

# LEVELS OF PROTECTION ASSOCIATED WITH THE DIFFERENT LEVELS OF SEGREGATION

(Article 39, paragraph 7 of EMIR )

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**CC&G**

A EURONEXT COMPANY

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## 1. Introduction

The document outlines the levels of protection associated with the different levels of segregation that CC&G provides, according to Article 39, paragraph 7 of Regulation (EU) No. 648/2012.

Details of the different levels of segregation shall include a description of the main legal implications of the related levels of segregation offered including information on insolvency law applicable in the relevant jurisdictions.

## 2. Obligations towards CC&G

The categories of admission to the System are:

- Clearing Members
  - General Clearing Member, and
  - Individual Clearing Member.

CC&G assumes the role of Central Counterparty against the General Clearing Members and the Individual Clearing Members only (here after: the Clearing Members).

The Clearing Members are required to fulfil their obligations to CC&G (including the payment of margins) originated either from transactions concluded by the Clearing Member on its own behalf or on behalf of its Clients or Indirect Clients, or – in case of the General Clearing Member – from operations concluded by its Trading Clients on its own behalf or on behalf of their Clients (Indirect Clients).

The transactions entered into by the Clearing Member on behalf of its Clients and those concluded by its Trading Clients – in case of the General Clearing Member – can be recorded in accounts segregated for each Client ("ISA Accounts") or in accounts which are segregated for group of Clients ("MOA and AOA Accounts").

In accordance with article 30 of Regulation No. 600/2014 (MiFIR) and European Commission Delegated Regulation No. 2017/2154 supplementing MiFIR with regards to regulatory technical standards on indirect clearing arrangements (the "Indirect Clearing RTS") the transactions concluded on exchange-traded derivatives by the Clearing Member on behalf of its Indirect Clients and – in case of the General Clearing Member – those concluded by its Trading Clients on behalf of their Clients (Indirect Clients) shall be recorded at least in a net omnibus segregated client account for Indirect Clients that opted for net omnibus indirect segregation ("NOSA Accounts"), or gross omnibus segregated client accounts for Indirect Clients that opted for gross omnibus indirect segregation ("GOSA Accounts") upon request by the Clearing Member.

For the purpose of opening the NOSA and GOSA accounts, in accordance with the Indirect Clearing RTS, the Clearing Member shall ensure that the Clients are a credit institution, an

authorised investment firm or an equivalent credit institution or investment firm of a third country.

In the event of a Clearing Member default, the Client whose positions and assets are recorded in "segregated client" accounts ("ISA Accounts"), pending the transmission to CC&G of the documentation for portability, assumes, temporary and for a maximum of five days, the status of Members Pro-tem and obligations with CC&G to deposit Margins as described in paragraph 5.3 ("segregated client" accounts).

In the event of a Clearing Member default, the Client whose clients<sup>1</sup> derivatives positions and assets are recorded in a "gross omnibus indirect clients account" ("GOSA Account"), pending the transmission to CC&G of the documentation for portability and upon the condition that the Member provides CC&G with the Clients' identification details, assumes, temporary and for a maximum of five days, the status of Members Pro-tem and obligations with CC&G to deposit Margins as described in paragraph 5.5 (gross omnibus segregated accounts).

## 3. Structure of accounts

### 3.1 Segregated accounts under EMIR

CC&G permits Clearing Members to enter positions and assets in the following segregated accounts:

- a) An "**House**" account dedicated to the recording of positions and assets of the account owned by the same Clearing Member.
- b) "**Omnibus client**" accounts for positions and assets of their Clients and / or Trading Clients. In details:
  - b.1) a **MOA** account (Main Omnibus Account) automatically opened by CC&G at the time of the Clearing Member membership;
  - b.2) **AOA** accounts (Additional Omnibus Account) opened at the request of the Clearing Member and dedicated to the segregated recording of positions and assets of groups of Clients and / or Trading Clients.
- c) "**Individual Segregated client**" Accounts (**ISA**) opened at the request of the Clearing Member and dedicated to the recording of positions and assets of Clients or Trading Clients that have chosen the individual segregation.

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<sup>1</sup> Indirect clients

In such circumstances, the procedures provide that upon opening the account, the Clearing Member sends to CC&G documents containing the identity of the Client.

