VERSION: 3 FEBRUARY 2017

In accordance with the provisions of Article 39(7) of the Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (EMIR), this Clearing Member Disclosure Statement is being made available to our clients that are entitled to the protections of EMIR.

CREDIT SUISSE SECURITIES (USA) LLC

CLEARING MEMBER DISCLOSURE STATEMENT[1]

PROTECTION OF CUSTOMER FUNDS UNDER THE COMMODITY EXCHANGE ACT AND COMMODITY FUTURES TRADING COMMISSION RULES

I. Introduction

A. The purpose of this document.[2]

We are providing this Clearing Member Disclosure Statement (**Statement**) to you because you have elected to enter into derivatives transactions that may be cleared by a clearing organization that is authorized as a central counterparty (**CCP**) in accordance with EMIR. Article 39 of EMIR provides that we must:[3]

(i) offer you a choice of an individual client segregation account or an omnibus client segregation account;

(ii) publicly disclose the levels of protection and the costs associated with the different levels of protection they provide; and

(iii) describe the main legal implications of the respective levels of segregation offered including information on the applicable insolvency law.

---

[1] Although care has been taken to assure that the information herein is accurate as of the date of publication, this Statement is not intended to constitute legal or regulatory advice. Recipients of this Statement should not act, or refrain from acting, on the basis of the analysis herein without seeking appropriate advice from their own counsel. FIA specifically disclaims any legal responsibility for any errors or omissions and disclaims any liability for losses or damages incurred through the use of this Statement. FIA undertakes no obligations to update this document following the date of publication.

[2] As used throughout this Statement, the terms "we", "our" and "us" refer to the clearing member; the terms "you" and "your" refer to the client.

[3] The European Securities and Markets Authority (**ESMA**) has clarified that all clearing members of EU CCPs are required to comply with EMIR Article 39. *See* ESMA CCP Question 8(i) (https://www.esma.europa.eu/sites/default/files/library/2016-1176_qa_xix_emir.pdf).

We are a clearing member of one or more CCPs located in the European Union (**EU**) that are both (i) authorized by EMIR, and (ii) registered with the Commodity Futures Trading Commission (**Commission**) as a derivatives clearing organization (**DCO**) in order to provide clearing services to US persons in connection with swaps.[4] Because we are registered with the Commission as a futures commission merchant (**FCM**), we must comply with the provisions of the US Commodity Exchange Act (**CEA**) and the Commission's rules governing the protection of customer assets and positions, as well as EMIR.

Under the Commission's regulatory regime, FCM clearing members are unable to provide their clients forms of client segregation, either individual client segregation or omnibus client segregation, that com

ply with EMIR. The forms of client segregation that FCMs may provide differ in certain respects from the forms provided under EMIR.[5] We have made available separately the costs associated with providing client segregation in compliance with the Commission's regulations.

You are entitled to elect to have your assets and positions held in accordance with a client segregation regime under EMIR and, if you elect to do so, we will facilitate the transfer of the assets and positions that we currently hold on your behalf to our EU affiliate or another clearing member licensed in an EU jurisdiction that is willing to accept your account.

If you (i) are a "**US person**" under the Commission's regulatory regime, or (ii) trade derivatives listed for trading on an exchange, *i.e.*, futures and options on futures contracts, that is registered with the Commission as a designated contract market (**DCM**) (*e.g.*, ICE Futures US) and elect to have your assets and positions held in accordance with a client segregation regime under EMIR, you will no longer be allowed to clear swaps through a CCP that has been authorized in accordance with EMIR or enter into derivatives listed for trading on a DCM and cleared through such CCP.

This Statement describes at a high level the statutory and regulatory regime under the CEA and applicable Commission rules governing the protection of customer assets and positions with respect to (i) cleared swaps,[6] and (ii) exchange-traded derivatives.

