



Briefing on updated FIA clearing documentation

Tuesday, 25 January 2022



Agenda

- Introduction
- Overview of FIA Documentation Services
- FIA Terms of Business 2018 – basics
- Updated FIA Terms of Business 2018 Package
 - What and why did FIA publish in November 2021?
 - FAQs
- FIA Indirect Clearing Terms
 - Indirect clearing terms for longer chains
 - FAQs
- Future reviews of FIA Terms of Business
- How to access updated FIA clearing documentation?

Presenters



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Today's presentation was prepared by

C L I F F O R D
C H A N C E



Overview of FIA Documentation Services



FIA Documentation Services

- FIA maintains three separate documentation services:
 - European Documentation Library
 - US Documentation Library
 - CCP Risk Review
- The three 'libraries' are subject to:
 - different access models
 - include different documents; (legal opinions, template agreements, risk disclosures, CCP rule summary/analysis)
 - serve different audiences
 - satisfy different regulatory requirements and objectives
- FIA Documentation Services are:
 - available to FIA members and non-members
 - hosted on FIA Documentation Platform (HighQ)
 - some are only available by subscription

Overview of FIA Documentation (non-US)

	Direct client (DC) – Indirect client (IC) arrangement	Clearing member (CM) – Direct client (DC) arrangement	Clearing member (CM) – CCP arrangement
AGREEMENTS	Updated 2018 ToBs + Updated User Guide: FIA DC-IC BOSA only and BOSA/GOSA Indirect Clearing Terms for use with 2018 ToBs (Updated) New Indirect Clearing Terms (for longer chains) Pre-2018 ToBs: FIA DC-IC BOSA only and BOSA/GOSA Indirect Clearing Terms for use with 2011 ToBs (Updated)	Updated 2018 ToBs + Updated User Guide: FIA CM-DC BOSA only and BOSA/GOSA Indirect Clearing Terms for use with 2018 ToBs (Updated) New Indirect Clearing Terms (for longer chains) Update Patch 2021 Pre-2018 ToBs: <ul style="list-style-type: none"> • FIA Clearing Module • ISDA/FIA Client Cleared OTC Derivatives Addendum (non-US) • FIA 2017 Regulatory Patch • FIA CM-DC BOSA only and BOSA/GOSA Indirect Clearing Terms for use with 2011 ToBs (Updated) 2017 ISDA/FIA Cleared Derivatives Execution Agreement (non-US) ISDA/FIA EMIR Reporting Delegation Agreement	
LEGAL OPINIONS	Netting opinions Collateral opinions	Netting opinions Collateral opinions CRR Article 305 opinions	CCP opinions IAS 32 opinions
DISCLOSURES & QUESTIONNAIRES	FIA DC indirect clearing risk disclosure	FIA/ISDA EMIR Article 39 risk disclosure FIA CM indirect clearing risk disclosure FIA IC jurisdictional legal due diligence questionnaires	
OTHER	Are you a US FCM? Please visit the FIA US Documentation Library		CCP Risk Review



FIA Terms of Business 2018



FIA Terms of Business – 2018 Update Project

WHY?

- Review and update 2011 Terms of Business in light of new regulations
- Consolidate and streamline various existing agreements and modules
- Comprehensively amend certain legal concepts/terms
- All with a view to creating the industry standard agreement for client clearing of ETD and OTC derivatives