In the context of a **MOA** account referred to in paragraph 3.1, letter b.1) above, the positions of each Trading Client are recorded in two accounts:

- b.1.1) a "General Clearing Member/house-Trading Client" account;
- b.1.2) a "General Clearing Member/client-Trading Client" account.

In the context of the **AOA** and **ISA** accounts referred to in paragraph 3.1, letter b.2) and letter c) above, the Clearing Member can record the positions and assets of its Clients in:

- c.1) a single account: "House" account, or
- c.2) two separate accounts: "House" account and "Client" account.

## 3.2 Segregated accounts under MiFIR for Indirect Clients

Only in respect of the Derivatives Sections and in accordance with the Indirect Clearing RTS, CC&G permits Clearing Members to enter position and assets in the following segregated accounts:

- a) "Net Omnibus Segregated client" Account (**NOSA**) opened at the request of the Clearing Member and dedicated to the segregated recording of positions and assets of Indirect Clients of the Clearing Member that opted for the Net Omnibus Segregation;
- b) "Gross Omnibus Segregated client Account (**GOSA**) opened at the request of the Clearing Member and dedicated to the segregated recording of positions and assets of Indirect Clients of each Client of the Clearing Member that opted for the Gross Omnibus Segregation.

In the **GOSA** accounts the Indirect Clients' positions shall be hold separately per each Indirect Client, through sub-accounts.

In the context of the **NOSA** and **GOSA** accounts, the Clearing Member can record the positions and assets of the Indirect Clients in:

- b.1) a single account: "House" account, or
- b.2) two separate accounts: "House" account and "Client" account.

The CCP is required by the Indirect Clearing RTS to keep separate records of the positions of each Indirect Client. To this purpose CC&G's Rules provide that CC&G shall open sub-accounts for holding positions separately for each Indirect Client also in case the Clearing Member opts to record positions and assets of Indirect Clients in two separate accounts (paragraph 3.2, letter b.2) above).

## 4. Sub-accounts for derivative positions

Clearing Members can request CC&G to record derivatives positions in sub-accounts of the accounts indicated in paragraph 3.1 and 3.2 letter b).

The CCP is required by the Indirect Clearing RTS to keep separate records of the positions of each Indirect Client. To this purpose CC&G's Rules provide that CC&G shall open sub-accounts for holding positions separately for each Indirect Client in case the Clearing Member records positions and assets of Indirect Clients in the account indicated in paragraph 3.2 letter b).

## 5. Levels of protection

### 5.1 House account<sup>2</sup>

#### 5.1.1 Segregation of positions and assets

The registration of positions and assets in the "House" account of the Clearing Member enables, at any time and without delay, to distinguish these positions and assets:

- from positions and assets recorded into the Client accounts (omnibus and segregated) on behalf of Clients of the same Clearing Member;
- from positions and assets recorded into the accounts of the other Clearing Members;
- from positions and assets of CC&G.

#### 5.1.2 Netting of positions

The positions held in the "House" account can be netted, at any time and without delay, with positions held in the same "House" account only.

#### 5.1.3 Asset usage for covering margins

The assets registered in the "House" account are used as guarantee of positions registered in the "House" account and the pertinent sub-accounts.

#### 5.1.4 Activation of the default procedure: portability and close out of positions

The portability of assets and positions registered in the "House" account is not provided.

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<sup>2</sup> Cfr paragraph 3.1 letter a)



Positions registered in the "House" account are closed out according to the default procedure. In this phase, positions registered in the "House" account and pertinent sub-accounts can be netted together.

### 5.1.5 Activation of the default procedure: usage of the assets deposited in the "House" account

The assets deposited in the "House" account are used for the closure of the positions registered in the same account and, where they occur, for the closure of the positions registered in the MOA and AOA client accounts, included, if existing, the accounts "General Clearing Member/house-Trading Client" and "General Clearing Member/client-Trading Client", and for the closure of the positions registered in the ISA<sup>3</sup>, NOSA<sup>4</sup> and GOSA<sup>5</sup> accounts.

At the end of the default procedure, any asset registered in the "House" account, in excess of the amount necessary to cover any losses sustained and the related cost and expenses, is returned by CC&G to the Clearing Member itself or its liquidator with the indication of the assets of the "House" account they refer to.