Please contact us either to indicate your elections after you have reviewed the relevant information in connection with each CCP as they are authorized under EMIR. We may also contact you from time to time with a view to confirming your written elections.Before making

---

[4] The terms "CCP" and "DCO" will be used interchangeably throughout this Statement. Each of CME Clearing Europe, Eurex Clearing AG, ICE Clear Europe, LCH Limited and LCH SA is registered with the Commission as a DCO and is permitted to clear one or more classes of swaps for cleared swaps customers.

[5] As explained below under *Customer protection regime*, the rules governing the protection of cleared swaps customer collateral differ from the rules governing the protection of customer funds held in connection with exchange-traded derivatives.

[6] The CEA defines a "cleared swap" to mean any swap that is, directly or indirectly, submitted to and cleared by a DCO registered with the Commission. A "swap", in turn, is broadly defined and includes "an agreement, contract, or transaction that is, or in the future becomes, commonly known to the trade as a swap."

a decision, we encourage you to carefully review this Statement as well the separate disclosure statement made available by our EU affiliate that describes the levels of protection afforded under, and the main legal implications of, client segregation under EMIR. This latter disclosure statement, and our affiliate's pricing disclosure statement, are available on our affiliate's website at: https://www.credit-suisse.com/investment_banking/client_offering/en/emir_disclosures.jsp.

B. Organization of this Statement

This Statement is set out as follows:

- Part II highlights certain significant differences between EMIR and Commission rules.
- Part III describes the agency clearing model.
- Part IV describes the Commission's regulatory regime for the protection of customer funds.
- Part V summarizes the rights of a customer to transfer, or port, assets or positions in a business-as-usual context and in the event we default in our obligations to a CCP.
- Part VI considers factors to consider in the event of the insolvency of a CCP or other third party.

C. What you are required to do.

You are required to review the information provided in this Statement and, as applicable, the separate disclosure statement provided by our affiliate and the disclosure statement provided by the CCP through which you may clear derivatives transactions. You must confirm to us in writing whether you intend to continue to maintain an account with us to clear derivatives or to transfer your account to our affiliate or other clearing member willing to accept your account that is licensed in an EU jurisdiction.

We will explain how we would like you to make this confirmation and by when. If you do not confirm within the requested timeframe, we may have to take action with respect to your account. In the meantime, we will continue to clear your swaps and exchange-traded derivatives using the existing omnibus account structure.

D. Important

Although this Statement will be helpful to you when making this decision, this Statement does not constitute legal or any other form of advice and must not be relied on as such. This Statement provides a high level analysis of several complex and/or new areas of law, whose effect will vary depending on the specific facts of any particular case, some of which have not been tested in the courts. It does not provide all the information you may need to make your decision on which account type or level of segregation is suitable for you. It is your responsibility to review and conduct your own due diligence on the relevant rules, legal documentation and any other information provided to you on each of our client account

offerings and those of the various CCPs on which we clear derivatives for you. You may wish to appoint your own professional advisors to assist you with this.

We will 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 Statement. Such losses or damages include (a) any loss of profit or revenue, damage to reputation or loss of any contract or other business opportunity or goodwill, and (b) any indirect loss or consequential loss. No responsibility or liability is accepted for any differences of interpretation of legislative provisions and related guidance on which it is based. This paragraph does not extend to an exclusion of liability for, or remedy in respect of, fraudulent misrepresentation.

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

II. Significant Differences Between EMIR and Commission Rules

As noted above, the primary focus of this Statement is the Commission's regulatory regime for the protection of customer funds. Nonetheless, throughout this Statement, we identify certain differences and similarities between the manner in which derivatives transactions generally are cleared in the EU, including as required by EMIR, and in which they are cleared under the Commission's regulatory regime. At the outset, we highlight the following:

- In the EU, cleared derivatives transactions are generally entered into using the "principal model." That is, the clearing member enters into two separate but related transactions: (i) a principal transaction with its client; and (ii) an equal and opposite principal transaction with the CCP. Under the Commission's regulatory regime, transactions are entered into using the "agency model." That is, the FCM clearing member, as agent for its customer, enters into one transaction with the CCP. The clearing member FCM does not enter into a separate transaction with its customer.

