



Deutsche Bank  
Indirect Clearing RTS Direct Client Disclosure  
Document – Indirect Clearing of Listed  
Derivatives Transactions

December 2020



# Direct Client Disclosure Document

## Introduction

Throughout this document references to “we”, “our” and “us” are references to Deutsche Bank AG acting as a clearing broker’s client which provides indirect clearing services (the **Direct Client**). References to “you” and “your” are references to the client of the Direct Client (the **Indirect Client**).

## What is the purpose of this document?

To enable us to comply with our obligations as a Direct Client under the Indirect Clearing RTS<sup>(1)</sup>, which requires that, where we are providing indirect clearing services to you that involve us clearing listed derivatives through a clearing broker on an EU CCP, we must:

- offer you a choice of a basic omnibus indirect client account or a gross omnibus indirect client account (as discussed under “*The types of accounts available*” in Part One B below);
- disclose to you the details of the different levels of segregation;
- publicly disclose the general terms and conditions under which we provide services to you; and
- describe the risk associated with each type of account.

We have provided the general terms and conditions under which we provide services to you separately. Details can be found at: <https://www.db.com/legal-resources/european-market-infrastructure-regulation/clearing-and-account-segregation>

As at the date of this document, we provide indirect clearing services in respect of listed derivatives transactions cleared on KDPW CCP SA through our clearing broker, Erste Securities Polska S.A.

With effect from 1 January 2021 (“IP completion day”), the Indirect Clearing RTS, so far as operative at that time, will form part of the domestic laws of the United Kingdom. With effect from IP completion day, references to the Indirect Clearing RTS include the Indirect Clearing RTS both as it forms part of European Union law and as it will form part of the domestic laws of the United Kingdom.

## Organisation of this document

This document is set out as follows:

- Part One A provides some background to indirect clearing.
- Part One B gives information about the difference between the basic omnibus indirect client account and the gross omnibus indirect client account, explains how this impacts on the clearing of your cleared transactions and sets out some of the other factors that might affect the level of protection you receive in respect of assets provided to us as margin.
- Part One C sets out some of the main insolvency considerations.
- Part Two provides an overview of the different levels of segregation that clearing brokers offer, together with an explanation of the main implications of each.

(1) Commission Delegated Regulation (EU) No 2017/2154 supplementing Regulation (EU) No 600/2014 with regard to regulatory technical standards on indirect clearing arrangements.



## What are you required to do?

You must review the information provided in this document and the relevant clearing member disclosures and confirm to us in writing which account type you would like us to maintain with respect to each clearing broker through which we clear cleared transactions for you from time to time. We will explain how we would like you to make this confirmation. If you do not confirm within a reasonable timeframe, we will record the positions and assets relating to you in a basic omnibus indirect client account.

## Important

Whilst this document will be helpful to you when making this decision, this document does not constitute legal or any other form of advice and must not be relied on as such. This document provides a high level analysis of several complex and/or new areas of law, whose effect will vary depending on the specific facts of any particular case, some of which have not been tested in the courts. It does not provide all the information you may need to make your decision on which account type or level of segregation is suitable for you. Nothing contained herein should be considered an offer, or an invitation to offer or a solicitation or a recommendation by us for a particular account type, level of segregation or transaction and no representation or warranty is made as to the accuracy or completeness of the disclosure provided. It is your responsibility to review and conduct your own due diligence on the relevant rules, legal documentation and any other information provided to you on each of our account offerings and those of the various clearing brokers and CCPs through which we clear cleared transactions for you. Before entering into any arrangement you should be aware that certain transactions give rise to substantial risks and are not suitable for all investors. You may wish to appoint your own professional advisors to assist you.

WE SHALL NOT IN ANY CIRCUMSTANCES BE LIABLE, WHETHER IN CONTRACT, TORT, BREACH OF STATUTORY DUTY OR OTHERWISE FOR ANY LOSSES OR DAMAGES THAT MAY BE SUFFERED AS A RESULT OF USING THIS DOCUMENT. SUCH LOSSES OR DAMAGES INCLUDE (A) ANY LOSS OF PROFIT OR REVENUE, DAMAGE TO REPUTATION OR LOSS OR ANY CONTRACT OR OTHER BUSINESS OPPORTUNITY OR GOODWILL AND (B) ANY INDIRECT LOSS OR CONSEQUENTIAL LOSS. NO RESPONSIBILITY OR LIABILITY IS ACCEPTED FOR ANY DIFFERENCES OF INTERPRETATION OF LEGISLATIVE PROVISIONS AND RELATED GUIDANCE ON WHICH IT IS BASED. THIS PARAGRAPH DOES NOT EXTEND TO AN EXCLUSION OF LIABILITY FOR, OR REMEDY IN RESPECT OF, FRAUDULENT MISREPRESENTATION.