## 5.2 "Omnibus Client" account (MOA / AOA)<sup>6</sup>

### 5.2.1 Segregation of positions and assets

The registration of positions and assets in a MOA or AOA account of the Clearing Member enables, at any time and without delay, to distinguish these positions and assets:

- from positions and asset recorded into the "House" account of the Clearing Member;
- from the positions and assets registered into other segregated accounts of the Clearing Member (i.e. AOA, ISA, NOSA or GOSA);
- from positions and assets recorded into the accounts of other Clearing Members;
- from positions and assets of CC&G.

### 5.2.2 Netting of positions

The positions held in each MOA or AOA account can be netted, at any time and without delay, with positions held in the same account only.

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<sup>3</sup> Cfr paragraph 3.1 letter b)

<sup>4</sup> Cfr paragraph 3.2 letter a)

<sup>5</sup> Cfr paragraph 3.2 letter b)

<sup>6</sup> Cfr paragraph 3.1 letter b)

### 5.2.3 “General Clearing Member/house-Trading Client” and “General Clearing Member/client-Trading Client” Account

The registration in the context of a MOA account of the positions of a Trading Client in a “General Clearing Member/house-Trading Client” account and in a “General Clearing Member/client-Trading Client” account enables, without delay and up to the initiation of the default procedure, to distinguish these positions from those of other Clients and/or Trading Clients registered in the same MOA account. Netting of these positions occurs up to the initiation of the default procedure separately for the positions registered in the “General Clearing Member/house-Trading Client” account and for those registered in the “General Clearing Member/client-Trading Client” account.

### 5.2.4 House account and Client account of the AOA account

The registration in the context of a AOA account of positions of the Client in two accounts (“House” account and “Client” account as from option c.2) of paragraph 3.1) enables, at any time and up to the initiation of the default procedure, to distinguish the positions registered in one account from positions and assets registered in the other accounts. Netting of positions occurs up to the initiation of the default procedure separately for the two accounts.

### 5.2.5 Asset usage for covering margins

The assets registered in a MOA or AOA account are used as guarantee of the margins computed on positions registered in the same account.

If in the context of the MOA account the positions of one or more Trading Clients are recorded in the accounts of “General Clearing Member/house-Trading Client” and “General Clearing Member/client-Trading Client”, the assets registered in the MOA account are also used as guarantee of positions registered in such accounts.

If in the context of the AOA account the positions and assets are registered in the two accounts, “House” account and “Client” account (option c.2) of paragraph 3.1), up to the initiation of the default procedure the assets registered in the “House” account are used as guarantee of the margins computed for the positions registered in the same “House” account and the assets registered in the “Client” account are used as guarantee of the margins computed for the positions registered in the same “Client” account.

### 5.2.6 Activation of the default procedure: portability and close out of positions

The assets and positions registered in the MOA and AOA accounts (included, if any, positions registered in the "General Clearing Member/house-Trading Client" and "General Clearing Member/client-Trading Client" accounts and/or in the related sub-accounts and, in the context of the AOA account, in the "House" account and "Client" account) are ported to the Designated Clearing Member if:

- at the moment of the initiation of the default procedure the documentation required for the portability has already been transmitted to CC&G;
- if within three hours from the occurrence of the event of default of a Clearing Member pursuant to Article B.6.1.1. of the Regulations the documentation required for the portability is transmitted to CC&G.

If the portability has not taken place, the positions are closed out according to the default procedure.

In this phase:

- The positions of the Trading Clients registered in the "General Clearing Member/house-Trading Client" and "General Clearing Member/client-Trading Client" accounts can be netted together and with remaining positions of the MOA account.

However, it remains still the inability to compensate for the positions recorded in the MOA with the positions recorded in other accounts ("House", AOA, ISA, NOSA, GOSA) of the defaulting Clearing Member.

- The positions registered in the "House" and "Client" account of the AOA account can be netted together.

However, it remains still the inability to compensate for the positions recorded in the AOA with the positions recorded in other segregated accounts ("House", MOA, ISA, NOSA, GOSA other AOA) of the Defaulting Clearing Member.

