



# Indirect Clearing Risk Disclosure Document

## Introduction

Throughout this document, references to 'we', 'our' and 'us' are references to Van Lanschot Kempfen NV as provider of indirect clearing services (the Direct Client). References to 'you' and 'your' are references to you as our client (the Indirect Client). We are providing indirect clearing services to you by clearing exchange traded derivatives (ETD) through BNP Paribas SA, as our clearing broker with an EU central counterparty (CCP). In that context, the Indirect Clearing RTS<sup>1</sup> requires that we offer you a choice of a basic omnibus indirect client account (also known as net omnibus indirect client account) hereafter a 'Basic Omnibus Indirect Client Account' and a gross omnibus indirect client account, hereafter a 'Gross Omnibus Indirect Client Account', as discussed under 'The types of accounts available' in Part B below.

### **What is the purpose of this document?**

To enable us to comply with our obligations as a Direct Client under the Indirect Clearing RTS, which require that, where we are providing indirect clearing services to you that involve us clearing derivatives through a clearing broker on an EU central counterparty (CCP), we must:

- offer you a choice of a Basic Omnibus Indirect Client Account and a Gross Omnibus Indirect Client Account (as discussed under 'The types of accounts available' in Part B below);
- disclose to you the details of the different levels of segregation;
- publicly disclose the general terms and conditions under which we provide services to; and
- describe the risk associated with each type of account.

In respect of the treatment of margin and collateral at CCP level you should refer to the CCP disclosures that the CCPs are required to prepare.

### **Organisation of this document**

This document is set out as follows:

- Part A provides some background to indirect clearing.
- Part B gives information about the differences between the Basic Omnibus Indirect Client Account and the Gross Omnibus Indirect Client Account, explains how this impacts on the clearing of your derivatives and sets out some of the other factors that might affect the level of protection you receive in respect of assets provided to us as margin.
- Part C sets out some of the main insolvency considerations.
- Part D provides an overview of the different levels of segregation that the clearing brokers offer, together with an explanation of the main implications of each. For full risk disclosure you should also refer to the disclosures that BNP Paribas SA and the CCPs are required to prepare. You will find the Disclosure Documents of BNP Paribas SA and the various CCPs under the following link: [ss-files-reg-bp2s-clearing-member-disc.pdf \(cib.bnpparibas\)](#)

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

## Important

Whilst this document will be helpful to you when making the decision between Basic Omnibus Indirect Client Account and Gross Omnibus Indirect Client Account, this document does not constitute legal or any other form of advice and must not be relied on as such. This document provides a high level analysis of several complex and/or new areas of law, whose effect will vary depending on the specific facts of any particular case, some of which have not been tested in the courts. It does not provide all the information you may need to make your decision on which account type or level of segregation is suitable for you. It is your responsibility to review and conduct your own due diligence on the relevant rules, legal documentation and any other information provided to you on each of our account offerings and those of our clearing broker and CCPs through which we clear ETD for you. You may wish to appoint your own professional advisors to assist you with this. We shall not in any circumstances be liable, whether in contract, tort, breach of statutory duty or otherwise for any losses or damages that may be suffered as a result of using this document. Please note that this disclosure document has been prepared on the basis of Dutch law save as otherwise stated. However, issues under other laws may be relevant to your due diligence. For example, the law governing the CCP rules or related agreements; the law governing the client clearing arrangement between the clearing broker and us; the law governing any insolvency proceedings to which we may be subject in any jurisdiction other than the Netherlands; the law of the jurisdiction of the CCP, the law of the jurisdiction of incorporation of the clearing broker; and the law of the location of any assets.

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

The market distinguishes two main types of clearing models: the 'agency' model and the 'principal-to-principal' model. Most of the CCPs which our clearing broker uses adopt the 'principal-to-principal' model, and this document assumes all transactions are cleared according to this model. When clearing ETD for you through BNP Paribas SA as our clearing broker, we enter into two separate transactions. Additionally, our clearing broker will enter into a third transaction directly with the CCP.

