

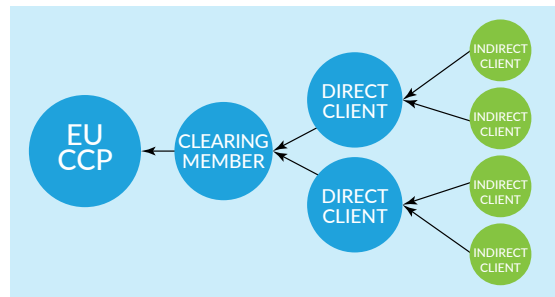


## 2018 INDIRECT CLEARING DOCUMENTATION

# Industry standard documents to help firms meet indirect clearing requirements under MiFIR and EMIR

### What is an indirect clearing arrangement?

An indirect clearing arrangement is a set of contractual relationships between the central counterparty (CCP), the clearing member (CM), the client of a clearing member (DC) and the client of the client of the clearing member (indirect client - IC) that allows the client of a clearing member to provide clearing services to that indirect client indirect client. EMIR (for cleared OTC) and MiFIR (for exchange-traded derivatives) regulate such arrangements and impose specific requirements on market participants that enter into indirect clearing arrangements.



FIA has been working with market participants and Clifford Chance LLP to create industry standard documentation to assist firms meeting some of the MiFIR and EMIR indirect clearing requirements.

The suite of indirect clearing documents supplements FIA's existing documentation library and

provides firms with a range of jurisdictional risk disclosures, jurisdictional legal due diligence documents/questionnaires and contractual terms, which they can tailor to fit their specific business model and client base.

### Key documents:

#### INDIRECT CLEARING JURISDICTIONAL QUESTIONNAIRES<sup>1</sup>

- The purpose of the indirect clearing questionnaire is to ascertain how laws of the direct client's jurisdiction treat certain indirect clearing requirements (e.g. segregation, porting, leapfrog) and whether they give them legal effect pre- and post-direct client's insolvency, either by way of statutory protections or otherwise (e.g. private contractual security interest arrangements). The indirect clearing questionnaires are jurisdiction specific and inform clearing members as to whether the MiFIR RTS

default management requirements are legally effective in a specific client jurisdiction and what they or their clients may need to do to make them legally effective.

#### INDIRECT CLEARING CM RISK DISCLOSURES<sup>2</sup>

- This document outlines risks for indirect clients in the event of the clearing member's default, depending on the level of segregation they choose. These disclosures are specific to the CM's jurisdiction and build on the existing FIA/ISDA EMIR Article 39(7) risk disclosure.

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For more information email [msiraj@fia.org](mailto:msiraj@fia.org) or visit [FIA.org/indirectclearingdocs](http://FIA.org/indirectclearingdocs).



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### INDIRECT CLEARING DC RISK DISCLOSURES<sup>3</sup>

- This document outlines risks for indirect clients in the event of the direct client's default, depending on the level of segregation they choose. These disclosures are specific to the DC's jurisdiction and are similar in structure to the existing FIA/ISDA EMIR Article 39(7) risk disclosure.

### FIA INDIRECT CLEARING TERMS

- The indirect clearing terms are designed to supplement contractual terms based on either the 2011 Professional Client Agreement or

the newly launched 2018 Terms of Business. Different versions of the indirect clearing terms have been prepared (as summarised in the table below) depending on the FIA documentation being supplemented, whether the terms will apply between the CM and DC or the DC and IC, and whether they will be used with Basic OSAs only or Basic OSAs and GOSAs. The terms have been drafted for use with simple chains (CCP-CM-DC-IC) although separate advice has been given about how the terms can be modified for use with longer chains.

## Overview of FIA indirect clearing documents

Documentation type	Pre-2018 Terms of Business				2018 Terms of Business	
	2011 PCA with Clearing Module		2011 PCA without Clearing Module		2018 Terms of Business	
Client clearing arrangements						
Clearing level	CM-DC	DC-IC	CM-DC	DC-IC	CM-DC	DC-IC
Indirect clearing arrangements – contractual terms	CM-DC BOSA only Terms	DC-IC BOSA only Terms*	N/A	DC-IC BOSA only Terms*	CM-DC BOSA only Terms	DC-IC BOSA only Terms
	CM-DC BOSA/GOSA Terms	DC-IC BOSA/GOSA Terms*		DC-IC BOSA/GOSA Terms*	CM-DC BOSA/GOSA Terms	DC-IC BOSA/GOSA Terms
Indirect clearing arrangements – non-contractual documentation	Indirect clearing jurisdictional legal due diligence	/	Indirect clearing jurisdictional legal due diligence	/	Indirect clearing jurisdictional legal due diligence	/
	CM risk disclosure	/	CM risk disclosure	/	CM risk disclosure	/
	/	DC risk disclosure	/	DC risk disclosure	/	DC risk disclosure

1 England & Wales, France, Germany, Switzerland, the US, Australia, Denmark, the Netherlands, Austria, Luxembourg, Singapore, Spain, HK, Italy, Sweden, Greece, Belgium, Canada (Ontario), Guernsey, Israel, South Korea and Poland.

2 England & Wales, France, Germany, Switzerland and the US.

3 England & Wales, France, Germany, Switzerland, the US, HK, Australia, Singapore and Canada (Ontario).

\*There are two sets of indirect clearing terms that can be used to supplement a contractual relationship between the DC and IC based on the PCA 2011: the DC-IC BOSA only Terms and the DC-IC BOSA/GOSA Terms. Each can be used regardless of whether or not a Clearing Module has been entered into between the DC and IC.

Visit [FIA.org/indirectclearingdocs](https://www.fia.org/indirectclearingdocs) for more information about the FIA Indirect Clearing Documentation and how to access it. For more information on FIA's Documentation Library, including Legal Opinions and the FIA 2018 Terms of Business<sup>©</sup>, visit <https://www.fiadocumentation.org/fia/european-documentation-library>.