- In the EU, customer assets may be transferred to a clearing member on either a title transfer basis or a security interest basis. Under the Commission's regulatory regime, customer assets may only be transferred on a security interest basis.

- Under EMIR, clearing members must offer customers a choice between EMIR individual client segregation and EMIR omnibus client segregation. Under the Commission's regulatory regime, FCM clearing members may provide only US omnibus client segregation. The forms of omnibus client segregation permitted under Commission rules differ in certain respects from the forms of omnibus client segregation that comply with EMIR.

- Under EMIR, clearing member affiliates are treated as customers and may be part of the same omnibus client account as all other customers. Under the Commission's regulatory regime, the accounts of clearing member affiliates must be treated as proprietary accounts and may not be commingled with customer accounts. This reflects the Commission's view that accounts that are subject to common control with the FCM may pose the same risk to customer funds as an FCM's own accounts.

III. Agency Clearing Model

Derivatives transactions cleared through a CCP in the EU are generally entered into using the "principal model." That is, the clearing member enters into two separate but related transactions: (i) a principal transaction with its customer; and (ii) an equal and opposite principal transaction with the CCP.

Under the Commission's regulatory regime, transactions are entered into using the "agency model." That is, the FCM clearing member enters into one transaction, and posts margin, with the CCP, as agent for and on behalf of its customer. The FCM clearing member does not enter into a separate transaction with its customer.

As the clearing member of the CCP, we are required to post assets with the CCP as margin to support your open positions within the time prescribed by the CCP. Such margin is generally required to be paid to the CCP early in the morning, although the CCP may call for additional margin during any trading day. Consequently, we will frequently meet a CCP's margin requirements using our own funds and then call you for margin. In the ordinary course, we will expect you to meet any call for margin by the end of the day on which the call is made. If you provide margin in a form that is not accepted by the CCP, we may transform it. The arrangements between you and us relating to how margin calls will be funded will be set out in our customer agreement with you.

IV. Customer protection regime

We may receive assets from you to margin: (i) cleared swaps executed bilaterally, either over-the-counter or through a trading facility such as (a) regulated market or a multilateral trading facility operated by an authorized investment firm (**Market**), or (b) a swap execution facility registered with the Commission;[7] (ii) exchange-traded derivatives executed on a designated contract market (**DCM**) registered with the Commission;[8] or (iii) exchange-traded derivatives executed on a regulated market.[9]

Under Commission rules, customer collateral received to margin cleared swaps may not be commingled with funds received to margin exchange-traded derivatives executed on either a DCM or a regulated market. Similarly, customer funds received to margin exchange-traded derivatives executed on a DCM may not be commingled with funds received to margin exchange-traded derivatives on a regulated market. As discussed below under *Transfer, or porting, of customer assets and positions*, the prohibition on commingling assures that customer assets are better protected in the event of an FCM clearing member bankruptcy.

The rules governing the protection of cleared swaps customer collateral differ from the rules governing the protection of customer funds held in connection with exchange-traded derivatives. We discuss first the regulatory regime for cleared swaps customer collateral, followed by a discussion of the regime for customer funds held in connection with derivatives traded on a DCM or a regulated market.

---

[7] As noted above, each of CME Clearing Europe, Eurex Clearing AG, ICE Clear Europe, LCH Limited and LCH SA is registered with the Commission as a DCO and is permitted to clear one or more classes of swaps for cleared swaps customers.

[8] Certain CCPs also clear futures and options on futures contracts listed for trading on US designated contract markets. For example, ICE Clear Europe clears futures and options on futures contracts listed for trading on ICE Futures US. Both CME Clearing Europe and LCH Limited are permitted by the scope of their respective DCO registrations to – but do not currently – clear futures and options on futures contracts listed for trading on DCMs.

