



Disclosure Statement pursuant to Article 39(7) of EMIR

Version 9.0
January 2024

IMPORTANT NOTICE

The ICNL Rules, Procedures and Policies including the present document contain some provisions which are only relevant to markets, contract types and client categories for which ICNL does not provide services as per the date of this document (but may do so in the future). This applies in particular to: (i) provisions which support the provision of clearing services to Clearing Members which are registered as Futures Commission Merchants with the CFTC and/or as Broker-Dealers with the SEC; and (ii) to provisions supporting collateral provision by way of pledge or charge or under a Gold Addendum.

Readers of this document are requested to note that ICE Clear Netherlands is authorised as a central counterparty under EMIR to clear derivative contracts relating to equity securities (including indices of equity securities) only.

Document history

Version	Date	Author	Comments
1.1	May 2016	MW	Updated to reflect additional Customer Position Accounts made available in May 2016.
4.1	October 2017	COO/President	Adjusted to reflect ICNL new Rulebook and framework
5.0	June 2018	CCO/Regulatory specialist	Embedding indirect clients. MT approval: 20180708
6.0	July 2020	CCO	Review. Changes made: <ul style="list-style-type: none"> • References to CDS and SP's deleted including accounts related to • Correction of account structure table • Correct disclaimers embedded • References to SEC and ICEU deleted • Deleted row in account table 'Back-to-back principal, agency or sponsored' MT approval: 20200811
7.0	20211014	CCO	Annual review. No changes envisaged MT approval: 2021109
8.0	20220920	CCO	Annual review. No changes envisaged
9.0	20231229	CCO	Annual review. Small formatting changes made.

Version control

Item	Description			
Document Name	ICNL EMIR Disclosure Statement article 39(7)			
Document owner	Compliance & Legal			
Version	9.0			
Approval Body	MT	Risk Committee	Audit Committee	Board
Last approval date	20240104	N/a	N/a	N/a

1. Introduction

- 1.1. This document (the "**Disclosure Statement**") constitutes the disclosure for the purposes of Article 39(7) of EMIR by ICE Clear Netherlands B.V. ("**ICNL**", the "**Clearing House**", "**we**" or "**us**"). Capitalised terms used but not defined in this document have the same meaning as set out in the rules of the Clearing House (the "**Rules**").
- 1.2. This Disclosure Statement is provided for information purposes only. It is neither a full description of the clearing services of the Clearing House, its Rules or Applicable Laws nor a recommendation to make use of any service (see "Important Notice" under 11 below).

2. Segregation and Portability requirements/Disclosure Statement pursuant to Art 39 EMIR

- 2.1. Article 39 of Regulation (EU) No. 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories ("**EMIR**") outlines the legal requirements in relation to segregation and portability of client positions. In simple terms, these provisions require Central Counterparties ("**CCPs**") to provide clearing members with, at a minimum, two types of client segregation models, which clearing members must then offer to their clients. These client segregation models are as follows:
 - 'Omnibus Client Segregation' where a CCP shall offer to keep separate records and accounts enabling each clearing member to distinguish in accounts with the CCP the assets and positions of that clearing member from those held for the accounts of its clients (Article 39(2) of EMIR); and
 - 'Individual Client Segregation' where a CCP shall offer to keep separate records and accounts enabling each clearing member to distinguish in accounts with the CCP the assets and positions held for the account of a client from those held for the account of other clients (Article 39(3) of EMIR).
- 2.2. The above are the minimum requirements and EMIR does not restrict the ability of CCPs to offer additional segregation options. Article 48(5)-(7) of EMIR specifies the contractual commitments and procedures triggered in the event of default of a clearing member and the approach that should be followed with respect to client positions and assets held in any of such clearing member's client accounts.
- 2.3. Technical standards under EMIR and MiFID II (Draft Commission Delegated Regulation (EU) of 22 September 2017 supplementing Regulation (EU) No 600/2014 with regard to regulatory technical standards on indirect clearing arrangements (the "MiFIR RTS") and Commission Delegated Regulation (EU), together with the amendments proposed by the draft Commission Delegated Regulation of 22 September 2017 amending Commission Delegated Regulation (EU) No 149/2013 with regard to regulatory technical standards on indirect clearing arrangements (the "EMIR RTS")) also impose certain standards for indirect clearing arrangements. In general, "indirect clearing" for this purpose refers to arrangements in which an entity that is itself a customer of a Clearing Member in turn is an intermediary for one or

more of its own customers (“indirect clients”) or similar situations involving longer chains of intermediaries.

