



# FIA Webinar (2/2)

FIA Opinions

APRIL 2025



# Reminders

- The webinar will be recorded and posted to the FIA website within 24 hours of the live webinar.
- *Disclaimer: This webinar is intended for informational purposes only and is not intended to provide investment, tax, business, legal or professional advice. Neither FIA nor its members endorse, approve, recommend, or certify any information, opinion, product, or service referenced in this webinar. FIA makes no representations, warranties, or guarantees as to the webinar's content.*



# Presenters

## Host:

**Mitja Siraj**, VP Legal, Europe, FIA

## Panelist:

**Caroline Meinertz**, Partner, Clifford Chance LLP

**Clemens-Emanuel Gutwenger**, Senior Associate, Clifford Chance LLP

**Richard Whiteaway**, Senior Associate, Clifford Chance LLP

# Agenda



**1** Overview of FIA Documentation Services

**2** FIA Opinions and Coverage for Netting, Collateral and CCPs



# Section

1

Overview of FIA Documentation Services

2

FIA Opinions and Coverage for Netting, Collateral and CCPs



# 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 – [www.fiadocumentation.org](http://www.fiadocumentation.org)
- Some are only available by subscription/purchase.

# Overview of FIA Documentation (NON-US)

## Full Document matrix

	Clearing Member (CM) – Direct Client (DC) Arrangement	Direct client (DC) – Indirect client (IC) Arrangement	Clearing Member (CM) – CCP Arrangement
<b>Agreements</b>	FIA Terms of Business 2018 – Version 2.0 (updated 2021) <a href="#">User Guide (updated 2023)</a> Update Patch 2021 <a href="#">FIA CM-DC Indirect Clearing Schedules</a> <u>Pre-2018 ToBs:</u> FIA Clearing Module FIA 2017 Regulatory Patch FIA CM-DC Indirect Clearing Modules <u>Other:</u> <a href="#">ISDA/FIA Master Regulatory Reporting Agreement (2023)</a> ISDA/FIA Cleared Derivatives Execution Agreement (non-US) ISDA/FIA Client Cleared OTC Derivatives Addendum (non-US)	FIA Terms of Business 2018 – Version 2.0 (updated 2021) <a href="#">User Guide (updated 2023)</a> <a href="#">FIA DC-IC Indirect Clearing Schedules</a> <u>Pre-2018 ToBs:</u> FIA DC-IC Indirect Clearing Modules	
<b>Legal Opinions</b>	Netting opinions Collateral opinions CRR Article 305 opinions	Netting opinions Collateral opinions	CCP opinions IAS 32 opinions
<b>Disclosures &amp; Questionnaires</b>	<a href="#">EMIR 3.0 disclosure templates (2024)</a> <a href="#">EU CCPRRR disclosure templates (2023)</a> FIA/ISDA EMIR Article 39 risk disclosure FIA CM indirect clearing risk disclosure FIA IC jurisdictional legal due diligence questionnaires	FIA DC indirect clearing risk disclosure <a href="#">EMIR 3.0 disclosure templates (2024)</a> <a href="#">EU CCPRRR disclosure templates (2023)</a>	
<b>Other</b>	<a href="#">Are you a US FCM? Please visit the FIA US Documentation Library</a>		CCP Risk Review



