



# LME Clear Disclosure

disclosure under EMIR Art.39(7)

*Please respond to:*  
[LMEClearing@lme.com](mailto:LMEClearing@lme.com)

**LME CLEAR LIMITED**

10 Finsbury Square, London EC2A 1AJ | Tel +44 (0)20 7113 8888

A private limited company. Registered in England no 07611628. Registered office as above.

**[LME.COM/CLEAR](https://www.lme.com/clear)**

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This document is issued by LME Clear Limited ("LME Clear") pursuant to its obligations under Article 39(7) of EU Regulation No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories ("EMIR") which states:

*EMIR Article 39(7) – CCPs and clearing members shall publicly disclose the levels of protection and the costs associated with the different levels of segregation that they provide and shall offer those services on reasonable commercial terms. Details of the different levels of segregation shall include a description of the main legal implications of the respective levels of segregation offered including information on the insolvency law applicable in the relevant jurisdictions.*

Each Member, Client and Indirect Client should obtain its own legal advice on the subject matter of this memorandum. In particular, the issue as to how and to what extent a Member, Client or Indirect Client is exposed should LME Clear default or become insolvent, a Client is exposed should the Member default or become insolvent, or an Indirect Client is exposed should the Client default or become insolvent will involve a full legal analysis of English and other relevant laws (for instance the laws of Belgium and the USA where some Member assets and Client Collateral are held) and if a Member, Client or Indirect Client wishes to know the definitive legal position it will need to take its own legal advice. LME Clear and its legal advisers take no responsibility for the contents of this memorandum and it does not constitute legal advice on which any Member, Client, Indirect Client or other person may rely. This memorandum does not overrule the provisions of the Rules and if there is any inconsistency the Rules prevail. LME Clear is also unable to take account of the arrangements entered into between a Member and its Client, or between a Client and its Indirect Client, or the laws of the jurisdiction of organisation of a Member, Client or Indirect Client, or the laws of any jurisdiction in which insolvency proceedings might take place in relation to a Member, Client or Indirect Client.

Unless otherwise defined, words and phrases defined in the Rules shall have the same meanings when used in this memorandum.

## 1. Types of Account

- 1.1 Rule 4 deals with the types of account which are made available by LME Clear and how they are operated.
- 1.2 LME Clear will maintain one House Account for each Member in which LME Clear's and the Member's respective rights, liabilities and obligations arising from Contracts (referred to as "**Respective Entitlements**") will be recorded.
- 1.3 A Member may maintain with LME Clear one or more Omnibus Segregated Client Accounts ("**OSAs**") of the following types:
  - (a) Direct Net Omnibus Segregated Client Account (**Direct NOSA**), in which the relevant Respective Entitlements arising from Contracts entered into by the Member on behalf of one or more of its Clients will be recorded (as opposed to Contracts entered into by the Member for its own account). The Margin Requirement for Contracts recorded in a Direct NOSA is calculated and maintained on a net basis;
  - (b) Direct Gross Omnibus Segregated Client Account (**Direct GOSA**) in which:



- i. the Positions of the Member in respect of each Client allocated to the Account shall be separately identifiable and shall be subject to netting or aggregation at a per-Direct Client level (as defined by 'Allocation IDs') in accordance with the position management provisions in Clearing Procedure B:4 and B:5; and
    - ii. separate Margin Requirements shall be calculated, in accordance with Clearing Procedure C, in respect of:
      - a. each of the Allocation IDs for which Positions are maintained in accordance with (i) above; and
      - b. Positions without an Allocation ID; and
    - iii. the Margin Requirement for the Account shall be the aggregate of the Margin Requirements calculated pursuant to (ii) above, together with any additional margin that may be required pursuant to the Rules. Upon a default, all positions in the account may be netted, and all margin in the account may be used to offset the liabilities in the account. There is no legal separation between positions recorded to or margin received in respect of each Allocation ID;
  - (c) Indirect Net Omnibus Segregated Client Account (**Indirect NOSA**), in which the relevant Respective Entitlements arising from Contracts entered into by the Member on behalf of one or more of its Clients will be recorded (as opposed to Contracts entered into by the Member for its own account). The Margin Requirement for Contracts recorded in an Indirect NOSA is calculated and maintained on a net basis. This account is offered in accordance with EU Regulation No 600/2014 on Markets in Financial Instruments and the related level 2 text (**MiFIR**).
- 1.4 A Member may maintain with LME Clear one or more Individual Segregated Client Accounts ("**ISAs**") of the following types:
  - (a) Direct Individual Segregated Accounts (**Direct ISA**), in which will be recorded the relevant Respective Entitlements arising from Contracts entered into by the Member on behalf of a specified Client of the Member. The Margin Requirement for Contracts recorded in a Direct ISA is calculated and maintained on a net basis;
  - (b) Indirect Individual Segregated Client Accounts (**Indirect ISA**), in which will be recorded the relevant Respective Entitlements arising from Contracts entered into by the Member on behalf of a specified Clearing Client of the Member which relate to a specified Indirect Client of the Clearing Client. The Margin Requirement for Contracts recorded in an Indirect ISA is calculated and maintained on a net basis; and
  - (c) Indirect Gross Omnibus Segregated Client Accounts (**Indirect GOSA**), in which:
    - i. the Positions of the Member in respect of each Indirect Client allocated to the Account shall be separately identifiable and shall be subject to netting or aggregation at a per-Indirect Client level (as defined by 'Allocation IDs') in accordance with the position management provisions in Clearing Procedure B:4 and B:5; and



- ii. separate Margin Requirements shall be calculated, in accordance with Clearing Procedure C, in respect of:
    - a. each of Allocation IDs for which Positions are maintained in accordance with (i) above; and
    - b. Positions without a Allocation ID; and
  - (d) the Margin Requirement for the Account shall be the aggregate of the Margin Requirements calculated pursuant to (ii) above, together with any additional margin that may be required pursuant to the Rules. Upon a default, all positions in the account may be netted, and all margin in the account may be used to offset the liabilities in the account. There is no legal separation between positions recorded to or margin received in respect of each Allocation ID. This account is offered in accordance with MiFIR.
- 1.5 See the appendix to this memorandum for a diagrammatic representation of the different account options.
- 1.6 Each Member is solely and directly liable for all the obligations owed to LME Clear in respect of each Account established for the Member.
- 1.7 LME Clear will treat each Account maintained for a Member separately from each other Account maintained for the Member for the purpose of:
- (a) recording the relevant Respective Entitlements;
  - (b) recording and accounting for Excess Collateral referable to that Account;
  - (c) where applicable, the netting of positions referable to Transactions or Contracts allocated to that Account;
  - (d) the exercise of any right by LME Clear under the Rules to combine or consolidate balances on Accounts;
  - (e) the exercise of any set-off rights by LME Clear under the Rules;
  - (f) the allocation or discharge of Losses, including Default Losses;
  - (g) the exercise of rights or obligations pursuant to Rule 10.7 (*Portability of Client Accounts*); and
  - (h) the delivery of Client Collateral directly to a Client pursuant to Rule 10.5.1(c) (*Treatment of different types of account*).
- 1.8 Each Account established by a Member is to be segregated in the books and records of LME Clear from each other Account, so that the relevant Respective Entitlements arising from Contracts allocated to any one Account are to be segregated and distinguished from similar respective rights and liabilities allocated to any other Account established by the Member.
- 1.9 Where a Member has one or more Accounts, the arrangements under Rule 8 (*Margin Requirements and Collateral*) for the calculation of the Member's Margin Requirement are to be applied separately to each such Account.



- 1.10 It is the sole responsibility of each Member to determine and establish the appropriate number and types of Accounts with LME Clear in order to enable the Member to satisfy its legal and regulatory obligations and its obligations under the Rules. This includes:
- (a) any obligation on a Member to record the relevant Respective Entitlements to a Client Account, or to establish separate OSAs or ISAs, in order to comply with any client money requirements under Applicable Law applying to the Member;
  - (b) any obligation of a Member to record LME Clear's and the Member's respective rights and liabilities arising from Contracts arising from Transactions or Contracts effected or cleared for a Client or any Indirect Client, to an OSA or ISA, in order to comply with the provisions of the EMIR and/or MiFIR Level 1 Regulation and / or the EMIR and/or MiFIR Level 2 Regulation applying to the Member; or
  - (c) any obligation of a Member to ensure that collateral provided by Clients is recorded or segregated in such a manner as enables the Member to be able to identify the person to whom such collateral (or equivalent assets) is returnable upon release from any charge created over it by the Member in favour of LME Clear (pursuant to Rule 8.5).
- 1.11 LME Clear has no obligation, under the Rules or otherwise, to verify, confirm or otherwise ensure that a Member has adopted an appropriate account structure.
- 1.12 Clients and Indirect Clients should read and familiarise themselves with the Rules applicable to Client Accounts. In particular, Clients and Indirect Clients should refer to Annex 6 of the Rules, which sets out the Mandatory CCP Provisions and the Client Acknowledgement Form. These provisions are also set out on the LME Clear website. LME Clear will regard any Client that a Member allocates to a Client Account as having accepted the application of the Mandatory CCP Provisions in respect of its use of that Client Account.

