second and third largest Clearing Member combined. ICE Clear Europe goes beyond this, satisfying requirements on the size of its Guaranty Fund applicable to so-called "QCCPs" under Basel III and the Capital Requirements Directive and also the CPMI-IOSCO's "cover 2" standard, under which its default funds covers defaults of the two largest Clearing Members. On an Insolvency of the Clearing House, Clearing Members will be unsecured creditors with respect to their Guaranty Fund contributions.

7.2 In addition, ICE Clear Europe holds its own regulatory capital which is intended to secure uninterrupted business activity or an orderly winding-down process. In the unlikely event of financial difficulties affecting ICE Clear Europe, various Rule provisions would apply to share losses and available assets by writing down the gains of Variation Margin or Mark-to-Market Margin payees for certain Contract Categories and ultimately terminating contracts for value and distributing assets among users. However, there can be no assurance these provisions will be used by an Insolvency Practitioner or Court or will be permitted to be used by Government Authorities. Moreover, invoking such provisions may lead to losses being suffered by Clearing Members and Customers in a way that depends on market price movements and is therefore not predictable. Such write-downs apply equally to Customer Accounts and, pursuant to the Standard Terms, relevant losses may be passed on by Clearing Members to Customers interested in such Accounts. In any event, Customers (except Sponsored Principals) will have no direct claim against ICE Clear Europe in an insolvency process, since they have no direct contractual or other relationship with the Clearing House. Pursuant to the Standard Terms, in such circumstances, Clearing Members will only be obliged to pay Customers (including Sponsored Principals) to the extent of any recovery from ICE Clear Europe, less expenses. It may be difficult or impossible to port Contracts, Customer-CM Transactions and related Margin in this scenario. It is also possible that there would be material delay and uncertainty around when and how much assets or cash can be recovered.

7.3 The Clearing House may be subjected to governmental resolution or recovery measures under the UK's Banking Act 2009. These may include measures requiring a bail-in, conversion to equity or write-down of the rights of creditors, which measures could apply to unsecured creditors such as Clearing Members or Sponsored Principals in respect of the Clearing House's obligations for the return of Margin (with potential impacts, pursuant to the Standard Terms, on Customers). Other steps potentially available to the authorities charged with resolution and recovery include, but are not limited to, the separation of the Clearing House into more than one legal entity, asset or business transfers, the appointment of administrators or insolvency practitioners in respect of the Clearing House, the mandatory termination of contracts or imposition of stays on the termination of contracts and other structural, organisational or legal changes any of which may affect the rights of Clearing Members and Customers.

## **8. Applicable Laws relating to insolvency**

8.1 The insolvency laws of several jurisdictions, including the UK, have been amended to permit the Clearing House to port Contracts and Margin and take other steps following an Event of

Default of a Clearing Member, as envisaged under UK EMIR. However, applicable laws of the jurisdiction in which a non-UK Clearing Member is incorporated may restrict the Clearing House from porting either Contracts or Margin, making leapfrog payments, offering protections intended to result from individual segregation or indirect client clearing rules or taking other steps following an Event of Default.

- 8.2 If the Clearing House does not port Contracts of a defaulter, then such Contracts will be liquidated (terminated) by the Clearing House. In such circumstances, pursuant to the Standard Terms, a Customer's contracts with its Clearing Member would also be terminated at the same time, resulting in loss of any benefit related to having open positions. A Customer or indirect client may incur costs to establish a replacement economic position elsewhere and make a claim in the defaulter's insolvency or administration process for any unreturned value in the terminated contracts.
- 8.3 If the Clearing House does not port Margin, and leapfrog payments do not occur, then the net sum for each relevant Account would be returned to the defaulting Clearing Member. There can be no assurance that local insolvency laws provide for any priority or separation of Customer property in these circumstances. Any property returned to a defaulter may be subject to claims by third parties or deductions for the costs of practitioners or courts dealing with the insolvency or administration, resulting in a reduced recovery. Recovery of assets may also be subjected to delays related to insolvency or court processes. The liability of a Clearing Member to a Customer may further be affected by resolution or recovery steps taken by relevant resolution or regulatory authorities under applicable laws. Such steps may result in a write-down of liabilities of the Clearing Member, the conversion of a Customer's debt claims into equity or the transfer of rights or liabilities of the Customer to a different legal entity.

