

# **Article 39 Regulation (EU) 648/2012**

## **Segregation and portability**

APPENDIX: Disclosure document

**BME CLEARING**

Updated as of 29 September 2023

## Disclosure document on segregation and portability: costs and levels of protection associated with each level of segregation (Article 39.7 of Regulation (EU) No. 648/2012)

### 1. Synopsis

BME CLEARING offers the following levels of segregation in compliance with Article 39 of Regulation (EU) No 648/2012 (EMIR).

#### 1.1 Clients' Individual Segregation

##### Individual Segregated Account (Agency Model)

- Any physical or legal person, entity or institution, can hold an Individual Segregated Account (Agency model) in the Central Register managed by BME CLEARING;
- Holders of this type of account are direct counterparties of BME CLEARING;
- Positions are netted in the Central Register managed by BME CLEARING, except in the Financial Derivatives segment where positions may also be registered on a gross basis, exclusively for xRolling Stock contracts.;
- Margins posted in favour of BME CLEARING through Clearing Members are fully segregated at all times from Margins in any other account including a Member's Proprietary Account;
- If a Member decides to close the Individual Segregated Account (Agency model) due to the Client defaulting, the outstanding balance will be repaid to the Client through the insolvency administrator; Receivables must be assumed by the Member;
- Members can manage as many Individual Segregated Accounts (agency model) as they wish; and
- In case of default of the Client, its Member shall be jointly and severally liable with the Client to BME CLEARING.

##### Individual Segregated Account (Principal to Principal model)

- Members are the holders of this type of account;
- Any physical or legal person, entity or institution, can request its Member to open an Individual Segregated Account (Principal to principal model) in the Central Register managed by BME CLEARING;

- Clients are direct counterparties of their Members;
- Positions are netted in the Central Register managed by BME CLEARING, except in the Financial Derivatives segment where positions may also be registered on a gross basis, exclusively for xRolling Stock contracts;
- Margins posted in favour of BME CLEARING by the Member are fully segregated at all times from Margins in any other account including a Member's Proprietary Account.
- If so required by the General Conditions for a particular Segment of the CCP, Clients must post Margins in favour of Member accountholder.
- If a Member decides to close the Individual Segregated Account (Principal to principal model) due to the Client defaulting, the outstanding balance will be repaid to the Member, for the account of the Client, if the Client is not Known to BME CLEARING, or to the Client, through the insolvency administrator, where its identity is known by BME CLEARING; Receivables must be assumed by the Member.
- Members can manage as many Individual Segregated Accounts (Principal to principal model) as they wish; and
- In case of default of the Client, its Member shall be directly liable to BME CLEARING.

### **Special Financial Intermediary Account (Equity and Fixed Income Segments)**

- Additional type of individual segregated account (both Agency model and Principal to principal models, at the choice of the Financial Intermediary) for the Equity and the Fixed Income Segments of the CCP; and
- This type of account can only be opened to the Financial Intermediaries which have availed themselves of the optional procedure of order settlement by financial intermediaries, detailed in IBERCLEAR's Settlement System procedures and regulations.

## **1.2 Clients' Omnibus Segregation**

### **Omnibus Segregated Account**

- Numerous Clients in an account held by a Clearing Member;
- Clients in this type of account are not direct counterparties of BME CLEARING. The Clearing Member accountholder is their counterparty;
- Gross positions are posted in the Central Register managed by BME CLEARING, although Margins are calculated using the resulting net position;

- Margins posted in favour of BME CLEARING by the Clearing Member holding the accounts, are fully segregated at all times from Margins in any other account including a Member's Proprietary Account;
- If so required by the General Conditions for a particular Segment of the CCP, Members must carry Second-Tier Register Accounts in relation to every Omnibus Segregated Account for the registration of the trades and margins of each Client and may require Clients to post Margins in favour of the Member.
- If a Member defaults and BME CLEARING decides to close the Omnibus Segregated Account, the outstanding balance will be repaid to the Member through the insolvency administrator, for the account of the Clients. Receivables must be assumed by the Member and BME CLEARING reserves the right to take any pertinent action against the Member to recover any balances receivable resulting from the closure of the account; and
- Each Member may hold as many Segregated Client Accounts as it wishes; and since Clients do not have a direct relationship with BME CLEARING, Members can arrange their legal affairs with Clients in a different manner. Clients can therefore be grouped under different criteria (e.g. CASS Clients, TTCA Clients, etc.).

### 1.3 Indirect Clients' Omnibus Segregation

#### **Omnibus Segregated Client Account - Indirect Clearing (Indirect Clearing OSA)**

- Account 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.
- Registration of the Positions may be gross or net
- Margins posted in favour of BME CLEARING by the account holder are calculated in relation to the total open Position and are fully segregated at all times from Margins in any other accounts including a Member's Proprietary Account;

Depending on where they are held, we can distinguish between:

#### a) Indirect Clearing OSA held by a Clearing Member

- BME CLEARING shall be the Central Counterparty of the Clearing Member holding the Account. The Clearing Member shall be the Counterparty of the Direct Clients. The Direct Client shall be the Counterparty of the multiple Indirect Clients.
- If the Clearing Member defaults and BME CLEARING decides to close the Indirect Clearing OSA Account, the outstanding balance due to the Indirect Clients will be repaid to the Clearing Member through the insolvency administrator, which must

make them available to its Direct Clients, for the account of the Indirect Clients.  
Receivables must be assumed by the Clearing Member.

- b) Indirect Clearing OSA held by a Non-Clearing Member or by a Client of the Clearing Member
- BME CLEARING shall be the Central Counterparty of the Direct Client holding the Account. The multiple Indirect Clients on behalf of which the Trades are held in this Account, shall have the Direct Client holding the Account as Counterparty
  - The Clearing Member shall be jointly and severally liable with the Direct Client before BME CLEARING for compliance with all obligations derived from these accounts
  - If the Direct Client defaults and the General Clearing Member decides to close the Indirect Clearing OSA Account, the outstanding balance due to the Indirect Clients 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.

