

# Rule Book

## Central Counterparty Rule Book

**BME CLEARING**

Date: 20 November 2023  
Effective from: 5 December 2023

## VERSIONS

Date	Version	Entry into force	Modifications
20/11/2023	2.0	05/12/2023	Adaptation to CCP RRR standards
			<ul style="list-style-type: none"> <li>Registration of the new Digital Assets Segment</li> </ul>
14/07/2023	1.0	07/09/2023	<ul style="list-style-type: none"> <li>Settlement Banking is included</li> <li>Tear-up mechanism is incorporated</li> </ul>

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## CHAPTER 1. GENERAL PROVISIONS

### ARTICLE 1. SCOPE OF APPLICATION

1. In accordance with the provisions of Articles 83 to 89 and 93 to 98 of the consolidated text of the Spanish Securities Markets and Investment Services Act, approved by Law 6/2023, of 17 March (hereinafter "LMVSI"), Regulation (EU) No 648/2012, of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (the "EMIR"), and other applicable legislation, this Rule Book defines the functioning and economic system of the Central Counterparty "BME CLEARING, S.A.U." ("BME CLEARING") and regulates, inter alia, the services supplied by the company, the access requirements to become a Member of BME CLEARING, the different types of Members, the Margin required and the disclosure requirements for Trades on Financial Instruments and other assets for which BME CLEARING acts as a Central Counterparty.

The General Conditions for each segment of BME CLEARING will supplement this Rule Book, and form an integral part of the same.

The regulations supplementing this Rule Book shall be established in the Circulars and Operating Instructions that BME CLEARING approves in accordance therewith.

This Rule Book, its General Conditions and supplementing regulations, which shall be of mandatory compliance for BME CLEARING Members, Clients, Indirect Clients, and users of the services provided by BME CLEARING in general, in addition to all the rights and obligations resulting therefrom for these entities and for BME CLEARING, will be applied and interpreted in accordance with Spanish legislation.

2. BME CLEARING is classified as a system under Law 41/1999, of 12 November on securities payment and settlement systems, and EC Directive 98/26 of the European Parliament and of the Council, of 19 May 1998, on the finality of settlement in payment and securities settlement systems.
3. General and specific decisions, that, in accordance with the provisions of this Rule Book, are within BME CLEARING's scope of application and must be adopted by the company, shall be adopted in accordance with the terms and criteria established by BME CLEARING's Board of Directors.
4. The terms used in this Rule Book and the supplementing regulations hereof shall have the meaning attributed below, save where another scope or meaning is expressly provided in any of the cases in which they are used:

**Account:** The section of the Trades Register where Trades, the resulting Positions, required Margins and Collateral are entered, along with any other transactions arising from the Trades registered that must be booked.

**Agent Member:** General Clearing Member that acts in BME CLEARING in the name and on behalf of a Direct Clearing Client.

**BME CLEARING:** BME CLEARING, S.A.U.

**BME CLEARING Supervisor:** Person entrusted with the duty of supervising the orderly conduct of BME CLEARING activities, applying the Rule Book and other applicable regulations by delegation of the Chief Supervisor.

**Buffer Collateral Account:** An ancillary Account where the Collateral posted at the end of the day to cover the collateral deficit in the Collateral Accounts is entered.

**Business Day:** The day set forth as such in the schedule published by BME CLEARING prior to the start of each calendar year for each Segment.

**CCP / Central Counterparty:** Entity performing Central Counterparty functions in accordance with the provisions of articles 83 to 89 and 93 to 98 of the Consolidated Text of the LMVSI and article 14 and subsequent of the EMIR. In this Rule Book, this term refers to BME CLEARING.

**Central Counterparty:** Interposition in its own name by BME CLEARING with regard to Members and Clients holding Central Register Accounts in relation with the settlement and clearing of obligations resulting from the Trades registered in these Accounts.

**Central Register:** Registration system run by BME CLEARING for Trades registered in the Accounts opened by Members in BME CLEARING, and the positions resulting therefrom, Margins required, Collateral and any other transactions arising from the Trades registered.

**Chief BME CLEARING Supervisor:** Person appointed by BME CLEARING entrusted with the duty of supervising the orderly conduct of BME CLEARING activities, applying the Rule Book and other applicable regulations.

**Circular:** Mandatory regulation, approved by BME CLEARING, which implements and supplements the Rule Book and the General Conditions.

**Clearing:** Creation of a single legal obligation which covers all the cash payment obligations and collection rights or delivery obligations and reception rights on securities or other financial instruments and assets resulting from the Trades registered in those Accounts with respect to which it is so stipulated in this Rule Book or in its supplementing regulations, whereby the parties will only be entitled to claim the net balance arising from such obligations and rights, reflected in a net Position.

**Client:** Individual, legal person, entity or institution that acts on one or more Segments, through a Clearing Member or a Non-Clearing Member and subject to the requirements prescribed in this Rule Book and the corresponding General Conditions and supplementing regulations, whose Trades, the Positions resulting from these Trades, Margins and Collateral are registered in an Individual Segregated Account (ISA Agency or ISA PtoP) or an Omnibus Segregated Account (OSA), as specified.



**Close Positions:** Action to carry out Trades of opposite sign to the Trades previously registered in the corresponding Account or, as the case may be, determine the early termination and/or cash settlement of the Positions, in the cases and by the procedures determined by BME CLEARING. The General Conditions of the different Segments may establish particular rules on how to proceed with the closing of Positions.

**Collateral:** Assets posted in favour of BME CLEARING, entered in the corresponding Collateral Accounts, in which the required Margins are posted, whose function is to cover the risk of Default on the obligations undertaken by Members and Clients.

**Collateral Account:** An ancillary Account, where the Collateral posted to cover the required Initial Margin, reflected in the corresponding Margin Account, is recorded.

**Communication for Registration:** Act whereby a Member or a Market, acting on behalf of a Member, notifies BME CLEARING of a Market Trade for its Registration.

**Competent Authority:** The Comisión Nacional del Mercado de Valores, as the authority designated by Spain to conduct the activities of authorisation and supervision of the CCPs established in Spain in pursuance of EMIR.

Also, any other Authority or Authorities that have been legally vested with powers relating to the authorisation and supervision of the activities of Members, Clients, and BME CLEARING shall be deemed to be a Competent Authority.

**Counterparty:** Interposition in their own name by Members with regard to their Clients and to their Ordinary Non-Clearing Members, and by Direct Clients with regard to their Indirect Clients, in respect of the clearing and settlement of obligations resulting from Trades registered in the Accounts where this is so established.

**Default:** Situation in which a Member or Client does not meet the requirements or obligations stipulated in this Rule Book and supplementing regulations in the performance of their activities.

**Defaulting Member/Client:** Member or Client that Defaults as provided for in Chapter 9 of this Rule Book.

**Direct Clearing Client:** Entity that, through an Agent Member and subject to the requirements prescribed in this Rule Book and the corresponding General Conditions and supplementing Circulars, acts in one or more segments, and where the Trades made on its account, the Positions resulting from these trades, Margins and Collateral are registered in the Proprietary Account of the Direct Clearing Member.

**Direct Client:** For the purposes of indirect clearing, a credit entity or investment services firm, which in its capacity as Non-Clearing Member, Ordinary Non-Clearing Member or Clearing Member Client provides clearing services to an Indirect Client under an Indirect Clearing Agreement.

**Final Net Balance:** Cash value resulting from applying to the Position registered in each Account the measures to close Positions, execute Collateral and for the close-out netting of the obligations and rights of a Member or Client, which is the sole legal obligation that can be required by BME CLEARING vis-à-vis the Member or Client, or

between the latter two parties, in relation with these Accounts, in compliance with the provisions of article 42.3 and article 43 and subsequent of this Rule Book. The cash value resulting from the close-out netting of the different Net Balances found in the form described above is also classified as a Net Balance, and hence all obligations and rights of a Member or Client, which is the sole legal obligation that can be required by BME CLEARING vis-à-vis the Member or Client, or between the latter two parties, in relation with these Accounts, in compliance with the provisions of article 42.3 and article 43 and subsequent of this Rule Book.

**Financial Instrument:** Generic name for all tradable securities and financial instruments referred to in Article 2 of the LMVSI, which are the object of Trades for which BME CLEARING carries out any of their functions.

**General Clearing Member:** Type of Member, which participates in BME CLEARING acting as clearing member in accordance with article 2.14 of EMIR and that will have BME CLEARING as Central Counterparty, that may carry out all the activities established in this Rule Book for Members, holding all types of Accounts and acting on its own account, and on behalf of its Clients', Non-Clearing Members and Ordinary Non-Clearing Members. Only General Clearing Members may act as Agent Members.

**General Conditions:** Rules that, supplementing and forming an integral part of this Rule Book, establish the terms and conditions applicable for each Segment to the services and functions that BME CLEARING carries out, and which may establish particular conditions and requirements relating to the activity of Members and Clients in relation to the Segment to which they refer.

**Gross Registration Omnibus Segregated Client Account- Indirect Clearing (Indirect Clearing GOSA):** An Account whose holder is a Clearing Member, a Non-Clearing Member or the Client of Clearing Member, where the Trades, Positions and Margins held on behalf of each Indirect Client of the Account holder or of an Ordinary Non-Clearing Member of the General Clearing Member Account Holder are recorded, in addition to the Collateral posted on behalf of these Indirect Clients.

Unless otherwise specified in this Rule Book and supplementing provisions, each Central Register Account shall comprise one or more Position, Margin or Collateral Account, which shall be an ancillary account, for the administration and operations of the Central Register and for risk management purposes.

It is also a generic name for all Accounts for which a Member is accountable or all a Client's Accounts, both Central Register Accounts and the Second-Tier Register Accounts, as appropriate.

**Indirect clearing agreements:** A set of contractual relationships between the Clearing Member, the Direct Client and the Indirect Client that allow the Direct Client to provide clearing services to the Indirect Client.

**Indirect Client:** For the purposes of indirect clearing, an individual, legal person, entity or institution, the client of a Direct Client which indirectly receives clearing services on one or more segments through a Direct Client, where the Trades made on its account, the Positions resulting from these Trades, Margins and Collateral are registered in the

Central Register managed by BME CLEARING, in an Indirect Clearing OSA or an Indirect Clearing GOSA, according to the preference of the Indirect Client, under an Indirect Clearing Agreement.

**Individual Clearing Member:** Type of Member, which participates in BME CLEARING acting as clearing member in accordance with article 2.14 of EMIR and that will have BME CLEARING as Central Counterparty, that may carry out all the activities established in this Rule Book for Members, although only on its own account and on behalf of its Clients, but not for any other Member.

**Individual Segregated Client Account – Agency (ISA Agency):** An Account whose holder is a Client, where an individual record is kept of the Client's Trades, Positions, Margins and Collateral.

**Individual Segregated Client Account- Principal to principal (ISA PtoP):** An Account, whose holder is a Clearing Member, where an individual record is kept of the Trades, Positions, Margins and Collateral held by the Clearing Member, in its own name and on behalf of a sole Client.

**Instruction:** Mandatory regulation of specific application approved by BME CLEARING, which supplements or implements the Rule Book, General Conditions and Circulars.

**Margin:** Amounts required from Members or Clients, as applicable, in accordance with the provisions of this Rule Book and its supplementing regulations, registered in the corresponding Margin Accounts, to cover the risk of Default on the obligations undertaken by Members and Clients.

**Margin Account:** Ancillary Account where the amounts corresponding to Initial Margin required in relation to Registered Positions in the Position Accounts, which can be calculated net or gross, are entered. Accounts where the amounts corresponding to Margins required from a Member in relation its activities in each of the corresponding Segments, other than Initial Margins (contribution to the Default Fund, Individual Fund and Extraordinary Margin) are registered, are also classified as Margin Accounts.

**Margin Collateral Account:** An ancillary account where the Collateral posted to cover the different Margins required to a Member other than Initial Margins (differentiating contribution to the Default Fund, Individual Fund and Extraordinary Margin) is recorded.

**Market:** Regulated market, multilateral trading facility or organised trading facility with which BME CLEARING has a corresponding agreement to perform some of the functions relating to the trades carried out therein.

**Market Trade:** Trade on Financial Instruments or other assets admitted to trading on Market with which BME CLEARING has entered into the corresponding agreement, and which arises from trades performed in the corresponding Market.

**Member:** Generic name which includes all kinds of Members of BME CLEARING from among those defined in Chapter 2 of this Rule Book.

**Member with the Capacity to run a Second-Tier Register:** Individual or General Clearing Member that manages a Second-Tier Register.

**Non-Clearing Member:** Type of Member, with BME CLEARING acting as its Central Counterparty, that may carry out all the activities established in article 6.2 of this Rule Book, holding the Accounts described in article 7.1.b), and acting on its own account or on behalf of its Clients and Indirect Clients.

**Non-Default Losses:** economic valuation of the damage or loss produced in the cases provided for in this Rule Book and its implementing rules, other than Default, which must be borne by BME CLEARING and by the Members, in accordance with the criteria for the allocation of Non-Default Losses established in these Regulations and its implementing rules.

**Omnibus Segregated Client Account (OSA):** An Account, whose holder is a Clearing Member, where the Trades, Positions, Margins and Collateral held by the Clearing Member, in its own name and on behalf of multiple Clients are recorded.

**Omnibus Segregated Client Account- Indirect Clearing (Indirect Clearing OSA):** An Account whose holder is a Clearing Member, a Non-Clearing Member or the Client of a Clearing Member, where the Trades, Positions, Margins and Collateral held on behalf of multiple Indirect Clients of the Account holder or of an Ordinary Non-Clearing Member of the General Clearing Member Account Holder are recorded.

**Ordinary Non-Clearing Member:** Type of Member, with its General Clearing Member as its Counterparty and not holding Accounts in BME CLEARING's Trades Register that may carry out all the activities established in article 6.3 of this Rule Book, acting on its own account or on behalf of its Indirect Clients.

**OTC Trade:** Trade on Financial Instruments or other assets arising from transactions performed outside of the Markets, with which BME CLEARING has entered into the corresponding agreements, in relation to Financial Instruments or other assets admitted or otherwise to trading on such markets.

**Position:** Financial Instruments, assets and cash balance arising at any time from the Trades registered in a specific Account. The resulting Position will be net in those Accounts with respect to which the application of netting has been established, and it will be gross in other cases.

**Position Account:** Ancillary Account where Trades and the Positions arising therefrom are entered. Position Accounts may be gross or net registration accounts.

**Position Settlement:** Procedure for the fulfilment of the obligations of Members, Clients and BME CLEARING arising from open Positions through the delivery of securities, Financial Instruments and/or assets and cash in the corresponding settlement system or through payment systems or cash payment or asset delivery mechanisms, in accordance with what is established for each CCP Segment in the corresponding General Conditions or by Circular.

**Proprietary Account:** Account held by a Clearing Member or a Non-Clearing Member where the Trades, Positions, Margins and Collateral of the Member holding the Account are registered.

**Registration:** Act whereby BME CLEARING registers the Trades in the corresponding Accounts of the Central Register and Members with the Capacity to run a Second-Tier Register simultaneously enter the Trades in their Second-Tier Registers.

**Request for Registration:** Act by which a Member or a settlement system with which BME CLEARING has reached the corresponding agreement for the Settlement of the Positions registered in BME CLEARING, acting for the account of a Member, requests the Registration of an OTC Trade from BME CLEARING.

**Resolution Authority:** The Comisión Nacional del Mercados de Valores, as the designated authority pursuant to Article 3 of Regulation (EU) 2021/23 of the European Parliament and of the Council of 16 December 2020 on a framework for the recovery and resolution of central counterparties (hereinafter referred to as the "Recovery and Resolution Regulation").

**Rule Book:** This Rule Book, which constitutes organisational and disciplinary regulation of the Securities Market, of mandatory compliance for all BME CLEARING participants. The General Conditions of each Segment are an integral part of the Rule Book.

**Second-Tier Register:** Registration system, managed by each Member with the Capacity to run a Second-Tier Register, for the Trades, Positions, Margins and Collateral registered in the Accounts of the Second-Tier Register opened by Clients with such Members, in relation to OSA accounts in the Central Register and for those Segments in which it is so required by the corresponding General Conditions.

**Second-Tier Register Account:** in cases where this is provided for a particular Segment in the corresponding General Conditions, and with respect to OSA Central Register Accounts, these are Accounts whose holders are Clients where the Transactions, Positions, required Margins, and where applicable, Collateral contributed by the Client shall be entered, reflecting the Client's Position vis-à-vis the Clearing Member holding the OSA.

**Segment:** Group of Financial Instruments or assets of similar characteristics and related Trades, which are considered jointly for the purposes of the specific regulations applicable in relation to the services provided by BME CLEARING and the methodology for calculating the Margins required.

**Settlement:** Generic name for all types of operations applied to determine and enforce cash amounts or volume of Financial Instruments or assets owed that are carried out in relation to registered Trades.

**Settlement Fails:** In those Segments in which it is so established by the corresponding General Conditions, any delay in the fulfilment of the delivery obligations relating to the securities or cash resulting from the Position Settlement.

**Trade:** Generic name for all legal transactions on Financial Instruments or other assets determined by BME CLEARING, in relation to which BME CLEARING carries out any of their functions.

**Trades Register:** Term which includes the book-entry registration system comprising the Central Register and the Second-Tier Register.

**Transfer:** Book-entry whereby the Registration of a Trade, or of all or part of a Position, is changed from one Account to another.

**Valuation Interval:** Price range bounded by a maximum value and a minimum value that a Financial Instrument may have, used to calculate Margins.

## ARTICLE 2. SERVICES AND FUNCTIONS OF BME CLEARING

1. As a Central Counterparty, BME CLEARING performs interposition functions in its own name in relation to the obligations resulting from the Trades registered in the Central Register, in accordance with the Rule Book and its supplementing regulations.

BME CLEARING acts as the CCP for the Trades on the Financial Instruments and other assets listed below:

- In the Equity Segment:
  - Purchases and sales of Equity securities (Market Trades and OTC Trades)
- In the Fixed Income Segment (Market Trades and OTC Trades):
  - Spot and term purchases and sales of Fixed Income securities.
  - Purchases and sales with repurchase agreements (repos) of Fixed Income securities.
- In the Financial Derivatives Segment (Market Trades):
  - Purchases and sales of Futures Contracts.
  - Purchases and sales of Option Contracts.
- In the Energy Segment:
  - Purchases and sales of MIBEL Electricity Futures Contracts (Market Trades).
    - MIBEL Electricity Futures.
    - MIBEL Electricity Swaps.
  - Purchases and sales of Gas Futures Contracts (Market Trades and OTC Market Trades).

- Natural Gas Futures, and
  - Liquefied Natural Gas Futures.
- Natural Gas and Liquefied Natural Gas Spot Contracts (Market Trades and OTC Trades).
- Natural Gas and Liquefied Natural Gas Loan Contracts (OTC Trades) and
- Natural Gas and Liquefied Natural Gas Deposit Contracts (OTC Trades).
- In the Interest Rate Derivatives Segment (IRS) (Market Trades and OTC Trades):
  - Interest rate swaps
  - Purchases and sales of interest rate forwards.
- In the Digital Assets Derivatives Segment (Market Transactions):
  - Crypto Index Futures

BME CLEARING will detail by Circular or Instruction, as stipulated in the related General Conditions, the Financial Instruments and other assets that are the object of these Trades.

2. In relation to the Trades with respect to which it acts a Central Counterparty, BME CLEARING will perform Registration, CCP, Clearing and Settlement services under the terms stipulated in this Rule Book and its supplementing regulations.
3. The functions of BME CLEARING in relation to the organisation and management of its services, which shall be developed in the corresponding General Conditions, Circulars or Instructions, shall include the following:
  - a) To determine the Trades for which BME CLEARING will act as CCP, as well as the Financial Instruments and other assets which may constitute the object of such Trades, and approve the corresponding General Conditions defining the general terms and conditions applicable to the Registration, Central Counterparty, Clearing and Settlement services provided by BME CLEARING.
  - b) To organise, direct, order, manage and supervise, in accordance with the rules established for each Segment in the related General Conditions, the Clearing and Settlement of Trades and, where appropriate, Position Settlement, trying to achieve maximum efficiency in the performance of its role as CCP.
  - c) To organise, direct, order and manage the Central Register.
  - d) To guide and supervise the record-keeping of the Second-Tier Register by the authorised Members.
  - e) To act as CCP for the Trades registered in the Central Register Accounts.



- f) To calculate and request the Margins required to cover the risk associated with Default on the obligations taken on by Members and Clients, and where applicable, act as custodian for the Collateral deposited.
  - g) To report to a trades repository or the European Securities and Markets Authority, as appropriate, on its own behalf or through delegation of the corresponding counterparties, in compliance with the terms and conditions stipulated by the European Union regulations, the Trades subject to such obligation.
  - h) In accordance with the terms and conditions provided in the European Union regulations or, if appropriate, with the criteria established by the European Securities and Markets Authority, BME CLEARING may issue Circulars to determine the reporting criteria and formats governing notifications submitted by Members or Clients to a trade repository or the European Securities and Markets Authority, as appropriate, in relation to the details of the Trades in which BME CLEARING acts as CCP.
4. BME CLEARING may enter into the appropriate agreements, which, where applicable, shall be subject to the approval procedure set forth in the LMVSI, with the Markets in which Transactions are executed, as well as with other entities that manage clearing and settlement systems or payment systems in which Transactions are cleared or settled in respect of which BME CLEARING performs any of its functions as a CCP. BME CLEARING may also enter into such agreements as may be necessary in relation to the cash payment or asset delivery mechanisms required for the Settlement of Positions and which are determined in the relevant General Conditions or by Circular.
5. In the exercise of the functions corresponding to it, BME CLEARING may approve Circulars and Instructions, which shall be of mandatory compliance for BME CLEARING Members, Clients, Indirect Clients and generally, users of the services provided thereby and which shall be subject to publication.

Circulars will supplement and implement the Rule Book and the General Conditions, and will deal with matters of a general nature related to Registration, Clearing, Settlement, Margin requirements, the posting of Margins through the contribution of Collateral, the execution of Collateral, Central Counterparty services, and where appropriate, to the calculation of balances owed and the close-out netting thereof, as well as other relevant aspects of the services provided by BME CLEARING.

Circulars shall be approved by the Board of Directors of BME CLEARING, and shall be published at least five Business Days before their effective date, except when, for reason of urgency, they must be effective in a shorter time after publication. Circulars must be communicated to the Comisión Nacional del Mercado de Valores and to the Bank of Spain within 24 hours of their adoption. The Comisión Nacional del Mercado de Valores may oppose, and suspend or render the Circulars ineffective when it considers that they may infringe applicable legislation, or harm the prudent and safe functioning of BME CLEARING and of the markets to which it provides a service or investor protection.



Instructions will implement or practically apply the Rule Book, General Conditions and the Circulars, or will deal with matters of a technical, operating or procedural nature with relevance for Members and Clients, related to Registration, Clearing, Settlement, Central Counterparty services, and other services provided by BME CLEARING.

Instructions shall be approved by the CEO of BME CLEARING, or, by delegation, by a Department Director.

6. As a result of its activities, BME CLEARING shall charge its Members the amounts corresponding to any fees set forth in its general fee and commission schedule, which shall be approved by means of a Circular.
7. Within the scope of its organisation and management duties, BME CLEARING may apply surcharges to commissions, damage compensations, and other economic penalties in the terms set forth in the relevant Circular.
8. BME CLEARING's economic regime shall comply with the LMVSI, EMIR and the applicable supplementing regulations. BME CLEARING shall report to the Competent Authority the information required in relation to its own funds, liquidity and risk in accordance with legal provisions.
9. BME CLEARING shall perform its functions giving particular priority to the safety and efficiency of BME CLEARING, and paying special attention to safeguarding the stability of the financial system, other relevant public interest considerations, and the objectives of its Members and Clients.

## CHAPTER 2. MEMBERS

### ARTICLE 3. MEMBERS. GENERAL PROVISIONS

1. The following are eligible to become Members of BME CLEARING:
  - a) Spanish investment service companies which are authorised to execute client orders or to trade on their own account.
  - b) Spanish credit institutions.
  - c) Investment service companies and credit institutions authorised in other member States of the European Union which are authorised to execute client orders or to trade on their own account.
  - d) Investment service companies and credit institutions authorised in a State which is not a member of the European Union, provided that they comply with the requirements established in the LMVSI to operate in Spain and which, in the authorisation granted by the authorities of their country of origin, are empowered to execute client orders or to trade on their own account.
  - e) Other persons that, in BME CLEARING's opinion (taking into account the special functions that as participants of BME CLEARING may be carried out by them):
    - 1<sup>st</sup> are appropriate;
    - 2<sup>nd</sup> have a sufficient level of aptitude and competence in clearing and settlement;
    - 3<sup>rd</sup> have established, where applicable, adequate organisational measures, and
    - 4<sup>th</sup> have sufficient resources for the function they have to carry out, taking into account the various financial mechanisms which may have been established by BME CLEARING to cover the risks arising from their activity in BME CLEARING and to ensure the correct Position Settlement.

The entities referred to in section 1 must comply with the requirements established in this Rule Book and supplementing regulations. These requirements shall not be discriminatory, and shall be transparent and objective in order to guarantee open and equal access to BME CLEARING.

2. The Bank of Spain and other resident or non-resident entities which carry out analogous activities may also become Members, under the terms and conditions stipulated in the LMVSI, its supplementing regulations and in this Rule Book. The latter may become Members of BME CLEARING following approval by the la Comisión Nacional del Mercado de Valores.

**3. Membership applications shall be approved by the Board of Directors of BME CLEARING.**

In order to acquire such condition, applicants must apply in writing to BME CLEARING, identifying the Segments to which they request to be admitted, and execute the relevant agreements with BME CLEARING, as well as any additional agreements, if any, to be executed with other Members, depending on the class to which they belong.

An application to become a Clearing Member of BME CLEARING must be accompanied by the documentation evidencing fulfilment with the requirements applicable to obtain such condition, as appropriate to the type of entity involved and as further foreseen in the corresponding Circular.

BME CLEARING may only deny access to Clearing Members meeting the relevant requirements and criteria where duly justified in writing and based on a comprehensive risk analysis.

**4. Members may be General Clearing Members, Individual Clearing Members, Non-Clearing Members or Ordinary Non-Clearing Members.**

Once admitted by BME CLEARING, the Members may act with the scope corresponding to each Member category, in relation to the Segments for which they have applied, in the terms envisaged in this Rule Book and its supplementing regulations.

The General Conditions may set forth specific terms in relation to Members' activities for each Segment

**5. Members must have and maintain, permanently, the necessary technical and human resources to act in BME CLEARING, which will be established and revised for each class of Member by BME CLEARING through the corresponding Circulars. These obligations aim to ensure that Members' resources and operational capacity are sufficient to fulfil the obligations deriving from BME CLEARING membership. On an annual basis, BME CLEARING shall review Members' compliance with the requirements that must be fulfilled and the resources needed to operate in BME CLEARING.**

**6. Membership may be cancelled in case of:**

a) Member's own desire. Members wishing to cancel their BME CLEARING membership must expressly communicate their desire by written request to BME CLEARING, and shall adopt, prior to the effective date of the cancellation, all necessary measures to transfer or where applicable close their Positions.

b) Declaration of Default in the terms established in Chapter 9 of this Rule Book.

## **ARTICLE 4. CLEARING MEMBERS**

**1. In general, Clearing Members may be Individual Clearing Members and General Clearing Members.**

The General Conditions may set forth additional types of Clearing Members for each Segment, specifying mandatory requirements set, and powers, rights and obligations corresponding to them. The General Conditions may also stipulate the minimum content of the agreements which should exist, where appropriate, between these Members and BME CLEARING or among the Members themselves.

2. Individual Clearing Members carry out their functions and act in BME CLEARING, on their own account and on behalf of their Clients, exercising the rights and obligations corresponding to them before BME CLEARING, which shall be their Central Counterparty, and being liable before BME CLEARING for any failure to comply with these obligations.

Individual Clearing Members may hold and manage in the Trades Register all the types of Accounts included in this Rule Book, communicate for Registration, request Registration and carry out and accept Transfer of Trades on their own account or on behalf of their Clients. They shall be liable to BME CLEARING for any failure to comply with all obligations inherent to the Positions registered in their Accounts and those of their Clients.

When they act on behalf of their Clients they shall transfer the cash amounts or securities that BME CLEARING has made available to them in relation with the Trades registered in their Clients' Accounts in the manner established by BME CLEARING.

To become an Individual Clearing Member, firms must meet the minimum level of equity established by BME CLEARING for each Segment in the corresponding General Conditions. BME CLEARING may establish by Circular other alternative guarantees and requirements instead of this minimum equity, which must provide an equivalent level of solvency, availability and financial security.

3. General Clearing Members carry out their functions and act in BME CLEARING, on their own account and on behalf of their Clients, Non-Clearing Members and Ordinary Non-Clearing Members, exercising the rights and obligations corresponding to them before BME CLEARING, which shall be their Central Counterparty, and being liable before BME CLEARING for any failure to comply with these obligations.

General Clearing Members may hold and manage in the Trades Register all types of Accounts included in this Rule Book, communicate for Registration, request Registration and carry out and accept Transfer of Trades on their own account or on behalf of their Clients. They shall be liable to BME CLEARING for any failure to comply with all obligations inherent to the Positions registered in their Accounts and those of their Clients.

General Clearing Members acting in BME CLEARING in the name and on behalf of Non-Clearing Members shall be jointly and severally liable before BME CLEARING with each of the Non-Clearing Members for any failure to comply with the obligations inherent to the Trades registered in the Accounts opened by the corresponding Non-Clearing Member, irrespective of whether it has complied with this obligation before the General Clearing Member.

General Clearing Members acting in BME CLEARING in their own name and on behalf of Ordinary Non-Clearing Members shall be solely and directly responsible before BME CLEARING for complying with all the obligations inherent to the Trades registered in the Accounts opened at the request of the Ordinary Non-Clearing Member, irrespective of whether it has complied with this obligation vis-à-vis the General Clearing Member.

When acting for the account of their Clients, Non-Clearing Members or Ordinary Non-Clearing Members, General Clearing Members shall transfer to them any cash or securities which BME CLEARING has made available to them in relation to the Trades registered in the corresponding Accounts in the manner established by BME CLEARING.

In the event that a Non-Clearing Member or Ordinary Non-Clearing Member enters into an agreement with two General Clearing Members, the joint liability of each of the General Clearing Members before BME CLEARING shall relate exclusively to the Accounts opened and held by the corresponding General Clearing Member, at the request of the Non-Clearing Member or Ordinary Non-Clearing Member, that have been identified to BME CLEARING in the form established by the latter.

To become a General Clearing Member, firms must meet the minimum level of shareholder's equity established by BME CLEARING for each Segment in the corresponding General Conditions. BME CLEARING may establish by Circular other alternative guarantees and requirements instead of this minimum shareholder's equity, which must provide an equivalent level of solvency, availability and financial security.