Our clearing broker will enter into a principal-to-principal transaction with the CCP, which is governed by the rules of such CCP (the CCP Transaction).

We will enter into a principal-to principal transaction with our clearing broker, which is governed by the terms of the client clearing agreement between the clearing broker and us (the Client Transaction).

Additionally, we will have a principal-to-principal transaction as a legal consequence of us entering into the direct client transaction in our name but for your risk and account, as agreed in the Conditions of your Investment Services (voorwaarden voor uw beleggingsdienst).

The terms of each Client Transaction are equivalent to those of the related CCP Transaction, except that (i) each Client Transaction will be governed by a client clearing agreement between our clearing broker and us and (ii) our clearing broker will take the opposite position in the CCP Transaction to the position it has under the related Client Transaction. Similarly, the terms of each Indirect Client Transaction are equivalent to those of the related Client Transaction, except that (i) each Indirect Client Transaction will be governed by an indirect client clearing agreement between you and us as agreed in the Conditions of your Investment Services (voorwaarden voor uw beleggingsdienst), and (ii) we will take the opposite position in the Client Transaction to the position we have under the related Indirect Client Transaction.

Under the terms of the client clearing agreement between our clearing broker and us, a Client Transaction will arise without the need for any further action by either our clearing broker or us, as soon as the CCP Transaction arises between our clearing broker and the CCP. Similarly, under the terms of the Conditions of your Investment Services (voorwaarden voor uw beleggingsdienst), an Indirect Client Transaction will arise without the need for any further action by either you or us, as soon as the Client Transaction arises between our clearing broker and us. Once all three of those transactions referred to above have been entered into, your transaction is considered to be 'cleared'. As the principal to the CCP, our clearing broker is required to provide assets to the CCP as margin for the CCP Transactions that relate to you and to ensure the CCP has as much margin as it requires at any time.

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

We are obliged by EMIR 3 to provide you with the following information:

- (a) information on the way that the margin models of the CCP work;
- (b) information on the situations and conditions that might trigger margin calls;
- (c) information on the procedures used to establish the amount to be posted by the clients; and
- (d) a simulation of the margin requirements to which clients might be subject under different scenarios.

You can find this information on the BNP website. This information is not directly relevant to your margin requirements ('marginverplichting') as it relates to our obligation to provide margin to the clearing broker. Information about your margin requirements ('marginverplichting') is included in the Conditions of your Investment Service ('voorwaarden voor uw beleggingsdienstverlening').

As the principal to us, you are required to provide assets to us as margin ('marginverplichting') for the Indirect Client Transactions and to ensure that we have as much margin as we require at any time, as agreed in the Conditions of your Investment Services (voorwaarden voor uw beleggingsdienst).

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

There may be circumstances where you wish to transfer some or all of your Indirect Client Transactions to another Direct Client or another clearing broker on a business as usual basis (i.e. in the absence of us having been declared in default by a clearing broker). We are not obliged to facilitate this under the Indirect Clearing RTS but we may be willing to do so subject to our ability to transfer the Indirect Client Transactions to which they relate and the margin provided to the clearing broker in connection with them (which will depend on the relevant arrangements with the clearing broker and the CCP) and any conditions set out in our Conditions of your Investment Services (voorwaarden voor uw beleggingsdienst). You will also need to find a direct client or clearing broker that is willing to accept such Indirect Client Transactions and/or the related Client Transactions and assets. It may be easier to transfer Indirect Client Transactions and Client Transactions that are recorded in a Gross Omnibus Indirect Client Account than those recorded in a Basic Omnibus Indirect Client Account (both types of account being described in more detail in Part B) for the same reasons as set out below under 'Will the Client Transactions and assets relating to you be automatically ported to a back-up entity?'