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

Nothing contained herein is intended to create or shall be construed as creating a fiduciary relationship between you and Deutsche Bank. You are not permitted to reproduce in whole or in part the information provided in this document without our prior written consent. Information provided herein may be a summary or translation and is subject to change without notice.

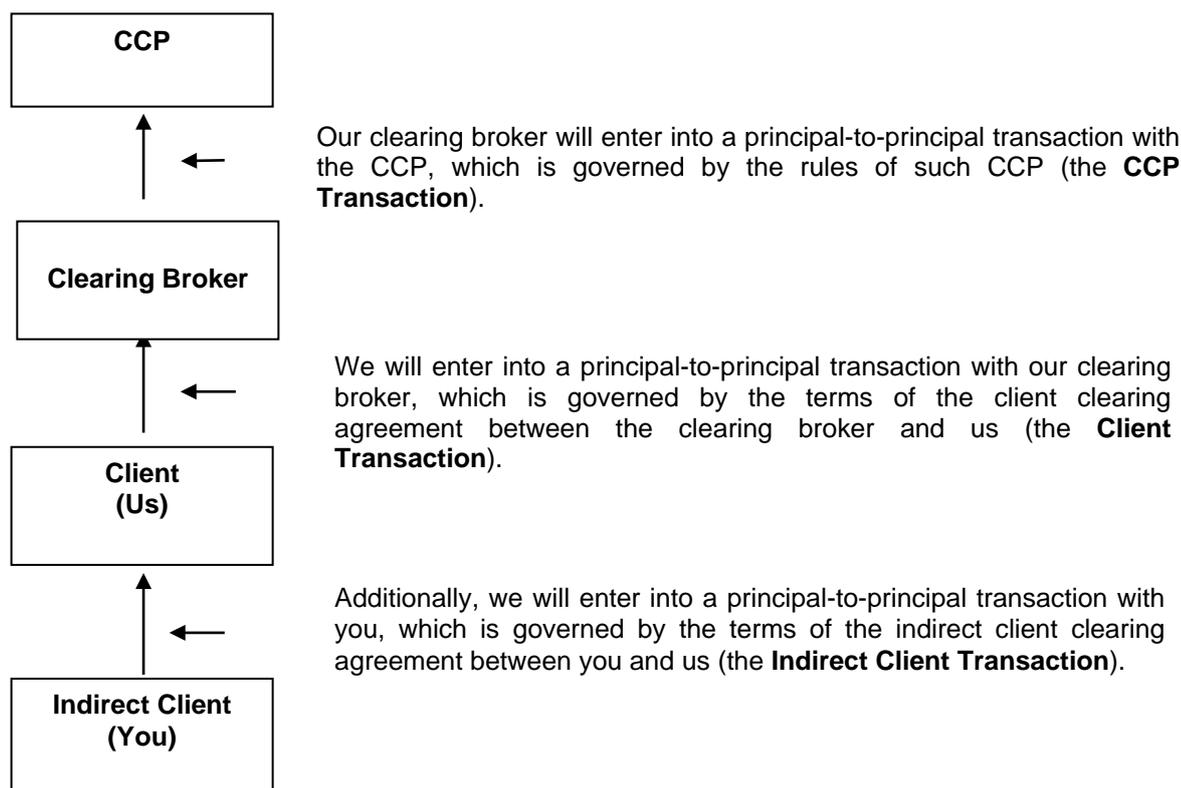


## Part One A: A brief background to indirect clearing

The market distinguishes two main types of clearing models: the “agency” model and the “principal-to-principal” model. Most of the CCPs which our clearing brokers use adopt the “principal-to-principal” model, and this document assumes all transactions are cleared according to this model.

### The “principal-to-principal” clearing model

When clearing transactions for you through a clearing broker, we usually enter into two separate transactions, Additionally, our clearing broker will enter into a third transaction directly with the CCP.



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



Under the terms of the client clearing agreement between our clearing broker and us, a Client Transaction will arise without the need for any further action by either our clearing broker or us, as soon as the CCP Transaction arises between our clearing broker and the CCP. Similarly, under the terms of the indirect client clearing agreement between you and us, an Indirect Client Transaction will arise without the need for any further action by either you or us, as soon as the Client Transaction arises between our clearing broker and us. Once all three of those transactions referred to above have been entered into, your transaction is considered to be "cleared".

As the principal to the CCP, our clearing broker is required to provide assets to the CCP as margin for the CCP Transactions that relate to you and to ensure the CCP has as much margin as it requires at any time. We will therefore ask you for margin and, where you provide it in a form which we cannot transfer to the clearing broker, we may transform it. If you have provided us with assets as margin, you may face what we call "transit risk" - this is the risk that, if we were to default prior to providing such assets to the clearing broker, or our clearing broker were to default prior to providing such assets to the CCP, the assets that should have been recorded in your account at the CCP will not have been and will not benefit from the protections described below under "*What happens if we are declared to be in default by a clearing broker?*".