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

3. ICE Clear Netherlands: account structure and levels of segregation

- 3.1. The Clearing House offers the following accounts for its Clearing Members and their clients:
- i) Proprietary Account which contains records only of the positions entered into for such Clearing Member for its own account, together with assets provided as margin on that account;
 - ii) A series of Customer Accounts, which differ depending on the status of the Clearing Member:

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

- Segregated Customer Omnibus Account for F&O (“S” Account in ICE systems) which uses a gross margin model. Additionally, the Clearing House has made available a different, separate Segregated Customer Omnibus Account (“E” Account in ICE systems) for F&O which uses a net margin model.
- An additional Segregated Customer Omnibus Accounts (“F” Account), which must be used by Clearing Members who wish to treat Customers that are Affiliates separately but can be used for other groups of Segregated Customers as desired which uses a gross margin model. Additionally, the Clearing House has made available a different, separate Segregated Customer Omnibus Account for the F&O service (“R” Account in ICE systems) in order to assist any desire for separate treatment for Customer that are Affiliates but can be used for other groups of Segregated Customers which uses a net margin model.
- Segregated TTFCA Customer Omnibus Account for the F&O service, Segregated TTFCA Customer Omnibus Account for the CDS service and Segregated TTFCA Customer Omnibus Account for the FX service (three “T” Accounts) which uses a gross margin model. Additionally, the Clearing House has made available a different, separate Segregated TTFCA Customer Omnibus Account for the F&O service (“K” in ICE systems) which uses a net margin model. Firms which are regulated by the Financial Conduct Authority and subject to the client money and client asset rules in CASS in respect of Customer margin must use these accounts for Customers that have opted out of CASS protections as a result of using title transfer collateral arrangements or otherwise. Such Clearing Members must use one of the other Segregated Customer Omnibus Accounts

listed above for those Customers where CASS protections apply in respect of Customer margin.

- Margin-flow Co-mingled Accounts for Segregated Customers ("I" Account). These are typically individually segregated accounts but may also be as "private omnibus accounts" for example for groups of Customers that are related companies or funds under common management.
- Margin-flow Co-mingled Accounts for Segregated TTFCA Customers ("J" Account) made available to Non-FCM/BD Clearing Members authorised by the Financial Conduct Authority and to whom the client money rules in CASS apply. These are typically individually segregated accounts but may be used as "private omnibus accounts" for example for related companies. Firms which are regulated by the Financial Conduct Authority and subject to the client money and client asset rules in CASS in respect of Customer margin must use these accounts for Customers that have opted out of CASS protections as a result of using title transfer collateral arrangements or otherwise. Such Clearing Members must use the "I" Account for Customers using Margin-flow Co-mingled Accounts where CASS protections apply in respect of Customer margin.
- Standard Omnibus Indirect Accounts for F&O. The indirect account structure is available for TTFCA and non-TTFCA (CASS) customers, resulting in a total of four different omnibus Accounts using position-keeping account codes "O", "X", "P" and "Y", which may be used for indirect clearing. Both gross and net margin options are available.
- Segregated Gross Indirect Accounts. These apply the same systems as for Margin-flow Co-mingled Accounts, and result in segregation of particular indirect client positions and margin on a per indirect client basis. These Accounts use position-keeping account codes "A" and "B" for non-TTFCA and TTFCA clients respectively.

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

- Non-DCM/Swap Customer Account ("S" Account), for futures and commodity options on non-US markets, such as ICE Futures Europe and ICE Endex, other than any such trades cleared in the DCM Customer Account pursuant to applicable co-mingling orders which uses a gross margin model. Additionally, the Clearing House has made available a separate Non-DCM/Swap Customer Account or General Customer Account ("E" in ICE Systems) which is the same kind of Account as that in S but uses a net margin model and is available for usage only in circumstances where net margin models are permissible under Applicable Laws;
- Additional position-keeping account linked to a separate Proprietary Account for FCM/BD Clearing Members (the "F" Account), which must be used by Clearing Members to separate proprietary positions of Affiliates which uses a gross margin model; and different Proprietary Accounts ("R" Account in ICE systems) in order to assist any desire for separate treatment for Customer that are Affiliates but can be used for other groups of Segregated Customers which uses a net margin model;
- DCM Customer Account ("W" Account), for futures on US markets, such as ICE Futures US, and any other trades allowed to be cleared in the same account pursuant to applicable co-mingling orders.
- Swap Customer Account ("Z" Account), for OTC products such as CDS.

- Each of the Non-DCM/Swap Customer Account, DCM Customer Account and Swap Customer Account has an additional linked position-account ("O" (for F&O), "P" and "O" (for CDS), respectively) which can be used to hold indirect client positions and record these separately from direct client positions, but this does not result in any additional segregation at Clearing House level on an FCM/BD Clearing Member default.