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

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

- i. with respect to Gross Omnibus Indirect Client Accounts, the clearing broker may, at your request, attempt to transfer (port) to another clearing broker (a back-up clearing broker) or another Direct Client (a back-up Direct Client and together with the back-up clearing broker a back-up entity), such Client Transactions and assets.; or
- ii. if porting cannot be achieved with respect to Gross Omnibus Indirect Client Accounts and in any default with respect to Basic Omnibus Indirect Client Accounts, the clearing broker will terminate the Client Transactions that relate to you (see 'What happens if porting is not achieved' below).

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

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

No, there will be no automatic porting. The type of account and level of segregation you choose will have an impact on the ability to port Client Transactions to a back-up entity upon our default, as described further below.

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

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

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

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

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

### **What happens if porting is not achieved?**

Each clearing broker is permitted to specify a period of time after which, if it has not been able to achieve porting, it will be permitted to actively manage its risks in relation to the Client Transactions. This period of time will vary across clearing brokers. If you want to port your Client Transactions (where possible), you will need to notify the clearing broker and show that you can satisfy the other conditions within this period.

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

If the clearing broker terminates the Client Transactions, then the Indirect Client Transactions between you and us are also likely to be terminated. The termination calculations in respect of those Indirect Client Transactions will be performed in accordance with the indirect client clearing agreement between you and us and such calculations will likely mirror those performed by the clearing broker in respect of the Client Transactions.

If you are due a payment from us as a result of the close-out calculations in respect of our Indirect Client Transactions, the amount due from us to you will be reduced by any amount that you receive (or are deemed to receive) directly from the clearing broker.

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

### **The types of accounts available**

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

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

As noted, we refer you to the CCP disclosures which the CCPs are required to prepare and which set out the treatment of margin and collateral at CCP level. We have also included below a general overview of the most common segregation approaches taken by CCPs, but note that for any particular CCP, there is no substitute for such CCP's own disclosure.

### Basic Omnibus Indirect Client Account

Under this account type, at the level of the clearing broker, the Client Transactions (including the corresponding assets in the clearing broker's accounts) relating to you are segregated from:

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

However, the Client Transactions (including corresponding assets in the clearing broker's accounts) that relate to you will be commingled with the Client Transactions (including corresponding assets in the clearing broker's accounts) relating to any of our other clients that have also opted for a Basic Omnibus Indirect Client Account and which are recorded in the same Basic Omnibus Indirect Client Account.

Can Client Transactions and related collateral be netted with the clearing broker's House Transactions and assets?	No
Can Client Transactions and related assets be netted with those relating to us or the clearing broker's other Direct Clients?	No
Can Client Transactions and related collateral be netted with those relating to our clients?	Yes (provided our other clients' Client Transactions and assets are recorded in the same Basic Omnibus Indirect Client Account)
Can Client Transactions and related collateral be netted with those relating to the clearing broker's other Indirect Clients (i.e. those Indirect Clients with Client Transactions and assets not recorded in the same Gross Omnibus Indirect Client Account)?	No

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

However, both we and the clearing broker may net the Client Transactions that are recorded in the same Basic Omnibus Indirect Client Account. The assets provided in relation to the Client Transaction credited to that Basic Omnibus Indirect Client Account can be used in relation to any Client Transaction credited to that Basic Omnibus Indirect Client Account.

Please see Part D for an overview of the risks in relation to a Basic Omnibus Indirect Client Account and for details of the different levels of segregation that may be available.

### Gross Omnibus Indirect Client Account

Under this account type, at the level of the clearing broker, the Client Transactions (including the corresponding assets in the clearing broker's accounts) relating to you are segregated from:

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

However, the Client Transactions (including corresponding assets in the clearing broker's accounts) that relate to you will be commingled with the Client Transactions (including corresponding assets in the clearing broker's accounts) relating to any of our other clients that have also opted for a Gross Omnibus Indirect Client Account and which are recorded in the same Gross Omnibus Indirect Client Account.

