This document has been produced by CME Clearing Europe Limited (CMECE) for the purpose of Article 39(7) of the European Market Infrastructure Regulation. It contains information about CMECE’s account structures which are being considered by the Bank of England and other regulators as part of CMECE’s application for reauthorisation under EMIR. If any changes need to be made as a result of that review, CMECE may need to amend this document. Capitalised terms used but not defined in this Account Disclosure have the same meaning given to them in the version of CMECE’s Rules that is due to be published at the time of CMECE’s reauthorisation (the Rules).

This document provides a high-level description of the Accounts offered by CMECE including a high level summary of certain provisions in the Rules and relevant legislation. It does not form part of the Rules and is not contractually binding. It does not constitute legal or other advice and should not be relied on as such. Persons considering entering into arrangements with a Clearing Member of CMECE should conduct their own due diligence and appoint their own advisers as appropriate.

**Question 1: What types of Client Account does CMECE offer?**

CMECE offers the following types of Client Accounts in its books and records:

- Omnibus Client Account – both a net and a gross version (see Questions 4 and 5).
- Individual Client Account (see Questions 6 and 7) and Fully Segregated Account (which is a variant of the Individual Client Account) (see Questions 8 and 9).

CMECE records in its books and records the positions entered into between CMECE and a Clearing Member when it is clearing on behalf of a Client and Collateral received by CMECE in relation to such positions. The Client Accounts therefore relate to a Clearing Member, as well as to one or more of its Clients. Any Clearing Member may have as many Client Accounts as it wishes. Each Clearing Member also has a House Account, which is the Account in CMECE’s books and records which records the positions entered into between CMECE and the Clearing Member when it is clearing on its own behalf.

**Question 2: Why does it matter what type of Account a Client has?**

The different types of Client Account are designed for different purposes and work in different ways in respect of matters such as position recording and netting, margining and what happens if CMECE issues a Declaration of Default in respect of a Clearing Member. As a result, some types of Client Account may suit a Client’s objectives better than others and different risks attach to different Accounts as explained further below. See Questions 5, 7 and 9.

**Question 3: How does CMECE treat the Collateral?**

Collateral provided in the form of cash that relates to the Client Accounts is received into bank accounts with CMECE’s Settlement Banks and invested by CMECE in accordance with CMECE’s treasury investment policy in compliance with the EMIR requirements. Collateral provided in the form of Eligible Securities is held with one of CMECE’s Custodians and may be used by CMECE for securing liquidity if necessary. Collateral provided in the form of Gold
is held with one of its Settlement Agents for Precious Metals and can also be used for securing liquidity if necessary.

Collateral is normally transferred to CMECE on a title transfer basis so CMECE has full ownership of such Collateral. CMECE transfers to the Clearing Member distributions that are equivalent to distributions it receives in respect of Eligible Securities and interest at such rate as it determines on Eligible Cash received as Collateral.

In some jurisdictions, Collateral is transferred to an FS Account (see Questions 8 and 9) under a structure which has elements of security and title transfer.

**Question 4: What is the Omnibus Client Account?**

**4.1 Purpose**

The Omnibus Client Account records positions entered into by a Clearing Member in respect of more than one Client and the types of assets and value of Collateral provided by the Clearing Member relating to that Omnibus Client Account. The Clearing Member can have more than one Omnibus Client Account, if it so wishes.

CMECE will require any Client that wants an Omnibus Client Account and wants to clear both IRS and Standard Contracts to have at least two Omnibus Client Accounts: one for IRS Contracts and the other for Standard Contracts.

The net Omnibus Client Account is only available in relation to Standard Contracts.

**4.2 Types of Omnibus Client Accounts**

There are two types of Omnibus Client Accounts:

- **Net Omnibus Client Account:** In this type of Omnibus Client Account, CMECE records all the positions entered into within this Omnibus Client Account and the types of assets and value of the related Collateral relating to the Omnibus Client Account as a whole. CMECE does not identify in its books and records positions and Collateral by Client within this Omnibus Client Account. The positions within this Omnibus Client Account are not netted against each other unless a Clearing Member requests CMECE to do so, in which case, it would only be possible to net positions relating to the same Client. The Margin Requirement for this type of Omnibus Client Account is calculated on a net basis across all the positions in the Omnibus Client Account.

- **Gross Omnibus Client Account:** In this type of Omnibus Client Account, CMECE records all the positions entered into in its books and records by Client, where known, based on information provided to it by Clearing Members and the types of assets and value of the related Collateral for that entire Omnibus Client Account. CMECE does not record the Collateral by Client within this Omnibus Client Account. The positions of different Clients within this Omnibus Client Account cannot be netted against each other and as a result, the Margin Requirement for this type of Omnibus Client Account is calculated on a gross basis.

**4.3 EMIR compliance**

The Omnibus Client Account has been designed to achieve omnibus client segregation as described in Article 39(2) EMIR. In other words, the positions and Collateral of the Clients of the Clearing Member will be distinguished from the positions and Collateral of the Clearing Member in CMECE's books and records. In accordance with Article 39(9) EMIR:

- Positions and the assets relating to the Clients are recorded in the Omnibus Client Account which is a separate Account from the House Account, where those of the Clearing Member are recorded.
• Positions recorded in any one Omnibus Client Account will not be netted with positions in any other Account.
• The types of assets and value of the related Collateral covering the positions recorded in an Omnibus Client Account will not be exposed to losses connected to positions in any other Account.

4.4 Recording of positions and margin in the Omnibus Client Accounts
In the net Omnibus Client Account, positions will not be recorded on a net basis unless the Clearing Member instructs CMECE to do so. CMECE will not necessarily be able to identify Clients within the net Omnibus Client Account as this information is usually not provided by Clearing Members. In the net Omnibus Client Account, margin is called on a net basis.
In the gross Omnibus Client Account, positions will be recorded on a gross basis and CMECE identifies in its books and records each Client within the gross Omnibus Client Account, if known, i.e. if the information has been provided by Clearing Members. In the gross Omnibus Client Account, margin is called on a gross basis.

4.5 Excess Collateral in the Omnibus Client Accounts
Excess Collateral in relation to an Omnibus Client Account is any Collateral that CMECE receives in respect of that Account which is greater than the Collateral it has called from the Clearing Member. Neither EMIR nor the CMECE Rules require that Excess Collateral relating to an Omnibus Client Account be transferred to CMECE. However, if CMECE receives Excess Collateral in relation to the Omnibus Client Account, in the absence of a Clearing Member default, it is treated in the same way as Collateral and CMECE will record the type of assets and value of the Excess Collateral for that entire Omnibus Client Account. CMECE will not identify the Excess Collateral by Client in its books and records.
On default of a Clearing Member, CMECE may take all the Collateral (including the Excess Collateral) in the form of Eligible Cash in the Omnibus Client Account and liquidate all the Collateral (including the Excess Collateral) in the form of Eligible Securities in the Omnibus Client Account and use the cash value of the Excess Collateral for the purpose of offsetting any amounts owing by the Defaulting Clearing Member to CMECE in respect of that Omnibus Client Account. See Questions 5, 16 and 17.

4.6 How is Collateral in the form of Securities held in the Omnibus Client Account?
CMECE records the Collateral by asset type in its books and records and allocates the Collateral to each of a Clearing Member’s Omnibus Client Accounts.
All Collateral in the form of Eligible Securities is deposited in custody accounts in CMECE’s name with one or more of CMECE’s Custodians. See Question 3.

4.7 Liquidation of Collateral and Portability in the Omnibus Client Account
On the default of a Clearing Member, CMECE is likely to liquidate all non-cash Collateral associated to the Omnibus Client Accounts and port the cash value of those liquidated assets along with any cash Collateral in accordance with its Default Rules. The default process, including the likely order of events, is explained in Questions 15 to 18.
Under CMECE’s Default Rules, an Omnibus Client Account is notionally divided into Notional Sub-Accounts, which record the positions by Client, if known, and the value of the related Collateral up to the Margin Requirement (i.e. without taking any account of Excess Collateral save in some circumstances) by Client within such Omnibus Client Account. These Notional Sub-Accounts are simply a legal construct to differentiate between positions and Collateral relating to different Clients in an Omnibus Client Account in the event of a Clearing Member default and do not affect the descriptions in paragraph 4.2. Subject to certain conditions for porting being met, CMECE can port the positions recorded in the relevant Notional Sub-
4.8 What happens on the default of a Client in the Omnibus Client Account?

