MPS
CAPITAL SERVICES
GRUPPOMONTEPASCHI

EMIR

Mps Capital Services Banca per le Imprese S.p.a. (MPSCS)
–
Disclosure Document clearing of Cash Equity and Fixed Income.

October 2017

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1 Introduction

Throughout this document references to "we", "our" and "us" are references to MPSCS. References to "you" and "your" are references to the client.

2. Purpose of the document

The European Market Infrastructure Regulation (EMIR) of the European Parliament and of The Council of 4 July 2012 on OTC derivatives, central counterparties (CCPs) and Trade Repositories entered into force on 16 August 2012. Some EMIR provisions effect changes in the legal and regulatory landscape for central counterparties in the EU (CCPs) and clearing members of such CCPs.
As part of obligations under EMIR, MPSCS is required to:

- offer you a choice of an individual client account or an omnibus client account (as discussed under *"Account Structures"* below);
- publicly disclose the levels of protection and costs associated with different levels of segregation; and
- describe the main legal implications of different levels of segregation (Art. 39.7).

We have provided the costs associated with the different levels of segregation separately. Details can be found at: : http://www.mpscapitalservices.it/Trasparenza/

In order to disclose the levels of protection and the costs associated with the different levels of segregation, the purpose of this document is to provide you with information about MPSCS' offer for our cash equity and fixed income clearing within the framework of the EMIR in relation to Cassa Compensazione e Garanzia Spa ("CC&G") where we act as Individual Clearing Member ("ICM").

Important

This document sets out main considerations for clients in terms of account setup, legal implications and costs, which clients should consider when making their clearing services choices.
You must review the information provided in this document and the relevant CC&G disclosures and confirm to us in writing which account type you would like us to maintain with respect to CC&G on which we clear Cash Equity and Fixed Income.

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 facts of any particular case, some of which have not been tested in the courts.
It does not provide all the information you may need to make your decision on which account type or level of segregation is suitable for you. It is your responsibility to review and conduct your own due diligence on the relevant rules, legal documentation and any other information provided to you on each of our client account offerings and those of CC&G. You may wish to appoint your own professional advisors to assist you with this.

Please note that this disclosure has been prepared based on Italian law. This document based on our interpretation of the EMIR requirements as at the date stated above. It is possible that further developments in relation to EMIR and in relation to the account structures offered by CC&G could change the risks and impacts we have described in this document.
Any information contained in this document and specifically referred to CC&G (with particular, but not exclusive, reference to paragraphs 3.4, 4 and 5), has been prepared on the basis of publicly available disclosure documents made available by CC&G. We are not responsible for, and do not accept any liability whatsoever, for any content or omissions or inaccuracies contained in the information produced by CC&G.
Each CCP is required to publish information about the account structures it offers and we have provided a link to the relevant part of the CC&G's website.

Whilst we may update this document from time to time, we will not specifically notify you of any such development or their impact on the account you have chosen, nor will we specifically notify you of any updates we have made to this document, however the current version of this document will be available on our website.

3 Account Structures

Reference to accounts means the accounts in the books and records of the CCP. The CCP uses these accounts to record the transactions that we enter into on your behalf and the assets that we provide to the CCP in respect of such transactions.

There are two basic types of client account available – Omnibus Client Accounts (OSA) and Individual Client Accounts (ISA), and each of them is characterized by different structures, levels of protection and different cost. The key elements of an ISA and OSA are described in more detail below.
In both setups, MPSCS will offer you a client account at CCP level which enables us to distinguish client collateral and positions ("the client account") from MPSCS's own collateral and positions ("the house account").
As used below the term "OSA client" will refer to a client which opt for an omnibus account, while the term "ISA client" will refer to a client which opt for an individual account.

MPSCS will be offering to clients the choice between either segregation models.