Can Client Transactions and related collateral be netted with the clearing broker's House Transactions and assets?	No
Can Client Transactions and related assets be netted with those relating to us or the clearing broker's other Direct Clients?	No
Can Client Transactions and related collateral be netted with those relating to our clients?	The Client Transactions relating to you will not be netted with the Client Transactions relating to any of our other clients. However, the collateral relating to you may be used to cover Client Transactions of our other clients to the extent it is recorded in the same Gross Omnibus Indirect Client Account.
Can Client Transactions and related collateral be netted with those relating to the clearing broker's other Indirect Clients (i.e. those Indirect Clients with Client Transactions and assets not recorded in the same Gross Omnibus Indirect Client Account)?	No

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

However, both we and the clearing broker may use the assets provided in relation to the Client Transactions relating to you in relation to any Client Transaction relating to our other clients that have also opted for a Gross Omnibus Indirect Client Account which are credited to the same Gross Omnibus Indirect Client Account.

Please see Part D for an overview of the risks in relation to a Gross Omnibus Indirect Client Account and for details of the different levels of segregation that may be available.

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

There are a number of factors that, together, determine the level of protection you will receive in respect of assets that you provide to us as margin for Indirect Client Transactions:

- whether you choose a Basic Omnibus Indirect Client Account or a Gross Omnibus Indirect Client Account (as discussed under 'The types of accounts available' above);
- whether we call any excess margin from you or you pay excess margin to us;
- whether you will get back the same type of asset as you provided as margin; and
- the bankruptcy and other laws that govern the clearing broker, us and the CCP.

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

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

As noted under 'The 'principal-to-principal' clearing model' in Part A, as a Direct Client of the clearing broker, we are required to transfer assets to the clearing broker in respect of the Indirect Client Transactions carried out when providing the Indirect Client Clearing Services to you. Clearing brokers only accept certain types of liquid cash and non-cash assets as margin.

As is market practice, we will decide what types of assets to accept from you as margin for your Indirect Client Transactions. This will be set out in the Conditions of your Investment Services (voorwaarden voor uw beleggingsdienst).

What we will accept from you as margin for the Indirect Client Transactions (the Client Assets) will not necessarily be the same type of assets that the clearing brokers will accept from us and that we will provide to them for the Client Transactions as margin (the Margin Assets).

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

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

We may enforce the pledge if you default in your obligations to us. Absent the exercise of any right of use by us, will record in our books and records that we have received such assets from you with respect to the applicable Indirect Client Transaction. To the extent that the market value of the pledged assets exceeds the debt owed to us, we must return, after completion of such enforcement, the excess to you.

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

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

Under the Indirect Clearing RTS, excess margin should be treated in accordance with the Conditions of your Investment Services (voorwaarden voor uw beleggingsdienst). As regards the Client Assets provided as excess margin, you will retain legal title to such Client Assets and your interests will be treated in the same way as any other cash or securities held on accounts with us, which are pledged under the Pledge.

## Part C: What are the main insolvency considerations

### **General insolvency risks**

If we become subject to insolvency proceedings, you may not receive all of your assets back or retain the benefit of your positions and there are likely to be time delays and costs (e.g. funding costs and legal fees) connected with recovering those assets. These risks arise in relation to both Basic Omnibus Indirect Client Accounts and Gross Omnibus Indirect Client Accounts because:

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

Please also note that:

- i. insolvency law may override the terms of contractual agreements, so you should consider the legal framework as well as the terms of disclosures and legal agreements;
- ii. a large part of your protection comes from CCP arrangements and the legal regimes surrounding them. Therefore, you should understand these in order to evaluate the level of protection that you have on our default. It is important that you review the relevant disclosures by the relevant clearing broker and the CCP in this respect;

iii. additionally:

- the interaction of key default issues – e.g. porting, recovery of assets, close-out netting and other insolvency matters – are likely to be determined by a combination of, without being limited to, Dutch law, the law applicable to the relevant CCP, the law applicable to our clearing broker, and the law of the location of any collateral.
- We suggest that you take legal advice on the interaction of these legal systems because it is beyond the scope of this disclosure.