4. Clearing Members providing services to Clients that have opted for Trades to be made on their behalf to be registered in OSA accounts in the Central Register, and in those Segments where the corresponding General Conditions demand to keep a Second Tier-Register shall meet the requirements for Members with the Capacity to run a Second-Tier Register set down in this Rule Book and its supplementing regulations.
5. BME CLEARING shall keep and make public a list of every class of Clearing Member for each Segment.
6. BME CLEARING shall publish any failure by the Clearing Members to meet the requirements or provide the resources laid down by BME CLEARING for attaining Clearing Member status, unless the Competent Authorities believe that such disclosure would imply a threat to financial stability or market confidence or would seriously jeopardise the financial markets or cause disproportionate harm to the interested parties.
7. If, as part of the annual review of the fulfillment of requirements and resources requested to Members referred to in article 3.5 above, or in any other situation, BME CLEARING identifies a significant negative event related to the risk profile of a Clearing Member, it shall notify the CNMV, informing it of any risk increase that, in the opinion of BME CLEARING, could trigger a Default of the Clearing Member.

## **ARTICLE 5. RIGHTS AND OBLIGATIONS OF CLEARING MEMBERS. TERMS OF THE AGREEMENT WITH BME CLEARING**

1. With the scope corresponding to the class of Clearing Member to which they belong (Individual or General) and the Segments in which they hold this status, the rights and obligations of the Clearing Members are those established in this article, and must be included in the required agreement with BME CLEARING, forming part of it.
2. Clearing Members' right comprise the following:
  - a) To act as a Clearing Member in BME CLEARING, in relation to the Segments in which it holds the status of Member, in accordance with the BME CLEARING Rule Book, the General Conditions, Circulars and Instructions.
  - b) To apply to BME CLEARING to open, hold and manage in BME CLEARING's Trades Register any of the types of Accounts described in the Rule Book.
  - c) To communicate for Registration or request the Registration of Trades, and make and accept Transfer of Trades to subject them to the function of the Central Counterparty, on their own account or on behalf of their Clients.
  - d) Receive the cash amounts and securities, Financial Instruments or assets corresponding to the Transactions registered in its Accounts. These amounts and securities, Financial Instruments or assets shall be made available to the Member in the manner and through the system determined by BME CLEARING in the corresponding General Conditions or by Circular.
  - e) To exercise the rights inherent to the Positions registered in their Accounts.
  - f) In those cases where BME CLEARING does not have, in compliance with the regulations in force, the obligation to invest the Collateral, it may request BME CLEARING that the Collateral provided by the Clearing Member is not invested by BME CLEARING.
  - g) To receive information relating to the Trades, Positions, Margins and Collateral registered in their Accounts.
  - h) To receive information under equal conditions with the remaining Members with systems made available to them by BME CLEARING.
  - i) To terminate the agreement without penalties in the event that any amendments should be made to the BME CLEARING regulation that amend the regulations which applied to the Member's actions until such time, without prejudice to the obligation to comply with any outstanding obligations and liabilities.
  - j) To lodge their claims pursuant to the procedures set forth in this Rule Book and in their agreement with BME CLEARING.

- k) The right, which also corresponds to BME CLEARING, to reciprocally set off the cash payment obligations and the Financial Instruments delivery obligations that are fungible, as long as the obligations are legally enforceable, subject to the limitation under article 39.9.(b) of the EMIR.

**3. Clearing Members' obligations comprise the following:**

- a) To know and accept, disclose to their Clients, comply and procure compliance with all terms of this Rule Book, General Conditions, Circulars and Instructions approved by BME CLEARING, and to keep up to date with any relevant amendments, as they are notified by BME CLEARING and appear on the company's web page, expressly being subject, in relation to their activities as Members of BME CLEARING, to this Rule Book and to legislation applicable in Spain, both Spanish legislation and EU legislation, which shall apply to all aspects not expressly stipulated in the agreement with BME CLEARING.
- b) To comply with the obligations inherent to the Trades registered in their Accounts, responding to BME CLEARING.

With regard to Proprietary Accounts, the Clearing Member acts in BME CLEARING in its name and on its own account and shall be solely and directly responsible before BME CLEARING, which shall be its Central Counterparty, for compliance with the obligations inherent to the Trades registered in these Accounts.

Where the Clearing Member is the holder of ISA PtoP, OSA, Indirect Clearing OSA or Indirect Clearing GOSA accounts, including the Accounts it opens at the request of its Ordinary Non-Clearing Members, the Clearing Member shall act in BME CLEARING in its own name, on behalf of the corresponding Client or Ordinary Non-Clearing Member and shall be solely and directly responsible before BME CLEARING, which shall be its Central Counterparty, for compliance with the obligations inherent to the Trades registered in these Accounts.

The General Clearing Member acts in BME CLEARING in the name and on behalf of its Non-Clearing Members and shall be jointly and severally liable before BME CLEARING, with its Non-Clearing Members, for compliance with the obligations arising from the registered Trades, and for depositing and maintaining the Initial Margins required at all times, corresponding to all the Accounts of its Non-Clearing Members, irrespective of whether its Non-Clearing Members have complied with such obligation vis-à-vis the General Clearing Member, as applicable, and in the event of their default.

The General Clearing Member acts in BME CLEARING in the name and on behalf of the Clients holding ISA Agency accounts and Direct Clients holding Indirect Clearing OSA and Indirect Clearing GOSA accounts, and is jointly and severally liable before BME CLEARING for compliance with the obligations deriving from these Accounts with the aforementioned Clients or Direct Clients, irrespective of whether they have complied with such obligation vis-à-vis the General Clearing Member, in the event of their default.



In the event that a Non-Clearing Member or Ordinary Non-Clearing Member enters into an agreement with two General Clearing Members, the joint liability of each of the General Clearing Members before BME CLEARING shall relate exclusively to the Accounts opened and held by the corresponding General Clearing Member, at the request of the Non-Clearing Member or Ordinary Non-Clearing Member, that have been identified to BME CLEARING in the form established by the latter.

- c) Pay to BME CLEARING the cash amounts resulting from the corresponding Settlements of any kind, including BME CLEARING's fees and the Settlement of cash Positions applied by BME CLEARING, in relation to the Trades in their Accounts, and, in the case of General Clearing Members, those of their Non-Clearing Members and those opened at the request of their Ordinary Non-Clearing Members, irrespective of whether they have complied with this obligation before the Clearing Member.

For such purposes, and unless other requirements are established in the General Conditions of each Segment, the Clearing Member shall have an account in the Target2 system, or other payment system or cash payment mechanism provided for in the General Conditions of each Segment.

Alternatively, the Clearing Member may designate and communicate to BME CLEARING the entity that, having an account in the system or in the cash payment mechanism established, will act as its payment agent, will act as its payment agent for payments of cash amounts resulting in the related Settlements and Settlement of Positions, subject to the terms and conditions of article 35 of this Rule Book and developed by BME CLEARING through a Circular. The payment agent shall act in the name and on behalf of the Clearing Member, with no change to the Clearing Member's responsibility before BME CLEARING for compliance with all payment obligations, particularly those resulting from Settlements or Settlements of Positions.

- d) To deliver to BME CLEARING the cash amounts or securities resulting from the corresponding Settlements of the Positions registered in their Accounts, including those of their Clients, and in the case of General Clearing Members, those of their Non-Clearing Members and those opened at the request of their Ordinary Non-Clearing Members, irrespective of whether they have complied with these obligation before vis-à-vis the General Clearing Member. Delivery of cash and securities resulting from the Settlement of Positions shall be made in the settlement system and in the manner and through the system determined in the General Conditions and its implementing rules
- e) To post the Collateral to cover the Margins required at all times, including Default Fund contributions.
- f) Accept (i) that except in the case in which it may request non-investment of its Collateral and exercise it, BME CLEARING will invest, in accordance with the criteria and investment policy approved by the Board of Directors, the Collateral provided by the Member; (ii) that, in any case, the Collateral in cash will be remunerated in accordance with the remuneration policy established by BME CLEARING by Circular and; (iii) the regime of allocation of Non-Default Losses, including, but not limited



to, Investment Losses under the terms established in the Regulations and its implementing rules.

- g) To make contributions for service continuity and other contributions established by BME CLEARING in the Rule Book and its supplementing regulations.
- h) To communicate whether the Trades are closing Trades, and supply as much information as necessary with respect to the Trades, Positions, Margins and Collateral registered in its Accounts, in cases where this is required by the Rule Book and other applicable regulations.
- i) To accept and actively collaborate in the execution of the applicable procedures and actions in the event of Settlement Fail or in the event of Default, including those related to the transfer of Positions and Collateral, the closing of Positions and the execution of Collateral posted as Margins envisaged in this Rule Book or in the General Conditions of each Segment and implementing rules.
- j) To accept the close-out netting regime envisaged in this Rule Book and its supplementing regulations.
- k) To communicate sufficiently in advance and in writing to BME CLEARING any material change in their articles of association, its nature or legal structure or financial condition and, especially, circumstances affecting the requirements to be the class of Member in question.
- l) To communicate immediately to BME CLEARING the information required by it, concerning themselves or their Clients, if required by the Competent Authorities, or in the general interest of BME CLEARING, to enable BME CLEARING to evaluate compliance with this Rule Book, its supplementing regulations and other applicable regulations, and to determine, control and manage significant risk concentrations related with their activities as Members and with the provision of services to Clients.
- m) At BME CLEARING's request, to inform BME CLEARING of the criteria and measures adopted to allow their Clients and Indirect Clients to access BME CLEARING's services.
- n) To allow BME CLEARING to communicate information relating to a Member or its Clients to the Competent Authorities requesting it. To the extent possible, BME CLEARING shall communicate the content of such information to the affected Member.
- o) To enter into an agreement with each of the Non-Clearing Members and Ordinary Non-Clearing Members with respect to which they act as such, which must include the minimum content set forth in the Rule Book or in the related General Conditions.
- p) To communicate immediately to BME CLEARING any Default on their obligations by any of their Non-Clearing Members or Ordinary Non-Clearing Members, or any of their Clients that, due to the Position they hold in BME CLEARING should be

considered to be relevant, indicating, if requested by BME CLEARING, the Client's full identity and the details included in the Member-Client agreement.

- q) To inform their Clients concerning the different regulations applicable to the different types of Accounts of the Central Register and to the Second-Tier Register Accounts in accordance with this Rule Book and other applicable regulation, prior to opening the Client Accounts.
- r) To include, in the contractual documentation with their Clients, the provisions required in this Rule Book.
- s) In those Segments in which the corresponding General Conditions require the keeping of Second-Tier Registers, to meet the requirements and conditions applicable to Members with the Capacity to run a Second-Tier Register, including the obligation to maintain the correspondence between the Second-Tier Register and the Central Register, and, when it is so established in the corresponding General Conditions for a specific Segment, to calculate and require Margins from their Clients.
- t) To comply and procure compliance with the rules of conduct provided for in applicable legislation, in accordance with the provisions of the LMVSI, and arising from their status as a Clearing Member of BME CLEARING.
- u) To communicate to BME CLEARING the existence of any sign or information that, in the Member's opinion, may result in failure to comply with the regulations provided in the LMVSI and other applicable legislation, providing the relevant data supporting such signs or information.
- v) To accept any verifications which BME CLEARING should decide to make relating to the Member's compliance with its obligations and to facilitate and cooperate in such verification.
- w) To meet their outstanding financial obligations vis-à-vis BME CLEARING, including BME CLEARING's fees and commissions, even after they should cease, for any reason, to be a Member of BME CLEARING.
- x) Accept the terms applicable to the contractual obligations on confidentiality and personal data protection set out by BME CLEARING by Circular.
- y) Accept and consent to the recovery and loss allocation measures adopted by BME CLEARING within the framework of the Recovery and Resolution Regulation and in accordance with the provisions of this Rule Book and its implementing rules and the provisions of BME CLEARING's recovery plan.
- z) Accept and consent to the early intervention measures adopted by the Competent Authority in application of the Recovery and Resolution Regulation.

In the event that the Competent Authority so decides, within the framework of the early intervention measures provided for in the Recovery and Resolution Regulation, and in accordance with the provisions of article 58 of this Rule Book,

they shall inform their Non-Clearing Members and Clients in an exhaustive manner about the participation in the auctions referred to in article 58 of this Rule Book, following the instructions received from BME CLEARING to that effect.

aa) Accept and consent the resolution measures, loss and position allocation tools and other resolution tools adopted by the Resolution Authority in application of the Recovery and Resolution Regulation, including, but not limited to:

- Comply, within the term and in accordance with the provisions in the Recovery and Resolution Regulation, with the obligations required by the Resolution Authority in the event provided for in article 59 of this Rule Book, even after ceasing to be Clearing Members for any reason.
- Accept and consent the variation margin gains haircutting provided for in article 60 of this Rule Book, waiving any action or claim for reimbursement against BME CLEARING (or its successor entity) arising from such variation margin gains haircutting.

In the event that such a measure is adopted, Clearing Members shall notify their Non-Clearing Members and Clients without undue delay, and inform them of the manner in which such measure will affect such Non-Clearing Members and Clients.

- Accept, consent and comply with the obligation to post the cash calls contributions to the Default Fund of BME CLEARING under the terms set out in article 61 of this Rule Book.

ab) Clearly inform its current and potential Non-Clearing Members and Clients of the possible losses and expenses they may have to face as a result of a Default, of the mechanisms for the allocation of losses and Positions, where applicable, in accordance with this Rule Book and its implementing rules, ensuring that they provide sufficient information for the Non-Clearing Member and Client to understand the losses to which they are exposed, in the most unfavourable case, including the cases in which BME CLEARING and/or the Competent Authority and the Resolution Authority adopt recovery, early intervention or resolution measures, as the case may be.

4. Agreements between the Clearing Members and BME CLEARING shall also include the following:

- a) The designation by the Member of the Segment with respect to which it requests to become a Member.
- b) The clause relating to submission of any claims which may arise between them to arbitration proceedings as provided for in the Rule Book, waiving any other jurisdiction to which they may be entitled.
- c) The clause relating to assumption of liability by the Member vis-à-vis BME CLEARING, for any damages which BME CLEARING may suffer as a result of the

actions of the Member in BME CLEARING, provided that there has been wilful misconduct or gross negligence on the part of the Member.

- d) The clause relating to assumption of liability by BME CLEARING, within the scope of its functions, vis-à-vis the Member, for any damage which the latter may suffer as a result of the operations of BME CLEARING, provided that there has been wilful misconduct or gross negligence on the part of BME CLEARING.
  - e) BME CLEARING's power to terminate the agreement in the event of Default of the Member, which shall determine the loss of its Member status.
  - f) The express acceptance by the Member to be subject, in relation to its activities in BME CLEARING, exclusively to this Rule Book, General Conditions, Circulars, and Instructions approved by BME CLEARING, and legislation applicable in Spain, both Spanish and EU.
  - g) The clause relating to the acceptance and express submission to the terms applicable to the contractual obligations on confidentiality and personal data protection set out by BME CLEARING by Circular.
5. The General Conditions of each Segment may set forth additional types of Clearing Members, may also stipulate the specific rights and obligations, as well as particular rules in relation with the minimum content of the agreements which should exist, where appropriate, between these Members and BME CLEARING or among the Members themselves.

## ARTICLE 6. NON-CLEARING MEMBERS

1. In general, Members which do not have the condition of Clearing Member, may be Non-Clearing Members and Ordinary Non-Clearing Members.

When Non-Clearing Members or Ordinary Non-Clearing Members have the power to trade exclusively on their own account or on behalf of entities in their group, mention of this must be made in their description, so that they are identified as Proprietary Non-Clearing Members or Proprietary Ordinary Non-Clearing Members.

The General Conditions of each Segment may set forth additional types of Members which do not have the condition of Clearing Member, specifying the requirements set, powers, rights and obligations corresponding to them. The General Conditions may also stipulate the minimum content of the agreements which should exist, where appropriate, between these Members and BME CLEARING or the agreements between the Non-Clearing Members and General Clearing Members.

2. Non-Clearing Members act in BME CLEARING, performing their functions and exercising their corresponding rights and obligations before BME CLEARING, which shall be their Central Counterparty, through the General Clearing Members, which act on behalf of the former, being jointly and severally liable the Non-Clearing Members

and General Clearing Members before BME CLEARING for compliance with these obligations.

Non-Clearing Members may request to open, hold and manage in BME CLEARING's Trades Register, Proprietary Accounts, ISA Agency, Indirect Clearing OSA and Indirect Clearing GOSA Accounts, and communicate for Registration, request the Registration and make and accept Transfer of Trades on their own account or on behalf of their Clients.

When they act for their Clients holding an ISA Agency or for Indirect Clients, Non-Clearing Members shall transfer to these Clients any cash or securities which BME CLEARING has made available to them, in the manner established by BME CLEARING and through their General Clearing Member, in relation to the Trades executed on behalf of the Clients and Indirect Clients and registered in the corresponding Client Accounts.

The Non-Clearing Member must enter into an agreement with one or, at most, two General Clearing Members, and it shall be separately liable before each of them for compliance with all obligations inherent to the Trades registered in the Accounts that have been identified, in the manner established by it, irrespective of whether the Clients or Indirect Clients have complied with said obligation before the Non-Clearing Member. Such agreements must be forwarded to BME CLEARING. Where a Non-Clearing Member enters into agreements with two General Clearing Members, BME CLEARING shall inform both General Clearing Members of such circumstance, without disclosing the identity of one to the other. The General Conditions of each Segment may set specific regulations regarding the relationship between Non-Clearing Members and General Clearing Members.

3. Ordinary Non-Clearing Members act in BME CLEARING and perform their functions through General Clearing Members that act in BME CLEARING in their own name and on behalf of these Ordinary Non-Clearing Members. Ordinary Non-Clearing Members hold the rights and obligations deriving from their actions in BME CLEARING before General Clearing Members, which shall be their Counterparty.

Ordinary Non-Clearing Members may not hold, maintain or manage an Accounts structure in BME CLEARING's Trades Register. For the registration of Trades made by Ordinary Non-Clearing Members on their own account, they may request their General Clearing Member to open ISA PtoP Client Accounts or register these Trades in an OSA. For the registration of Trades made by Ordinary Non-Clearing Members on behalf of Indirect Clients, they may request their General Clearing Member to open an Indirect Clearing OSA or an Indirect Clearing GOSA. The Accounts referred to in this paragraph shall be held by the General Clearing Member, which shall submit a request to BME CLEARING to open them, and be responsible for their maintenance and management. Ordinary Non-Clearing Members may communicate for Registration, request the Registration or accept the Transfer of Trades on their own account or on behalf of their Indirect Clients, and may also Transfer Trades between Accounts designated by their General Clearing Member.

The General Clearing Member shall be liable vis-à-vis BME CLEARING for compliance with all obligations inherent to the Trades made by the Ordinary Non-Clearing Member, both proprietary trades and trades made on behalf of their Indirect Clients, registered in the Accounts referred to in the preceding paragraph, irrespective of whether the Ordinary Non-Clearing Member has complied with such obligation vis-à-vis the General Clearing Member.

The Ordinary Non-Clearing Member must enter into an agreement with one or, at most two General Clearing Member, which shall be its Counterparty, and it shall be separately liable before each of them for compliance with all obligations inherent to the proprietary Trades and Trades made on behalf of their Indirect Clients and registered in the Accounts opened and held by the corresponding General Clearing Member at the request of the Ordinary Non-Clearing Member that have been identified to BME CLEARING, in the manner established by it, irrespective of whether the Indirect Clients have complied with such obligation vis-à-vis the Ordinary Non-Clearing Member. Where the Ordinary Non-Clearing Members enter into agreements with two General Clearing Members, BME CLEARING shall inform both General Clearing Members of such circumstance, without disclosing the identity of one to the other. The General Conditions of each Segment may set specific regulations regarding the relationship between Ordinary Non-Clearing Members and General Clearing Members.

4. In addition to the entities referred to in article 3.1 a) and d) of this Rule Book, entities that meet the following requirements, established in article 3.1 e) of the Rule Book, may act as Proprietary Non-Clearing Members or Proprietary Ordinary Non-Clearing Members:
  - a) Their main corporate purpose shall consist of investment on their own account or on behalf of entities within their corporate group in organised markets, and must exclude investment on behalf of others, directly or indirectly. For firms willing to become a Proprietary Non-Clearing Member or a Proprietary Ordinary Non-Clearing Member in Segments relating to Financial Instruments or other assets with non-financial underlying, the only requisite will be that their corporate purpose allows the trading of futures, options, or other Financial Instruments or assets on the relevant underlying, besides having recognised and proven experience and professionalism in the sector of the underlying asset, as measured according to criteria established in the corresponding General Conditions, and fulfilling the additional requisites of solvency, organisation and specialty that BME CLEARING may establish in the supplementing provisions to this Rule Book.
  - b) They must meet the level of solvency required by the General Clearing Member at all times.
  - c) They shall maintain a shareholder's equity level as established by BME CLEARING for each Segment in the corresponding General Conditions. BME CLEARING may establish by Circular other alternative guarantees and requirements instead of this minimum shareholder's equity, which must provide an equivalent level of solvency, availability and financial security.

- d) They shall meet all requirements pursuant to applicable law regulating the conduct of their participation in BME CLEARING.

Unless expressly stipulated in a specific regulation, these Members that trade exclusively on their own account or on behalf of entities in their group, shall participate in BME CLEARING under the same regime established for Non-Clearing Members and Ordinary Non-Clearing Members, according to their category.

- 5. BME CLEARING shall maintain and publish for each of its Segments, a list of all Non-Clearing Members, Ordinary Non-Clearing Members, Proprietary Non-Clearing Members and Proprietary Ordinary Non-Clearing Members.

## **ARTICLE 7. RIGHTS AND OBLIGATIONS OF NON-CLEARING MEMBERS. TERMS OF THE AGREEMENT WITH BME CLEARING**

1. The rights and obligations of Non-Clearing Members are those established in this article, and must be included in the required agreement with BME CLEARING, forming part of it.
2. Non-Clearing Members' rights comprise the following:
  - a) To act as a Non-Clearing Member in BME CLEARING, which will be its Central Counterparty, in respect of the Segments in which it holds Member status, through its General Clearing member, which acts in BME CLEARING on behalf of the Non-Clearing Member, in accordance with BME CLEARING's Rule Book, General Conditions, Circulars and Instructions.
  - b) To request to open, maintain and manage Accounts in BME CLEARING's Trade Register.
    - To hold Proprietary Accounts for the Registration of the proprietary Trades executed, their resulting Positions, required Margins and contributed Collateral, in addition to
    - ISA Agency, Indirect Clearing OSA and Indirect Clearing GOSA for the Registration of the Trades on behalf of Clients or Indirect Clients, their resulting Positions, required Margins and contributed Collateral.
  - c) To communicate for Registration or request the Registration of Trades, make and accept Transfer of Trades, to subject them to the function of the Central Counterparty, on their own account or on behalf of their Clients and Indirect Clients.
  - d) To receive, through the General Clearing Member, the amounts in cash and the securities corresponding to Trades registered in their Accounts. Such amounts and securities shall be made available to the Member in the manner and through the settlement system determined by BME CLEARING.



- e) To exercise, through the General Clearing Member, the rights inherent to the Positions registered in their Accounts.
- f) In those cases where BME CLEARING does not have, in compliance with the regulations in force, the obligation to invest the Collateral, it may request BME CLEARING, through its General Clearing Member, that the Collateral provided by the Non-Clearing Member is not invested by BME CLEARING.
- g) To receive information relating to the Trades, Positions, Margins and Collateral registered in their Accounts.
- h) To receive information under equal conditions with the remaining Members with systems made available to them by BME CLEARING.
- i) To terminate the agreement without penalties in the event that any amendments should be made to the BME CLEARING regulation that amend the regulations which applied to the Member's actions until such time, without prejudice to the obligation to comply with any outstanding obligations and liabilities.
- j) To lodge their claims pursuant to the procedures set forth in this Rule Book and in their agreement with BME CLEARING.
- k) The right, which also corresponds to BME CLEARING, to reciprocally set off the cash payment obligations and the Financial Instruments delivery obligations that are fungible, as long as the obligations are legally enforceable, subject to the limitation under article 39.9.(b) of the EMIR.

**3. Non-Clearing Members' obligations comprise the following:**

- a) To know and accept, disclose to their Clients and Indirect Clients, comply and procure compliance with all terms of this Rule Book, General Conditions, Circulars and Instructions approved by BME CLEARING, and to keep up to date with any relevant amendments, as they are notified by BME CLEARING and appear on the company's web page, expressly being subject, in relation to their activities as Members of BME CLEARING, to this Rule Book and to legislation applicable in Spain, both Spanish legislation and EU legislation, which shall apply to all aspects not expressly stipulated in the agreement with BME CLEARING.
- b) To enter into an agreement with one or, at most, two General Clearing Members, being separately liable before each of them for compliance with all obligations inherent to the Trades registered in the Accounts that have been identified, in the manner established by it, irrespective of whether the Clients or Indirect Clients have complied with said obligation before the Non-Clearing Member. Such agreements must be forwarded to BME CLEARING.

Where Non-Clearing Members enter into agreements with two General Clearing Members, BME CLEARING shall inform both General Clearing Members of such circumstance, without disclosing the identity of one to the other. The General Conditions of each Segment may set specific regulations regarding the relationship between Non-Clearing Members and General Clearing Members.



- c) To comply, through the General Clearing Member, which acts in BME CLEARING on behalf of the Non-Clearing Member, with the obligations inherent to the Trades registered in the Accounts where it is the holder as or held by the Non-Clearing Member, irrespective of whether the Client or Indirect Client has complied with such obligation vis-à-vis the Non-Clearing Member.

When the Non-Clearing Member holds ISA Agency Accounts, the Non-Clearing Member shall be jointly and severally liable, together with the Client, before BME CLEARING for compliance with these obligations should the Client default.

With regard to Proprietary Accounts, and where the Non-Clearing Member is the holder of the Indirect Clearing OSA Account or the Indirect Clearing GOSA Account, the Non-Clearing Member shall be liable before BME CLEARING, which shall be its Central Counterparty, for compliance with the obligations inherent to the Trades registered in these Accounts.

The General Clearing Member shall be jointly and severally liable before BME CLEARING with the Non-Clearing member, in the event of default by the latter, for compliance with the obligations deriving from all the Accounts held by the Non-Clearing Member and identified by both parties, in the manner established by BME CLEARING.

- d) To pay BME CLEARING, through their General Clearing Member, which acts in BME CLEARING and the Settlement of Cash Positions carried out by BME CLEARING on behalf of the Non-Clearing Member, the cash amounts resulting from relevant Settlements of any kind, including BME CLEARING's fees, in relation to the Trades in their Accounts, and to comply, through the General Clearing Member, which acts on behalf of the Non-Clearing Member, with the obligation to deliver the cash or securities deriving from the corresponding Settlement of the Positions registered in its Accounts, in the manner and through the settlement system determined in the General Conditions and its implementing rules.

To be liable before the General Clearing Member for compliance with these obligations, irrespective of whether the Clients or Indirects Client have complied with said obligation vis-à-vis the Non-Clearing Member.

- e) To deposit and maintain, through their General Clearing Member, which acts in BME CLEARING on behalf of the Non-Clearing Member, the Margins required at any time in relation to the Positions registered in their Accounts, through the contribution of Collateral, with both Members being jointly and severally liable before BME CLEARING for compliance with this obligation.
- f) Accept (i) that except in the case in which it may request non-investment of its Collateral and exercise it, BME CLEARING will invest, in accordance with the criteria and investment policy approved by the Board of Directors, the Collateral provided by the Member; (ii) that, in any case, the Collateral in cash will be remunerated in accordance with the remuneration policy established by BME CLEARING by Circular and; (iii) the regime of allocation of Non-Default Losses, including, but not limited

to, Investment Losses, under the terms established in the Regulations and its implementing rules.

- g) To communicate whether the Trades are closing Trades, and supply as much information as necessary with respect to the Trades, Positions, Margins and Collateral registered in its Accounts, in cases where this is required by the Rule Book and other applicable regulations.
- h) To accept and actively collaborate in the execution of the applicable procedures and actions in the event of Settlement Fail or in the event of Default, including those related to the transfer of Positions and Collateral, the closing of Positions and the execution of Collateral posted as Margins envisaged in this Rule Book or in the General Conditions of each Segment and its implementing rules.
- i) To accept the close-out netting regime envisaged in this Rule Book and its supplementing regulations.
- j) To communicate sufficiently in advance and in writing to BME CLEARING any material change in its articles of association, its nature or legal structure or its financial condition and, especially, circumstances affecting the requirements to be the class of Member in question.
- k) To communicate immediately to BME CLEARING the information required by it, concerning themselves or their Clients and Indirect Clients, if required by the Competent Authorities, or in the general interest of BME CLEARING, to enable BME CLEARING to evaluate compliance with this Rule Book, its supplementing regulations and other applicable regulations, and to determine, control and manage significant risk concentrations related with their activities as Members and with the provision of services to Clients.
- l) At BME CLEARING's request, to inform BME CLEARING of the criteria and measures adopted to allow Clients and Indirect Clients to access BME CLEARING's services.
- m) To allow BME CLEARING to communicate information relating to themselves or their Clients and Indirect Clients to the Competent Authorities requesting it. To the extent possible, BME CLEARING shall communicate the content of such information to the affected Member.
- n) To communicate immediately to BME CLEARING any Default on its obligations by any of its Clients or Indirect Clients that due to the Position they hold in BME CLEARING should be considered to be relevant, indicating, if requested by BME CLEARING, the Client's full identity and the details included in the Member-Client agreement.
- o) To inform their Clients and Indirect Clients concerning the different regulations applicable to the different types of Accounts of the Central Register in accordance with this Rule Book and other applicable regulation, prior to opening the Client or Indirect Client Accounts, indicating the rights and obligations corresponding thereto.

- p) For those Segments where the General Conditions so provide, the obligation to include in the contractual documentation with Clients which are holders of ISA Agency Accounts, the provisions required in this Rule Book.
  - q) To comply and procure compliance with the rules of conduct provided for in applicable legislation, in accordance with the provisions of the LMVSI, and arising from their status as a Non-Clearing Member of BME CLEARING.
  - r) To communicate to BME CLEARING the existence of any sign or information that, in the Member's opinion, may result in failure to comply with the regulations provided in the LMVSI and other applicable legislation, providing the relevant data supporting such signs or information.
  - s) To accept any verifications which BME CLEARING should decide to make relating to the Member's compliance with its obligations and to facilitate and cooperate in such verification.
  - t) To meet their outstanding financial obligations vis-à-vis BME CLEARING, including BME CLEARING's fees and commissions, even after they should cease, for any reason, to be a Member of BME CLEARING.
  - u) To accept that BME CLEARING may, at the request of the General Clearing Member, temporarily suspend the Non-Clearing Member's access to BME CLEARING's Trades Register when the Non-Clearing Member has exceeded the risk limits determined by its General Clearing Member or has incurred in Settlement Fails.
  - v) Accept the terms applicable to the contractual obligations on confidentiality and personal data protection set out by BME CLEARING by Circular.
  - w) Accept and consent to the recovery and loss allocation measures adopted by BME CLEARING within the framework of the Recovery and Resolution Regulation and in accordance with the provisions of this Rule Book and its implementing rules and the provisions of BME CLEARING's recovery plan.
  - x) Accept and consent to the early intervention measures adopted by the Competent Authority in application of the Recovery and Resolution Regulation.
  - y) Accept and consent the resolution measures, loss and position allocation tools and other resolution tools adopted by the Resolution Authority in application of the Recovery and Resolution Regulation, referred to in Article 59 of this Rule Book, including, but not limited, the variation margin gains haircutting provided for in article 60 of this Rule Book, waiving any action or claim for reimbursement against BME CLEARING (or its successor entity) arising from such variation margin gains haircutting.
4. Agreements between the Non-Clearing Members and BME CLEARING shall also include the following:
- a) The designation by the Member of the Segment with respect to which it requests to become a Member.