However, in many cases you may not actually face transit risk because our clearing brokers often call margin from us early in the morning to pass it on to the CCP so we will often use our own funds to satisfy the margin call and then seek to recover such amount from you. In these cases where the margin has been funded by us and has already been passed on to the CCP before we call it from you, it is rather that we are exposed to you for the interim period. The arrangements between you and us relating to how the margin calls will be funded will be set out in the indirect client clearing agreement between you and us.

Please see Part One B for an explanation of how this is relevant to the choice of account types.

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

There may be circumstances where you wish to transfer some or all of your Indirect Client Transactions to another Direct Client or clearing broker on a business as usual basis (ie. in the absence of us having been declared in default by a clearing broker). We are not obliged to facilitate this under the Indirect Clearing RTS but we may be willing to do so subject to our ability to transfer the Client Transactions to which they relate and the margin provided to the clearing broker in connection with them (which will depend on the relevant arrangements with the clearing broker and the CCP) and any conditions set out in our indirect client clearing agreement. You will also need to find a Direct Client or clearing broker that is willing to accept such Indirect Client Transactions and / or the related Client Transactions and assets. You should note that if a Direct Client or clearing broker is unable to facilitate such a transfer, then we will not be able to agree to a request from you to transfer your Indirect Client Transactions or any margin provided in respect of them.

It may be easier to transfer Indirect Client Transactions and the corresponding Client Transactions that are recorded in a Gross Omnibus Indirect Client Account than those recorded in a Basic Omnibus Indirect Client Account (both types of account being described in more detail in Part One B) for the same reasons as set out below under "*Will the Client Transactions and assets relating to you be automatically ported to a back-up clearing broker or back-up Direct Client?*".



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

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

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

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

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

No, there will be a number of conditions which must be satisfied before the Client Transactions and assets that relate to you can be ported to a back-up entity. These conditions will be set by the clearing broker and will include obtaining your consent. In all cases you will need to have a back-up entity that has agreed to accept the Client Transactions. You may wish to appoint a back-up entity upfront as part of your clearing arrangements but the back-up entity is unlikely to be able to confirm that it is willing to accept the Client Transactions until the default occurs. The back-up entity may also have conditions that they require you to meet. You may also be able to agree with the clearing broker that it may choose a back-up entity on your behalf. If you have not appointed a back-up entity prior to our default or agreed with the clearing broker that it may appoint one on your behalf, then this may mean that porting is less likely to occur.

If porting is achieved, your Indirect Client Transactions with us will terminate in accordance with our indirect client clearing agreement. We would expect your back-up entity to put in place new indirect client transactions / client transactions between itself and you.

The type of account and level of segregation you choose will have an impact on the ability to port Client Transactions and assets to a back-up clearing entity upon our default.

If you choose a Basic Omnibus Indirect Client Account (described in more detail in Part One B), no contractual arrangements are required to be put in place for porting and, therefore, porting will ordinarily not be available.

If you choose a Gross Omnibus Indirect Client Account (described in more detail in Part One B), you can appoint a back-up entity with respect to just your Client Transactions (i.e. independently of our other clients in the same Gross Omnibus Indirect Client Account).



### What happens if porting is not achieved?

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

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

If the clearing broker terminates the Client Transactions, then the Indirect Client Transactions between you and us are also likely to terminate. The termination calculations in respect of those Indirect Client Transactions will be performed in accordance with the indirect client clearing agreement between you and us and such calculations will likely mirror those performed by the clearing broker in respect of the Client Transactions. If you are due a payment from us as a result of the close-out calculations in respect of our Indirect Client Transactions, the amount due from us to you will be reduced by any amount that you receive (or are deemed to receive) directly from the clearing broker.

Please see Part One C for a consideration of the main insolvency considerations.