3.2. Clearing Members and their clients should note that:

- The various types of Customer Accounts have different characteristics, including as to the level of segregation or risk mutualisation and attendant risks. The different sorts of accounts, their characteristics and availability are summarised in Table 1. A more detailed description of the Customer Accounts models can be found in "Customer Protection Framework" document published by the Clearing House at: <https://www.ice.com/clear-netherlands>
- The rights and liabilities and levels of segregation or mutualisation relating to each type of Customer Accounts are set out in the Rules and Procedures.
- Customer Accounts are designed to comply with different legal requirements applicable in the jurisdictions where the Clearing House is regulated.
- For all types of Customer Accounts, there is no mutualisation of risks with the proprietary positions of the Clearing Member carrying the Customer Account.
- Different costs apply in respect of the different types of Customer Accounts, as specified in the Clearing House's published fees schedules.
- Customer Accounts are designed to cater for different types of clearing member, level of segregation and risk mutualisation and other factors, including:
 - **FCM/Non-FCM:** Some accounts are available only to Clearing Members that are regulated in the U.S. by the Commodity Futures Trading Commission (CFTC) as futures commission merchants or by the Securities and Exchange Commission (SEC) as broker-dealers ("FCM/BDs"). Please note that the Margin-flow Co-mingled Accounts for Segregated Customers and Individual Segregation through Sponsored Principal Accounts are not currently available to FCM/BD Clearing Members. These differences arise due to the regulatory and legal requirements applicable to ICNL and its Clearing Members in the U.S., which mandate a different segregation regime to that applicable in Europe.
 - **Individual segregation versus omnibus segregation:** Some accounts are individually segregated accounts for the purposes of EMIR, in that a single Customer is interested in the particular account, where the only Contracts recorded in the account relate to that Customer and collateral on that account may be applied only against losses on such Contracts. In such an account, there is no mutualisation of the liabilities or assets recorded in the account for one Customer with any liabilities or assets relating to other Customers. A Customer is not exposed to losses on other Customers' accounts. There are also omnibus accounts for the purposes of EMIR, in which multiple Customers are interested, where the Contracts recorded in the account relate to multiple Customers and assets in the account collateralise the obligations arising from all Contracts capable of being recorded in the account. Each Customer using such an account is subject to mutualised risk on the assets and positions of other Customers using the account.

- **Indirect client clearing or direct client clearing:** In indirect clearing, the ultimate client has at least two intermediaries between itself and the Clearing House: the Customer and Clearing Member. Whilst EMIR and MiFID II impose various requirements aiming at reducing risks for users of such structures, indirect clearing is intrinsically more risky than direct clearing because the end-customer is potentially exposed to the insolvency or failure of two different intermediaries and collateral needs to pass via two entities prior to reaching the clearing house, which can add to costs, delays in receiving or transferring assets, transit risks and insolvency risks. Moreover, the Clearing House has no relationship with Customers and so is in no position to check their standing or resources, this being a Clearing Member responsibility. Indirect clients may elect for "standard" or "gross" segregation at client, Clearing Member and Clearing House level, as set forth in technical standards under EMIR and MiFID II. The Clearing House has made available separate Accounts for purposes of indirect clearing, in which indirect clients are kept separate from Accounts used by clients for their own positions on a Clearing Member default. Some of these are omnibus accounts, in which multiple indirect clients are interested, whilst others are individually segregated accounts dedicated to the particular indirect client. However, for indirect clients of FCM/BD Clearing Members, only position-keeping omnibus accounts are available due to U.S. legal restrictions and those position-keeping accounts offer no post-default segregation of indirect clients from clients upon the default of an FCM/BD Clearing Member.
- **TTFCA between Clearing Member and Customer:** Some accounts may only be used in circumstances where the Clearing Member and Customer establish a title transfer financial collateral arrangement ("**TTFCA**") between them in respect of clearing at the Clearing House. Other accounts are available only in circumstances where there is no TTFCA between the Clearing Member and Customer such that client segregation requirements (e.g., as those in the FCA's client money rules) apply.
- **Segregation Requirements for FCM/BD Customer Accounts:** Customer Accounts available to FCM/BD Clearing Members are subject to segregation requirements under the U.S. Commodity Exchange Act and applicable regulations, including requirements that customer property in such accounts be segregated from proprietary assets of the Clearing Member and proprietary assets of the Clearing House. Assets recorded in such Customer Accounts constitute customer property for the purposes of applicable CFTC regulations and U.S. insolvency laws.
- **Pledged Collateral Account:** In relation to Customer Accounts of FCM/BD Clearing Members, assets may, subject to execution by the Clearing Member of a Pledged Collateral Addendum with the Clearing House, be designated as held in Pledged Collateral Accounts under which certain assets are transferred pursuant to a New York law pledge, in accordance with U.S. market practices and regulatory requirements. In relation to all other Customer Accounts, assets must be provided to the Clearing House on a TTFCA basis.
- **Net / gross:** Some accounts are margined on a net basis, such that offsetting positions of different Customers are taken into account for purposes of Margin calls. Other accounts are margined on a gross basis, such that offsetting positions of different Customers are subject to Margin requirements without any offsetting being

taken into account in calculating Margin. The margin requirement on a gross margined account will be higher than on a net margined account. In omnibus accounts, the margin provided by a Clearing Member is pooled in respect of all Contracts recorded in the account, effectively resulting in any ultimate claims of Customers of a Clearing Member also being pooled in respect of any entitlements to return of margin. In an individually segregated account, there is no such pooling.