# Section

1

Overview of FIA Documentation Services

2

FIA Opinions and Coverage for Netting, Collateral and CCPs

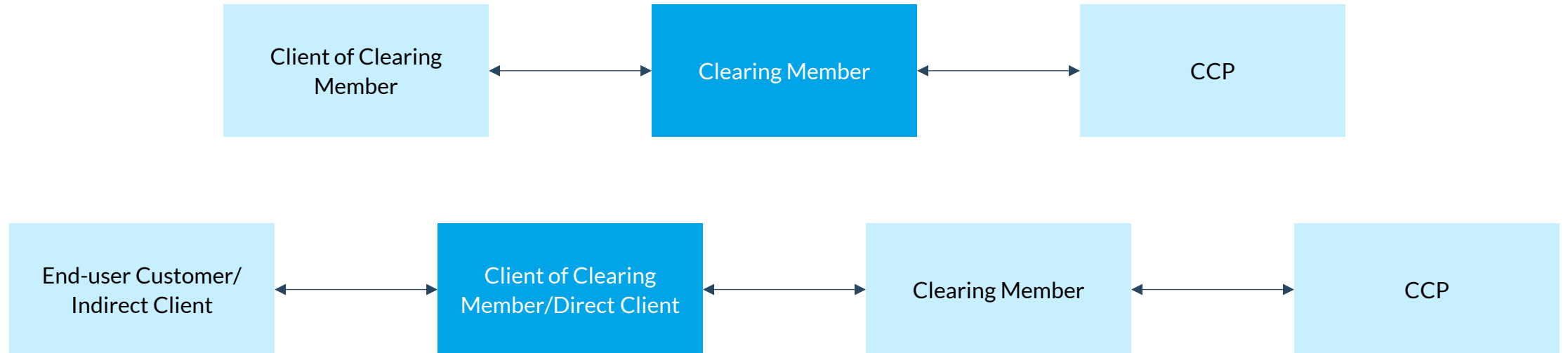


# Overview of FIA Documentation (NON-US)

## FIA Terms of Business 2018

	Clearing Member (CM) – Direct Client (DC) Arrangement	Direct client (DC) – Indirect client (IC) Arrangement	Clearing Member (CM) – CCP Arrangement
Agreements	FIA Terms of Business 2018 – Version 2.0 (updated 2021) <a href="#">User Guide (updated 2023)</a> Update Patch 2021 <a href="#">FIA CM-DC Indirect Clearing Schedules</a> <u>Pre-2018 ToBs:</u> FIA Clearing Module FIA 2017 Regulatory Patch FIA CM-DC Indirect Clearing Modules <u>Other:</u> ISDA/FIA Master Regulatory Reporting Agreement (2023) ISDA/FIA Cleared Derivatives Execution Agreement (non-US) ISDA/FIA Client Cleared OTC Derivatives Addendum (non-US)	FIA Terms of Business 2018 – Version 2.0 (updated 2021) <a href="#">User Guide (updated 2023)</a> <a href="#">FIA DC-IC Indirect Clearing Schedules</a> <u>Pre-2018 ToBs:</u> FIA DC-IC Indirect Clearing Modules	
Legal Opinions	<b>Netting opinions</b> <b>Collateral opinions</b> <b>CRR Article 305 opinions</b>	<b>Netting opinions</b> <b>Collateral opinions</b>	<b>CCP opinions</b> <b>IAS 32 opinions</b>
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Other	Are you a US FCM? Please visit the <a href="#">FIA US Documentation Library</a>		CCP Risk Review