## **9. United Kingdom**

- 9.1 The Clearing House is an authorised CCP under UK EMIR. This means that the Clearing House is not an authorised firm such as a bank or broker, but is supervised by the Bank of England in the operation of its Clearing House.
- 9.2 The Clearing House has certain statutory protections as a result of it being a recognised clearing house and authorised central counterparty under the Companies Act 1989 and UK EMIR, and as a result of it being the operator of a "designated system" under the Financial Markets & Insolvency (Settlement Finality) Regulations 1999. It also has rights as a collateral-taker under the Financial Collateral Arrangements (No. 2) Regulations 2003. These protections serve to counter certain challenges under insolvency laws (such as those relating to a moratorium and insolvency claw-back) in relation to the Clearing House's default rules and actions taken under its default rules. The Clearing House's default rules provide for it to be able to terminate, liquidate or transfer Contracts and Customer-CM Transactions, liquidate collateral, hedge positions, serve notices under contracts, deal with assets in the accounts, transfer positions and Margin to a Transferee Clearing Member in a porting situation and make leapfrog payments, among others. ICE Clear Europe has been advised that applicable UK statutory protections would apply to the Clearing House's default rules and default proceedings. As a result, as a matter of English law, the Clearing House is entitled to exercise the powers set out under its default rules to port Contracts and Margin, including upon the Event of Default of a Clearing Member established in the United Kingdom where the law governing the insolvency or administration is the law of a jurisdiction in the United Kingdom. Under Section 183(2) Companies Act 1989, no foreign judgment may be recognised in the United Kingdom if it were contrary to that legislation's UK insolvency law over-rides.

## **10. European Union**

- 10.1 The Clearing House has certain rights as a collateral-taker under Directive 2002/47/EC of the European Parliament and of the Council dated 6 June 2002 on financial collateral arrangements

(the "**Financial Collateral Directive**"). In addition, it holds various national designations as a third country system under certain European Union member state laws implementing or related to recital 7 of Directive 98/26/EC of the European Parliament and of the Council dated 19 May 1998 on settlement finality in payment and securities settlement systems (the "**Settlement Finality Directive**"). Pursuant to the Financial Collateral Directive (which according to the European Commission have been implemented in all relevant European member states) the Clearing House would be entitled to terminate Contracts. The Clearing House has been advised that it would not be constrained by any currently relevant EU Clearing Member insolvency laws from establishing new Contracts with a Replacement Clearing Member in order to port contracts recorded in a Customer Account. Pursuant to the Financial Collateral Directive, the Clearing House is also able to also entitled to realise and set off Margin against any losses on an account pursuant to close-out netting provisions in the Rules. However, neither of these pieces of legislation envisages or facilitates the Clearing House porting Margin to a Transferee Clearing Member or making leapfrog payments, which are governed by EMIR.

- 10.2 EMIR is directly applicable in all member states of the European Union and assumes that a Clearing House may port Margin to a Transferee Clearing Member. Recital 64 of EMIR states that the requirements laid down in EMIR on the segregation and portability of Clients' positions and assets should prevail over any conflicting laws, regulations and administrative provisions of the member states that prevent the parties from fulfilling them. However, EMIR does not amend the national insolvency laws of member states as regards third country recognised central counterparties. Insolvency laws applicable to a Clearing Member in default may render it inadvisable or impossible for ICE Clear Europe to take certain actions, such as porting Margin or Contracts or making leapfrog payments. If a member state's insolvency laws have not been amended to facilitate the porting of Margin and Contracts or leapfrog payments by a clearing house such as ICE Clear Europe, there can be no assurance that ICE Clear Europe will be able to invoke those aspects of its default rules in respect of a defaulter incorporated or established in such a jurisdiction in order to protect clients or indirect clients of such a defaulter. Similar restrictions may apply to indirect clients accessing clearing through Clients established in jurisdictions whose national insolvency laws do not facilitate porting under EMIR or which access via such Clearing Members.
- 10.3 ICE Clear Europe has been advised that, in some continental European jurisdictions, additional steps are required on the part of the Clearing Member and Customer in order for the Customer to be bound contractually to any changes which may be made from time to time to the Standard Terms annexes, despite the consultation provisions of such annexes and related processes and the publication of Standard Terms annexes by the Clearing House. If, as a result of such national laws, a Customer is not bound by any aspect of the Standard Terms annex or otherwise seeks to avoid, modify or renege from any of its obligations under a Standard Terms annex, there can be no assurance that the Clearing House will offer porting to that Customer. Indirect clients and clients should confirm with their Clearing Members as to whether any documentary requirements apply as regards default management protections offered by such Clearing Members in relation to client defaults.

## 11. Switzerland

- 11.1 The Clearing House has been recognized as a foreign central counterparty by the Swiss Financial Market Supervisory Authority (FINMA).
- 11.2 In the case of an insolvency of a Clearing Member, Art. 90 (1) of the Swiss Financial Market Infrastructure Act ("FMIA"), the Clearing House would be entitled, to the extent this is permitted under the Rules, to: (i) terminate Contracts; (ii) realize and set off Margin against any losses on an account pursuant to close-out netting provisions and (iii) port Margin and Contracts in the insolvency of a Clearing Member.