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

### The types of accounts available

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

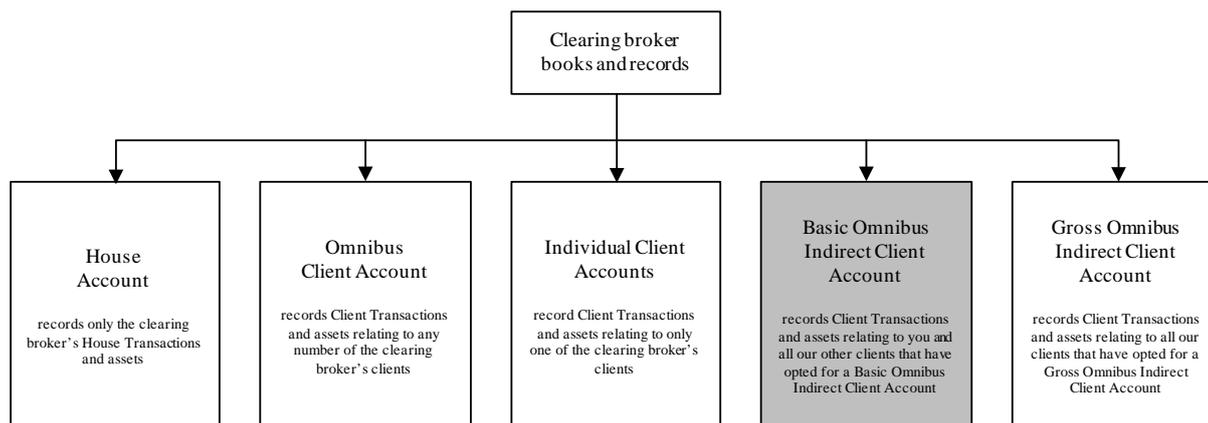
There are two basic types of indirect client accounts available – Basic Omnibus Indirect Client Accounts and Gross Omnibus Indirect Client Accounts. Some of the CCPs then offer different levels of segregation within some of those account types as described in Part Two of this document.

#### *Basic Omnibus Indirect Client Account*

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

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

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



Can Client Transactions and related assets be netted with the clearing broker's House Transactions and assets? No

Can Client Transactions and related assets be netted with those relating to us or the clearing broker's other Direct Clients? No

Can Client Transactions and related assets be netted with those relating to our other clients? Yes (provided our other clients' Client Transactions and assets are recorded in the same Basic Omnibus Indirect Client Account)

Can Client Transactions and related assets be netted with those relating to the clearing broker's other Indirect Clients? No

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

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

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

### *Gross Omnibus Indirect Client Account*

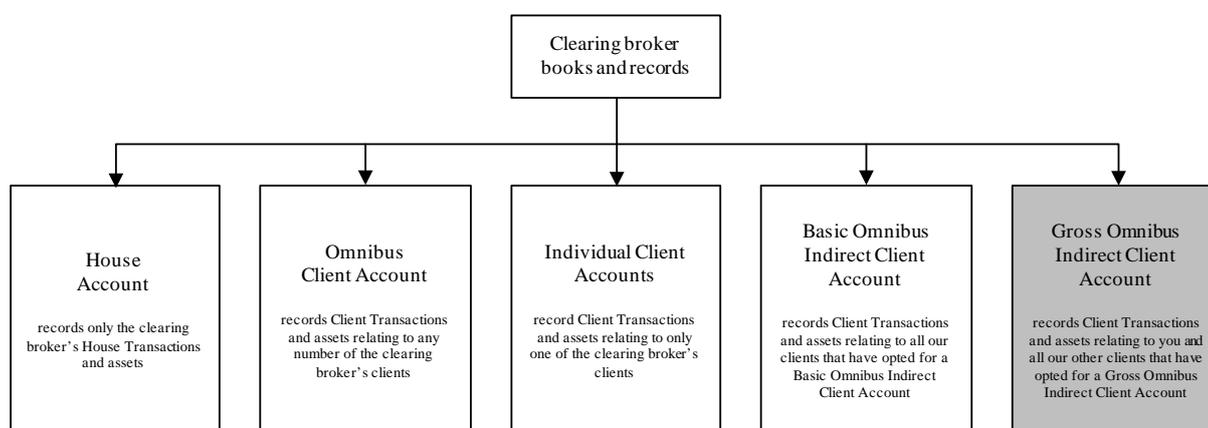
Under this account type, at the level of the clearing broker, the Client Transactions (including the corresponding assets in the clearing broker's accounts) relating to you are segregated from:

- any House Transactions of the clearing broker and any of their assets;



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

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



Can Client Transactions and related assets be netted with the clearing broker's House Transactions and assets? No

Can Client Transactions and related assets be netted with those relating to us or the clearing broker's other Direct Clients? No

Can Client Transactions and related assets be netted with those relating to our other clients? The Client Transactions relating to you will not be netted with the Client Transactions relating to any of our other clients.

However, the assets relating to you may be used to cover Client Transactions of our other clients to the extent it is recorded in the same Gross Omnibus Indirect Client Account.



Can Client Transactions and related assets be netted with those relating to the clearing broker's other Indirect Clients? No

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

The clearing broker will also agree not to use the assets relating to Client Transactions relating to you with respect to any House Transaction or Client Transaction recorded in any other account. However, the clearing broker may use the assets provided in relation to the Client Transactions relating to you in relation to any Client Transaction relating to our other clients that have also opted for a Gross Omnibus Indirect Client Account which are credited to the same Gross Omnibus Indirect Client Account.