#### **Gross Omnibus Segregated Client Account - Indirect Clearing (Indirect Clearing GOSA)**

- Account 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.
- Within the Indirect Clearing GOSA, Positions of each indirect client will be registered separately from Positions of other indirect clients. Positions will always be registered net.
- Margins posted in favour of BME CLEARING by the account holder are calculated in relation to the net open Position of each indirect client. The total amount of the Margin required shall be the sum of the required Margins for all the different indirect clients.

Depending on where they are held, we can distinguish between:

- a) Indirect Clearing GOSA held by a Clearing Member:
- BME CLEARING shall be the Central Counterparty of the Clearing Member holding the Account. The Clearing Member shall be the Counterparty of the Direct Clients. The Direct Client shall be the Counterparty of the multiple Indirect Clients.
  - If the Clearing Member defaults and BME CLEARING decides to close the Indirect Clearing GOSA Account, the outstanding balance due to the Indirect Clients shall be made available by BME CLEARING to the Defaulting Clearing Member, through the insolvency administrator, 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. Receivables must be assumed by the Clearing Member.

- b) Indirect Clearing GOSA held by a Non-Clearing Member or by a Client of the Clearing Member
  - BME CLEARING shall be the Central Counterparty of the Direct Client holding the Account. The multiple Indirect Clients on behalf of which the Trades are held in this Account, shall have the Direct Client holding the Account as Counterparty
  - The Clearing Member shall be jointly and severally liable with the Direct Client before BME CLEARING for compliance with all obligations derived from these accounts
  - If the Direct Client defaults and the General Clearing Member decides to close the Indirect Clearing GOSA Account, the outstanding balance due to the Indirect Clients shall be made available by BME CLEARING to the General Clearing Member, which must 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.

## **1.4 Non-Clearing Members**

### **Individual Segregation: Proprietary Account**

- Non-Clearing Members are the holders of this type of account;
- Proprietary Non-Clearing Members' Positions and assets are registered differently in the Proprietary Accounts of the Central Register managed by BME CLEARING;
- Margins posted in favour of BME CLEARING by the Non-Clearing Members, through their General Clearing Members, are fully segregated at all times from Margins in any other accounts;
- Non-Clearing Members are direct counterparties of BME CLEARING;
- The General Clearing Member shall be jointly and severally liable with the Non-Clearing Member before BME CLEARING;
- If a Non-Clearing Member defaults and its General Clearing Member decides to close the Proprietary Account, the outstanding balance will be repaid to the Non-Clearing Member through the insolvency administrator. Receivables must be assumed by the General Clearing Member; and
- Each Member may hold as many Proprietary Accounts as it wishes.

## **1.5 Ordinary Non-Clearing Members**

- Ordinary Non-Clearing Members shall not be holders of Proprietary Accounts;

- Ordinary Non-Clearing Members may opt (except otherwise set out in the General Conditions for a particular Segment) to register the Trades made on their behalf and their Positions, Margins and Collateral:
  - in an ISA PtoP held by its General Clearing Member, ISA PtoP account features apply;
  - in an OSA held by its General Clearing Member. 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. OSA account features apply
- General Clearing Members are counterparties of their Ordinary Non-Clearing Members.

## 2. General matters. Accounts structure

The structure of BME CLEARING's records and accounts, as regulated in Chapter 6, "Registration", of its Rule Book, enable Members, Direct Clearing Clients and Clients to hold different types of accounts in the **Central Register** managed by BME CLEARING, as defined in Articles 21 and 22 of the Rule Book.

A first classification of the accounts held in the Central Register managed by BME CLEARING permits to distinguish:

- **Proprietary accounts:** where proprietary Trades and Positions of the corresponding Member or Direct Clearing Client are registered individually, in addition to the Margins and Collateral posted.
 

Registration of the Positions are always net, except in the Financial Derivatives segment where positions may also be registered on a gross basis, exclusively for xRolling Stock contracts.
- **Client 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:
  - 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.
  - 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.

- **Indirect Clearing accounts:** in which Trades, Positions, Margins and Collateral held on behalf of Indirect Clients are recorded. Indirect Clearing Accounts might be:
  - 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.
  - 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.

The Trade Register of BME CLEARING is composed of the Central Register managed by the CCP, where the accounts above mentioned are held, as well as of the **Second-Tier Register Accounts**, managed by those Clearing Members with the capacity to run a Second-Tier Register (Article 104.4 of the Securities Market Act and Articles 19 and 25 of BME CLEARING's Rule Book) in the cases where the General Conditions for each CCP Segment require these accounts in relation with Omnibus Segregated Accounts in the Central Register.

BME CLEARING is responsible for calculating settlements, for the settlement of positions, for managing margins and for allocating the exercising of options in relation to accounts registered in the Central Register. Members carrying a Second-Tier Register, in relation to Second-Tier Register Accounts (Article 25.2.B) of the Rule Book), are responsible for calculating settlements, for the settlement of positions and for allocating the exercising of options, in accordance with the corresponding General Conditions for each Segment of the CCP and, where the General Conditions so establish for a particular Segment, they are responsible for managing margins related to positions registered in those Second-Tier Register Accounts.

Individual Clearing Members and General Clearing Members are authorized to carry a Second-Tier Register and to keep Second-Tier Register Accounts in those Segments of the CCP where the General Conditions so require, subject to fulfilment of the conditions and requirements laid down in Article 25 of BME CLEARING's Rule Book and to have the minimum own resources that BME CLEARING may require for a particular Segment of the CCP in the corresponding General Conditions, all in accordance with the provisions of Circular on "Members Carrying a Second-Tier Register".



Second-Tier Register Accounts (subaccounts of the Omnibus Segregated Accounts), whose holders are Clients, 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 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 Clients.