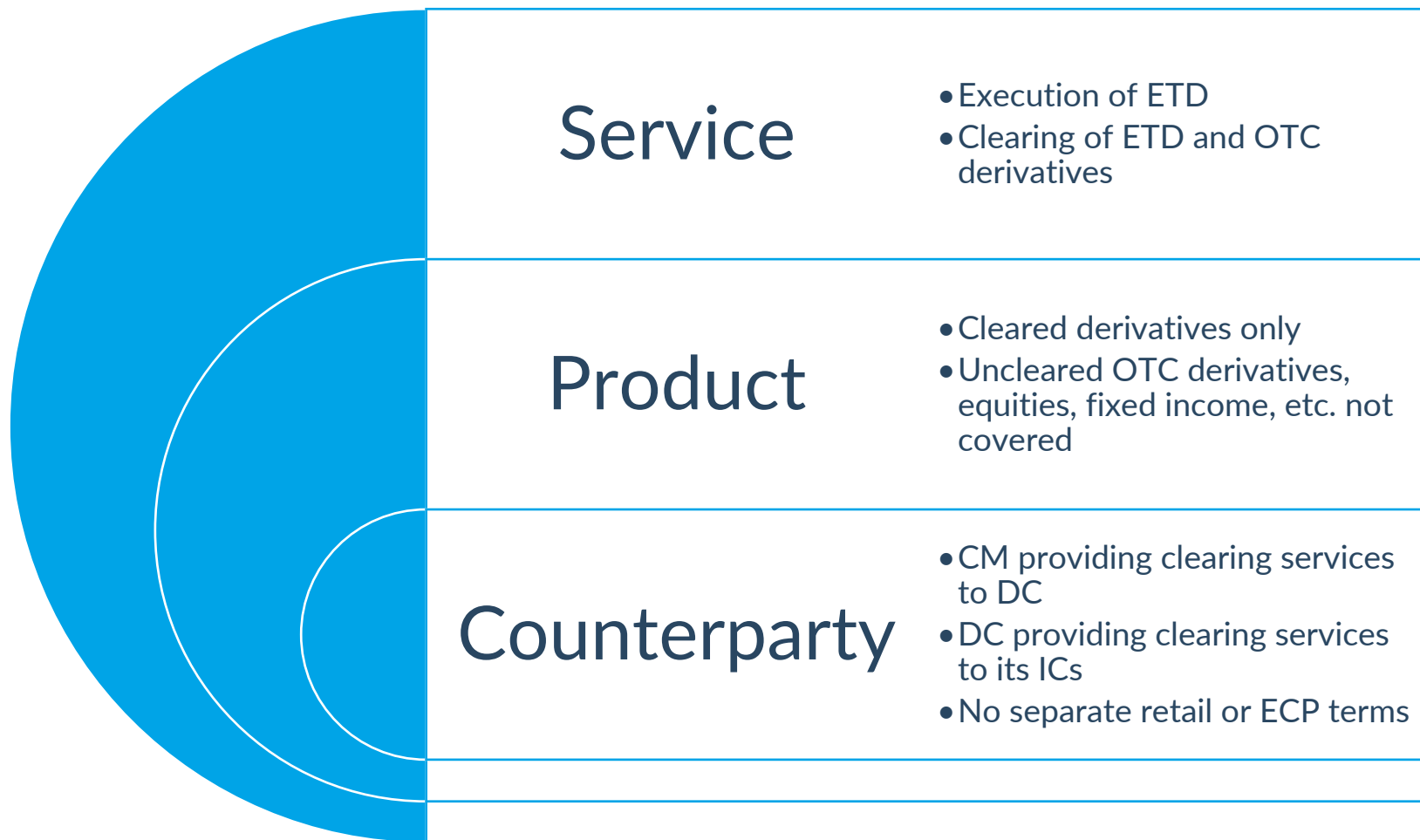
WHAT?

- Regulatory Patch
- Terms of Business 2018
- User Guide

WHEN?

- Regulatory Patch originally published in June 2017 (and re-published in July 2017)
- FIA Terms of Business 2018 and User Guide published in August 2018

FIA Terms of Business 2018 – Scope





FIA Terms of Business 2018 – building blocks structure

Base Agreement

- 32 Sections – Core Provisions highlighted in yellow
- Annex
- Table A – Agreed CCPs
- Execution Schedule