As positions are entered into between CMECE and each Clearing Member, the default of a Client (either in the sense of an insolvency event or a breach of its Client Agreement with its Clearing Member) should not have a direct effect on the clearing arrangements of other Clients of the Clearing Member unless the Client default is so significant as to cause the Clearing Member to default in which case the Collateral of the other Clients in the same Omnibus Client Account could be subject to risk of mutualisation (see Question 5). A Clearing Member may, of course, default as a result of many other issues — not just a Client default.

On the default of a Client, a Clearing Member may want to transfer any positions relating to a defaulting Client to the House Account so that they become house positions and/or close them out. Similarly, any related Collateral relating to a defaulting Client, as identified by the Clearing Member, could be transferred to the House Account to become house collateral if requested by the Clearing Member in accordance with CMECE’s Rules. A Clearing Member will continue to be responsible for meeting the Margin Requirements relating to a defaulting Client’s positions until those positions have expired or otherwise been closed out even if they are transferred to the House Account.

Question 5: What are the main legal implications of the Omnibus Client Account?

5.1 Mutualisation risk

The Client in the Omnibus Client Account takes a degree of risk against other Clients of the Clearing Member in the same Omnibus Client Account only upon the default of its Clearing Member. In such case, any Collateral in the Omnibus Client Account could be used by CMECE to cover any losses on positions relating to any Clients in that Omnibus Client Account and to reduce an amount owed to CMECE in relation to any Client within that same Omnibus Client Account. This risk exists in both net and gross Omnibus Client Accounts. See Questions 4, 15 and 16.
5.2 Notional Sub-Accounts

As noted in Question 4, the Omnibus Client Account is notionally divided into Notional Sub-Accounts, which are a legal construct that is important for CMECE’s calculations under the Default Rules. However, the existence of Notional Sub-Accounts in the event of a default will depend on the extent to which CMECE has information about the Clients and can identify positions by Client within a short period of time. To the extent it can, a Notional Sub-Account will be deemed to exist in respect of any positions that CMECE can satisfactorily identify as relating to a Client. Otherwise, all other positions that are not identifiable as relating to a particular Client (and therefore which may relate to a number of Clients) will be deemed to form a separate, single Notional Sub-Account. It is likely that a net Omnibus Client Account will have to be treated as a single Notional Sub-Account. See Questions 4, 15 and 16.

5.3 Porting

It will be simpler for CMECE to port positions and the related Collateral in the gross Omnibus Client Account than in the net Omnibus Client Account for two reasons: (1) it is more likely that CMECE will know the identity of the Clients in the gross Omnibus Client Account, and (2) it will be harder to find an Adopting Clearing Member who is willing to take on all of the positions in the net Omnibus Client Account and to get the Clients to agree to it (see Questions 4 and 14).

CMECE will need to port positions and related Collateral within a certain period of time (the relevant porting period) in order to mitigate the risk that upon the default of the Clearing Member the value of both the positions and the Collateral CMECE holds in respect of them may fluctuate and that CMECE will not be receiving Variation Requirement from the Defaulting Clearing Member to reflect such fluctuations. The tolerance built into the Margin Requirement calculated for Standard Contracts currently allows CMECE less time to port than that for IRS Contracts (see Question 15).

If CMECE cannot port, it will close out the positions in the relevant Omnibus Client Account and calculate and return a Single Net Sum as explained in Questions 4 and 17. Where CMECE has been able to calculate a Single Net Sum in respect of a Notional Sub-Account relating to a single Client that it can identify, it will try to return that Single Net Sum to that Client. This is more likely to be the case with the gross Omnibus Client Account than the net Omnibus Client Account. Otherwise, the Single Net Sum will be returned to the Defaulting Clearing Member (or its insolvency official) for the account of the relevant Clients.

5.4 Information from Clearing Members

CMECE relies on information from the Clearing Member to determine which position relates to which Client in the Omnibus Client Account. Updated position information is provided by the Clearing Member to CMECE at the end of each Business Day. When the Clearing Member provides the Collateral to satisfy the Margin Requirement to CMECE, CMECE will receive information about how to allocate the value and types of assets to each Omnibus Client Account.

Clearing Members do not always provide information about the identity of the Clients in relation to all Omnibus Client Accounts. This is the case, in particular, in relation to net Omnibus Client Accounts (see Question 4). Furthermore, CMECE would not be able to verify whether the Clearing Member’s information is accurate. Any delay in receiving information about the Clients from the Defaulting Clearing Member or inaccuracy in such information could jeopardise CMECE’s ability to port positions and Collateral. This is a risk in relation to both net and gross Omnibus Client Accounts.

5.5 Excess Collateral

If the Client transfers any Excess Collateral to the Clearing Member in respect of an Omnibus Client Account and such Excess Collateral is transferred to CMECE, CMECE will not know which Clients provided that Excess Collateral to the Clearing Member with the consequence
that such Excess Collateral might be used to cover other Clients’ losses in relation to the positions in the Omnibus Client Account. This risk exists in both the net and gross Omnibus Client Accounts. See Question 4.

5.6 Risks relating to fluctuation in value of Collateral

On business as usual, CMECE allocates Collateral to each Omnibus Client Account by value and types of assets are recorded by an issue identifier such as an ISIN or CUSIP and nominal amount. Collateral is not allocated by Client nor by Notional Sub-Accounts. See Question 4.

Given that Collateral is not allocated by Client in the Omnibus Client Account and is held in a pool for all Clients within that Omnibus Client Account, Clients will consequently share in increases and decreases in the value of the Collateral provided by Clearing Members with all Clients in that Omnibus Client Account. As CMECE does not record the Collateral in the Omnibus Client Account by Client or Notional Sub-Account, it will not be able to identify which type of assets Client have been provided by the Clearing Member in respect of which Client or Notional Sub-Account. Consequently, Clients in respect of which the Clearing Member has provided cash Collateral may share decreases in value of non-cash Collateral with those Clients in respect of which the Clearing Member has provided such non-cash Collateral. Clients in the same Omnibus Client Account therefore share the risk relating to fluctuations in the value of Collateral (this, of course, only relates to value fluctuations that are beyond the conservative haircut levels set by CMECE).

Upon a default of a Clearing Member, CMECE is entitled to liquidate any non-cash Collateral relating to Omnibus Client Accounts at such time and at such rate as it, in its reasonable discretion, determines. The proceeds of such liquidated Collateral may be lower than CMECE was anticipating, in which case they might not be sufficient to cover all amounts owed by the Defaulting Clearing Member to CMECE. The risk is mitigated by the fact that on each Business Day, CMECE applies haircuts to Collateral, revalues such Collateral and haircuts and takes such changes into account in determining whether it needs to call additional Collateral from the Clearing Member. It is also possible that CMECE’s haircuts are overly or insufficiently prudent. As with changes in the value of Collateral, Clients will share in the risk of valuations relating to Collateral provided by other Clients within the same Omnibus Client Account.

These risks exist in both the net and gross Omnibus Client Account.

5.7 Other Shortfalls

There could also be a shortfall in an Omnibus Client Account if CMECE has not received the Collateral from a Clearing Member to meet the Margin Requirements. This would constitute an Event of Default and allow CMECE to issue a Declaration of Default in respect of the Clearing Member. The missing Collateral may negatively affect the calculation of the amount that can be ported or returned to the Clients in relation to that Omnibus Client Account. If porting is not possible, the extent of any such loss will depend on whether there is sufficient surplus in the Defaulting Clearing Member’s House Account or Guarantee Fund Contributions to cover the loss.

It is possible that the Custodian or Investment Agent with which CMECE holds Eligible Assets may become insolvent or that its staff may act negligently, fraudulently or with wilful default causing money or assets to be lost. In that case there might be a shortfall in any Account. CMECE minimises this risk by using appropriate skill, care and diligence in its selection and monitoring of Custodians and Investment Agents. Whilst Collateral is provided to CMECE on a title transfer basis, a Clearing Member’s recourse to CMECE for return of Collateral, Default Fund Contributions, Assessments and Optional Payments is limited to the current value of the assets available to CMECE at the relevant CSD, Custodian etc at the relevant time. Any such shortfall relating to a type of Eligible Security may therefore be shared between the Omnibus Client Accounts in respect of which such Eligible Security has been allocated (and may therefore affect the value relating to each Client in them) on such basis as CMECE reasonably believes to be fair and equitable.
CMECE may convert Eligible Securities (provided to it as Collateral or as Contributions to the Guarantee Fund) into cash in the event it requires liquidity in a default or non-default situation, in which case, there is a risk that they will not be returned to Clearing members in the form of Eligible Securities but in cash instead. CMECE may not use as collateral any Eligible Assets which are credited to an FS Account.