3.1 Omnibus Client Account (OSA)

An OSA offers you omnibus account segregation as set out in article 39(2) of EMIR and is the minimum level of segregation required under EMIR. The OSA has the following features:

- positions and collateral that relate to you will be commingled with positions and collateral relating to any of our other clients that are recorded in the same OSA. It means that: (i) all the positions recorded in the same OSA (even if relating to different clients) can be netted together, and (ii) the collateral provided in relation to your position can be used to guarantee any positions registered in the same OSA (even if such position is related to another client).
- collateral and positions registered in the same OSA will be kept, by the CCP, separated and distinguished from (i) MPSCS' house account; (ii) other clients' account opened by MPSCS; and (iii) accounts opened by other clearing members;

- excess collateral may be held by MPSCS,
- With respect to portability implications please refer to paragraph 4.1 below.

3.2 Individual Segregated Account (ISA)

The ISA is a new type of account setup aimed at achieving individual account segregation as described in article 39(3) of EMIR. The ISA offers you an higher level of legal protection for your positions and collateral. The key features of the ISA are:

- the only positions and collateral which will be registered in the ISA are those relating to you. Therefore the positions and collateral that relate to you in such account at the CCP are distinguished from those relating (i) to our house account (ii) to the positions and assets that relate to any of our other clients, and (iii) other clearing members' accounts.
- client's position within the ISA are netted together, but netting is not allowed with our house transactions;
- in contrast to an OSA, the position related to you and recorded in the ISA cannot be netted with those of any other client; and the collateral guaranteeing your positions in the ISA cannot be used in relation to the positions of any other clients of ours (i.e. your collateral is not exposes to losses arising out of the positions of other clients);
- excess margin cannot be held by MPSCS: all collateral called by MPSCS must be passed on to the CC&G, including collateral called in excess;
- extra cost will be incurred by the ICM and the CCP for the set-up and maintenance of an ISA, such cost might be passed through to the client[1];
- With respect to portability implications please refer to paragraph 4.2 below.

3.3 Affiliates

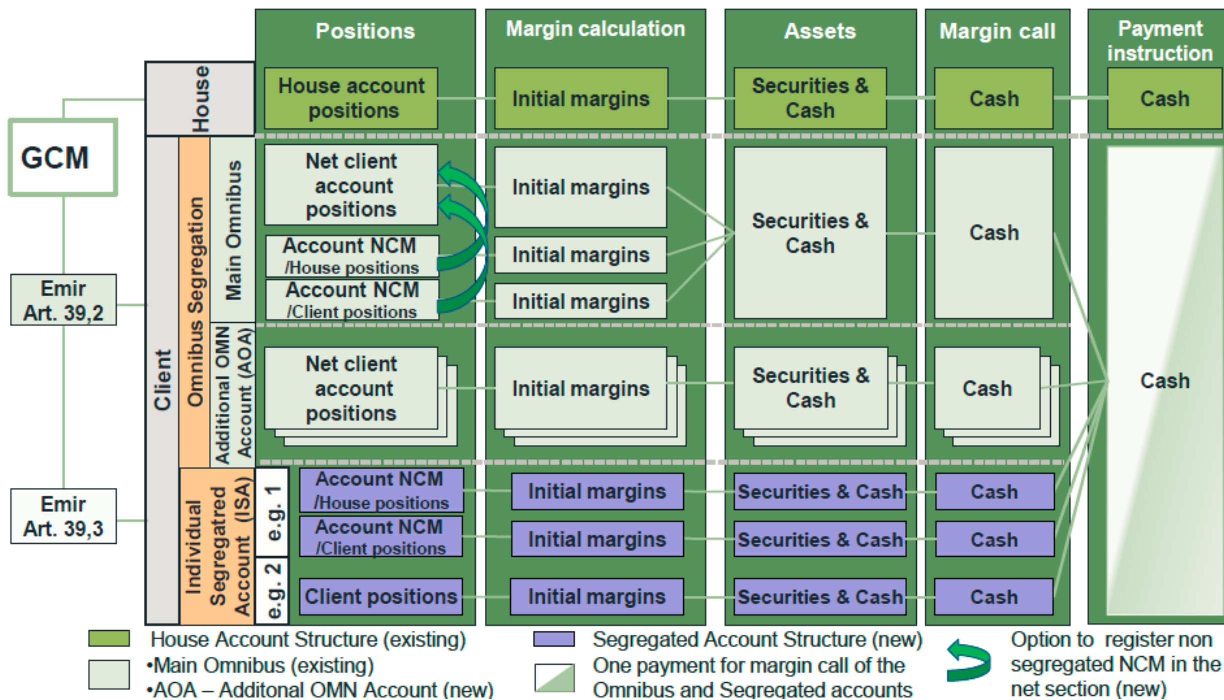
We treat our affiliates in the same way as clients when complying with EMIR. This means that affiliates also have a choice between types of account. An affiliate may be part of the same Omnibus Client Account as other clients.