- b) The clause relating to submission of any claims which may arise between them to arbitration proceedings as provided for in the Rule Book, waiving any other jurisdiction to which they may be entitled.
  - c) The clause relating to assumption of liability by the Member vis-à-vis BME CLEARING, for any damages which BME CLEARING may suffer as a result of the actions of the Member in BME CLEARING, provided that there has been wilful misconduct or gross negligence on the part of the Member.
  - d) The clause relating to assumption of liability by BME CLEARING, within the scope of its duties, vis-à-vis the Member, for any damage which the latter may suffer as a result of the operation of BME CLEARING, provided that there has been wilful misconduct or gross negligence on the part of BME CLEARING.
  - e) BME CLEARING's power to terminate the agreement in the event of Default of the Member, which shall determine the loss of its Member status.
  - f) The express acceptance by the Member to be subject, in relation to its activities in BME CLEARING, exclusively to this Rule Book, General Conditions, Circulars, and Instructions approved by BME CLEARING, and legislation applicable in Spain, both Spanish and EU.
  - g) The clause relating to the acceptance and express submission to the terms applicable to the contractual obligations on confidentiality and personal data protection set out by BME CLEARING by Circular.
5. The General Conditions of each Segment may stipulate specific rights and obligations in relation with the participation of Non-Clearing Members in said Segment and the minimum content of the agreements which should exist, where appropriate, between these Members and BME CLEARING.
  6. The provisions of this article shall be applicable, mutatis mutandis, to Proprietary Non-Clearing Members, with the exception of those relating to Client or Indirect Clients.

## **ARTICLE 8. RIGHTS AND OBLIGATIONS OF ORDINARY NON-CLEARING MEMBERS. TERMS OF THE AGREEMENT WITH BME CLEARING**

1. The rights and obligations of Ordinary Non-Clearing Members are those established in this article, and must be included in the required agreement with BME CLEARING, forming part of it.
2. The rights of Ordinary Non-Clearing Members shall be, mutatis mutandis, those stipulated for Non-Clearing Members in the previous article, paragraph 2, d), e) and g) to j). Additionally, the following rights shall also correspond to Ordinary Non-Clearing Members:
  - a) To act as an Ordinary Non-Clearing Member in BME CLEARING in respect of the Segments in which it holds Member status, through their General Clearing Member,

which shall be the Counterparty of the Ordinary Non-Clearing Member, with the General Clearing Member acting in BME CLEARING in its own name and on behalf of the Ordinary Non-Clearing Member, in accordance with BME CLEARING's Rule Book, General Conditions, Circulars and Instructions.

- b) It may opt for the Trades executed on its own account to be registered: i) in an ISA PtoP Account; or ii) in an OSA, both held by its General Clearing Member and where the Ordinary Non-Clearing Member shall be bear, vis-à-vis its General Clearing Member, which shall be its Counterparty, the rights and obligations corresponding to the Clients of each of these types of Account. Therefore, it may request its General Clearing Member to open ISA PtoP Accounts or request the Trades made on its own account to be registered in an OSA held by the General Clearing Member.
- c) The Trades made by the Ordinary Non-Clearing Member on behalf of its Indirect Clients shall be registered in the Indirect Clearing OSA or the Indirect Clearing GOSA opened at the request of the Ordinary Non-Clearing Member by the General Clearing Member, which shall be the accountholder of the Accounts and responsible for their maintenance and management.

The Ordinary Non-Clearing Member may not be the accountholder, maintain or manage Accounts in BME CLEARING Trades Register.

- d) To communicate for Registration, request the Registration or accept the Transfer of Trades made on its own account or on behalf of its Indirect Clients, and Transfer Trades between Accounts opened at its request that have been designated by the General Clearing Member.
3. The obligations of Ordinary Non-Clearing Members shall be, mutatis mutandis, those stipulated for Non-Clearing Members in the previous article, paragraph 3, a) and g) to o) and letters q) to y). Additionally, following obligations shall also correspond to Ordinary Non-Clearing Members:
- a) To enter into an agreement with one or, at most two General Clearing Member, which shall be its Counterparty, being separately liable before each of them for compliance with all obligations inherent to the Trades made on its own account and Trades made on behalf of Indirect Clients and registered in the Accounts opened and held by the corresponding General Clearing Member at the request of the Ordinary Non-Clearing Member, that have been identified to BME CLEARING, in the manner established by it, irrespective of whether the Indirect Client has complied with such obligation vis-à-vis the Ordinary Non-Clearing Member.
  - b) Where the Ordinary Non-Clearing Members enter into agreements with two General Clearing Members, BME CLEARING shall inform both General Clearing Members of such circumstance, without disclosing the identity of one to the other.
  - c) The General Clearing Member acts in BME CLEARING in its own name and on behalf of the Ordinary Non-Clearing Member, and shall be liable before BME CLEARING for compliance with the obligations inherent to the Trades registered in the Accounts opened by the Ordinary Non-Clearing Member, irrespective of whether the

Ordinary Non-Clearing Member has complied with such obligation vis-à-vis the General Clearing Member.

- d) To be liable before the General Clearing Member for the payment of cash amounts resulting from the related Settlements of any kind, including BME CLEARING's fees, as well as for compliance with the obligation to deliver cash and securities arising from the related Position Settlements registered in the Accounts opened by the General Clearing Member at the request of the Ordinary Non-Clearing Member, irrespective of whether the Indirect Clients have complied with such obligation vis-à-vis the Ordinary Non-Clearing Member.
  - e) In cases where it is so determined for a specified Segment in the related General Conditions, to post and maintain, in favour of the General Clearing Member, Collateral to cover the Margins required by the General Clearing Member.
  - f) Accept the regime for the allocation of Non-Default Losses, under the terms established in this Rule Book and its implementing rules.
4. Agreements between the Ordinary Non-Clearing Members and BME CLEARING shall also include the following:
- a) The designation by the Member of the Segment with respect to which it requests to become a Member.
  - b) The clause relating to submission of any claims which may arise between them to arbitration proceedings as provided for in the Rule Book, waiving any other jurisdiction to which they may be entitled.
  - c) The clause relating to assumption of liability by the Member vis-à-vis BME CLEARING, for any damages which BME CLEARING may suffer as a result of the actions of the Member in BME CLEARING, provided that there has been wilful misconduct or gross negligence on the part of the Member
  - d) The clause relating to assumption of liability by BME CLEARING, within the scope of its duties, vis-à-vis the Member, for any damage which the latter may suffer as a result of the operation of BME CLEARING, provided that there has been wilful misconduct or gross negligence on the part of BME CLEARING.
  - e) BME CLEARING's power to terminate the agreement in the event of Default of the Member, which shall determine the loss of its Member status.
  - f) The express acceptance by the Member to be subject, in relation to its activities in BME CLEARING, exclusively to this Rule Book, General Conditions, Circulars, and Instructions approved by BME CLEARING, and legislation applicable in Spain, both Spanish and EU.
  - g) The clause relating to the acceptance and express submission to the terms applicable to the contractual obligations on confidentiality and personal data protection set out by BME CLEARING by Circular.



5. The General Conditions of each Segment may stipulate specific rights and obligations in relation with the participation of Ordinary Non-Clearing Members and the minimum content of the agreements which should exist, where appropriate, between these Members and BME CLEARING.
6. The provisions of this article shall be applicable, mutatis mutandis, to Proprietary Ordinary Non-Clearing Members, with the exception of those relating to Clients or Indirect Clients.

## **ARTICLE 9. MINIMUM CONTENT OF AGREEMENTS BETWEEN GENERAL CLEARING MEMBERS AND NON-CLEARING MEMBERS OR ORDINARY NON-CLEARING MEMBERS.**

1. The minimum content of the agreements to be entered into between a General Clearing Member and a Non-Clearing Member will identify the CCP Segments to which the contract between the two shall apply and shall include:
  - a) The joint and several liability of the General Clearing Member and the Non-Clearing Member before BME CLEARING for all obligations inherent to the Trades registered in the Accounts opened by the Non-Clearing Member, which have been identified by both parties, irrespective of whether the Non-Clearing Member has complied with such obligation before the General Clearing Member.
  - b) The obligation of the General Clearing Member to make, on behalf of the Non-Clearing Member, the payments and collections of cash, including BME CLEARING's fees and comply with the obligation to deliver cash and securities arising from the related Position Settlement, with regard to the Trades performed in BME CLEARING by the Non-Clearing Member and the Positions registered in the Accounts opened by the Non-Clearing Member which have been identified by both parties, irrespective of whether the Non-Clearing Member has complied with such obligation before the Clearing Member.
  - c) The responsibility of the Non-Clearing Member before the General Clearing Member for the payment of cash amounts resulting from the related Settlements of any kind, including BME CLEARING's fees, as well as for compliance with the obligation to deliver cash and securities arising from the related Settlement of the Positions registered in the Accounts identified by both parties, irrespective of whether the Clients have complied with such obligation vis-à-vis the Non-Clearing Member.
  - d) The obligation of the Non-Clearing Member to inform its Clients and Indirect Clients concerning the different regulations applicable to the different types of Accounts held in the Central Register in accordance with this Rule Book and other applicable regulations, prior to opening the Client or Indirect Client Accounts, indicating the rights and obligations corresponding thereto.

- e) The Non-Clearing Member's undertaking to meet all outstanding financial obligations vis-à-vis BME CLEARING, including BME CLEARING's fees and commissions, even after losing, for any reason, its status as a Member of BME CLEARING, or even if the agreement entered into with the General Clearing Member has been terminated for any reason.
- f) The Non-Clearing Member's obligation to post and maintain, in the form of a Collateral contribution, through its General Clearing Member, the Margins corresponding to the Positions of its Accounts, for which both Members shall be jointly and severally liable vis-à-vis BME CLEARING.
- g) The obligation of the Non-Clearing Member to accept the investment and remuneration regime of the Collateral and the allocation of Investment Losses, in the terms determined by BME CLEARING, as established in the Regulations and its implementing rules.
- h) The Non-Clearing Member's acceptance and active collaboration in the execution of applicable procedures and actions in the event of Settlement Fail or in the event of Default, including those related to the transfer of Accounts, closing of Positions and execution of the Collateral posted as Margins.
- i) The acceptance by the Non-Clearing Member of the close-out netting regime envisaged in this Rule Book and its supplementing regulations.
- j) The express acceptance by both Members to be subject, in relation to their activities in BME CLEARING, exclusively to this Rule Book, General Conditions, Circulars and Instructions approved by BME CLEARING, and to legislation applicable in Spain, both Spanish and EU.
- k) The possibility of the General Clearing Member requesting BME CLEARING to temporarily suspend the Non-Clearing Member's access to BME CLEARING's Trades Register, when the Non-Clearing Member has exceeded the risk limits determined by its General Clearing Member or has incurred in Settlement Fails.
- l) The acceptance and consent of both Members to:
  - The regime for the allocation of Non-Default Losses provided for by BME CLEARING in this Rule Book and its implementing rules.
  - the recovery and loss allocation measures adopted by BME CLEARING within the framework of the Recovery and Resolution Regulation and in accordance with the provisions of this Rule Book and its implementing rules and the provisions of BME CLEARING's recovery plan.
  - the early intervention measures adopted by the Competent Authority in application of the Recovery and Resolution Regulation.
  - Accept and consent the resolution measures, loss and position allocation tools and other resolution tools adopted by the Resolution Authority in application of the Recovery and Resolution Regulation.



2. The minimum content of the agreements to be entered into between a General Clearing Member and an Ordinary Non-Clearing Member will identify the CCP Segments to which the contract between the two shall apply and shall include, mutatis mutandis, the provisions established in sections h), i), j) and l) of the paragraph 9.1 above, and additionally:
  - a) The General Clearing Member's responsibility vis-à-vis BME CLEARING for all obligations inherent to the Trades registered in the Accounts opened at the request of the Ordinary Non-Clearing Member, either on its own account or on behalf of the Indirect Clients of the Ordinary Non-Clearing Member, irrespective of whether the Ordinary Non-Clearing Member has complied with such obligation vis-à-vis the General Clearing Member.
  - b) The General Clearing Member's obligation vis-à-vis BME CLEARING to make, in its own name and on behalf of the Ordinary Non-Clearing Member, the payments and collections of cash, including BME CLEARING's fees, and to meet its obligations to deliver the cash or securities deriving from the corresponding Position Settlement, with respect to the Trades made in BME CLEARING by the Ordinary Non-Clearing Member registered in the Accounts opened at the request of the Ordinary Non-Clearing Member, on its own account or on behalf of the Indirect Clients of the Ordinary Non-Clearing Member, irrespective of whether the Ordinary Non-Clearing Member has complied with such obligation vis-à-vis the General Clearing Member.
  - c) The Ordinary Non-Clearing Member's liability vis-à-vis the General Clearing Member, which shall be its Counterparty, for the payment of cash amounts resulting from the related Settlements of any kind, including BME CLEARING's fees, as well as for compliance with the obligation to deliver cash and securities arising from the related Position Settlements registered in the Accounts opened at the request of the Ordinary Non-Clearing Member, deriving from the Trades executed on its own account or on behalf of its Indirect Clients, irrespective of whether these Clients have complied with such obligation vis-à-vis the Ordinary Non-Clearing Member.
  - d) In cases where it is so determined for a specified Segment in the related General Conditions, the Ordinary Non-Clearing Member shall deposit the Margins required by its General Clearing Member in its favour.
  - e) The authorisation granted by the General Clearing Member to the Ordinary Non-Clearing Member in relation to the Accounts whose opening was requested by the Ordinary Non-Clearing Member, to request and communicate the registration of the Trades and for making and accepting Transfers of Trades registered therein.
  - f) The obligation of the Ordinary Non-Clearing Member to inform its Indirect Clients concerning the different regulations applicable to the different types of Indirect Clearing Accounts held in the Central Register in accordance with this Rule Book and other applicable regulations, prior to the request to open such Accounts, specifically indicating the rights and obligations corresponding to the Indirect Clients.

3. The General Conditions of each Segment may set forth additional types of Non-Clearing Members and of Ordinary Non-Clearing Members and may also stipulate the minimum content of the agreements which should exist, where appropriate, between these Members and General Clearing Members.
4. The provisions of this article shall be applicable, mutatis mutandis, to Proprietary Non-Clearing Members and Proprietary Ordinary Non-Clearing Member, as appropriate, with the exception of those relating to Clients or Indirect Clients.
5. The Non-Clearing Members and the Ordinary Non-Clearing Members may agree with their respective General Clearing Members conditions additional to those laid down as minimum content in this Rule Book or in the General Conditions, provided that such additional terms do not conflict with the provisions of the Rule Book and the General Conditions as to what constitutes minimum content. In case of discrepancy between the additional conditions agreed and the minimum content of contracts provided for in the Rule Book and the General Conditions, the minimum content clauses shall always prevail.

## CHAPTER 3. DIRECT CLEARING CLIENTS

### ARTICLE 10. GENERAL RULES

1. Any entity that may have the category of Individual Clearing Member set down in this Rule Book may obtain the status of Direct Clearing Client.
2. The Direct Clearing Client shall have access to the corresponding Segments through a Member that acts as Agent Member with which it shall enter into an agreement that includes the minimum content set forth in this Rule Book and whereby BME CLEARING will be a party of the agreement. The General Conditions may establish, for each Segment, specific requirements in relation to the Direct Clearing Clients' activity in the relevant Segment.
3. The Direct Clearing Client may request its Agent Member to open Accounts for the Registration of Trades executed for its account. The Direct Clearing Member may exclusively, through its Agent Member, communicate for Registration and request the Registration of Trades it has made on its own account, and may not, under any circumstances, act on behalf of Clients.
4. Unless expressly provided otherwise in the General Conditions, the Direct Clearing Client must meet the minimum level of shareholder's equity established by BME CLEARING for Individual Clearing Members in each Segment in compliance with the corresponding General Conditions. BME CLEARING may establish by Circular, other alternative guarantees and requirements instead of this minimum shareholder's equity, which must provide an equivalent level of solvency, availability and financial security.
5. The Direct Clearing Client is responsible for discharging the financial obligations arising from its participation in BME CLEARING and shall be liable vis-à-vis BME CLEARING for compliance with all the obligations inherent to the Trades registered in its Accounts. The Direct Clearing Client shall post and maintain the Collateral to cover the Margins required under this Rule Book for Individual Clearing Members. The Agent Member shall post and maintain the contributions to the Default Fund as it is set in this Rule Book. Nonetheless, the Default Fund contributions correspond to the Direct Clearing Client.
6. In the event of a default of an Agent Member, contributions to the Default Fund made by the defaulting Agent Member on behalf of the Direct Clearing Client will not be considered contributions to the Default Fund of the defaulting Agent Member, but will be considered contributions of the Direct Clearing Client.
7. In the event of a default of a Direct Clearing Client, the Collateral corresponding to the contributions to the Default Fund made by its Agent Member corresponding to that Direct Clearing Client will be executed, if necessary, as set out in Article 45.8.C.3.,

8. The Direct Clearing Client shall access BME CLEARING through its Agent Member. The Agent Member shall act in the name of and on behalf of the Direct Clearing Client in relation to the rights and obligations of the same with regard to BME CLEARING. All activity between the Direct Clearing Client and BME CLEARING will be managed, administered and settled through the Agent Member.
9. With respect to all that which is not expressly envisaged in this Rule Book, the regulations applicable for Direct Clearing Clients shall be those set forth in this Rule Book and supplementing regulations for Individual Clearing Members, particularly in relation to Margins, Position limits and Default, unless exceptions or specialisations are established. All the rights and obligations recognised in this Rule Book shall be executed and fulfilled by the Direct Clearing Client before BME CLEARING, through the Agent Member, which shall act in the name and on behalf of the Direct Clearing Client.
10. The Direct Clearing Clients may enter into a contract with a second Agent Member, which will only be effective in the event that BME CLEARING's dealings with the first Agent Member are suspended for any reason. If the contract has not been signed with a second Agent Member, an Individual Fund that will be determined by Circular should be posted.

## ARTICLE 11. RIGHTS AND OBLIGATIONS

1. The rights of Direct Clearing Clients shall comprise the following:
  - a) To request their Agent Member to open an Account in the Segments in which the Client requests to operate.
  - b) To request their Agent Member to communicate for Registration or to request Registration of Trades on its own account in the Segments in which they have the status of Direct Clearing Client, in order to subject them to Central Counterparty.
  - c) To receive, through the Agent Member, the amounts in cash and the securities corresponding to Positions registered in their Accounts.
  - d) To exercise the rights inherent to the Positions registered in their Accounts.
  - e) To receive from their Agent Member information relating to the Trades, Positions and Collateral registered in their Accounts.
  - f) To receive information under equal conditions with the remaining participants with systems made available to them by BME CLEARING.
  - g) To lodge their claims pursuant to the procedures set forth in this Rule Book and in their agreement with BME CLEARING.
  - h) The right, which also corresponds to BME CLEARING, to reciprocally set off the cash payment obligations and the Financial Instruments delivery obligations that reciprocally correspond to the Direct Clearing Client and BME CLEARING, and which

are fungible, as long as the obligations are legally enforceable, subject to the limitation established under article 39.9.(b) of EMIR.

**2. The obligations of Direct Clearing Clients comprise the following:**

- a) To know and accept, comply and procure compliance with all terms of this Rule Book, General Conditions, Circulars and Instructions approved by BME CLEARING, and to keep up to date with any relevant amendments, as they are notified by BME CLEARING and appear on the company's web page, expressly being subject, in relation to their activities as Members of BME CLEARING, to this Rule Book and to legislation applicable in Spain, both Spanish legislation and EU legislation, which shall apply to all aspects not expressly stipulated in their agreement with BME CLEARING.
- b) Pay the amounts in cash and deliver the securities corresponding to the Transactions registered in their Accounts in the manner and through the system determined by BME CLEARING in the corresponding General Conditions or by Circular.
- c) To comply with the obligations inherent to the Trades registered in their Accounts.
- d) To post, through their Agent Member, Collateral to cover the Margins required at all times, in favour of BME CLEARING. The obligation of the contribution to the Default Fund shall correspond to the Agent Member.
- e) Accept (i) that except in the case in which it may request non-investment of its Collateral and exercise it, BME CLEARING will invest, in accordance with the criteria and investment policy approved by the Board of Directors, the Collateral provided by the Member; (ii) that, in any case, the Collateral in cash will be remunerated in accordance with the remuneration policy established by BME CLEARING by Circular and; (iii) the regime of allocation of Non-Default Losses, including, but not limited to, Investment Losses under the terms established in the Regulations and its implementing rules.
- f) To make contributions for service continuity and other contributions established by BME CLEARING.
- g) To communicate to their Agent Member whether the Trades are closing Trades, and supply as much information as necessary with respect to the Trades, Positions, Margins and Collateral registered in their Accounts, in cases where this is required by the Rule Book and other applicable regulations.
- h) To communicate to BME CLEARING and the Agent Member the required information concerning themselves to enable BME CLEARING to evaluate compliance with this Rule Book, its supplementing regulations and other applicable regulations, and to determine, control and manage significant risk concentrations. To respond to requests for information from BME CLEARING relating to any sign or information that, in its opinion, may result in failure to comply with the regulations provided in the LMVSI and other applicable legislation, providing the relevant data concerning these signs or information. This obligation is independent of the

communications that Members must provide to the Comisión Nacional del Mercado de Valores or to the relevant Competent Authorities, under the provisions of the regulations on conduct established in the LMVSI and other applicable legislation.

- i) To comply and procure compliance with the rules of conduct provided for in the applicable legislation, in accordance with the provisions of the LMVSI, and arising from their status as a Direct Clearing Member.
- j) To accept and actively collaborate in the execution of any measures envisaged under this Rule Book and corresponding General Conditions and implementing rules in the event of a Settlement Fails or in the event of Default, including those related to the closing of Positions and the execution of the Collateral posted as Margins.
- k) To accept and actively collaborate to ensure that, in the event of Default by the Agent Member, the agreement, when executed, with the second Agent Member becomes effective or otherwise the provisional system established in article 44 is implemented.
- l) To accept the close-out netting regime envisaged in this Rule Book and its supplementing regulations.
- m) To accept the terms applicable to the contractual obligations on confidentiality and personal data protection set out by BME CLEARING by Circular.
- n) Accept and consent to the recovery and loss allocation measures adopted by BME CLEARING within the framework of the Recovery and Resolution Regulation and in accordance with the provisions of this Rule Book and its implementing rules and the provisions of BME CLEARING's recovery plan.
- o) Accept and consent to the early intervention measures adopted by the Competent Authority in application of the Recovery and Resolution Regulation.

In the event that the Competent Authority so decides, within the framework of the early intervention measures provided for in the Recovery and Resolution Regulation, and in accordance with the provisions of article 58 of this Rule Book, they shall inform their Clients in an exhaustive manner about the participation in the auctions referred to in article 58 of this Rule Book, following the instructions received from BME CLEARING to that effect.

- p) Accept and consent the resolution measures, loss and position allocation tools and other resolution tools adopted by the Resolution Authority in application of the Recovery and Resolution Regulation, including, but not limited to:
  - Comply, within the term and in accordance with the provisions established in the Recovery and Resolution Regulation, with the obligations required by the Resolution Authority in the event provided for in article 59 of this Rule Book, even after ceasing to be Clearing Members for any reason.

- Accept and consent the variation margin gains haircutting provided for in article 60 of this Rule Book, waiving any action or claim for reimbursement against BME CLEARING (or its successor entity) arising from such variation margin gains haircutting.

In the event that such a measure is adopted, Direct Clearing Clients shall notify their Clients without undue delay, and inform them of the manner in which such measure will affect such Clients.

- Accept, consent and comply with the obligation to post the cash calls contributions to the Default Fund of BME CLEARING under the terms set out in article 61 of this Rule Book, which obligation shall be performed by the Agent Member.

All the rights and obligations recognised in this Rule Book shall be executed and fulfilled by the Direct Clearing Client before BME CLEARING through the Agent Member, which shall act in BME CLEARING in the name and on behalf of the Direct Clearing Client.

## **ARTICLE 12. MINIMUM CONTENT OF THE AGREEMENT BETWEEN BME CLEARING, THE DIRECT CLEARING CLIENT AND THE AGENT MEMBER**

The agreements entered into between BME CLEARING, the Direct Clearing Clients and the Agent Member shall include the clauses of the agreement between BME CLEARING and Clearing Members set forth in article 5.3, except for those included in paragraphs e), n), o), p), q), and r), and will also include those of paragraph 2 of article 11 on the obligations of Direct Clearing Clients.

Additionally, they shall include the following provisions:

- a) The Direct Clearing Client's obligation to post, through its Agent Member, the Collateral to cover Margins required for Positions held in its Accounts. The obligation to contribute to the Default Fund shall correspond to the Agent Member.
- b) The obligation of the Direct Clearing Client to accept (i) that except in the case in which it may request the non-investment of its Collateral and exercise it, BME CLEARING will invest, in accordance with the criteria and the investment policy approved by the Board of Directors, the Collateral provided by the Member; (ii) that, in any case, the Cash Collateral shall be remunerated in accordance with the remuneration policy established by BME CLEARING by means of Circular and; (iii) the regime for the allocation of Non-Default Losses, including, but not limited to, Investment Losses, under the terms established in the Rule Book and its implementing rules.
- c) The commitment by the Direct Clearing Client to enter into an agreement with a second Agent Member, or otherwise to post the corresponding Individual Fund.



- d) The minimum content set forth in this Rule Book in relation with the Agent Member is established in the following article
- e) The Direct Clearing Client and its Agent Member may agree conditions in addition to those established as minimum content in this Rule Book and in the General Conditions, provided that these additional terms do not conflict with the minimum content provided for in the Rule Book and General Conditions. In the event of discrepancies between the above-mentioned additional conditions and the minimum content laid down in the Rule Book and General Conditions, the minimum content clauses shall always prevail.

### **ARTICLE 13. MINIMUM CONTENT IN RELATION WITH THE AGENT MEMBER OF THE AGREEMENT BETWEEN THE DIRECT CLEARING CLIENT, THE AGENT MEMBER AND BME CLEARING**

1. The designation of an Agent Member that acts in BME CLEARING in the name and on behalf of the Direct Clearing Client.
2. The acceptance of an Agent Member in order to act in BME CLEARING in the name and on behalf of the Direct Clearing Client.
3. The condition that Agent Members shall act in BME CLEARING in the name and on behalf of Direct Clearing Members. All the rights and obligations vis-à-vis BME CLEARING shall exist in favour and against Direct Clearing Clients. However, Direct Clearing Clients shall always access BME CLEARING through their Agent Member.
4. The obligation of the Direct Clearing Client, through its Agent Member, to post and maintain the Collateral to cover the Margins required for Positions held in its Accounts, being responsible vis-a-vis BME CLEARING. The Agent Member shall be responsible for posting and maintaining the Default Fund of the Direct Clearing Client, through the contribution of Collateral, and if applicable the additional contributions, as well as the Default Fund cash call contribution referred to in Article 61 of this Rule Book that may be agreed by the Resolution Authority.
5. The obligation of the Direct Clearing Client to accept (i) that except in the case in which it may request the non-investment of its Collateral and exercise it, BME CLEARING will invest, in accordance with the criteria and the investment policy approved by the Board of Directors, the Collateral provided by the Member; (ii) that, in any case, the Cash Collateral shall be remunerated in accordance with the remuneration policy established by BME CLEARING by means of Circular and; (iii) the regime for the allocation of Non-Default Losses, including, but not limited to, Investment Losses, under the terms established in the Rule Book and its implementing rules.
6. The obligation of the Agent Member to have the material, technical and human resources and procedures in place to act in BME CLEARING in the name and on behalf of the Direct Clearing Client.

7. The obligation of the Agent Member to hold the status of General Clearing Member of the Segment or Segments in which the Direct Clearing Client, with respect to which it acts as Agent Member, is a participant.
8. The liability of the Direct Clearing Client vis-à-vis BME CLEARING for all the obligations inherent to the Trades registered in the Accounts opened by the Agent Member in the name and on behalf of the Direct Clearing Client, which have been identified by both.
9. The obligation of the Agent Member to make cash payments and collections on behalf the Direct Clearing Client, including BME CLEARING fees, resulting from the Trades made by the Agent Member in BME CLEARING on behalf of the Direct Clearing Client and registered in the Accounts opened by the Agent Member identified in the agreement between the two parties.
10. The Direct Clearing Client's undertaking to meet all outstanding financial obligations vis-à-vis BME CLEARING, including BME CLEARING's fees and commissions, even after losing, for any reason, its status as a Direct Clearing Client of BME CLEARING, or if the agreement entered into with the Agent Member has been terminated for any reason.
11. The Direct Clearing Client's acceptance and active collaboration in the execution of applicable procedures and actions in the event of Settlement Fail or in the event of Default, including the closing of Positions and the execution of the Collateral posted as Margins.
12. The Direct Clearing Client's acceptance of the close-out netting regime envisaged in this Rule Book and its supplementing regulations.
13. The express acceptance by the Agent Member and the Direct Clearing Client to be subject, in relation to their activities in BME CLEARING, exclusively to this Rule Book, General Conditions, Circulars and Instructions approved by BME CLEARING and legislation applicable in Spain, both Spanish and EU.
14. The undertaking by the Agent Member to provide BME CLEARING with all detailed information requested in respect of the Trades of each Direct Clearing Client for which it acts as Agent Member.
15. The condition that Agent Members shall not be liable before BME CLEARING for compliance with the obligations of the Direct Clearing Client.
16. If the contract is with the second Agent Member, the provision that the contract will only enter into force in the case of suspension of the actions of the first Agent Member for any reason.
17. The Direct Clearing Client and its Agent Member may agree conditions in addition to those established as minimum content in this Rule Book and in the General Conditions, provided that these additional terms do not conflict with the minimum content provided for in the Rule Book and General Conditions. In the event of discrepancies between the above-mentioned additional conditions and the minimum content laid down in the Rule Book and General Conditions, the minimum content clauses shall always prevail.