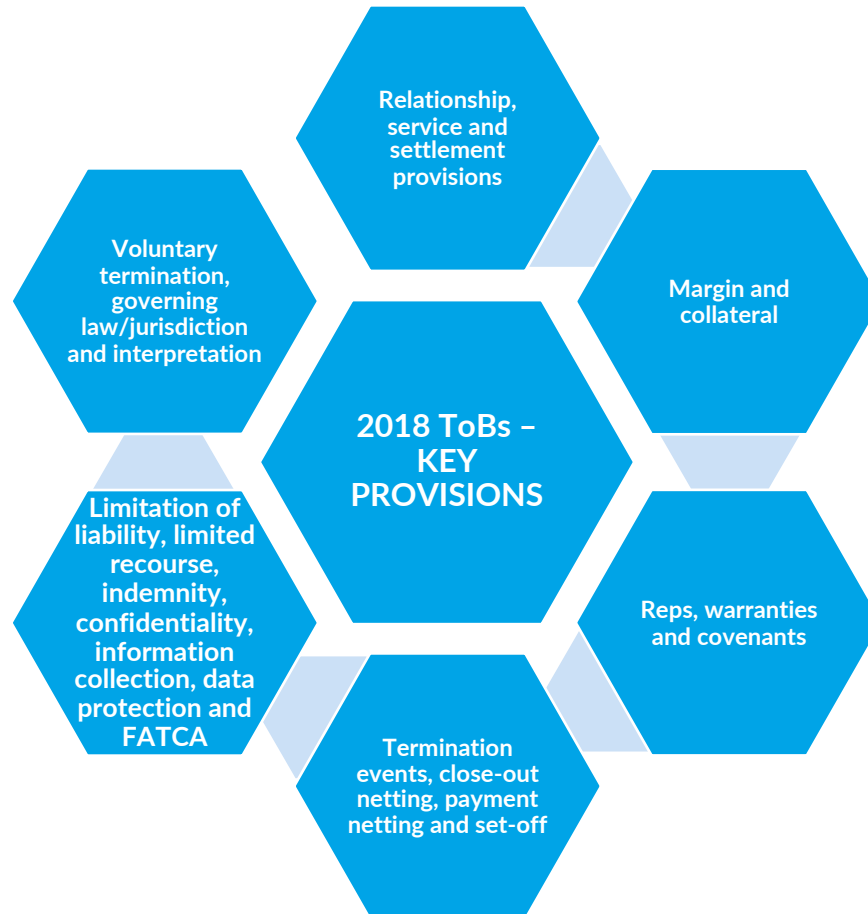
Schedules and optional provisions (in User Guide)

- Agency Schedule
- Trustee Schedule
- Custody Schedule
- Commodities Provisions
- Two-way Default Provisions
- Two-way Margining Module
- OTC Clearing Provisions
- General Optional Provisions

Other sections of User Guide

- Overview of the 2018 Terms of Business
- Clause guide to the 2018 Terms of Business
- Retail Client guidance notes

FIA Terms of Business 2018 – Key provisions of the Base Agreement





Updated FIA Terms of Business 2018 – version 2.0



FIA Terms of Business – 2021 Update Project

WHY?

- Review and update FIA Terms of Business 2018 in light of new UK (and EU) regulations and reforms (*see next slide for details*)

WHAT?

- FIA Terms of Business 2018 – Version 2.0
- Update Patch 2021
- Updated User Guide to the FIA Terms of Business 2018
- New Indirect Clearing Terms (*suitable for longer chains indirect clearing*)
- Updated versions of the Indirect Clearing Terms published in 2018

WHEN?

- The updated FIA documentation ‘package’ was published in November 2021



Which pieces of regulation/reforms did we consider for the FIA Terms of Business 2018 review?

- The end of the Brexit transition period;
- Changes to UK insolvency legislation;
- Article 4(3a) EMIR, which requires clearing members and clients providing clearing services to provide those services under fair, reasonable, non-discriminatory and transparent commercial terms (FRANDT);
- IBOR transition;
- The potential for a firm to retain profits that a client has accumulated rather than paying them out as variation margin;
- Changes to the netting sets aggregation provision and the mechanics of it under the Indirect Clearing Terms;
- Recent court cases relevant in the context of the FIA Terms of Business;
- Supplementing the Indirect Clearing Terms modules to cater for the provision of indirect clearing services by indirect clients; and
- The impact of the LME's proposal to dematerialise warrants.
- Whether to include a 'two-sided' exclusive jurisdiction clause.



Updated FIA Terms of Business 2018 (Version 2.0) – FAQs

1

- **What is the purpose of the ‘2021 Update Patch’ and how can I use it?**
- The purpose of the ‘2021 Update Patch’ is to update the FIA Terms of Business 2018 (Version 2.0). The document includes a template letter that can be sent to clients in order to inform them of the proposed modifications to their Terms of Business.