On the contrary, the netting between positions registered in the omnibus client account (MOA or AOA) with positions registered in other accounts (House, ISA, NOSA, GOSA or other "omnibus client" accounts of paragraph 3.1, letter b), of the defaulting Clearing Member is not allowed.

### 5.2.7 Activation of the default procedure: usage of the assets deposited in the omnibus client account

If the portability has not taken place, the assets deposited in the MOA or AOA "Omnibus Client" account are used for the closure of the positions registered in the same account. If, in the context of the MOA account, the positions of one or more Trading Clients are recorded in the accounts "General Clearing Member/house-Trading Client" and "General Clearing Member/client-Trading Client" the assets recorded in the MOA account are also used for closing the positions recorded in these accounts.

If, in the context of the AOA account, the assets are registered into two separate accounts, "House" account and "Client" account, are pull together and can be used for closing the positions resulting from the netting of the positions registered in the "House" and "Client" account.

At the end of the default procedure (close out), any asset registered in the MOA or AOA "Omnibus Client" account in excess of the amount necessary to cover any losses sustained and the costs and expenses for the closure of the positions registered in such account are returned by CC&G to the Clearing Member itself or its liquidator with the indication of the assets of the "Omnibus Client" account they refer to.

## 5.3 Individual Segregated client Account (ISA)<sup>7</sup>

### 5.3.1 Segregation of positions and assets

The registration of positions and assets of a Client in an ISA account enables, at any time and without delay, to distinguish these positions and assets:

- from positions and assets of the Clearing Member;
- from positions and assets of other Clients of the same Clearing Member;
- from positions and assets recorded into the accounts of the other Clearing Members;
- from positions and assets of CC&G.

### 5.3.2 Netting of positions

The positions held in each ISA account can be netted, at any time and without delay, with positions held in the same ISA account only.

### 5.3.3 House account and Client account of the "Segregated Client" accounts

The registration in the context of an ISA account of positions and assets of the Client in two accounts ("House" account and "Client" account as from option c.2) of paragraph 3.1) enables, at any time and up to the initiation of the default procedure, to distinguish the positions and assets registered in one account from those registered in the other account. Netting occurs up to the initiation of the default procedure separately for the two accounts.

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<sup>7</sup> Cfr paragraph 3.1 letter c)

#### 5.3.4 Usage of assets recorded into the "Segregated Client" account for covering margins

The assets registered in a ISA account are used only as guarantee of margins computed for the positions registered in such account.

If in the context of the ISA account the positions and assets are registered in the two accounts, "House" account and "Client" account (option c.2) of paragraph 3.1), up to the initiation of the default procedure the assets registered in the "House" account are used as guarantee of the margins computed for the positions registered in the same "House" account and the assets registered in the "Client" account are used as guarantee of the margins computed for the positions registered in the same "Client" account.

#### 5.3.5 Activation of the default procedure: portability and close out of positions

The assets and positions registered in a ISA account are ported to the Designated Clearing Member if:

- at the time an event of default occurred the documentation required for the portability has already been transmitted to CC&G;
- if within five CC&G open days from the occurrence of an event of default the documentation required for the portability is transmitted to CC&G and in this period the Client has always duly paid the margins.

If the portability has not taken place, the positions are closed out according to the default procedure.

In this phase, any positions registered in the "House" and "Client" accounts of the ISA account are netted together. However, it remains still the inability to compensate for the positions recorded in the ISA with the positions recorded in other accounts ("House", MOA, AOA, NOSA, GOSA and other ISA) of the Defaulting Clearing Member.

#### 5.3.6 Activation of the default procedure: usage of the assets deposited in the "Segregated Client" account

If the portability has not taken place, the assets deposited in each ISA account are used only for the closure of the positions registered in such account.

If, in the context of the ISA account, the assets are registered into two separate accounts, "House" account and "Client" account, are pull together and can be used for closing the positions resulting from the netting of the positions registered in the "House" and "Client" account.

At the end of the default procedure (close out), any possible asset registered in each ISA account in excess of the amount necessary to cover any losses and the costs and expenses

sustained for the closure of the corresponding ISA account are returned by CC&G to the Client.