[9] Each of CME Clearing Europe, Eurex Clearing AG, ICE Clear Europe, LCH Limited and LCH SA clears futures and options on futures contracts listed for trading on one or more Markets.

A. Cleared Swaps Customer Collateral[10]

The Commission's regulatory regime for the protection of cleared swaps collateral held for cleared swaps customers is commonly referred to as "**LSOC**", an acronym for "legally segregated, operationally commingled." LSOC implements the provisions of the CEA that require us to "treat and deal with all money, securities and property of any swaps customer received to margin, guarantee orsecure a swap cleared by or through a DCO as belonging to such customer."[11] Cleared swaps customer collateral must be separately accounted for and may not be commingled with our funds or be used to margin, guarantee, or secure any trades or contracts of any other swaps customer or person.

1. Required records. Notwithstanding the foregoing, the CEA and Commission rules permit us to commingle cleared swaps customer collateral in the same account or accounts with a bank or trust company or a CCP that clears cleared swaps customers positions on our behalf. Although cleared swaps customer positions and collateral may be held in the same commingled account, each FCM and CCP must maintain books and records that identify the positions of, and the market value of the collateral posted by, each customer in order that, in the event of a customer default, the collateral of a non-defaulting customer is not exposed to losses attributable to the defaulting customer.

These recordkeeping requirements achieve several goals:

- The required records assure that we conduct the daily analysis to confirm that we are not using the funds of one customer to meet the obligations of another at the CCP.

- As discussed below under *Transfer, or porting, of customer assets and positions*, the required records assure that, in the event we are placed in bankruptcy, the CCP does not use the collateral of non-defaulting customers to meet the margin obligations of one or more defaulting customers.

- The required records should facilitate the transfer of cleared swaps customer positions and related margin, whether at the request of the customer in a business-as-usual context or upon our default.

---

[10] **Cleared swaps customer collateral** is broadly defined to mean all money, securities, or other property received by an FCM or by a DCO from, for, or on behalf of a cleared swaps customer, that: (i) is intended to or does margin, guarantee, or secure a cleared swap; or (ii) constitutes, if a cleared swap is in the form or nature of an option, the settlement value of such option. This term also includes accruals, *i.e.*, all money, securities, or other property that an FCM or DCO receives, directly or indirectly, which is incident to or results from a cleared swap that an FCM intermediates for a cleared swaps customer.

A **cleared swaps customer** is any person entering into a cleared swap, except (i) any owner or holder of a cleared swaps proprietary account with respect to the cleared swaps in such account, and (ii) a clearing member of a DCO with respect to swaps cleared on that DCO. Commission rules provide that accounts of clearing member affiliates must be treated as proprietary accounts and may not be commingled with customer accounts.

[11] The obligation to treat cleared swaps customer collateral as belonging to the customer requires that all such collateral be received on a security interest basis. Customer collateral may not be received on a title-transfer basis.

2. Excess customer collateral. LSOC permits, but does not require, an FCM clearing member to maintain its cleared swaps customers' excess collateral with a CCP if: (1) the rules of the DCO expressly permit the FCM to transmit collateral in excess of the amount required by the DCO; and (2) the CCP provides a mechanism by which the FCM is able to, and maintains rules pursuant to which the FCM is required to, identify each business day, for each cleared swaps customer, the amount of collateral posted in excess of the amount required by the CCP.[12]

By electing to hold its cleared swaps customers' excess collateral with a CCP, an FCM clearing member may assure its customers that their collateral will not be subject to inadvertent or intentional misuse by the FCM. Moreover, the transfer of cleared swaps customer positions and related margin, whether at the request of the customer in a business-as-usual context or upon the default of the customer's FCM clearing member, should be facilitated.

