

**EMIR**

**INTESA SANPAOLO S.p.A**

**Disclosure Document Clearing of Equity  
Derivatives, Cash Equity and Fixed Income**

**January 2016**

INTESA SANPAOLO

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## 1 Introduction

Throughout this document references to “we”, “our” and “us” are references to Intesa Sanpaolo S.p.A. as the General Clearing Member (GCM) in relation to Cassa Compensazione e Garanzia (CC&G).

References to “you” and “your” are references to the client.

## 2 Background

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, Intesa Sanpaolo S.p.A. (“Intesa Sanpaolo”) is required to:

- “keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its clients at the CCP” (Art 39.4);
- “offer its clients, at least, the choice between omnibus client segregation and individual client segregation and inform them of the costs and level of protection referred to in paragraph 7 associated with each option. The client shall confirm its choice in writing” (Art. 39.5);
- disclose publicly the levels of protection and the costs associated with the different levels of segregation and a description of the main legal implications of the respective levels of segregation offered including information on the insolvency law applicable (Art.39.7).

## 3 Purpose of the document

In order to disclose the levels of protection and the costs associated with the different levels of segregation (Art. 39.7), the purpose of this document is to provide you with information about the Intesa Sanpaolo offers for Equity Derivatives, Cash Equity and Fixed Income clearing within the framework of the EMIR.

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 Equity Derivatives, Cash Equity and Fixed Income.

In the meantime, where we are currently offering you clearing services, we will continue to clear your Equity Derivatives, Cash Equity and Fixed Income using the existing account structure, as this is the most similar of the new account types to the existing account structure.

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 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. This document does not constitute a contract or an offer to contract.

Should we agree to clear Equity Derivatives, Cash Equity and Fixed Income for you, such service would be subject to specific requirements and specific contractual provisions to be agreed with you.

This document does not amend or vary any position of any agreement with us or otherwise affect the interpretation of any such agreement including any fee schedule that you have previously agreed or may agree with us in the future.

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.

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.

#### **4 Account Structures**

Intesa Sanpaolo will be offering to clients at least two segregation models per CCP, one omnibus client segregation model (OSA) and one individual client segregation model (ISA) with different structures, levels of protection and come at a different cost.

The key elements of an ISA and OSA described in more detail below. In both setups, Intesa Sanpaolo will offer you a client account at CCP level which enables Intesa Sanpaolo to distinguish client collateral and positions (“the client account”) from Intesa Sanpaolo’s own collateral and positions (“the house account”).

Article 39(10) of EMIR provides that assets (in respect of segregation and portability) refers to collateral held to cover positions and includes the right to transfer assets equivalent to that collateral or the proceeds of the realization of any collateral.

#### **4.1 Omnibus Segregated Account (OSA)**

An OSA offers you omnibus account segregation as set out in article 39(2) of EMIR.

This account setup is similar to your current account setup with Intesa Sanpaolo. In an OSA account, multiple Equity Derivatives, Cash Equity and Fixed Income positions and collateral of clients are being combined.

In this setup, you will keep on benefitting from the netting opportunities, which will reduce your overall costs and charges. The OSA is the minimum level of segregation required under EMIR. It has the following features:

- the CC&G keeps separate records and accounts that distinguish the collateral and positions of the clients in the omnibus account from Intesa Sanpaolo's house account and/or other client accounts;
- depending on the account setup at CC&G level (gross or net), collateral in the OSA may be netted;
- netting of collateral and positions across house and client accounts is not allowed;
- collateral held at CC&G level that covers derivative positions within the OSA is not exposed to potential losses in Intesa Sanpaolo's house account and/or other client accounts;
- client collateral in the OSA may be used to cover other client's positions within the OSA;
- excess collateral may be held by Intesa Sanpaolo.

#### **4.2 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. As a client, your Equity Derivatives, Cash Equity and Fixed Income positions and collateral are distinguished from other client's positions and collateral as well as Intesa Sanpaolo's own positions, enabling you to achieve the most optimal form of segregation.

Therefore, the ISA offers you the highest level of legal protection for your derivative positions and collateral.