CMECE invests Eligible Cash in certain liquid investments as required by EMIR. There is a risk that such investments may result in a loss. CMECE bears the investment risk subject to certain limitations as set out in its Rules.

5.8 CMECE insolvency risk

An Omnibus Client Account is not designed to provide protection in the case of CMECE’s own insolvency. The only Account which attempts to provide such protection is the FS Account (see Questions 8 and 9).

These risks exist in both the net and gross Omnibus Client Account and in the Individual Client Account.

Question 6: What is the Individual Client Account?

6.1 Purpose

This Account records positions entered into by a Clearing Member in respect of a single Client of the Clearing Member and the Collateral relating to such positions separately from those of both the Clearing Member and any other Client of the Clearing Member. The Clearing Member can have as many Individual Client Accounts as it chooses.

CMECE will require each Client that wants an Individual Client Account and wants to clear both IRS and Standard Contracts to have at least two Individual Client Accounts: one for IRS Contracts and one for Standard Contracts.

6.2 EMIR compliance

It has been designed to achieve individual client segregation as described in Article 39(2) EMIR. In other words, the positions and Collateral of the Clients of the Clearing Member will be distinguished from the positions and Collateral of both the Clearing Member and the Clearing Member’s other Clients in CMECE’s books and records. In accordance with Article 39(9) EMIR:

- Assets and positions relating to a Client are recorded in the Individual Client Account which is separate from any other Account.
- Positions recorded in an Individual Client Account will not be netted with positions in any other Individual Client Account and will not be netted with positions in any other Account.
- The assets covering the positions recorded in an Individual Client Account will not be exposed to losses connected to positions in any other Account.

CMECE records the Collateral in the Individual Client Account by asset type (cash or non-cash) and for Eligible Securities by ISIN or CUSIP number.

6.3 Position and margin netting in the Individual Client Account

Positions in an Individual Client Account will be margined on a portfolio basis and Collateral will be called in respect of each Individual Client Account on that basis.
6.4 Excess Collateral in the Individual Client Account

Excess Collateral in relation to an Individual Client Account is any Collateral that the Clearing Member has identified to CMECE as such, and that CMECE receives in respect of that Account which is greater than the Collateral it has called from the Clearing Member. CMECE records the Excess Collateral as specified to CMECE by the Clearing Member, by asset type (cash or non-cash) and Eligible Securities by ISIN or CUSIP number.

Excess Collateral is treated in the same way as Collateral, including under the Default Rules. This means that the liquidated value of Excess Collateral provided by a Client will be included in the calculation to determine the amount to be ported for, or returned to, that Client. Excess Collateral provided by a Client will not be used for the benefit of any other Client. See Questions 15 and 16.

6.5 How is Collateral in the form of Securities held in the Individual Client Account?

In relation to an Individual Client Account, in its books and records, CMECE records the Collateral by asset type (cash or non-cash) and identifies Eligible Securities by ISIN or CUSIP number associated to each Individual Client Account.

All Collateral in the form of Eligible Securities relating to all Clearing Members’ Individual Client Accounts is deposited in a custody account in CMECE’s name with one or more of CMECE’s Custodians. See Question 3.

6.6 What happens on a default of the Clearing Member in relation to the Individual Client Account?

Upon a default of a Clearing Member, CMECE will liquidate the Collateral of the Defaulting Clearing Member and facilitate the porting of the positions in the Individual Client Account with the value of the related Collateral to an Adopting Clearing Member in accordance with the CMECE Rules. The positions and Collateral associated to each Individual Client Account can be ported to a different Adopting Clearing Member. See Questions 13 to 16.

If porting cannot be achieved because one of the conditions is not satisfied (e.g. because no Adopting Clearing Member is available or the Client does not want to port), CMECE will close out that Client’s positions and calculate the Single Net Sum which would be returned to the Client or the Security Trustee provided the Client Documents have been executed and are in effect. See Question 12. If they are not, the balance is returned to the Defaulting Clearing Member for the account of the Client. See Question 17.

6.7 What happens on the default of a Client in relation to the Individual Client Account?

As positions are entered into between CMECE and each Clearing Member, the default of a Client (either in the sense of an insolvency event or a breach of its Client Agreement with its Clearing Member) will not have a direct effect on the clearing arrangements of other Clients of the Clearing Member. The Collateral of the other Clients in the other Accounts (whether Omnibus Client Accounts or other Individual Client Accounts) could not be used to cover any losses relating to the defaulting Client’s positions in the Individual Client Account. In other words, the Individual Client Account is legally segregated from the other Accounts.

On the default of a Client, a Clearing Member may want to close out any positions relating to a defaulting Client or transfer them into the House Account so that they become house positions. Similarly, any related Collateral relating to a defaulting Client, as identified by the Clearing Member, could be transferred to the House Account to become house Collateral if requested by the Clearing Member in accordance with CMECE’s Rules. A Clearing Member will be responsible for meeting the Margin Requirements relating to defaulting Client’s positions until those positions have expired or otherwise been closed out.
Question 7: What are the main legal implications of the Individual Client Account?

7.1 Legal segregation

The main legal implication of the Individual Client Account is that the Client’s Collateral (including any Excess Collateral) in such Account is legally segregated and cannot be used to cover any losses relating to positions in relation to other Clients and other Accounts. See Questions 16 and 17.

7.2 Fluctuation in the value of the Collateral in the Individual Client Account

On business as usual, CMECE allocates Collateral to each Individual Client Account and records the Collateral by asset type based on the information received from Clearing Members. See Question 6.

A Client with an Individual Client Account will not share in increases and decreases in value of Eligible Securities relating to other Individual Client Accounts or Omnibus Client Accounts. CMECE will value the Collateral in each Individual Client Account on a daily basis and make margin calls to the Clearing Member if the Collateral in an Individual Client Account is not sufficient to cover the Margin Requirement relating to that Account. The Collateral in the other Accounts cannot be used to cover any shortfall in such Individual Client Account due to fluctuations in the value of the Collateral.

Upon a default of a Clearing Member, CMECE is entitled to liquidate any non-cash Collateral relating to an Individual Client Account at such time and at such rate as it, in its reasonable discretion, determines. The proceeds of such liquidated Collateral may be lower than CMECE was anticipating, in which case they might not be sufficient to cover all amounts owed by the Defaulting Clearing Member to CMECE. This risk is mitigated by the fact that, on each Business Day, CMECE applies haircuts to Collateral, revalues such Collateral and haircuts and takes such changes into account in determining whether it needs to call additional Collateral from the Clearing Member.

7.3 Other Shortfalls

There could also be a shortfall in an Individual Client Account if CMECE has not received the Collateral from a Clearing Member to meet the Margin Requirement. This would constitute an Event of Default and allow CMECE to issue a Declaration of Default in respect of the Clearing Member. The missing Collateral may negatively affect the calculation of the amount to be ported or returned to the Clients of that Defaulting Clearing Member. The extent of any such loss will depend on whether there is any surplus in the House Account of the Defaulting Clearing Member or in its Guarantee Fund Contributions.

It is possible that the Custodian or Investment Agent with which CMECE holds Eligible Assets may become insolvent or that its staff may act negligently or fraudulently or with wilful default, in which case there might be a shortfall in any Account. CMECE minimises this risk by using appropriate skill, care and diligence in its selection and monitoring of Custodians and Investment Agents. Whilst Collateral is provided to CMECE on a title transfer basis, a Clearing Member’s recourse to CMECE for return of Collateral, Default Fund Contributions, Assessments and Optional Payments is limited to the current value of the assets available to CMECE at the relevant CSD, Custodian etc at the relevant time. Any shortfall relating to a type of Eligible Securities may therefore be shared between the Individual Client Accounts in respect of which such Eligible Securities are recorded on such basis as CMECE reasonably believes to be fair and equitable.