However, the transfer of a cleared swaps customer's collateral between CCPs to meet margin requirements will be more difficult.[13] Importantly, excess customer collateral held at a CCP will not necessarily receive greater protection in the event of the bankruptcy of the FCM clearing member. As discussed below under *Transfer, or porting, of customer assets and positions*, customers have a priority over other creditors of a bankrupt FCM, and the funds held for the benefit of customers will not be subject to the claims of other creditors. Nonetheless, in the unlikely event of a shortfall of assets available to meet the claims of cleared swaps customers, all cleared swaps customers will share in the shortfall ratably.

B. Exchange-traded derivatives

1. US derivatives exchanges. The provisions of the CEA that provide for the segregation of customer funds held to margin, guarantee or secure futures and options on futures contracts traded on or subject to the rules of a US derivatives exchange are essentially identical to the provisions governing cleared swaps customer collateral. Exchange-traded derivatives customer funds: (i) must be separately accounted for and may not be commingled with our funds or be used to margin, guarantee, or secure any trades or contracts of any other customer or person; and (ii) may be commingled in an omnibus account with a bank or trust company or with the DCO that clears exchange-traded derivatives on our behalf. Nonetheless, there are differences, in particular with respect to the books and records that the DCO must create and maintain.

At the FCM level, the differences between the exchange-traded customer omnibus model and LSOC are slight. In each instance, FCMs are required to create and maintain books and

[12] For example, Eurex Clearing AG, ICE Clear Europe and LCH Limited have adopted rules permitting FCM clearing members to maintain a cleared swaps customer's excess collateral with the DCO.

[13] For example, excess funds held at a CCP must be transferred back to the clearing member before they may be transferred to another CCP.

records concerning: (i) the identity of their customers; (ii) the positions held on behalf of each such customer; and (iii) the collateral deposited by each customer to margin such positions.

At the CCP level, however, the FCM clearing member is not required to provide the CCP with information to identify the positions of, and the market value of the collateral posted by, each customer, and the CCP is not required to create and maintain such books and records. Rather, the CCP is entitled to treat the omnibus account as a single customer.

As discussed below under *Transfer, or porting, of customer assets and positions*, because the CCP is entitled to treat the omnibus account as a single customer, a customer's ability to transfer the customer's positions and related margin upon the default of the FCM clearing member may be limited. Moreover, in the event an FCM clearing member defaults in its obligations to a CCP and there is a shortfall in the customer funds required to be held in the customer omnibus account, the CCP may, but is not required to, liquidate all positions held in the omnibus account and apply the proceeds thereof to meet the FCM's obligations to the CCP with respect to the customer omnibus account.[14]

2. Non-US derivatives exchanges. We may be a clearing member of a CCP for the purpose of clearing transactions executed on a non-US derivatives exchange.[15] The CEA does not specifically provide for the segregation of customer funds held to margin, guarantee or secure futures and options on futures contracts traded on or subject to the rules of a non-US derivatives exchange. Nonetheless, at the FCM level, the Commission's rules establish a regulatory regime that is comparable to the provisions governing US exchange-traded derivatives customer funds. Customer funds held for the purpose of trading non-US exchange-traded derivatives: (i) must be separately accounted for and may not be commingled with our funds or be used to margin, guarantee, or secure any trades or contracts of any other customer or person; and (ii) may be commingled in an omnibus account with a bank or trust company or with the CCP that clears exchange-traded derivatives on our behalf. In addition, we are required to maintain books and records concerning: (i) the identity of our customers; (ii) the positions held on behalf of each such customer; and (iii) the collateral deposited by each customer to margin such positions.

At the CCP level, however, the rules of the jurisdiction otherwise governing the treatment of customer funds apply. In the case of an EMIR-authorized CCP, customer funds would be held in an omnibus client account.

---

[14] As further discussed below, the assets held in the customer omnibus account may not be used to meet any other obligations of the FCM clearing member to the CCP.