# Management of counterparty risk in context

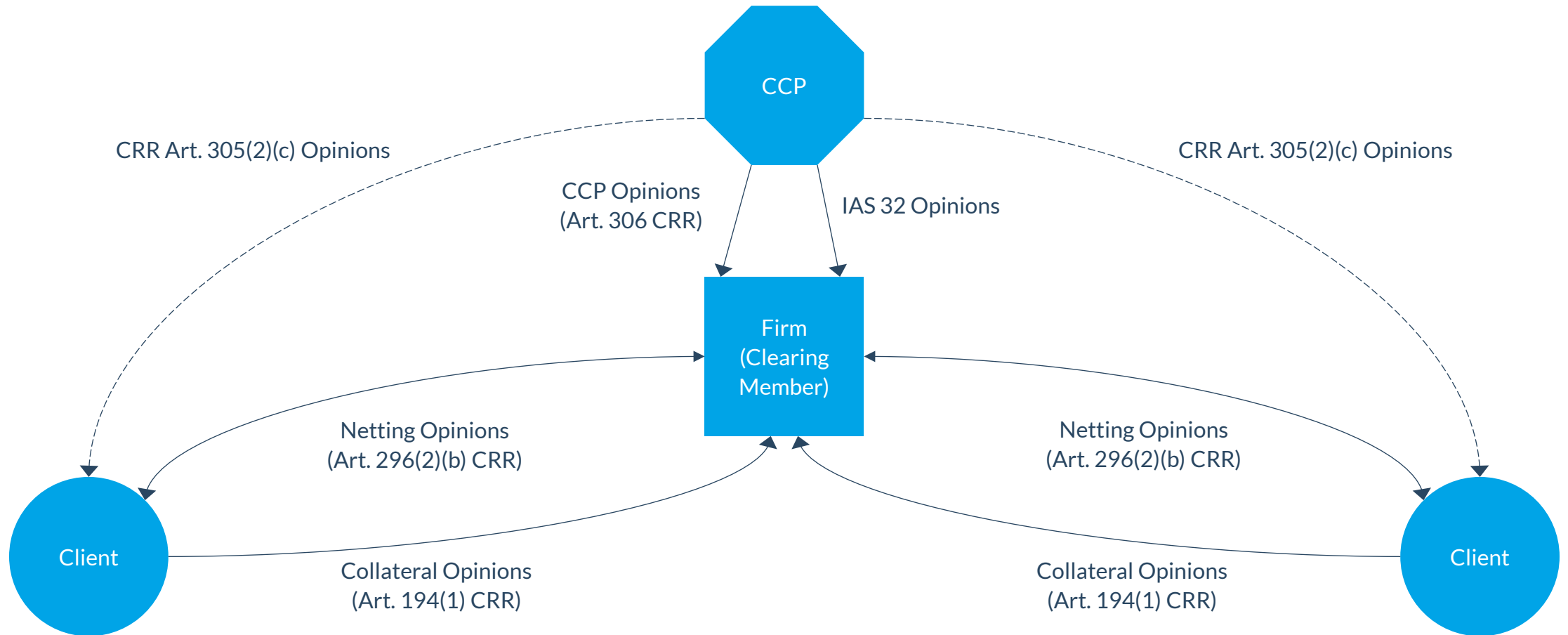


## Key Questions

- What is your risk-weighted exposure for regulatory capital requirements?
- Where does your firm stand in the chain: who is your counterparty (up- and down-stream)?
- How can you be sure that your exposure is net if the counterparty fails (netting agreement)?

# Capital Requirements

## UK/Europe (UK CRR and EU CRR)

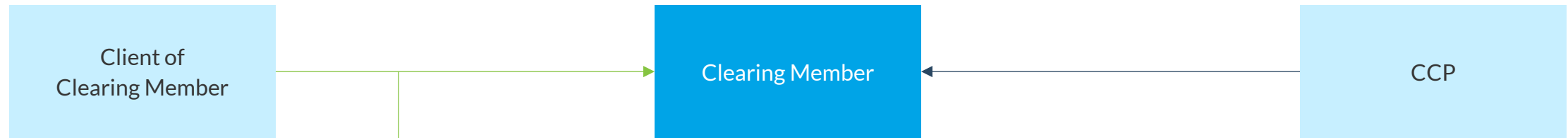


Note: Arrow points to who may rely on the relevant opinion

# Capital requirements in a clearing chain

## Netting and collateral Opinions

### Position of Clearing Member



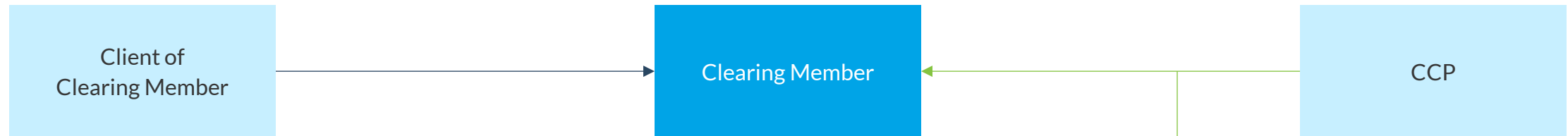
#### Clearing Member exposures to Client

- Art 304(1): Normal regime applies.
- Art 296(2): Requires **Netting Opinion (Art. 296(2)(b) CRR)** for net reporting.
- **Collateral Opinion (Art. 194(1) CRR)** required if take collateral as security.