2

- **Does the updated version of the FIA Terms of Business 2018 (Version 2.0) have any impact on the FIA netting opinions?**
- No, the updates do not alter the core provisions (which are the subject of the opinions).

3

- **What is the rationale behind the new ‘Retained margin (profit)’ clause?**
- This clause enables the Firm and the Client to agree that cash that would otherwise be returnable to the Client may be retained by the Firm.

4

- **Are the updated Terms of Business compliant with UK and EU regulations?**
- Yes, although the FIA Terms of Business 2018 (Version 2.0) have been updated to take account of the end of the Brexit transition period, references to EU legislation has been retained where appropriate.

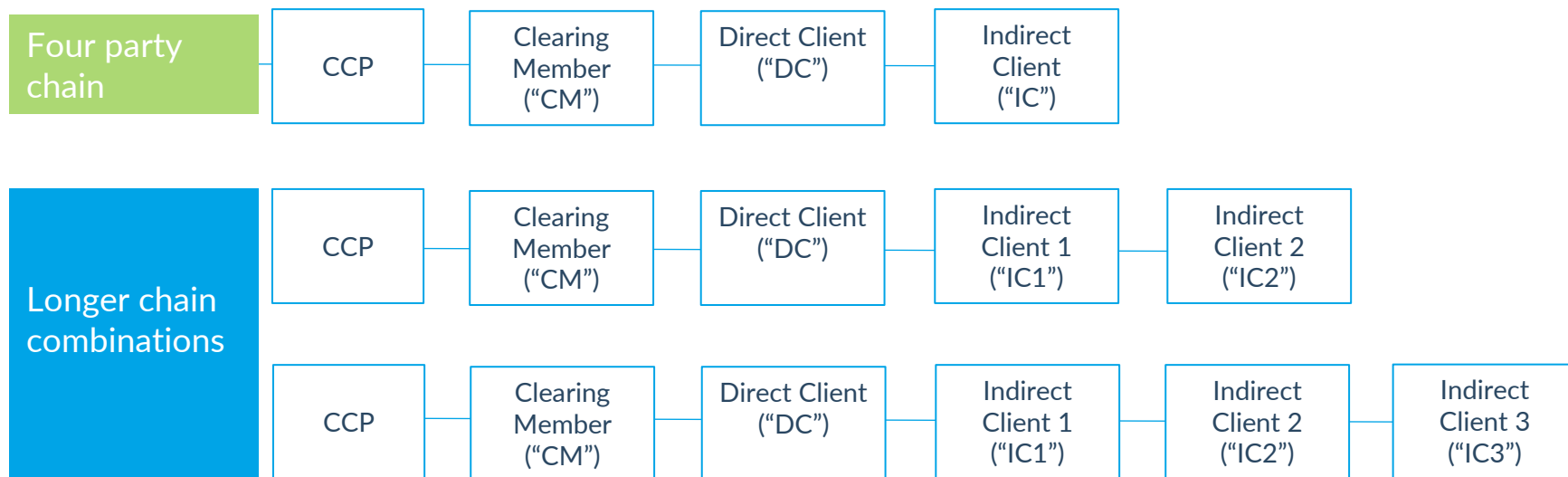
5

- **How did FIA address the EU FRANDT requirement in the updated ToBs?**
- Chapter 10 (OTC Clearing Provisions) of the User Guide has been updated to include a section on FRANDT. This provides background to the obligations and sets out certain points that firms should bear in mind when seeking to comply with the FRANDT requirements



New FIA Indirect Clearing Terms – longer chains

Indirect clearing chains



- The MiFIR and EMIR Indirect Clearing RTS set out the conditions under which indirect clearing services can be provided.
- There are additional restrictions on longer chains – more detail is set out in the longer chains memorandum. The Indirect Clearing RTS prohibit longer chains which extend past IC3.