## 2. Treatment of Accounts

- 2.1 In the event that a Member becomes a Defaulting Member, the different types of Account maintained by the Defaulting Member with LME Clear will be subject to the following treatment when LME Clear is calculating the final net settlement amounts in respect of each Account:
- (a) no OSA or ISA may be combined with any other Account of the Defaulting Member (unless this is specifically permitted by Applicable Clearing Regulations – which, at the moment, it is not). Note that although the positions of Clients (in respect of a Direct GOSA) and Indirect Clients (in respect of an Indirect GOSA) are recorded against separate Allocation IDs, all positions within the relevant Account may be combined upon a Member default in accordance with the LME Clear Rules;
  - (b) LME Clear will as soon as practicable return any surplus amount or Collateral owing to the Defaulting Member in respect of an ISA or an OSA (after completion of final net settlement under Rule 10.8) to the Client to which such ISA relates or to the Clients entitled to share in such OSA (as the case may be) or, if such Clients are not known to LME Clear or if it has insufficient information to determine how an amount is to be apportioned between them or to permit it to make a payment, to the relevant Office-Holder of the Defaulting Member for the



account of the relevant Client or Clients, save that LME Clear shall only return any surplus amount or Collateral to a Client if it is permissible under Applicable Law and LME Clear is not prevented from effecting such return by any court order or legal restriction, or by any claim or right of the Defaulting Member or any other person which may take precedence during any insolvency procedure affecting the Defaulting Member;

- (c) LME Clear may (to the extent permitted at the relevant time by Applicable Clearing Regulations, which at present would be permitted) allocate any surplus of Collateral provided by the Defaulting Member in respect of its House Account to meet a deficiency on a Client Account of the Defaulting Member (but not vice versa); and
- (d) LME Clear will allocate the Defaulting Member's Default Fund Contribution in or towards the discharge of Default Loss on Client Account and House Account on such basis as it deems appropriate.

### **3. Calculating and Maintaining Margin per Account**

3.1 The Margin Requirement for each Member will be the amount which LME Clear may determine and notify the Member from time to time.

3.2 A Member's Margin Requirement will be calculated, maintained and applied for each of the following Accounts on a net basis. Such net calculations shall be applied separately in respect of:

- (a) the House Account of the Member;
- (b) each Direct NOSA of the Member;
- (c) each Indirect NOSA of the Member;
- (d) each Direct ISA of the Member; and
- (e) each Indirect ISA of the Member,

such that any Collateral provided by the Member in respect of the Client or Clients allocated to the Account shall be in respect of a net Margin Requirement calculation.

3.3 A Member's Margin Requirement will be calculated, maintained and applied for each of the following Accounts on a gross basis. Such gross calculations shall be applied separately in respect of:

- (a) each Direct Gross Omnibus Segregated Client Account of the Member; and
- (b) each Indirect Gross Omnibus Segregated Client Account of the Member,

such that any Collateral provided by the Member in respect of the Client or Clients allocated to the Account shall be in respect of a gross Margin Requirement calculation.

### **4. Member as Principal**

4.1 Save as set out in paragraph 4.2 below, nothing in the Rules will create any form of contractual or non-contractual relationship between LME Clear and any Client, any Indirect Client or any other third party in respect of any Contract or otherwise. Save as



may otherwise be specifically provided in the Rules, each Member will contract with LME Clear as principal and not as agent for any Client, any Indirect Client or any other third party.

- 4.2 The Rules specify that a Client of a Member may have direct rights under the Rules for the porting or return of Client Collateral when the Member is in default (see further paragraphs 8 and 10.6 below).

## 5. Costs Associated with Maintaining Various Accounts

- 5.1 Each Member will pay such fees to LME Clear as determined by LME Clear in accordance with Clearing Procedure G. The fees and charges will be published on LME Clear's website.
- 5.2 LME Clear may amend the fees from time to time by the publication of a Circular, which will, subject to Rule 2.2.6, come into effect from such time as LME Clear may specify in that Circular.

## 6. Collateral and Members' Counterparty Risk on LME Clear

### Types of Collateral

- 6.1 LME Clear accepts the following forms of Collateral:
- (a) cash;
  - (b) securities;
  - (c) gold entitlements; and
  - (d) LME warrants.
- 6.2 LME Clear's website sets out the eligibility criteria for each type of Collateral, including the currencies accepted as Eligible Cash and the types of securities accepted as Eligible Securities.

### Security Documents

- 6.3 Each Member is required to execute the relevant Security Documents in favour of LME Clear to secure the Member's obligations to LME Clear. Depending where non-cash Collateral may be located, a Member may have to execute one or more of the following agreements:
- (a) an English law-governed security deed covering assets (principally securities and gold entitlements) located in England and Wales and elsewhere;
  - (b) a Belgian law governed pledge covering assets (principally securities) located in Belgium;
  - (c) a New York law governed pledge covering assets (principally securities and gold entitlements) located in the USA and elsewhere; and
  - (d) an English law governed pledge covering LME warrants and the metal they represent.



## 6.4

- (a) To the extent that they cover cash and securities the English and Belgian pledges at paragraphs 6.3(a) and (b) above provide for security financial collateral arrangements (and not title transfer financial collateral arrangements).
- (b) The New York law pledge provides for a conventional security arrangement (and not a title transfer arrangement) but the security interest will be perfected by the outright transfer of the collateral to LME Clear, to be held at all times in LME Clear's own accounts. In the case of security entitlements, this means that the security entitlement in a financial asset is removed from the Member's securities account and a security entitlement in that financial asset is booked in LME Clear's securities account.
- (c) Pursuant to the security agreement referred to in paragraph 6.3(d) above, LME Clear takes security over LME warrants (and the metal represented by them) by way of an English law charge and pledge over any LME warrants transferred by the Member to LME Clear's account for this purpose.

**Cash Collateral**

- 6.5 To the extent that a Member provides LME Clear with cash, whether as Collateral or Default Fund Contributions, general legal principles and the contractual arrangements provided by the Rules mean that ownership is transferred to LME Clear and in exchange the Member is owed a corresponding debt by LME Clear. That debt is unsecured and payable in certain circumstances as provided in the Rules, subject to the rights of LME Clear to make deductions and to set-off. The Member will have no proprietary interest in the cash whilst in the possession of LME Clear and LME Clear may use the money for its own purposes (including providing it as security for its own obligations). In other words, the Member will have no interest in the credit balances in LME Clear's own bank accounts. This means that, upon the insolvency of LME Clear, the Member will be an unsecured creditor to the extent of the (net) debt (if any) owed by LME Clear to the Member at that time and the Member will be entitled to claim in LME Clear's insolvency in the normal way and receive such distribution which is given to unsecured creditors generally.

**Specific Issues - Renminbi Collateral**

- 6.6 LME Clear accepts Cash Collateral in the form of renminbi, subject to the Member having established appropriate arrangements with an Approved Settlement Bank that is approved by LME Clear to settle Payment Obligations in renminbi.
- 6.7 The renminbi is not a freely convertible currency. All payments in respect of Cash Collateral denominated in renminbi will be made solely by transfer to a renminbi bank account maintained in Hong Kong in accordance with prevailing rules and regulations. LME Clear cannot be required to make a payment by any other means (including in bank notes, by cheque or draft or by transfer to a bank account in the People's Republic of China). In addition, there can be no assurance that access to renminbi funds for the purposes of making payments under these Rules or generally may remain or would not become restricted.

**Gold Collateral**

- 6.8 Gold Collateral provided by a Member to LME Clear is in the form of unallocated gold (i.e. a contractual entitlement to gold, but not ownership of actual physical gold). Once LME Clear receives the unallocated gold it will convert it into allocated gold (i.e. actual physical gold) which LME Clear will own outright, and the Member will not have any proprietary or other rights in the allocated gold. Until such conversion is made, LME Clear will not count the gold as Eligible Collateral. When returning Gold Collateral to the Member, LME Clear will convert the relevant amount of allocated gold into unallocated gold and transfer the unallocated gold to the Member. If LME Clear becomes insolvent whilst holding Gold Collateral, the Member will be an unsecured creditor to the extent of the value of the unallocated gold owed by LME Clear to the Member at that time (less any debt owed by the Member to LME Clear) and the Member will be entitled to claim in LME Clear's insolvency in the normal way and receive such distribution which is given to unsecured creditors generally.

### **Securities Collateral**

- 6.9 To the extent a Member provides LME Clear with Securities Collateral, general legal principles mean that the Member still owns those securities, subject to a perfected, first-ranking, fixed security interest held by LME Clear as constituted by the Member's Security Documents.
- 6.10 LME Clear's proprietary interest in and/or its rights as collateral taker over such securities are governed by and set out by the Security Documents (which are governed by various jurisdictions' laws) but the Member retains the right, if it wishes to retire as a member of LME Clear, to have the securities returned subject to all liabilities owed by the Member to LME Clear being satisfied and subject to the terms of the Security Documents. The securities are book entries and the Member will be entitled to receive securities of the same kind but not precisely the same ones that were provided by the Member in the first place. Furthermore, in the hands of LME Clear, the relevant custodian or the relevant central depository system, the securities may be pooled with other securities of the same kind and hence the Member's interest may be that of a share of that pool, meaning if there is a shortfall in the overall pool (for instance, in exceptional circumstances like accounting mistakes or irregularities) the Member's interest may not be traceable and/or may (or, if Belgian law applies, will) be limited to a pro rata share of the remaining pool. Upon insolvency of LME Clear, subject to the Member having satisfied all its obligations to LME Clear and subject to the terms of the Security Documents, the insolvency officer of LME Clear must return those securities provided by the Member, or such surplus after satisfying all such obligations.