### **Insolvency of clearing brokers, CCPs and others**

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

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

- i. we expect that an insolvency official will be appointed to manage the clearing broker or the CCP. Our rights against the clearing broker or the CCP will depend on the relevant insolvency law and/or that official;
- ii. it may be difficult or impossible to port Client Transactions and/or CCP Transactions and related margin, so it would be reasonable to expect that they will be terminated at the level of the clearing broker and/ or the CCP. The steps, timing, level of control and risks relating to that process will depend on the clearing broker and/ or the CCP, the applicable rules or agreements and the relevant insolvency law. However, it is likely that there will be material delay and uncertainty around when and how much assets or cash we will receive back from the clearing broker or the CCP. Subject to the bullet points below, it is likely that we will receive back only a percentage of assets available depending on the overall assets and liabilities of the clearing broker or the CCP;
- iii. it is unlikely that you will have a direct claim against the clearing broker or the CCP because of the principal-to-principal model described in Part A;
- iv. Indirect Client Transactions will terminate at the same time as the matching Client Transactions unless our clearing agreement with the clearing broker provides otherwise;
- v. the termination calculations in respect of those Indirect Client Transactions will be performed in accordance with the Conditions of your Investment Services (voorwaarden voor uw beleggingsdienst) and such calculations will likely mirror those performed by the clearing broker in respect of the Client Transactions;
- vi. if you are due a payment from us as a result of the termination of the Indirect Client Transactions, the amount due from us to you will be owed in addition to any claims you have in respect of the return of the Client Assets held by us;
- vii. if we have a claim against you resulting from the termination of the Indirect Client Transactions, we may liquidate or foreclose into the Client Assets to satisfy such claim; where the proceeds resulting from the liquidation of the Client Assets exceed our claims against you resulting from the Indirect Client Transactions, you may claim from us the excess by which the liquidation proceeds exceed our claim (see ‘If porting does not occur, will your entitlements in positions and Margin Assets be segregated from our insolvency estate?’ above); and
- viii. you will not have any claims in respect of Margin Assets, but you only have an entitlement to the return of any Client Assets in excess of any claims we may have against you, i.e. after we complete any private sale of Client Assets pledged to us under the Pledge (see ‘What happens if porting is not achieved?’ above).

### **Margin rights**

On the basis that you provide assets to us by way of security interest, then you should have a legal right to recover the balance of those assets (after settling your obligations to us) ahead of other creditors. However, please note that, depending on the exact set up of our security arrangements, it may be that some preferential creditors will still have a prior claim to your assets.

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

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



## Close-out netting

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

You and we would want this to work differently from normal bilateral close-out netting that would apply to all positions and assets between us and the clearing broker – e.g. assets on an Gross Omnibus Indirect Client Account relating to you could be netted with our house or another indirect client account at the clearing broker. There is a risk that this netting across accounts could happen automatically as a result of ordinary Dutch insolvency law or the automatic termination may be agreed as part of the contractual arrangement.

A similar risk occurs between us and you in relation to the Indirect Client Transactions and assets. It is most likely to materialise in a pre-porting period during which Dutch law may automatically set off amounts owned and collateral relating to one clearing broker with amounts owned and collateral relating to another. This risk arises regardless of what you and we may provide for in our clearing documentation. Whilst the resulting termination amount should represent our net exposure to each other, it will make porting difficult or impossible.

## Porting – limitations

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

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

## Mismatch of CCP/Client Transactions and assets

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

## Segregated estate under Dutch law

The Dutch Securities Giro Administration and Transfer Act (Wet giraal effectenverkeer, ‘Wge’) introduced a statutory segregation regime for cleared derivatives, including ETD. It provides for the legal segregation of the assets of a clearing broker, provided and to the extent it is acting as an intermediary (tussenpersoon) and established in the Netherlands. In case of an indirect clearing arrangement, the segregation regime may also apply to the direct client that is acting as such an intermediary and is established in the Netherlands. We may act as your intermediary when clearing ETDs through the clearing broker.