The **features and regime applicable to each of these Accounts** (including who the holder is, what the counterparty relationships are with regards to the Trades registered therein, and how the Accounts are managed from an administrative and operative perspective, as prescribed in Articles 21 to 25 of the Rule Book) are described in the following sections, based on the fact that:

- Trades performed by Clearing Members or Non-Clearing Members, as well as by Direct Clearing Clients, on their own account shall be entered in their corresponding Proprietary Accounts of the Central Register managed by BME CLEARING;
- Ordinary Non-Clearing Members shall not be holders of Proprietary Accounts and may opt (except if the General Conditions for a particular Segment establish otherwise) to register the Trades made on their behalf and their Positions, Margins and Collateral, except where the General Conditions for a particular Segment of the CCP establish otherwise:
  - in an ISA PtoP held by its General Clearing Member,
  - in an OSA held by its General Clearing Member. 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.
- 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.

According to Article 23.1 of the Rule Book “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.”

The General Conditions for the Equity and Fixed Income Segments, in accordance with provisions of Articles 18.2.E) and 23.1 of the Rule Book, set out, for these particular Segments, the maintenance of accounts exclusively in the Central Register managed by BME CLEARING and the following additional types of accounts within the classes referred to in the Rule Book:

- Special Financial Intermediary Account: additional type of account based on the specialisms relating to the Account holder. This type of account can only be opened for Financial Intermediaries which have availed themselves of the optional procedure of order settlement by financial intermediaries, detailed in IBERCLEAR's Settlement System procedures and regulations.
- Gross registration accounts and Net registration accounts: additional types of accounts, based on whether Registration of Positions and the corresponding Margins are calculated gross, that is, without netting, or net, with netting.

The Circular on “Account types available in BME CLEARING” develops the provisions of the Rule Book and the General Conditions on accounts in the Central Register managed by BME CLEARING, and describes the process for opening such accounts.

BME CLEARING discloses and provides to all the CCP's Clearing Members separate information for Trades, Positions, Margins and Collateral in all accounts opened in the Central Register (Article 5.1.g) of the Rule Book). Members must transmit this information to their Clients, as well as, where the General Conditions require the maintenance of this type of account for a particular Segment of the CCP, any information on Positions and Margins registered in the Second-Tier Register Accounts (Article 16.1. D) of the Rule Book).

## 2.1 Clearing Model/Counterparty

- a) In the **ISA Agency, held by a Client**, whose identity must be known to BME CLEARING, BME CLEARING shall be the Central Counterparty of the Client with respect to the Trades registered in the ISA Agency 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, for compliance with the obligations inherent to the opening and use of these Accounts deriving from the Trades registered therein.
- b) In the **ISA Principal to Principal (ISA PtoP) held by a Clearing Member**, 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 and the Client on behalf of which the Trades are held in such Account shall have the

Clearing Member as Counterparty. Clients of an ISA PtoP shall act through their Member, which shall act in BME CLEARING in their own name on behalf of the Client. Clients shall be liable before their Member, for compliance with the obligations deriving from the Trades executed on behalf of the Client and registered in these Accounts.

- c) In the **Non-Clearing Member Proprietary Account**, BME CLEARING shall be the Central Counterparty of the Non-Clearing Member with regards to the Trades and Positions registered.

General 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 (including its Proprietary Accounts).

- d) Clients of an **OSA** shall act through their Clearing Member, which shall act in BME CLEARING in their own name on behalf of the Clients. BME CLEARING will be the Central Counterparty of the Clearing Member. The latter will be the counterparty of the Clients. Clients shall be liable before their Member, for compliance with the obligations deriving from the Trades executed on behalf of the Client and registered in these Accounts.
- e) For the **Indirect Clearing Accounts**,
  - When the Clearing Member is the account holder, BME CLEARING shall be the Central Counterparty of the Clearing Member holding the Account. The Clearing Member shall be the Counterparty of the Direct Clients. The Direct Client shall be the Counterparty of the multiple Indirect Clients.
  - when the Direct Clients are account holders, BME CLEARING shall be the Central Counterparty of the Direct Client holding the Account. The multiple Indirect Clients on behalf of which the Trades are held in this Account, shall have the Direct Client holding the Account as Counterparty.

### 3. Applicable legal framework

The legal foundations of the segregation and portability regime set forth in BME CLEARING's Rule Book and enabling provisions are described hereon, and refer to fundamental legal implications: Segregation of Margins, portability, the finality and irrevocability of Trades and measures in the event of default.

Spanish law applies except were indicated in relation to depositing securities as collateral in the central securities depositories CBL, EUROCLEAR and SIX SIS, as explained hereon.

#### **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**

Article 39 of the EU regulation, that is directly applicable in Spain, regulates the different levels of segregation that the CCP and its Clearing Members must offer their Clients.

This Article specifies that:

1. "A CCP shall keep separate records and accounts that shall enable it, at any time and without delay, to distinguish in accounts with the CCP the assets and positions held for the account of one clearing member from the assets and positions held for the account of any other clearing member and from its own assets.
2. A CCP shall offer to keep separate records and accounts enabling each clearing member to distinguish in accounts with the CCP the assets and positions of that clearing member from those held for the accounts of its clients ('omnibus client segregation').
3. A clearing member shall keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its clients at the CCP ("individual client segregation"). Upon request, the CCP shall offer clearing members the possibility to open more accounts in their own name or for the account of their clients.
4. A clearing member shall keep separate records and accounts that enable it to distinguish both in accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of its clients at the CCP.
5. A clearing member shall offer its clients, at least, the choice between omnibus client segregation and individual client segregation and inform them of the costs and level of protection referred to in paragraph 7 associated with each option. The client shall confirm its choice in writing.
6. When a client opts for individual client segregation, any margin in excess of the client's requirement shall also be posted to the CCP and distinguished from the margins of other clients or clearing members and shall not be exposed to losses connected to positions recorded in another account.
7. CCPs and clearing members shall publicly disclose the levels of protection and the costs associated with the different levels of segregation that they provide and shall offer those services on reasonable commercial terms. Details of the different levels of segregation shall include a description of the main legal implications of the respective levels of segregation offered including information on the insolvency law applicable in the relevant jurisdictions.
8. A CCP shall have a right of use relating to the margins or default fund contributions collected via a security financial collateral arrangement, within the meaning of Article

2(1)(c) of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements ( 1 ) provided that the use of such arrangements is provided for in its operating rules. The clearing member shall confirm its acceptance of the operating rules in writing. The CCP shall publicly disclose that right of use, which shall be exercised in accordance with Article 47.