[15] For example, as noted above, each of CME Clearing Europe, Eurex Clearing AG, ICE Clear Europe, LCH Limited and LCH SA clears futures and options on futures contracts listed for trading on non-US derivatives exchanges. Certain FCMs that are clearing members of ICE Clear Europe are authorized to clear derivatives transactions executed on ICE Futures Europe and ICE Endex. Pursuant to Commission Order, certain of the positions executed on behalf of customers on ICE Futures Europe and ICE Endex and the related margin are permitted to be held in the same account as US exchange-traded derivatives in order to allow portfolio margining between derivatives traded on those exchanges and derivatives traded on ICE Futures US. Such positions and margin receive the same protections provided US exchange-traded derivatives.

3. Excess customer funds. Commission rules do not expressly authorize a CCP to adopt (or prohibit a CCP from adopting) rules permitting an FCM clearing member to maintain its excess customer funds with the CCP. If a CCP were to adopt such rules, the CCP would not be required to identify such funds to particular customers within the customer omnibus account. In the event an FCM clearing member defaults in its obligations to the CCP and there is a shortfall in the customer funds required to be held in the customer omnibus account, the CCP may apply the excess customer funds that it is holding to meet the FCM's obligations to the CCP with respect to the customer omnibus account.

V. Transfer, or porting, of customer assets and positions

A. Transfers to another FCM in a business-as-usual context

The rights and obligations of FCMs and their customers with respect to the transfer of customer assets and positions to another FCM in a business-as-usual context are the same whether the customer is trading (i) cleared swaps, (ii) exchange-traded derivatives executed on a DCM, or (iii) exchange-traded derivatives executed on a regulated market. In particular, Commission rules prohibit us from transferring your assets and positions to another FCM without your consent.

In a business-as-usual context, *i.e.*, we are not in default, you may request at any time that all or a portion of your assets and positions be transferred to another FCM clearing member that has agreed to accept your account. National Futures Association (**NFA**) Compliance Rule 2-27 provides that, within two business days after receiving a customer's request to transfer the customer's account, or within such further time as may be necessary in the exercise of due diligence, the FCM clearing member carrying the account must confirm to the FCM clearing member receiving the account all balances in the account and all open positions. Within three business days of the day such confirmation is due, or within such further time as may be necessary in the exercise of due diligence, the FCM clearing member carrying the account must effect the transfer of the balances and positions to the receiving FCM clearing member.

NFA Compliance Rule 2-27 is applicable to all FCMs and each type of customer account.

B. Transfers when the FCM clearing member is in default under DCO rules but not in bankruptcy.

1. Cleared swaps. If an FCM clearing member that clears swaps on behalf of its customers is deemed to be in default under the rules of the relevant CCP but has not been placed in bankruptcy, the CCP will undertake to facilitate the transfer of the defaulting FCM's customers to one or more non-defaulting FCM clearing members that are willing and able to accept the accounts.

Because a CCP will have information regarding the identity of each cleared swaps customer of the defaulting FCM clearing member, the positions carried on behalf of each such customer and the value of the collateral margining such positions, a cleared swaps customer may be able to request the CCP to transfer the customer's positions and related margin to an FCM clearing member that the cleared swaps customer selects.

The defaulting FCM is required to cooperate with the CCP in effecting such transfer and, therefore, the FCM should transfer any excess cleared swaps collateral it may hold. Nonetheless, the transfer of customer assets and positions will be facilitated if excess cleared swaps customer collateral is held by the CCP that has declared the FCM clearing member in default.

2. Exchange-traded derivatives. Because a CCP will not have information with respect to value of the assets and positions on behalf of an FCM clearing member's exchange-traded derivatives customers, such customers will not have an opportunity to request that their positions and related margin be transferred to an FCM clearing member that the customer selects. In these circumstances, the CCP may attempt to transfer the assets and positions held in the customer omnibus account to one or more non-defaulting FCMs.