### **LME warrants Collateral**

- 6.11 LME Clear accepts Collateral in the form of LME Warrants (and the underlying metal), subject to the Member having established appropriate arrangements with LME Clear including the execution of the relevant Security Document.
- 6.12 As noted above, LME Clear takes security over the LME Warrants (and the underlying metal) by an English law charge and pledge within the structure contemplated by the LME Rules which relate to LMEsword. The arrangements rely on the existing account framework within LMEsword and the transfer and attornment mechanics which currently apply in LMEsword.
- 6.13 The charging of LME Warrants as Collateral to LME Clear will therefore involve the delivery of the LME Warrants into LME Clear's account (the "**LME Clear Pledged**



**Account"**) in LMEsword meaning that LME Clear is the holder of the LME Warrant (and therefore the underlying metal).

- 6.14 LME Clear's holding of the LME Warrants will be subject to the terms of a the Security Document specific to the LME Warrants referred to in paragraph 6.3(d) above executed by each Member wanting to provide LME Warrants as Collateral. The terms will provide that the Member agrees to charge and pledge the LME Warrants which it transfers to the LME Clear Pledged Account from time to time in favour of LME Clear as security for its Margin Requirement obligations and any other obligations owed to LME Clear.
- 6.15 The Security Document specifies that the Member remains responsible for all rent, storage fees and other payments and expenses which apply in respect of the LME Warrants and the underlying metal.

#### **Specific Risks for LME Warrants Collateral**

- 6.16 The Member remains exposed to various risks relating to the LME Warrants and the underlying metal. Members should be aware of the following risks and obligations in particular:

(a) **Sanctions/embargos affecting the LME Warrants**

There is a risk that metal and LME warehouses could be subject to sanctions or embargos. To the extent that any such actions meant that the LME Warrants were not then accessible or available to LME Clear, LME Clear will use its powers under paragraph 3.4 of Clearing Procedure Part D to the Rules whereby LME Warrants could be treated as ineligible Collateral and LME Clear would have the right to call for additional Collateral. In addition LME Clear has rights under paragraph 4.1(a) of Clearing Procedure Part D to the Rules to determine what constitutes Eligible Collateral and when any such form of Collateral ceases to be eligible.

(b) **Damage or loss affecting the underlying metals to which the LME Warrants relate**

The underlying metal to which the LME Warrants relate could be subject to a "Force Majeure" event making such metal no longer available (for a limited or indefinite period). In practice, the likelihood of such event occurring is considered to be remote (based on data relating to the LME warehouses). There is a specific provision (Clause 5.5 (*Insurance*)) in the Security Document referred to in paragraph 6.3(d) above which requires a Member to maintain certain insurances specific to the LME Warrants and Clause 17(b) (*Payments and expenses*) of that Security Document which imposes an additional obligation to make relevant insurance payments. These obligations are in addition to the general obligation under paragraph 4.4 of Clearing Procedure D of the Rules which states that the Member remains responsible for maintaining adequate insurance.

In the event that the metal is no longer available, LME Clear will exercise its powers under Clearing Procedure Part D.

(c) **Payments due on the LME Warrants and the underlying metal**



Payments may be outstanding and trigger certain rights of an LME warehouse to withhold the metal (for unpaid rent) or the LME may suspend the transfer of LME Warrants in LMEsword where rent payment is outstanding. These risks have been mitigated in the Security Document referred to in paragraph 6.3(d) above by the inclusion of Clause 17 (*Payments and Expenses*) which requires the Member to pay calls, fees fines, rents, storage fees and other costs, and expenses which become due both in relation to the LME Warrants and the underlying metals to which they relate. LME Clear will exercise its powers under Clearing Procedures Part D in the event that any such amounts go unpaid.

(d) **Fraud/default by LMEsword depository or by the warehouse**

Where the effect of fraud means that LME Warrants are not accessible or available to LME Clear as discussed in paragraph 3.4 of Clearing Procedure Part D to the Rules then LME Clear can call for additional Collateral.

- 6.17 Clients should see further paragraphs 10.9 to 10.13 regarding specific issues that arise where LME Warrants are used as Client Collateral.

**Books and Records**

- 6.18 Cash Cover, Securities Collateral and Gold Collateral are provided by a Member to LME Clear, and recorded against the relevant accounts in the books and records of LME Clear.
- 6.19 LME Clear does not maintain separate accounts per Member in the books of its cash management banks, securities custodians or gold custodians .
- 6.20 In keeping with the requirements of EMIR Article 47(5), LME Clear ensures that Securities Collateral held with third party banks and custodians is identifiable separately from their own assets and the assets of LME Clear.

**7. Default Rules<sup>1</sup>**

- 7.1 LME Clear's procedures set out in Rule 10 and the Default Procedures constitute the default rules of LME Clear for the purposes of Part VII of the Companies Act 1989, the Recognition Regulations, the Settlement Finality Regulations and EMIR.
- 7.2 Action taken by LME Clear in accordance with such default rules has protected status under English law under Part VII. This includes, in particular, actions taken by LME Clear to transfer positions and assets allocated to a Client Account in accordance with its porting procedures (as required under EMIR Article 48(5) and (6)), or to return assets directly to a Client in accordance with EMIR Article 48(7) (See paragraph 8 below for more detail on these processes). This means that actions taken by LME Clear under its default rules to close out or transfer the positions of a defaulting Member are generally not capable of being subject to challenge in the UK by an insolvency practitioner appointed in respect of that insolvent Member.

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<sup>1</sup> Members and Clients should note that LME Aluminium Premium Contracts are subject to LME Clear's existing ability under the Rules to cash settle a Contract, such that LME Clear is able to cash settle a Delivery Obligation where it has not been possible to deliver the correct LME Premium Warrant.



## 8. Portability – Transfer of Client Accounts from a Defaulting Member to another Member

### General

- 8.1 The Rules provide for the portability of Client Accounts upon the default of a Member, in accordance with LME Clear's obligations under EMIR Article 48(5) and (6). The portability rules are set out in Rule 10.7 and Default Procedure Part D (*Porting Procedure*). The description in this paragraph 8 applies in its entirety to Client Collateral located in the EU, but for the position outside the EU, see paragraphs 8.17 and 8.18 below.
- 8.2 Under the LME Clear porting rules, in the event that a Member becomes a Defaulting Member, the Clients allocated to a particular Client Account can request that the assets and positions recorded to that Client Account be transferred to a new Client Account with a non-defaulting Member. Where the Client Account is:
- (a) an ISA, this process can be initiated by the single Client allocated to that Account; or
  - (b) an OSA, this process must be initiated by all Clients allocated to that Account.
- 8.3 The porting process can be initiated in one of two ways:
- (a) automatically by LME Clear, where the Automatic Porting Process applies to a Client Account; or
  - (b) for any other Client Account, on receipt by LME Clear of Porting Request Notices submitted by all Clients allocated to the Client Account.

Copies of the standard form of Porting Request Notice, together with the standard form Automatic Porting Designation Document, can each be found on the LME Clear website.

### Automatic Porting Process

- 8.4 The Automatic Porting Process will apply where the Client Account contains only Identified Clients (being Clients whose identities are known to LME Clear) and, prior to the Member becoming a Defaulting Member, all the Clients allocated to the Client Account have lodged with LME Clear Automatic Porting Designation Documents in respect of that Client Account. Each Client allocated to the Client Account wishing the Automatic Porting Process to apply to that Account will have completed and sent to LME Clear (either directly or via their Member) Automatic Porting Designation Documents which will specify a designated Member to which the Account will be transferred in the event that their current Member becomes a Defaulting Member. All Clients in a single Account will need to designate the same Member Transferee in order for the Automatic Porting Designation Documents to be valid. The Automatic Porting Designation Documents constitute standing requests to LME Clear to effect a porting of the assets and positions in the Client Account to the designated Member Transferee in the event of the current Member becoming a Defaulting Member. LME Clear will, upon issuing a Default Notice in respect of the Defaulting Member, confirm with the designated Member Transferee whether it consents to accept the transfer of the Client Account. The transfer will be conditional upon the designated Member Transferee providing its consent to the transfer within the Porting Election Period.



### Porting by issue of Porting Request Notice

- 8.5 Where the Automatic Porting Process does not apply to a Client Account, then in order to effect a transfer to a new Member, the relevant Client or Clients must submit Porting Request Notices to LME Clear within the Porting Election Period. A Porting Request Notice must be received by LME Clear from each Client allocated to the Client Account, and must include a signature evidencing the consent of the nominated Member Transferee to accept the assets and positions on the Client Account.
- 8.6 In the event that the Client Account contains any Non-Identified Clients, LME Clear will only be able to effect the transfer of the Client Account in the event that it is able to identify the relevant Clients. It is therefore in the interests of any Client that wishes to be able to participate in the porting process to be an Identified Client, and to be allocated to a Client Account in which all other Clients (if any) are also Identified Clients. Under Rule 5.1.9, where a Member receives notice from the Clients allocated to a Client Account that they wish to be Identified Clients, the Member must provide to LME Clear the information necessary for LME Clear to classify such Clients as Identified Clients.