9. The requirement to distinguish assets and positions with the CCP in accounts is satisfied where:
  - a) the assets and positions are recorded in separate accounts;
  - b) the netting of positions recorded on different accounts is prevented;
  - c) the assets covering the positions recorded in an account are not exposed to losses connected to positions recorded in another account.
10. Assets refer to collateral held to cover positions and include the right to the transfer of assets equivalent to that collateral or the proceeds of the realisation of any collateral, but does not include default fund contributions.
11. Member States' national insolvency laws shall not prevent a CCP from acting in accordance with Article 48(5), (6) and (7) with regard to the assets and positions recorded in accounts as referred to in paragraphs 2 to 5 of this Article<sup>1</sup>."

**Royal Legislative Decree 4/2015, of 23 de October, approving the Consolidated Text of the Securities Market Act.**

The Royal Legislative Decree 4/2015, of 23 de October, approving the Consolidated Text of the Securities Market Act ( the "Securities Market Act") recognises in the terms set forth below the principle of "afectación de garantías", the possibility for the CCP to set out a close-out netting regime, the legal founding for the portability of assets and positions in case of default, as well as the right to segregation of Margins if a Member, Client or the CCP defaults:

**Article 109.3 of the Securities Markets Act:**

"The collateral provided by the members and clients in accordance with the rules of the central counterparty's Regulation and in connection with any transactions made in the scope of its activity shall be valid only vis-à-vis the entities in whose favour it was provided and only for the obligations deriving from such transactions for the central counterparty or its members and from the status of member of the central counterparty."

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<sup>1</sup> Paragraph 11 of Article 39 EMIR added by Article 1 (11) of Regulation (EU) 2019/834 of the European Parliament and of the Council, of 20 May 2019 amending Regulation (EU) No 648/2012 ("EMIR REFIT"). According to Article 2 (a) of EMIR REFIT, this new paragraph 39.11 of EMIR shall apply from 18 December 2019.

## Article 110 of the Securities Markets Act:

1. "If a member, or a member's client, fails to meet any or all of the obligations undertaken vis-à-vis the central counterparty or vis-à-vis the member, the aggrieved party may make use of the collateral provided by the party in default and, to that end, adopt the necessary measures in the terms to be established by the entity's Rule Book.
2. The Central Counterparty's Rule Book and Circulars may establish the cases which shall determine the early termination of all contracts and positions of a member, either on its own account or on behalf of its clients, and which, in the terms of the regulation previously mentioned, shall provoke the netting of contracts and positions and the creation of a single legal obligation, covering all included transactions, based in which the parties shall only have the right to demand each other for the net balance of the result of netting such transactions. Among the previously mentioned cases, non-payment of obligations and the opening of insolvency procedures in relation to members, clients or the Central Counterparty, shall be included. Such netting regime shall have the consideration of netting agreement in accordance with the provisions of Royal Decree -Law 5/2005, of March 11<sup>th</sup>, of Urgent Reforms for the Push of Productivity and the Improvement of Public Contracts, without prejudice of the specific regime contained in Act 41/1999 of November 12<sup>th</sup>, on Systems for Payments and Securities Settlements.

(...)

4. In the event of insolvency on the part of a member of a central counterparty or any of its clients, the central counterparty shall have the absolute right of separation with regard to financial instruments and cash representing the collateral which the members and clients have provided or accepted, in accordance with the provisions of the central counterparty's Regulation. Without prejudice of the foregoing, any surplus remaining after settlement of the guaranteed transactions shall be incorporated into the estate in insolvency of the client or member.
5. In the event of insolvency of the clients of members of a central counterparty, those members shall have the absolute right of separation with regard to financial instruments and cash representing the collateral that their clients have provided, in accordance with the provisions of the central counterparty's Rule Book. Without prejudice of the foregoing, any surplus remaining after settlement of the transactions shall be incorporated into the estate in insolvency of the client in question.
6. Once a member has been declared bankrupt, the Central Counterparty, after notifying the National Securities Market Commission, shall arrange for the transfer of any contracts and positions registered for clients, together with the financial instruments and cash representing the corresponding collateral. For these purposes, both the competent judge and the administrators in the bankruptcy proceedings

shall provide the entity to which the book entries and collateral are to be transferred with access to the documentation and the computer records required to make the transfer effective. Where such transfer cannot be effected, the entity may order the settlement of the contracts and positions which the member had opened, including those for the account of clients. In that case, once the procedures that must be performed with respect to the registered positions and collateral provided by clients vis-à-vis the member have concluded, the clients shall have the absolute right of separation with respect to any surplus.

7. In the event of insolvency of the Central Counterparty and should the liquidation of all contracts and positions of a member proceed, either for its own account or on behalf of its clients, members and clients who had not breached their obligations to the Central Counterparty shall have the absolute right of separation with respect to any surplus of the collateral posted to the Central Counterparty in accordance with its own Rules and Regulations, coming from the liquidation of the guaranteed transactions with the exception of contributions to the default fund"

#### **Article 107.1 of the Securities Market Act**

Recognises that BME CLEARING's Rule Book shall have the status of a Securities Market regulation of order and discipline, specifying that:

1. "Central counterparties shall approve their articles of incorporation and an internal Regulation, which shall have the status of a Securities Market regulation of order and discipline."

Lastly, Article 104.1 of the Act establishes that:

"The central counterparty shall take the form of a public limited company and shall be recognized as system for the purposes of Act 41/1999, of 12 November, on systems for payment and securities settlement".