# Capital requirements in a clearing chain

## CCP Opinions

### Position of Clearing Member



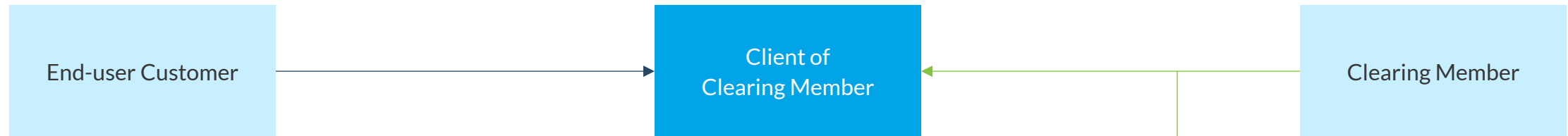
#### Clearing Member exposures to CCP

- Client trade exposures  
Art 306(1)(c): Exposure value = 0 if terms stipulate CM is not obligated to reimburse client if CCP defaults.
- Own-account trade exposures  
Art 306(1)(a): 2% RW if QCCP  
Art 306(3): Exposure values calculated under normal regime. Exposure value calculation requires **CCP Opinion (Art. 306 CRR)** for net reporting.

# Capital requirements in a clearing chain

## Netting and collateral Opinions

### Position of Client of Clearing Member



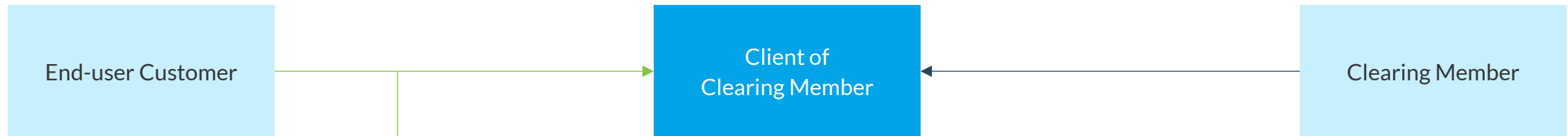
#### Client of Clearing Member exposures to Clearing Member

- Client trade exposures  
Art 306(1)(c): Exposure value = 0 if terms stipulate CM is not obligated to reimburse client if CCP defaults.
- Own-account trade exposures  
Art 306(3): Exposure values requires **Netting Opinion (Art. 296(2)(b) CRR)** for net reporting.
- See Art. 305(2)(c) CRR Opinions slide (to follow).

# Capital requirements in a clearing chain

## Netting and collateral Opinions

### Position of Client of Clearing Member

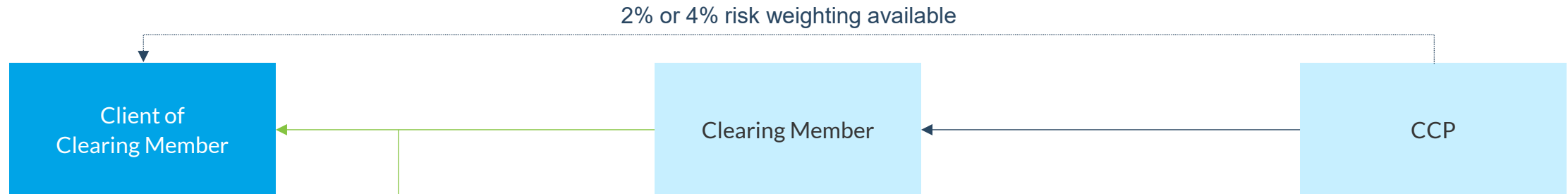


#### Client of Clearing Member exposures to end-user Customer

- Art 304(1): Normal regime applies.
- Art 296(2): Requires **Netting Opinion (Art. 296(2)(b) CRR)** for net reporting.
- **Collateral Opinion (Art. 194(1) CRR)** required if take collateral as security.