18. The acceptance and consent of the Direct Clearing Client and, with regards to the obligation under the last subparagraph of point C) below the acceptance and consent of its Agent Member to:

- A. the recovery and loss allocation measures adopted by BME CLEARING within the framework of the Recovery and Resolution Regulation and in accordance with the provisions of this Rule Book and its implementing rules and the provisions of BME CLEARING's recovery plan.
- B. the early intervention measures adopted by the Competent Authority in application of the Recovery and Resolution Regulation.

In the event that the Competent Authority so decides, within the framework of the early intervention measures provided for in the Recovery and Resolution Regulation, and in accordance with the provisions of article 58 of this Rule Book, the Direct Clearing Client shall inform their Clients in an exhaustive manner about the participation in the auctions referred to in article 58 of this Rule Book, following the instructions received from BME CLEARING to that effect.

- C. the resolution measures, loss and position allocation tools and other resolution tools adopted by the Resolution Authority in application of the Recovery and Resolution Regulation, including, but not limited to:
  - Comply, within the term and in accordance with the provisions established in the Recovery and Resolution Regulation, with the obligations required by the Resolution Authority in the event provided for in article 59 of this Rule Book, even after ceasing to be Clearing Members for any reason.
  - Accept and consent the variation margin gains haircutting provided for in article 60 of this Rule Book, waiving any action or claim for reimbursement against BME CLEARING (or its successor entity) arising from such variation margin gains haircutting. In the event that such a measure is adopted, Direct Clearing Clients shall notify their Clients without undue delay, and inform them of the manner in which such measure will affect such Clients.
  - Accept, consent and comply with the obligation to post the cash call contributions to the Default Fund of BME CLEARING under the terms set out in article 61 of this Rule Book, which obligation shall be performed by the Agent Member.

## ARTICLE 14. AGENT MEMBERS

- 1. General Clearing Members meeting the requirements set forth in this article may request authorisation from BME CLEARING to perform the function of Agent Member.

2. In order to perform the function of Agent Member, Members must meet the minimum level of equity established, where appropriate, by BME CLEARING for the corresponding Segment.
3. Clearing Members exercising the function of Agent Members shall enter into an agreement with the Direct Clearing Client and BME CLEARING that includes the minimum content set forth in this Rule Book.
4. In order to perform the function of Agent Member, Members must meet the following conditions:
  - a) To have the material, technical and human resources and procedures in place to act in BME CLEARING on behalf of the Direct Clearing Client in accordance with the corresponding General Conditions.
  - b) To make the corresponding contribution to the Default Fund of the Direct Clearing Client and the additional contributions, as well as the cash call contribution to the Default Fund referred to in Article 61 of this Rule Book that may be adopted by the Resolution Authority. These contributions to the Default Fund correspond to the Direct Clearing Client in its capacity as a clearing member and cover liabilities arising exclusively from that status, and is therefore not a Margin of the Agent Member.
  - c) To hold the status of General Clearing Member of the Segment or Segments in which the Direct Clearing Client with respect to which it acts as Agent Member, is a participant.
5. Agent Members must provide the Default Fund contribution and the additional contributions of the Direct Clearing Clients with respect to which they act as Agent Members, as well as the cash call contribution to the Default Fund referred to in Article 61 of this Rule Book that may be adopted by the Resolution Authority. Failure to contribute this Default Fund or to update the additional contributions shall be construed as an act of Default by the Direct Clearing Client.
6. Agent Members shall comply vis-à-vis BME CLEARING with the obligations corresponding to them in their role as Agent Member, acting on behalf of the Direct Clearing Client: They shall not be liable before BME CLEARING for discharging the financial obligations of the Direct Clearing Client, The Agent Member shall have no obligation for discharging the obligations corresponding to the Direct Clearing Client, including any settlements or the obligation to deposit Initial and Individual Funds, nor for the financial obligations related to the Default Fund corresponding to the Direct Clearing Client; any default on these obligations will not be a cause of default by the Agent Member.
7. Agent Members shall act in BME CLEARING on behalf of the Direct Clearing Clients with which they have entered into an agreement to act as Agent, referring to the Direct Clearing Clients the rights and obligations of BME CLEARING.
8. The Agent Member must immediately notify BME CLEARING and the Direct Clearing Client if it finds itself in a situation, or thinks it is going to find itself in a situation, in

which it will not be able to fulfil its obligations as a Agent Member as laid down in the contract between the Agent Member, the Direct Clearing Client and BME CLEARING and in this Rule Book.

9. BME CLEARING shall further develop, pursuant to a Circular, the conditions which must be met by the Members in order to act as an Agent Member.
10. Members acting as Agent Members are obliged to provide the Competent Authorities and BME CLEARING with all detailed information requested in respect of the trades of each Direct Clearing Client for which they act as Agent Member.
11. In the event of Default by the Direct Clearing Client, the Agent Member shall collaborate and carry out all measures required by BME CLEARING in application of the conditions established in this Rule Book.
12. If the Agent Member fails to comply with any of the conditions and obligations established in Chapter 3 of this Rule Book and its supplementing regulations, and without prejudice to the application, if appropriate, of the regime established for Defaults in Chapter 9 hereof, BME CLEARING may revoke the authorisation given to the Member to perform the function of Agent Member.
13. The revocation of the authorisation to perform the function of Agent Member shall entail the adoption by BME CLEARING and the Member involved of any necessary measures in relation to the Accounts of the Direct Clearing Clients for which it acts as Agent Member.
14. If an Agent Member that is not in default is replaced, BME CLEARING will return to the outgoing Agent Member its contributions to the Default Fund corresponding to the Direct Clearing Client that has instigated the replacement, once it has received the new Agent Member's contributions to the Default Fund corresponding to the Direct Clearing Client in question

## CHAPTER 4. CLIENTS

### ARTICLE 15. GENERAL RULES

1. Any individual or legal entity may be a Client.
2. The Client shall have access to the corresponding Segments through a Clearing Member or a Non-Clearing Member, subject to the requisites set forth in this Rule Book. The General Conditions may set forth, for each Segment, specific requisites in relation to Client activity.
3. The Client may request the Members with which it acts to open an ISA Agency or ISA PtoP to register the Trades made on its own account or request that these Trades are registered in an OSA, in cases provided for in the corresponding General Conditions for a particular Segment, in the corresponding Second-Tier Register Account.

### ARTICLE 16. RIGHTS AND OBLIGATIONS. CONTRACTUAL RELATIONSHIP BETWEEN MEMBERS AND CLIENTS

1. The rights of Clients comprise the following:
  - a) To request the Members, with respect to the Segments in which they wish to act as Clients, to open an ISA Agency or an ISA PtoP, or request that the Trades made on their own name are registered in an OSA, and, in cases provided for in the corresponding General Conditions for a particular Segment, in the corresponding Second-Tier Register Account.
  - b) To request the corresponding Member to communicate for Registration or to request Registration of Trades in the respective Segments in which it holds the status of Client.
  - c) To exercise, through the corresponding Member, the rights inherent to the Trades registered in their Accounts and receive the cash amounts and securities corresponding to Positions registered in their Accounts.
  - d) To receive from the corresponding Member information relating to the Trades, Positions, Margins and Collateral registered in their Accounts.
  - e) To report their claims pursuant to the procedures set forth in this Rule Book.
2. The obligations of Clients comprise the following:

- a) To know and comply with this Rule Book, the General Conditions, the Circulars, and the Instructions approved by BME CLEARING and their successive amendments, which will be public, expressly accepting to be subject, in relation with their activities as Clients in BME CLEARING, exclusively to the aforementioned rules and regulations and the legislation applicable in Spain, both Spanish and EU.
- b) To comply, through the corresponding Member, with the obligations inherent to the Positions registered in their Accounts and pay their Member the cash amounts and deliver the securities corresponding to the Positions registered in their Accounts.

Clients holding an ISA Agency shall act through their Member, which shall act in BME CLEARING on behalf of their Client, and be jointly and severally liable with the Member before BME CLEARING, which shall be its Central Counterparty, for compliance with the obligations inherent to the opening and use of these Accounts deriving from the Trades registered therein.

Clients of an ISA PtoP or OSA and, where applicable, of the corresponding Second-Tier Register Account, shall act through their Member, which shall act in BME CLEARING in their own name on behalf of the Client and shall be liable before their Member, which shall be their Counterparty, for compliance with the obligations deriving from the Trades executed on behalf of the Client and registered in these Accounts.

Each Member's liability vis-à-vis BME CLEARING in relation with the Trades made on behalf of the Client shall be limited exclusively to the Trades registered in the Client Accounts kept by the corresponding Member.

- c) To post and maintain the Collateral to cover the Margins required at all times, in favour of BME CLEARING and through their Member, if they are the accountholder of an ISA Agency, for which the Client and Member are jointly and severally liable before BME CLEARING.

Accept the investment and remuneration regime for Collateral and the allocation of Non-Default Losses, including, but not limited to, Investment Losses, in the terms determined by BME CLEARING, as established in the Rule Book and its implementing rules.

In the cases provided for in the corresponding General Conditions for a particular Segment, to post and maintain Collateral to cover these Margins, in favour of the Member, for ISA PtoP Accounts and OSA Accounts, or in favour of the corresponding Member with the capacity to run a Second-Tier Register, if the Client is the holder of a Second-Tier Register Account.

- d) To communicate to the corresponding Member whether the Trades are closing Trades, if required pursuant to applicable regulations.
- e) To communicate to the corresponding Member the required information concerning the Client, which shall include, the Client's name, address, and tax identification number, the legal entities' identification code, if applicable, and,



where appropriate, the identity of their legal representative and justification of such representation.

- f) To comply with the rules of conduct provided for in applicable legislation, in accordance with the provisions of the LMVSI, and arising from their status as Client.
  - g) To accept and actively collaborate in the execution of applicable procedures and actions provided for in this Rule Book, the corresponding General Conditions and implementing rules, in the event of Settlement Fail or in the event of Default, including those related to the transfer of Positions and Collateral, closing of Positions and execution of any Collateral posted as Margins.
  - h) To accept the close-out netting regime envisaged in this Rule Book and its supplementing regulations.
  - i) To accept that their name, address and tax identification number, legal entities identification code and the Account number assigned, may be communicated by the Member to BME CLEARING, and if necessary, by the Member or by BME CLEARING to the Competent Authorities.
  - j) To accept the terms applicable to the contractual obligations on confidentiality and personal data protection set out by BME CLEARING by Circular.
  - k) Accept the regime of allocation of Non-Default Losses under the terms established in this Rule Book and its implementing rules.
  - l) Accept and consent to the recovery and loss allocation measures adopted by BME CLEARING within the framework of the Recovery and Resolution Regulation and in accordance with the provisions of this Rule Book and its implementing rules and the provisions of BME CLEARING's recovery plan.
  - m) Accept and consent to the early intervention measures adopted by the Competent Authority in application of the Recovery and Resolution Regulation.
  - n) Accept and consent the resolution measures, loss and position allocation tools and other resolution tools adopted by the Resolution Authority in application of the Recovery and Resolution Regulation, referred to in Article 59 of this Rule Book, including, but not limited to the variation margin gains haircutting provided for in article 60 of this Rule Book, waiving any action or claim for reimbursement against BME CLEARING (or its successor entity) arising from such variation margin gains haircutting.
3. The contractual relationship between a Member and a Client shall follow the terms agreed upon by the parties, and shall be subject to the specific requirements, where appropriate, that are established in the corresponding General Conditions. The terms should mention the rights and obligations of the Client, the type of Account, and the acceptance of the regulation of BME CLEARING and the Client's submission in relation to its activity in BME CLEARING, solely to these regulations and to legislation applicable in Spain, both Spanish and EU.

## ARTICLE 17. INDIRECT CLEARING. DIRECT CLIENTS AND INDIRECT CLIENTS

1. In accordance with the corresponding Indirect Clearing Agreement, Clearing Members, Non-Clearing Members and Ordinary Non-Clearing Members having the status of investment services company or credit institution, may provide Indirect Clearing services. The terms and conditions of this Rule Book with regard to the actions of these Members on behalf of their Indirect Clients will be applicable to the provision of these services to their Indirect Clients. Non-Clearing Members and Ordinary Non-Clearing Members, in their actions on behalf of their Indirect Clients, will be considered to be Direct Clients of their General Clearing Member.
2. Clients of a Clearing Member, that hold the status of an investment services firm or credit institution, may also provide Indirect Clearing services, in accordance with the corresponding Indirect Clearing Agreement.

Clients of Clearing Members, in their role as Direct Clients for the purposes of Indirect Clearing:

- May be accountholders of an Indirect Clearing OSA or Indirect Clearing GOSA opened in BME CLEARING's Central Register through and at the request of the Clearing Member, and in this case:
  - Shall act in BME CLEARING, which shall be their Central Counterparty, in their own name on behalf of their Indirect Clients. In any case, they shall also act through their Clearing Member, which shall act in the name and on behalf of the Direct Client;
  - Must post and maintain the Collateral to cover the Margins required at all times, in favour of BME CLEARING and through their Clearing Member. The Direct Client and the Clearing Member shall be jointly and severally liable before BME CLEARING for compliance with all obligations associated with the opening and use of Indirect Clearing OSA and Indirect Clearing GOSA accounts deriving from the Trades registered in these Accounts;
- They shall be liable before the General Clearing Member in regard to the Trades registered in these Accounts, irrespective of whether the Indirect Clients have complied with said obligation vis-à-vis the Direct Client;
- They must provide the Clearing Member as much information as necessary with respect to the Trades, Positions, Margins and Collateral registered in the Accounts dedicated to Indirect Clearing, in cases where this is required by the Rule Book and other applicable regulations.
- They must inform their Indirect Clients about the different regulations applicable to the different types of Accounts dedicated to Indirect Clearing in accordance with this Rule Book and other applicable regulation, prior to requesting the opening of

these Accounts, specifically indicating the rights and obligations corresponding to the Indirect Clients.

- In the event of their Default, they must collaborate in the execution of the procedures to transfer the Accounts or to close the Positions, and provide the Clearing Member with all the information concerning their Indirect Clients in the terms and conditions set in Chapter 9 of this Rule Book.
3. Indirect Clients hold with respect to Direct Clients (be they Clients of a Clearing Member, a Non-Clearing Member or Ordinary Non-Clearing Member), mutatis mutandis, the rights corresponding to Clients established in article 16.1 above, paragraphs b), c) and d), and the obligations set forth in article 16.2, paragraphs a), b).1, d) to n). Additionally, Indirect Clients must agree that, in the event of Default of the Direct Client, the Direct Client shall transfer all information relating to them to the Clearing Member. The terms and conditions forming part of the contractual relationship between Clearing Members, Direct Clients and Indirect Clients shall follow the terms agreed upon by the parties in the corresponding Indirect Clearing Agreement, and should mention the rights and obligations of the Indirect Clients, the type of Account they have selected, and the acceptance of the regulation of BME CLEARING and the Indirect Client's submission in relation to its activity in BME CLEARING, to such regulation and legislation applicable in Spain, both Spanish and EU.

## CHAPTER 5. TRADES

### ARTICLE 18. GENERAL RULES

1. BME CLEARING shall organise the Clearing, Settlement, Registration and Central Counterparty of the Trades, carrying out all or only some of these functions, pursuant to the related General Conditions for each Segment.
2. The General Conditions, which shall be attached as an Appendix to this Rule Book, and form an integral part of the same, shall set forth for each Segment, without limitation:
  - A) The name of the Segment.
  - B) The Financial Instruments or other assets and the Transactions to which they may be subject, which form part of the corresponding Segment, as well as the particular rules to be applied regarding the adjustments to the characteristics of the Financial Instruments or other assets, in the cases in which this is foreseen.
  - C) The system and form of Position Settlement and any specific rules applicable to Clearing and Position Settlement activities, including, where appropriate, Settlement Fails.
  - D) Duties to be performed by BME CLEARING in relation to the Trades.
  - E) Specific rules which, where necessary, must be applied as concerns Registration, Communication for Registration or Requests for Registration and the procedure to accept the Communication or Request in the Trades Register, as well as in relation to the requirement of keeping of Accounts in the Central Register or in the Second-Tier Register.
  - F) Specific rules which, where necessary, must be applied to calculate and require Margins.
  - G) In the Financial Derivatives Segment, in the event of Trades on Derivatives where the Underlying Asset is an index, an express reference and referral shall be included to the rules relating to the composition and calculation of the index.
  - H) Information that BME CLEARING shall broadcast in relation to the Trades and information, transmission and storage systems.
  - I) Additional conditions or requirements applicable to Members and Clients.
  - J) Additional types of Members, as a result of the special features which exist in relation to the requirements demanded, or the powers, rights and obligations corresponding to them, together with the minimum content of the agreements which must exist, where appropriate, between these Members and BME CLEARING or among Members themselves.

- K) Additional types of Accounts, since the Registration of Positions and the Calculation of Margins are performed gross or net, and due to specialisms relating to the Account holder.
  - L) Requirements applicable to the relationship that, as the case may be, must exist between the Members of BME CLEARING and the trading members of the Markets and the participating entities of the settlement systems, payment systems, cash payment or asset delivery mechanisms in which, respectively, the trading of the Financial Instruments or assets and the Settlement of Positions is carried out or through which the Cash Settlement or the delivery of assets is carried out.
  - M) Specific rules applicable in relation to Default of Members or Clients.
  - N) Particular rules, if any, that should exist with respect to the allocation of Non-Default Losses.
  - O) Particular rules, if any, that may exist in relation to the recovery and resolution measures of BME CLEARING.
3. BME CLEARING shall establish Segments, based, among other criteria, on the type of Financial Instrument or asset that is the object of the related Trades, the Market, or the fact that trading and/or settlement in such Financial Instruments takes place outside any Market or settlement system or in accordance with applicable payment systems or cash settlement facilities. All Financial Instruments or assets and their related Trades shall belong to a Segment. For each Segment, the regulations and the Margins determined by BME CLEARING in the relevant General Conditions, Circulars and Instructions shall apply.

## CHAPTER 6. REGISTRATION

### ARTICLE 19. TRADES REGISTER. GENERAL PROVISIONS

1. The Trades Register shall be managed by BME CLEARING, which shall administer the Central Register, where applicable together with the Members with the Capacity to run a Second-Tier Register, which shall manage the Second-Tier Register of OSA accounts in the Central Register.
2. BME CLEARING shall act as Central Counterparty from the time the Trades are entered in the Central Register.
3. The Trades Register shall include the Trades, their resulting Positions, required Margins and Collateral, as well as any other transactions arising from the Trades registered that should be entered.
4. Admission to the Trades Register shall take place by the routes described in the following article. Access to the Trades Register shall take place by entering the Trade in the Central Register.
5. Entries in the Central Register and the Second-Tier Register Accounts may only be made in accordance with this Rule Book and supplementing regulations.
6. BME CLEARING shall be responsible, in relation to the Accounts of the Central Register, and the Members with the Capacity to run a Second-Tier Register shall be responsible in relation to the Accounts of the Second-Tier Register, of the possibility of identifying the whole life of the Trades, and of the Positions resulting therefrom, from registration to settlement, as the case may be, or until Counterparty duties cease, enabling a comprehensive and accurate reconstruction of the Clearing process for each Trade and Positions to be made and enabling to directly connect a Trade or Position with their origin.

### ARTICLE 20. FORMS OF ADMISSION TO THE TRADES REGISTER

1. Admission to the Trades Register may take place by the following routes:

#### **A) Communication for Registration**

The Market Trades on Financial Instruments admitted by BME CLEARING, which are determined in the corresponding General Conditions, shall be admitted to the Trade Register via this route.

Market Trades shall be deemed entered in the Trades Register once BME CLEARING has accepted the Communication for Registration made, on behalf of a Member, by the Market in accordance with the procedures set forth in the corresponding General

Conditions and Circulars and in accordance with the terms of the agreement between BME CLEARING with the corresponding Market.

## **B) Request for Registration**

BME CLEARING may register the OTC Trades admitted by BME CLEARING which are determined in the corresponding General Conditions.

These OTC Trades shall be deemed entered in the Trades Register once BME CLEARING has accepted the Request for Registration made on behalf of a Member, in accordance with the procedures set forth in the corresponding General Conditions and Circulars.

## **C) Generation of Trades by BME CLEARING**

BME CLEARING may register the Trades generated in the management of Settlement Fails according to the provisions established in the corresponding General Conditions and supplementing regulations.

2. BME CLEARING may suspend one or more access routes to the Register, for the period deemed suitable, in cases of force majeure or when necessary to protect BME CLEARING or its participants. BME CLEARING shall inform the Comisión Nacional del Mercado de Valores of such decisions, as soon as possible, and shall make them public. The Comisión Nacional del Mercado de Valores may order the suspension to be lifted.

## **ARTICLE 21. CENTRAL REGISTER ACCOUNTS. PROPRIETARY ACCOUNTS AND CLIENT ACCOUNTS**

### **1. Proprietary accounts. Accountholder and Counterparty relationship**

Proprietary Accounts are Accounts where proprietary Trades and Positions of the corresponding Member are registered individually, in addition to the Margins and Collateral posted.

The following types of Proprietary Accounts may be kept in the Central Register managed by BME CLEARING:

- A. Proprietary Account**, held by a Clearing Member or a Non-Clearing Member, in which the Trades made in the name and on behalf of the account holder are registered, reflecting the net Position of the Member holding the Account, in addition to the Margins required and Collateral posted.

BME CLEARING shall be the Central Counterparty of the Member holding the Account with respect to the Trades registered in the Proprietary Account.

- B. Proprietary Account of a Direct Clearing Client**, held by a Direct Clearing Client, where the Trades made in the name and on behalf of the account holder are registered, reflecting the net Position of the Direct Clearing Client, the Margins required to the Direct Clearing Client and Collateral posted.



BME CLEARING shall be the Central Counterparty of the Direct Clearing Client with respect to the Trades registered in the Proprietary Account of the Direct Clearing Client.

The opening of this Account must be requested by the Agent Member of the Direct Clearing Client. With respect to all that which is not expressly envisaged in this Rule Book for Direct Clearing Client Accounts, the applicable provisions in this regard shall be those set forth for the Proprietary Account of an Individual Clearing Member.

When so established in the General Conditions, the Proprietary Account and the Proprietary Account of the Direct Clearing Client may reflect the gross Position.

## 2. Client accounts. Individual Segregated Accounts and Omnibus Segregated Accounts

Client Accounts are Accounts in which, according to the Client's choice in relation to the type of Client Account, the Trades and Positions made on behalf of Clients are registered, in addition to the Margins and Collateral posted. Client Accounts may be:

- a) *Individual Segregated Accounts (ISA)*: Accounts where the Trades and Positions kept on behalf of the sole Client holding the account are registered individually, in addition to the Margins and Collateral posted.
- b) *Omnibus Segregated Accounts (OSA)*: Accounts where the Trades and Positions kept on behalf of multiple Clients of the Account holder are registered, in addition to the Margins required and Collateral posted. OSA Accounts are opened for and in the name of a Clearing Member.

## 3. Accountholder and Counterparty relationship in Individual Segregated Accounts

The following types of Individual Segregated Accounts may be kept in the Central Register managed by BME CLEARING:

- A. Individual Segregated Client Account - Agency (ISA Agency Model)** held by a Client, whose identity must be known to BME CLEARING, opened through a Clearing Member or a Non-Clearing Member, where Trades made in the name and on behalf of the Client are registered, reflecting individually the Client's individual net position, required Margins and Collateral posted.

BME CLEARING shall be the Central Counterparty of the Client holding the Account with respect to the Trades registered in the ISA Agency Accounts.

- B. Individual Segregated Client Account -Principal to Principal (ISA PtoP Model)** held by a Clearing Member, where Trades made in the name of the Member and on behalf of a Client are registered, reflecting individually the net Position held in the Account, the required Margins and Collateral posted by the Member holding the Account.

BME CLEARING shall be the Central Counterparty of the Clearing Member holding the Account with respect to the Trades registered in the ISA PtoP Accounts.

The Client on behalf of which the Trades are held in such Account shall have the Clearing Member as Counterparty, subject to the terms agreed by the two parties.

When so established in the General Conditions, the Individual Segregated Client Account may reflect the gross Position.

#### 4. Accountholder and Counterparty relationship in Omnibus Segregated Client Accounts

The following types of **Omnibus Segregated Client Accounts (OSA)** may be held in the Central Register managed by BME CLEARING.

The Clearing Members may be holders of the OSA Accounts, where the Trades made in the name of the Clearing Member and on behalf of multiple Clients are registered, reflecting the sum of the Positions held by the Clearing Member on behalf of these Clients, the Margins required to the Clearing Member and the Collateral posted by the Clearing Member.

BME CLEARING shall be the Central Counterparty of the Clearing Member with respect to the Trades registered in the OSA Account. The multiple Clients on behalf of which the Trades are held in such Account shall have the Clearing Member as Counterparty, subject to the terms agreed by the two parties.

#### 5. Management of Proprietary Accounts and Client Accounts. Ancillary accounts for administrative, operative and risk management purposes

In relation to each of the Proprietary and Client Accounts opened in the Central Register, BME CLEARING shall maintain the following ancillary accounts, for administrative and operational purposes and for risk management, with the exceptions or special features which, where appropriate, are established for specific Segments in the corresponding General Conditions or Circulars:

##### A. **Position Accounts**, where the Positions resulting from the Trades entered in each of the Accounts are registered.

1. Proprietary Accounts may have one or more Position Accounts, at the discretion of their holder, and the registration of Positions in all such Positions Accounts will always be net, except if the General Conditions foresee the possibility of gross registration of Positions.
2. ISA Agency and ISA PtoP Client Accounts may have one or more Position Accounts, at the discretion of their holder, and the registration of Positions in all such Position Accounts will always be net, except if the General Conditions foresee the possibility of gross registration of Positions.
3. OSA Client Accounts may also have one or more Position Accounts, at the discretion of the Clearing Member. If there is only one Position Account, the registration of the Positions will be gross. If there are more than one Position Accounts, the registration of the Position may be gross or net in each one, at the discretion of the Clearing Member.

4. When, in each Proprietary Account, ISA Agency Account or ISA PtoP Account and OSA Account, there are several Position Accounts, BME CLEARING shall only be liable for the obligations deriving from the net Position resulting from all these Position Accounts taken together.
- B. Margin Accounts**, where the Margins required from the Account holder are calculated and entered in relation to the open Position arising from the total number of Position Accounts associated with the corresponding Margin Account. There shall be only one Margin Account for each Proprietary, ISA Agency, ISA PtoP and OSA Accounts.
  - C. Collateral Account**, where a record is held of the assets posted by the Account holder to cover the required Margins, as these have been calculated and entered in the corresponding Margin Account. There shall be only one Collateral Account for each Account.

## ARTICLE 22. CENTRAL REGISTER INDIRECT CLEARING ACCOUNTS

### 1. Indirect Clearing Accounts

The following types of Indirect Clearing Accounts may be held in the Central Register managed by BME CLEARING:

- A. Omnibus Segregated Client Account- Indirect Clearing (Indirect Clearing OSA)**, where Trades, Positions, Margins and Collateral held on behalf of multiple Indirect Clients (which have opted for this type of Account) of one or more Direct Clients are registered.
- B. Gross Omnibus Segregated Client Account- Indirect Clearing (Indirect Clearing GOSA)**, where Trades, Positions and Margins held on behalf of each of the Indirect Clients (which have opted for this type of Account) of a sole Direct Client and the Collateral held on behalf of all these Indirect Clients are registered.

### 2. Accountholder and Counterparty relationship in Indirect Clearing Accounts

According to the holder of the Indirect Clearing Account, whose identity should be known by BME CLEARING, and the Counterparty relationships deriving from the Trades registered in these Accounts, the following types of Account exist:

- A. Indirect Clearing Omnibus Segregated Account (Indirect Clearing OSA) held by a Clearing Member**, where a record is kept of the Trades made in the name of the Clearing Member on behalf of multiple Indirect Clients of one or more Ordinary Non-Clearing Members (Direct Client) or Clients of the Clearing Member (Direct Client), reflecting the Positions held by the Clearing Member on behalf of these Indirect Clients, the Margins required and the Collateral posted by the Clearing Member holding the Account.

BME CLEARING shall be the Central Counterparty of the Clearing Member holding the Account with respect to the Trades that are registered in the OSA Indirect Clearing Account.

The Clearing Member that is the holder of the Account shall be the Counterparty of the Direct Clients of the Clearing Member. The Direct Client shall be the Counterparty of the multiple Indirect Clients, whose identity shall not be known by BME CLEARING. The Counterparties referred to in this section are subject to the terms agreed by the parties in corresponding Indirect Clearing Agreement.

- B. Indirect Clearing Omnibus Segregated Client Account (Indirect Clearing OSA) held by a Non-Clearing Member or by a Client of a Clearing Member**, where a record is kept of the Trades made in the name of the Non-Clearing Member holding the Account (Direct Client) or in the name of the Client of the Clearing Member holding the Account (Direct Client) on behalf of multiple Indirect Clients, reflecting the Positions held by the Direct Clients holding the Accounts on behalf of these Indirect Clients, in addition to the Margins required and Collateral posted by the Direct Clients holding the Accounts.

BME CLEARING shall be the Central Counterparty of the Direct Client holding the Account with respect to the Trades registered in the Indirect Clearing OSA Account.

The multiple Indirect Clients on behalf of which the Trades are held in this Account, whose identity shall not be known by BME CLEARING, shall have the Direct Client holding the Account as Counterparty, subject to the terms agreed in the corresponding Indirect Clearing Agreement.

- C. Indirect Clearing Gross Omnibus Segregated Account (Indirect Clearing GOSA), held by a Clearing Member**, where a record is kept of the Trades made in the name of the Clearing Member on behalf of each of the Indirect Clients of a specific Ordinary Non-Clearing Member (Direct Client) or of the Client of a Clearing Member (Direct Client), individually reflecting for each of the Indirect Clients the Positions held by the Clearing Member and Margins required, and reflecting the Collateral posted by the Clearing Member holding the Account for all the Indirect Clients.

BME CLEARING shall be the Central Counterparty of the Clearing Member holding the Account with respect to the Trades registered in the Indirect Clearing GOSA Account.

The Clearing Member that is the holder of the Account shall be the Counterparty of the Direct Client of the Clearing Member. The Direct Client of the Clearing Member shall be the Counterparty of the multiple Indirect Clients, whose identity shall not be known by BME CLEARING. The Counterparties referred to in this section are subject to the terms agreed by the parties in corresponding Indirect Clearing Agreement.

- D. Indirect Clearing Gross Omnibus Segregated Client Account (Indirect Clearing GOSA) held by a Non-Clearing Member or by the Client of a Clearing Member**, where a record is kept of the Trades made in the name of the Non-Clearing Member holding the Account (Direct Client) or in the name of the Client of the Clearing Member holding the Account (Direct Client), on behalf of each of the Indirect Clients,

individually reflecting for each of the Indirect Clients the Positions held by the holder for their account and the Margins required, and reflecting the Collateral posted by the Direct Client holding the Account for all the Indirect Clients.

BME CLEARING shall be the Central Counterparty of the Direct Client holding the Account with respect to the Trades registered in the Indirect Clearing GOSA.