The assets that are legally segregated under such regime comprise of our derivative positions (i.e. the indispensable rights and obligations under derivative transactions) vis-à-vis the clearing broker entered into by us as intermediary and thus for your risk and account (so-called ‘corresponding positions’, e.g. the Client Transactions), and which positions correspond with your derivative positions vis-à-vis us (so-called ‘client positions’, e.g. the Indirect Client Transactions), as well as all the rights and obligations in respect of the provision of collateral pursuant to the corresponding positions. The sole purpose of the aforementioned legally segregated pool of assets (referred to as the ‘derivative estate’, derivatenvermogen) is to satisfy your claims and those of other clients arising from the client positions linked with the corresponding positions. It can however not be excluded that the derivative estate may not be sufficient to satisfy all such claims. Furthermore, the Wge provides that upon our bankruptcy, our insolvency trustee must cooperate with porting the derivative assets in accordance with Article 48 of Regulation (EU) 648/2012 (‘EMIR’), as well as the client positions and the collateral provided for the purposes of the client positions. Possibly, both in case of a Basic Omnibus Indirect Client Account or a Gross Omnibus Indirect Client Account, only part of such collateral may be included in the transfer. As described above however, porting may not be possible or subject to other limitations.

Finally, we note that the protections afforded by the Wge generally do not exclude the risk that, if we become subject to insolvency proceedings, you may not receive all of your assets back or retain the benefit of your positions and that there may be time delays and costs (e.g. funding costs and legal fees) connected with recovering those assets. This applies irrespective of whether you choose a Basic Omnibus Indirect Client Account or Gross Omnibus Indirect Client Account.

## Intervention, recovery and resolution

As a Dutch credit institution, the Dutch intervention, recovery and resolution regime, as set forth in the Dutch Financial Supervision Act (Wet op het financieel toezicht) (amongst others implementing the Directive 2014/59/EU ('BRRD')) and following from Regulation (EU) No 806/2014 ('SRM Regulation'), applies to us. If we become subject to proceedings under such regime we may, among other things, be subject to certain resolution measures (including a write-down or conversion, or transfer to a third party, of our assets or liabilities, as applicable) and your rights against us may be affected. We suggest that you take legal advice on such regime because it is beyond the scope of this.

## Part D: Clearing broker indirect client account structures

As noted in Part B, each clearing broker is required under the Indirect Clearing RTS to offer at least the choice of a Basic Omnibus Indirect Client Account or a Gross Omnibus Indirect Client Account. This Part D contains an overview of the levels of segregation of each account type, together with an overview of the main protections afforded by and the main legal implications of each.

The descriptions given in this Part D are very high level and consider the minimum requirements for indirect client account types under the Indirect Clearing RTS and the respective levels of segregation. However, the particular characteristics of the accounts will affect the exact levels of protection they offer and the legal implications so you must review the information provided by the clearing brokers to fully understand the risks of the specific account we maintain in relation to you at each clearing broker. You may also need to seek professional advice to understand the differences in detail. However, we hope that the questions raised and factors described in both parts of this document will help you to know which questions to ask and to understand the impact of the answers you receive.

The descriptions have been prepared on the basis of the minimum requirements in the Indirect Clearing RTS.

The overview below seeks to compare the main account types and levels of segregation against the following risks.