# Art. 305(2)(c) opinions

## Position of Client of Clearing Member



### Client of Clearing Member exposures to Clearing Member

- Art 305(1): **bilateral risk weighting** applies.
- Art 305(2): **2% risk weighting** available if segregation/bankruptcy remoteness/transfer conditions satisfied.
- Art 305(3): **4% risk weighting** if no protection against joint default of Clearing Member and another Client.

- If Clearing Member fails, will Client “bear no losses”? See amended CRR Article 305(2)(c).
- The Client may risk-weight the part of exposure covered by assets and collateral at the CCP at 2%.
- Requires analysis of segregation and effects of porting/leapfrog in clearing member default.
- Relevant jurisdictions for analysis are:
  - Jurisdiction of CCP – laws and rules applicable to Clearing Member default
  - Jurisdiction of Clearing Member – insolvency laws and rules applicable to treatment of client assets.
- Hence two opinions – CCP and Clearing Member opinions, which need to be read together.



# IAS 32 opinions

## Position of Client of Clearing Member

- Assist Clearing Members meet the International Accounting Standard (IAS 32).
- Under Para. 42 IAS 32, Clearing Members can offset financial assets and liabilities in their balance sheets for exposures arising out of certain financial instruments, including derivatives.
- IAS 32 opinions are required, as Clearing Members need a written and reasoned opinion to substantiate set-off provisions and collateral arrangements.
- FIA obtained the IAS 32 opinions back in 2014 to 2015 and they have not been updated since.
- **FIA has recently set up a Working Group to explore whether there is sufficient interest in updating/commissioning new IAS 32 opinions.**

- Para. 42 IAS 32:  
A financial asset and a financial liability shall be offset and the net amount presented in the balance sheet when, and only when, an entity:
  - i. currently has a legally enforceable right to set off the recognised amounts, and
  - ii. intends either to settle on a net basis, or to realise the asset and settle the liability simultaneously.

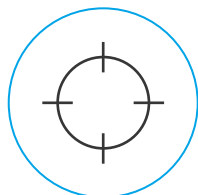
In accounting for a transfer of a financial asset that does not qualify for derecognition, the entity shall not offset the transferred asset and the associated liability.

# 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 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.

# High-level structure/scope of FIA opinions

## FIA Non-US legal opinions

Netting Opinions	Collateral Opinions	CCP Opinions	CRR Art. 305 Opinions	IAS 32 Opinions
<ul style="list-style-type: none"> <li>• 62 opinions</li> <li>• Based on 'Category 1' or 'Category 2' opinion templates</li> <li>• One opinion letter with many legal opinions</li> <li>• Netting</li> <li>• Set-off</li> <li>• TTCA</li> <li>• Necessary/desirable amendments</li> <li>• FIA Terms of Business 2018 and pre-2018 versions</li> <li>• FIA Clearing Module</li> <li>• ISDA/FIA Addendum.</li> </ul>	<ul style="list-style-type: none"> <li>• 43 opinions</li> <li>• Based on 'Situs' or 'Non-situs' opinion templates</li> <li>• Effectiveness of FIA security interest arrangements</li> <li>• TTCA covered in the netting opinions</li> </ul>	<ul style="list-style-type: none"> <li>• 17 CCP opinions</li> <li>• Enhanced template</li> <li>• All CCP services typically covered</li> <li>• Netting (including TT Margin/cash)</li> <li>• Set off</li> <li>• Account Segregation</li> <li>• Bankruptcy remoteness of collateral.</li> </ul>	<ul style="list-style-type: none"> <li>• 4 CCP 305(2)(c) opinions and 5 CM 305(2)(c) opinions</li> <li>• "bear no losses" conclusions</li> <li>• Analysis of the "segregation condition", "bankruptcy remoteness condition" and "porting condition" under 305(2)</li> <li>• No FIA opinions available for 4% risk weighting under 305(3).</li> </ul>	<ul style="list-style-type: none"> <li>• 6 CCP opinions and 7 CM opinions</li> <li>• A set of pre-opinions</li> <li>• A set of documents on unilateral amendments of CCP Rules</li> <li>• BAU payment netting</li> <li>• Close-out netting in the event of CM's and CCP's default.</li> </ul>