3.4 CC&G's Account Structure

The following chart shows account Structure with EMIR by CC&G[2]:

[1] With respect to the fees and charges applied by CC&G (currently EUR 2.400 per year per ISA and per segment) please visit the CCP website at the following link: http://www.lseg.com/node/14614
With respect to the costs'structure applied by MPSCS please consult our EMIR pricing disclosure document available at the following link: http://www.mpscapitalservices.it/Trasparenza/

[2] References to "NCM" in the chart shall be deemed a reference to a "Non-Clearing Member" as defined in the CC&G's Regulation. Please note that being MPSCS an ICM, it cannot offer clearing services to Non- Clearing Members, therefore any such reference shall be disregarded in relation to our offer. For more information please look at http://www.ccg.it/it/home/emir/segregation-and-portability/.



4 What happens if we are declared in default?

Article 48 of EMIR establishes that the CCP, in case of default of one of its clearing members, must be committed to trigger procedures for the transfer of assets and positions of the defaulting clearing member's clients - recorded in ISAs or OSAs – to another clearing member (so-called: portability).
Therefore if we are declared to be in default by the CCP, there are two possibilities with respect to transactions and collateral related to you:

- the CCP will try to transfer (**port**) to another clearing member (a **"Designed Clearing Member"**), such transactions and collateral; or, if this cannot be achieved,

- in accordance with the provisions of EMIR, CC&G will take all the measures permitted by its rules, including the liquidation of the assets and positions related to you (see *"What happens if porting is not achieved"* below).

Porting of your positions and collateral to another clearing member is thus not automatic: there will be a number of conditions which must be satisfied before transactions and assets that relate to you can be ported to a Designed Clearing Member. These conditions will be set by the CCP and will include obtaining your consent and the presence of a contractual agreement between you and a Designated Clearing Member. In all cases you will need to have a Designed Clearing Member that has agreed to accept your transactions. If you have not appointed a Designed Clearing Member prior to our default then this may mean that porting is less likely to occur.
Also the type of account and level of segregation you choose will have an impact on the ability to port your transactions and collateral to a Designed Clearing Member upon our default.

Please find below a description of how your ability to port positions and collateral can be influenced by the type of account you choose:

4.1 Portability of positions and collateral of an OSA client

The portability of positions and collateral of an OSA client will only be possible in case where all the clients belonging to that same OSA subscribe to the agreement of portability with the same Designated Clearing Member. This situation may be difficult if the omnibus account contains numerous clients.
Indeed, with regard to the portability of OSA clients, the reference to "*all of those clients, on their request*", set out in Article 48, paragraph 5 of EMIR, must be understood to include all the clients of the relative omnibus account, without the possibility of a partial portability deriving from the opt-out by some of those clients. In the absence of the agreement of all the clients, the portability of the omnibus account in question may not take place.
The identity of the Designated Clearing Member shall be notified in advance to CC&G (at any time up to the declaration of our default).
Without an agreement with a Designated Clearing Member at the time of the declaration of our default (or immediately thereafter), CC&G will consider that portability is not practicable and will apply the other procedures provided for the management of the default (see paragraph 4.3 below).