FIA Indirect Clearing Terms – overview

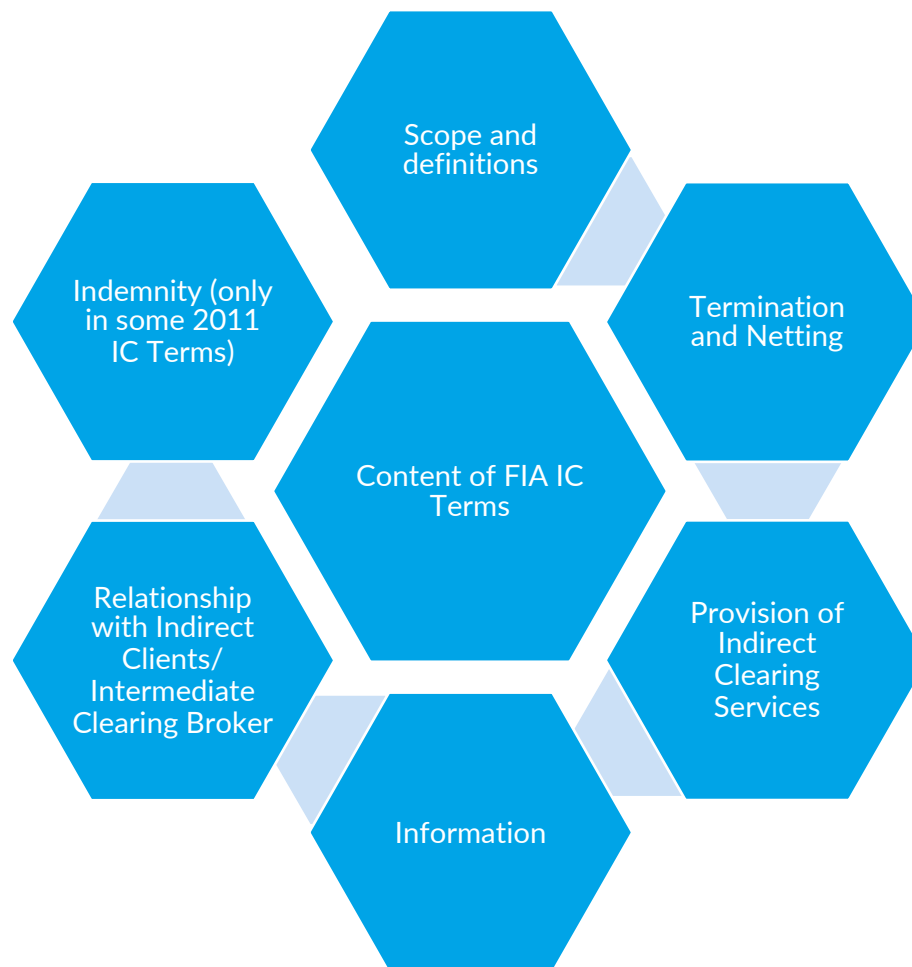
	FIA Professional Client Agreement 2011				FIA Terms of Business 2018			
	CM-DC	DC-IC1	IC1-IC2	IC2-IC3	CM-DC	DC-IC1	IC1-IC2	IC2-IC3
Updated BOSA only Terms	X	X	N/A	N/A	X	X	N/A	N/A
Updated BOSA/GOSA Terms	X	X	N/A	N/A	X	X	N/A	N/A
NEW Longer chains CM-DC Terms	X	N/A	N/A	N/A	X	N/A	N/A	N/A
NEW Longer chains 'middle links' Terms	N/A	X	X	N/A	N/A	X	X	N/A
NEW Longer chains 'end of chain' Terms	N/A	X	X	X	N/A	X	X	X

^[1] These terms cover the following links in the chain: CCP – **CM – DC** – IC1 – IC2, CCP – **CM – DC** – IC1 – IC2 – IC3 and CCP – **CM – DC** – IC.