FIA, jointly with ISDA, also maintains netting opinions for U.S. FCMs addressing enforceability of the liquidation and credit support provisions of commonly used futures account agreements and a Cleared Derivatives Addendum upon a customer's default or insolvency. These netting opinions currently cover 26 jurisdictions. FIA members may access these opinions at no charge in the US FIA Documentation Library.

# Worldwide coverage

TIERED SUBSCRIPTION MODEL				ADD-ON MODEL		
Netting and collateral opinions		CCP opinions		Netting opinions	CCP opinions	
Australia	Italy	England & Wales	LCH Ltd	Bahrain	China	Shanghai Clearing House (under consideration)
Austria	Japan	England & Wales	LME Clear	Bulgaria	Norway	Nasdaq Clearing, Commodities (under consideration)
Bahamas	Jersey	France	LCH SA	China (Netting and Collateral)	The Netherlands	CBOE Clear Europe (under consideration)
Belgium	Luxembourg	England & Wales	ICE Clear Europe	Czech Republic	New Zealand	NZX (under consideration)
Bermuda	Malta	Germany	Eurex Clearing	Dubai (DIFC)		
Brazil (No Collateral)	Malaysia	Sweden	Nasdaq Clearing	Estonia		
British Virgin Islands	Netherlands	Italy	Euronext Clearing (previously CC&G)	Gibraltar		
Canada (Ontario)	Norway	Germany	European Commodity Clearing (ECC)	Hungary		
Canada (Quebec)	Poland	Singapore	Singapore Exchange Derivatives Clearing	Indonesia		
Cayman Islands	Portugal	Australia	ASX Clear (Futures)	Latvia		
Cyprus	Scotland	Hong Kong	HKFE Clearing Corporation Limited (HKCC)	Liechtenstein (Netting + Collateral)		
Denmark	Singapore	Hong Kong	SEHK Options Clearing House Ltd (SEOCH)	Mauritius		
England & Wales	South Africa	Spain	BME Clearing	Mexico		
Finland	South Korea	Brazil	B3	Monaco		
France	Spain	Hong Kong	Securities Clearing (HKSCC)	New Zealand		
Germany	Sweden	Mexico	Asigna Compensation y Liquidacion	Peru		
Greece	Switzerland	Canada	Canadian Derivatives Clearing Corporation (CDCC)	Slovenia		
Guernsey	Taiwan			*NEW* UAE ADGM		
Hong Kong	Thailand (No collateral)			Saudi Arabia (under consideration)		
India	Turkey					
Ireland	UAE Federal (No Collateral)					
Israel	United States of America					