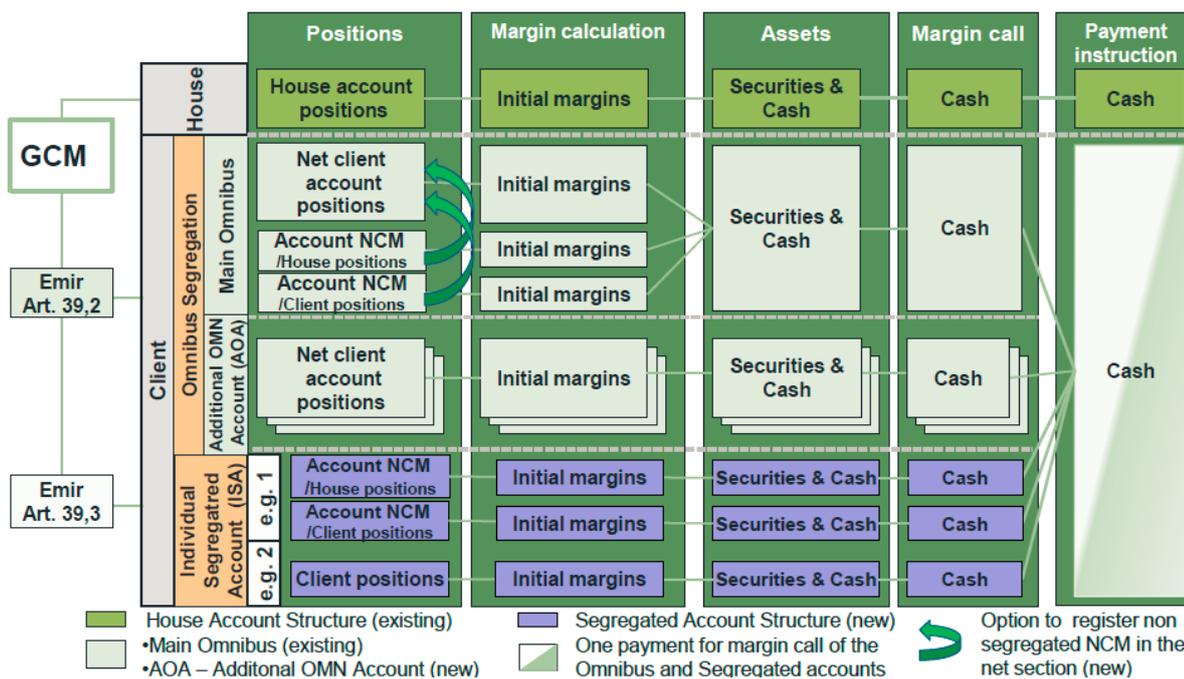
The key features of the ISA are:

- cash and equity derivative positions and collateral are placed in separate individual accounts at the CC&G and are distinguished from other client accounts and Intesa Sanpaolo's house account;
- cash and equity derivative positions from the client within the ISA are netted, but netting is not allowed across accounts of different clients;
- collateral covering the positions in the ISA is not exposed to losses outside the ISA;

- excess margin cannot be held by Intesa Sanpaolo: all collateral called by the Clearing Member (CM) must be passed on to the CC&G, including collateral called in excess.

### 4.3 Account Structure CC&G

The following chart shows account Structure with EMIR by CC&G<sup>1</sup>:



### 4.4 Cost Implication

Where clients elect to use an ISA, they will be subject to additional charges in relation to the provision of this type of account. These additional charges will not arise where they opt for an OSA.

A number of factors took into account when assessing the charges levied for the provision of an ISA, including but not limited to operational and IT costs required maintaining these accounts.

Clients should note that when selecting an ISA they might also be subject to additional third party charges.

<sup>1</sup> For more information please look at <http://www.ccg.it/it/home/emir/segregation-and-portability/>

Intesa Sanpaolo reserves the right to change at any time and without notice, the CCP Client Account Structure Fees described in Pricing Schedule Document<sup>2</sup> and subject to the terms set out in the contractual agreement between the client and Intesa Sanpaolo:

- no additional charges will be levied by Intesa Sanpaolo where clients opt for an OSA;
- Intesa Sanpaolo will levy additional charges where clients opt for an ISA.

Fee Type	Fee Charged
Setup Fee	€ 10,000 one-off per ISA
Account Maintenance Fee	€ 10,000 per ISA per year

The table reported above is in addition to any applicable CCP fees or charges, which the CCP requires for set up or maintenance of an Individual Client Account and a separate charge may be applied for collateral movements. The pricing will be applied when determining the CCP Client Account Structure Fee<sup>3</sup>.

## 5 Portability

Article 48 of EMIR establishes the circumstances and parameters under which a CCP must transfer the assets and positions of the clients of defaulted clearing members or may liquidate such assets and positions.

Following a member default, a CCP is required to transfer the assets and positions recorded as being held for the account of the clients of the defaulted clearing member if the conditions defined in Article 48 are met. Otherwise, the CCP may try to transfer the assets and positions, on a best effort basis, but ultimately has the right to liquidate the assets and positions.

If the assets of a client of the defaulted clearing members are only partially liquidated then the non-liquidated portion of the assets will be returned to the clients when they are known to the CCP or, if they are not, to the clearing member for the account of its clients.

Articles 48(5) and 48(6) of EMIR provide that, if a clearing member defaults, “the CCP shall, at least, contractually commit itself to trigger the procedures for the transfer of the assets and positions... to another clearing member designated by (the client or clients)...”. They further provide that if porting of client positions “has not taken place for any reason within a predefined transfer period specified in its operating rules, the

<sup>2</sup> [http://www.corporate.intesasanpaolo.com/wp-content/uploads/2014/10/EMIR\\_Intesa-Sanpaolo-Clearing-Pricing-Schedule-Document.pdf](http://www.corporate.intesasanpaolo.com/wp-content/uploads/2014/10/EMIR_Intesa-Sanpaolo-Clearing-Pricing-Schedule-Document.pdf)

<sup>3</sup> Should you require any further information, please do not hesitate to contact your Intesa Sanpaolo Relationship Manager

CCP may take all steps permitted by its rules to actively manage its risk in relation to those positions, including liquidating the assets and positions held by the defaulting clearing member for the account of its clients”.