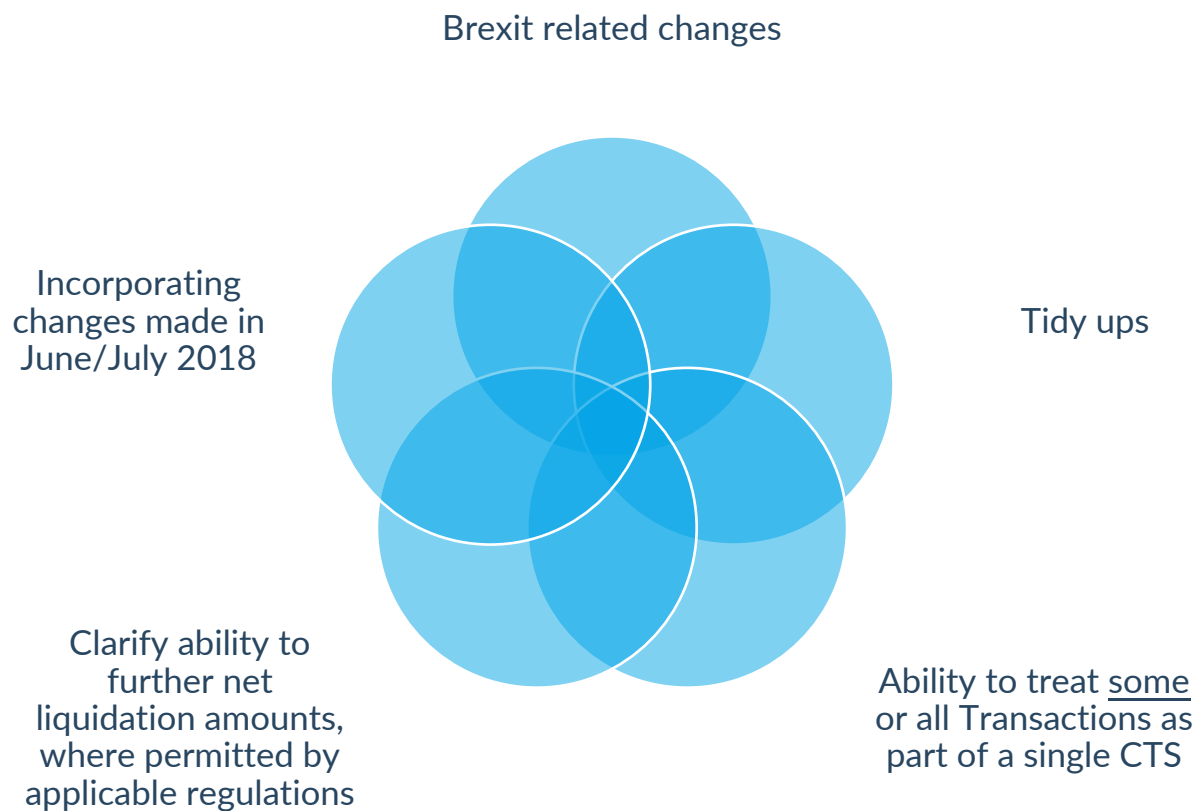
^[2] These terms cover the following links in the chain: CCP – CM – **DC – IC1** – IC2 and CCP – CM – DC – **IC1 – IC2** – IC3.

^[3] These terms cover the following links in the chain: CCP – CM – DC – **IC1- IC2**, CCP – CM – DC – IC1 – **IC2 – IC3** and CCP – CM – **DC – IC**.

FIA Indirect Clearing Terms - content



Original FIA Indirect Clearing Terms – what has changed?