4.2 Portability of positions and collateral of an ISA client

Where an ISA client have previously notified the Designated Clearing Member to CC&G, CC&G will automatically perform the procedures for the transfer of the positions and assets.
ISA clients, who at the time of our default had not already notified the Designated Clearing Member to CC&G will be given a time window (currently 5 business days) for providing it.
During the above mentioned time window the client will be given the chance to become temporary member of CC&G, in such case it shall act in accordance with CC&G rules and regulations[3] and pay margins directly to the CCP.
If the ISA client fails to reach an agreement with a Designated Clearing Member within the established time period (or declines to act as a temporary member), CC&G would consider the portability not practicable and would apply the other procedures for the management of the default (see paragraph 4.3 below).

4.3 What happens if porting is not achieved?

In cases of failure to reach agreements of portability or if the transfer to another Designed Clearing Member fails for any reason, in accordance with the provisions of EMIR, CC&G will take all the measures permitted by its rules, including the liquidation of the assets and positions held by us on your behalf. In the most likely scenario, that's will result in CC&G terminating your transactions and perform a close-out calculation in respect of them in accordance with its rules. The following main principles will apply:

i) with respect to OSA clients, if the portability has not taken place, collateral deposited in the OSA is used for the closure of all positions registered in the same account.
Netting between positions registered in the OSA with positions registered in other MPSCS accounts (house, ISA or other "omnibus client" accounts), is not allowed.
At the end of the default procedure (close out), any collateral registered in the OSA in excess of the amount necessary to cover any losses sustained and the costs and expenses for the closure of such account are returned by CC&G to us or our liquidator with the indication of the omnibus client account they refer to.

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[3] http://www.lseg.com/node/5437

Indeed, in such case, while still being able to instantly and accurately identify the assets and positions recorded in the OSA, CC&G is not in condition to directly proceed with the direct restitution to you as these accounts contain the assets and positions of a variety of clients and CC&G does not know the identity of each client.

ii) with respect to ISA clients, it still remains the inability to compensate the positions recorded in the ISA account with the positions recorded in other MPSCS' accounts (house, OSA and other ISA) and the assets deposited in the ISA account are used only for the closure of the positions registered in such account. At the end of the default procedure (close out), any possible asset registered in the ISA account in excess of the amount necessary to cover any losses and the costs and expenses sustained for the closure of the same ISA account are returned by CC&G directly to the ISA client. That will be possible because, in an insolvency scenario, CC&G would be in a position to immediately and exactly identify and return to the client the assets and positions registered on the ISA because that account only contains assets and positions of that single client.

5 Collateral

As is market practice and subject to applicable laws, we will decide the basis on which we will accept collateral from you. This will be set out in the clearing agreement entered into between us.
However, since pursuant to CC&G's rules and regulations, we are required to transfer any collateral to CC&G on a title transfer basis (pursuant and for the effect of the Legislative Decree 21 May 2004 no. 170), it is highly likely that we will receive the collateral from you on the same legal basis.

If this is the case, when you transfer assets to us, *we* become the *full owner* of such assets[4] with an obligation to return equivalent assets to you under certain circumstances. In the event of our insolvency, you do not have any ownership right on such equivalent asset but a claim against us, thus you will bear a credit risk on us with respect to such obligation. This means that if we were to fail, unless we are declared to be in default by the CCP, you will have no right of recourse to the CCP or to any assets that we transfer to the CCP 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 CCP, the extent of your rights in relation to the CCP, if any, will depend on the CCP (for instance see paragraph 4.3 above).

In the above circumstance the clearing agreement between us will constitute a title transfer collateral arrangement for the purposes of Legislative Decree 21 May 2004 no. 170 and Regulation (EU) 2015/2365 (this latter being referred as "SFTR Regulation") and we will inform you about the general risks and consequences that may be involved in concluding a title transfer collateral arrangement by separate notice.