- **Excess Margin:** The Clearing House allows excess Margin to be posted on any Customer Account, other than certain accounts of FCM/BD Clearing Members. If a Customer uses an individually segregated account, the Clearing Member is further required to pass all excess Margin held by it on to a clearing house. This is not required for assets not in the form of Permitted Cover. Details of when this may or may not occur may be set out in the relevant client clearing agreement. If a Customer uses an omnibus account, the Clearing Member is not required to pass any excess Margin on to a clearing house. Depending on the terms on which excess Margin is held at Clearing Member level, the Customer may take credit risk on its Clearing Member. Triparty Collateral: Triparty collateral arrangements involving a CSD, the Clearing House and a Clearing Member may be established as a structure for the transfer of Margin to and from the Clearing House subject to the terms set out in the Finance Procedures and Deed of Guarantee and Indemnity.
- Collateral purchase agreement: In relation to a Proprietary and Margin-flow Co- mingled Account used for F&O Contracts only, the Clearing House may enter into a collateral purchase agreement with a third party collateral purchaser under which the Clearing House will agree to offer for sale to the third party collateral purchaser certain Triparty Collateral provided as Margin on such Account, in the event of the F&O Clearing Member being declared a Defaulter under the Rules. Any proceeds of such sale will be included in the relevant net sum following an Event of Default.

Table 1: Available accounts at the Clearing House											
Name of account	ICE position account code	Available to FCM/BD Clearing Members?	Available to Non-FCM/BD Clearing Members?	Contract Categories	Level of segregation under EMIR	Direct or indirect clients	TTFCA between Clearing Member and Customer?	Client money acceptable?	TTFCA or Pledged Collateral Account between Clearing House and Clearing Member	Gross or net Margin	Excess Margin required to be held at Clearing House?
Segregated Customer Omnibus Account For F&O	S	No	Yes	F&O	Omnibus	Direct	No TTFCA	Yes	TTFCA	Gross	No
Segregated Customer Omnibus Account For F&O	E	No	Yes	F&O	Omnibus	Direct	No TTFCA	Yes	TTFCA	Net	No
Additional Segregated Customer Omnibus Account for F&O for Affiliate positions	F	No	Yes	F&O	Omnibus	Direct	Either TTFCA or no TTFCA (but not both)	Yes	TTFCA	Gross	No
Additional Segregated Customer Omnibus Account for F&O for Affiliate positions	R	No	Yes	F&O	Omnibus	Direct	Either TTFCA or no TTFCA (but not both)	Yes	TTFCA	Net	No



Segregated TTFCA Customer Omnibus Account For F&O	T	No	Yes	F&O	Omnibus	Direct	TTFCA	No	TTFCA	Gross	No
Segregated TTFCA Customer Omnibus Account For F&O	K	No	Yes	F&O	Omnibus	Direct	TTFCA	No	TTFCA	Net	No
Margin-flow Co-mingled Account (Segregated Customers)	I	No	Yes	F&O	Individually segregated (but can be used as "private omnibus")	Direct	No TTFCA	Yes	TTFCA	N/A	Yes
Margin-flow Co-mingled Account (TTFCA Customers)	J	No	Yes	F&O	Individually segregated (but can be used as "private omnibus")	Direct	TTFCA	Yes	TTFCA	N/A	Yes
Standard Omnibus Indirect Account For F&O	O	No	Yes	F&O	Omnibus	Indirect	No TTFCA	Yes	TTFCA	Gross	No



Standard Omnibus Indirect Account For F&O	X	No	Yes	F&O	Omnibus	Indirect	No TTFCA	Yes	TTFCA	Net	No
Standard TTFCA Omnibus Indirect Account For F&O	P	No	Yes	F&O	Omnibus	Indirect	TTFCA	No	TTFCA	Gross	No
Standard TTFCA Omnibus Indirect Account For F&O	Y	No	Yes	F&O	Omnibus	Indirect	TTFCA	No	TTFCA	Net	No
Segregated Gross Indirect Account (Segregated Customers)	A	No	Yes	F&O	Individually segregated (but can be used as "private omnibus")	Indirect	No TTFCA	Yes	TTFCA	N/A	No
Segregated Gross Indirect Account (TTFCA Customers)	B	No	Yes	F&O	Individually segregated (but can be used as "private omnibus")	Indirect	TTFCA	No	TTFCA	N/A	No
DCM Customer Account	W	Yes	No	F&O	Omnibus	Direct	No TTFCA	No	Pledged Collateral Account	Gross	Not yet
DCM Customer Account	P	Yes	No	F&O	Omnibus	Indirect	No TTFCA	No	Pledged Collateral Account	Gross	Not yet



Non- DCM/Swap Customer Account	S	Yes	No	F&O	Omnibus	Direct	No TTFCA	No	Pledged Collateral Account	Gross	Not yet
Non- DCM/Swap Customer Account	O	Yes	No	F&O	Omnibus	Indirect	No TTFCA	No	Pledged Collateral Account	Gross	Not yet
Non- DCM/Swap Customer Account	E	Yes	No	F&O	Omnibus	Direct	No TTFCA	No	Pledged Collateral Account	Net	Not yet
General Customer Account	S	Yes	No	F&O	Omnibus	Direct	No TTFCA	No	Pledged Collateral Account	Gross	Not yet
General Customer Account	E	Yes	No	F&O	Omnibus	Direct	No TTFCA	No	Pledged Collateral Account	Net	Not yet