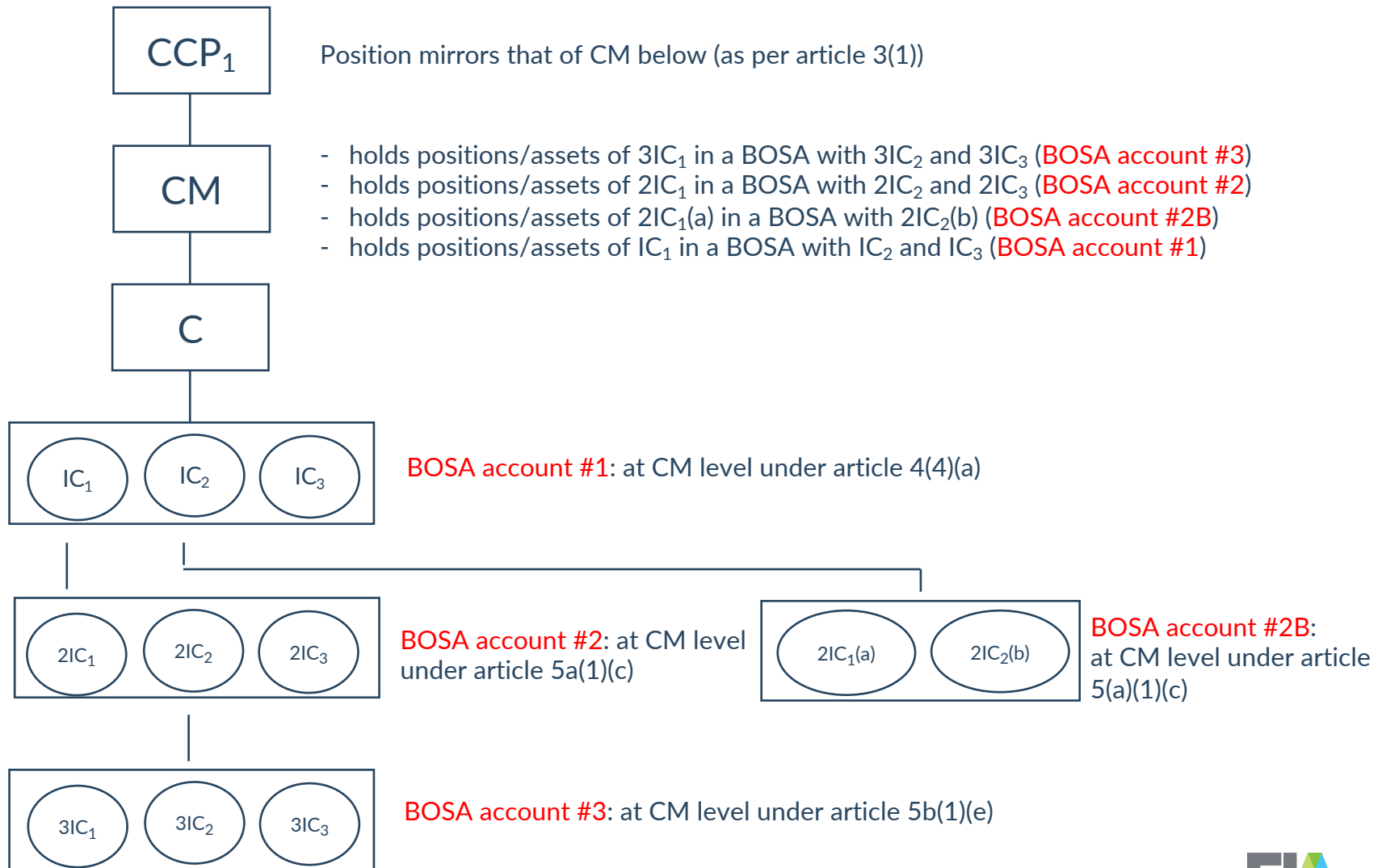




New, longer chains documentation – BOSA only

- 6 documents, 3 for 2018 ToBs, 3 for 2011 PCA
- Cater for longer chains under articles 6 and 7 RTS – terms amended to reflect RTS longer chains requirements
- New structure:
 - CM-DC level is the top tier document
 - DC-IC level operates as end of chain document
 - Created new middle links document that can be used at any level in between
- Netting sets concept retained as per old documents – done at CCP level
- What do I need to look out for when using these documents?
 - Length of chain – consider whether requirements of article 7(1)(b) and 6(2) are met
 - Where am I in the chain?
 - Make sure that all my documentation works together – for example, look at documents with ICB
 - What capacity am I acting in?
- For 2011 middle link document, addition of some FIA Clearing Module mechanics relating to calculation of CSTA (which at CM-DC module is done through use of FOA Clearing Module but at this level Firm is not acting as CM so provisions won't be in place)

Longer chains documentation – IC structure (BOSA only)





Indirect Clearing Supplemental Netting Opinions

What are the IC Supplemental Netting Opinions?

- These opinions are 'top-up' opinions that supplement FIA jurisdictional netting opinions to cover the enforceability and validity of the FIA Indirect Clearing Netting Provisions.

What is their scope?

- They cover the forms of the FIA Indirect Clearing Terms that include amendments to the netting provisions in the FIA Terms of Business. They are given in respect of the same types of parties and transactions as the FIA jurisdictional netting opinions.

Why does FIA maintain them?