Intesa Sanpaolo will offer OSA Net or OSA Gross and ISA segregation models and portability according CC&G conditions. Please, refer to the “segregation and portability” document issued by CC&G for any information about the functional implications of two types of account reported illustrated above.

## **6 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.

CC&G accepts as collateral to a wider range of Sovereign issuers, traded on MTS and considered to have a low market risk (Austria, Belgium, France, Germany Italy, Netherlands)

The value of deposited collateral will be evaluated either at each end of the day and with the occasion of daily recalculations of margin requirements, based on market price and haircuts applied.

In order to diversify the risk on the securities deposited as collateral, concentration limits for assets collateralizing Initial Margins have been agreed:

- maximum 50% Assets over total Initial Margin;
- maximum 45% Asset form a single issuer over total Initial Margin.

## **7 Main insolvency considerations**

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.

The procedure for failure to fulfill obligations applied by CC&G pursuant to Article B.6.2.1 of CC&G Regulation provides that, in accordance with the EMIR rules on segregation and portability, CC&G transfer to another participant guarantees and positions of the accounts that fall in the conditions laid down in Article 48 of EMIR.

According to CC&G Regulation, in order to proceed with the transfer of positions and collateral in a “Client<sup>4</sup> Omnibus” account (MOA – Main Omnibus Account or AOA – Additional Omnibus Account), CC&G must have received the documentation on the identification of the Participant receiving the transfer (Designated Participant) before the failure. This assumes that the customers of the Participant whose positions and collateral flow into the same account have previously reached an agreement in relation to the Participant for receiving the transfer of positions and collateral.

With regard to the transfer of positions and collateral in an ISA (Individual Segregated Account opened at the request of the Clearing Member and dedicated to the recording of positions and collateral of customers or Non-Clearing Members that have chosen the individual segregation indicated below as well as in CC&G Regulation as "Customer" with a capital C) account, however, the Customer that has not already sent to CC&G the documentation identifying the Designated Participant before the default or insolvency of his own Participant benefits of a period of five days to provide for the designation.

In the period between the default and the transfer, he becomes "Participant Pro-tempore" of CC&G and is required to pay the margins, in order to enable a proper risk management of his positions (article B.6.2.1, paragraph 1), letter c) and article B.2.4.2 of CC&G Regulation).

In relation to the contractual positions and guarantees recorded on accounts for which the conditions mentioned above are not satisfied and, therefore, do not benefit from portability, possible availability of the defaulting Participant in excess of the amount necessary to cover the losses incurred will be refunded by CC&G to the party entitled (the Participant, the Client or the liquidating authority under the circumstances) at the end of the defaulting procedures. More precisely, warranties arising from MOA and AOA accounts will be returned to the Participant, specifying its nature and origin. The warranties arising from ISA accounts will be returned to Customers themselves.

In this regard it is noted that, 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 a “Segregated Client” account (ISA) because that account only contains assets and positions of a single Client. Instead, with reference to the assets and positions registered into a “Client Omnibus” account (MOA and AOA), while still being able to instantly and accurately identify the assets and positions recorded in the account, CC&G is not in condition

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<sup>4</sup> “Client” can be defined as the Customer undertaking or Non-Clearing Member, linked to a Clearing Member by a contractual relationship that permits it to clear its operations through CC&G and to hold assets and positions under the provisions of Article 39, paragraph 3 of the EMIR Regulation, without necessarily establishing any contractual relationship with CC&G.

to directly proceed with the restitution as these accounts contain the assets and positions of a variety of Clients and CC&G does not know the identity of each Client.

The Italian law ensures that both porting and the right of the Client to receive back the guarantees registered into an ISA account, 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 70 of 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. "

In particular, Article 70 of the Consolidated Financial Act clearly protects the collateral acquired by CC&G in harmony with the requirements of EMIR, including the event of the insolvency of a participant. Since Article 48 (5-6) of EMIR provides the mechanism of portability and Article 48 (7) of EMIR provides that any outstanding balances must be returned to the Customers of the defaulting Participant, it follows that Article 70 of the Consolidated Financial Act recognizes, indeed demands, that CC&G use collateral recorded in segregated accounts only for such purposes, even in a scenario of default.

The above is also valid in case of default of a non Italian Participant (EEA). This assumes that the jurisdiction of the Participant has transposed Article 8 of Directive no. 98/26/EC.

**Important notice:**

**Unless you request a change of account structure in writing, Intesa Sanpaolo will continue to maintain the existing account structure we currently have in place for you**

**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. Some CCPs have not yet published their disclosure documents but will be required to do so from the time of authorization under EMIR.

**Cassa Compensazione e Garanzia:**

<http://www.ccg.it/it/home/emir/segregation-and-portability/>

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