### Porting Period

- 8.7 The period within which porting may be requested is four hours following the declaration of a default (the "**Porting Election Period**"). This means that the requesting Clients (if the Automatic Porting Process does not apply) and the Member Transferee must all have consented to the transfer within that four hour period. The actual transfer will occur within a 24 Business Hour period following the declaration of the default or (if necessary) within an extended period determined by LME Clear. A "Business Hour" is any hour within a day that is a business day. Consequently, if LME Clear issues a Default Notice at 2pm on a Friday, the Porting Period would expire at 2pm on the following Monday (unless LME Clear has specified an alternate duration for the Porting Period on its Website).

### Effect of transfer

- 8.8 At the time of transfer, all clearing contracts between the Defaulting Member and LME Clear that are recorded to the relevant Client Account will be transferred to the relevant Client Account of the Member Transferee that has agreed to accept them, together with all Collateral recorded on that Client Account.
- 8.9 LME Clear need not port the Collateral to the relevant Client Account of the Member Transferee, such that it shall port only the Positions and their associated clearing contracts where:
- (a) the Member Transferee has already ensured that the Margin Requirement applicable to that Client Account (taking into account the Positions that are to be transferred) is satisfied prior to the relevant transfer point;
  - (b) the Automatic Porting Designation Documents or Porting Request Notice comprising the request by the Client(s) for the porting specifies that Collateral shall not be ported;
  - (c) for reasons outside of the control of LME Clear, it is not operationally practicable for Collateral to be ported; or



- (d) the transfer of the Collateral is not permissible under Applicable Law or LME Clear is prevented from effecting the transfer by any court order or legal restriction applying to LME Clear or the Collateral, or by any claim by any person over the Collateral that takes precedence over, and prevents LME Clear from exercising, its right to transfer the Collateral,

provided in all cases that the porting of the Positions will take place only where (a) is satisfied.

#### **Conditions to transfer**

8.10 LME Clear will only act on a porting request (whether pursuant to Automatic Porting Designation Documents or a Porting Request Notice) if certain conditions, set out in Rule 10.7.5 and Default Procedure D2, are satisfied; namely, that:

- (a) (where the Automatic Porting Process applies) LME Clear was in receipt of properly completed Automatic Porting Designation Documents in respect of all Clients allocated to the Client Account at least one clear Business Day before the Member became a Defaulting Member;
- (b) (where pursuant to a Porting Request Notice) the requests of each Client allocated to the Client Account are received within the Porting Election Period and each Porting Request Notice is properly completed;
- (c) the designated Member Transferee has consented to the transfer within the Porting Election Period and is not itself a Defaulting Member;
- (d) LME Clear has the information required to enable it to accurately calculate the amounts to be transferred;
- (e) LME Clear is satisfied that, following the transfer, it will be in receipt of sufficient Collateral from the Member Transferee (whether received directly or from the relevant Client(s));
- (f) all Clients allocated to the transferring Client Account are Identified Clients;
- (g) the transfer is capable of being effected by LME Clear without any breach of Applicable Clearing Regulations and LME Clear is not prevented from effecting such transfer by the application of Applicable Law or by any court order or legal restriction, or by any claim or right of the Member Transferor or any other person which may take precedence during any insolvency procedure affecting the Member Transferor;
- (h) the transfer relates to the whole of the Client Account and not only to some of the Contracts and Collateral recorded on the Client Account (save, in the case of Collateral, where the Member Transferee has pre-funded sufficient Collateral to the transferee Client Account); and
- (i) the Member Transferee provides to LME Clear written representations that it has established appropriate contractual arrangements with the transferring Clients to enable the Member Transferee to perform clearing services for those Clients.

However, LME Clear is able to waive any of these conditions (save (g)) if LME Clear thinks fit.



- 8.11 LME Clear will not be obliged to act on a porting request if it has reason to believe that the transfer would:
- (a) be contrary to Applicable Law or Applicable Clearing Regulations binding on LME Clear; or
  - (b) impair LME Clear's ability to perform its obligations as they fall due.
- 8.12 In the event that a Client Account is not subject to the porting process following a Member's default, LME Clear will, in accordance with Rule 10.5.1(c), as soon as practicable following the determination of any surplus on the relevant Client Account after completion of final net settlement:
- (a) return the surplus to the Client or Clients allocated to Client Account, if they are known to LME Clear; or
  - (b) if they are not known to LME Clear or if it has insufficient information determine how an amount is to be apportioned between them or to permit it to make a payment to them, return the surplus to the estate of the Defaulting Member (via its appointed insolvency practitioner) for the account of the relevant Client or Clients,

save that LME Clear shall only return any surplus amount or Collateral to a Client if it is permissible under Applicable Law and LME Clear is not prevented from effecting such return by any court order or legal restriction, or by any claim or right of the Defaulting Member or any other person which may take precedence during any insolvency procedure affecting the Defaulting Member.

- 8.13 For further detail on the handling of Collateral allocated to a Client Account, see paragraph 10 below.

#### **Partial Transfers from an Omnibus Segregated Client Account**

- 8.14 It is possible that not all Clients in an Omnibus Segregated Client Account will want to Transfer their Positions to the same Member Transferee.
- 8.15 Under Rule 10.7.6, LME Clear may also consider requests to effect a Transfer of the Positions of an individual Client from an Omnibus Segregated Client Account of a Defaulting Member to the Omnibus Segregated Client Account of a Member Transferee (each such Transfer a "Partial Transfer"). A Partial Transfer would include any contingent variation margin but not Collateral.
- 8.16 A Partial Transfer may only be permitted where the Automatic Porting Process does not apply to the relevant Omnibus Segregated Client Account and where LME Clear has determined that Porting Request Notices nominating the same Member Transferee are unlikely to be received from each and every Client in that Omnibus Segregated Client Account.
- 8.17 Partial Transfers will be effected in accordance with, and subject to the conditions contained in, Rule 10.7 and Default Procedure Part D.
- 8.18 LME Clear may set and vary the number and duration of any period during which it will accept requests for Partial Transfers (each a "Partial Transfer Window"). Please note:



- (a) details of Partial Transfer Windows (and any change to a Partial Transfer Window) will be published on the LME Clear website; and
- (b) LME Clear retains the right to vary the number and/or the duration of the Partial Transfer Windows without prior notification. When determining the duration and aggregate number of Partial Transfer Windows, LME Clear shall seek to identify the most favourable risk management solution, having regard to:
  - i. the number of Clients allocated to the Relevant Accounts;
  - ii. the number, size and Market Value of the Open Contracts allocated to the Relevant Accounts; and
  - iii. the direction, size of the Position and overall risk profile of each Relevant Account.

### Conditions to Partial Transfers

- 8.19 At the end of each Partial Transfer Window LME Clear shall consider all Porting Request Notices received from one or more Clients (each a “Requesting Client”). LME Clear will review these together with any Porting Request Notices received but not actioned in prior Partial Transfer Windows. LME Clear will, subject to the proviso below, transfer from the Relevant Account the Open Contracts (but not the Collateral) of all Requesting Clients to the Member Transferee(s) nominated in the relevant Porting Request Notices if:
- (a) by effecting such Partial Transfers, the risk to LME Clear would not significantly increase taking into account:
    - i. any increase or decrease in the Margin Requirement that would apply to the Relevant Account going forward; and
    - ii. any increase or decrease in any contingent margin credit that would offset the Margin Requirements of that Relevant Account going forward;
  - (b) LME Clear is satisfied that sufficient additional Collateral (if any) will be provided to it by the Member Transferee;
  - (c) LME Clear has the information required to enable it to calculate the amounts to be transferred;
  - (d) the requirements set out in Default Procedure D2.4 are satisfied;
  - (e) LME Clear is satisfied that all Requesting Clients allocated to the Relevant Account are Identified Clients;
  - (f) it is practicable to determine the specific Positions allocable to each Requesting Client; and
  - (g) such Partial Transfers are permissible under Applicable Law and LME Clear is not prevented from effecting such Partial Transfers by any court order or legal restriction applying to LME Clear or the Open Contracts, or by any claim or right of the Member Transferor or any other person which may take precedence during any insolvency procedure affecting the Member Transferor.



**Proviso:** Nothing shall oblige LME Clear to effect a Partial Transfer which either: (x) if effected would change the direction and/or size of the Positions of the Open Contracts remaining in the Relevant Account; or (y) LME Clear considers inappropriate having as its primary objective effective risk management.

#### **General discretion of LME Clear to effect a Transfer**

8.20 LME Clear has the right under Rule 10.7.9 to permit a transfer from a Client Account notwithstanding that any condition in Rule 5, Rule 10.7 or Default Procedure D is not satisfied, in circumstances where LME Clear considers that it is appropriate, in the interests of:

- (a) Clients;
- (b) the Clearing System;
- (c) the stability of the markets in which the Members or Clients participate; or
- (d) the stability of the wider financial system in the UK.

Where and to the extent that a transfer falls within, and is subject to, Article 48(5) or (6) of EMIR, this discretion is subject to the proviso that LME Clear may not permit a transfer to take effect where any condition or requirement under Article 48(5) or (6) of EMIR is not satisfied, such as a requirement for the relevant Clients and the Member Transferee to have consented to the transfer.

#### **The position outside the EU**

8.21 The porting and return of Client Collateral procedures described by this paragraph 8 is intended to give effect to the requirements of EMIR. Whilst EMIR has legal effect within the EU, it will not necessarily be recognised elsewhere, such as the US.