In this regard, EMIR Article 48(5) instructs a CCP to "commit itself to trigger the procedures for the transfer of the assets and positions held by the defaulting clearing member for the account of its clients to another clearing member designated by all of those clients, on their request and without the consent of the defaulting clearing member." However, that other clearing member is required to accept those assets and positions "only where it has previously entered into a contractual relationship with the clients by which it has committed itself to do so." Once transferred to a non-defaulting FCM clearing member, the customer will be able to request that the customer's account be transferred to an FCM clearing member that the customer selects.

C. Treatment of cleared swaps customer assets and positions when the FCM clearing member is placed in bankruptcy

1. In general. If an FCM clearing member is placed in bankruptcy, the FCM is liquidated in accordance with the commodity broker liquidation provisions of the US Bankruptcy Code and the Commission's rules.[16]

2. Authority of a CCP in the event of a shortfall in the cleared swaps customer omnibus account. If, upon the bankruptcy of an FCM clearing member, there is a shortfall in the required margin for the cleared swaps customer omnibus account at a CCP, the Commission's rules governing cleared swaps customer collateral specifically prohibit a CCP from netting the positions and collateral of non-defaulting customers with the positions and collateral of any other customer or the clearing member.[17]

3. Transfer of cleared swaps customer assets and positions. Once an FCM clearing member has filed for, or is otherwise placed in bankruptcy, a CCP may not transfer, or port, the positions and assets of non-defaulting customers to another clearing member except as directed by the trustee and confirmed by the Bankruptcy Court. However, the Commission's rules instruct the trustee in bankruptcy to attempt to "effectuate the transfer of entire customer accounts wherein the commodity contracts are transferred together with the money, securities,

---

[16] It is important to note that the Commission's rules specifically require each FCM clearing member or CCP holding cleared swaps customer collateral to designate the United States as the legal location of such collateral. The purpose of this requirement is to assure that cleared swaps customer collateral will be treated in accordance with the US Bankruptcy Code. This is the case even if the CCP is located outside of the US and also subject to the laws of another jurisdiction.

[17] The CCP may use the value of the collateral posted on behalf of the defaulting customer. The Commission's rules with regard to cleared swaps customer collateral are consistent with EMIR.

or other property margining, guaranteeing, or securing the commodity contracts."[18] The rules further provide that, if the FCM's customer accounts cannot be transferred in their entirety, the trustee may effect a partial transfer of all customer accounts or of an individual customer account.

In the event customer accounts cannot be transferred, however, or only a partial transfer is accomplished, the trustee is further instructed to liquidate all remaining open positions. The Bankruptcy Code requires that losses arising in any account class of a defaulting FCM must be shared ratably among the members of that account class.[19] Therefore, in the event that losses among cleared swaps customers are so great that the FCM is unable to meet the shortfall with its own assets and consequently defaults to the CCP, a cleared swaps customer may be exposed to losses of other customers.[20]

D. Treatment of exchange-traded derivatives customer assets and positions when the FCM clearing member is placed in bankruptcy

1. In general. With one critical exception discussed below, the law governing the treatment of exchange-traded derivatives customer assets and positions is similar to the treatment of cleared swaps customer assets and positions. In particular, when an FCM clearing member has filed for, or is otherwise placed in bankruptcy, a CCP may not transfer, or port, the positions and assets of non-defaulting customers to another clearing member except as directed by the trustee and confirmed by the Bankruptcy Court. In addition, the trustee in bankruptcy, in coordination with the CCP, will attempt to effectuate the transfer of all customer positions together with the money, securities, or other property held to margin the commodity contracts.

In the event customer accounts cannot be transferred, however, or only a partial transfer is accomplished, the trustee is further instructed to liquidate all remaining open positions. The Bankruptcy Code requires that losses arising in any account class of a defaulting FCM must be shared ratably among the members of that account class.