The multiple Indirect Clients, whose identity shall not be known by BME CLEARING, shall have the Direct Client holding the Account as Counterparty, subject to the terms agreed by the parties in the corresponding Indirect Clearing Agreement.

**3. Management of Indirect Clearing Accounts.** Ancillary accounts for administrative, operative and risk management purposes.

In relation to each of the Indirect Clearing Accounts opened in the Central Register, BME CLEARING shall maintain the following ancillary accounts, for administrative and operative purposes and for risk management, with the exceptions and special features which, where appropriate, are established for specific Segments in the corresponding General Conditions or Circulars:

**A. Position Accounts**, where the Positions resulting from the Trades entered in each of the Accounts are registered.

1. Indirect Clearing OSA Accounts may have one or more Position Accounts, at the discretion of the holder, and the registration of the Positions may be gross or net. When there are several Position Accounts, BME CLEARING shall only be liable for the obligations deriving from the net Position resulting from all these Position Accounts taken together.
2. Indirect Clearing GOSA Accounts will have one Position Account for each Indirect Client, and the Positions will always be registered net.

The Clearing Member and Non-Clearing Member holding an Indirect Clearing GOSA must transmit to BME CLEARING on a daily basis all information required to identify the Positions corresponding to each of the Indirect Clients. Additionally, and for the same purpose, the Clients of a Clearing Member and Ordinary Non-Clearing Members, in their role as Direct Clients, shall supply their General Clearing Member on a daily basis with all information required to identify the Positions corresponding to each of their Indirect Clients.

**B. Margin Accounts:**

1. Indirect Clearing OSA Account, where the Margins required to the Account holder are calculated and entered in relation to the open Position arising from the total number of Position Accounts associated with the corresponding Margin Account. There shall only be one Margin account for each Account.
2. Indirect Clearing GOSA Account, where the Margins required to the Account holder are calculated and entered in relation to the net open Position arising from each of the Position Accounts opened for each of the Indirect Clients. There shall be as many Margin Accounts as there are Position Accounts. The

total amount of the Margin required shall be the sum of the required Margins entered for all the corresponding Margin Accounts.

**C. Collateral Account:** there shall only be one Collateral Account for each Account.

1. Indirect Clearing OSA Account, where the assets posted by the Account holder to cover the required Margins (as these have been calculated and entered in the corresponding Margin Account) are registered.
2. Indirect Clearing GOSA: where the assets posted by the Account holder (to cover the sum of the Margins calculated and entered in all the corresponding Margin Accounts) are registered.

## ARTICLE 23. OTHER PROVISIONS APPLICABLE TO CENTRAL REGISTER ACCOUNTS

1. The General Conditions may establish additional types of Accounts for each BME CLEARING Segment, due to the Registration of Positions and the Calculation of Margins performed in gross or in net, or as a result of specialisms relating to the Account holder, among others. From the types of Accounts set forth in this Rule Book and the corresponding General Conditions, BME CLEARING may implement the different options available through Circulars.
2. The opening of Accounts in the Central Register must be requested from BME CLEARING by the corresponding Clearing Member or Non-Clearing Member.
3. Trades performed by Clearing Members or Non-Clearing Members on their own account shall be entered in their corresponding Proprietary Accounts.
4. Ordinary Non-Clearing Members that shall not be holders of Proprietary Accounts may opt to register the Trades made on their behalf and their Positions, Margins and Collateral:
  - a) in an ISA PtoP held by its General Clearing Member, which shall be their counterparty, and the Ordinary Non-Clearing Member shall be bear, vis-à-vis its General Clearing Member, the rights and obligations corresponding to the Clients of this type of Account; or
  - b) in an OSA held by its General Clearing Member, which shall be its counterparty, and the Ordinary Non-Clearing Member shall be bear, vis-à-vis its General Clearing Member, the rights and obligations corresponding to the Clients of this type of Account. Under no circumstances may Trades performed on behalf of an Ordinary Non-Clearing Member be entered in the same OSA Client Account in which the Trades made on behalf of the clients of this Ordinary Non-Clearing Member are registered.
5. Trades performed on behalf of Clients, in addition to their Positions, Margins and Collateral shall be entered, at their discretion, in the corresponding ISA Agency, ISA

PtoP or OSA and in the Segments required under the prevailing General Conditions in the corresponding Second-Tier Register opened by the appropriate Member.

Trades performed on behalf of Indirect Clients, in addition to their Positions, Margins and Collateral shall be entered in the corresponding Indirect Clearing OSA or GOSA, as designated by the Direct Client, taking into account the preference of the Indirect Client.

6. Clearing shall not be performed for the cash payment obligations and securities deliveries resulting from the Positions registered in different Accounts.
7. Members, when trading on their own account and Clients, may communicate for Registration or request the Registration of Trades through other Members or, in the case of Clients, through Members other than the Member with which they have opened their Account. In order for the Trades to be registered in the Member's Proprietary Account or in the Client's Account, as applicable, BME CLEARING shall establish, by means of a Circular, the procedure for Transferring Trades (give-up) in the Central Register between the Accounts of the Member performing the Trade and the Account where it is to be registered.
8. Entries in the Central Register may be amended or, if appropriate, cancelled by BME CLEARING in the following cases, which shall be developed through a Circular:
  - A. Evident material errors or technical failure.
  - B. Trades offset within the same Account.
  - C. Transfers between Accounts.
  - D. Amendments or cancellations of Market Trades agreed on a Market with which BME CLEARING has made the appropriate agreements to act as CCP, when this Market informs BME CLEARING of the amendment or cancellation of these Trades.

In any event, BME CLEARING may request the justifying documents it deems necessary in order to perform any amendments or cancellations requested.

BME CLEARING shall invoice any amendments and cancellations made according to the prices published in the fee schedule approved from time to time pursuant to a Circular.

9. Access hours to the Central Register shall be regulated by Circular.

## **ARTICLE 24. SECOND-TIER REGISTER ACCOUNTS SYSTEM**

1. In those cases where this is envisaged in the corresponding General Conditions for a particular Segment, and with respect to the OSA in the Central Register, Members with the capacity to run a Second-Tier Register shall carry Second-Tier Register Accounts, whose holders are Clients, which shall record the Trades, Positions, Margins required and, where applicable, the assets used to post the collateral to cover the Margins required to the account holder, and which shall reflect at all times the Position of each



Client vis-à-vis the Member with the capacity to run a Second-Tier Register, which shall be the counterparty of this Client.

2. Trades performed by a Member in its own name and on behalf of Clients that have an Account in the Second-Tier Register shall be entered in the corresponding OSA of the Central Register and, simultaneously, in the corresponding Account of the Second-Tier Register, and only the latter shall include the Client's identity. All entries made in Second-Tier Registers shall also be reflected in the Central Register OSA.
3. Second-Tier Register Accounts must be in agreement with the corresponding Central Register OSA, so that Trades registered in the latter reflect the Trades registered in detail in the former. To this effect, Position adjustments must be made in Central Register OSA accounts with gross Position Accounts, as a result of the closing of Trades or Positions in Second-Tier Register Accounts.

In order to keep due correspondence between Central Register OSA accounts and Second-Tier Register Accounts, BME CLEARING shall establish by Circular the periodical procedures required to compare the Positions registered in these Accounts.

4. Members with the capacity to run a Second-Tier Register must strictly comply with any information requests made by BME CLEARING or the Competent Authorities in relation to the management of Second-Tier Register Accounts.

## **ARTICLE 25. MEMBERS WITH THE CAPACITY TO RUN A SECOND-TIER REGISTER**

1. For the BME CLEARING Segments where the General Conditions require the keeping of Second-Tier Register Accounts for any OSA in the Central Register, Individual Clearing Members and General Clearing Members shall be authorised to perform the function of a Member with the capacity to run a Second-Tier Register in order to manage Second-Tier Register Accounts, according to the terms of this article.
2. In order to manage Second-Tier Register Accounts, Clearing Members must meet the following conditions:
  - A. They shall maintain a minimum shareholder's equity level as established by BME CLEARING for each Segment in the corresponding General Conditions applicable to them. BME CLEARING may establish by Circular other alternative guarantees and requirements instead of this minimum equity, which must provide an equivalent level of solvency, availability and financial security.
  - B. They shall have the necessary material, technical, human and procedural resources to, in accordance with the provisions of the related General Conditions:
    1. Manage the Second-Tier Register Accounts of each Client in the manner established in BME CLEARING Circulars, so that the Trade entries in any OSA

opened in the Central Register managed by BME CLEARING are faithfully reflected.

2. In the cases stipulated for certain Segments in the corresponding General Conditions, to manage the Margins corresponding to the Positions in each Second-Tier Register Account.
  3. To calculate Settlements corresponding to the Trades registered in each Second-Tier Register Account.
  4. To perform the Position Settlement in the settlement systems with which BME CLEARING has reached the related agreements, for the Trades registered in each Second-Tier Register Account.
  5. To allocate partial exercises of Options or deliveries with multiple deliverables permitted on Second-Tier Register Accounts following the allocation criteria established by BME CLEARING.
- C. An Individual Fund shall be posted when so established for a specific Segment in the corresponding General Conditions.
- D. BME CLEARING shall further develop, pursuant to a Circular, the conditions which must be met by the Members in order to manage Second-Tier Register Accounts.
3. Members with the capacity to run a Second-Tier Register are obliged to provide the Competent Authorities and BME CLEARING with all detailed information requested in respect of the Trades of all Clients registered in Second-Tier Register Accounts.
  4. In the cases and in the manner established by BME CLEARING pursuant to a Circular, Members must inform BME CLEARING, without the need for prior request thereof, of the Clients' Trades registered in Second-Tier Register Accounts.
  5. Members with the capacity to run a Second-Tier Register must communicate, with respect to the Trades registered in Second-Tier Register Accounts, which Trades are closing trades and the resulting Position adjustment that BME CLEARING must perform in the OSA in the Central Register.
  6. Members with the capacity to run a Second-Tier Register may transfer Trades between Second-Tier Register Client Accounts, as long as the purpose is to correct errors in the assignment of Trades.
  7. If the Member with the Capacity to run a Second-Tier Register fails to comply with any of the conditions and obligations established in this Rule Book and its supplementing regulations with respect to the management of Second-Tier Register Accounts, BME CLEARING may implement the regime established for Defaults in chapter 9 hereof.

## CHAPTER 7. CENTRAL COUNTERPARTY

### ARTICLE 26. CENTRAL COUNTERPARTY AND IRREVOCABILITY

BME CLEARING shall act as Central Counterparty for Trades from the date on which they are entered in the Central Register.

As part of its functions as Central Counterparty, BME CLEARING interposes in the obligations resulting from the Trades, acting with respect to the Central Register Account holders as Central Counterparty to each of the original counterparties of each of the Trades, which shall cease to hold reciprocal rights and obligations and shall exclusively hold them in respect of BME CLEARING.

From the moment of entry in the Central Register the interposition of BME CLEARING in these obligations shall be understood to be irrevocable, as defined by Law 41/1999, of 12 November, on securities payment and settlement systems, and EC Directive 98/26/CE, of the European Parliament and of the Council, of 19 May, on the finality of settlement in securities payment and settlement systems.

From the moment of entry in the Central Register the obligations resulting from Trades, and from their netting, when it is so determined in the corresponding General Conditions for the relevant type of Account or Trade, shall be legally enforceable and shall be binding on third parties as defined by Article 11 of Law 41/1999, of 12 November, on payment and securities settlement systems and Article 3 of EU Directive 98/26/EC, of the European Parliament and of the Council, of 19 May, on the finality of settlement in securities payment and settlement systems.

### ARTICLE 27. MARKETS FOR WHICH BME CLEARING ACTS AS CENTRAL COUNTERPARTY. AGREEMENTS BETWEEN BME CLEARING AND THE MARKETS

1. BME CLEARING shall act as Central Counterparty for Market Trades on Financial Instruments and other assets admitted for trading on the Markets with which it has signed appropriate agreements for this purpose.
2. BME CLEARING shall establish in the corresponding General Conditions:
  - a) the Market Trades for which BME CLEARING shall act as CCP;
  - b) the duties and services to be performed by BME CLEARING in relation to these Market Trades;
  - c) the requirements applicable in any relationship that should exist between BME CLEARING members and Market members.

3. The agreements entered into by BME CLEARING with the Market to act as CCP for Market Trades on Financial Instruments and other assets admitted for trading thereon shall be based on transparent and non-discriminatory criteria for accessing BME CLEARING's services.
4. BME CLEARING and these Markets shall establish the appropriate coordination mechanisms to exchange the necessary information to carry out their functions. Specifically, the necessary resources shall be established to allow:
  - a) BME CLEARING to automatically and immediately accept the Trades performed on the Market, subject to the mechanisms and controls established by the two parties.
  - b) Both entities to report any amendments or cancellations of Trades occurring in their respective areas.
  - c) Both entities to inform each other of any event of default in their respective areas incurred by Market members or BME CLEARING Members.
  - d) Both entities to report the temporary suspension, completion or extraordinary extension of a Session taking place in their respective areas.
  - e) BME CLEARING to report to the Market any suspension of access to the Trades Register due to a Market member, or its Clearing Member where applicable, exceeding the limits assigned in BME CLEARING.
5. The agreement between BME CLEARING and the Market shall also include the other provisions required by the applicable legislation as prescriptive content. It shall also lay down the requirements relating to any relationships that should exist between BME CLEARING Members and Market members and specify the manner in which the Market members or their clients may access Registration, Central Counterparty, Clearing and Settlement services, through BME CLEARING Members, pursuant to the provisions of this Rule Book and its supplementing regulations.

## ARTICLE 28. TRADES SUBJECT TO CENTRAL COUNTERPARTY

1. BME CLEARING shall act as Central Counterparty in:

- A) Market Trades registered in the Central Register Accounts.
- B) OTC Trades registered in the Central Register Accounts.

The relevant General Conditions shall regulate the specific conditions for each Segment pursuant to which BME CLEARING shall act as Central Counterparty for the Trades mentioned in sections A and B above.

- C) The Trades generated by BME CLEARING in the management of Settlement Fails according to the provisions established in the corresponding General Conditions.

2. The disclosure of Trades included in section 1 of this article shall be regulated by Circular.
3. BME CLEARING may, as a result of lack of liquidity or in its general interest, decide to suppress access to the Register of certain Trades. BME CLEARING shall inform the Comisión Nacional del Mercado de Valores and other Competent Authorities of such decisions, as early as possible, and shall make them public. This suppression shall involve not admitting Registration of new Trades of this kind, and that BME CLEARING shall act as Central Counterparty only until expiration of the Trades on Financial Instruments or the Settlement of open Positions, without this in any way entailing the termination of any rights or obligations associated to such open Positions.

## ARTICLE 29. MARGINS REQUIRED BY BME CLEARING

1. BME CLEARING may require all or some of the following kinds of Margins in relation to the Accounts opened in the Central Register, in the cases provided in this Rule Book, with the special features which, where appropriate, are established in the related General Conditions, Circulars and Instructions:
  - A) Initial Margin, the purpose of which is to cover the risk of each Account's Position.
  - B) Individual Fund, the purpose of which is to cover BME CLEARING's risk in relation to the Clearing Members.
  - C) Extraordinary Margin, the purpose of which is to cover BME CLEARING's risk in relation to the Clearing Members in extraordinary situations.
  - D) Default Fund, the purpose of which is to cover any debit balances resulting from the adoption of the corresponding measures in the event of Default by a Clearing Member.
2. Initial Margins
  - A) The Collateral for the required Initial Margins must be posted by the holders of each Account opened in the Central Register, i.e. the Members holding the respective Accounts, Direct Clearing Clients and Clients that are holders of an ISA Agency, Indirect Clearing OSA and Indirect Clearing GOSA.
  - B) The obligation to post Collateral to cover the required Initial Margin shall arise from the moment in which a Trade is entered in the corresponding Account of the Central Register.
  - C) Initial Margins shall be calculated for each Segment in accordance with generally-accepted portfolio risk assessment models, which shall be described via Circular.
  - D) BME CLEARING shall calculate the Initial Margins for the Positions registered in the Position Accounts that belong to a single Central Register Account, considering the

net or gross Position of each Position Account, based on the type of Central Register Account involved.

- E) If a Member should hold more than one Proprietary Account, the Initial Margin may be calculated on the net Position resulting from adding up the Position registered in the Position Accounts of all its Proprietary Accounts.

If a Non-Clearing Member holding several Proprietary Accounts has an agreement with two General Clearing Members, the Initial Margin shall be calculated separately for the Proprietary Accounts that the Non-Clearing Member has identified with each of the General Clearing Members.

- F) Initial Margins shall be calculated with the frequency established in the General Conditions of each Segment, which will also stipulate the period in which to adjust the amounts required to adapt the Collateral posted to the new amount at which the Margins are set as a result of this calculation. The corresponding amounts of Collateral shall be posted in favour of BME CLEARING or released. In the absence of a specific provision, Margins shall be calculated and Collateral adjusted on a daily basis.
- G) BME CLEARING shall require Initial Margins registered in the Margin Accounts belonging to each Central Register Account at the end of the session on the calculation date, without the offset of any amounts between the different Accounts in the Central Register.

### 3. Individual Fund

- A) An Individual Fund must be posted by Clearing Members and by Direct Clearing Clients.

Likewise, in accordance with the transitional provisions applicable in such cases, the Non-Clearing Members of a General Clearing Member when the latter has been declared in Default must post and Individual Fundal Fund.

In addition, Direct Clearing Clients must provide an additional amount to the Individual Fund in the following two cases:

- When they do not appoint a second Agent Member
  - When their Agent Member is declared in default in accordance with the provisions of the transitional regime.
- B) BME CLEARING may require an Individual Fund from Clearing Members in the manner and in the cases established by Circular. In any event, the following Members must post an Individual Fund:
    1. Clearing Members that manage Second-Tier Register Accounts for Central Register OSA accounts, when so established for the corresponding Segment in the respective General Conditions.

BME CLEARING shall establish, pursuant to a Circular, the amount to be posted by these Clearing Members, depending on the total Initial Margins entered in the Margin Accounts belonging to all Central Register Accounts in respect of which they act as Clearing Member, including those of Non-Clearing Members, Ordinary Non-Clearing Members and their Clients. The aforementioned Circular shall establish the minimum, and, if applicable, maximum, Individual Fund amount for each type of Member and Segment.

2. Clearing Members exceeding their Position or Trade limits set forth by BME CLEARING.

#### 4. Extraordinary Margins

- A) Clearing Members and Direct Clearing Clients must post Extraordinary Margins.
- B) BME CLEARING may require Extraordinary Margins for each Segment, either individually from a Clearing Member, or generally from all Clearing Members, in cases which BME CLEARING considers to be high-risk, in accordance with the criteria and procedures set forth by Circular.

#### 5. Default Fund

- A) Clearing Members and Agent Members of Direct Clearing Clients must make contributions to the Default Fund.
- B) The purpose of the Default Fund is to cover any debit balances which may result from managing the Default of a Clearing Member, and which are not covered by the amounts corresponding to the sum of Initial Margins, Extraordinary Margins, Individual Fund and the Collateral posted in the Buffer Account and the contribution to the Default Fund of the Defaulting Member, in addition to BME CLEARING's own dedicated funds.
- C) A Circular shall establish the minimum amount of the total contribution to the Default Fund for each Segment, consisting of the sum of the different minimum contributions for each Clearing Member, depending on their Segment. The Circular corresponding to each Segment may establish criteria to require contributions additional to the minimum contribution, based on the relative risk of each Clearing Member within the Segment in question.
- D) A Circular shall establish the form of calculation, the frequency of recalculations, the minimum amount, where applicable, of the contribution to the Default Fund corresponding to each Clearing Member for each Segment; the time allowed to make the initial contributions, as well as the format used to make the aforementioned recalculation and the period in which to contribute the additional amounts required to adapt their quantity to the new amount set as a result of this calculation.
- E) In the event that the Default Fund should need to be used, and without prejudice to the provisions for applying the Default Fund in the event of Default set down in the Rule Book or any particular clauses established in the corresponding General



Conditions for a specific Segment, which will both be preferentially applied, the amount withdrawn shall be allocated proportionally to the Clearing Members, depending on the contribution they have made for each of their Segments in the most recent recalculation or replenishment.

- F) Clearing Members shall be obliged to restore their contributions and to provide the additional contributions to the Default Fund that BME CLEARING determines for each Segment, following the procedures, within the periods and within the limits stipulated, where appropriate, by Circular.
- G) In the event that the Default Fund of the Non-Defaulting Clearing Members or Non-Defaulting Direct Clearing Clients has to be used for Defaults, BME CLEARING shall inform the CNMV and the Resolution Authority as soon as possible, and shall explain whether this fact entails any type of deficiency or problem for BME CLEARING.

## 6. Margin Accounts and Collateral Accounts

- A) Initial Margins shall be entered in the Margin Accounts linked to the Position Accounts belonging to each Central Register Account. Individual Funds, Extraordinary Margins and contributions to the Default Fund are entered separately in the respective Margin Accounts, not linked to the Position Accounts, opened by BME CLEARING for each Clearing Member.
- B) The Collateral posted to cover the Initial Margins required shall be entered in the Collateral Account of the corresponding Central Register Account. The Collateral posted to cover the Individual Funds, Extraordinary Margins and contributions to the Default Fund shall be entered separately in the corresponding Margin Collateral Accounts opened by BME CLEARING for each Clearing Member.

## ARTICLE 30. GENERAL PROVISIONS APPLICABLE TO MARGINS REQUIRED BY BME CLEARING

1. Margins required by BME CLEARING, corresponding to Accounts opened in the Central Register in relation to any Trades registered in such Accounts, shall be posted in favour of BME CLEARING by Members and Clients that are holders of these Accounts. These Margins shall only be liable vis-à-vis BME CLEARING, and only for obligations resulting from such Trades vis-à-vis BME CLEARING, or obligations deriving from holding Member status of BME CLEARING.
2. Should it be required for the Position Settlement, for the execution of the Collateral posted in securities or for any other activity linked to BME CLEARING's liquidity needs in its performance as a CCP, BME CLEARING shall be entitled to temporarily use the Collateral posted to cover the Margins, both cash and securities posted by way of transfer of ownership, or the assets resulting from the investment of this Collateral.

3. The Collateral shall be posted to cover the required Margins, in the manner, following the procedures and within the hours provided by Circular.
4. The Collateral posted to cover the Margins shall be controlled, and where applicable, owned by BME CLEARING, which may require it to be transferred at any time, and held directly by BME CLEARING or by entities authorised thereby in accordance with the regulations established via Circular.
5. All the Collateral posted, including that which exceeds the Margin requirements, shall secure vis-à-vis BME CLEARING all amounts owed to BME CLEARING by the Member or Client obliged to post it at any time.
6. Clearing Members must post Collateral to cover the required Margins directly with BME CLEARING and in its favour; Non-Clearing Members shall post Collateral to cover the required Margins in favour of BME CLEARING but through their General Clearing Member; and Clients that are holders of an ISA Agency, an Indirect Clearing OSA or an Indirect Clearing GOSA shall post Collateral in favour of BME CLEARING but through the Member through which they have opened their Account.
7. Members must keep a separate record of the Collateral posted by Non-Clearing Members and Clients through them in favour of BME CLEARING.
8. Financial instruments, cash and any other assets accepted as Collateral, the manner in which such Collateral is posted (which may, among others, be a financial collateral pledge or a financial guarantee with transferred ownership of the assets), liquidity evaluation and assessment methods, applicable discounts, concentration limits for assets or financial instruments used for the Margins, and the remuneration for the Collateral employed by BME CLEARING shall all be established via Circular.
9. The aforementioned Circulars, the policies and procedures that BME CLEARING must approve in that regard and the applicable models and parameters to set the requirements of the Margins required by BME CLEARING shall be subject, in the cases and in the manner expressly provided in EMIR, to requirements of prior validation by the Competent Authority, to a review, at least annually, to independent validation and to the reporting thereof to the Clearing Members and the Competent Authority.
10. The Clearing Member shall be responsible for posting and maintaining a minimum Collateral in cash of the total Margins required by BME CLEARING for all concepts and in all Segments, to be established by BME CLEARING via Circular.
11. BME CLEARING shall invest the Collateral posted in accordance with the Investment policy approved by the Board of Directors, and the provisions of the implementing Circular.
12. The posting and execution of Collateral to be used for Margins shall comply with the provisions of this Rule Book and take place in accordance with Law 41/1999, of 12 November, on securities payment and settlement systems, and in accordance with the provisions of Royal Decree Law 5/2005, of 11 November, on urgent reforms to foster productivity and improve public contracting, and their implementing rules.

13. BME CLEARING shall keep and continuously update all information on the amounts of Margins required from Members and Clients in accordance with this Rule Book, the Collateral posted by Members and Clients, at the session end, and any intraday variations in this amount, with respect to each Central Register Account.

## **ARTICLE 31. MARGINS REQUIRED BY MEMBERS**

1. In the cases hereby established for a certain Segment in the related General Conditions, the Members must request the related Margins from their Clients holding Second-Tier Register Accounts, from Clients of an ISA PtoP and from their Ordinary Non-Clearing Members, in order to cover the risk corresponding to the Position of each of these Accounts, as well as the risk circumstances of their Clients and Ordinary Non-Clearing Members.
2. Clients holding Second-Tier Register Accounts, Clients with an ISA PtoP and Ordinary Non-Clearing Members are obliged to post, vis-à-vis the Member and in its favour, the Collateral to cover the Margins which the latter may request from it from time to time. These Margins shall only be liable vis-à-vis the Member and only for obligations resulting from such Trades registered in these Account vis-à-vis the Member.
3. Members shall calculate these Margins using similar portfolio risk assessment criteria as those used by BME CLEARING.
4. Members must keep, for each Segment, a differentiated register of Margins corresponding to each Second-Tier Register Account, and each ISA PtoP and the Margins required from their Ordinary Non-Clearing Members.
5. Members must keep the Collateral posted in cash by Ordinary Non-Clearing Members and Clients in differentiated bank accounts, or, otherwise invest them in highly liquid, low risk instruments with a known yield.
6. BME CLEARING shall oversee the fulfilment by the Members and their Clients of their obligations related to calculation and requirement of Margins, and of posting of Collateral to cover the required Margins in accordance with the provisions for each Segment established in the related General Conditions. For these purposes, the relevant procedures established by Circular will be applied.

## **ARTICLE 32. BME CLEARING'S DEDICATED OWN RESOURCES AND BME CLEARING'S ADDITIONAL DEDICATED OWN RESOURCES FOR DEFAULTS**

1. BME CLEARING's dedicated own resources (Skin in the game) for defaults

- A) BME CLEARING shall allocate a minimum amount of its equity for each of its Segments, as BME CLEARING's dedicated own resources (*Skin in the game*), which shall be reviewed annually, the purpose whereof is to cover any negative balances resulting from the adoption of the corresponding measures in the event of Default of a Clearing Member which exceed the amount resulting from the sum of the amount registered in the Collateral Account, in the Margin Collateral Account and in the Buffer Collateral Account of the Defaulting Member.
  - B) The amount of BME CLEARING's dedicated own resources for defaults shall be established via Circular.
  - C) In the event that BME CLEARING's dedicated own resources for defaults for a BME CLEARING segment has been used, BME CLEARING shall immediately notify the Competent Authority and shall dedicate new own resources until it covers the minimum amount referred to in this article for each Segment following the procedures, time limit (which may not exceed one month), conditions and limits established by Circular.
2. BME CLEARING's additional dedicated own resources (*Second skin in the game*) for Defaults:

BME CLEARING shall allocate additional dedicated own resources (*Second skin in the game*) for Defaults, under the terms set forth in Article 54 of this Rule Book and its implementing rules.

## ARTICLE 33. LIMITS APPLICABLE TO CLEARING MEMBERS

- 1. BME CLEARING may limit, via Circular, the volume of Trades and Positions corresponding to the Accounts for which the Clearing Members are liable vis-à-vis BME CLEARING, on the basis of objective and non-discriminatory criteria and following an exhaustive risk assessment. The setting of limits will not impair, in any case, BME CLEARING's entitlement to require Extraordinary Margins.
- 2. If the Clearing Members should exceed the applicable limits, BME CLEARING shall require them to post an additional amount to the Individual Fund, in the manner and according to the provisions determined by Circular, while BME CLEARING may decide to suspend access to the Trades Register for the Clearing Member and its Non-Clearing Members and Clients during the corresponding session, until these Individual Fund has been posted.

## CHAPTER 8. CLEARING AND SETTLEMENT

### ARTICLE 34. CLEARING

BME CLEARING shall perform Clearing for the cash payment and securities deliveries obligations resulting from the Trades registered in the Accounts of the Central Register in compliance with the cases and terms established in the corresponding General Conditions and Circulars.

Following Clearing, the parties will be exclusively liable for compliance with the resulting cash payment and securities deliveries obligations.

Clearing shall not be performed for the cash payment and securities deliveries obligations resulting from the Trades registered in different Central Register Accounts of a Member.

The General Conditions may establish, for a certain Segment, exceptions in relation to certain types of Accounts or Trades with respect to which Clearing will not be performed on the obligations arising from the Trades registered therein.

### ARTICLE 35. SETTLEMENTS AND POSITION SETTLEMENTS MADE BY BME CLEARING

1. The functions performed by BME CLEARING in relation to the Settlement of open Positions, the methods of calculating settlements and the systems to make these effective shall be regulated by the General Conditions and by the corresponding Circulars.

BME CLEARING shall carry out the Settlement of fees, Settlement for Margin adjustments, Settlement deriving from measures adopted in the event of Default, Settlements for allocation of Non-Default Losses, and any other Settlement resulting from Trades registered in Central Register Accounts established in the corresponding General Conditions for each Segment or by Circular.

2. In the Financial Derivatives, Energy and Interest Rate Derivatives Segments and Derivatives on Digital Assets, the Settlement of open Positions shall be performed on the expiry date of the corresponding Financial Instruments or assets, via the delivery of securities or corresponding underlying or in cash in accordance with the corresponding General Conditions.

In the segments referred to in the previous section, the Settlement of Positions in cash will be performed by BME CLEARING.

- When the cash settlement is made in Euros, in the Target2 system, or such other payment system as may be established in the General Conditions or implementing Circulars.

- When the cash settlement is made in a different currency, through the payment system or cash payment mechanism that may be established in the General Conditions or implementing Circulars.
- Or, alternatively, in the form or by the system established in the General Conditions of each Segment, as the case may be.

In the Financial Derivatives Segment, the Settlement of Positions via the delivery of securities upon expiry of the corresponding Derivative Financial Instruments shall comply with the provisions for the Settlement of Positions in settlement systems.

In the Energy Segment, the Settlement of Position via the delivery of the underlying shall comply with the provisions of the corresponding General Conditions.

The obligations of BME CLEARING, Members and Clients in respect of cash, securities or underlying deliveries arising from the Position Settlement referred to in this section shall be complied with, in each Segment, at the time and using the channel established in the General Conditions, in accordance with the characteristics of the Trade and of the Financial Instruments or assets and, where appropriate, with the regime applicable to the corresponding Market or settlement system, payment system, or corresponding cash payment or asset delivery mechanism.