CMECE may convert Eligible Securities (provided to it as Collateral or as Contributions to the Guarantee Fund) into cash in the event it requires liquidity in a default or non-default situation, in which case, there is a risk that they will not be returned to Clearing Members in the form of...
Eligible Securities but in cash instead. CMECE may not use as Collateral any Eligible Assets which are credited to an FS Account.

CMECE invests Eligible Cash in certain liquid investments as required by EMIR. There is a risk that such investments may result in a loss. CMECE bears the investment risk subject to certain limitations as set out in its Rules.

7.4 Porting

Subject to CMECE Rules, CMECE will facilitate porting of positions and the related Collateral in the Individual Client Account (see Questions 13-16).

CMECE will need to port positions and related Collateral within a certain minimum period of time in order to mitigate the risk that upon the default of the Clearing Member the value of the positions and Collateral relating to them may fluctuate and that CMECE will not be receiving any further Variation Requirement from the Defaulting Clearing Member to reflect such fluctuations. The tolerance built into the Margin Requirement calculated for Standard Contracts currently allows CMECE less time to port than that for IRS Contracts. However, the porting period will be longer for the Individual Client Accounts than Omnibus Client Accounts. CMECE will use its reasonable endeavours to facilitate the porting of positions and related Collateral during the relevant porting period and may extend the porting period subject to specific conditions at the time. If CMECE cannot port, it will close out the positions in the relevant Individual Client Account, calculate and return an amount to the Client (see Question 17).

7.5 CMECE insolvency risk

An Individual Client Account is not designed to provide protection in the case of CMECE’s own insolvency. The only Account which attempts to provide such protection is the FS Individual Client Account (see Questions 8 and 9).

**Question 8: What is an FS Individual Client Account and an FS Account?**

8.1 Purpose

FS stands for “fully segregated”. The FS Individual Client Account is an account in CMECE’s clearing system and the FS Account is an account with the FS Custodian. The FS Individual Client Account is a form of Individual Client Account which is for most purposes the same as an Individual Client Account. The main differences are that:

- the FS Individual Client Account (in CMECE’s books and records) is linked to a separate custody account at an FS Custodian: the FS Account. The FS Custodian being chosen by the relevant Client, the Clearing Member and CMECE;
- CMECE and each Clearing Member and Client will enter into an FS Settlement Deed in relation to each FS Individual Client Account, the main provision of which is that Collateral (in the form of Eligible Securities) relating to the FS Individual Client Account can be delivered directly by the Client to CMECE (into the relevant FS Account) and vice versa and, in each case, such Collateral will satisfy some or all of the Client’s margin obligations to the Clearing Member and the Clearing Member’s Margin Requirement in relation to the FS Individual Client Account, depending on the size of the Agreed Amount set by the Client and the Clearing Member; and
- CMECE will create a Security Interest over each FS Account in favour of an FS Security Trustee which will hold the security on trust for the benefit of each Clearing Member that has an FS Individual Client Account and each relevant Client (the FS Security Interest Document). The FS Security Interest Document is enforceable primarily when CMECE enters into an insolvency proceedings.
The FS Individual Client Account also requires other documentation to be entered into, including a Client Protection Agreement and/or a Client Acknowledgement (where a Clearing Member is not located in specified jurisdictions - see Question 12) and an FS Settlement Deed.

The FS Individual Client Account and FS Account have been designed to:

- enable a Client to transfer Collateral in the form of Eligible Securities relating to an FS Individual Client Account from the Client’s custody account with the FS Custodian directly to the FS Account;
- facilitate Collateral in the form of Eligible Securities credited to the FS Account to be segregated at a Custodian from all other Collateral received by CMECE and, where possible, to allow the Client visibility over such FS Account;
- enable the porting or returning of the Client Eligible Securities credited to the FS Account in the event of either a CMECE or a Clearing Member default; and
- seek to assist the Clearing Member and (if applicable) the Client to benefit from a preferential risk weighting under the Capital Requirements Regulations in respect of the securities credited to the FS Account.

The Clearing Member can have as many FS Accounts as it chooses. The FS Account is described in further detail in the Fully Segregated Procedure.

8.2 EMIR compliance

The FS Individual Client Account is similar to a normal Individual Client Account, so the commentary at Question 6.2 applies.

However, unlike an ordinary Individual Client Account, any Collateral in the form of Eligible Securities held in the FS Account will be distinguished from the Collateral of both the Clearing Member and the Clearing Members’ other Clients at the Custodian as well as in CMECE’s books and records. The FS Account is therefore designed to achieve a higher level of segregation for Collateral in the form of Eligible Securities than EMIR requires.

8.3 How is Collateral in the form of Securities held in the FS Account?

Eligible Securities held in the FS Account are segregated from those of the Clearing Member and from any other Client of the Clearing Member, both on CMECE’s books and records and in the books and records of the FS Custodian. The FS Account is opened in the name of CMECE to reflect the fact that the Eligible Securities are transferred to CMECE as Collateral in accordance with the Rules, but the Account name references the Clearing Member and Client to which it relates, either specifically or by code.

The Eligible Securities in an FS Account will be held under a Multiparty FS Custody Agreement, pursuant to which both the Client and CMECE appoint the Custodian as a collateral manager, to transfer securities between the Client’s account with the FS Custodian and the FS Account. This agreement is entered into between CMECE, the Client, the Custodian, the Clearing Member and the FS Security Trustee. The Multiparty FS Custody Agreement will set out the basis on which securities are transferred between accounts.

The FS Custodian will (within agreed parameters) automatically transfer Collateral from the Client’s custody account to the FS Account and vice versa.
The Fully Segregated Account Procedure provides more detail on how the FS Account operates on a day to day basis including in relation to substitution, distributions and corporate actions.

8.3 Position and margin netting in the Fully Segregated Account

Positions in an FS Individual Client Account will be margined on a portfolio basis, and Collateral will be called, on the same basis as under the Individual Client Account. However, Eligible Collateral standing to the credit of an FS Account will go towards satisfying the Clearing Member’s Margin Requirement applicable to the related FS Individual Client Account.

8.4 Excess Collateral in the Fully Segregated Account

The answer to Question 6.4 applies equally to an FS Individual Client Account save for the following arrangements. Where required, the Client and Clearing Member will agree an amount of Eligible Securities to be held in the FS Account at any one time (Agreed Amount) and the Clearing Member will notify CMECE of such Agreed Amount. The Agreed Amount may be less than, equal to or greater than the Margin Requirement for the FS Individual Client Account. Where an FS Account has an Agreed Amount, this amount of Eligible Securities must be held in the FS Account at all times. The Agreed Amount may be changed at any time by the relevant Clearing Member and the Client authorises the Clearing Member to so notify CMECE in the FS Settlement Agreement. The Client and the Clearing Member should put in place separate contractual arrangements between themselves setting out how they will determine the Agreed Amount.

8.5 What happens on a default of the Clearing Member?

The Fully Segregated Account Procedure sets out what happens on the default of the Clearing Member.

As with an ordinary Individual Client Account, the Client may choose from two options:

(A) to port its positions to one or more Adopting Clearing Members in accordance with Rule 8.4; or

(B) not to port its positions, in which case, the net sum relating to the Individual Client Account (if positive) shall be returned to the Client in accordance with Rule 8.5 and CMECE may instruct the FS Custodian to deliver to the Client or the Security Trustee (to hold on trust for the Client), as applicable, Eligible Securities and cash credited to the FS Account to satisfy CMECE’s obligation.

If the net sum relating to the FS Individual Client Account is negative, this means all the Collateral in the FS Account and any other relevant Collateral has been used to meet the losses on positions recorded in that FS Individual Client Account, but was insufficient to satisfy them and therefore an amount is still owed by the Clearing Member to CMECE. In such case, CMECE will use the other resources available to it as part of the default waterfall to satisfy the loss, for example Contributions of the Defaulting Clearing Member, CMECE and non-defaulting Clearing Members to the Guarantee Fund, Assessments etc., as set out in Rules 8.6 to 8.13.

8.6 What happens on the default of a Client?

See Question 6 but subject to the following.

If the Clearing Member notifies CMECE of a default by the Client pursuant to the Client Agreement and, at such time no Declaration of Default has been issued by CMECE with respect to such Clearing Member, the Clearing Member may want to close out any positions
relating to a defaulting Client or transfer them into the House Account so that they become house positions.