6 Main insolvency considerations

6.1 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 will be likely time delays and costs (e.g. funding costs and legal fees) connected

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[4] We will record in our books and records that we have received such asset from you with respect to transactions cleared on your behalf.

with recovering those assets. These risks arise in relation to both Individual Client Accounts and Omnibus Client Accounts because:

- except for CCP-specific porting solutions described earlier you will not have any rights directly against the CCP; and you will only have contractual claims against us;
- our insolvency proceedings are most likely to be a version of a process called compulsory winding up (*liquidazione coatta amministrativa*) regulated by the Consolidated Banking Act (Italian law n. 385 of 1 September 1993 called T.U.B)(although it is possible for us to enter into liquidation and other proceedings[5]). In *liquidazione coatta amministrativa*, subject to a few exceptions, you will not be able to take any action against us; and
- any stage of a cleared transaction may be challenged by our insolvency official in certain circumstances

Please also note that:

- 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; and
- 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. In such respect it has to be noted that:

  CC&G is enabled to take action for the management of the default in accordance with the Consolidated Law on Finance (Italian law n. 58 of 24 February 1998 called T.U.F) and with the article 48 of the European Rules n. 648/2012 (EMIR).
  Such rules allow CC&G to set a procedure and to take action accordingly in the event of default or insolvency of one or more clearing members in order to ensure the stability and efficiency of the system managed.

  Additionally, the Italian law ensures that both porting and the right of the client to receive back the guarantees registered into an ISA account (as described in paragraph 4 above), would be enforceable against a defaulting clearing member (including in the event of insolvency proceedings being opened against such clearing member).

  We refer here to Article 79-*septies* T.U.F., as recently modified, that establish: "The margins and other benefits acquired by a central counterparty as collateral for fulfilling the obligations arising from compensation carried out in favor of its participants cannot be subject to enforcement or precautionary actions by creditors of the single participant or the entity that manages the central counterparty, even in case of opening of insolvency proceedings. The acquired collateral may be used only in accordance with Regulation (EU) No. 648/2012. "

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[5] As an Italian credit institution we may be subject to other measures taken by the Italian supervisory authority (see for instance the new Resolution tool introduced by Directive 2014/59/EU and Italian implementing legislation). Pursuant to CC&G's rules and regulations, does not constitute a cause of default of the clearing member the adoption, against him, pursuant to the Legislative Decree no. 180 of 2015, the Consolidated Law on Banking and the T.U.F., of a crisis prevention or management measure or of a measure for compulsory administrative liquidation with the continuation of the business activity set out at the assignment act of the liquidators, or equivalent measures provided by jurisdictions, provided the clearing member fulfils its obligations arising from its participation in the CCP.

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

6.2 Insolvency of CCPs and others

Except as set out in this section "*Insolvency of 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 CCP itself, a custodian or a settlement agent.

In relation to CCP insolvency, broadly speaking, our (and therefore your) rights will depend applicable insolvency proceeding and the specific protections that the CCP has put in place. You should review the relevant CCP disclosures carefully in this respect and take legal advice to fully understand the risks in this scenario.

In addition, please note the following:

- we expect that an insolvency official will be appointed to manage the CCP. Our rights against the CCP will depend on the applicable insolvency proceeding;
- it will be difficult or impossible to port your cleared transactions and related collateral, so it would be reasonable to expect that they will be terminated at CCP level. The steps, timing, level of control and risks relating to that process will depend on the CCP, its rules and the applicable insolvency proceedings. However, it is likely that there will be material delay and uncertainty around when and how much assets or cash we will receive back from the CCP. It is likely that we will only receive back only a percentage of assets available depending on the overall assets and liabilities of the CCP;
- it is unlikely that you will have a direct claim against the CCP because you do not have a contractual relationship with the CCP;
- the termination of your positions 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 to the extent we receive equivalent amounts from the CCP in relation to your transactions.

Links to CCP disclosure documents:

Please note that these links have been included for convenience only. In the event that any of them do not work, you should contact the relevant CCP directly.

Cassa Compensazione e Garanzia: http://www.ccg.it/it/home/emir/segregation-and-portability/

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