#### **Law 41/1999 of 12 November on payment and securities settlement systems**

Law 41/1999 of 12 November 1999 on payment and securities settlement systems transposes into Spanish law Directive 98/26/EC of 19 May 1998 of the European Parliament and of the Council on settlement finality in payment and securities settlement systems. It recognises finality, irrevocability and enforceability, specifying that transfer orders entered onto a system by participants, (where applicable) the clearing thereof, the obligations resulting from this clearing, and the instructions to settle any other commitments imposed by the system to ensure accepted transfer orders or clearing instructions posted are fulfilled, are binding on third parties and cannot be contested or rendered null and void for any reason.

Article 13 of Law 41/1999 stipulates that the opening of insolvency proceedings against a participant of a system or the company managing said system shall not have effects on the



rights and obligations of said participant or managing company that: a) derive from the transfer orders received and accepted by the system prior to the system being notified of the opening of the said insolvency proceedings; b) result from the clearing, where applicable, of such orders on the same business day on which notification was received; or c) are intended to settle on the said business day any other commitments imposed by the system to ensure accepted transfer orders or clearing instructions posted are fulfilled.

These obligations are settled pursuant to the system's rules against the funds or securities available in the settlement account of that participant to fulfil the participant's obligations in the system, and against available collateral and other assets and credit facilities established by it for this purpose.

The rights of a company managing a system or of a participant regarding the collateral provided to it in a system (Article 14 of Law 41/1999) shall not be affected by insolvency proceedings against the participant in the system or any third party that has provided such collateral, as the company managing the system or the participant has absolute rights of separation (bankruptcy remoteness). This collateral may be realised for the satisfaction of these rights.

The cash and securities provided as collateral can be used to fulfil secured obligations, even in the event insolvency proceedings are opened, without prejudice to any surplus resulting from the obligations being settled against this collateral being counted as part of the total assets of the participant subject to insolvency proceedings.

#### **Royal Decree-Law 5/2005 of 11 March 2005 on urgent reforms to foster productivity and improve public contracting**

Royal Decree-Law 5/2005, in Chapter II of Title I, transposes into Spanish law Directive 2002/47/EC of 6 June 2002 of the European Parliament and of the Council on financial collateral arrangements. It is applicable to close-out netting arrangements and to financial collateral arrangements and any collateral provided in relation to BME CLEARING in its capacity as a central counterparty clearing house (Article third and fourth of Royal Decree-Law 5/2005).

With regards to close-out netting arrangements, Article fifth of this Royal Decree-Law sets out that on the occurrence of an enforcement event, the obligations of the parties become due and the parties will only be entitled to require from each other the net balance resulting from the settlement of those obligations. The net balance shall be calculated in accordance with the terms of the close-out netting arrangement or of related agreements.

Article fifteenth of this Royal Decree-Law refers to the effects of the opening of insolvency proceedings on collateral, specifying that:

1. "The opening of insolvency or winding-up proceedings shall not be cause for declaring null and void or reversing a financial collateral arrangement or any collateral provided, as long as the financial collateral arrangement has come into existence or the collateral has been provided prior to the decree to open proceedings



or provide the collateral; or that the said arrangement came into existence or the collateral was provided in a prescribed period prior to commencement of such proceedings or measures or the taking up any other event in the course of such proceedings or measures.

2. Where a financial collateral arrangement or has come into existence or collateral has been provided on the day of, but after the moment of the commencement of insolvency or winding-up proceedings, it shall be legally enforceable and binding on third parties if the collateral taker can prove that he was not aware, nor should have been aware, of the commencement of such proceedings or measures.
3. "Financial collateral arrangements shall not be limited, restricted or affected in any way by the opening of insolvency or winding-up proceedings, and may be executed immediately and in a segregated manner pursuant with the terms and conditions agreed by the parties and with the aforementioned provisions.
4. "Financial collateral arrangements that come into existence or collateral that is provided prior to the opening of insolvency or winding-up proceedings can only be reversed or declared void in the circumstances described in Article 71 of Insolvency Act 22/2003 of 9 July 2003 by the insolvency administrator, who will have to provide evidence that the creditors have committed a fraudulent act."

Meanwhile, Article sixteenth contains particular provisions regarding the effects of the opening of insolvency proceedings on close-out netting arrangements in the sense that these proceedings may not affect the possibility to declare the anticipated maturity, termination, resolution or enforcement of the close-out netting arrangement or the financial operations concluded within its framework.

#### **Royal Legislative Decree 1/2020, 5 May, approving the Consolidated Text of the Insolvency Act (Insolvency Act)**

The legal provisions which expressly apply to a case of liquidation or dissolution of BME CLEARING, are laid down in Law 41/1999 and in the Securities Market Law, as mentioned above as well as in the general rules governing corporate enterprises or insolvency laws.

Article 574.3 of the Insolvency Act states, regarding the appointment of insolvency administrators, that in the event of insolvency of an entity subject to the supervision of the CNMV, the person appointed as insolvency administrator shall be chosen out of the three persons proposed by the CNMV.

The special characteristics of the CCPs, the nature of their activities, the necessary protection of the interests of the participants in the clearing and settlement systems managed by the CCPs, the role that they play in the financial and securities market, and their condition as entities subject to the supervision of the CNMV, justify that, in the event of insolvency, the CNMV would be involved in the proposal of the persons to be appointed

as insolvency administrators, in order that the required measures may be taken for the orderly recovery or liquidation, if necessary, of the CCP.

Article 578 of the Insolvency Act also specifies that the special provisions established in specific legislation applicable to credit institutions or entities that are similar to these under law, investment service firms, and participants of securities clearing and settlement systems shall apply when insolvency proceedings are opened against said entities. In this regard, specific legislation includes that set forth in Securities Market Act, Law 41/1999 and Royal Decree-Law 5/2005. These regulations are subjectively and objectively applied within the scope stipulated therein to the transactions and contracts defined in the same legislation, in particular those relating to trades performed on payment and securities clearing and settlement systems, double ready forward transactions, repo transactions, or derivatives transactions.