In such circumstances, the Clearing Member will instruct CMECE to either instruct the FS Custodian to transfer any Eligible Securities in the FS Account which, in the case of a close out of positions, are not required to satisfy any losses on those positions, to an account designated by it or to the commingled custody account in the name of CMECE with a Custodian which holds Collateral relating to the Clearing Member’s House Accounts.

8.7 What would happen on the default of CMECE?

Rule 2.5 is triggered if CMECE enters into an insolvency proceeding or following certain payment defaults.

In that case:

(A) each non-defaulting Clearing Member will calculate a CCP Default Single Net Sum for each of its FS Individual Client Accounts by netting positions and the value of Collateral recorded on each FS Individual Client Account. CMECE shall verify each calculation and, if there is any dispute, CMECE’s calculation is final;

(B) Collateral credited to the FS Account and/or any other Collateral relating to that FS Individual Client Account is available to meet any losses incurred by CMECE in relation to positions recorded in that FS Individual Client Account and it is only Collateral credited to the FS Account which remains after such losses have been satisfied (if any) which is secured by the relevant FS Security Interest Document in favour of the FS Security Trustee who holds it on trust for such Clearing Member and its relevant Clients; and

(C) the FS Security Trustee will enforce the FS Security Interest Document against the relevant Collateral in the FS Accounts on a default by CMECE, including by giving instructions to the relevant FS Custodian to liquidate and/or transfer the relevant securities or cash. The powers of the FS Security Trustee over the FS Account before and after CMECE default, are subject to certain contractual and legal constraints and Clearing Members/Clients should satisfy themselves in this respect.

If a CCP Default Single Net Sum is owed by a Clearing Member to CMECE, it means all the Collateral in the FS Account and any other relevant Collateral has been used to meet the losses on positions recorded in that FS Individual Client Account, but was insufficient to satisfy them and therefore an amount is still owed by the Clearing Member to CMECE. Non-Defaulting Clearing Members are required to pay any such CCP Default Single Net Sum relating to one of their Accounts within 2 Business Days of it being verified by CMECE. If they do not pay, they may be declared in default. If a CCP Default Single Net Sum is owed by a Clearing Member which has already been declared in default, CMECE may use the other resources available to it as part of the default waterfall to satisfy the loss (see Question 8.5).

Question 9: What are the main legal implications of the Fully Segregated Client Account?

The precise nature and risks of the FS Account will vary depending on which FS Custodian is used, the jurisdiction in which the FS Account is maintained and the documents to be entered into. The FS Account is based on a supporting legal and operational structure and Clearing Members and Clients should satisfy themselves that it is suitable for their requirements.

The FS Account reduces the need for the Client to transfer collateral to the Clearing Member to the extent there are Eligible Securities in the FS Account and may reduce the need for pre-funding.
In determining the amounts to be ported or returned to the Client in an FS Individual Client Account, the Collateral relating to the FS Individual Client Account, including the Collateral credited to the FS Account, cannot be used for any other Account. See Questions 17 and 18.

If CMECE issues a Declaration of Default in respect of the Clearing Member, the Client does not take the risk that there is insufficient Collateral relating to other Clients of that Clearing Member. See Questions 17 and 18. However, please note paragraph (E) below.

The following characteristics exist in relation to the Eligible Securities credited to the FS Account:

(A) While CMECE reserves the right to instruct the FS Custodian to liquidate all, or some of the Eligible Securities, CMECE will seek to transfer some or all of the Eligible Securities (rather than cash) to an Adopting Clearing Member, the Client or the Clearing Member, as applicable;

(B) CMECE is entitled to liquidate any Collateral in the form of Eligible Securities at such time and at such rate as it in its reasonable discretion determines. However, in practice CMECE would only seek to liquidate Securities to generate cash for the purpose of managing a Client’s porting where amounts owed to CMECE could not otherwise be met. The proceeds of such Eligible Securities may be lower than CMECE was anticipating, in which case they might not be sufficient to cover any amounts owed by the Defaulting Clearing Member to CMECE. This risk should be mitigated by the fact that, on each Business Day, CMECE applies haircuts to Collateral taken in the form of Eligible Securities, revalues such Collateral and haircuts and takes such changes into account in determining whether it needs to call additional Collateral from the Clearing Member. It is also possible that CMECE’s haircuts are overly or insufficiently prudent;

(C) In order to port Eligible Securities credited to the FS Account, for operational reasons, it may be necessary to transfer them out of the FS Account to the Client, even if they can be subsequently transferred to a new FS Account. The Client will have to transfer the Eligible Securities to another FS Account relating to a non-defaulting Clearing Member (an Adopting Clearing Member) if it wants to benefit from the FS structure thereafter;

(D) Collateral relating to the FS Individual Client Account which is not credited to an FS Account will be ported in the normal way (see Questions 6 and 7);

(E) It is possible that the FS Custodian may become insolvent or that its staff may act negligently or fraudulently or with wilful default, in which case there might be a shortfall in the FS Account. CMECE mitigates this risk by using appropriate skill, care and diligence in its selection and monitoring of FS Custodians. A Clearing Member’s recourse to CMECE for return of Collateral, Default Fund Contributions, Assessments and Optional Payments is limited to the current value of the assets available to CMECE at the relevant CSD, Custodian etc at the relevant time;

**Question 10: What are the costs associated with the different Accounts?**

CMECE has published the costs associated with the different Accounts in the Fees and Charges Notice which can be found here: [http://www.cmegroup.com/europe/clearing-europe/cme-clearing-europe-fees.html](http://www.cmegroup.com/europe/clearing-europe/cme-clearing-europe-fees.html)

**Question 11: Which additional Rules does the Clearing Member have to comply with when clearing for Clients?**
11.1 Rules applicable to Clearing Members when clearing for Clients

A Clearing Member whose Client wants an Individual Client Account or to be in a gross Omnibus Client Account must comply with Chapter 3A of the Rules. This requires the Clearing Member, among other things, to:

(1) enter into a Client Agreement with its Client. CMECE does not mandate the form or content of a Client Agreement save that it must contain provisions dealing with the matters set out in Rule 3A.1, nor does CMECE expect to receive a copy of any Client Agreement. If CMECE issues a Declaration of Default in respect of the Clearing Member and the positions are ported to an Adopting Clearing Member (see Question 13), CMECE considers these provisions necessary to facilitate the transfer of Client transactions entered into between a Client and a Clearing Member;

(2) have certain minimum arrangements for the collateralisation of Client transactions as set out in Rule 3A.2. CMECE does not mandate the collateralisation of such positions beyond these points, but it considers these provisions are necessary to facilitate the transfer of Client transactions in the event the Clearing Member defaults and the positions are ported to an Adopting Clearing Member;

(3) enter into certain Client Documents as explained in Question 12; and

(4) provide such information about the Client as CMECE may reasonably request.

11.2 Rules that are relevant to Clients

Where Clearing Members base their Client Agreements on industry standard documents, they may refer to mandatory provisions and core provisions of the relevant CCP.

Mandatory provisions are those which the CCP considers mandatory for inclusion in the terms of transactions between Clearing Members and Clients. CMECE’s mandatory provisions are set out on its Website and include:

- Rule 3A.1 on clearing for Clients
- Rule 3A.2 on Client Agreements
- Rule 3A.3 on Collateral

Core provisions are those which relate to Client Transactions including those which establish the basis for transactions between the Clearing Member and the Client and the consequences if a CCP declares the Clearing Member to be in default. These are also published on CMECE’s Website and include:

- Rule 2.3 (Limitation of liability and indemnity)
- Rule 2.4 (Limited recourse)
- Rule 2.5 (Clearing House insolvency)
- Rule 2.12 (Governing law and arbitration)
- Rule 2.14 (No proceedings)
- Rule 3.7 (General Actions available to the Clearing House)
- Rule 3.8 (Termination of clearing membership)
- Rule 3.9 (Suspension)
Question 12: What are the Client Documents?

The Client Documents differ depending on the location of the Clearing Member’s centre of main interests. A company’s centre of main interests or COMI is the jurisdiction with which it is most closely associated for the purposes of determining which member state of the EU takes precedence in cross-border insolvency proceedings. There is no definition of COMI but guidance in EU legislation states that it should correspond to the place where a company conducts the administration of its interests on a regular basis.