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

### **Affiliates**

We treat our affiliates in the same way as clients when complying with the Indirect Clearing RTS. This means that affiliates also have a choice between types of account and the account type chosen by each of our affiliates may vary.

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

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

- whether you choose a Basic Omnibus Indirect Client Account or a Gross Omnibus Indirect Client Account (as discussed under *"The types of account available"* above);
- in each case, whether such assets are transferred to us by way of title transfer or security interest;
- whether we call any excess margin from you or you pay excess margin to us;
- whether you will get back the same type of asset as you provided as margin; and
- the bankruptcy and other laws that govern the clearing broker, us and the CCP.

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

### **Will you provide cash or non-cash assets as margin for the Client Transactions?**

As noted under *"The 'principal-to-principal' clearing model"* in Part One A, as a Direct Client of the clearing broker, we are required to transfer assets to the clearing broker in respect of the Client Transactions related to your Indirect Client Transactions. Clearing brokers only accept certain types of liquid cash and non-cash assets as margin.



As is market practice, we will decide what types of assets to accept from you as margin for your Indirect Client Transactions. This will be set out in the indirect client clearing agreement between us. What we will accept from you as margin for the Indirect Client Transactions will not necessarily be the same type of assets that the clearing brokers will accept from us for the Client Transactions, in which case we may provide you with a collateral transformation service, under which we transform the assets you provide to those which we can pass onto the clearing broker.

### **Do you provide assets to us on a title transfer or a security interest basis?**

The basis on which we are willing to accept assets from you will be set out in the indirect client clearing agreement between us.

#### *Title Transfer*

Where the indirect client clearing agreement provides for the transfer of assets by way of title transfer collateral arrangement, when you transfer assets (**Transferred Assets**) to us, we become the *full owner* of such assets and you lose all rights in such assets. We will record in our books and records that we have received such Transferred Assets from you with respect to the applicable Indirect Client Transaction. We will be obliged to deliver to you equivalent assets to such Transferred Assets (**Equivalent Assets**) in the circumstances set out in the indirect client clearing agreement.

We may either transfer such Transferred Assets on to the clearing broker with respect to the Client Transaction related to the Indirect Client Transaction, or we may transfer other assets to the clearing broker with respect to such Client Transaction.

You bear our credit risk with respect to our obligation to deliver Equivalent Assets to you. This means that if we were to fail, unless we are declared to be in default by the clearing broker, who would then be obliged to follow the requirements under the Indirect Clearing RTS with respect to a direct client default, you will have no right of recourse to the clearing broker or to any assets that we transfer to the clearing broker and you will instead have a claim against our estate for a return of the assets along with all our other general creditors. Even if we are declared to be in default by the clearing broker, the extent of your rights in relation to the clearing broker, if any, will depend on the particular clearing broker.

#### *Pledge*

Where the indirect client clearing agreement is governed by German law and includes a pledge arrangement, when you transfer assets to us, you *retain* full beneficial ownership of such assets. Such assets are transferred to us on the basis that the assets still belong to you, but you have granted us a pledge with respect to such assets.

We may enforce that pledge if you default in your obligations to us. Absent the exercise of any right of use by us (see below), only at the point of such enforcement would title in such assets or their liquidation value transfer to us. We will record in our books and records that we have received such assets from you with respect to the applicable Indirect Client Transaction.



Prior to any such default, you may also give us a right to use such assets. Until such time as we exercise such right of use, the assets continue to belong to you. Once we exercise the right of use, (e.g. by posting the assets to a clearing broker), the assets will cease to belong to you and in effect become our asset, at which point you will bear our credit risk in a similar way to the title transfer arrangements. The circumstances in which we may exercise such right of use and the purposes for which we may use any assets will be set out in the indirect client clearing agreement between us.

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

Excess margin is any amount of assets we require from you or you provide to us in respect of an Indirect Client Transaction that is over and above the amount of assets the clearing broker requires from us in respect of the related Client Transaction. Under the Indirect Clearing RTS, excess margin should be treated in accordance with the terms of the indirect client clearing agreement between you and us. Depending on those terms, you may take credit risk on us in respect of it.

#### **Will you get back the same type of asset as you originally provided to us as margin for an Indirect Client Transaction?**

In a business as usual situation, whether we will deliver the same type of asset to you that you originally provided to us will be governed by the indirect client clearing agreement between us.

In the event of our default, if you are due a payment, you may not receive back the same type of asset that you originally provided to us. This is because the clearing broker is likely to have wide discretion to liquidate and value assets and make payments in various forms, and also because the clearing broker may not know what form of asset you originally provided to us as margin for the Indirect Client Transaction and as a result of any asset transformation services we may provide. This risk is present regardless of what type of client account you select.