8.22 In the US for instance, if a Defaulting Member does not become the subject of bankruptcy proceedings or other analogous insolvency proceedings in the US, these porting and return of Client Collateral procedures generally should be effective as a matter of contract between LME Clear, the Defaulting Member and the Client. However, if a Defaulting Member becomes the subject of such US bankruptcy or insolvency proceedings (which is possible whether the Defaulting Member is organised in the US or overseas) it is likely that implementation of these porting and return of Client Collateral procedures would be blocked, at least temporarily. Depending on the nature of the proceedings, LME Clear might be able to persuade a court that the procedures should be permitted because they closely resemble the customer account transfer procedures routinely employed in insolvencies of US broker/dealers.

### **9. Legal implications of the different levels of segregation**

9.1 Keeping all the Accounts of one Member separate from those of other Members allows transactions between LME Clear and the Member, and the Collateral provided by the Member, to be dealt with separately from those of other Members should LME Clear or the Member enter into insolvency proceedings. It also allows accurate closing-out of transactions between LME Clear and the Member, and the liquidation and application of the Member's Collateral against its exposure to LME Clear. In addition, it allows the Member's exposure to LME Clear to be ascertained accurately (as per paragraph 6 above).



- 9.2 Segregating on the basis of a Member's Clients allows the Clients to reduce their exposure to the Member by facilitating the return of Collateral allocated to a Client Account directly to the relevant Client(s) or porting that Collateral to another Member as described in paragraph 8 above. Recording Collateral in an ISA is more likely to facilitate return or porting of Collateral allocated to a Client Account than Collateral held in an OSA where LME Clear must be able to take the additional step of being able to identify the Clients involved and the Collateral attributed to each of them. Clients grouped together behind an OSA also take the additional risk against the other Clients involved as described in paragraph 10.8 below.
- 9.3 Clients and Indirect Client should note that in the event of a Member default, positions and assets recorded in a Direct GOSA or an Indirect GOSA will be managed in accordance with Rule 10. There is no legal segregation between positions recorded against separate Allocation IDs within the Account. Amongst other things, this means that if the Account cannot be ported to another Member, the provisions relating to final net settlement of Accounts set out in Rule 10.8 shall apply. This means that all positions and all collateral that are recorded in the Account may be offset, and there will not be a separate close out per-Allocation ID.

## **10. Clients' insolvency exposure to Members and other Clients**

- 10.1 The contractual relationship between a Client and its Member will take various forms and be governed by the law selected by them (which may not necessarily be English law). Therefore, the analysis here is only of a general nature focusing on LME Clear, without reference to the precise nature of the contractual relationship between the Client and its Member or the specific circumstances of Members. This memo does not address Indirect Clients' exposure to their Clients.
- 10.2 The segregation of transactions and Collateral carried out by LME Clear is entirely dependent on the instructions of the Member so a Client will be at risk of the Member not providing accurate information and instructions to LME Clear. Clients should seek to manage this risk through their contractual arrangements with their Members. As for any transaction made by the Member with LME Clear which is recorded in a Client Account of the Member, there is no contractual link between LME Clear and the relevant Client and, for instance, if any liability or debt is owed by LME Clear to the Member arising from that transaction, the Client cannot claim any rights in relation to that liability or debt.
- 10.3 Aside from the risk in paragraph 10.2 above, a Client will have normal insolvency risk against its Member in relation to debts owed by the Member to the Client under their contractual relationship. The Client might be able to rely on any contractual set-off rights provided in its documentation with the Member and any set-off rights available pursuant to any insolvency regime applicable to the Member.
- 10.4 The rights and obligations of the Member and its Client in relation to cash or other assets provided to the Member by the Client as security for the Client's obligations to the Member will depend on the security arrangements between the Client and the Member (see further paragraph 10.7 below). Collateral provided by the Member to LME Clear, even if it is recorded in a Client Account of the Member, will not create a contractual relationship between the Client and LME Clear in relation to the Collateral and the Client will have no rights of any kind (whether contractual, proprietary or otherwise) to that Collateral (save for certain rights described in paragraph 4.2 above and paragraphs 10.7 and 10.8 below).



- 10.5 EMIR is directly applicable in and forms part of the laws of England and Belgium (being the jurisdictions where LME Clear holds some Collateral, the other jurisdiction being New York, USA) which should therefore give effect to the requirements of EMIR regarding Client Collateral as reflected in the Rules. Specifically, EMIR provides that on the default of a Member, Collateral provided by a Member to LME Clear and recorded in a Client Account ("**Client Collateral**") (a) should be returned to the Client if LME Clear can ascertain the identity of the Client (EMIR article 48(7)), otherwise, (b) should be transferred (or "**ported**") by LME Clear if possible to another Member for the account of the relevant Client upon which LME Clear will hold the Client Collateral as Collateral provided by the other Member (EMIR articles 48(5) and (6)) (the conditions for return or porting of Client Collateral to take place, and the way in which return or porting works, are set out in paragraph 8 above). If only part of the Client Collateral is ported, EMIR states the balance is to be returned to the Client if LME Clear can ascertain the identity of the Client to whom that balance corresponds. Whether the foregoing is possible in practice will depend on various factors including the ability of LME Clear to match Client Collateral with the right Client or Clients at the time of the default of the relevant Member, something that will apply equally to ISAs as well as OSAs. English law (being the governing law of the Rules), the governing laws of the relevant Security Documents and the jurisdiction where Collateral is held (and, in EU member states, EMIR) all should take precedence on this question over any other laws such as the law of the jurisdiction where a Member is organised or where a Member's insolvency is administered, although there may be circumstances where insolvency proceedings taking place in another jurisdiction (such as where the Member or Client is organised) may take a different approach to this issue and which may take precedence. EMIR will not necessarily be recognised or given precedence in any court or insolvency proceedings which take place outside the EU, and the Rules state that the return or porting of Client Collateral will only be made if it is permissible under Applicable Law and LME Clear is not prevented from effecting such return by any court order or legal restriction, or by any claim or right of the Defaulting Member or any other person which may take precedence during any insolvency procedure affecting the Defaulting Member.
- 10.6 As noted in paragraphs 8.17 and 8.18 above, the procedures for porting and return of Client Collateral described in paragraph 10.6 above may not apply:
- (a) to Client Collateral located in the US if and when any insolvency proceedings are commenced in the US in relation to the relevant Member; or
  - (b) where it is not possible to enforce such arrangements in the jurisdiction of incorporation of the relevant Member where insolvency proceedings are initiated.
- 10.7 Certain Members will therefore be encouraged by LME Clear to execute a security agreement governed by English law in favour of LME Clear as security trustee for the Member's Clients granting each Client (via the security trustee) a security interest in the Member's right to have returned to it any Client Collateral recorded to that Client. Clients are not named specifically in the security agreement but described generically as being Clients of the Member. The Members who will be prompted to consider executing the security agreement are those who provide non-cash Collateral located outside the EU and those who are organised in jurisdictions which are unlikely to recognise the EMIR principles of porting or return of Client Collateral. Jurisdictions where the porting or return to a Client of Client Collateral may be problematic include the USA, Australia, Hong Kong and the Netherlands. LME Clear will update this list over time, where additional analysis is conducted in respect of further jurisdictions from which prospective Members



may seek to apply to LME Clear. The security interest granted to each Client is only over the Member's contractual right to have Client Collateral returned to the Member (and not the Member's right, title and interest in the Client Collateral itself, nor any proprietary right (such as the equity of redemption) which the Member may have for the return of the Client Collateral). In case there is any overlap between the security granted by the Member to LME Clear in its own right and by the Member to its Clients, the security agreement is expressed to be subordinated to the former. The security agreement is intended to facilitate LME Clear's ability to return or port Client Collateral when the Member is in default or becomes insolvent. Where a Client is concerned about its ability to obtain a return or porting of Client Collateral, the Client should consider requesting from its Member that the Member executes the security agreement with LME Clear, using the standard form of agreement that LME Clear will make available. However, it is not possible to say whether the security agreement will protect the relevant Clients in relation to Collateral held in every jurisdiction and in all circumstances, or whether return or porting of Client Collateral will in fact be facilitated, and each Client should take its own legal advice on the nature and effect of the security agreement.

- 10.8 Clients allocated to an OSA and will be exposed to risks derived from the activity of the Member in respect of other Clients allocated to that OSA. This is because i) individual Client positions and entitlements to Collateral are specifically not recorded and segregated in a Direct NOSA on a per-Client basis, and ii) individual Client positions are recorded but not segregated and entitlements to Collateral are not recorded or segregated in a Direct GOSA on a per-Client basis. Following a default by the Member, a single net sum will be calculated by LME Clear in respect of the positions allocated to the OSA. In the event that any Collateral needs to be applied to meet the net obligations of the Member in respect of the OSA, such Collateral will be taken from that allocated to the OSA. Such losses will therefore be mutualised between the Clients allocated to the OSA. The amount of Collateral returned to Clients or to the defaulting Member following the resolution of the default will therefore be the amount available after the deduction of amounts to address the losses on the OSA. Consequently, clearing activity that the Member performs for a Client allocated to the OSA can result in losses borne by all other Clients allocated to that OSA.