The reason for differentiating between Clearing Members depending on where they are based is because it is possible under the laws of certain EU jurisdictions (namely England, Scotland and Germany) to agree by way of contract to transfer positions and Collateral from an insolvent Clearing Member to an Adopting Clearing Member or (if porting is not possible) pay a net sum directly to a Client rather than to an insolvent Clearing Member. This contractual agreement is created by way of the Rules and the Client Acknowledgement.

In other jurisdictions in which CMECE has conducted legal due diligence, in order for positions and Collateral to fall outside the insolvency estate of an insolvent Clearing Member, security must be created over the relevant asset (i.e. the net sum calculated on close out). Such security is created under the Client Protection Agreement.

12.1 Clearing Members in England, Scotland and Germany (Contract CMs)

If the Clearing Member’s centre of main interests is in England, Scotland or Germany, it is referred to as a Contract CM and the only Client Document the Contract CM must execute with its Client and CMECE is the Client Acknowledgment.

Under the Rules and the Client Acknowledgement, CMECE, the Contract CM and the Client agree that on default by a Clearing Member following satisfaction of certain conditions (the same as those applicable with respect to the Client Protection Agreement arrangement), CMECE may transfer the positions and Collateral recorded in a Client Account to an Adopting Clearing Member or close out such positions, apply/aggregate the Collateral (as applicable) and pay the resulting net sum direct to the Client.

The Client Acknowledgement to be entered into by Contract CMs with their Clients and CMECE is similar to that described below for Security CMs, save that it includes the following additional provisions:

- the Client can enforce Rules 8.4 and 8.5.11 which relate to porting and the return of the Single Net Sum; and
- the Client is required to agree to certain other Rules which may affect the amount due, if any, to a Clearing Member following its default, for example, those setting out limitations on the Clearing Member’s recourse to CMECE; the prohibition on Clearing Members assigning transferring or granting security over their rights to repayment of Collateral and Contributions; and CMECE’s ability to amend the relevant Rules and the Client Acknowledgement.
12.2 Clearing Members outside England, Scotland and Germany (Security CMs)

If the Clearing Member does not have a centre of main interests in England, Scotland or Germany, it is referred to as a Security CM and the Client Documents are:

- Client Protection Agreement
- Security Trust Deed
- Client Acknowledgment

A Client Protection Agreement

A Client Protection Agreement is an agreement entered into between CMECE, the Security CM and either a Client or the Security Trustee. Each of the two versions is a standard form agreement and cannot be negotiated. Each is an English law assignment by way of security which is made by the Security CM in favour of its Client.

Under the Client Protection Agreement entered into with the Client, the Security CM assigns to the Client its rights to receive the amount that would be ported or return to the Client in relation to the relevant Client Account or Notional Sub-Account on the Security CM’s default (if any) as security for its obligations to the Client under the Client Agreement.

Under the Security Trustee version of the Client Protection Agreement:

- the obligations secured by the assignment are amounts owed by the Security CM to all relevant Clients under their Client Agreements; and
- the Clearing Member assigns to the Security Trustee as trustee for the beneficiaries of the trust (i.e. all Clients of the Security CM that are indicated as a Client in CMECE’s books and records and which have elected in their Client Acknowledgment to benefit from the trust) all of its rights to receive the amount that would be ported or return to the Client in relation to the relevant Client Account or Notional Sub-Account on the Security CM’s default.

With this version of the Client Protection Agreement, a Security Trust Deed (See B below) will also need to be entered into.

The Client Protection Agreement facilitates the porting of positions and Collateral recorded in the relevant Individual Client Account or Notional Sub-Account because it ensures that, if CMECE issues a Declaration of Default in respect of the Security CM, the Client or the Security Trustee will be entitled to the rights which the Security CM would otherwise have had to amounts due under those positions as calculated in accordance with the Default Rules.

The Client Protection Agreement is a security document and formalities may need to be undertaken in certain jurisdictions to perfect the security. Rule 3A.4.3 makes the Security CM responsible for such formalities. As a result, Security CMs may prefer to use the Security Trustee version of the Client Protection Agreement because there is only one Client Protection Agreement.

B Security Trust Deed

Under the Security Trust Deed, the Security CM declares a trust in favour of the Security Trustee in respect of each Client that is indicated as a Client in CMECE’s books and records and which has elected in its Client Acknowledgment to benefit from the trust. The Security Trust Deed will be entered into by the Security CM and the Security Trustee. The Security Trust Deed is a standard form document and cannot be negotiated.

The Security Trustee is CMECE acting in its capacity as a security trustee.

The use of a security trustee is common in English law and reduces the administration otherwise required to deal with multiple beneficiaries (in this case, Clients). The economic position of a Client will be broadly similar whether it has entered into a Client Protection Agreement...
Agreement with its Security CM or whether it has rights under the Security Trust Deed. Whilst CMECE is the Security Trustee, the main difference between the two options will be that in the Security Trustee structure, no Client will be able to take direct enforcement action under the Client Protection Agreement. This is to ensure that the Security Trustee can co-ordinate the collection and allocation of the relevant assets in an orderly manner but does reduce the power of the Clients to act individually (subject to other factors).

C Client Acknowledgement

A Client Acknowledgement is an agreement entered into between CMECE, the Clearing Member and each Client. This is a standard form agreement and cannot be negotiated.

In summary, the main provisions are:

- the Client acknowledges certain provisions of Chapter 3A of the Rules and that it has no rights to enforce the Rules;
- the Client and the Clearing Member agree that, if a Client Agreement is not entered into, then another agreement will be deemed to come into existence between them on terms comparable to those set out in Chapter 3A;
- the Client agrees that CMECE shall not be liable to the Client for actions taken under the Default Rules, instructions which CMECE gives to the Security Trustee (if applicable) or any amendment to a Client Protection Agreement (if applicable) which CMECE has agreed to on behalf of the Client, in each case unless directly caused by CMECE’s fraud, gross negligence or wilful default;
- the Client indemnifies CMECE in respect of losses arising out of actions taken under the Default Rules, instructions which CMECE gives to the Security Trustee (if applicable) or any amendment to a Client Protection Agreement (if applicable) which CMECE has agreed to on behalf of the Client, in each case unless directly caused by CMECE’s fraud, gross negligence or wilful default; and
- the Client notifies CMECE of any Adopting Clearing Member it has already appointed and agrees to notify CMECE of any changes to its Adopting Clearing Members (see Question 14).

Question 13: What is porting?

The term “porting” describes the process whereby, if CMECE issues a Declaration of Default in respect of a Clearing Member, the positions relating to Clients of that Clearing Member that are recorded in an Individual Client Account or a Notional Sub-Account within an Omnibus Client Account and the value of the associated Collateral can be transferred to an Adopting Clearing Member (see Question 14). The concept comes from Articles 48(5) and 48(6) EMIR, which require central counterparties to contractually commit to procedures which, on the Client’s request and without the consent of the Defaulting Clearing Member, enable the transfer of assets and positions held by a Defaulting Clearing Member for the account of a Client. See Questions 14 and 16.

Question 14: What is an Adopting Clearing Member?

An Adopting Clearing Member is a Clearing Member which has agreed to accept the positions relating to an Individual Client Account or a Notional Sub-Account within an Omnibus Client Account and related Collateral in the event that CMECE issues a Declaration of Default with respect to a Clearing Member. The concept of an Adopting Clearing Member comes from Article 48(5) and (6) of EMIR and it is necessary to make porting work. See Question 13.

CMECE does not require Clients to appoint an Adopting Clearing Member but it will not be able to port any Individual Client Account or Notional Sub-Account unless an Adopting
Clearing Member is willing to accept the positions and to provide sufficient additional Collateral in respect of any positions where the amount to be ported is zero or owed by the Defaulting Clearing Member to CMECE (see Question 16).

The Adopting Clearing Member will not be bound to accept a Client’s positions upon a default of a Clearing Member. It will be given a choice at the time. However, given that CMECE will want to port positions promptly (see the porting periods in Question 15), a Client that wants to be able to port is advised to have an arrangement in place with an Adopting Clearing Member ahead of a default by its Clearing Member.

An Adopting Clearing Member must be a Clearing Member of CMECE. CMECE does not mandate the nature of the arrangement that the Client enters into with an Adopting Clearing Member. In order to facilitate the porting, however, Clients are advised to provide details of its Adopting Clearing Member(s) in its Client Acknowledgement.