### **3.1 Determination of applicable legislation**

As indicated above, Spanish law applies.

1. Collateral provided in the form of securities deposited in CBL Luxembourg and EUROCLEAR shall be subject to the law of Luxembourg or Belgium, respectively, in relation to certain matters, as explained below:
  - In this sense, pursuant to Article 15.2 of Law 41/1999, collateral that is legally deposited and recorded in a depositary in another EU Member State in favour of a Spanish system, the participants thereof or the company managing said system, which is provided to secure settlements in the systems, shall be subject to the law of the corresponding Member State insofar as the proprietary law effects thereof.
  - Similarly, Article 17 of Royal Decree-Law 5/2005 stipulates that: "1. Book entry securities collateral shall be governed by the law of the Member State in which the primary account is maintained. The primary account is that in which the book entries recording the provision of the book entry securities collateral to the collateral taker are made. The reference to the law of a Member State is a reference to its material law, disregarding any rule under which, in deciding the relevant question, reference should be made to the law of another country.
2. This law shall be applicable in relation to the following issues:
  - a) The legal nature and proprietary effects of book entry securities collateral;
  - b) The requirements for perfecting a financial collateral arrangement, and more generally the completion of the steps necessary to render such an arrangement and provision effective against third parties;

- c) Whether a person's title to or interest in such book entry securities collateral is overridden by or subordinated to a competing title or interest, or a good faith acquisition has occurred; and
- d) The steps required for the realisation of book entry securities collateral following the occurrence of an enforcement event."

BME CLEARING has obtained the legal opinions of independent lawyers experts in the law of Luxembourg and Belgium who have analysed the fundamental legal matters regarding the valid arrangement and enforceability of financial collateral, the capability of realisation and the fact that these arrangements can be contested *erga omnes*, along with the impact, as applicable, of insolvency proceedings being opened against the participant providing the collateral or the central securities depositary.

3. With regards to the collateral deposited in SIX SIS via transfer of ownership of the securities, a legal analysis has also been conducted.

The set of BME Clearing internal rules regulating the posting of collateral, together with the Member agreements, by virtue of which members accept to be bound by the CCP internal regulations, are subject to Spanish Law. Hence, Spanish Law will apply to the collateral arrangement.

However, Swiss Law will be the law applicable to the transfer of securities and to the constitution of the security interest over the securities. Swiss Law recognises the ownership of the securities held as collateral (deposited via title transfer) by BME CLEARING in the collateral account and the immediate access to such securities and the enforceability of the collateral, in the event of a Member's default. BME CLEARING is recognised by SIX SIS as the holder of the ownership rights over the securities received as collateral materialised via title transfer in BME CLEARING's account opened at SIX SIS and the protection of the rights acquired by BME CLEARING over the securities posted in BME CLEARING's account at SIX SIS in the event of default of the Member.

4. In light of the conclusions reached in the above-mentioned legal assessments, it can be confirmed that there are no essential differences in the laws of these countries (Belgium, Luxembourg and Switzerland) with regard to the collateral protection framework laid down in Spanish law. In the most relevant legal aspects, the framework of protection of the collateral posted in favour of BME CLEARING is similar to the regulatory framework applicable in Spain.

#### **4. Omnibus Client Segregation (Article 39.2 EMIR): Segregation in the accounts with BME CLEARING of assets and positions of each Clearing Member from those held for the accounts of its members**

As explained, Clearing Members' Positions and Margins are registered in the corresponding Proprietary Accounts of the Central Register managed by BME CLEARING.

Trades, Positions, Margins and Collateral held by Clearing Members on behalf of Clients opting for omnibus segregation are reflected in the Central Register through the Omnibus Segregated Accounts defined above (Article 21.4 of the Rule Book) and, where the General Conditions require the maintenance of this type of account for a particular Segment of the CCP, the Positions and Margins of the Clients are simultaneously registered in Second-Tier Register Accounts managed by the Members Carrying a Second-Tier Register, and only the latter shall include the Client's identity (Article 24.2 of the Rule Book).

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 (Article 21.4 of the Rule Book).

Where applicable according to the General Conditions for a particular Segment, Second-Tier Register Accounts of an OSA, will be held by Clients, and 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 (Article 24.1 of the Rule Book). Clients of an OSA and, where applicable, of the corresponding Second-Tier Register Accounts, shall act through their Member, which shall act in BME CLEARING in their own name but on behalf of the Client and shall be liable before their Member, for compliance with the obligations deriving from the Trades executed on behalf of the Client and registered in these Accounts.

Paragraph 6 of Article 19 of the Rule Book indicates that Members Carrying a Second-Tier Register shall be responsible in connection with the Second-Tier Register Accounts, of the possibility of identifying the whole life of a Trade, and of the Positions resulting therefrom, from its registration to its 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 Position to be made and to directly connect a Trade or Position with its origin.

Lastly, paragraph 3 of Article 24 of the Rule Book specifies that Second-Tier Register Accounts must be in agreement with the corresponding Omnibus Segregated Accounts of the Central Register, so that Trades registered in the latter reflect the Positions registered in detail in the former. To this effect, Members must make the Position Adjustment in the OSA Central Register Accounts with gross Position Accounts, as a result of the closing of Trades or Positions in the Second-Tier Register Accounts, respectively. The Circular on "Members Carrying a Second-Tier Register" and the Instruction on "Information to be

supplied to BME CLEARING by Members Carrying a Second-Tier Register” establish the periodic comparison procedures pursuant to Article 24.3 of the Rule Book.

In the cases thereby established for a certain CCP Segment in the related General Conditions, the Members must request the related Margins from their Clients holding Second-Tier Register Accounts, in order to cover the risk corresponding to the Position of each of those Accounts, as well as the Client's risk circumstances (Article 31.1 of the Rule Book). In those cases, Members Carrying a Second-tier Register must keep a differentiated register of Margins for each Segment where the General Conditions so require, corresponding to each Second-Tier Register Account (Article 31.3 of the Rule Book). Members must also keep the Collateral posted in cash by Clients in differentiated bank accounts or, otherwise, invest them in highly liquid, low risk instruments with a known yield.