2. Authority of a CCP in the event of a shortfall in the exchange-traded derivatives customer omnibus account. In contrast to the treatment of the cleared swaps customer omnibus account, if, upon the bankruptcy of an FCM clearing member, there is a shortfall in the exchange-traded derivatives customer omnibus account at a CCP caused by the default of one or more customers, Commission rules permit, but do not require, the CCP to net and liquidate the positions held in the customer omnibus account and to use the proceeds of such liquidation to meet the defaulting FCM's obligations to the CCP with respect to the omnibus

---

[18] The trustee will coordinate with the CCP to effect a transfer of a defaulting FCM's customer positions.

[19] Under the Bankruptcy Code, (i) cleared swaps customers, (ii) customers clearing exchange-traded derivatives executed on a DCM, and (iii) customers clearing exchange-traded derivatives executed on a regulated market each comprise a separate account class.

[20] Consequently, even if an FCM clearing member were able to provide its customers individual client segregated accounts, such accounts would not provide any additional protection to customers in the event of the bankruptcy of the FCM clearing member.

account.[21] The proceeds from the liquidation of the exchange-traded derivatives customer omnibus account may not be used to meet any other obligations of the FCM clearing member to the CCP.

E. Rights and Obligations of CCPs Under EMIR

The disclosure statement made available by our EU affiliate, referenced above, describes in greater detail the rights and obligations of clearing members, their clients and CCPs under EMIR in the event a of clearing member default. These rights and obligations differ in certain respects from the rights and obligations available under the CEA and the Commission's regulatory regime. We note immediately below two significant differences.

1. As noted earlier, under EMIR Article 48(5), a CCP may transfer the assets and positions held by a defaulting clearing member in an omnibus client segregated account only if all of the clients that comprise the omnibus client segregated account had previously designated another clearing member. Under the Commission's regulatory regime, the consent of the clients would not be necessary. Rather, the CCP, in coordination with the Commission, would identify one or more non-defaulting clearing members that would be willing to accept the omnibus account. Once the omnibus account is transferred, each customer would be able to request that the customer's account be transferred to an FCM clearing member that the customer selects.

2. EMIR Article 48(5) also requires a CCP commit to transfer the assets and positions held by defaulting clearing member in an omnibus client segregated account for a predefined period of time after the clearing member becomes insolvent. Under the US Bankruptcy Code, however, once an FCM clearing member has filed for bankruptcy, a CCP may not transfer client assets and positions without the consent of the bankruptcy trustee.

[21] The CCP is authorized to net and liquidate such positions even if the Bankruptcy Court has appointed a trustee in bankruptcy.

VI. Insolvency of CCPs and others

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

In relation to CCP insolvency, broadly speaking our (and therefore your) rights will depend on the law of the country in which the CCP is incorporated and the specific protections that the CCP has put in place.[22] You should review the relevant CCP disclosures carefully in this respect and take legal advice to fully understand the risks in this scenario.

In addition, please note the following:

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

- It will be difficult or impossible to port positions and related margin, so it would be reasonable to expect that they will be terminated at CCP level. The steps, timing, level of control and risks relating to that process will depend on the CCP, its rules and the relevant insolvency law. However, it is likely that there will be material delay and uncertainty around when and how much assets or cash we will receive back from the CCP. Subject to the bullet points below, it is likely that we will only receive back only a percentage of assets available depending on the overall assets and liabilities of the CCP.

- It is unlikely that you will have a direct claim against the CCP.

- Under the terms of our customer agreement, we are not liable to you in the event of the default of a CCP or other third party not under our control.

- If recovery of margin in this scenario is important, then you should explore "bankruptcy remote" or "physical segregation" structures offered by some CCPs. However, these tend to be offered only in relation to accounts subject to individual client segregation.

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

---

[22] CME Clearing Europe, ICE Clear Europe and LCH Limited are organized under the laws of the England and Wales; Eurex Clearing AG is organized under the laws of Germany; and LCH SA is organized under the laws of France.