4. Clearing Member default and porting

- 4.1. Different means of segregation of assets and different features of Customer Accounts result in different risks for each account. Risks related to segregation are of particular relevance on an Event of Default being declared in respect of a Clearing Member.
- 4.2. Customer clearing has been designed to facilitate the transfer of Contracts and related Customer-CM Transactions on an Event of Default occurring in relation to the Clearing Member carrying such Contracts. Margin on Customer Accounts may also be transferred to a Transferee Clearing Member to the extent that the same is not needed to meet losses on an account. This is termed "**porting**". Where no Transferee Clearing Member is prepared to accept the relevant Contracts and Customer-CM Transactions, the Contracts would be closed out (see "Liquidation and net sums" below).
- 4.3. The effectiveness of any Customer segregation regime in the context of a particular Clearing Member default and the timing of any return or transfer of Customer assets will depend on numerous factors and circumstances outside the Clearing House's control that may be difficult to predict. Such factors may include the prior actions of the Clearing Member or Customer and their personnel, the state of a Clearing Member's internal books and records, the location and custody of relevant assets, the actions and cooperativeness of insolvency officials, courts, regulators and other Customers and the outcomes of legal proceedings. The type of Customer Account used, place of business of the Clearing Member and place of business of other Customers using a Customer Account may also have an impact on the ability of ICNL to port Contracts, Customer-CM Transactions and Margin to a Transferee Clearing Member. Porting will generally occur by way of termination of Contracts and Customer-CM Transactions with the Defaulter and the establishment of new, equivalent Contracts and Customer-CM Transactions with a Transferee Clearing Member. Therefore, if a Customer has provided collateral to a Clearing Member for Customer-CM Transactions that is in excess of the value of the Margin and Surplus Collateral held at the Clearing House, the amount of the excess will remain an unsecured claim on the Clearing Member and will not be ported.
- 4.4. There will be a number of conditions which must be satisfied before Contracts, Customer-CM Transactions and related assets can be ported to a Transferee Clearing Member. These conditions include that porting does not result in a Customer Account being under-margined that the relevant client is not itself in an insolvency process and that porting is not illegal and would not expose ICNL to liabilities or legal challenges. Also, a consenting Transferee Clearing Member will need to have been found. In order for positions to be ported on an Event of Default of a Clearing Member, a Customer needs to have appointed a non-defaulting replacement Clearing Member who is prepared to act as Transferee Clearing Member. If no Transferee Clearing Member is appointed, or the Clearing Member that has been so appointed declines to become party to replacement Contracts or Customer-CM Transactions, the Clearing House may liquidate the positions. As a practical matter, porting of margin is likely to be more feasible for Customers using individual segregation. For an omnibus account, porting of the entire account to a Transferee Clearing Member (subject to consent of all Customers) or porting only of Contracts (without any Margin) are possible alternative outcomes.
- 4.5. As a practical matter, porting of margin is likely to be more feasible for Customers using individual segregation. For an omnibus account, porting of the entire account to a Transferee Clearing Member (subject to consent of all Customers) or porting only of Contracts (without any Margin) are possible

alternative outcomes. Additionally, the likelihood of porting being successful may be enhanced where the client has pre-existing arrangements (e.g. legal and operational) in place with the Transferee Clearing Member (subject to any potential Transferee Clearing Member being willing to put in place those arrangements). Customers are recommended to consider putting such arrangements in place and are encouraged to notify and update the Clearing House of their "Default Portability Preferences" on an ongoing basis.

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

5. Post-default porting period

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

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

6. Liquidation and net sums

- 6.1. In the event that porting cannot be achieved due to losses incurred on a Customer Account, inability to find a non-Defaulting Clearing Member willing or able to take on the client's position, market conditions or otherwise, the Clearing House will close-out or terminate the client's positions. After doing so, the Clearing House must declare a "net sum" separately for each Customer Account as owing to or from the Clearing Member. For Customer Accounts, this net sum will be calculated taking into account the following amounts (among others and subject to the exceptions described below): (i) any losses or gains on the close out of Contracts (taking into account any mark-to-market margin previously provided); (ii) costs and losses of the Clearing House; (iii) initial margin, including any available surplus collateral; (iv) any payments due relating to physical settlement; (v) available guaranty fund of the defaulting Clearing Member; (vi) any other amounts, such as unpaid fees or fines; and (vii) any available surplus Proprietary Account margin of the Clearing Member. The use of initial or original Margin provided in respect of Customer Accounts for the purposes of calculating a net sum is restricted under Applicable Laws. For example, on an individually segregated account, no positions or Margin of other Customers can be offset against those of the Customer interested in that individually segregated account; and the same is true for Segregated Gross Indirect Accounts and indirect clients. For the Swap Customer Account of an FCM/BD Clearing Member, there are certain protections under Part 22 of the CFTC regulations, which is commonly referred to as the "legally segregated, operationally commingled" or "LSOC" rule. Under LSOC, the initial or original Margin attributable to one Customer may not be used to cover the losses from another Customer's positions, but protection is by reference to the value of all assets on the Customer Account, not to particular assets posted by particular Customers. Each Customer Account is segregated from the Proprietary Account of the Clearing Member and from each other Customer Account throughout the liquidation and net sum process. The only exception is that any excess assets on the Proprietary Account or Guaranty Fund Contributions of the Defaulter may be used to meet a loss or shortfall on any Customer Account.