#### **Specific Issues for LME Warrants as Client Collateral**

- 10.9 A Client's LME Warrants and underlying metal can only be provided as Eligible Collateral if the Member has obtained the relevant rights to pledge the Client's LME Warrants and the underlying metal. Members and Clients should be aware that as LME Warrants are not classified as financial instruments within the meaning of MiFID a security arrangement involving the transfer of possession of the LME Warrants will not give rise to a right of use under the Financial Collateral Directive.
- 10.10 It therefore seems likely that a title transfer arrangement will be required between the Member and its Client. Clients should make themselves aware of the consequences that such an arrangement would have if the Member were to enter insolvency at a time when it is holding the Client's LME Warrants directly in LMEsword (as opposed to where they are held in the LME Clear Pledged Account when they will benefit from LME Clear's segregation and porting arrangements).
- 10.11 As an English pledge is taken by possession, LME Clear will need to ensure that, in the event of porting, the Client's LME Warrants will first be transferred by LME Clear from the LME Clear Pledged Account to the account of the Member Transferee in LMEsword.



The Member Transferee will then transfer back the Client's LME Warrants to the LME Clear Pledged Account.

- 10.12 Until the Client's LME Warrants are returned to the LME Clear Pledged Account, the Client's LME Warrants will not be given value in LMEmercury and therefore the Member Transferee will have to ensure alternative Collateral is provided in that time.
- 10.13 Clients' should also be aware that until the LME Warrants are returned to the LME Clear Pledged Account they are exposed to the risk of the Member Transferee's insolvency.

## 11. Indirect Clients

- 11.1 As explained in paragraph 3 above, LME Clear will permit Members to establish Client Accounts in respect of Indirect Clients (that is, clients of the Member's own Clients, as defined in MiFIR).
- 11.2 MiFIR requires LME Clear to offer two types of segregation option for indirect clearing, an Indirect NOSA and an Indirect GOSA. It is important that Members and Clients understand the role of the Client in the default management of a Member in relation to indirect clearing. As the LME market is a principal market, notwithstanding that the accounts at LME Clear are opened for indirect clearing purposes, there are still positions of direct Clients represented in each indirect clearing account, as they form part of the principal to principal chain. Consequently, the indirect client is not able to request LME Clear to port positions and collateral in the event of a Member default, and it will be the responsibility of the Client to make such a request. Please see section 8 *Portability–Transfer of Client Accounts from a Defaulting Member to Another Member* for further information.

### Indirect NOSA

- 11.3 Members may request to open an Indirect NOSA for the purposes of recording the assets and positions of more than one Client with Indirect Clients, however the account must be used exclusively for the purposes of indirect clearing. Indirect Clients allocated to an Indirect NOSA will be exposed to risks derived from the activity of the Member in respect of other Clients and Indirect Clients allocated to that Indirect NOSA. This is because individual Client and Indirect Client positions and entitlements to Collateral are specifically not recorded or segregated in an Indirect NOSA on a per-Client or per-Indirect Client basis.
- 11.4 Following a default by the Member, provided that no porting is effected, a single net sum will be calculated by LME Clear in respect of the positions allocated to the Indirect NOSA.
- 11.5 In the event that any Collateral needs to be applied to meet the net obligations of the Member in respect of the Indirect NOSA, such Collateral will be taken from that allocated to the Indirect NOSA. Such losses will therefore be mutualised between the Clients allocated to the Indirect NOSA, and this will be reflected in the relevant close out sum between the relevant Client and the Indirect Client subject to the terms of the indirect clearing documentation between the Client and the Indirect Client.
- 11.6 The amount of Collateral returned to Clients or to the defaulting Member following the resolution of the default will therefore be the amount available after the deduction of amounts to address the losses on the Indirect NOSA, and such collateral will be apportioned between the Indirect Clients of each Client, subject to the terms of the



indirect clearing documentation between the Client and the Indirect Client. Consequently, clearing activity that the Member performs for a Client allocated to the Indirect NOSA can result in losses borne by all other Clients and Indirect Clients allocated to that Indirect NOSA.

- 11.7 Following a Client default, MiFIR does not require the Member to port the positions and assets of an Indirect Client to another Client. This will be subject to the contractual arrangements between, and insolvency law applicable to, the Member, the Client and the Indirect Client.

#### **Indirect GOSA**

- 11.8 Members may request to open an Indirect GOSA for the purposes of recording the assets and positions of a single Client with Indirect Clients. The account must be used exclusively for the purposes of indirect clearing. Indirect Clients allocated to an Indirect GOSA will be exposed to risks derived from the activity of the Member in respect of other Indirect Clients allocated to that Indirect GOSA. This is because although individual Indirect Client positions are recorded and Margin Requirement is calculated in an Indirect GOSA on a per-Indirect Client basis, the positions and collateral are not legally segregated in respect of each Indirect Client.
- 11.9 Following a default by the Member, providing that no porting is effected, a single net sum will be calculated by LME Clear in respect of the positions allocated to the Indirect GOSA.
- 11.10 In the event that any Collateral needs to be applied to meet the net obligations of the Member in respect of the Indirect GOSA, the Collateral recorded in respect of the Indirect GOSA will be used. Such losses will therefore be mutualised between the Indirect Clients allocated to the Indirect GOSA, and this will be reflected in the relevant close out sum between the relevant Client and the Indirect Client subject to the terms of the indirect clearing documentation between the Client and the Indirect Client.
- 11.11 The amount of Collateral returned to Clients or to the defaulting Member following the resolution of the default will therefore be the amount available after the deduction of amounts to address the losses on the Indirect GOSA, and such collateral will be apportioned between the Indirect Clients of each Client, subject to the terms of the indirect clearing documentation between the Client and the Indirect Client. Consequently, clearing activity that the Member performs for a Client allocated to the Indirect GOSA can result in losses borne by all other Indirect Clients allocated to that Indirect GOSA.
- 11.12 Following a Client default, MiFIR contemplates that the Member may trigger the porting of the Indirect GOSA (or the positions and assets of individual Indirect Clients within that GOSA) to another Client. The procedures are described below in the section entitled *Porting upon a Client Default*. Any positions and assets that are not ported will be subject to the contractual arrangements between, and insolvency law applicable to, the Member, the Client and the Indirect Client.

#### **Indirect ISA**

- 11.13 Members may request to open an Indirect ISA for the purposes of recording the assets and positions of a single Client with a single Indirect Client. The account must be used exclusively for the purposes of indirect clearing. The Client and Indirect Client allocated



to an Indirect ISA will not be exposed to risks derived from the activity of the Member in respect of other Clients or Indirect Clients.

- 11.14 Following a default by the Member, providing that no porting is effected, a single net sum will be calculated by LME Clear in respect of the positions allocated to the Indirect ISA. In the event that any Collateral needs to be applied to meet the net obligations of the Member in respect of the Indirect ISA, the Collateral recorded in respect of the Indirect ISA will be used.
- 11.15 Following a Client default, the Member may trigger the porting of the Indirect ISA to another Client. The procedures are described below in the section entitled *Porting upon a Client Default*. Any positions and assets that are not ported will be subject to the contractual arrangements between, and insolvency law applicable to, the Member, the Client and the Indirect Client.

#### **Porting Upon a Client Default**

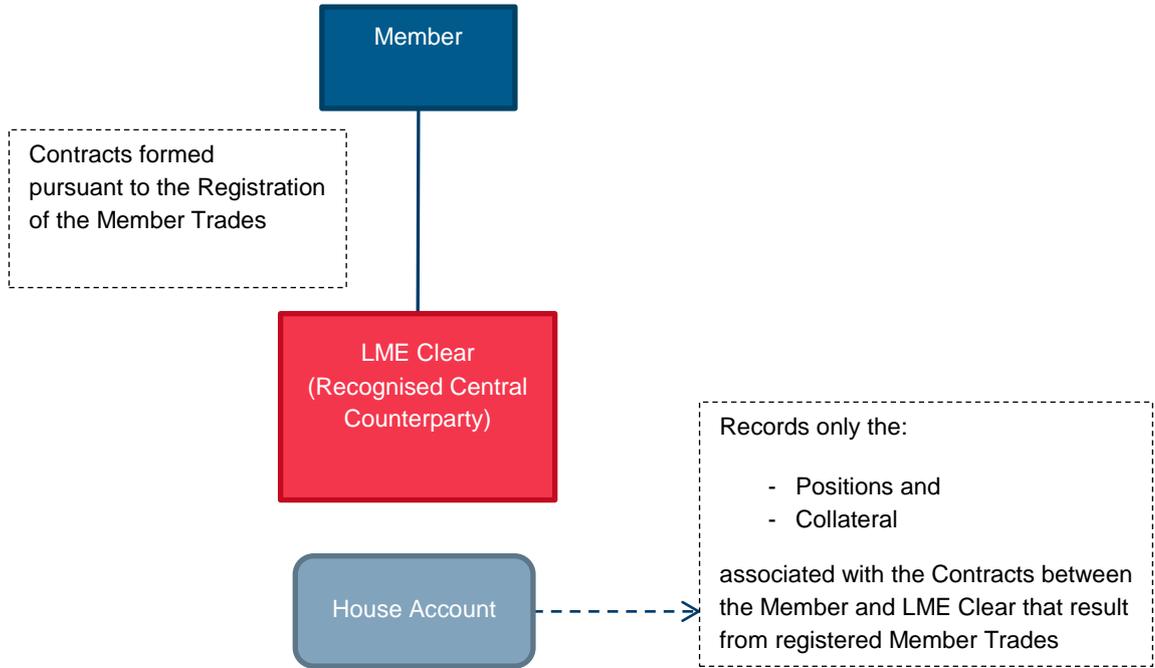
- 11.16 Specific porting procedures apply where the Clearing Client allocated to such an Account defaults (for example, due to that Clearing Client becoming insolvent). These procedures are set out in Rule 10.12 (*Indirect Client Porting*), and applies only where the account is an ISA (in other words, where the Account is an Indirect GOSA or an Indirect ISA). In such circumstances, the Member responsible for the Account can request that the Indirect Clients allocated to the Account, together with the assets and positions on that Account shall be transferred:
- (a) to another Account that the Member has established for another Client (a Replacement Clearing Client), which would constitute either an Indirect GOSA or an Indirect ISA (such a transfer being a Replacement Clearing Client Transfer); or
  - (b) to a Client Account established by the Member directly for such Indirect Clients, such that the Indirect Clients would become Clients of the Member (such a transfer being a Direct Client Transfer).
- 11.17 Any such transfers shall be subject to the satisfaction of the conditions set out in Rule 10.12. In particular, transfers between Accounts must be on a 'like for like' basis, reflecting an equivalent level of segregation for the transferring Indirect Clients. For example, a Replacement Clearing Client Transfer in respect of an Indirect ISA should be to another Indirect ISA. Similarly, a Direct Client Transfer of an Indirect ISA should be to a Direct ISA.
- 11.18 It is also the responsibility of the Member requesting such a transfer to ensure that (a) the affected Indirect Clients are aware of, and do not object to, the proposed transfer; and (b) the affected Indirect Clients (and any Replacement Clearing Client) has established appropriate contractual arrangements to facilitate the clearing of the assets and positions of the Indirect Clients under the Account structure that will be in place following the transfer.