Please see Part One C for a consideration of the main insolvency considerations.



## Part One C: What are the main insolvency considerations?

### *General insolvency risks*

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

- you will not have any rights directly against the CCP;
- except for certain clearing broker-specific structures described herein and the comments below under “*Margin rights*”, you will not have any rights directly against the clearing broker; and you will only have contractual claims against us (i.e. rather than being able to recover particular assets as owner);
- our insolvency proceedings are most likely to be insolvency proceedings opened and controlled by Bundesanstalt für Finanzdienstleistungsaufsicht (**BaFin**), the German financial supervision authority (although it is possible that BaFin could order other measures in respect of us). In such insolvency proceedings you will generally not be able to take any action against us. All powers in respect of our insolvent estate are with the insolvency administrator of our insolvent estate and all actions have to be taken against or with the consent of the insolvency administrator (which can be a time consuming process with an uncertain outcome); and
- any stage of a cleared transaction (e.g., Indirect Client Transactions, Client Transactions, CCP Transactions and porting) may be challenged by the insolvency administrator over our insolvent estate if, broadly speaking, it was not on arm’s length terms. If successful, the court has broad powers to unwind or vary all of those stages.

Please also note that

- this disclosure deals only with our insolvency. You may also not receive back assets and positions if other parties in the clearing structure – e.g. the CCP itself, a custodian or a settlement agent – default;
- insolvency law may override the terms of contractual agreements, so you should consider the legal framework as well as the terms of disclosures and legal agreements;
- a large part of your protection comes from CCP arrangements and the legal regimes surrounding them. Therefore, you should understand these in order to evaluate the level of protection that you have on our default. It is important that you review the relevant disclosures by the CCP in this respect; and
- we may act through the London branch of Deutsche Bank AG which is established in the United Kingdom:
  - From IP completion day, it will be possible for English courts to take insolvency jurisdiction in relation to English branches of EU credit institutions
  - The interaction of key default issues – e.g. porting, recovery of assets, close-out netting and other insolvency matters – are complex and likely to be determined by a combination of German law, English law and the law of the location of any collateral.



- we may act through the Sydney branch of Deutsche Bank AG. Deutsche Bank AG is a registered foreign company in Australia and is an authorised deposit-taking institution (ADI) for the purposes of the Banking Act 1959 of Australia.
- Australian courts are not subject to EU law. In certain circumstances an Australian branch of a foreign ADI could be subject to insolvency proceedings governed by the applicable laws in force in Australia or the law of another jurisdiction determined in accordance with Australian law, even though there may be concurrent insolvency proceedings in the place of incorporation of the foreign ADI or another jurisdiction. This is more likely to occur in relation to property of the branch located in Australia. Such Australian insolvency laws, as so applied and interpreted, may be different from the insolvency laws of such other jurisdictions.
- Without limiting the extent of potential differences, Australian banking legislation provides that if a foreign ADI, such as Deutsche Bank AG, (whether in or outside Australia) suspends payment or is unable to meet its obligations, the assets of the foreign ADI in Australia are to be available to meet the foreign ADI's liabilities in Australia in priority to all other liabilities of the foreign ADI. Furthermore, debts due by an ADI to the Reserve Bank of Australia will have priority in a winding-up of the ADI over all other debts of the ADI.
- The interaction of key default issues – e.g., porting, recovery of assets, close-out netting and other insolvency matters – are complex and will require careful analysis of applicable conflicts of law rules in all relevant jurisdictions.

We suggest that you take legal advice on the interaction of these legal systems because it is beyond the scope of this disclosure.

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

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

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

In addition, please note the following:

- we expect that an insolvency official will be appointed to manage the clearing broker or the CCP. Our rights against the clearing broker or the CCP will depend on the relevant insolvency law and/or that official;
- it will be difficult or impossible to port Client Transactions and / or CCP Transactions and related margin, so it would be reasonable to expect that they will be terminated at the level of the clearing broker and / or the level of the CCP. The steps, timing, level of control and risks relating to that process will depend on the clearing broker and / or the CCP, the applicable rules or agreements and the relevant insolvency law. However, it is likely that there will be material delay and uncertainty around when and how much assets or cash we will receive back from the clearing broker or the CCP. Subject to the bullet points below, it is likely that we will receive back only a percentage of assets available depending on the overall assets and liabilities of the clearing broker or the CCP;
- it is unlikely that you will have a direct claim against the clearing broker or the CCP because of the principal-to-principal model described in Part One A;



- under the indirect client clearing agreement, Indirect Client Transactions will terminate at the same time as the matching Client Transactions unless our clearing agreement with the clearing broker provides otherwise. This will result in a net sum owing between you and us. However, your claims against us are limited recourse so that you will only receive amounts from us in relation to Indirect Client Transactions if we receive equivalent amounts from the clearing broker or the CCP in relation to relevant Client Transactions; or
- if recovery of margin in these scenarios is important, then you should explore whether any clearing brokers offer “bankruptcy remote” or “physical segregation” structures.