-
- 6.2. Customers whose trades are cleared in an omnibus account should note that, in the event of the assets for a particular Customer Account not being enough to cover losses, the losses on that Customer Account will be mutualised amongst Customers interested in that account. The application of Guaranty Fund Contributions between particular accounts of the Defaulter is a matter reserved in part to the discretion of the Clearing House and would be exercised so as to minimise any losses to the Clearing House and its non-defaulting Clearing Members in the first instance.
- 6.3. In the event of liquidation, the Clearing House will calculate a net sum separately for each different Customer Account (including for each different individually segregated Customer Account). If the net sum is an amount payable to the Clearing House, it will claim this amount from the Clearing Member and pass the loss through the "default waterfall" under the Rules. If the net sum is an amount payable by the Clearing House, the Clearing House will transfer the net sum to the relevant payee(s). Such payees may be Customers; direct payments (so called "leapfrog payments") to Customers are more likely to be possible in relation to an individually segregated account than an omnibus account. Where amounts are not transferred directly to a Customer following a Clearing Member Default, such assets would be paid or transferred to the Defaulter or its Insolvency Practitioner. There may be consequent delays for Customers in claiming such assets or competing claims by third parties over such assets may exist. Even in the case of direct transfers to Customers, an Insolvency Practitioner may assert claims against a Customer. Importantly, Customer Account Margin is segregated from the Proprietary Account of the Clearing Member throughout the default process.
- 6.4. In relation to indirect clearing, "leapfrog payments" are also possible from Clearing Members to indirect clients on a client default. However, such matters are a Clearing Member responsibility and not the responsibility of the Clearing House, except as is necessary to release relevant funds or assets to the Clearing Member for such purposes upon close out of the corresponding positions at Clearing House level. Such leapfrog payments are not addressed further here; Clearing Member disclosures should be reviewed for relevant information.

7. Other Risks: Clearing Member Disclosures

- 7.1. Clearing Members of ICNL are also required to provide Customers with a risk disclosure statement. Many are basing this on the FOA/ISDA Article 39(7) Clearing Member Disclosure document available here: <https://europe.fia.org/fia-europeisda-emir-disclosure-document>. Customers should refer to this statement and the ISDA/FOA document for a discussion of general risks relating to clearing and for specific issues related to the Clearing Member being used. Various risks, not discussed in detail here, are addressed in the ISDA/FOA document, including, but not limited to, transit risk, fellow client risk, liquidation risk, haircut risk and, valuation mutualisation risk and risks related to indirect clearing.

In particular, ICNL note as follows concerning CCP insolvency risks:

- Users of the Clearing House are unsecured creditors. The Clearing House generally receives assets on a TTFCFA basis. This is the case for all Clearing Members, except for those FCM/BD Clearing Members which have executed a Pledged Collateral Addendum in respect of their Customer Accounts. Users of the Clearing House which provide collateral on a TTFCFA basis are unsecured creditors. The Clearing House will have full rights of ownership (including all the rights of usage that come with ownership) in respect of such TTFCFA assets.

-
- For Margin transferred under a Pledged Collateral Addendum by FCM/BD Clearing Members, the Clearing House has rights of use and appropriation over such assets which if exercised will result in any ownership interest of the Clearing Member being replaced by a contractual claim to the assets and the Clearing Member in question becoming an unsecured creditor. However, these rights are exercisable only following an Event of Default of the Clearing Member, whether or not this is declared.
 - On an Insolvency of the Clearing House, the Rules provide for separate net sums to be calculated in respect of each different Proprietary Account and Customer Account on a segregated basis in the same way as on a Clearing Member default. However, there is no client money regime, client asset protection or secured arrangement over TTfCA collateral offered by the Clearing House.
 - ICE Clear Netherlands also maintains a fully funded Guaranty Fund into which Clearing Members and ICE Clear Netherlands contribute. This is funded on a TTfCA basis by all Clearing Members. The Guaranty Fund is required, as a minimum under EMIR, to include sufficient assets to enable ICNL to withstand under extreme but plausible market conditions losses in respect of either the largest Clearing Member or the second and third largest Clearing Member combined. ICE Clear Netherlands goes beyond this, satisfying requirements on the size of its Guaranty Fund applicable to so-called "QCCPs" under Basel III and the Capital Requirements Directive and also the CPMI-IOSCO's "cover 2" standard, under which its default funds covers defaults of the two largest Clearing Members. On an Insolvency of the Clearing House, Clearing Members will be unsecured creditors with respect to their Guaranty Fund contributions.

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

7.3. In addition, ICN Clear Europe holds its own regulatory capital which is intended to secure uninterrupted business activity or an orderly winding-down process. In the unlikely event of financial difficulties affecting ICNL, various Rule provisions would apply to share losses and available assets by writing down the gains of Variation Margin or Mark-to-Market Margin payees for certain Contract Categories and ultimately terminating contracts for value and distributing assets among users. However, there can be no assurance these provisions will be used by an Insolvency Practitioner or Court or will be permitted to be used by Government Authorities. Moreover, invoking such provisions may lead to losses being suffered by Clearing Members and Customers in a way that depends on market price movements and is therefore not predictable. Such write-downs apply equally to Customer Accounts and, pursuant to the Standard

Terms, relevant losses may be passed on by Clearing Members to Customers interested in such Accounts. Such write-downs apply equally to Customer Accounts and, pursuant to the Standard Terms, relevant losses may be passed on by Clearing Members to Customers interested in such Accounts. In any event, Customers will have no direct claim against ICNL in an insolvency process, since they have no direct contractual or other relationship with the Clearing House.