- 11.3 If the Clearing House does not port Contracts and Margin, then the positions would be liquidated. After liquidation any net sum due to the Customer would be separated on behalf of the Customer. Under Art. 90 (2) FMIA such rights arise by operation of law and would be exercised automatically by the Swiss liquidator in an insolvency of the Clearing Member.
- 11.4 The Clearing House has been advised that porting and segregation of positions are made separately by account class, i.e. segregated account structures would be reflected. While the FMIA mentions only individually segregated accounts and net omnibus segregated accounts, it is likely (although not certain) that other segregation models, such as those applicable under EMIR, UK EMIR and the US bankruptcy regime, would also be recognised by virtue of Art. 90 (1) FMIA.
- 11.5 The Clearing House has been advised that the issues discussed in paragraph 10.3 above are likely to apply similarly in Switzerland.

## **12. U.S.**

- 12.1 The Clearing House is a registered derivatives clearing organization ("DCO") under the U.S. Commodity Exchange Act and a registered securities clearing agency under the U.S. Securities Exchange Act of 1934. It also operates pursuant to an exemption from securities clearing agency registration for some products. As a DCO, the Clearing House is subject to U.S. regulations requiring that it segregates customer collateral deposited by an FCM with the Clearing House from, among other things, the property of the FCM and the property of the Clearing House. Applicable U.S. laws generally protect the rights of the Clearing House under its rules to terminate and net positions of an insolvent Clearing Member and apply margin of an insolvent Clearing Member. U.S. laws also generally permit the transfer of Customer positions and margin carried through an insolvent Clearing Member, subject to certain limitations.
- 12.2 The insolvency of an FCM/BD Clearing Member may, depending on the circumstances, be governed by one or more of (i) Subchapter IV of Chapter 7 of the U.S. Bankruptcy Code as supplemented by the insolvency rules under Part 190 of the CFTC Regulations (the "Commodity Broker Liquidation Provisions"), (ii) the insolvency regime of the Securities Investor Protection Act of 1970 ("SIPA"), or (iii) the orderly liquidation authority under Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the "OLA"). In any such proceeding, a trustee or receiver will be appointed to administer the assets of the failed FCM/BD Clearing Member. With respect to positions carried in a DCM Customer Account, Swap Customer Account or Non-DCM/Swap Customer Account, it is expected that the insolvency trustee or receiver will attempt to arrange with the Clearing House the porting of such positions and related margin to a Transferee Clearing Member, in accordance with Applicable Law. As discussed above, however, there can be no assurance that such porting will take place. In certain circumstances, such as where there is a shortfall in margin assets in the relevant account, it may be difficult or impossible to arrange such porting. Positions that are not ported would be liquidated.
- 12.3 Following liquidation of Customer positions, U.S. insolvency laws provide for the distribution to Customers of Customer property held by or on behalf of the insolvent FCM/BD Clearing Member, in priority to other creditors. Generally speaking, distribution is made separately by account class (i.e., separately for the Swap Customer Account, DCM Customer Account and Non-DCM/Swap Customer Account) on a pro rata basis to customers in that account class based on their net equity claims. (Such claims will typically be determined in accordance with the Commodity Broker Liquidation Provisions including applicable CFTC rules, even in a SIPA or OLA proceeding.) As a result, shortfalls in customer property held by or for the account of an insolvent FCM/BD Clearing Member would be shared among customers on a pro rata basis by account class. With respect to the Swap Customer Account, the LSOC rules are designed to limit certain elements of "fellow-customer" risk by preventing the Clearing House from using initial margin attributed to one Customer to cover losses resulting from another Customer's



positions, and thereby reduce the risk of a shortfall in customer funds. However, such a shortfall could nonetheless occur from investment losses, application or netting of variation margin, the order in which losses are realised on different positions, operational losses, fraud, custodian failure, CCP insolvency and other events.

- 12.4 Customers of FCM/BD Clearing Members that are affiliated to such FCM/BD Clearing Members should be aware that positions, Contracts and Margin referable to them may be recorded in the Proprietary Account of the Clearing Member, in accordance with applicable U.S. laws, with segregation only at position-keeping account level for record-keeping purposes. This may result in fellow customer risks also encompassing the proprietary positions of the Clearing Member for such affiliated Customers.
- 12.5 Indirect clients clearing through U.S. Clearing Members should be aware that indirect clearing accounts available at Clearing House level for FCM/BD Clearing Members are position-keeping accounts, which offer some but not all of the protections of indirect clearing envisaged under EMIR and MiFID II and that, notably, no post-default segregation from relevant Customer Accounts used by clients of the same Clearing Member is available in a Clearing Member default.