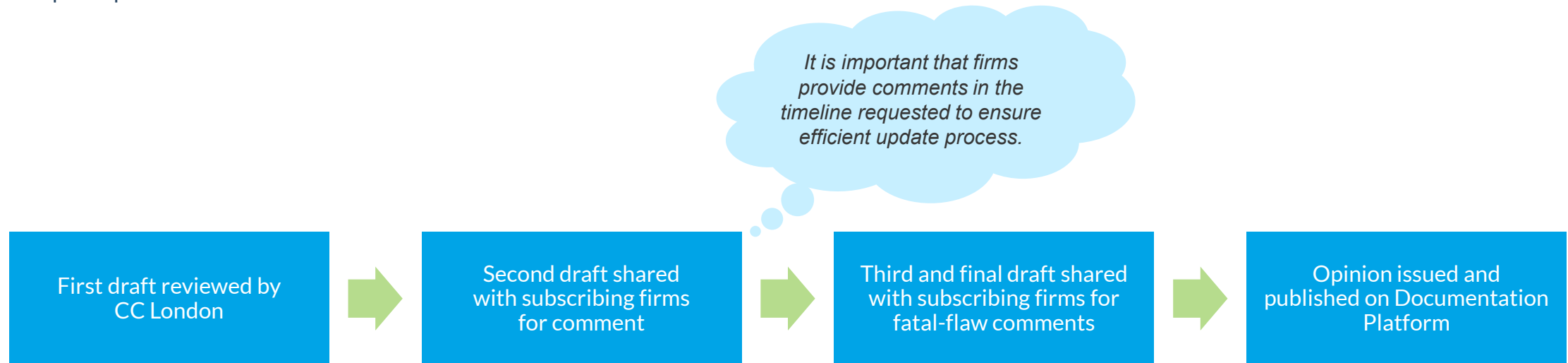


# Reliance on FIA legal opinions

- FIA legal opinions can be relied on for regulatory capital purposes by subscribing firms and their affiliates, provided that the names of affiliates that wish to rely on the opinions have been communicated to FIA.
- Firms that have not subscribed to FIA opinions and have instead obtained them from any other source cannot rely on them.
- FIA legal opinions are prepared on the basis of instructions from FIA in the context of the netting and collateral requirements of the Basel III capital rules in Europe (EU and UK) and the US.
- FIA legal opinions can be shared by subscribing firms with
  - the officers, employees, auditors and professional advisers of any addressee or any subscribing member;
  - any person to whom disclosure is required to be made by applicable law or court order or pursuant to the rules or regulations of any supervisory or regulatory body or in connection with any judicial proceedings; and
  - any competent authority supervising a subscribing member,
  - on the basis that (i) such disclosure is made solely to enable any such person to be informed that an opinion letter has been issued and to be made aware of its terms but not for the purposes of reliance, and (ii) we do not assume any duty or liability to any person to whom such disclosure is made and in preparing this opinion letter we have not had regard to the interests of any such person.

# Legal opinion review process – NCCLs, Brief Descriptions and opinion updates


- What are 'no change confirmation letters' (NCCLs) and Brief Descriptions?
- Reviewing v. updating the opinions
- Some institutions are subject to capital regimes that require them to review legal opinions on an annual basis
- Update process:



- Legal opinions WG – all subscribing firms are eligible to participate in the WG

# How to access FIA legal opinions?

- FIA hosts its legal opinions on [FIA Documentation Platform](#) (not on FIA website).
- Access to FIA legal opinions is restricted to FIA subscribing firms (member and non-member firms).