It is beyond the scope of this disclosure to analyse such options but your due diligence on them should include analysis of matters such as whether other creditors of the type described in “Porting – preferential creditors” below will have priority claims to margin; whether margin or positions on one account could be applied against margin or positions on another account (notwithstanding the clearing agreement between us and the clearing broker); the likely time needed to recover margin; whether the margin will be recovered as assets or cash equivalent; and any likely challenges to the legal effectiveness of the structure (especially as a result of the clearing broker’s insolvency).

### Margin rights

Generally speaking, your risk of loss will be highest in relation to title transfer margin; and lowest if you have retained the assets (e.g. in a custody account over which you have given us a security interest). If you provide assets to us by way of security interest or pledge and we have not exercised a right of use over those assets, then you should have a legal right to recover the balance of those assets (after settling your obligations to us) ahead of other creditors. However, please note that, depending on the exact set up of our security arrangements, it may be that some preferential creditors will still have a prior claim to your assets (please see “Porting – preferential creditors” below which deals with a similar point). If you have transferred the assets to our name by way of security (e.g. by giving us a mortgage over the assets) then you bear more risk if there is a shortfall in any of the assets that we are holding.

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

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

### Application of article 102b EGIInsO

You should also observe the provisions of article 102b Induction Code to the German Insolvency Code (*EGInsO*) ([EGInsO](#)) which apply to clearing members and porting procedures.

Article 102b EGIInsO overrules the generally applicable principles of German insolvency law and provides for a legal preference of porting procedures which may not be challenged by the insolvency administrator of our insolvent estate although it is not clear that Article 102b EGIInsO also protects measures taken by a clearing broker in the case of insolvency proceedings being opened in respect of us as a Direct Client.



Despite the fact that porting procedures may be mandatorily preferred by German law, the insolvency administrator of our insolvent estate could nonetheless challenge any related transaction and you would be required to take action against the insolvency administrator of our insolvent estate (which can be a time consuming process with an uncertain outcome).

### German Banking Act (Kreditwesengesetz)

In serious circumstances, in particular in the case of a risk for stability of the financial system (*Gefahr für die Stabilität des Finanzsystems*), BaFin may instruct that we are spun-off (*Ausgliederung*) to another credit institution if this is required to avoid our insolvency. It is unlikely that you will be able to stop such transfer and you would most likely be required to enforce any early termination rights which you had against us against the assuming credit institution.

Additionally, if financial difficulties of credit institutions could lead to serious consequences for the German economy taken as a whole, the German Federal Government (*Bundesregierung*) could order a moratorium on credit institutions generally. It is unlikely that you will be able to stop a moratorium or to enforce any early termination rights against us as a result of a moratorium.

### Close-out netting

If we default and the clearing broker cannot port the Client Transactions and collateral (e.g. because a back-up entity cannot be found, or ordinarily, because the relevant positions are in a Basic Omnibus Indirect Client Account) then we would expect it to terminate and net our Client Transactions and apply related assets.

There is a risk that this netting across accounts could happen automatically as a result of applicable insolvency law. A similar risk occurs between us and you in relation to the corresponding Indirect Client Transactions.



### Porting – prohibition

As mentioned herein, except in specific structures, a clearing broker only owes us (not you) obligations in relation to Client Transactions and related assets.

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

### Porting – preferential creditors

As mentioned under “*What happens if we are declared to be in default by a clearing broker?*” in Part One A, a clearing broker’s porting structure may be based on or supported by a security interest. This can take different forms but generally involves us creating security over our rights against the clearing broker in relation to a, Basic Omnibus Indirect Client Account or Gross Omnibus Indirect Client Account in your favour or in favour of another person (e.g. an independent trustee) to hold the security on your behalf. Broadly speaking, the security interest should support the argument that these assets are not part of our insolvency estate (i.e. are not to be shared with our other creditors).

However, depending on the exact structure, insolvency law gives certain statutory creditors priority over secured creditors. This means that some creditors may have a claim on client account assets ahead of you. Statutory creditors are likely to include, amongst others, our insolvency official (e.g. in respect of its costs and expenses), a relatively small amount of unsecured creditors, some employee salaries and pension contributions.

### Mismatch of CCP/Client Transactions and assets

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

For example, it may occur at clearing broker level as a result of Fellow Client Risk (see the explanation of this term in Part Two of this document), with the result that there are insufficient assets available for porting to satisfy our obligations to you in relation to the Indirect Client Transactions.