APPENDIX

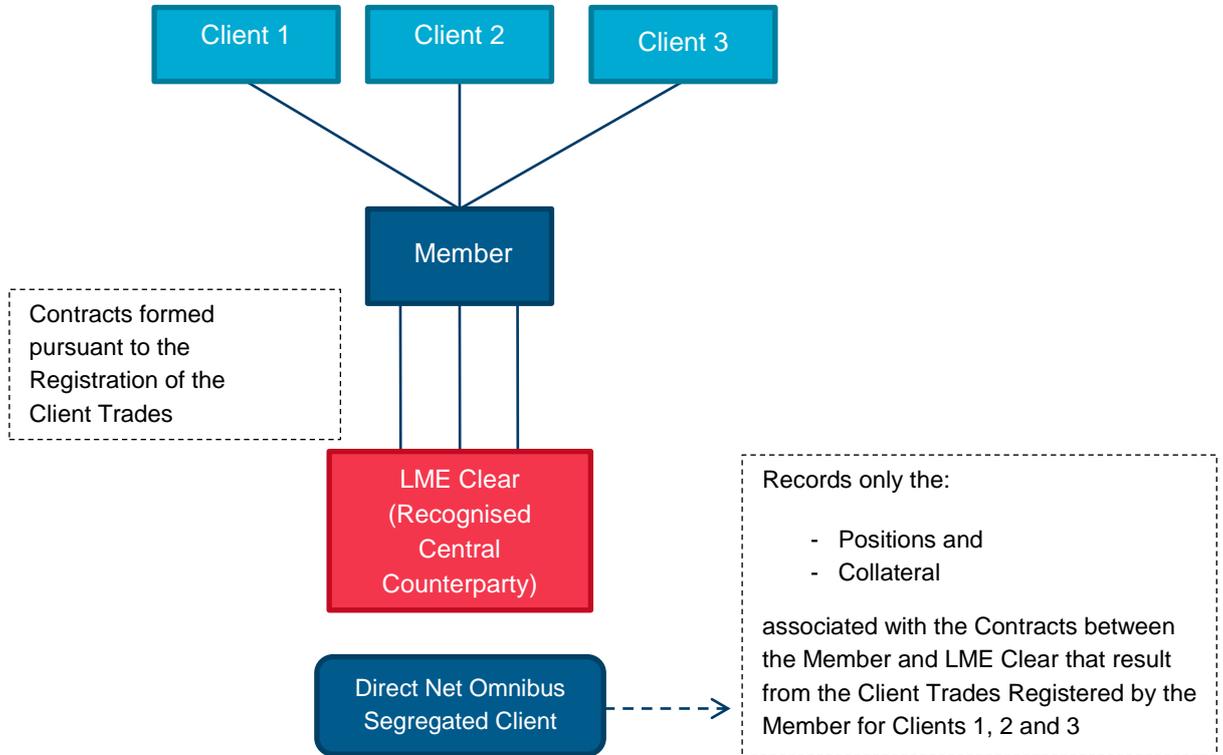
LME CLEAR ACCOUNT STRUCTURES

1. House Account

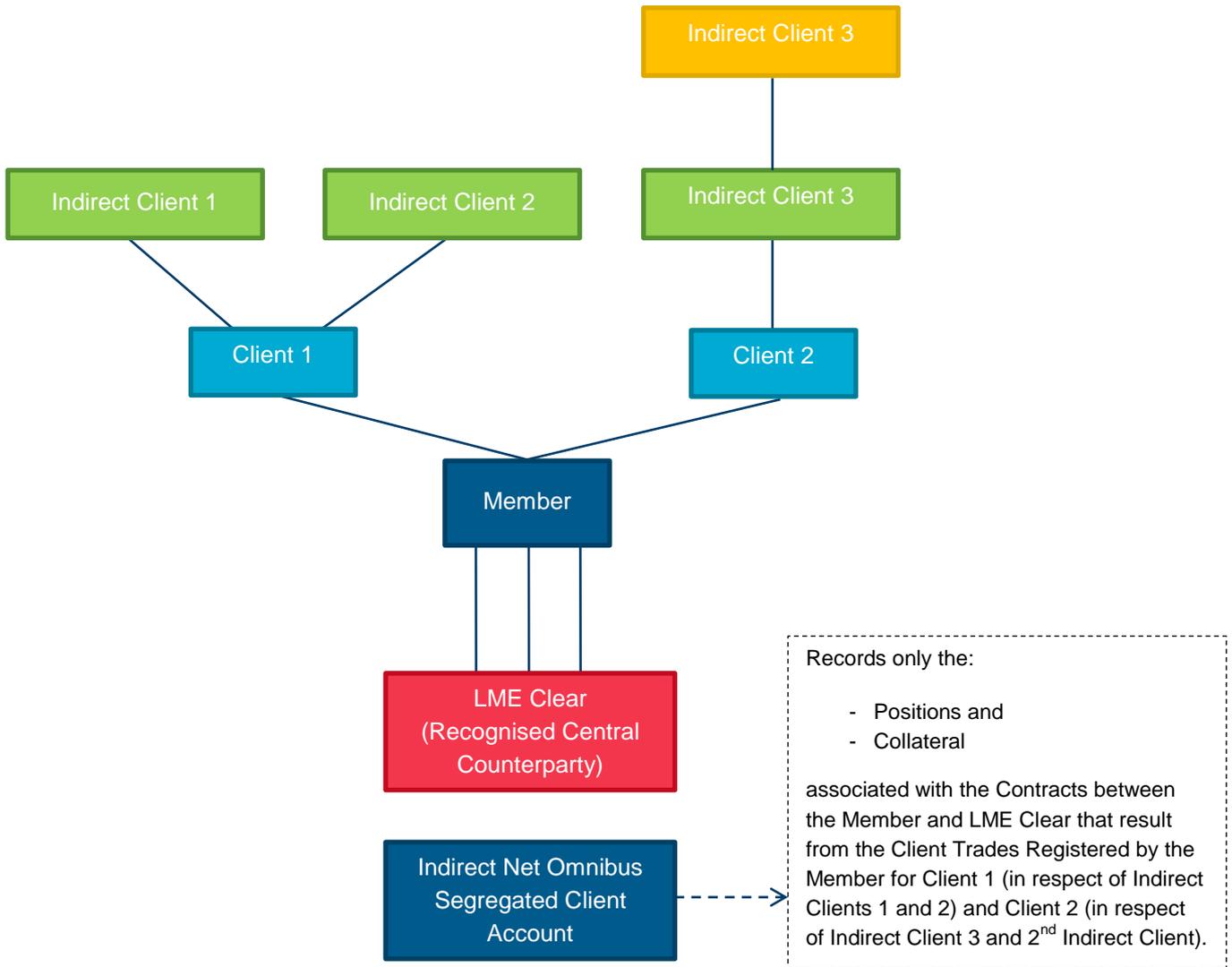


2. Direct Net Omnibus Segregated Client Account

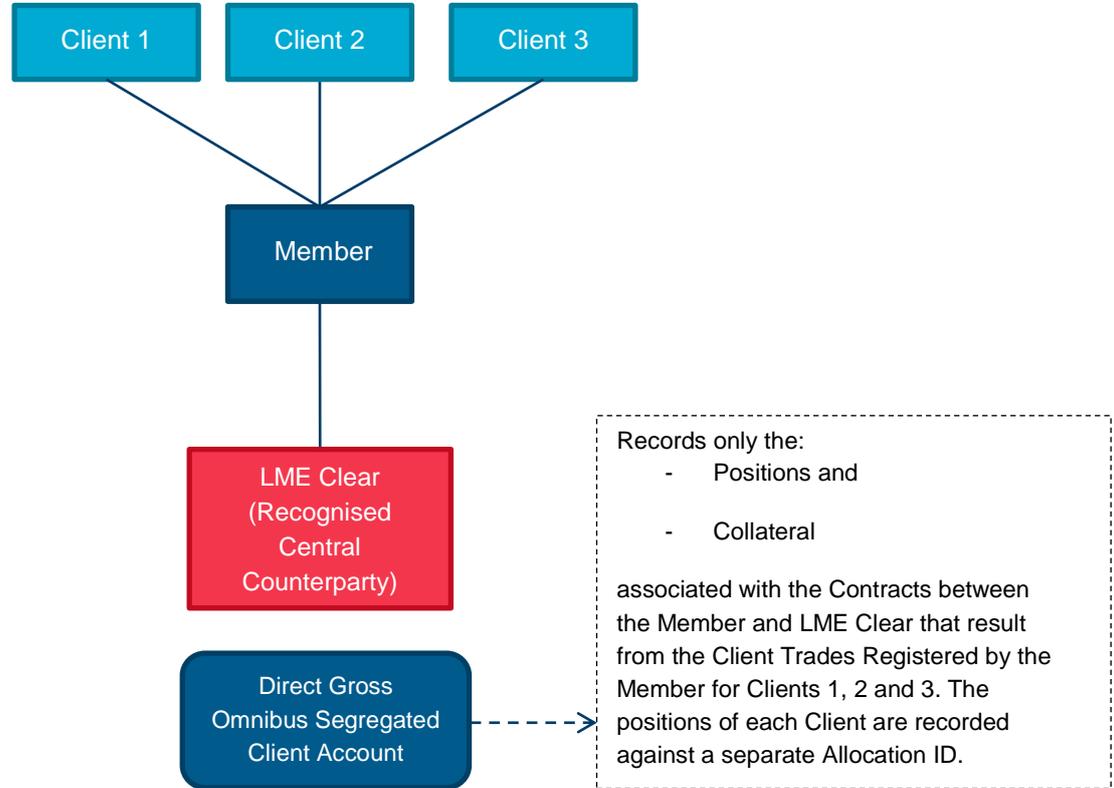
3.



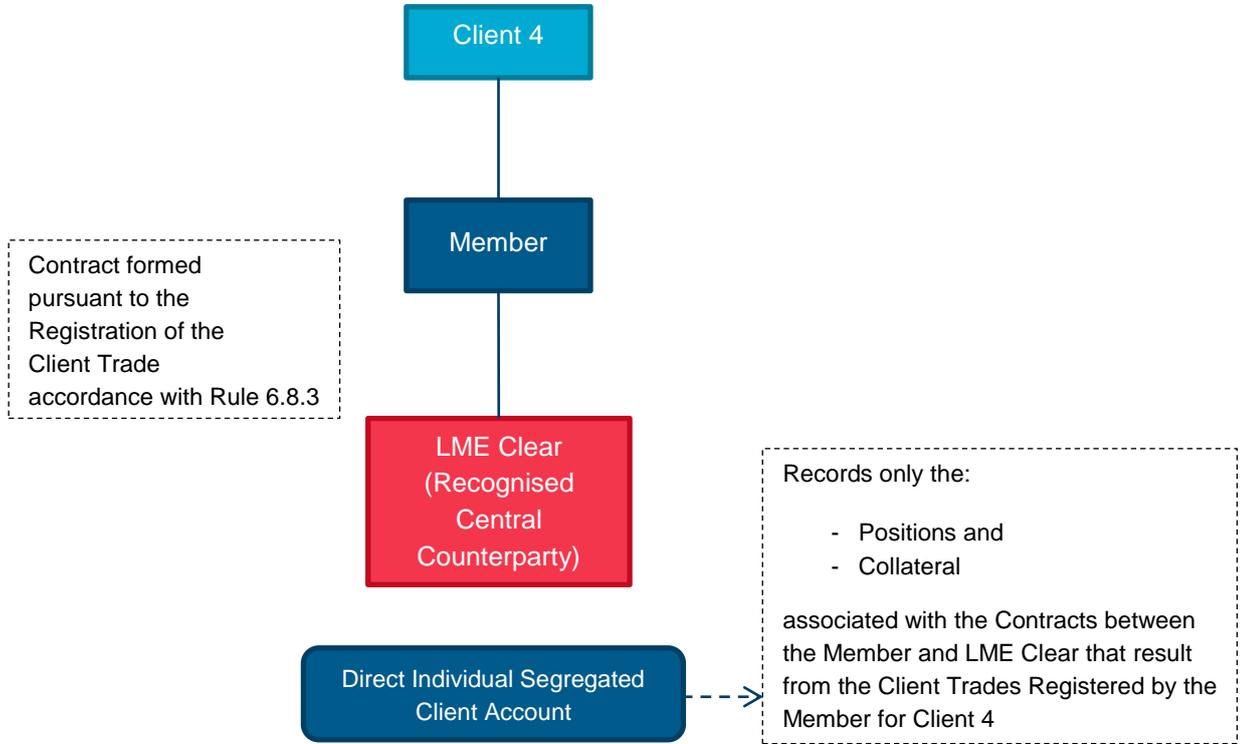