## 5.4 "Net Omnibus Segregated client" Account (NOSA) for Indirect Clients

### 5.4.1 Segregation of positions and assets

The registration of positions and assets of an Indirect Client in a NOSA account enables, at any time and without delay, to distinguish these positions and assets:

- from positions and assets of the Clearing Member;
- from positions and assets of Clients of the Clearing Member;
- from positions and assets of other Clearing Members;
- from positions and assets of CC&G.

### 5.4.2 Netting of positions

The positions held in each NOSA account can be netted, at any time and without delay, with positions held in the same NOSA account only.

### 5.4.3 House account and Client account of the "Segregated Client" accounts

The registration in the context of a NOSA account of positions of the Indirect Clients in two accounts ("House" account and "Client" account as from option c.2) of paragraph 3.2) enables, at any time and up to the initiation of the default procedure, to distinguish the positions and assets registered in one account from those registered in the other account. Netting occurs up to the initiation of the default procedure separately for the two accounts.

### 5.4.4 Usage of assets recorded into the "Indirect Client" account for covering margins

The assets registered in a "NOSA" account are used only as guarantee of margins computed for the positions registered in such account.

Assets of "NOSA" accounts are segregated at account level.

If in the context of the NOSA account the positions and assets are registered in the two accounts, "House" account and "Client" account (option c.2) of paragraph 3.2), up to the initiation of the default procedure the assets registered in the "House" account are used as guarantee of the margins computed for the positions registered in the same "House"

account and the assets registered in the "Client" account are used as guarantee of the margins computed for the positions registered in the same "Client" account.

#### 5.4.5 Activation of the default procedure: portability and close out of positions

Pursuant to Article 48(5) and (6) of the EMIR Regulation, regardless of whether the account structure is based on individual segregated accounts or omnibus accounts, the CCP shall, at least, contractually 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.

The portability of positions and collateral is an obligation of means, since Article 48 of the EMIR Regulation does not require the CCP to transfer, in all cases, the positions and collateral of the Defaulting Clearing Member. Specifically, Article 48 provides that if the transfer to another Clearing Member has not taken place for any reason within a predefined transfer period, the CCP may liquidate the assets and positions held by the Defaulting Clearing Member for the account of its Clients. In accordance with MiFIR and the Indirect Clearing RTS, assets and positions of Indirect Clients benefit from protection of Articles 39 and 48 EMIR. Therefore, the EMIR rules of conduct on transfer and liquidation also apply to the positions and collateral of Indirect Clients recorded in the GOSA and NOSA accounts of the Defaulting Clearing Member with reference to derivatives.

This being said, the positions and assets registered in a NOSA account are ported to the Designated Clearing Member by the Indirect Clients if:

- at the moment of the occurrence of an event of default of a Clearing Member the documentation required for the portability has already been transmitted to CC&G;
- if within three hours from the occurrence of an event of default the documentation required for the portability is transmitted to CC&G.

If the portability has not taken place, the positions are closed out according to the default procedure.

In this phase any positions registered in the "House" and "Client" account of the NOSA account are netted together. However, it remains still the inability to compensate for the positions recorded in the NOSA with the positions recorded in other accounts ("House", MOA, AOA, ISA, GOSA other NOSA) of the Defaulting Clearing Member.

#### 5.4.6 Activation of the default procedure: usage of the assets deposited in the "Segregated Client" account

If the portability has not taken place, the assets deposited in a NOSA account are used only for the closure of the positions registered in such account.

If, in the context of the NOSA account, the assets are registered into two separate accounts, "House" account and "Client" account, are pull together and can be used for

closing the positions resulting from the netting of the positions registered in the "House" and "Client" account.

At the end of the default procedure (close out), any possible asset registered in each NOSA account in excess of the amount necessary to cover any losses and the costs and expenses sustained for the closure of the corresponding NOSA account are returned by CC&G to the Clearing Member itself or its liquidator with the indication of the assets of the "NOSA" account they refer to, as per Article B.6.2.3 (paragraph 3).

#### 5.4.7 Activation of the Client default procedure: portability and close out of positions

In case of default of a Client, the Clearing Member shall:

- Continue to fulfil obligation with CC&G;
- Activate its procedures for the management of the Client default that includes the transfer of the assets and contractual positions of the Indirect Clients, where a portability agreement have been signed.