- FIA maintains a number of Indirect Clearing Terms and some of them include amended netting provisions that are not covered in the 'base' FIA jurisdictional netting opinions. Therefore, we maintain the IC Supplemental Netting Opinions to help firms benefit from netting for regulatory capital purposes when they use the FIA Indirect Clearing Terms.

Why may firms require them?

- CM-DC netting amendments: creation of multiple netting sets (multiple Liquidation Amounts or Cleared Set Termination Amounts) instead of a single amount
- DC-IC netting amendments: new termination event (the DC Trigger Event), upon the occurrence of which, netting provisions apply that are not provided for in the FIA Terms of Business.

FIA indirect clearing documentation– FAQs

1

• **Are the new/updated FIA Indirect Clearing Terms compliant with the UK and EU indirect clearing rules?**

- Yes, although they are based on the UK versions of the RTS. At the moment the two versions are the same in substance, but (a) modifications may be needed for example to the definitions if relying on the EU versions and (b) regulatory divergence needs to be borne in mind.

2

• **Can the same FIA Indirect Clearing Terms be used with the same client accessing multiple CCPs under the same 'base agreement' at different levels in the indirect clearing arrangement?**

- Not at the moment. An amalgamated version has been considered and can be produced if there is interest.

3

• **What is the difference between 'Agreed IC CCP' and 'Additional IC CCP'?**

- An Agreed IC CCP is each EU or UK Agreed CCP as defined the 2018 ToBs or as agreed between the Parties, whereas an Additional IC CCP is a CCP in respect of which the Firm is not a clearing member (and where an ICB is used for access in respect of transactions). It is therefore a term used for non CM-DC chains.

4

• **How much netting and set-off is allowed under the MiFIR indirect clearing rules and FIA indirect clearing documentation?**

- Separate Liquidation Amounts/IC Cleared Set Termination Amounts are created to separate out certain Transactions, for example those in an IC Cleared Transaction Set. Some firms wish to have the ability to further net amounts by, for instance, netting a Liquidation Amount which would otherwise be owed by the CM to the DC relating to DC proprietary positions against a separate Liquidation Amount which would otherwise be owed by the DC to the CM relating to indirect clearing positions.



Future ToBs reviews



Looking ahead – when will FIA next review the ToBs?

- FIA is committed to maintaining the FIA Terms of Business 2018 and accompanying documents up-to-date.
- FIA plans to gradually ‘retire’ the 2011 PCA and accompanying documentation, including the Indirect Clearing Terms that were produced for use with the 2011 PCA, by no longer providing updates to the 2011 suite of documentation.
- There are a number of existing and future pieces of regulation that will need to be considered in the next iteration of the ToBs review.
- We are currently analysing the application of BRRD Articles 55 and 71a and the UK PRA's stay in resolution rules on the FIA Terms of Business 2018 (and FCM Futures Account Agreements).
- We previously commenced analysing the impact of CSDR Mandatory Buy-In requirements on the FIA Terms of Business 2018, however the work has been paused due to the recent delay of the effective date of the MBI requirement.
- We will continue to monitor future regulatory and other relevant developments that may impact the FIA Terms of Business 2018. One piece of regulation that will need to be considered in this context is CCP Recovery & Resolution (Article 63 – Safeguards for clients and indirect clients).



Accessing the updated FIA Terms of Business



How can I access the updated FIA Documentation Package?

We host the updated Terms of Business 2018 (Version 2.0) together with the updated User Guide, the 2021 Update Patch and all the updated and new FIA Indirect Clearing Terms on the [FIA Documentation Platform](#).

FIA members and non-members are welcome to access our documentation.

A preview version of the updated FIA Terms of Business 2018 is available free of charge.

The updated FIA Documentation Package (*i.e., the updated Terms of Business 2018 (Version 2.0) together with the updated User Guide, the 2021 Update Patch and all the updated and new FIA Indirect Clearing Terms*) is available for a one-off fee (GBP3,500 for FIA members and GBP5,000 for non-members).

Please feel free to contact [Mitja Siraj](#) if you have questions or would like to get access to the updated documents.



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C H A N C E



Thank you for joining us today!

Upcoming Webinars:



2021 Annual ETD Volume Review
9:30 AM ET



Taking stock of European regulatory developments
2:00 PM GMT



FIA