### 3. Indirect Net Omnibus Segregated Client Account



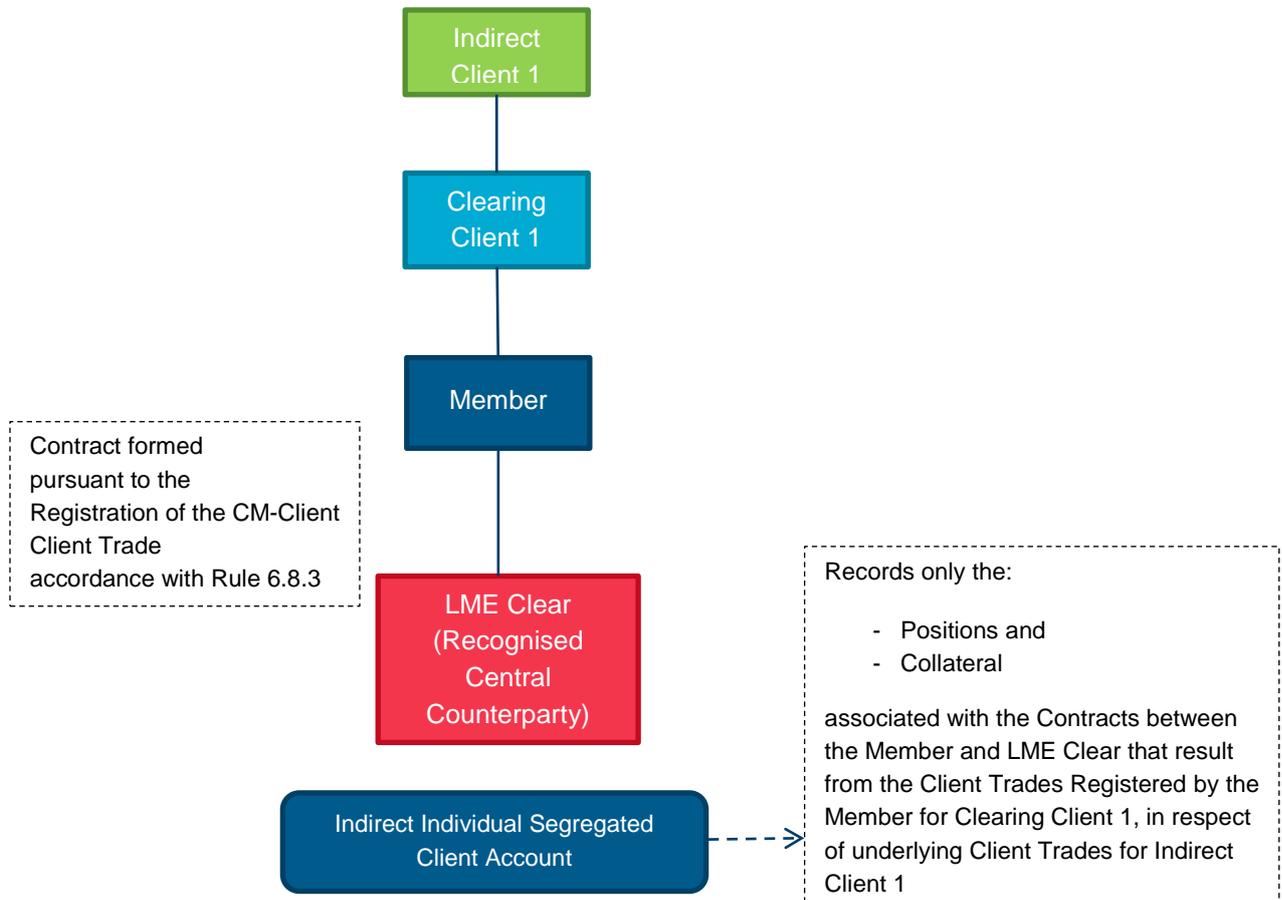
#### 4. Direct Gross Omnibus Segregated Client Account



### 5. Direct Individual Segregated Client Account



### 6. Indirect Individual Segregated Client Account



7. Indirect Gross Omnibus Segregated Client Account