### **13. Abu Dhabi Global Market**

- 13.1 The Clearing House is recognised as a remote clearing house in the Abu Dhabi Global Market ("ADGM") pursuant to a recognition order of 20 April 2020. This is connected with the Clearing House providing clearing services for ICE Futures Abu Dhabi. The recognition gives rise to several insolvency law protections, including for default management, pursuant to Part 13 of the ADGM Financial Services and Markets Regulations 2015 (as amended), which includes similar protections for clearing houses to those established under the UK's Companies Act 1989 and the Settlement Finality Regulations.
- 13.2 The Clearing House currently has no ADGM-incorporated Clearing Members.

### **14. Important notice**

- 14.1 This Disclosure Statement covers certain risks that might arise to a Clearing Member or a Customer as a result of clearing at ICE Clear Europe under the various different Customer accounting structures ICE Clear Europe offer. It does not deal with risks related to trading nor other generic risks of clearing in derivatives, such as, but not limited to, interest rate risk, credit risk, market risk, leverage risk, tax risk or political risk. However, ICE Clear Europe notes that the value of investments may go up or down and that any investor in derivatives may lose more than the original amount invested. This Disclosure Statement does not address the implications of the various levels of segregation that may be applicable to Clearing Members or Customers or regulatory capital requirements.
- 14.2 This Disclosure Statement does not form part of the contractual documentation between ICE Clear Europe and its counterparties. The purpose of this Disclosure Statement is only to satisfy the obligation under UK EMIR and EMIR to provide the information required under UK EMIR and EMIR. Some sections are also relevant to ICE Clear Europe's obligations under UK SFTR and SFTR, where noted.
- 14.3 Although this document has been prepared on the basis of information available at the moment of preparation, ICE Clear Europe accepts no liability for any decision taken on the basis of this Disclosure Statement or for any omission in disclosure. This Disclosure Statement has been prepared on the basis of, and reflects solely, the law and the risks identified as at the date hereof, and the version of the Rules and Procedures published on the date specified above.

- 14.4 This Disclosure Statement does not provide all the information that may be needed to make a decision on the use of any of the Clearing House's services or whether to choose any particular account or level of segregation. Whilst this Disclosure Statement may be helpful to you when deciding how to use or choose an account at the Clearing House, this Disclosure Statement does not constitute legal, financial or any other form of advice and must not be relied on as such. The clearing models discussed in this Disclosure Statement are designed to provide individual or omnibus segregation at the Clearing House level of positions and Margin relating to Contracts recorded in a Customer Account and to facilitate "porting" of such positions and Margin following a default of the relevant Clearing Member or leapfrog payments, in accordance with EMIR and other Applicable Laws, and to comply with EU legal requirements on indirect clearing. Although the Clearing House has taken legal advice and consulted with its users and regulators in establishing these arrangements, there is no definitive judicial or regulatory precedent, as to how such arrangements would be treated in the event of the default of a Clearing Member or any other person. This Disclosure Statement provides only a high-level description or summary of several complex and/or new legal structures for clearing and areas of law, whose effect will vary depending on the specific facts of any particular case. It is the responsibility of any person considering using or accessing the Clearing House, whether as a Clearing Member, Customer, indirect client or otherwise, to review and conduct its own due diligence on the relevant Rules, Procedures, Contract Terms, Standard Terms annexes, Trading Facility, Exchange and other Market Rules, documentation with its Clearing Member or Customer, other legal documentation, Applicable Laws and any other information that may be relevant to its decision on whether and how to use the Clearing House's services. Customers, indirect clients, Clearing Members and any other users of the Clearing House should consult their own legal and financial advisors as to the legal effect of the contracts it is party to, relevant documentation mentioned above, any segregation model and the appropriateness of any of the above for their particular circumstances.
- 14.5 The Clearing House 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 Disclosure Statement. Such excluded losses or damages include (a) any loss of profit or revenue; (b) damage to reputation or loss or any contract or other business opportunity or goodwill; or (c) any indirect loss or consequential loss. No responsibility or liability is accepted for any differences of interpretation of legislative provisions and related guidance on which this Disclosure Statement is based. This paragraph does not extend to an exclusion of liability for, or remedy in respect of, fraudulent misrepresentation, death or personal injury caused by negligence or any other liability which by Applicable Law may not be excluded or restricted.
- 14.6 This Disclosure Statement has been prepared on the basis of English, Swiss and U.S. laws and the law of the European Union save as otherwise stated. However, issues under other laws, such as those of the place of business of a Clearing Member, Customer or indirect client or governing laws of documentation between Clearing Members and Customers (including Standard Terms annexes) or between Customers and indirect clients, and the law of location of any assets, may be relevant to any due diligence, including as to the effectiveness of account segregation.