### 5.5 "Gross Omnibus Segregated client" Account (GOSA) for Indirect Clients

#### 5.5.1 Segregation of positions and assets

The registration of positions and assets of Indirect Clients in a GOSA account enables, at any time and without delay, to distinguish these positions and assets:

- from positions and assets of the Clearing Member;
- from positions and assets of Clients of the Clearing Member;
- from positions and assets of other Clearing Members;
- from positions and assets of Indirect Clients of other Clients of the same Clearing Member;
- from positions and assets of CC&G.

In the GOSA accounts the Indirect Clients' positions shall be held separately per each Indirect Client, through sub-accounts. Registration in sub-accounts enables, at any time and without delay, to distinguish positions of an Indirect Client from those of other Indirect Clients registered in the same GOSA account.



### 5.5.2 Netting of positions

The positions in each GOSA are held in sub-accounts. Positions are netted, at any time and without delay, with positions held in the same sub-account only. In case of default of the Clearing Member please refer to paragraph 5.5.5 below.

### 5.5.3 House account and Client account of the "GOSA" accounts

The registration in the context of a GOSA account of positions and assets of the Indirect Clients in two accounts ("House" account and "Client" account as from option c.2) of paragraph 3.2) enables, at any time and up to the initiation of the default procedure, to distinguish positions and assets registered in one account from those registered in the other account. In any case netting occurs up to the initiation of the default procedure separately for each sub-account only.

### 5.5.4 Usage of Assets recorded into the "Indirect Client" account for covering margins

The assets registered in an "GOSA" account are used only as guarantee of margins computed for the positions registered in such account.

If in the context of the GOSA account the positions and assets are registered in the two accounts, "House" account and "Client" account (option c.2) of paragraph 3.2), up to the initiation of the default procedure, the assets registered in the "House" account are used as guarantee of the margins computed for the positions registered in the same "House" account and the assets registered in the "Client" account are used as guarantee of the margins computed for the positions registered in the same "Client" account.

### 5.5.5 Activation of the default procedure: portability and close out of positions

Pursuant to Article 48(5) and (6) of the EMIR Regulation, regardless of whether the account structure is based on individual segregated accounts or omnibus accounts, the CCP shall, at least, contractually 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. The portability of positions and collateral is an obligation of means, since Article 48 of the EMIR Regulation does not require the CCP to transfer, in all cases, the positions and collateral of the Defaulting Clearing Member. Specifically, Article 48 provides that if the transfer to another Clearing Member has not taken place for any reason within a predefined transfer period, the CCP may liquidate the assets and positions held by the Defaulting Clearing Member for the account of its Clients.

In accordance with MiFIR and the Indirect Clearing RTS, assets and positions of Indirect Clients benefit from protection of Articles 39 and 48 EMIR. Therefore, the EMIR rules of conduct on transfer and liquidation also apply to the positions and collateral of Indirect Clients recorded with the GOSA and NOSA accounts of the Defaulting Clearing Member with reference to derivatives.

This being said, the positions and assets registered in a GOSA account are ported to the Designated Clearing Member if:

- at the moment of the occurrence of an event of default of a Clearing Member the documentation required for the portability has already been transmitted to CC&G or;
- if within five days from the occurrence of an event of default the documentation required for the portability is transmitted to CC&G and in this period the Client has always duly paid the margins.

If the portability has not taken place, the positions are closed out according to the default procedure.

In this phase positions registered in sub-accounts of the GOSA account are netted together. However, it remains still the inability to compensate for the positions recorded in the GOSA account with the positions recorded in other accounts ("House", MOA, AOA, ISA, NOSA other GOSA) of the Defaulting Clearing Member.

In case the Clearing Member opted to record positions and assets of Indirect Clients in two separate accounts (paragraph 3.2, letter b.2) above), in this phase, positions registered in the "House" and "Client" account and pertinent sub-accounts of the GOSA account are netted together. However, it remains still the inability to compensate for the positions recorded in the GOSA account with the positions recorded in other accounts ("House", MOA, AOA, ISA, NOSA other GOSA) of the defaulting Clearing Member.