In relation to each of the OSA Account opened in the Central Register, BME CLEARING shall maintain the following ancillary accounts (Article 21.5 of the Rule Book), for administrative and operational purposes and for risk management, with the exceptions special features which, where appropriate, are established for specific Segments in the corresponding General Conditions or Circulars:

1. Position Accounts, OSA Clients Accounts may 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.

In the Equity, Fixed Income and IRS Segments, Proprietary Accounts can only have one Position Account.

2. 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 OSA Account.
3. 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 OSA Account.

In light of the above, Members' Positions and assets and those of their Clients who have opted for omnibus segregation are fully separated.

#### **4.1 Indirect Clearing Omnibus Accounts**

BME CLEARING offers the following accounts in the Central Register managed by BME CLEARING for the registration of the assets and positions held for the account of indirect

clients, in accordance with the segregation requirements established by the indirect clearing RTS: Omnibus Segregated Client Account- Indirect Clearing (Indirect Clearing OSA), and Gross Omnibus Segregated Client Account- Indirect Clearing (Indirect Clearing GOSA) (Article 22.1 of the Rule Book)

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 (Article 22.2 of the Rule Book):

- Indirect Clearing OSA held by a Clearing Member: 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 shall be the Counterparty of the Direct Clients. The Direct Client shall be the Counterparty of the multiple Indirect Clients.
- Indirect Clearing OSA held by a Non-Clearing Member or by a Client of a Clearing Member, BME CLEARING shall be the Central Counterparty of the Direct Client holding the Account with respect to the Trades registered therein. The multiple Indirect Clients on behalf of which the Trades are held in this Account, shall have the Direct Client holding the Account as Counterparty.
- Indirect Clearing GOSA, held by a Clearing Member, BME CLEARING shall be the Central Counterparty of the Clearing Member holding the Account with respect to the Trades registered therein. The Clearing Member shall be the Counterparty of the Direct Client. The Direct Client shall be the Counterparty of the multiple Indirect Clients.
- Indirect Clearing GOSA held by a Non-Clearing Member or by the Client of a Clearing Member, 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 shall have the Direct Client holding the Account as Counterparty.

For the indirect Clearing Accounts, when the Direct Clients are account holders, 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 (Article 17.2 of the Rule Book)

For each of these accounts, BME CLEARING shall maintain the ancillary accounts, for administrative and operative purposes and for risk management, with the exceptions and particular features that might be established in the General Conditions of the respective Segments, as described here below (Article 22.3 of the Rule Book):

- a) Position Accounts, where the Positions resulting from the Trades entered in each of the Accounts are registered.

- 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.

In the Equity, Fixed Income and IRS Segments, Indirect Clearing OSA Accounts can only have one Position Account.

- 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:

- 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.
- 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.

- 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.
- 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.

Thus, Positions and assets of Indirect Clients who have opted for any of the two omnibus segregation alternatives are fully separated from the assets and Positions of the Members and comply with the requirements laid down in the indirect clearing RTS.



## 5. Individual Client segregation (article 39.3 EMIR): Segregation in the accounts with BME CLEARING of assets and positions of each Client from those held for the accounts of other Clients

Individual Segregated Accounts (both, Agency and Principal to principal (Article 21.3.A and B of the Rule Book), and in the Equity and Fixed Income Segment of the CCP the Special Financial Intermediary Account (additional type of individual account, available in the Equity and Fixed Income Segment) all of them opened in the Central Register managed by BME CLEARING, are the types of individual segregation accounts that the CCP offers to Clearing Members and that enable them to offer their Clients individual client segregation. Non-Clearing Members might also offer its Clients the possibility to hold an ISA Agency (Articles 6.2 and 21.3.A) of the Rule Book)

Trades performed by a Member on behalf of a Client holding an ISA Agency and trades related to Clients of ISA PtoP, as well as their Positions, Margins and Collateral, shall be entered in the corresponding Account of the Central Register (Article 23.5 of the Rule Book). Ordinary Non-Clearing Members may opt to register the Trades made on their behalf and their Positions, Margins and Collateral in an ISA PtoP held by its General Clearing Member (Article 8.2.b) of the Rule Book), except where the General Conditions for a particular Segment set out otherwise. In particular, in the Equity and the Fix Income Segments, Ordinary Non-Clearing Members can only register the Trades made on their behalf in an ISA PtoP held by its General Clearing Member.

In the ISA Agency, held by a Client, whose identity must be known to BME CLEARING, BME CLEARING shall be the Central Counterparty of the Client with respect to the Trades registered in the ISA Agency 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, for compliance with the obligations inherent to the opening and use of these Accounts deriving from the Trades registered therein (Articles 21.3.A) and 16.2.B of the Rule Book).

As explained above, Non-Clearing Members register their proprietary trades in Proprietary Accounts held by the Non-Clearing Member (article 21.1.A), being these individual segregated accounts opened in the Central Register managed by BME CLEARING, that allow individual segregation in respect of Non-Clearing Members proprietary trades. BME CLEARING shall be the Central Counterparty of the Non-Clearing Member with regards to the Trades and Positions registered in the Non-Clearing Member Proprietary Account. Non-Clearing Member must post Initial Margins in favour of BME CLEARING (Article 29.2. A of the Rule Book). General Clearing Members act 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 (including its Proprietary Accounts), irrespective of whether it has complied with this obligation vis-à-vis the General Clearing Member (Article 4.3 of the Rule Book).

In the ISA Principal to Principal (ISA PtoP) held by a Clearing Member, 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 and 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. Clients of an ISA PtoP 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, for compliance with the obligations deriving from the Trades executed on behalf of the Client and registered in these Accounts (Articles 21.3.B and 16.2.B of the Rule Book)

The Ordinary Non-Clearing Member who requests registration of its proprietary trades on an ISA PtoP shall bear vis-à-vis its General Clearing Member, who holds the account and shall be its Counterparty, the rights and obligations corresponding to the Clients of each of these types of Account.