8. Applicable Laws relating to insolvency

8.1. The (insolvency) laws of several jurisdictions, including the Netherlands, have been amended to permit the Clearing House to port Contracts and Margin and take other steps following an Event of Default of a Clearing Member, as envisaged under EMIR. However, applicable laws of the jurisdiction in which a Clearing Member or its client is incorporated may restrict the Clearing House from porting either Contracts or Margin, making leapfrog payments, offering protections intended to result from individual segregation or indirect client clearing rules or taking other steps following an Event of Default, including if EMIR applies. If the Clearing House is unable to port Contracts of a defaulter, then such contracts will be liquidated (terminated) by the Clearing House. In such circumstances, a Customer or indirect client's contracts with its Clearing Member would typically also be automatically terminated, resulting in loss of any benefit related to having open positions. A Customer or indirect client would then need to incur costs to establish a replacement position elsewhere and make a claim in the defaulter's insolvency for any value in the terminated contracts. If the Clearing House is unable to port Margin, and leapfrog payments do not occur, then such Margin would be returned to the defaulter according to local insolvency laws. There can be no assurance that local insolvency laws respect any priority or separation of Customer property. Any property returned to a defaulter may be subject to claims by third parties or deductions for the costs of practitioners or courts dealing with the insolvency or administration, resulting in a reduced recovery. Recovery of assets may also be subjected to delays related to insolvency or court processes. The liability of a Clearing Member to a Customer may further be affected by resolution or recovery steps taken by relevant resolution or regulatory authorities under applicable laws. Such steps may result in a writedown of liabilities of the Clearing Member, the conversion of a Customer's debt claims into equity or the transfer of rights or liabilities of the Customer to a different legal entity.

9. The Netherlands

9.1. The Clearing House is an EMIR authorised CCP under the Netherlands regulatory system. This means that the Clearing House is not an authorised firm such as a bank or broker, but is supervised by De Nederlandsche Bank and Autoriteit Financiële Markten in the operation of its CCP services and activities.

9.2. The Clearing House has certain statutory protections as a result of it being an authorised CCP and as a result of it being the operator of a "designated system" under Dutch insolvency law and Directive 98/26/EC of the European Parliament and of the Council dated 19 May 1998 on settlement finality in payment and securities settlement systems (the "**Settlement Finality Directive**"). It also has rights as a collateral-taker under the provisions laid down in title 2 of book 7 of the Dutch Civil Code, entitled Financial Collateral Agreements ("Financiële zekerheidsvereenkomsten"), in accordance with Directive 2002/47/EC of the European Parliament and of the Council dated 6 June 2002 on financial collateral arrangements (the "Financial Collateral Directive"). These protections serve to counter certain challenges under insolvency laws (such as those relating to a moratorium and insolvency claw-back) in relation to

the Clearing House's default rules and actions taken under its default rules. The Clearing House's default rules provide for it to be able to terminate, liquidate or transfer Contracts and Customer-CM Transactions, liquidate collateral, hedge positions, serve notices under contracts, deal with assets in the accounts, transfer positions and Margin to a Transferee Clearing Member in a porting situation and return margin directly to Customers, among others. We have been advised that applicable Netherlands statutory protections would apply to the Clearing House's default rules and default proceedings. As a result, as a matter of Netherlands law, the Clearing House is entitled to exercise the powers set out under its default rules to port Contracts and Margin upon the Event of Default of a Clearing Member established in the Netherlands where the law governing the insolvency or administration is the law of a jurisdiction in the Netherlands.

10. European Union

- 10.1. Under the Settlement Finality Directive and Financial Collateral Directive (which according to the European Commission have been implemented in all relevant European member states) the Clearing House would be entitled to terminate contracts and establish new contracts with a Replacement Clearing Member. The Clearing House is also entitled to realise and set off Margin against any losses on an account pursuant to close-out netting provisions in the Rules under this legislation. However, neither of these pieces of legislation envisages or facilitates the Clearing House porting Margin to a Transferee Clearing Member.
- 10.2. EMIR is directly applicable in all member states of the European Union and assumes that a Clearing House may port Margin to a Transferee Clearing Member. EMIR also requires CCPs to make leapfrog payments in some circumstances. Recital 64 of EMIR states that the requirements laid down in EMIR on the segregation and portability of Clients' positions and assets should prevail over any conflicting laws, regulations and administrative provisions of the member states that prevent the parties from fulfilling them. However, EMIR does not amend the national insolvency laws of member states. Insolvency laws applicable to a Clearing Member in default may conflict with EMIR, which could render it inadvisable or impossible for ICNL to take certain actions, such as porting Margin or Contracts or transferring assets directly to clients. Some European jurisdictions have amended their national insolvency laws so as to permit porting of Contracts and Margin as well as certain other aspects of default management envisioned by EMIR. If a member state's insolvency laws have not been amended to facilitate the porting of Margin and Contracts by a clearing house such as ICNL, as envisaged under EMIR, there can be no assurance that ICNL will be able to invoke those aspects of its default rules in respect of a defaulter incorporated or established in such a jurisdiction. Similar restrictions will apply to indirect clients accessing clearing through Clients established in jurisdictions whose national insolvency laws do not facilitate porting under EMIR.
- 10.3. We have been advised that, in some European jurisdictions, additional steps are required on the part of the Clearing Member and Customer in order for the Customer to be bound contractually to any changes which may be made from time to time to the Standard Terms annexes, despite the consultation provisions of such annexes and the publication of Standard Terms annexes by the Clearing House. If, as a result of such national laws, a Customer is not bound by any aspect of the Standard Terms annex or otherwise seeks to avoid any of its obligations under a Standard Terms annex, there can be no assurance that the Clearing House will offer porting to that Customer. Indirect clients and clients should