**Question 15: When will CMECE port positions and Collateral?**

CMECE can only port positions recorded in an Individual Client Account or a Notional Sub-Account within an Omnibus Client Account if certain conditions set out in Rule 8.4.1 are satisfied. These are that:

- CMECE is satisfied that valid Client Documents are in place (see Question 12) and that it is under no obligation that would require payment to be made to another party;
- CMECE has the information it requires to make the calculations and is satisfied as to its accuracy;
- the Adopting Clearing Member (see Question 14) agrees to accept the positions and this does not cause its credit limits to be exceeded;
- the Client has requested CMECE to make the transfer; and
- CMECE is satisfied, if there is insufficient Collateral to support the positions, that the Adopting Clearing Member will provide the necessary additional Collateral.

If these conditions are satisfied, CMECE will take all reasonable endeavours to port within the Porting Period (see Question 16). The period for porting may be extended by CMECE in its absolute discretion, subject to specific risk and market conditions at the time. However, if any of the conditions are not satisfied in relation to any Individual Client Account or Notional Sub-Account or not likely to be satisfied before the end of the Porting Period, or if CMECE reasonably believes that porting would introduce an unacceptable level of risk or volatility to the clearing system, CMECE will instead take steps to close out the positions and return an amount to the relevant Client(s) (see Question 17). CMECE will not close out any client positions for at least four (4) hours from the issue of a Declaration of Default.

In particular, CMECE is entitled to take such steps in relation to any Individual Client Account or Notional Sub-Account if it has not been able to port positions and the value of Collateral within the following time periods:

<table>
<thead>
<tr>
<th>Product</th>
<th>Account type</th>
<th>Porting Period</th>
</tr>
</thead>
<tbody>
<tr>
<td>IRS Contracts</td>
<td>Gross Omnibus Client Account</td>
<td>36 hours</td>
</tr>
<tr>
<td></td>
<td>Individual Client Account</td>
<td>48 hours</td>
</tr>
<tr>
<td>Standard Contracts</td>
<td>Net Omnibus Client Account</td>
<td>8 hours</td>
</tr>
<tr>
<td></td>
<td>Gross Omnibus Client Account</td>
<td>12 hours</td>
</tr>
<tr>
<td></td>
<td>Individual Client Account</td>
<td>24 hours</td>
</tr>
</tbody>
</table>
Regardless of the Porting Period timeframes set out above, CMECE would expect that a Client who wishes to have the positions and Collateral relating to them ported to have made arrangements with an Adopting Clearing Member and contacted CMECE to confirm that they wish the positions and Collateral to be ported to that Adopting Clearing Member. Clients are advised to confirm this within the first four (4) hours following the Declaration of Default so that CMECE can facilitate the porting. For the avoidance of doubt, CMECE would not need to receive any copies of the Clearing Agreement between the Client and the Adopting Clearing Member.

**Question 16: How does the porting process work at CMECE?**

Assuming the conditions to porting are met (see Question 15), CMECE will act in accordance with Rule 8.4 of CMECE’s Rules. A summary of the two porting processes are set out below. The process is applied to each Individual Client Account and each Notional Sub-Account within an Omnibus Client Account but is slightly different in relation to a Notional Sub-Account of a Security CM as explained below.

**16.1 Clearing Members in England, Scotland and Germany (Contract CMs)**

CMECE will transfer the rights and obligations relating to the relevant positions and Collateral from the Defaulting Clearing Member to the relevant Adopting Clearing Member by:

- removing all positions and Collateral from the Defaulting Clearing Member’s relevant Individual Client Account or Notional Sub-Account; and
- entering such positions and Collateral in the Adopting Clearing Member’s relevant Individual Client Account or Notional Sub-Account.

**16.2 Clearing Members outside England, Scotland and Germany (Security CMs)**

(1) CMECE will seek to discharge the Defaulting Clearing Member’s rights and liabilities under the positions (e.g. by closing them out) and setting off any obligations for payment of money to CMECE against any obligations for payment of money by CMECE.

(2) If the resulting sum is owed by the Defaulting Clearing Member to CMECE, CMECE will set off the Defaulting Clearing Member’s Collateral whereas if it is owed by CMECE to the Defaulting Clearing Member, CMECE will aggregate it with the Defaulting Clearing Member’s Collateral relating to that Individual Client Account or Notional Sub-Account.

In an Omnibus Client Account, there are additional sources of funds that could be set off against any amount still owed by the Clearing Member to CMECE in relation to a Notional Sub-Account. First is any Excess Collateral relating to the Omnibus Client Account, of which the Notional Sub-Account forms part. Second is any positive sum produced under the calculation so far in relation to any other Notional Sub-Account in the same Omnibus Client Account (but not in any other Omnibus Client Account). CMECE will use its reasonable discretion to determine whether and what proportion of any Excess Collateral or surplus Collateral relating to another Notional Sub-Account to use in respect of each Notional Sub-Account, CMECE does not subsequently rebalance any amounts so used, so Omnibus Client Accounts bear the risk described in paragraph 5.1. CMECE may, at its discretion, also use any funds from the Unallocated House Buffer as an additional source of funds that could be off-set against amounts still owed by the Clearing Member to CMECE in relation to a Notional Sub-Account.

(3) CMECE will certify the resulting sum that is owed either to or by the Clearing Member.
(4) CMECE will make various entries in its books and records which will result in the positions and Collateral from the Defaulting Clearing Member’s relevant Client Account being credited to the relevant Client Account of the Adopting Clearing Member. The Collateral credited to such Adopting Clearing Member’s Client Account will be the same as that credited to the Defaulting Clearing Member’s Client Account unless:

(i) the Defaulting Clearing Member’s Client Account was a Notional Sub-Account which had insufficient Collateral and surplus from another Notional Sub-Account in the same Omnibus Client Account was set off against such shortfall (in which case, more Collateral will be credited to the Adopting Clearing Member’s Client Account); or

(ii) the Defaulting Clearing Member’s Client Account was a Notional Sub-Account which had surplus Collateral which was set off against a loss on another Notional Sub-Account in the same Omnibus Client Account (in which case, less Collateral will be credited to the Adopting Clearing Member’s Client Account).

(5) If the sum mentioned in step 3 above was zero or owed to CMECE then the Adopting Clearing Member may be required to provide additional Collateral to CMECE in respect of the positions opened in its account in accordance with the Rules. See also Questions 17 and 18.

Regardless of whether the Defaulting Clearing Member is a Contract CM or a Security CM, CMECE will not liquidate any of the Collateral recorded to a Client Account during the first four (4) hours following a Declaration of Default, unless any of the following circumstances apply:

(a) the Client agrees to or requests the liquidation of the Collateral;

(b) CMECE reasonably believes that liquidating the Collateral will facilitate the likelihood of porting the positions and Collateral;

(c) the Clearing Member has notified CMECE that an Insolvency Event has occurred in relation to the Client, the Client has defaulted under the Client Agreement between it and the Clearing Member or that the Clearing Member reasonably believes that an Insolvency Event is likely to occur in relation to the Client or is reasonably imminent; or

(d) CMECE reasonably believes that taking any of the porting actions described above in relation to a net Omnibus Client Account would introduce an unacceptable level of risk to the Clearing System or to CMECE.

**Question 17: What happens if a Client’s positions and Collateral cannot be ported or the Client does not want this?**

If the conditions to porting are not (or CMECE reasonably believes they will not be) met before the end of the porting period in respect of any Individual Client Account or Notional Sub-Account within an Omnibus Client Account, CMECE will calculate a net sum in accordance with Rule 8.5. CMECE will return this net sum to the relevant Client or the Security Trustee, if applicable, for the benefit of the relevant Clients, where the relevant Client Documents (see Question 12) are in place and otherwise, to the Defaulting Clearing Member for the account of the Client, as required by Article 48(7) EMIR.

A summary of the process is set out below. The process would be applied to each Individual Client Account and each Notional Sub-Account within an Omnibus Client Account and, again, the process applies slightly differently in relation to a Notional Sub-Account as explained below.
(1) Step (1) under paragraph 16.2 will be followed.

(2) Step (2) under paragraph 16.2 will be followed.

(3) If the available Collateral is insufficient to satisfy the loss on the relevant Client Account, CMECE may set off a proportion of the Defaulting Clearing Member’s Contribution to the relevant Guarantee Fund.