3. For the delivery of cash amounts resulting from Settlements and the Settlement of Positions on expiry, Clearing Members shall have an account in the Target2 system, or any other payment system or cash payment mechanism that may be established in the General Conditions or in the implementing Circulars.

Alternatively, the Clearing Member may designate and communicate to BME CLEARING the entity which, holding an account in the established payment system or cash payment mechanism, will act as its payment agent for payments of cash amounts resulting from the related Settlements and Settlement of Positions, subject to the terms and conditions established by BME CLEARING via Circular. The designation of an entity to act as its payment agent by the Member shall be subject to approval by BME CLEARING, which shall assess whether, given the entity's risk status, its appointment may negatively impact the safe and secure operations of BME CLEARING. The payment agent shall act on behalf of the Clearing Member, with no change to the Clearing Member's responsibility before BME CLEARING for compliance with all payment obligations, particularly those resulting from Settlements or Settlements of Positions. If the funds contributed by the Clearing Member to its payment agent do not cover the Settlement amount communicated by BME CLEARING, the payment agent should inform BME CLEARING before BME CLEARING processes the corresponding charges in the payment system accounts or cash payment mechanism so that they may be met by the payment agent.

The General Conditions of each Segment may set out particular requirements applicable in relation to the payment system or cash payment mechanism in place.

BME CLEARING may reach the necessary agreements with the entities that manage the corresponding payment systems or cash payment mechanisms in order to carry out Cash Settlements.

4. BME CLEARING shall pay the corresponding Clearing Member and the latter shall pay BME CLEARING the amounts in cash, directly or through its payment agent or in the manner provided for in the corresponding General Terms and Conditions or by Circular, arising from the corresponding Settlements and from the Settlement of open Positions registered in the Accounts of the Central Register of Clearing Members and their Non-Clearing Members, or Ordinary Non-Clearing Members.

Non-Clearing Members and Ordinary Non-Clearing Members in respect of General Clearing Members, and the Clients in respect of their corresponding Members, and vice versa, shall pay each other the cash proceeds resulting from the corresponding Settlements and from the Settlement of the open Positions registered in their Accounts.

5. BME CLEARING shall make available to the Members the detail of the Settlements corresponding to each Account opened in the Central Register.

The Members shall make available to their Clients the detail of the Settlements corresponding to each of the Agency ISA Client Account, PtoP ISA, and to each Second-Tier Registry Account.

## **ARTICLE 36. POSITION SETTLEMENTS MADE THROUGH SETTLEMENT SYSTEMS. POSITION SETTLEMENT FAILS.**

1. When in any Segment, the Position Settlement involves the delivery of securities, such delivery will take place in the related settlement system, in accordance with the provisions of the applicable General Conditions.
2. The Settlement of open Positions performed in a settlement system, under the agreement entered into between BME CLEARING and this settlement system, the procedures whereby BME CLEARING delivers the related Settlement instructions for the exchange of information in relation to the Settlement outcome, as well as the applicable procedures and measures to resolve any Settlement Fails related to such open Positions will comply with the applicable General Conditions and Circulars.
3. The obligations held by BME CLEARING, Members and Clients in respect of cash or securities deliveries referred to in this article shall be complied with, in each Segment, at the time and in the manner established in the General Conditions, in accordance with the characteristics of the Trade or the Financial Instrument and, where appropriate, with the regime applicable to the corresponding Market or settlement system.
4. BME CLEARING and the Clearing Members shall deliver to each other the securities arising from the corresponding Settlement of open Positions registered in the Accounts of the Central Register of Clearing Members and their Non-Clearing Members, and Ordinary Non-Clearing Members where applicable through participants of the corresponding settlement system.

Non-Clearing Members and Ordinary Non-Clearing Members in respect of General Clearing Members, and Clients in respect of their corresponding Members, and vice



versa, shall pay each other the cash proceeds and deliver the securities resulting from the Settlement of the open Positions registered in their Accounts.

## **ARTICLE 37. RELATIONSHIP BETWEEN BME CLEARING AND SETTLEMENT SYSTEMS AGREEMENTS BETWEEN BME CLEARING AND SETTLEMENT SYSTEMS**

1. BME CLEARING may enter into agreements with the settlement systems used to perform the Settlement of open Positions, on the basis of objective and transparent criteria.
2. BME CLEARING shall establish in the corresponding General Conditions the requirements applicable to the relationship which, where appropriate, should exist between BME CLEARING and its Members and participants in the settlement system used to perform the Settlement of open Positions with respect to which BME CLEARING acts as CCP.

In those Segments where so determined in the corresponding General Conditions, BME CLEARING shall provide the information system managed by the settlement system, in the manner established in the agreement between them, the information regarding the Clearing of Transactions, which may result in variations in the net balances of securities of each account holder in the accounting record of securities in the settlement system.

3. Participants in the settlement systems that perform, on behalf of BME CLEARING Members, the activities related to the management services for Trades settlements should be connected with BME CLEARING as specified under the terms and conditions established by BME CLEARING.
4. Agreements between BME CLEARING and settlement systems shall establish:
  - a) the appropriate coordination mechanisms for the exchange of any other information necessary to carry out their corresponding functions;
  - b) the requirements applicable in any relationship that should exist between BME CLEARING and its Members with the participants in the settlement system;
  - c) the form in which BME CLEARING shall provide the information system managed by the settlement system, the information regarding the Clearing of Trades, which may result in variations in the net balances of securities of each account holder in the securities accounting record in the settlement system;
  - d) the resources required for both entities to report any default incurred in their respective areas, by entities participating in the settlement systems and Members and Clients of BME CLEARING.
  - e) the other provisions required by the applicable legislation regarding prescriptive content.

## CHAPTER 8 BIS. NON-DEFAULT LOSSES

### ARTICLE 37. bis NON-DEFAULT LOSSES

Non-Default Losses shall be considered to be those occurring in the following cases, which may be developed by Circular:

- A. Investment Losses:** Any loss suffered by BME CLEARING in relation to the investment of the Collateral, due to the total or partial failure to repay the amount of Collateral invested on the date on which it must be repaid, in accordance with the relevant conditions applicable to the investment of the Collateral and BME CLEARING's regulations.

Only those losses incurred by BME CLEARING in the context of the investment of the Collateral arising from a default of the counterparty to the investment transactions, or those arising from a default of the issuer of the Collateral in which it is invested, will be considered Investment Losses.

- B. Other Non-Default Losses:** Any other loss suffered by BME CLEARING caused by business risk events, operational or legal risk, or force majeure events that prevent BME CLEARING from fulfilling its obligations as a CCP (such as, but not limited to, fire, flood, explosion, fraud or cyber-attack).

When an event has occurred that results, or reasonably in the opinion of BME CLEARING may result, in Non-Default Losses, BME CLEARING will issue a Declaration of Non-Default Event, which will determine the beginning of the application of the measures provided for in these Rule Book and its implementing rules for the allocation of Non-Default Losses.

The amount of Non-Default Losses shall be borne by BME CLEARING and by the Members, in accordance with the provisions, as applicable, of this Chapter 8 bis and Chapter 12 of this Rule Book and its implementing rules.

If subsequently the Investment Losses are reduced, BME CLEARING shall distribute the amount recovered or the amount of the reduction among BME CLEARING or among the Members, on a pro rata basis of the amount of Investment Losses borne by each Member, in the reverse order of the order of priority in the absorption of losses provided for in Article 37 quinquies, as may be developed by Circular.

### ARTICLE 37.ter BME CLEARING'S DEDICATED OWN RESOURCES AND BME CLEARING'S ADDITIONAL DEDICATED OWN RESOURCES TO NON-DEFAULT LOSSES

1. Dedicated own resources (*Skin in the game*)

- A) BME CLEARING shall allocate an amount of its own resources, as dedicated own resources of BME CLEARING (*Skin in the game*), whose purpose is to cover potential Non-Default Losses in the cases so determined in this Rule Book.
- B) The amount of the dedicated own resources of BME CLEARING for Non-Default Losses shall be established by Circular, and shall be subject to review with the frequency determined in said Circular.
- C) In the event that BME CLEARING's dedicated own resources for Non-Default Losses have been used, BME CLEARING shall immediately inform the Competent Authority. The time limit for the replenishment, which may not exceed one month, the form of replenishment, the conditions and limits applicable, shall be established by Circular.

## 2. Additional dedicated own resources (Second skin in the game)

BME CLEARING will assign additional dedicated own resources (Second skin in the game) to cover non-default Losses under the terms set forth in Article 54 of this Rule Book and its implementing rules.

## ARTICLE 37. quarter ALLOCATION TO CLEARING MEMBERS OF NON-DEFAULT LOSSES

- 1. Clearing Members, irrespective of the CCP Segments in which they operate, are obliged to bear the Non-Default Losses, in the cases where so determined in this Rule Book and in accordance with the allocation of losses determined by BME CLEARING by Circular.
- 2. The criteria and the method of allocation of Non-Default Losses, the maximum amount to be allocated, the review period of such amount, as well as the form of settlement of the corresponding amount, shall be established by Circular.

## ARTÍCULO 37. quinquies ORDER OF PRIORITY IN THE ABSORPTION OF NON-DEFAULT LOSSES

- 1. The amount of the Investment Losses, referred to in Article 37 Bis A), shall be borne by BME CLEARING and by the Members, in accordance with the following order of priority:
  - 1<sup>st</sup> Dedicated own resources (*Skin in the game*) of BME CLEARING for Investment Losses;
  - 2<sup>nd</sup> Allocation to Clearing Members for Investment Losses, in the proportion to be determined by Circular (Initial Allocation). Those Members who have exercised their right to request BME CLEARING not to invest their Collateral shall be excluded from the allocation of Investment Losses (section A of article 37 bis), in accordance with the provisions of this Rule Book and its implementing rules;

- 3<sup>rd</sup> Additional dedicated own resources (Second skin in the game) of BME CLEARING, under the terms set forth in article 54 of this Rule Book and its implementing rules;
  - 4<sup>th</sup> Allocation to Clearing Members for Investment Losses, in the proportion to be determined by Circular (Additional Allocation). Those Members who have exercised their right to request BME CLEARING not to invest their Collateral shall be excluded from the allocation of Investment Losses (section A of article 37 bis), in accordance with the provisions of this Rule Book and its implementing rules;
  - 5<sup>th</sup> BME CLEARING shall be responsible for the uncovered losses with a debit to its remaining equity, excluding regulatory capital and any other equity that the applicable regulations require it to maintain at all times;
2. The amount of the Other Non-default Losses provided for in Article 37 Bis, B) shall be borne by BME CLEARING, as follows:
- 1<sup>st</sup> Additional Dedicated Own Resources (*Second Skin in the Game*) of BME CLEARING, under the terms set forth in article 54 of this Rule Book and its implementing rules.
  - 2<sup>nd</sup> BME CLEARING shall be responsible for the uncovered losses with a debit to its remaining equity, excluding regulatory capital and any other equity that the applicable regulations require it to maintain at all times;

## CHAPTER 9. DEFAULT

### ARTICLE 38. CAUSES OF DEFAULT

The following are causes of Default of a Member, Direct Clearing Client or Client:

1. Failure to post or to maintain Margins in due time and form, or failure to pay in due time and form the cash amounts resulting from the corresponding Settlements or Position Settlements or any other amount owed by a Member, Direct Clearing Client or Client to BME CLEARING or to the Member through which they act in BME CLEARING.
2. In the case of a Direct Clearing Client, when the Agent Member notifies BME CLEARING that the Direct Clearing Client has defaulted on its obligations to the Agent Member (even when these obligations arise from the conditions additional to the minimum content clauses laid down in this Rule Book).
3. Failure to deliver the securities, financial instruments or assets, or cash resulting from the Position Settlement, when this could imply a risk for BME CLEARING or the Member.
4. The initiation, or request for initiation made by a Member. Direct Clearing Client or Client, of bankruptcy or insolvency (whatever the name given thereto), in relation to the Client, Direct Clearing Client or Member, its Parent or another relevant company within its group, or the adoption by a judicial or administrative authority of a universal decision to wind up the Client or Member, its Parent or any other relevant company within its group.
5. The existence of any circumstance in relation to the Member, Direct Clearing Client or Client, its Parent or any other relevant company within its group, which may generate a risk for the economic solvency of the Member or BME CLEARING, including among other default by a Client, Direct Clearing Client or Member on its obligations in other markets, settlement systems or central counterparties.
6. In the event of declaration of Default of its General Clearing Member and declaration of Default of its Agent Member, failure by the Non-Clearing Member or by the Direct Clearing Client, respectively, to comply with the requisites established in article 44 of this Rule Book.
7. Default by the Member in charge of processing the Default of a Non-Clearing Member or Client on the obligations provided hereunder in this respect.
8. Breach, by the Member, by the Direct Clearing Client or by the Client, of the rules of conduct applicable to it pursuant to the LMVSI.
9. Default by a Clearing Member on the obligation to hold an account or to designate a payment agent to hold an account in the payment system established by BME CLEARING for Cash Settlements.

10. Any other Default by the Member, Direct Clearing Client or Client on its obligations, other than those mentioned in the preceding paragraphs, established in this Rule Book and developed through the corresponding Circulars, or in its agreement with BME CLEARING or with a Member that could imply a risk for BME CLEARING or the Member.

## **ARTICLE 39. MEASURES TO BE ADOPTED IN THE EVENT OF DEFAULT**

1. When any Member, Direct Clearing Client or Client incurs in any of the causes of Default provided in the article above, in relation to any or all of the Segments in which it participates, the following measures may be adopted:
  - A) Temporary suspension of the Member, Direct Clearing Client or Client with respect to the capacities of the Member or Client to act in those Segments where Default has occurred or in Segments where such Default should be considered relevant.
  - B) Declaration of Default of the Member, Direct Clearing Client or Client.
  - C) Loss of the status of Member, Direct Clearing Client or Client.
2. General Clearing Members must immediately give notice to BME CLEARING of any Default incurred by their Non-Clearing Members or Ordinary Non-Clearing Members. If the Non-Clearing Member has another General Clearing Member, BME CLEARING shall inform it about the default incurred by the Non-Clearing Member.
3. Agent Members must immediately give notice to BME CLEARING of any Default incurred by their Direct Clearing Clients.
4. Likewise, Members shall immediately notify BME CLEARING of any Default incurred by their Clients considered to be significant due to the Position held in BME CLEARING. If the Client has Accounts opened with other Members, BME CLEARING shall inform the other Members about the Client's Default.
5. BME CLEARING shall report the start of actions relative to an eventual declaration of Default of any Member, Direct Clearing Client or Client considered to be significant due to the Position held in BME CLEARING, to the Comisión Nacional del Mercado de Valores, the relevant Competent Authorities, in addition to the Markets and clearing and settlements systems with which BME CLEARING holds agreements.
6. Members, Direct Clearing Clients or Clients that have been temporarily suspended, declared to be in Default or have lost the status of Member, Direct Clearing Client or Client may be subject to charges in the form of fees, damage compensation and other economic penalties set forth by BME CLEARING via Circular and, where applicable, any additional penalties agreed in the Member-Client agreement or Non-Clearing Member-Ordinary Non-Clearing Member-Clearing Member agreement or Agent Member-Direct Clearing Client agreement.

7. The measures to be adopted in the event of Default and the procedures to be applied in the event of Declaration of Default shall be reviewed annually.
8. Unless expressly stated otherwise, the communications issued by BME CLEARING, Members, Direct Clearing Clients and Clients during the course of the measures adopted in the event of Default may be disclosed using any habitual communications channel (including telephone and e-mail).
9. For the purposes of the provisions on Default expressed in this chapter of the Rule Book, it should be understood that:
  - a) mentions to Non-Clearing Members include Ordinary Non-Clearing Members unless there are provisions that expressly apply to one group or the other;
  - b) mentions to Individual Clearing Members include Direct Clearing Clients unless there are provisions that expressly apply to the latter.

#### **ARTICLE 40. TEMPORARY SUSPENSION OF THE MEMBER, DIRECT CLEARING CLIENT OR CLIENT**

1. A Member, Direct Clearing Client or Client may be temporarily suspended, pursuant to this article, and as a precautionary measure, when there are indications that the Member, Direct Clearing Client or Client has incurred in any of the causes of Default stipulated in this Rule Book.
2. A Member, Direct Clearing Client or Client may also be temporarily suspended once it has been declared to be in Default for having incurred in any of the causes of Default stipulated in this Rule Book.
3. The temporary suspension of a Member, Direct Clearing Client or Client shall result in BME CLEARING or the Member imposing the corresponding operating restrictions and restrictions on its capacity to act in BME CLEARING, in those Segments where there are indications of having incurred in Default, in the case of a temporary suspension for precautionary purposes, or where Default has occurred, if the measure is adopted after the declaration of Default, and in any other Segments where the Default could have a significant impact. In no event shall the temporary suspension of a Member, Direct Clearing Client or Client limit its obligations to post Margins, nor to make payments corresponding to any applicable Settlements.
4. The decision to temporarily suspend a Clearing Member or Direct Clearing Client shall correspond to BME CLEARING. The decision to temporarily suspend a Non-Clearing Member shall correspond to its General Clearing Member, which must inform BME CLEARING of the decision.
5. The agreement to temporarily suspend Clients corresponds to the Member through which the Client's Account has been opened.



6. Prior to implementing the suspension, if the cause of Default should allow it, in BME CLEARING's opinion, in the event of suspension of Clearing Members or Direct Clearing Clients, or in the relevant Member's opinion in the event of suspension of Non-Clearing Members of Clients, the Member, Direct Clearing Client or Client may be granted twenty four (24) hours to remedy the Default, giving BME CLEARING prior notice thereof and provided there is no risk to BME CLEARING or its participants. If the Default is not remedied within this period, the Member, Direct Clearing Client or Client may be temporarily suspended.
7. BME CLEARING shall notify the Clearing Members and Direct Clearing Clients of the temporary suspension decision and shall inform the Comisión Nacional del Mercado de Valores, the corresponding Competent Authorities, in addition to the Markets and clearing and settlement systems with which BME CLEARING holds agreements.

Members shall immediately notify BME CLEARING of the temporary suspension of its Non-Clearing Members and Clients considered to be significant due to the Position held in BME CLEARING. If the Non-Clearing Member has several General Clearing Members or if the Client has Accounts opened with other Members, BME CLEARING shall give notice of the temporary suspension of the Non-Clearing Member or the Client to the other Members, in order for them to take the corresponding measures to restrict their trading and activities.

BME CLEARING shall report the temporary suspension of any Member, Direct Clearing Client or Client that, due to the Position it holds in BME CLEARING, should be considered significant, to the Comisión Nacional del Mercado de Valores, the relevant Competent Authorities, in addition to the Markets, and clearing and settlement systems with which BME CLEARING holds agreements.

#### **ARTICLE 41. DECLARATION OF DEFAULT OF THE MEMBER, DIRECT CLEARING CLIENT OR CLIENT**

1. The declaration of Default of the Member, Direct Clearing Client or Client may be issued at the time when it becomes known that a Member, Direct Clearing Client or Client incurs in any of the causes of Default stipulated in this Rule Book, whether or not a resolution concerning the temporary suspension of the Member, Direct Clearing Client or Client has been adopted.
2. Declaration of Default of the Member, Direct Clearing Client or Client shall involve the adoption of the measures provided in this chapter of the Rule Book. If the Non-Clearing Member has entered into agreements with two General Clearing Members or if the Client has entered into agreements with several Members, these measures shall be adopted by each of the Members with which the agreements have been entered into, in relation to the corresponding Accounts identified before BME CLEARING, which are separately liable for each of them, even if with respect to one or more of them the Non-Clearing Member or the Client is not in Default, for which purpose, BME CLEARING shall notify each one of the Members affected of this circumstance.

3. The declaration of Default of a Clearing Member (the “Defaulting Clearing Member”), and the subsequent adoption of measures shall correspond to BME CLEARING.
4. The declaration of Default of a Non-Clearing Member (the “Defaulting Non-Clearing Member”), shall correspond to its General Clearing Member. However, BME CLEARING may issue a declaration of Default of a Non-Clearing Member, giving notice thereof to its General Clearing Member, when this is advisable in order to prevent an increase in risk for BME CLEARING or its participants.

The subsequent adoption of measures resulting from the declaration of Default of the Non-Clearing Member shall correspond to its General Clearing Member, which must likewise adopt any measures required by BME CLEARING.

In the event the Defaulting Non-Clearing Member operates through two General Clearing Members, the obligations established in this section shall relate to both, in relation to the corresponding Accounts identified before BME CLEARING, which are separately liable for each of them, even if with respect to the Positions it holds with one of them it is not in Default, for which purpose BME CLEARING shall inform them of this circumstance.

5. Declaration of Default of a Direct Clearing Client, in addition to the adoption of the measures provided in this chapter of the Rule Book, shall correspond to BME CLEARING. The Agent Member shall collaborate with BME CLEARING at all times and carry out all the measures agreed on by BME CLEARING.
6. Declaration of Default of a Client (the “Defaulting Client”), and the subsequent adoption of measures shall correspond to the Member through which the Client’s Account has been opened.
7. BME CLEARING shall issue a declaration of Default of the Clearing Member and of the Direct Clearing Client, and shall deliver a copy of this declaration to the Defaulting Clearing Member, to the defaulting Direct Clearing Client, to the Non-Clearing Members of the Defaulting Clearing Member should it have any, and to the Comisión Nacional del Mercado de Valores, and, if applicable, the other Competent Authorities, in addition to the Markets and clearing and settlement systems with which BME CLEARING holds agreements.
8. Unless the Comisión Nacional del Mercado de Valores or, where appropriate, the Competent Authorities believe that such disclosure would imply a threat to financial stability or market confidence, or would seriously jeopardise the financial markets or cause disproportionate harm to the parties involved, BME CLEARING shall make public any declarations of Default of Members and Direct Clearing Clients.
9. The Members shall issue a declaration of Default, with the minimum content established by Circular, which they shall deliver to the Non-Clearing Member or Defaulting Client. The Member shall submit to BME CLEARING a copy of the declaration of Default of any Member, or Client considered to be significant due to the Position held in BME CLEARING, which shall be forwarded to the Comisión Nacional del Mercado de Valores, and where appropriate to the relevant Competent Authorities, in addition to

the Markets and clearing and settlement systems with which BME CLEARING holds agreements.

10. Members must keep BME CLEARING informed at all times of the measures adopted in relation to a Defaulting Non-Clearing Member, a Defaulting Client considered to be significant due to the position held in BME CLEARING or where the Default is of particular importance and significance.

## **ARTICLE 42. MEASURES TO BE ADOPTED IN THE EVENT OF DECLARATION OF DEFAULT OF A MEMBER, DIRECT CLEARING CLIENT OR CLIENT AND CLOSE-OUT NETTING**

1. Upon declaration of Default of a Member, Direct Clearing Client or Client, BME CLEARING or the Member through which Positions have been registered may adopt any of the following measures in relation to the Defaulting Member, Direct Clearing Client or Client, on behalf and at the expense of the defaulter:
  - A) To suspend the Defaulting Member, Direct Clearing Client or Client or to maintain any precautionary suspension, where applicable.
  - B) To immediately restrict the Registration of new Trades of the Defaulting Member, Direct Clearing Client or Client.
  - C) To undertake any trades as may be necessary, including trades on financial instruments, for the purpose of reducing unhedged risks, until total coverage thereof.
  - D) To Close-out the Defaulting Member, Direct Clearing Client or Client's Positions, performing, when necessary and on behalf of the Defaulting Member, Direct Clearing Client or Client, opposite Trades to those registered in their Accounts, and applying the Close-out netting regimen provided for in article 98 of the LMVSI.
  - E) To transfer to another Member, where possible, or otherwise close the Accounts of Clients opened in the BME CLEARING Central Register, or, where applicable, the corresponding Second-Tier Registers of the OSA.
  - F) BME CLEARING may execute, in whole or in part, the Collateral posted in its favour by the Defaulting Member, Direct Clearing Client or Client to cover Margins of any kind and, where appropriate, posted by the Clearing Member, to the extent that latter is liable in the event of Default of the former.
  - G) The Member may execute, in whole or in part, the Collateral posted, in favour of the Member by the Defaulting Member or Client to cover Margins of any kind.
  - H) The Member may request BME CLEARING to partially or fully execute the Collateral posted in favour of BME CLEARING to cover Margins corresponding to the Central Register Accounts of the Defaulting Client or Non-Clearing Member.

- I) To obtain any kind of professional advice or assistance which the Member or BME CLEARING may reasonably require in relation to the management of the Default, including a mandate to another firm to manage the Closing-out of the Positions.
  - J) Any other measure required to mitigate the risk for BME CLEARING or its participants resulting from the Default and which the Member or BME CLEARING consider necessary, informing the Competent Authorities thereof.
2. BME CLEARING or its Members must:
- A) Inform the Defaulting Member, Direct Clearing Client or Client of the respective measures adopted as rapidly as possible.
  - B) Fully cooperate with the Competent Authorities.
  - C) Co-operate, as long as there is reciprocity, in the exchange of information with any market, clearinghouse, or settlement system in which the Defaulting Member, Direct Clearing Client or Client could be acting, and co-operate with any Competent Authority, in relation to the measures adopted by BME CLEARING or the Member in relation to the Defaulting Member, Direct Clearing Client or Client.
3. When BME CLEARING or the Member agree to Close-out all the Positions of the Defaulting Member, Direct Clearing Client or Client, this agreement shall lead to all the Positions registered in the Accounts of the Defaulting Member, Direct Clearing Client or Client becoming immediately due, even when the latter holds several Accounts with various Members, and the following measures shall be implemented:
- a) when appropriate, and on behalf of the Defaulting Member, Direct Clearing Client or Client, opposite Trades to those registered in the Accounts shall be made, and if necessary, the Collateral posted to cover the Initial Margin shall be executed, obtaining the corresponding net balance arising from the closing of the Position, factoring in the cost of the Closing-out and the cash value of the Collateral, which shall be the resulting from its execution, where applicable;
  - b) the cash value of all the Positions that have not been Closed-out in the manner described above shall be calculated taking into account both all the obligations and all the correlative rights arising from each Position, both with respect to the delivery of financial instruments or underlying assets and of cash;
  - c) the cash value of the Collateral posted to cover the Initial Margin at the time of closing shall be calculated, and where possible, the cash value of the Collateral shall be that resulting from its execution;
  - d) the cash value of all payment obligations relating to all amounts owed, balances, costs, expenses and penalties resulting from the Default shall be calculated;
  - e) all these obligations and rights shall be automatically set off so that a net balance is obtained, the cash value of which shall be the Final Net Balance.
4. As a result of this close-out netting a sole legal obligation shall exist by which BME CLEARING or the Member, Direct Clearing Client or Client, depending on to whom the

Final Net Balance arising from the aforementioned close-out netting is owed, may request only the payment of this Final Net Balance.

5. Unless special rules are laid down in the General Conditions or by Circular, the value calculations envisaged in this section, when it has not been possible to Close the Positions in the form described in section a) above, shall be made by BME CLEARING or the Member using the settlement prices published by BME CLEARING on the day before the calculation date. In the case that there are no available prices in BME CLEARING, if authorised by BME CLEARING, the prices published on that date in other markets or central counterparties whose purpose are the same financial instruments or assets being valued may be used at BME CLEARING's discretion, or if this is not available, a correct business valuation shall be performed, adjusted to the current market value.
6. BME CLEARING or the Member shall notify the Member, the Direct Clearing Client or the Client of the amount of Final Net Balance, including how the calculation was made in detail. The amount of the Final Net Balance must be paid by the corresponding party before the end of the next Business Day after the notification of the Final Net Balance has been delivered. Failure to make the payment on that date shall result in late payment interest being applied.
7. According to article 98 of the LMVSI and the provisions of this Rule Book, in the General Conditions of each Segment and, where appropriate, in the Circulars implementing these regulations, references to the early termination or Closing-out of Positions arising from the declaration of Default by a Member, Direct Clearing Client or Client, and the subsequent netting of the resulting balances, are, as a whole, considered as an agreement for Close-out netting in conformity with Royal Decree-Law 5/2005, of 11 March, on urgent reforms to foster productivity and improve public contracting, and subject to Law 41/1999, of 12 November, on securities payment and settlement systems.

## **ARTICLE 43. TRANSFER OF ACCOUNTS AND CLOSING-OUT OF POSITIONS IN THE EVENT OF DECLARATION OF DEFAULT**

### **I. DEFAULT BY A CLEARING MEMBER OR BY A DIRECT CLEARING CLIENT**

#### **A. Close-out of the Position of the Proprietary Account of the Defaulting Clearing Member or of the Defaulting Direct Clearing Client**

If BME CLEARING decides to close the Proprietary Account of a Defaulting Clearing Member or of the Defaulting Direct Clearing Client, the appropriate close-out netting shall be carried out and the resulting Final Net Balance calculated.

With respect to all that which is not expressly envisaged in this Rule Book for the Proprietary Account of Direct Clearing Clients, the applicable provisions in this regard shall be those set forth for the Proprietary Account of an Individual Clearing Member.

## **B. Transfer of ISA Agency and ISA PtoP Client Accounts or Close-out of the Position of such Accounts:**

If the Defaulting Clearing Member keeps an ISA Agency or is the holder of an ISA PtoP:

1. BME CLEARING shall, at the request of each Client, attempt to transfer these Accounts to another or other Non-Clearing or Clearing Members, for ISA Agency Client Accounts, or to another or other Clearing Members, for ISA PtoP Client Accounts, as designated by each Client, having previously notified the Comisión Nacional del Mercado de Valores. To perform this transfer, agreement between the Member or Members to which the Accounts shall be transferred and the Clients whose Accounts are to be transferred shall be required.
2. BME CLEARING shall inform the Clients involved of the situation and of its intention to transfer the Accounts. Notice to the Clients shall be sent to the address provided by the Defaulting Member. The transfer of Accounts to the new Member shall involve the transfer of the Collateral corresponding to the Accounts.
3. In the event that all or some of the ISA Agency Client Accounts cannot be transferred because the Initial Margins corresponding to all or some of the Accounts do not suitably cover BME CLEARING's risk, the latter may, at its discretion, request the Clients Account holders of these ISA Agency Accounts to contribute the amounts required to adequately cover this risk as an adjustment to the Initial Margins. This contribution must be made before 9 a.m. on the morning of the following Business Day to that on which it was requested by BME CLEARING (if the request was made before 10 a.m.) or before 1 p.m. on the following Business Day (if the request was made after 10 a.m.). If the amounts requested are not contributed, a Default will be deemed to have occurred.

In this case, and also when the transfer cannot be made due to other reasons, or when the Initial Margins corresponding to all or some of the ISA PtoP Client Accounts do not suitably cover BME CLEARING's risk, the latter may, at its discretion, fully or partially Close-out the Positions of the corresponding ISA Agency or ISA PtoP Client Accounts. In the event of a partial Close-out of the Position, the regulations governing the transfer provided in section 1 above shall apply in relation to the remaining open Position.