Alternatively, it could be that all of your Indirect Client Transactions with us are netted automatically as a result of applicable insolvency law (please see above under “*Close-out netting*”).



## Part Two: Clearing broker indirect client account structures

As noted in Part One B, each clearing broker is required to make available the choice of a Basic Omnibus Indirect Client Account or a Gross Omnibus Indirect Client. This Part Two contains an overview of the main levels of segregation within each account type together with an overview of the main protections afforded by and the main legal implications of each.

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

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

The Annex seeks to compare the main account types and levels of segregation against the following risks:

### Risks used to compare each account type and level of segregation

### Explanation of risk

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



Typical client account characteristics at the clearing broker level

	Basic Omnibus Indirect Client Account	Gross Omnibus Indirect Client Account
<b>Who will the Client Transactions recorded in the account relate to?</b>	Basic Omnibus Indirect Client Accounts record both assets and Client Transactions that relate to you (where you have opted for a Basic Omnibus Indirect Client Account) and the assets and Client Transactions that relate to our other clients that have also opted for a Basic Omnibus Indirect Client Account.	Gross Omnibus Indirect Client Accounts record both assets and Client Transactions that relate to you (where you have opted for a Gross Omnibus Indirect Client Account) and the assets and Client Transactions that relate to our other clients that have also opted for a Gross Omnibus Indirect Client Account.
<b>Which losses can assets recorded in the account be used for?</b>	Assets that are provided to the clearing broker as margin for a Client Transaction recorded in a Basic Omnibus Indirect Client Account may be used to cover any losses in that account, whether such losses relate your Client Transactions or Client Transactions relating to one of our other clients within that Basic Omnibus Indirect Client Account.	Assets that are provided to the clearing broker as margin for a Client Transaction recorded in a Gross Omnibus Indirect Client Account may be used to cover any losses in that account, whether such losses relate your Client Transactions or Client Transactions relating to one of our other clients within that Gross Omnibus Indirect Client Account.
<b>Will the clearing broker know which Client Transactions and types of assets relate to you?</b>	The clearing broker may not know which Client Transactions and assets recorded in a Basic Omnibus Indirect Client Account relate to you.	Yes, but prior to our default it may not know your identity.
<b>Will the clearing broker record the assets provided by value only or will it identify the type</b>	The clearing broker may identify in its records the type of asset provided as margin for the Basic Omnibus Indirect Client Account but will not be able to identify which type of assets relate to any client's Client Transactions within that	The clearing broker may identify in its records the type of asset provided as margin for the Gross Omnibus Indirect Client Account but is unlikely to be able to identify anything other than the value of assets provided in respect of any of our client's Client Transactions within that Gross Omnibus Indirect



	Basic Omnibus Indirect Client Account	Gross Omnibus Indirect Client Account
of asset provided?	Basic Omnibus Indirect Client Account.	Client Account.



	Basic Omnibus Indirect Client Account	Gross Omnibus Indirect Client Account
<b>Will the Client Transactions recorded in the account be netted?</b>	It is likely that the Client Transactions recorded in the account will be netted. This means that Client Transactions that relate to you may be netted with Client Transactions that relate to our other clients whose Client Transactions are recorded in the same Basic Omnibus Indirect Client Account.	Client Transactions relating to you are likely to be netted with other Client Transactions relating you. However, Client Transactions relating to you should not be netted with Client Transactions relating to any of our other clients recorded in the same Gross Omnibus Indirect Client Account.
<b>Will the margin be calculated on a gross or net basis?</b>	The margin will be calculated on a net basis.	The margin will be calculated on a gross basis.
<b>Will you have to enter into any documentation or operational arrangements directly with the clearing broker?</b>	You may have to enter into legal documentation to which the clearing broker is party. It is unlikely that you will have to set up any operational arrangements with the clearing broker directly.	You may have to enter into legal documentation to which the clearing broker is party. It is possible but unlikely that you will have to set up some operational arrangements with the clearing broker directly.
<b>Transit Risk</b>	Yes	Yes
<b>Fellow Client Risk</b>	Yes	Yes



	Basic Omnibus Indirect Client Account	Gross Omnibus Indirect Client Account
Liquidation Risk	Yes	Yes (unless the clearing broker is able to port the assets recorded in the account or is able to transfer the assets to you without needing to liquidate some or all of them first).
Haircut Risk	Yes	Yes
Valuation Mutualisation Risk	Yes	Yes
Clearing Broker Insolvency Risk	Yes	Yes
How likely it is that porting will be achieved if we default?	Unlikely	Unlikely (depending on the rules of the CCP and the clearing agreement and security interests to be provided by us in your favour)