confirm with their Clearing Members as to whether any documentary requirements apply as regards default management protections offered by such Clearing Members in relation to client defaults.

11. Important notice

- 11.1. This Disclosure Statement covers certain risks that might arise to a Clearing Member or a Customer as a result of clearing at ICNL under the various different customer accounting structures we offer. It does not deal with risks related to trading nor other generic risks of clearing in derivatives, such as interest rate risk, credit risk, market risk, leverage risk, tax risk or political risk. However, we note that the value of investments may go up or down and that any investor in derivatives may lose more than the original amount invested. This Disclosure Statement does not address the implications of the various levels of segregation that may be applicable to Clearing Members or Customers or regulatory capital requirements.
- 11.2. This Disclosure Statement does not form part of the contractual documentation between ICNL and its counterparties. The purpose of this Disclosure Statement is only to satisfy the obligation under EMIR to provide the information required under EMIR.
- 11.3. Although this document has been prepared on the basis of the best information available at the moment of preparation, ICNL accepts no liability for any decision taken on the basis of this Disclosure Statement or for any omission in disclosure. This Disclosure Statement has been prepared on the basis of, and reflects solely, the law and the risks identified as at the date hereof, and the version of the Rules and Procedures published on the date specified above.
- 11.4. This Disclosure Statement does not provide all the information that may be needed to make a decision on the use of the Clearing House's services or whether to choose any particular account or level of segregation. Whilst this Disclosure Statement may be helpful to you when deciding how to use or choose an account at the Clearing House, this Disclosure Statement does not constitute legal, financial or any other form of advice and must not be relied on as such. The clearing models discussed in this Disclosure Statement are designed to provide individual or omnibus segregation at the Clearing House level of positions and Margin relating to Contracts recorded in a Customer Account and to facilitate "porting" of such positions and Margin following a default of the relevant Clearing Member, in accordance with EMIR and other Applicable Laws and to comply with EU legal requirements on indirect clearing.. Although the Clearing House has taken legal advice and consulted with its users and regulators in establishing these arrangements, there is no definitive judicial or regulatory precedent, as to how such arrangements would be treated in the event of the default of a Clearing Member or any other Person This Disclosure Statement provides only a high level description or summary of several complex and/or new legal structures for clearing and areas of law, whose effect will vary depending on the specific facts of any particular case. It is the responsibility of any person considering using or accessing the Clearing House, whether as a Clearing Member, Customer, Indirect Client or otherwise, to review and conduct its own due diligence on the relevant Rules, Procedures, Contract Terms, Standard Terms annexes, Trading Facility, Exchange and other Market Rules, documentation with its Clearing Member or Customer, other legal documentation and any other information that may be relevant to its decision on whether and how to use the Clearing House's services. Customers, indirect clients, Clearing Members and any other users of the Clearing House should consult their own advisors as to the legal effect of the contracts it is party to, relevant

documentation mentioned above, any segregation model and the appropriateness of any of the above for their particular circumstances.

- 11.5. The Clearing House shall not in any circumstances be liable, whether in contract, tort, breach of statutory duty or otherwise, for any losses or damages that may be suffered as a result of using this Disclosure Statement. Such excluded losses or damages include (a) any loss of profit or revenue; (b) damage to reputation or loss or any contract or other business opportunity or goodwill; or (c) any indirect loss or consequential loss. No responsibility or liability is accepted for any differences of interpretation of legislative provisions and related guidance on which this Disclosure Statement is based. This paragraph does not extend to an exclusion of liability for, or remedy in respect of, fraudulent misrepresentation, death or personal injury caused by negligence or any other liability which by Applicable Law may not be excluded or restricted.
- 11.6. This Disclosure Statement has been prepared on the basis of Netherlands laws and the law of the European Union save as otherwise stated. However, issues under other laws, such as those of the place of business of a Clearing Member, Customer or indirect client governing laws of documentation between Clearing Members and Customers (including Standard Terms annexes), and the law of location of any assets, may be relevant to any due diligence, including as to the effectiveness of account segregation.