4. Unless the Client expressly communicates to the Defaulting Member, which must send a copy of such communication to BME CLEARING, its intention not to transfer its ISA Agency or ISA PtoP Client Accounts and its agreement to the immediate Close-out of Positions and the execution of the Collateral posted to cover Margins, BME CLEARING shall not carry out this Close-out:
  - prior to 9:00 on the Business Day following the day of declaration of Default of the Defaulting Member, if such declaration of Default is issued by BME CLEARING before 10:00; or



- prior to 13:00 on the Business Day following the day of declaration of Default of the Defaulting Member, if such declaration of Default is issued by BME CLEARING after 10:00.
5. In the event that, due to the impossibility of transfer or due to the insufficiency of Collateral to cover the Initial Margins, the Client's Position should be fully or partially Closed-out, BME CLEARING shall calculate the corresponding Final Net Balance of the fully or partially Closed-out Position.

**C. Transfer of OSA Client Accounts. Transfer of the corresponding Second-Tier Register Accounts (where applicable). Close-out of the Position of these Accounts:**

1. BME CLEARING shall, at the request of the Clients, manage the transfer of OSA Client Accounts, and where appropriate their corresponding Second-Tier Register Accounts, together with the Collateral of these Accounts, to another or other Clearing Members, designated by all the Clients of the OSA Account, having previously notified the Comisión Nacional del Mercado de Valores. To perform this transfer, agreement between the Member or Members to which the Accounts and the corresponding Collateral shall be transferred and Clients whose Accounts are to be transferred shall be required. The General Conditions which, for certain Segments, have established specific rules regarding the requirement of keeping of Second-Tier Registers in respect of the OSA, or in relation to the requirement of Margins from the Second-Tier Register Clients, may stipulate additional conditions for the transfer of Accounts.
2. BME CLEARING shall inform the Members concerned of the situation and of its intention to transfer the Accounts, with an indication of the Members to which they will be transferred. The Member to which the Accounts will be transferred will inform the Clients.
3. In cases where OSA Client Accounts and their corresponding Second-Tier Register Accounts cannot be transferred, or where the Collateral deposited for all or some of the OSA Clients Accounts is not sufficient to suitably cover BME CLEARING's risk, the latter may, at its discretion, fully or partially Close-out the Position of the corresponding OSA Client Accounts. In the event of a partial Close-out, it may not increase risk for any Client. The regulations governing the transfer provided in section 1 above shall apply in relation to the remaining open Position. The Positions of the corresponding Second-tier Register Accounts shall be modified in accordance with the Close-out or transfers that occur in order to maintain correspondence between the Position of the Second-Tier Register Accounts and the Position of the OSA Client Account.

Unless the Client expressly communicates to the Defaulting Member, which must send a copy of such communication to BME CLEARING, their intention not to transfer their Accounts and their agreement to the immediate Close-out of Positions and the execution of the Collateral posted to cover the Margins, BME CLEARING shall not initiate the Close-out:



- prior to 9:00 on the Business Day following the day of declaration of Default of the Defaulting Member, if such declaration of Default is issued by BME CLEARING before 10:00; or
  - prior to 13:00 on the Business Day following the day of declaration of Default of the Defaulting Member, if such declaration of Default is issued by BME CLEARING after 10:00.
4. In the event that, due to the impossibility of transfer or due to the insufficiency of the Collateral posted to cover the Initial Margins, the Client's Position in an OSA Client Account should be fully or partially Closed-out, BME CLEARING shall calculate the corresponding Final Net Balance of the fully or partially Closed-out Position.

**D. Transfer of Indirect Clearing OSA Client Accounts. Closing-out of the Position of these Accounts:**

1. BME CLEARING, where circumstances so permit, may initiate the measures it considers convenient to attempt to transfer the Indirect Clearing OSA Client Accounts, and the Collateral corresponding to these Accounts, having previously notified the Comisión Nacional del Mercado de Valores.

This transfer may be made to one or more Clearing Members designated by and at the request of a) the Direct Client of the Defaulting Clearing Member of the Account of which the Defaulting Clearing Member is the holder, or b) the Direct Client holder of the Indirect Clearing OSA; in both cases on behalf of the Indirect Clients.

To perform this transfer, agreement between the Clearing Member or Members to which the Accounts and related Collateral shall be transferred and the referenced Direct Clients or holders of these Accounts on behalf of their Indirect Clients shall be required.

2. BME CLEARING shall inform the Members concerned of the situation and of its intention to transfer the Accounts, with an indication of the Members to which they will be transferred. The Defaulting Clearing Member shall inform the Direct Clients, and these shall inform the Indirect Clients of the situation, indicating the Clearing Members to which the Accounts shall be transferred.
3. In cases where, due to the circumstances, it is decided not to attempt the transfer of the Indirect Clearing OSA, or when such a transfer is not possible, BME CLEARING may at any time fully or partially Close-out the net Position. A partial Close-out must not result in an increase in risk for any Direct or Indirect Client. The regulations governing the transfer provided in paragraph 1 of this section shall apply in relation to the remaining open Position.
4. In the event that, the Client's Position in an Indirect Clearing OSA Client Account is fully or partially Closed-out, BME CLEARING shall calculate the corresponding Final Net Balance of the fully or partially Closed-out Position.

#### **E. Transfer of Indirect Clearing GOSA Client Accounts. Closing-out of the net Position of these Accounts:**

1. BME CLEARING shall initiate the measures it considers convenient to attempt to transfer the Indirect Clearing GOSA Accounts, and the Collateral corresponding to these Accounts, having previously notified the Comisión Nacional del Mercado de Valores.

This transfer shall be made to one or more Clearing Members designated by and at the request of a) the Direct Client of the Defaulting Clearing Member of the Account of which the Defaulting Clearing Member is the holder, or b) the Direct Client holder of the Indirect Clearing GOSA.

To perform this transfer, agreement between the Clearing Member or Members to which the Accounts and related Collateral shall be transferred and the referenced Direct Client of the Defaulting Clearing Member or holder of the Account on behalf of their Indirect Clients shall be required.

2. BME CLEARING shall inform the Members concerned of the situation and of its intention to transfer the Accounts, with an indication of the Members to which they will be transferred. The Defaulting Clearing Member shall inform the Direct Client, which shall inform the Indirect Client of the situation, indicating the Clearing Members to which the Accounts shall be transferred.
3. In cases where Indirect Clearing GOSA Client Accounts cannot be transferred, or where the Collateral posted is not sufficient to suitably cover the resulting risk, BME CLEARING may fully or partially Close-out the net Position of the corresponding Indirect Clearing GOSA. A partial Close-out must not result in an increase in risk for any Direct or Indirect Client. The regulations governing the transfer provided in paragraph 1 of this section shall apply in relation to the remaining open Position.
4. In the event that, due to the impossibility of transfer or due to the insufficiency of the Collateral posted to cover the Initial Margins, the Client's Position in an Indirect Clearing GOSA is fully or partially Closed-out, BME CLEARING shall calculate the corresponding Final Net Balance of the fully or partially Closed-out Position.

## **II. DEFAULT BY A NON-CLEARING MEMBER**

### **A. Close-out of the Position of the Proprietary Account of the Defaulting Non-Clearing Member**

If the General Clearing Member decides to Close-out the Position of the Proprietary Account of a Defaulting Non-Clearing Member, the latter shall perform the appropriate Close-out netting and calculate the resulting Final Net Balance.

### **B. Transfer of ISA Agency Client Accounts or Close-out of the Position of these Accounts**

In the event that a Defaulting Non-Clearing Member keeps ISA Agency Client Accounts, BME CLEARING, shall transfer, previously informing the Comisión Nacional del Mercado de Valores thereof, these Accounts to its General Clearing Member, which shall be obliged to accept them. The General Clearing Member and the Defaulting Non-Clearing Member shall inform the latter's Clients of the situation, indicating the General Clearing Member to which the transfer shall be made. The transfer of Accounts to the aforementioned General Clearing Member shall involve the transfer of the Collateral corresponding to these Accounts. The Defaulting Non-Clearing Member shall transfer to the General Clearing Member all the information relating to its Clients required so that the General Clearing Member is able to efficiently carry out all the activities required by it in relation to the Trades and Positions of each Client holding an ISA Agency Account.

In the event that the Collateral deposited to cover the Initial Margins corresponding to all or some of the ISA Agency Client Accounts does not suitably cover the risk of the General Clearing Member which receives the Accounts, the latter may request the Clients that are holders of these ISA Agency Client Accounts to contribute the amounts required to adequately cover this risk as an adjustment to the Initial Margins. This contribution must be made before 9 a.m. on the morning of the following Business Day to that on which it was requested by the General Clearing Member (if the request was made before 10 a.m.) or before 1 p.m. on the following Business Day (if the request was made after 10 a.m.). If the amounts requested are not contributed, a Default will be deemed to have occurred. In this case, the General Clearing Member shall agree to the full or partial Close-out of the Accounts and calculate the Final Net Balance.

#### **C. Transfer of Indirect Clearing OSA Client Accounts. Close-out of the Position of these Accounts**

1. In the event that a Defaulting Non-Clearing Member holds Indirect Clearing OSA, the General Clearing Member, having informed BME CLEARING, which shall in turn inform the Comisión Nacional del Mercado de Valores thereof, when circumstances so permit, may initiate the measures it deems appropriate to attempt to transfer the Indirect Clearing OSA and the Collateral corresponding to these Accounts.

This transfer shall be made to another Account of the same General Clearing Member, to one or more other Clearing Members, Non-Clearing Members or Clients of the General Clearing Member, designated by the General Clearing Member, on behalf of all the Indirect Clients. To perform this transfer, agreement between the Clearing Member or Members, Non-Clearing Members or Clients of the Clearing Member to which the Accounts and related Collateral shall be transferred and the Indirect Clients whose Positions and Collateral are to be transferred shall be required.

2. The General Clearing Member shall keep BME CLEARING informed of the situation and of the intention to transfer the Account, with an indication of the Account of the same General Clearing Member or identifying the Clearing

Members or Non-Clearing Members or Clients of the General Clearing Member to which they shall be transferred.

The Defaulting Non-Clearing Member shall transfer to its General Clearing Member, and where applicable, to the receiving party of the Accounts, all the information relating to its Indirect Clients required so that they are able to efficiently carry out all the indirect clearing activities required in relation to the Trades and Positions of each Indirect Client. The General Clearing Member shall inform the Indirect Clients of the situation, indicating the receiving party of the Account.

3. In cases where, due to the circumstances, the General Clearing Members decides not to attempt the transfer of the Indirect Clearing OSA, the General Clearing Member may at any time fully or partially Close-out the Position of these Accounts. A partial Close-out may not result in an increase in risk for any Indirect Client. The regulations governing the transfer provided in paragraph 1 of this section shall apply in relation to the remaining open Position.
4. In the event that, the Client's Position in an Indirect Clearing OSA Client Account is fully or partially Closed-out, the General Clearing Member shall calculate the corresponding Final Net Balance of the fully or partially Closed-out Position.

**D. Transfer of Indirect Clearing GOSA Client Accounts. Close-out of the Position of these Accounts**

1. If the Defaulting Non-Clearing member is the holder of the Indirect Clearing GOSA, the General Clearing Member, having informed BME CLEARING, which in turn shall inform the Comisión Nacional del Mercado de Valores, and at the request of the Indirect Client, shall initiate the procedure that it must have in place to transfer the Indirect Clearing GOSA, together with the Collateral corresponding to these Accounts, to another Account of the same General Clearing Member or one or more Clearing Members, Non-Clearing Members or Clients of the Clearing Member, designated by the group of Indirect Clients whose Positions and Collateral shall be transferred.

To perform this transfer, agreement between the Clearing Member or Members, Non-Clearing Members or Clients of the Clearing Member to which the Accounts and related Collateral shall be transferred and the Indirect Clients whose Positions and Collateral are to be transferred shall be required.

2. The General Clearing Member shall keep BME CLEARING informed of the situation and of the intention to transfer the Accounts, with an indication of the Account of the same General Clearing Member or identifying the Members or Clients of the General Clearing Member to which they shall be transferred.

The Defaulting Non-Clearing Member shall transfer to its General Clearing Member, and where applicable, to the receiving party of the Accounts, all the information relating to its Indirect Clients required so that they are able to efficiently carry out all the indirect clearing activities required in relation to the Trades and Positions of each Indirect Client. The General Clearing Member shall

inform the Indirect Clients of the situation, indicating the receiving party of the Account.

3. In cases where Indirect Clearing GOSA Client Accounts cannot be transferred, or where the Collateral posted is not sufficient to suitably cover the resulting risk, the Member or Client of the Clearing Member which receives the account, at their discretion, may fully or partially Close-out the net Position of the corresponding Indirect Clearing GOSA. A partial Close-out may not result in an increase in risk for any Indirect Client. The regulations governing the transfer provided in paragraph 1 of this section shall apply in relation to the remaining open Position.
4. In the event that, due to the impossibility of transfer or due to the insufficiency of the Collateral posted to cover the Initial Margins, the Client's Position in an Indirect Clearing GOSA is fully or partially Closed-out, the General Clearing Member shall calculate the corresponding Final Net Balance of the fully or partially Closed-out Position.

### **III. DEFAULT BY AN ORDINARY NON-CLEARING MEMBER**

The General Clearing Member of the Ordinary Non-Clearing Member shall Close-out the ISA PtoP Client Account in which the proprietary Position of the Ordinary Non-Clearing Member is held, and shall obtain the Final Net Balance.

If the Ordinary Non-Clearing Member has opted for the Trades made on its own account to be registered in an OSA Client Account held by its General Clearing Member, the latter shall Close-out the Position of the Defaulting Ordinary Non-Clearing Member and calculate the Final Net Balance. In any case, the adjustments required as a result of the Closing-out of the Defaulting Ordinary Non-Clearing Member's Position shall be made in the associated OSA.

For Indirect Clearing OSA and Indirect Clearing GOSA accounts opened by the Clearing Member at the request of the Ordinary Non-Clearing Member, *mutatis mutandis*, the measures to be implemented shall be those described above relating to the transfer and Close-out of this type of Account in the event of Default by a Non-Clearing Member that is the holder of the Accounts. In the event of a Close-out of the Account, the Clearing Member shall calculate the Final Net Balance of the Closed-out Position.

The Ordinary Non-Clearing Member shall provide the General Clearing Member with all information on the Indirect Clients whose Trades are registered in the aforementioned Indirect Clearing OSA and GOSA in order to transfer or Close-out the Positions and so that the receiving party of the Accounts is able to continue to provide the corresponding indirect clearing services and efficiently perform the activities corresponding to it in relation to the Trades and Positions of these Indirect Clients.

#### **IV. DEFAULT OF A CLIENT HOLDING AN INDIRECT CLEARING OSA OR GOSA CLIENT ACCOUNT**

In the event of Default by the Client of a Clearing Member holding the Indirect Clearing OSA or Indirect Clearing GOSA Accounts, the Clearing Member shall implement the measures described above, mutatis mutandis, relating to the transfer and Close-out of these Accounts in the event of Default by a Non-Clearing Member that is the holder of the Accounts. In the event of a Close-out of the Account, the Clearing Member shall calculate the Final Net Balance of the Closed-out Position.

The Direct Client holder of the Account shall provide the General Clearing Member with all information on the Indirect Clients whose Trades are registered in the aforementioned Indirect Clearing OSA and Indirect Clearing GOSA Accounts in order to transfer or Close-out the Positions and so that the receiving party of the Accounts is able to continue to provide the corresponding indirect clearing services and efficiently perform the activities corresponding to it in relation to the Trades and Positions of these Indirect Clients.

#### **V. DEFAULT OF A CLIENT HOLDING ISA AGENCY OR ISA PtoP CLIENT ACCOUNTS**

In the case of Default by the Client holding an ISA Agency or of the Client associated with the ISA PtoP Account, the Closing-out of the Account and calculation of the Final Net Balance of the Closed-out Position shall be performed by the Member through which the Defaulting Client holds the Account, or the Member holding the ISA PtoP Account.

### **ARTICLE 44. INTERIM REGIME FOR NON-CLEARING MEMBERS OF A DEFAULTING GENERAL CLEARING MEMBER AND DIRECT CLEARING CLIENTS OF A DEFAULTING AGENT MEMBER.**

1. In the event of Default by a General Clearing Member, its Non-Clearing Members must sign an agreement with another General Clearing Member within a period not longer than ninety (90) calendar days from the date on which BME CLEARING issues the declaration of Default of the General Clearing Member.
2. During the period between the declaration of Default and the execution of the new agreement, the Non-Clearing Members shall assume vis-à-vis BME CLEARING, in relation to the Accounts of which they are holders and the Accounts of their Clients, the obligations corresponding to the Clearing Members.

For such purposes:

- A) Non-Clearing Members shall agree with BME CLEARING any collection and payment mechanisms which may be necessary.

- B) BME CLEARING shall require the Non-Clearing Members to post an Individual Fund, for each Segment in which they operate, the amount whereof shall be the amount which a Clearing Member would have to contribute for all items pertaining to each Segment, including the contribution to the Default Fund. This Individual Fund must be provided by the Non-Clearing Member within 24 hours of the time on which BME CLEARING requests the posting thereof.
- 3. Failure to execute a new agreement with a Clearing Member, failure to properly set up collection and payment mechanisms, or failure to post the Individual Fund as mentioned in the preceding paragraphs, shall entail a cause of declaration of Default of the Member, and BME CLEARING shall adopt the measures set out for the event of Default by a Clearing Member.
- 4. The procedures set down in the previous paragraphs of this article shall not apply to Ordinary Non-Clearing Members.
- 5. In the event of termination of the agreement between the Agent Member, the Direct Clearing Client and BME Clearing, and in the case of default by an Agent Member, its Direct Clearing Clients, unless they had already signed a contract with a second Agent Member, in which case it shall enter into force, must sign an agreement with another Agent Member within a period not longer than ninety (90) calendar days from the date on which BME CLEARING issues the declaration of Default of the Agent Member.
- 6. During the period between the declaration of Default and the execution of the new agreement, the Direct Clearing Clients shall assume vis-à-vis BME CLEARING, in relation to the Accounts of which they are Account holders, the duties corresponding to the Clearing Members.

For such purposes:

- A) Direct Clearing Clients shall agree with BME CLEARING the collection and payment mechanisms related that are necessary.
- B) BME CLEARING shall require Direct Clearing Clients the posting of an Individual Fund, for each Segment in which they operate, the amount whereof shall be the amount which a Clearing Member would have to contribute for all items pertaining to each Segment, including the contribution to the Default Fund. This Individual Fund must be provided by the Direct Clearing Client within 24 hours of the BME CLEARING requesting the posting thereof.
- 7. Failure to execute a new agreement with an Agent Member, failure to properly arrange the required mechanisms, failure to comply with any obligation relating to the Default Fund as well as the other causes of default laid down in these Rule Book, shall entail a cause of declaration of Default of the Direct Clearing Client, and BME CLEARING shall adopt the measures set out for the event of Default of a Clearing Member.



## **ARTICLE 45. SETTLEMENT OF COSTS, EXPENSES AND BALANCES RESULTING FROM DEFAULT**

### **1. Obligation to reimburse expenses and costs**

All amounts due and all costs, expenses and penalties resulting for the Member or for BME CLEARING from the Default of a Member, Direct Clearing Client or Client shall be paid by the Defaulting Client, Direct Clearing Client or Member to the Member through which the latter held Positions or to BME CLEARING.

All measures relating to the settlement of expenses, costs and penalties shall be performed in accordance with the provisions governing close-out netting set forth in article 42.3 of this Rule Book.

### **2. Default by Clearing Members and by Direct Clearing Clients**

- A) BME CLEARING shall settle all the expenses, costs and penalties arising from the Default of the Defaulting Clearing Member or of the Defaulting Direct Clearing Client for each Segment in which the Defaulting Member or Direct Clearing Client held a Position. In the event of the Defaulting Clearing Member, the amount of the aforementioned settlement shall be used to calculate the Final Net Balance on the Closing-out of all the Client Accounts and the Closing-out of the Proprietary Account.
- B) If the Final Net Balance corresponding to the Closing-out of the Proprietary Account of the Clearing Member or of the Direct Clearing Client is due to the Defaulting Clearing Member or to the Defaulting Direct Clearing Client, BME CLEARING shall pay it the corresponding amount, otherwise the Defaulting Clearing Member or the Defaulting Direct Clearing Client shall pay the balance to BME CLEARING. However, if the Final Net Balance is due to the Defaulting Clearing Member, BME CLEARING may offset it against the Final Net Balance arising from the Close-out of the Client Accounts of the Defaulting Clearing Member.
- C) In cases where a transfer cannot be made, the Final Net credit Balances due to the Clients resulting from the Closing-out of the Position in the ISA Agency Client Accounts, ISA PtoP Client Accounts and OSA Client Accounts, shall be made available by BME CLEARING to the Client holding the ISA Agency Client Accounts, or to the Member for the account of the Clients, for ISA PtoP and OSA Client Accounts.

In cases of Indirect Clearing OSA Client Accounts, where a transfer has not been made, the Final Net credit Balances due to the Indirect Clients resulting from the Closing-out of the Position shall be made available by BME CLEARING to the Clearing Member, which must make them available to its Direct Clients, for the account of the Indirect Clients. In cases where a transfer cannot be made, the Final Net Balances due to the Indirect Clients resulting from the Closing-out of the Position of Indirect Clearing GOSA accounts shall be made available by BME CLEARING to the Defaulting Clearing Member, which must make them available to

its Indirect Clients, or if this is not possible, to its Direct Client, for the account of the Indirect Clients.

- D) In cases where a transfer cannot be made, the Final Net Balances payable resulting from the Closing-out of the Position of all Client Accounts held by the Clearing Member, shall be the responsibility of the Defaulting Clearing Member, in virtue of its liability vis-à-vis BME CLEARING.
- E) BME CLEARING may offset, within each Segment in which the Defaulting Member or the Defaulting Direct Clearing Client held a Position, all liquid, due and payable amounts owed by the Defaulting Clearing Member or by the Defaulting Direct Clearing Client to BME CLEARING with the amounts owed by BME CLEARING to the Defaulting Clearing Member or to the Defaulting Direct Clearing Client when calculating the corresponding Final Net Balance.
- F) After obtaining the balance for each Segment, BME CLEARING shall proceed as follows:
  - 1. If all Final Net Balances are credit balances, BME CLEARING shall make available to the Defaulting Member or to the Defaulting Direct Clearing Client all the balances in their favour, or in favour of the Member's Clients, if these are known, and the resulting Final Net Balances are in their favour.
  - 2. If the credit and debit Final Net Balances can be offset, BME CLEARING shall offset them, and if the resulting Final Net Balance is a credit balance BME CLEARING shall make it available to the Defaulting Member or to the Defaulting Direct Clearing Client if it is in its favour, or to the Defaulting Member's Clients, if these are known and if the Final Net Balances are in their favour.
  - 3. If the Final Net Balance is a debit balance, the Defaulting Member or the Defaulting Direct Clearing Client will be obliged to pay the balance to BME CLEARING.

### **3. Default by Non-Clearing Members**

- A) The General Clearing Member shall settle all the expenses, costs and penalties arising from the Default of the Defaulting Non-Clearing Member which holds Positions with it. The amount of the aforementioned settlement shall be used to calculate the Final Net Balance on the closing of all the Client Accounts and the Closing-out of the Proprietary Account.
- B) If the Final Net Balance corresponding to the Closing-out of the Proprietary Account of the Non-Clearing Member is due to the Defaulting Non-Clearing Member, the General Clearing Member shall pay it the corresponding amount, otherwise the Defaulting Non-Clearing Member shall pay the balance to the General Clearing Member. However, if the Final Net Balance is due to the Defaulting Non-Clearing Member, the General Clearing Member may offset it against the net debit balance which may arise from the closing of the Accounts of the Clients of the Defaulting Non-Clearing Member.

- C) In cases where a transfer cannot be made, the Final Net credit Balances due to the Clients resulting from the Closing-out of the Position of the ISA Agency Client Accounts shall be made available by BME CLEARING to the Clients holding the ISA Agency Client Accounts.

In cases where a transfer has not been made, the Final Net credit Balances due to the Indirect Clients resulting from the Closing-out of the Position of the Indirect Clearing OSA of which the Defaulting Non-Clearing Member is the holder, shall be made available by BME CLEARING to the General Clearing Member, which must make them available to the Defaulting Non-Clearing Member for the account of the Indirect Clients. Also, where a transfer cannot be made, the Final Net credit Balances due to the Indirect Clients resulting from the closing of the Position of the Indirect Clearing GOSA of which the Defaulting Non-Clearing Member is holder shall be made available by BME CLEARING to the General Clearing Member. The latter shall make them available to the Indirect Clients, and if this is not possible, to the Defaulting Non-Clearing Member for the account of the Indirect Clients.

- D) In cases where a transfer cannot be made and the Final Net Balance is due to the Defaulting Non-Clearing Member resulting from the Closing-out of the Position of ISA Agency, Indirect Clearing OSA or Indirect Clearing GOSA Accounts, the General Clearing Member shall pay the Defaulting Non-Clearing Member the amount of the balance. If it is in favour of the General Clearing Member, the Defaulting Non-Clearing Member must pay the Final Net Balance to the General Clearing Member.
- E) In the event that the Defaulting Non-Clearing Member holds Accounts with different General Clearing Members, each of them shall be obliged to forward to BME CLEARING their corresponding Final Net Balance, calculated in accordance with the provisions relating to the Closing-out of Client Accounts, and in relation to Proprietary Accounts, as follows:
1. In the event that the net balances settled by all General Clearing Members are debit balances or credit balances, the provision of sections B and C above shall be observed, although in respect of each Member separately.
  2. In the event that some net balances are debit balances and others are credit balances, they will be offset against each other and BME CLEARING will calculate the new Final Net Balance arising, for which purposes it will be considered that the different Positions held with each General Clearing Member by the Defaulting Non-Clearing Member are part of a sole framework agreement, pursuant to article 5.1 of RD-L 5/2005. Accordingly, BME CLEARING will separately calculate the detail of the part of the Final Net Balance corresponding to each Member in proportion to the debit or credit position corresponding to the net balance calculated by each Member, making the appropriate offsets. BME Clearing shall notify each Member of the amount corresponding to it and will collect the Final Net Balances of the Members with a net credit balance:
    - a) If the Final Net Balance is a credit balance for the Defaulting Non-Clearing Member, BME CLEARING will make this available to it, and it will pay, on

behalf of the Defaulting Non-Clearing Member, those Members with which it has a debit balance.

- b) If the Final Net Balance is a debit balance for the Defaulting Non-Clearing Member, the latter shall pay the corresponding balance to each Member with which it has a debit balance, as notified by BME CLEARING, and BME CLEARING shall pay, on behalf of the Non-Clearing Member, the amounts relating to the credit balances with other Members to those Members with which it has a debit Balance.

#### **4. Default by Ordinary Non-Clearing Members**

If the Final Net Balance resulting from the Closing-out of the Position on the own account of the Ordinary Non-Clearing Member registered in an ISA PtoP or an OSA Account where the holder is its General Clearing Member is a credit balance for the Defaulting Ordinary Non-Clearing Member, the General Clearing Member shall pay it the corresponding amount, otherwise the former shall pay the balance to the General Clearing Member.

For Indirect Clearing OSA and Indirect Clearing GOSA Accounts opened by the General Clearing Member at the request of the Ordinary Non-Clearing Member, mutatis mutandis, the measures to be implemented shall be those described in section 3 above relating to the Final Net Balance resulting from this type of Account in the event of Default by a Non-Clearing Member that is the holder of the Accounts.

#### **5. Default of Direct Clients holders of Indirect Clearing OSA or Indirect Clearing GOSA Accounts**

With regard to the Final Net Balances resulting from the Closing-out of the Indirect Clearing OSA and Indirect Clearing GOSA Accounts where the holder is a Direct Client of a Clearing Member, in the event of Default by said Direct Client, the measures to be implemented shall be those described in section 3 of this article relating to the Final Net Balance resulting from this type of Account in the case of Default by a Non-Clearing Member that is the account holder of these type of Accounts.

#### **6. Default by Clients**

- A) The Member shall settle all expenses, costs and penalties resulting from the Default of a Client holding Positions with it. The amount of the aforementioned settlement shall be included in the calculation of the Final Net Balance.
- B) If the Final Net Balance is in favour of the Client, the Member shall pay it to the Client, and if it is in favour of the Member, the Client shall pay it to the Member.
- C) If the Defaulting Client held ISA Agency Accounts with different Members, each of these Members shall be obliged to obtain the Final Net Balance corresponding to the Close-out of the Client Position held with each one:
  - 1. In the event that all the net balances settled by the Members are debit balances or credit balances for the Client, the provisions of section B above shall apply, although with respect to each Member separately.

2. If some of the net balances are debit balances and others are credit balances, they shall be offset against each other and BME CLEARING shall calculate the resulting Final Net Balance, for the purpose of which the different Positions held by the Defaulting Client with each Member shall be part of a sole framework agreement, according to the provisions of article 5.1 of RD-L 5/2005. BME CLEARING shall calculate separately the details of the part of the Final Net Balance corresponding to each Member in proportion to the debit position associated with the net balance calculated by each Member and shall perform the appropriate offsets. BME Clearing shall notify each Member of the amount corresponding to it and will collect the net balances of the Members which have a net credit balance:
  - a) If the Final Net Balance is a credit balance in favour of the Client, BME CLEARING shall make this balance available to the Client, although payment may be made previously on behalf of the Client, to those Members with which it has a debit balance.
  - b) If the Final Net Balance is a debit balance for the Client, the Client shall pay the corresponding balance to each Member with a debit balance, as notified by BME CLEARING, and BME CLEARING shall pay, on behalf of the Client, the amounts relating to the credit balances which the Client has with other Members to those Members with which it has a debit balance. In any event, the Members may claim the amount of the balance in their favour through any legal action deemed suitable.

## 7. Specialisms with respect to certain Segments

The General Conditions applicable to each Segment, as they may be, in turn, enabled by Circular, may establish the specialisms relating to the transfers of Positions and the Close-out thereof, even through the introduction of an auction system enabling an orderly Close-out on market conditions of the Positions, as well as the order for applying the Default Fund and other resources required to cover the debit balances which may arise as a result of the aforementioned Closing-out of Positions, which may be different from that established on a general basis in the provisions for the application of the Default Fund set down in this Rule Book. In the event of an auction, these General Conditions may envisage the creation of a default management group or committee formed by non-defaulting Members which operate in the relevant Segment . This group or committee will collaborate with BME CLEARING in the management of the auctions which may have to be held and it will have the functions determined in the General Conditions.

BME CLEARING may adopt, as a default management measure, the close-out and cash settlement ("*Tear-up in Default*"), when the corresponding default management measures have already been adopted and, being necessary to close-out Positions, it is impossible for BME CLEARING to do it otherwise under market conditions, provided that the adoption of this measure, due to the volume of the Positions to which it refers, does not compromise the financial soundness of the CCP. This measure shall be applicable in the cases and in accordance with the procedure and rules for the

calculation of the value established in the corresponding General Conditions of each Segment and in its implementing rules.