The provisions regarding traceability of Trades aforementioned (Article 19.6 of BME CLEARING's Rule Book) apply to individual segregated accounts.

Clients holding ISA Agency must post Initial Margins in favour of BME CLEARING (Article 29.2 of the Rule Book), through their related Member, with the particular rules that may be set out in the relevant General Conditions for a Segment of the CCP.

Members holding ISA PtoP must also post in favour of BME CLEARING the Initial Margins that the CCP may require from them (Article 29.2.A) of the Rule Book). Besides, in accordance with Article 31.1 of the Rule Book, in those cases where the General Conditions so establish for a particular Segment of the CCP, Members holding ISA PtoP accounts must require Margins from their Clients or Ordinary Non-Clearing Members to which the trades registered in such accounts refer, being the latter obliged to post the Margins before and in favour of the Member.

As per Article 30.6 of the Rule Book, BME CLEARING keeps, updates and discloses to all the CCP's Clearing Members separate information for Positions and Margins in all accounts opened in the Central Register (proprietary and client's accounts).

Pursuant to the above, the Positions and assets of Clients holding individual segregated accounts can be fully separated.

The number of Proprietary and ISA accounts that a Member can hold in the Central Register managed by BME CLEARING is not limited. Members can ask for several of these accounts to be opened, as specified for the Proprietary Accounts in Article 29.2.E of the Rule Book, in relation to the Initial Margin, and in the Circular on “Account Types available in BME CLEARING” for the other types of accounts.

## **6. Compliance with the requirement to segregate assets and positions in BME CLEARING**

### **Assets and positions are recorded in separate accounts**

As explained in previous sections, the Margins of Members and Clients are registered and booked separately in the corresponding Central Register Accounts or Second-Tier Register Accounts, as applicable. Besides, BME CLEARING maintains ancillary accounts, for administrative and operative purposes and for risk management: Position, Margin and Collateral Accounts. These ancillary accounts contribute to a better identification and differentiation of the assets and positions recorded in BME CLEARING’s Trade Register.

Assets pledged as collateral in favour of BME CLEARING may consist of cash (in Euros) or securities. These assets are deposited in special accounts solely used for depositing Margins and opened in BME CLEARING’s name.

According to the “Posting of Margins” Circular and the Circulars on the posting of collateral in the form of securities in IBERCLEAR, CLEARSTREAM, EUROCLEAR and SIX SIS, applicable to the Margins posted in favour of BME CLEARING:

- Cash is deposited in the Margin Accounts of BME CLEARING on the TARGET2 (Bank of Spain, Eurosystem) platform; and
- Securities posted as collateral, either through transfer of ownership or as a pledge in the case of IBERCLEAR, CLEARSTREAM and EUROCLEAR, and by means of transfer of ownership in the case of SIX SIS, are deposited in the respective Margin Accounts opened in BME CLEARING’s name at both central securities depositories.

### **Netting of positions recorded on different accounts is prevented**

Pursuant to paragraph 6 of Article 23 of BME CLEARING’s Rule Book, Trades and Positions of Members and Clients are recorded in different accounts without being netted.

## **Assets covering the positions recorded in an account are not exposed to losses connected to positions recorded in another account**

The comment made above regarding the principle of "*afectación de garantías*" established Article 109.3 of the Securities Market Act also applies here. This principle is also reflected in Article 30.1 of BME CLEARING's Rule Book for Margins posted in favour of BME CLEARING, and in Article 31.1 for those posted in favour of Members.

As explained and pursuant to the applicable regulation, BME CLEARING complies with the requirements of segregation of assets and Positions in different Accounts.

## **7. Default**

In the event of a **Client defaulting**, its Member shall be responsible for declaring the default and adopting the measures necessary to manage the default, pursuant to the provisions set forth in Chapter 9 of BME CLEARING's Rule Book. The Member shall proceed to close the Position of the Defaulting Client, in accordance with the close-out netting provisions set out in the Rule Book (Articles 42.3, 43 and 45 of the Rule Book).

In accordance with the provisions of Article 48 of Regulation (EU) 648/2012 of 4 July 2012, the Rule Book establishes in Article 43 the mechanisms for transferring or close-out netting Client's Positions in the event of default of Clearing Members differentiating the types of client accounts than the Clearing Member can either hold or manage.

According to Article 42 of BME CLEARING's Rule Book, upon declaration of Default of a Member, BME CLEARING, as applicable, may transfer to another Member, if 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 (subaccounts of the Omnibus Segregated Accounts), in accordance with the provisions of Article 43. BME CLEARING may sell off, in whole or in part, the Collateral of any kind posted in favour of BME CLEARING. The close-out netting of positions, transfer of accounts of the Defaulting Member and the settlement of costs, expenses and balances resulting from the Default are explained in Articles 42.3, 43 and 45 of the Rule Book.

BME CLEARING's Rule Book also regulates the measures to be adopted with regards to Client's Positions, in the cases of default of the Non-Clearing Members and the Ordinary Non-Clearing Members.

The costs, expenses and balances resulting from default are settled pursuant to Article 45 of the Rule Book.

## 8. Disclosure obligations of clearing members and obligation to communicate Clients' decisions in writing

As per Article 5.3.q), 7.3.o) and 8.3 of the Rule Book, Members are obliged to inform their Clients concerning the different regulations applicable to the different types of accounts of the Central Register and of the Second Tier Register prior to opening the Accounts of the Clients.

According to article 16.3 of the Rule Book 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.

In its turn, and with regards to indirect clients, article 17.3 of the Rule Book sets out that 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.

## 9. Costs

The fees for the maintenance of Positions set forth in BME CLEARING's Fees Circular shall apply.

The fees charged by BME CLEARING shall not vary depending on the different levels of segregation.

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