<div>  Global Reach. Regional Expertise. </div>				
Legal Opinions List - In Subscription Model				
<p>NCCL = No Change Confirmation Letter</p> <p>BD = Brief Description</p> <p><a href="#">FIA Legal Opinions Refresher - Webinar (13 October 2021)</a></p> <p><a href="#">FIA Legal Opinions - Slides (October 2021).pdf</a></p> <p><a href="#">FIA Legal Opinions - Info Sheet (October 2021).pdf</a></p>				
Jurisdiction	Netting & Collateral Opinions	NCCL	CCP Opinions	NCCL
Australia	<ul style="list-style-type: none"> <li>• <a href="#">Netting Opinion (Aug 2023)</a> <i>Blackline (2023 vs 2020)</i> Netting Opinion (June 2020) Netting Opinion (March 2018) Netting Opinion (Dec 2013)</li> <li>• <a href="#">Collateral Opinion (Aug 2023)</a> <i>Blackline (2023 vs 2019)</i> Collateral Opinion (March 2019) Collateral Opinion (Feb 2013)</li> </ul>	<ul style="list-style-type: none"> <li>• NCCL (Sept 2024)</li> <li>• BD (Nov 2021)</li> <li>• NCCL (Oct 2020)</li> <li>• NCCL (Dec 2015)</li> </ul>	<ul style="list-style-type: none"> <li>• <a href="#">ASX Clear (Futures) Pty Ltd (May 2023)</a></li> <li>• ASX Clear (Futures) Pty Ltd (Oct 2018)</li> <li>• ASX Clear (Futures) Pty Ltd (Dec 2013)</li> </ul>	<ul style="list-style-type: none"> <li>• NCCL - ASX (June 2024)</li> <li>• NCCL - ASX (March 2022)</li> <li>• NCCL - ASX (Feb 2021)</li> <li>• NCCL - ASX (Dec 2019)</li> </ul>
Austria	<ul style="list-style-type: none"> <li>• <a href="#">Netting Opinion (Sept 2022)</a> <i>Blackline (2022 vs 2018)</i> Netting Opinion (March 2018) Netting Opinion (Dec 2013)</li> <li>• <a href="#">Collateral Opinion (Sept 2022)</a> <i>Blackline (2022 vs 2018)</i> Collateral Opinion (March 2018) Collateral Opinion (Feb 2013)</li> </ul>	<ul style="list-style-type: none"> <li>• NCCL (Feb 2025)</li> <li>• NCCL (Nov 2023)</li> <li>• BD (Oct 2021)</li> <li>• NCCL (July 2020)</li> <li>• NCCL (June 2019)</li> </ul>		



# Subscription model and 'Add-on' model

- FIA legal opinions are available to member and non-member firms. Non-members pay a premium subscription fee.
- In 2018, FIA introduced an annual 'tiered' subscription model for certain legal opinions. Subscribers required to sign a subscription agreement.
- In 2019, a variation of the annual subscription model ('Add-on Model') was introduced for less in-demand netting opinions.
- Subscription year for both models runs from 1 October to 30 September. Both subscription models are reviewed on an annual basis and opinions can be moved between the models (once a year) depending on the number of subscribers. Subscription renewals are automatic, unless cancelled by subscribing firms.
- FIA reaches out to subscribing firms over summer in advance of subscription model anniversary to confirm subscription selection and pricing.
- Subscribers are free to amend their selection of opinions during subscription year.
- Key difference between the 'tiered' subscription model and the 'add-on' model:
  - **Tiered subscription model:** pricing depends on the number of opinions that each firm wishes to subscribe to (i.e., annual fee does not depend on demand for each opinion, but rather on the 'tier' that each subscribing firm is in);
  - **Add-on model:** pricing depends on the number of subscribing firms for each opinion (i.e., the more firms subscribe to the opinion in the 'Add-on' model, the cheaper the annual fee).



# Key Contacts



**Mitja Siraj**, Vice President of Legal, Europe, FIA  
[msiraj@fia.org](mailto:msiraj@fia.org)  
+44 20 7519 1831



**Caroline Meinertz**, Partner, Clifford Chance LLP  
[caroline.meinertz@cliffordchance.com](mailto:caroline.meinertz@cliffordchance.com)  
+44 20 7006 4253



**Richard Whiteaway**, Senior Associate, Clifford Chance LLP  
[richard.whiteaway@cliffordchance.com](mailto:richard.whiteaway@cliffordchance.com)  
+44 20 7006 4171

**Jeremy Walter**, Partner, Clifford Chance LLP  
[jeremy.walter@cliffordchance.com](mailto:jeremy.walter@cliffordchance.com)  
+44 20 7006 8892



**Clemens-Emanuel Gutwenger**, Senior Associate, Clifford Chance LLP  
[clemensemanuel.gutwenger@cliffordchance.com](mailto:clemensemanuel.gutwenger@cliffordchance.com)  
+44 20 7006 1014



**FIA**

The image features the letters 'FIA' in a bold, sans-serif font. The 'F' is dark grey. The 'I' is dark grey with a green triangle on its right side. The 'A' is composed of a green triangle on the left and a blue triangle on the right. The background is a white canvas with large, overlapping geometric shapes in light green, light blue, and light yellow.