(4) If an amount is still owed by the Defaulting Clearing Member, CMECE may set off a proportion of any surplus on the Defaulting Clearing Member’s House Account to cover the loss.

CMECE will certify the resulting amount that is owed either to or by the Clearing Member. See also Question 18.

**Question 18: Upon a default of a Clearing Member, how will CMECE apply any surplus in the House Account of the Defaulting Clearing Member and the Guarantee Fund Contributions of the Defaulting Clearing Member to Standard Contracts and IRS Contracts?**

CMECE will record in its books and records Standard Contracts and related Collateral in separate Accounts to those used for IRS Contracts and related Collateral. The calculations will be carried out separately per Account. A Defaulting Clearing Member’s Standard Guarantee Fund Contributions and any surplus on its Standard House Account will first be applied to losses on its Standard Client Accounts and a Defaulting Clearing Member’s IRS Guarantee Fund Contributions and any surplus on its IRS House Account will first be applied to losses on its IRS Accounts. However, once this has been done, any surplus Standard Guarantee Fund Contributions of the Defaulting Clearing Member may be used for an outstanding loss in an IRS Client Account, and any surplus IRS Guarantee Fund Contributions of the Defaulting Clearing Member may be used for an outstanding loss in a Standard Client Account. However, Standard Guarantee Fund Contributions of non-defaulting Clearing Members may not be set off against any losses resulting from IRS Contracts and IRS Guarantee Fund Contributions of non-defaulting Clearing Members may not be set off against losses resulting from Standard Contracts. CMECE may, at its discretion, also use any funds from the Unallocated House Buffer as a source of funds that could be off-set against amounts still owed by the Clearing Member to CMECE in relation to a Client Account or a Notional Sub-Account.

**Question 19: What are the insolvency risks in the various jurisdictions in which Clearing Members are incorporated?**

The insolvency laws of the jurisdictions in which Clearing Members are incorporated differs and differences have an impact on the effectiveness and operation of the porting rules. CMECE has obtained advice in relation to the Omnibus and Individual Client Account structures from counsel in the jurisdictions in which it has Clearing Members as listed below. Set out are high level summaries of the most significant potential issues with the porting structure identified by the advice - they neither explain all the relevant issues nor provide a detailed analysis. Should you wish to receive, on a non-reliance basis, a copy of the full advice received for any of the jurisdictions listed above please contact CMECE directly.

**19.1 Contract CMs**

**England**

Any payments which are made to a Defaulting Clearing Member for the account of the Client, e.g. because porting has not been possible and the Client Documents were not in place, will
probably get trapped in the insolvent estate of the Clearing Member. Therefore, subject to any client money protection (see Question 19), the Client will be an unsecured creditor with respect to the amount owed to it by the Clearing Member under the relevant Client Agreement, and as such it may not receive that amount at all.

Subject to the application of Part VII Companies Act 1989 (Part VII) and certain other mitigating factors, the main concerns in relation to the insolvency of an English Clearing Member are:

(A) Automatic set off – generally, all debts due by the Clearing Member to CMECE will automatically be set off against all debts due the other way. Because the Clearing Member deals as principal, English law will not distinguish between the various Client Accounts and will most likely set off amounts across all those Accounts (i.e. relating to different Clients) and against the Clearing Member’s House Account(s). This would mean that it is not be possible to calculate net sums per Client Account and the porting system will not operate as expected;

(B) Transaction avoidance and claw-back – these include transactions at an undervalue and preferences; and

(C) Special Regimes (e.g. Banking Act 2009) – stabilisation powers (e.g. transfer of a Defaulting Clearing Member’s assets into public ownership), risk separating assets and liabilities. This means, for example, that a person (e.g. CMECE or a Client) could end up facing a counterparty with only liabilities but no matching assets. However, we would expect that this risk would be mitigated as a result of the Banking Act 2009 (Restriction on Partial Property Transfers) Order 2009 (and once CMECE is authorised as a CCP under EMIR, we would expect that the Banking Act 2009 (Restriction on Partial Property Transfers) (Recognised Central Counterparties Order 2014 would have a similar mitigating effect (assuming that it comes into force as planned on 1 August 2014) It is also possible that the counterparty itself is transferred into public or third party ownership. There is no protection against this eventuality.

Part VII is designed to safeguard the operation of financial markets. It does this by modifying English insolvency law to protect certain actions of authorised central counterparties (which includes CMECE) taken in accordance with their default rules in the event that one of their members defaults. Providing that Part VII is found to apply (see below), it should mitigate the risk of a successful challenge by the insolvency official of a Clearing Member.

There are potential weaknesses and uncertainties in Part VII. Two particular uncertainties in the current context are that it is unclear if Part VII overrides all relevant English insolvency law and legislation and the possibility that an insolvency official might challenge the close out after completion of the default proceedings. However, there are other grounds for arguing that CMECE's porting arrangements benefit from Part VII protection, for example because they involve the settlement of a clearing member client position under CMECE’s Default Rules.

B Germany
No particular issues have been identified.

C Scotland
No particular issues have been identified.

19.2 Security CMs
With respect to the Security Interest created by the Client Protection Agreement generally, there are the following risks:

- Jurisdiction of incorporation - the effectiveness of the Security Interest will in large part depend on the law of the place of incorporation of the Security CM;
- Mismatch – because CMECE does not regulate the terms or transactions under Clearing Agreements, it may be that the assets (i.e. net sums due from CMECE to the
Security CM on a Client Account) do not match the obligations under the Client Agreement; and

- Indirect relationship – the Client should have rights as a secured party (or beneficiary) but these are still rights that are exercisable against the Security CM, rather than directly against CMECE. As porting is likely to be necessary only in extreme default situations (e.g. the insolvency of the Security CM), the Client may face delays/restrictions on enforcement and competing creditors.

D Canada (Ontario)

The operation of the Payment Clearing and Settlement Act could potentially allow a Defaulting Clearing Member which is a Canadian bank to set off all amounts owed between it and CMECE to create one net sum. However the operation of this relatively new law is currently untested.

E Denmark

No particular issues have been identified.

F France

If a Clearing Member and Client enter into and execute a Client Protection Agreement during the period between the date when a bankrupt Clearing Member is found to be unable to make payments as they become due (this could be up to eighteen months before the opening of the insolvency proceedings) and the opening of the insolvency proceedings, there is a risk that the Client Protection Agreement could be declared null and void. Also, it is untested at French law whether an English law governed security assignment over receivables would be considered to fall outside of the Defaulting Clearing Member’s estate.

**Question 20: Does it make any difference whether cash is client money?**

As a central counterparty, CMECE is not subject to the Financial Conduct Authority’s Client Money Rules and does not hold cash as client money. Therefore, the Collateral held by CMECE is not subject to client money protections. Where a Clearing Member holds a Client’s cash Collateral as client money, CMECE’s Rules require the Clearing Member to notify CMECE and request that the Individual Client Account or Omnibus Client Account in which the Collateral related to the Client are recorded will be used to hold only Eligible Cash that constitutes client money from the perspective of the Clearing Member. On request by the Clearing Member, CMECE will provide the acknowledgement which the Clearing Member is required by the FCA Client Money Rules to obtain from CMECE.

**Question 21: Does it make any difference whether the Contracts cleared are traded on an exchange or otherwise?**

No.

When Exchange Transactions entered into by a Clearing Member in respect of a Client (which may be either a non-clearing member of the exchange or a customer of a member of the exchange) enter CMECE, they will be recorded in an Omnibus Client Account relating to the Clearing Member unless they are designated otherwise. The Clearing Member may re-allocate such an Exchange Contract to the Individual Client Account or Omnibus Client Account in which the Client’s Exchange Contracts are intended to be recorded and the Clearing Member is asked to do so no later than the earlier of (i) 60 minutes after the Exchange Transaction has been cleared and (ii) the start of CMECE’s next Settlement Cycle.

However, any Exchange Contracts which are not re-allocated will remain in the Omnibus Client Account and Clients should be aware that it may be significantly more difficult for CMECE to transfer positions and Collateral that are still recorded in that Omnibus Client...
Account to an Adopting Clearing Member in the event CMECE issues a Declaration of Default against the Clearing Member. See Questions 4 and 5.

CMECE is able to transfer a Client position from an Omnibus Client Account to an Individual Client Account and vice versa on the request from the Clearing Member if the Client changes its account structure at any time.