## **8. Order in which the Collateral and other resources are applied in the event of Default (Default Waterfall)**

- A) When Positions are Closed-out in the terms envisaged in this Rule Book, the Defaulting Member, Direct Clearing Client or Client must pay, as applicable, BME CLEARING or the Member through which it had opened Positions, the amounts arising from calculating the Final Net Balance owed by it, immediately following the notification of the aforementioned Final Net Balance.
- B) In the event a voluntary payment is not made immediately, for any reason, even as a result of the insolvency of the Defaulting Member or Client, and the creditor is a Member, the creditor may execute the Collateral posted in its favour, and, where appropriate, request BME CLEARING to proceed with the execution of the Collateral posted in favour of BME CLEARING to cover the Margins, in relation to the corresponding Central Register Accounts, provided that the Collateral corresponding to the Initial Margins has not already been executed in the Closing-out of all the Positions and the subsequent application of the close-out netting procedure, on the sound understanding that BME CLEARING shall only be bound to perform this execution to the extent that it is not a creditor of the Defaulting Client or Member, in which case, it shall proceed pursuant to the provisions set forth in the following sections.
- C) When the creditor of the Final Net Balance is BME CLEARING and the Defaulting Member or the Defaulting Direct Clearing Client does not make an immediate payment, for whatever the cause, BME CLEARING will perform with respect to each Segment, except when otherwise established, the procedures indicated below, on a successive basis in the order listed, until the total Final Net Balance owed has been paid:
  - 1. The execution of the Collateral posted to cover the Initial Margins related to the Positions held by the Defaulting Member or by the Defaulting Direct Clearing Client, to the extent to which this has not already been executed as part of the Closing-out of all the Positions and subsequent application of the Close-out netting procedure, used to calculate the corresponding Final Net Balance.
  - 2. The execution, in this order, of the Collateral corresponding to the Individual Funds for each Segment, and, if any, to the Extraordinary Margins posted by the Defaulting Member or by the Defaulting Direct Clearing Client and the Collateral held in the Buffer Account.
  - 3. The execution of the Defaulting Clearing Member's contribution to the Default Fund or the Defaulting Direct Clearing Member's contribution to the Default Fund (posted by its Agent Member) of the Segment in which the Default occurred, and if it is insufficient and they exist, the Collateral corresponding to the contributions of the Defaulting Clearing Member or of the Defaulting Direct Clearing Client to the Default Funds of all the other Segments in which the Default of the Clearing Member or the Default of the Direct Clearing Client has



not given rise to a Final Net debit Balance, as well as the Collateral posted by the Defaulting Member or Direct Clearing Client vis-à-vis BME CLEARING to cover any other Margin, of whatever type, Individual Fund or Extraordinary Margin.

4. The assumption, with a debit to BME CLEARING's dedicated own resources (Skin in the game), of a loss equivalent to the part specifically allocated to the Segment(s) in which the Default occurred.
5. The execution of the rest of the Collateral posted by the non-defaulting Clearing Members and Direct Clearing Members to cover their contributions to the Default Fund of the Segment(s) in which the Default occurred.
6. The assumption, with a debit to BME CLEARING's additional dedicated own resources (Second skin in the game), of a loss equivalent to the part specifically allocated to the Segment(s) where the Default has occurred, subject to the provisions of Article 54 of this Rule Book and its implementing rules.
7. The requirement from the Clearing Members and from the Agent Members of the Direct Clearing Clients, on their behalf, of additional contribution to the Default Fund, whereby the Collateral contributed shall be executed immediately, to the extent required.
8. The possible requirement of a contribution for service continuity in the terms provided for in the General Conditions of the Segment, in respect of which the default occurred. The contribution may be made by non-defaulting Clearing Members, with a charge to their Proprietary Accounts or against the Accounts that are net receivers of the applicable concepts established in the relevant General Conditions. The General Conditions of the Segment shall establish the party that should provide this contribution. The contribution for service continuity is additional to the contribution to the Default Fund.
9. In no case shall the provisions of sections 5, 6 and 7 and 8 of article 45.8 be applied in those Segments where the Closing-out of all the Positions held by the Defaulting Clearing Member or by the Defaulting Direct Clearing Client does not give rise to a Final Net credit Balance for BME CLEARING, or in cases where there is a Final Net credit Balance for BME CLEARING but it has been fully met, applying the measures set forward in article 45.8, sections of 1 to 4 of the Rule Book.
10. Voluntary contributions may be requested from the Clearing Members, in the terms set down in the General Conditions of the Segment in which the Default occurred, with no entitlement to a refund from BME CLEARING.
11. BME CLEARING's activities will cease with respect to the Segment(s) in which the Default occurred, with the simultaneous closing of all the Positions existing at that time or in the Segment(s) in question. To this effect, the Final Net Balance of each Position shall be obtained, and the resulting payments must be made in accordance with whether the balances of the Clients, Members and BME CLEARING are debit or credit balances.



12. The assumption of the losses not covered with a charge to BME CLEARING remaining equity, with the exception of the capital and remaining equity required from time to time under the applicable regulations.
  13. If BME CLEARING cannot reasonably continue its business operations, as a result of losses arising from the assumption of Default, it will proceed in accordance with applicable legislation.
- D) Should the procedures envisaged in article 45.8 generate any losses, as a result of the use of the Default Fund or of the mandatory contributions referred to in no.8 section C above, and even of the voluntary contributions, if any, both for Members and for BME CLEARING, both parties may file a claim against the Member or Client whose Default generated the need to perform the foregoing procedures. In this case, the recoveries that may be obtained by any of the Members or by BME CLEARING shall be earmarked to repay BME CLEARING and the Members of the corresponding Segment in the following order: 1) the voluntary contributions referred to in no.9; 2) the mandatory contributions referred to in no.8; 3) the obligatory contributions referred to in no.7; 4) the contributions referred to in no.6; 5) the mandatory contributions referred to in no.5; and 6) the contributions referred to in no.4 of section 4, all from section C of article 45.8. The refund shall be distributed on a pro rata basis with respect to the amounts contributed or required from each one. In the event that BME CLEARING or any Member recovers any amount corresponding to the contributions they made, this must be delivered to BME CLEARING for distribution in accordance with the provisions established herein.
- E) The provisions of this Article 45.8 are without prejudice to the application, where appropriate, of other recovery measures that BME CLEARING may adopt, in accordance with the provisions of this Rule Book, the implementing rules and the recovery plan of BME CLEARING, or the early intervention measures adopted by the Competent Authority and the resolution measures and tools adopted by the Resolution Authority in accordance with the provisions of Chapter 12 of this Rule Book and the Recovery and Resolution Regulation.

## **ARTICLE 46. LOSS OF MEMBER, DIRECT CLEARING CLIENT OR CLIENT STATUS IN THE EVENT OF DECLARATION OF DEFAULT**

Upon declaration of Default of a Member, Direct Clearing Client or Client, and having completed the Default management measures, BME CLEARING or the Member, as applicable, may terminate their agreement with the Defaulting Member, Direct Clearing Client or Client, which shall determine the loss of the condition of Member, Direct Clearing Client or Client, without prejudice to the obligation of the Member, Direct Clearing Client or Client to honour all pending financial obligations vis-à-vis BME CLEARING, its General Clearing Member or Member, even after having lost the status of Member, Direct Clearing Client or Client.

## CHAPTER 10. SUPERVISION AND CLAIMS

### ARTICLE 47. SUPERVISION OF BME CLEARING

1. The Chief BME CLEARING Supervisor shall be designated by BME CLEARING. In its turn, the Chief BME CLEARING Supervisor may designate BME CLEARING Supervisors. The Chief BME CLEARING Supervisor and the BME CLEARING Supervisors shall have the adequate human and technical resources, and their duties shall be the oversight of the activity of BME CLEARING Members and Clients, seeking the orderly functioning of BME CLEARING.
2. In all BME CLEARING sessions there shall be, at least, one BME CLEARING Supervisor, who shall oversee the orderly and suitable development of Clearing, Settlement, Registration and Central Counterparty processes.
3. The Supervisor shall resolve any incidents arising during the session, taking into account the provisions of the Rule Book, and other regulations applicable to BME CLEARING.
4. The Supervisor may decide the momentary suspension of one or more routes of access to the Register, in cases where such decisions should be necessary to guarantee the orderly development of the Clearing, Settlement, Registration and Central Counterparty processes. For the same reasons, the Supervisor may also decide on an extraordinary extension of the session. In all of the aforementioned cases, the Supervisor shall inform the Comisión Nacional del Mercado de Valores immediately.
5. It is the responsibility of BME CLEARING Board of Directors to draw up, revise and update the criteria to supervise the activity of Members and Clients, and to oversee the correct application of such criteria, receiving reports to that end from the Chief Supervisor of BME CLEARING dealing with detection of potential breaches of BME CLEARING rules.
6. It is the duty of the Chief BME CLEARING Supervisor to apply the internal procedures manual that BME CLEARING shall produce, in accordance with the supervision criteria established by BME CLEARING Board of Directors, to carry out an adequate supervision of the activities of Members and Clients, in order to prevent and detect possible violations of BME CLEARING rules.
7. The above-mentioned internal procedures manual shall detail the supervision tools, the detection methods and the criteria to identify possible actions that might violate BME CLEARING rules, and shall also include the criteria to communicate and cooperate with the Comisión Nacional del Mercado de Valores.
8. The supervision procedure shall imply the assessment of actions that may be considered in violation, taking into account the relevance and the consequences that such actions may have for BME CLEARING. When the nature of the actions permits it, the supervision procedure shall ensure that the affected Member or Client is informed

of the relevant circumstances in relation to its actions under supervision, that the Member or Client may present its allegations, and that certain time periods to remedy the actions, if possible, are allowed.

9. The Chief BME CLEARING Supervisor shall inform the Comisión Nacional del Mercado de Valores of all the significant or material circumstances that may affect compliance with BME CLEARING rules.

## **ARTICLE 48. RESOLUTION OF INCIDENTS WITH MEMBERS**

1. Any disagreement with the actions undertaken in BME CLEARING must be notified by the Member prior to the start of session on the Business Day subsequent to the one in which the incident occurred. Otherwise, all Trades registered, as reflected in the Trades Register, shall be deemed to have been accepted.
2. Upon notice of a disagreement by a Member, the Chief BME CLEARING Supervisor shall be in charge of investigating it to determine the source of the disagreement.
3. Once the source of the disagreement has been located, the Chief BME CLEARING Supervisor shall determine to whom it is attributable. If the failure is attributable to BME CLEARING, the latter shall be in charge of restoring the situation immediately. In the event that the failure is attributable to the Member, verification shall be requested from the Member. If the Member accepts this attribution of the source of the incident, the Member shall bear any consequences resulting therefrom. In the event that the Member does not accept attribution of the source of the incident, such incident shall remain under examination, and an amicable resolution process shall be initiated with the Chief BME CLEARING Supervisor, which must be completed prior to the start of the next session. If no agreement is reached, the Member may lodge a claim in the terms of article 50 below.
4. While the incident is pending final resolution, the Member shall be obliged to post, on a precautionary basis, the required Margins and to comply, also on a precautionary basis, with any settlements made by BME CLEARING.

## **ARTICLE 49. CLAIMS COMMISSION**

1. The Claims Commission shall consist of BME CLEARING's General Manager, Chief Supervisor and Chief Risk Officer.
2. BME CLEARING shall appoint a Chairperson from among its members, and a Secretary to the Commission who may speak at meetings but not vote.
3. Where the Chairperson considers it appropriate, BME CLEARING's supervisors and any other individuals whose attendance is required may be invited to attend Claims

Commission meetings to discuss matters included in the agenda for the meeting in question.

4. Commission members and any other individuals invited to attend its meetings shall adopt an objective and impartial attitude, act independently and at their own discretion, and abstain from participating in meetings, discussions and voting related with any matters in which they have a direct or indirect, personal or professional interest or relation.
5. The Commission's discussions are confidential.
6. The Claims Commission shall have the following duties:
  - a) Be aware of claims filed by a Member pursuant to Article 50; and
  - b) Be aware of complaints or claims filed by Clients pursuant to Article 51.
7. All communication and action relating to claims must be in writing.
8. The Claims Commission shall resolve claims and complaints within 12 weeks from the date on which written notice of the claim/complaint is received.

## **ARTICLE 50. CLAIMS BY MEMBERS AGAINST BME CLEARING**

1. In the event that a Member should wish to lodge a claim against BME CLEARING, it shall submit it in writing to the Claims Commission describing in detail its claim and the facts on which it is based.
2. If the Member disagrees with the criteria upheld by the Claims Commission or BME CLEARING, it may begin arbitration proceedings as provided in the following section, within thirty (30) calendar days counting from notice to the parties of the decision of the Claims Commission.
3. For the resolution of any claims mentioned in the preceding section of the present article, with waiver of any jurisdiction to which they may be entitled, the Members and BME CLEARING shall submit such claims to arbitration in law, which shall be regulated in accordance with the provisions of the Spanish Arbitration Law dated December 23, 2003, or any law which may replace or amend it. An arbitrator shall be appointed by common consent between the parties and, if this should not be possible, each of the parties shall designate an arbitrator, and these arbitrators shall in their turn designate a third arbitrator, who shall act as Chairman. In the event that one of the parties should not designate an arbitrator within fifteen (15) calendar days following BME CLEARING's notice of the initiation of the arbitration proceedings, the arbitrator designated by the party which has done so shall be deemed accepted as an arbitrator by the party which has failed to designate its own, and therefore the arbitration shall be awarded by a single arbitrator. The appointment shall be communicated by means of communication which provides evidence of receipt by the arbitrator or arbitrators, for its acceptance. If the arbitrator or arbitrators should not have accepted in writing addressed to the party

which appointed them, within fifteen (15) calendar days counting from the day following notice thereof, they shall be deemed not to accept the appointment. Therefore, in the event that any of the parties should have designated an arbitrator who should not have accepted his/her designation, the relevant parties shall have one last fifteen (15)-calendar day period to designate a new arbitrator. Once the arbitrator or arbitrators have accepted the designations, they shall have a period of thirty (30) calendar days to issue their arbitration award.

4. Arbitrators may decide on all materials submitted by the parties over which they arbitrate, including the validity of the arbitration itself, as well as adopt precautionary measures and rule on their own competency. They shall also establish the procedure to follow to substantiate the arbitration proceedings, with respect to the principles of audience and contradiction.
5. The venue of the arbitration proceedings shall be Madrid. The addresses for notification will be those indicated in the formalization of the arbitration or, in other case, the registered office as indicated in the Member agreement.
6. The parties expressly undertake to comply with the arbitration award issued.
7. The parties shall bear their own expenses, and the fees and expenses of the arbitrator shall be distributed by halves, unless the award should provide a different distribution.
8. For all matters which, pursuant to legal mandate, cannot be submitted to arbitration or, where applicable, for the judicial enforcement of the arbitration, the parties, with express waiver to any other jurisdiction to which they may be entitled, hereby submit to the Courts of the city of Madrid.
9. BME CLEARING shall keep an orderly record of claims received, including information on: the name of the Member filing the claim, a description of the nature of the claim, the progress of the claim, and the date the claim was resolved.

## **ARTICLE 51. CLAIMS BY CLIENTS AGAINST MEMBERS AND BME CLEARING**

1. In the event that a Client should have any complaint or claim against a Member, or against BME CLEARING itself, prior to any administrative, arbitration, or judicial action, it may contact BME CLEARING in writing at the latter's registered offices, expressly indicating its intention to lodge a claim, identifying, where applicable, the Member against which it has a claim and describing in detail the claim and the facts on which it is based. As well as providing documentation supporting these facts and the contractual relationship with the Member.
2. In the event that the Client's complaint or claim should refer to the actions of BME CLEARING, BME CLEARING's Claims Commission shall assess the claim made by the Client and shall respond to it within a maximum period of 12 weeks.
3. In the event that the Client's complaint or claim should refer to the actions of a Member, BME CLEARING's Claims Commission shall study the facts and shall try, during

the maximum period of 12 weeks, to ensure that the Client and the Member in question reach a solution by mutual consent.

4. In the event that the Client does not accept the response delivered by BME CLEARING's Claims Commission, or in the event that no agreement is reached with the Member, the Client may initiate arbitration proceedings as provided in the following section, provided that this provision has been included in the agreement between the Member and the Client. The initiation of arbitration proceedings must be communicated to the defendant, the Comisión Nacional del Mercado de Valores and to BME CLEARING.
5. For the resolution of any conflicts which may arise in relation to BME CLEARING's actions, with waiver of any jurisdiction to which they may be entitled, the parties involved may submit such matters to arbitration which shall be regulated in accordance with the provisions of the Spanish Arbitration Law, of 23 December 2003, or any law which replaces or amends this. An arbitrator shall be appointed by common consent between the parties and, if this should not be possible, each of the parties shall designate an arbitrator, and these arbitrators shall in their turn designate a third arbitrator, who shall act as Chairman. In the event that one of the parties does not designate an arbitrator within fifteen (15) calendar days following BME CLEARING's notice of initiation of the arbitration proceedings, the arbitrator designated by the party which has done so shall be deemed to be accepted as arbitrator by the party which has failed to designate its own, and therefore arbitration shall be performed by a single arbitrator. The appointment shall be communicated by means of communication which provides evidence of receipt by the arbitrator or arbitrators, for its acceptance. If the arbitrator or arbitrators should not have accepted in writing addressed to the party which appointed them, within fifteen (15) calendar days counting from the day following notice thereof, they shall be deemed not to accept the appointment. Therefore, in the event that any of the parties should have designated an arbitrator who should not have accepted his/her designation, the relevant parties shall have one last fifteen (15)-calendar day period to designate a new arbitrator. Once the arbitrator or arbitrators have accepted the designations, they shall have a period of thirty (30) calendar days to issue their arbitration award.
6. Arbitrators may decide on all materials submitted by the parties over which they arbitrate, including the validity of the arbitration itself, as well as adopt precautionary measures and rule on their own competency. They shall also establish the procedure to follow to substantiate the arbitrage proceedings, with respect to the principles of audience and contradiction.
7. The venue of the arbitration proceedings shall be Madrid. The addresses for notification will be those indicated in the formalization of the arbitration or, in other case, their respective registered offices.
8. The parties expressly undertake to comply with the arbitration award issued.
9. The parties shall bear their own expenses, and the fees and expenses of the arbitrator shall be distributed by halves, unless the award should provide a different distribution.

10. For all matters which, pursuant to legal mandate, cannot be submitted to arbitration or, where applicable, for the judicial enforcement of the arbitration, the parties, with express waiver to any other jurisdiction to which they may be entitled, hereby submit to the Courts of the city of Madrid.
11. BME CLEARING shall make available to Members and Clients a Complaints Book in which shall be entered all claims reported to BME CLEARING, concerning BME CLEARING or any Member.
12. BME CLEARING shall maintain an orderly record of the claims received that shall include, among other data, the identification of the Client filing the claim, the name of the Member against which the claim has been lodged, where applicable, a description of the nature of the claim, the progress of the claim, and the date the claim was resolved.



## CHAPTER 11. INSOLVENCY AND DEFAULT OF BME CLEARING

### ARTICLE 52. INSOLVENCY OF BME CLEARING

1. If BME CLEARING is declared insolvent or enters a situation of insolvency as stipulated in Regulation (EU) 575/2013 of the European Parliament and Council of 26 June 2013, on prudential requirements for credit institutions and investment firms (hereinafter "Insolvency" or "situation of Insolvency"), BME CLEARING shall declare this to be the case. If this declaration is not performed, Members that have not been declared in Default may require BME CLEARING to declare the early maturity of all the Positions registered in the Members' Accounts, both Proprietary Accounts and Client Accounts, in accordance with the procedures, established by Circular where applicable.
2. Once the request has been received, BME CLEARING will declare the early maturity of all the Positions registered by the Members in their Accounts. From the date of the early maturity declaration, only the Trades and Transactions necessary to perform the Closing-out of all the Positions of the corresponding Member shall be allowed to access the BME CLEARING Trades Register. This early maturity declaration will lead to the Close-out netting of the cash or securities delivery obligations arising from such Positions, in accordance with the calculations performed by BME CLEARING, which will give rise to the creation of a single legal obligation, under the same terms as those established in article 42.3 of this Rule Book.
3. As a result of such Close-out netting, BME CLEARING or the Members (for themselves and for their Clients) will only be entitled to request the Final Net Balance arising from the Closing-out of the Position, which will be performed and calculated in accordance with the procedure for early maturity, the Closing-out of Positions and clearing of balances. Once the Final Net Balance is calculated, it shall be notified to the Members. In the case that it is in their favour, BME CLEARING shall inform the Bankruptcy Administration to decide the time frame within which the payment of the Final Net Balance to the Members will take place. Where the balance is in favour of BME CLEARING, the Members shall pay the net balance within one working day of the notification.
4. The provisions of the Rule Book contained in this article, in articles 42 and subsequent and in the Circulars which eventually develop them, with respect to early maturity, the Closing-out of Positions and the clearing of balances, are deemed to be Close-out netting agreements under Royal Decree-Law 5/2005, of 11 March, on urgent reforms to foster productivity and improve public contracting, and under Law 41/1999, on securities payment and settlement systems.

## ARTICLE 53. DEFAULT OF BME CLEARING

1. In the event of the default on its corresponding payment obligations by BME CLEARING, the Members with respect to which BME CLEARING has defaulted on its obligations, and which have not been declared in Default, may request BME CLEARING to declare the early maturity of all Positions registered in their Accounts, be they proprietary accounts or Client accounts, which it holds with them at that time, in line with the procedure, where applicable established by Circular.
2. BME CLEARING shall be considered to have defaulted on its payment obligations in the following cases:
  - a) When BME CLEARING has ceased to deliver the cash resulting from the Settlements and five Business Days have elapsed since the date on which this delivery should have been made.
  - b) When BME CLEARING has not refunded the Margins in the terms established under the regulations.
  - c) When BME CLEARING has not complied with its obligations in relation to the Position Settlement.
3. Once the request has been received and the default and its persistence have been proven, BME CLEARING shall declare the early maturity of all the Positions that the Members making the request have registered in its Accounts under the stipulated terms, where applicable by Circular. From the date that early maturity is declared, under the terms established by Circular, only the Trades and Transactions necessary to Close-out all the Positions of the corresponding Member shall be allowed to access to BME CLEARING's Trades Register. This declaration of early maturity will lead to the Close-out netting of the resulting cash or securities delivery obligations, which will give rise to the creation of a single legal obligation. If BME CLEARING fails to issue a declaration, the early maturity of all Positions will take place automatically, under the terms stipulated, where applicable by Circular.
4. As a result of such Close-out netting, BME CLEARING or the Members (by themselves and for their Clients) will only be entitled to request the Final Net Balance arising from the Closing-out of the Position, which will be performed and calculated in accordance with the procedure for early maturity, the Closing-out of Positions and clearing of balances. Once the Final Net Balance is calculated, it shall be notified to the Members. BME CLEARING or the Members, as applicable, shall proceed to the payment within one working day of its notification.
5. The provisions of the Rule Book contained in this article, in articles 42 and subsequent and in the Circulars which develop them, with respect to early maturity, the Closing-out of Positions and the clearing of balances, are deemed to be Close-out netting agreements under Royal Decree-Law 5/2005, of 11 March, on urgent reforms to foster productivity and improve public contracting, and under Law 41/1999, on securities payment and settlement systems.

## CHAPTER 12. RECOVERY MEASURES OF BME CLEARING

### ARTICLE 54. BME CLEARING'S ADDITIONAL DEDICATED OWN RESOURCES

1. BME CLEARING shall allocate an amount of its own resources, as additional dedicated own resources (Second skin in the game) of BME CLEARING, the purpose of which is to cover both the losses arising from the Default of one or several Clearing Members and the Non-Default Losses (in accordance with Chapter 8 bis of this Rule Book), under the terms set forth in this Rule Book and its implementing rules.
2. The amount of the additional dedicated own resources of BME CLEARING shall be established by Circular.
3. In the event that the additional dedicated own resources of BME CLEARING have been used, BME CLEARING shall immediately inform the Competent Authority, and shall allocate new dedicated own resources until the minimum amount is covered, by the corresponding procedures, within the established term, which may not exceed one month, and with the conditions and limits established by Circular.
4. BME CLEARING shall establish by Circular the measures to be adopted in case of immediate unavailability of the additional dedicated own resources, including the possibility of requiring contributions from the Non-Defaulting Members, as well as the obligation to reimburse such contributions.

### ARTICLE 55. RECOVERY PLAN

1. In compliance with the Recovery and Resolution Regulation, BME CLEARING shall prepare and maintain a recovery plan setting out the actions to be undertaken in the event of a Default or a Non-Default, or a combination of both, in order to comply with the provisions of the Recovery and Resolution Regulation.
2. The recovery plan shall contain the recovery measures that may be undertaken by BME CLEARING to fully and effectively address all of BME CLEARING's risks. The recovery plan shall contain a framework of indicators, based on the risk profile of BME CLEARING, which shall determine the circumstances under which the measures referred to in the recovery plan shall be adopted. The indicators may be qualitative or quantitative, shall be related to the financial soundness and operational viability of the CCP and shall allow for the early adoption of recovery measures in order to let sufficient time for the implementation of the plan.

## **ARTICLE 56. PROCEDURES RELATED TO THE ACTIVATION OF THE RECOVERY PLAN**

1. The procedures to be followed when, in order to achieve the recovery objectives, it is proposed to adopt the measures set out in the recovery plan even though the value of the indicators established in the recovery plan itself has not been reached, shall be established by Circular. Likewise, a Circular shall establish the procedures to be followed when, despite having reached the value of the indicators, BME CLEARING is not going to apply the measures foreseen in the recovery plan.
2. BME CLEARING shall immediately notify the CNMV of any decision adopted in accordance with the preceding paragraph and its justification.
3. When BME CLEARING intends to activate its recovery plan, it shall notify the CNMV of the nature and extent of the problems it has detected, setting out all relevant circumstances and indicating the recovery or other measures it intends to take to address the situation, as well as the calendar envisaged for restoring its financial soundness by means of those or other measures.

## **ARTICLE 57. CLOSING OUT POSITIONS AND CASH SETTLEMENT (*TEAR UP IN RECOVERY*)**

In the General Conditions applicable to each Segment, developed, where appropriate, by Circular, when the corresponding default management measures have already been adopted and it is necessary to close out Positions which volume is so significant that it may compromise the financial stability of the CCP and it is not possible for BME CLEARING to do so otherwise, measures may be established as a recovery measure, to allow the close out of Positions in an orderly manner and under market conditions, where appropriate, and their cash settlement (*Tear up in recovery*), in the cases and in accordance with the procedures and rules for calculating the value to be determined.

## CHAPTER 13. EARLY INTERVENTION AND RESOLUTION MEASURES OF BME CLEARING

### ARTICLE 58. EARLY INTERVENTION MEASURES

1. The Competent Authority may adopt early intervention measures under the provisions of Article 18 of the Recovery and Resolution Regulation.
2. If, as part of the early intervention measures, the Competent Authority decides to require BME CLEARING to instruct its Clearing Members to request their Non-Clearing Members and Clients to participate in the auctions organised by BME CLEARING, the Clearing Members shall be obliged to ask their Non-Clearing Members and Clients to participate directly in the auctions organised by BME CLEARING.

Clearing Members shall inform their Non-Clearing Members and Clients in a comprehensive manner about the auction following the instructions received from BME CLEARING. BME CLEARING shall specify the deadline after which it will not be possible to participate in the auction. Non-Clearing Members and Clients shall inform BME CLEARING directly before such deadline of their intention to participate in the auction. BME CLEARING shall facilitate the bidding procedure for such Non-Clearing Members and Clients. Only those Non-Clearing Members or Clients of a Clearing Member may be authorized to participate in the auction in accordance with the terms established in this Rule Book and its implementing rules.

3. Clearing Members affected by this measure shall, without undue delay, as soon as this resolution measure is applied, communicate to their Clients its application and how the measure affects Clients.

### ARTICLE 59. RESOLUTION TOOLS

1. In the framework of a resolution process of BME CLEARING, the Resolution Authority may adopt resolution measures, loss and position allocation tools and the other resolution tools provided for in the Recovery and Resolution Regulation.
2. Within the framework of the provisions of article 27 of the Recovery and Resolution Regulation, prior to the adoption of the resolution tools provided for in such Regulation, the Resolution Authority shall require the compliance by the Clearing Members with all the obligations provided for in this Rule Book and its implementing rules.
3. In the event that, pursuant to article 27 of the Recovery and Resolution Regulation, the Resolution Authority does not require the compliance referred to in the previous section, the Resolution Authority may, under the terms established in the Recovery and Resolution Regulation, require the execution of the obligations that remain to be

fulfilled within a period of 18 months from the time when BME CLEARING is considered non-viable or likely to become non-viable. Clearing Members shall be obliged to comply with such obligations even after ceasing to be Clearing Members for any reason and even after BME CLEARING becomes non-viable or likely to become non-viable.

## **ARTICLE 60. VARIATION MARGIN GAINS HAIRCUTTING APPLICABLE TO NON-DEFAULTING CLEARING MEMBERS, AS ADOPTED BY THE RESOLUTION AUTHORITY**

1. The Resolution Authority may, under the terms set out in article 30 of the Recovery and Resolution Regulation, reduce BME CLEARINGs payment obligations to Clearing Members arising from the Settlement by variation of profits or payments having the same economic effect (variation margins gains haircutting).
2. The reduction shall be made in proportion to the amounts owed by BME CLEARING. The reduction shall take effect and shall be immediately binding on BME CLEARING and the affected Clearing Members from the moment the Resolution Authority adopts this resolution measure. Non-defaulting Clearing Members affected by this measure may not claim any rights from BME CLEARING (or its successor entity) arising from the reduction provided for in this paragraph and adopted by the Resolution Authority, in any subsequent proceedings.

## **ARTICLE 61. CASH CALLS BY THE RESOLUTION AUTHORITY ON CLEARING MEMBERS**

1. The Resolution Authority, in accordance with the provisions set forth in Article 31 of the Recovery and Resolution Regulation, may require Non-Defaulting Clearing Members to make a cash contribution to BME CLEARING of up to an amount equal to twice their contribution to the Default Fund.
2. The Resolution Authority may make cash calls for resolution purposes on the terms and in the amount set out in the Recovery and Resolution Regulation and irrespective of whether or not all contractual obligations requiring cash contributions from Non-Defaulting Clearing Members have been exhausted. The Resolution Authority shall determine the amount of the cash contribution of each Non-Defaulting Clearing Member in proportion to its contribution to the Default Fund.
3. In the event that a non-defaulting Clearing Member fails to pay the required amount, the Resolution Authority may require BME CLEARING to declare it in default, so that, once the default management measures have been adopted, the excess Collateral provided by the Clearing Member as Initial Margin, Individual Fund and Extraordinary Margins, as well as its contribution to the Default Fund, shall be used to pay the total amount required by the Resolution Authority.

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