#### 5.5.6 Activation of the default procedure: usage of the assets deposited in the "Segregated Client" account

If the portability has not taken place, the assets deposited in a GOSA account are used only for the closure of the positions registered in such account.

If, in the context of the GOSA account, the assets are registered into two separate accounts, "House" account and "Client" account, are pull together and can be used for closing the positions resulting from the netting of the positions registered in the "House" and "Client" account.

At the end of the default procedure (close out), any possible asset registered in each GOSA account in excess of the amount necessary to cover any losses and the costs and expenses sustained for the closure of the corresponding GOSA account are returned by CC&G to the Clearing Member itself or its liquidator (or the Client) with the indication of the assets of the "GOSA" account and each sub-account related to the "GOSA" account they refer to, as per Article B.6.2.3 (paragraph 3).

### 5.5.7 Activation of the Client default procedure: portability and close out of positions

In case of default of a Client, the Clearing Member shall:

- Continue to fulfil obligation with CC&G;
- Activate its procedures for the management of the Client default that includes the transfer of the assets and contractual positions of the Indirect Clients, where a portability agreement have been signed.

In case of default of a Trading Client acting as broker for Indirect Clearing under the cases referred to in Article B.6.1.1, paragraph 1, letter b) and paragraph 4, the General Clearing Member is responsible for closing the Contractual Positions of the defaulting Trading Client, unless otherwise provided by the indirect clearing agreements in relation to the trigger of the porting procedures designed to transfer the Indirect Clients' Contractual Positions and collateral.

## 6. Insolvency Law

CC&G is empowered to take action for the management of a Clearing Member's default or insolvency in accordance with the Consolidated Law on Finance (Italian Law n. 58 of 24 February 1998 called T.U.F) and with the Article 48 of EMIR Regulation.

Such regulations require CCPs to set a procedure and to take action accordingly in the event of default or insolvency of one or more Clearing Members in order to ensure the stability and efficiency of the system managed.

According to what has been described in the paragraphs above, the procedure concerning the management of a default of a Clearing Member applied by CC&G pursuant to Article B.6.2.1 of CC&G Regulations provides that, in accordance with the EMIR rules on segregation and portability, CC&G shall transfer to an another participant assets and positions of the accounts that fall in the conditions laid down in Article 48 of EMIR in the event the documentation has been transmitted under the terms and conditions described therein.

The Italian regulatory framework ensures that both porting and the right of the Client to receive back the guarantees would be enforceable against a defaulting Clearing Member (including in the event of insolvency proceedings being opened against such Clearing Member).

In particular, reference is made to Article 79-*septies* of the Consolidated Financial Act as recently modified, which provides, *inter alia*, that:

- i. The margins and the other collateral acquired by a central counterparty as guarantee for fulfilment of the obligations deriving from the clearance activity carried out in favour of its own participants cannot be subject to executive or precautionary actions on the part of the creditors of the single participants or of the

subject which manages the central counterparty, also in the case of the opening of insolvency procedures. The guarantees acquired may be used only as contemplated by EMIR.

- ii. The opening of an insolvency procedure against a participant does not prejudice the adoption and effectiveness of the measures contemplated under Article 48 of EMIR by the central counterparty, in compliance with the same article, aimed at the management of the positions of the insolvent participant and in pursuit of the portability of the same or the return of the latter to the customers, as contemplated by the aforesaid regulation. Such measures cannot be declared ineffective in virtue of the application of other legal provisions.

In particular, Article 79-septies of the Consolidated Financial Act clearly protects the collateral acquired by CC&G in accordance with the requirements of EMIR, including the event of the insolvency of a participant. Since Article 48 (5-6) of EMIR provides the mechanism of portability and Article 48 (7) of EMIR provides that any outstanding balances must be returned to the Clients of the defaulting Participant, it follows that Article 79-septies of the Consolidated Financial Act recognizes, indeed demands, that CC&G use collateral recorded in segregated accounts only for such purposes, even in a scenario of default.

The above is also valid in case of default of a non Italian Participant (EEA). This assumes that the jurisdiction of the Participant has transposed Article 8 of Directive No. 98/26/EC, according to which, in the event of an insolvency proceeding being opened against a participant in a system, the rights and obligations arising from, or in connection with, the participation of that participant shall be determined by the law governing that system.

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