Risks used to compare each account type and level of segregation	Explanation of risk
<b>Transit Risk</b>	Whether you are exposed to us at any point in the process of providing or receiving margin in respect of Indirect Client Transactions.
<b>Fellow Client Risk</b>	Whether assets provided to the clearing broker or CCP in respect of Client Transactions related to you could be used to cover losses in Client Transactions relating to another client.
<b>Liquidation Risk</b>	Whether, if the Client Transactions and assets relating to them were to be ported, there is a risk that any non-cash assets would be liquidated into cash. If this were to happen, the value given to such assets by the clearing broker may differ from what you perceive to be the full value of the assets.
<b>Haircut Risk</b>	Whether the value of the assets that relate to Client Transactions might be reduced or not increase by as much as you expect because the clearing broker applied a haircut that did not properly reflect the value of the asset.
<b>Valuation Mutualisation Risk</b>	Whether the value of the assets that relate to Client Transactions could be reduced or not increase by as much as you expect because the assets posted in relation to other clients' Client Transactions have decreased in value.
<b>Clearing Broker Insolvency Risk</b>	Whether you are exposed to the insolvency or other failure of the clearing broker.

## Typical account characteristics at the clearing broker level

Typical account characteristics at the clearing broker level	Basic Omnibus Indirect Client Account	Gross Omnibus Indirect Client Account
<b>Who will the Client Transactions recorded in the account relate to?</b>	Basic Omnibus Indirect Client Accounts record both assets and Client Transactions that relate to you (where you have opted for a Basic Omnibus Indirect Client Account) and the assets and Client Transactions that relate to our other clients that have also opted for a Basic Omnibus Indirect Client Account.	Gross Omnibus Indirect Client Accounts record both assets and Client Transactions that relate to you (where you have opted for a Gross Omnibus Indirect Client Account) and the assets and Client Transactions that relate to our other clients that have also opted for a Gross Omnibus Indirect Client Account.
<b>Which losses can assets recorded in the account be used for?</b>	Assets that are provided to the clearing broker as margin for a Client Transaction recorded in a Basic Omnibus Indirect Client Account may be used to cover any losses in that account, whether such losses relate your Client Transactions or Client Transactions relating to one of our other clients within that Basic Omnibus Indirect Client Account.	Assets that are provided to the clearing broker as margin for a Client Transaction recorded in a Gross Omnibus Indirect Client Account may be used to cover any losses in that account, whether such losses relate your Client Transactions or Client Transactions relating to one of our other clients within that Gross Omnibus Indirect Client Account.
<b>Will the clearing broker know which Client Transactions and types of assets relate to you?</b>	The clearing broker may not know which Client Transactions and assets recorded in a Basic Omnibus Indirect Client Account relate to you.	Yes, but prior to our default it may not know your identity.
<b>Will the clearing broker record the assets provided by value only or will it identify the type of asset provided?</b>	The clearing broker may identify in its records the type of asset provided as margin for the Basic Omnibus Indirect Client Account but will not be able to identify which type of assets relate to any client's Client Transactions within that Basic Omnibus Indirect Client Account.	The clearing broker may identify in its records the type of asset provided as margin for the Gross Omnibus Indirect Client Account but is unlikely to be able to identify anything other than the value of assets provided in respect of any of our client's Client Transactions within that Gross Omnibus Indirect Client Account.
<b>Will the margin be calculated on a gross or net basis?</b>	The margin will be calculated on a net basis.	The margin will be calculated on a gross basis.
<b>Will you have to enter into any documentation or operational arrangements directly with the clearing broker?</b>	You may have to enter into legal documentation to which the clearing broker is party. It is unlikely that you will have to set up any operational arrangements with the clearing broker directly.	You may have to enter into legal documentation to which the clearing broker is party. It is possible but unlikely that you will have to set up some operational arrangements with the clearing broker directly.

Typical account characteristics at the clearing broker level	Basic Omnibus Indirect Client Account	Gross Omnibus Indirect Client Account
Transit Risk	Yes	Yes
Fellow Client Risk	Yes	Yes
Liquidation Risk	Yes	Yes (unless the clearing broker is able to port the assets recorded in the account or is able to transfer the assets to you without needing to liquidate some or all of them first).
Haircut Risk	Yes	Yes
Valuation Mutualisation Risk	Yes	Yes
Clearing Broker Insolvency Risk	Yes	Yes
How likely it is that porting will be achieved if we default?	Unlikely	Unlikely

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