

## Emir Disclosure

### EMIR – Listed Derivatives Clearing

#### Summary

The purpose of this document is to provide you with information about the Intermonte SIM offers on Listed Derivatives clearing within the framework of the European Market Infrastructures Regulation (EMIR), and in relation to the Central CounterParty-ies (CCPs) where we act as Clearing Member (CM).

This document sets out the main considerations for clients in terms of account setup, legal implications, and costs, which clients should consider when making their clearing services choices.

Currently Intermonte SIM is a listed derivatives **Individual Clearing Member** (ICM) of the CC&G. Please note that Intermonte is not a General Clearing Member and as such is not authorized to have clients not clearing member (*Partecipanti indiretti*).

This communication is drawn up in compliance with Article 39.7 of EMIR:

*CCPs and clearing members shall publicly disclose the levels of protection and costs associated with the different levels of segregation that they provide and shall offer 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.*

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## **I. Definitions**

It is important to note the following definitions in EMIR No 648/2012 (Article 2 – Definitions):

② ‘CCP’ means a “legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.”

② ‘clearing member’ means “an undertaking which participates in a CCP and which is responsible for discharging the financial obligations arising from that participation.”

② ‘client’ means an “undertaking with a contractual relationship with a clearing member of a CCP which enables that undertaking to clear its transactions with that CCP.”

## **II. EMIR Requirements**

Article 39.4: A clearing member shall keep separate records and accounts that enable it to distinguish, both in its accounts held with the CCP and in its own accounts, its own assets and positions from the assets and positions held for its clients at the CCP.

Article 39.5: 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.

## **III. Obligations towards CCP (CC&G)**

The categories of admission to the System are:

- General Clearing Member,
- Individual Clearing Member, and
- Non-Clearing Member.

CC&G assumes the role of Central Counterparty against the General Clearing Members and the Individual Clearing Members only (here after: the Clearing Members).

The Clearing Members are obliged to fulfil their obligations to CC&G (including the payment of margin) originate either from operations concluded by the Clearing Member on its own behalf or from operations concluded by the Member on behalf of its clients.

The operations concluded by the Clearing Member on behalf of its clients can be recorded in accounts segregated for each client (ISA accounts”) or in accounts segregated for group of clients (AOA accounts”).

In the event of a Clearing Member default, the Clients whose positions and assets are recorded in “segregated client accounts”, pending the transmission to CC&G of the documentation for portability, assume, temporary and for a maximum of five days, the status of Members Pro-tem and obligations with CC&G to deposit Margins as described below (segregated client accounts).

#### ***IV. Structure of accounts***

##### **IV.1 Segregated accounts**

CC&G permits Clearing Members to enter positions and assets in the following segregated accounts:

- a) An “**House** account” dedicated to the recording of positions and collateral of the account owned by the same Clearing Member
- b) “**Omnibus client** accounts” for positions and assets of their customers. In details:
  - b.1) a **MOA** account (Main Omnibus Account) automatically opened by CC&G at the time of the Clearing Member
  - b.2) **AOA** accounts (Additional Omnibus Account) opened at the request of the Clearing Member and dedicated to the segregated recording of positions and collateral of groups of customers.
  - c) **ISA** accounts (Individual Segregated Account) opened at the request of the Clearing Member and dedicated to the recording of positions and collateral of customers that have chosen the individual segregation.

In such circumstances, the procedures provide that upon opening the account, the Clearing Member send to CC&G documents containing the identity of the customer

In the ISA structure, the Clearing Member can record the positions and assets of the Clients in:

- c.1 a single account: “House account”, or
- c.2 two separate accounts: “House account” and “Client account”.

#### ***V. Subaccounts for derivative positions***

Clearing Members can request CC&G to record derivatives positions in sub-accounts of the accounts indicated above.

#### ***VI. Levels of protection***

##### **VI.1 “Omnibus Client” account**

###### *Segregation of positions and assets*

The registration of positions and assets in a MOA or AOA account of the Clearing Member enables, at any time and without delay, to distinguish these positions and assets both from those recorded into the “House” account and the other AOA and ISA of the same Clearing Member, both from those recorded into the accounts of the other Clearing Members, both from those of CC&G.

###### *Netting of positions*

The positions held in each MOA or AOA account can be netted, at any time and without delay, with positions held in the same account only.

#### *Asset usage for covering margins*

The assets registered in a MOA or AOA account are used as guarantee of the margins computed on positions registered in the same account.

#### *Activation of the default procedure: portability and close out of positions*

The assets and positions registered in the MOA and AOA accounts are ported to the Designated Clearing Member if the documentation required by CC&G for the portability is in good standing at the moment of the activation of the default procedure.

If the portability has not taken place, the positions are closed out according to the default procedure.

On the contrary, the netting between positions registered in the omnibus client account (MOA or AOA) with positions registered in other accounts (House, ISA or other “omnibus client” accounts), of the defaulting Clearing Member.

#### *Activation of the default procedure: usage of the assets deposited in the omnibus client account*

If the portability has not taken place, the assets deposited in the MOA or AOA “Omnibus Client account” are used for the closure of the positions registered in the same account.

At the end of the default procedure (close out), any asset registered in the MOA or AOA “Omnibus Client” account in excess of the amount necessary to cover any losses sustained and the costs and expenses for the closure of such account are returned by CC&G to the Clearing Member itself or its liquidator with the indication of the “Omnibus Client” account they refer to.

## **VI.2 “Segregated Client” accounts**

#### *Segregation of positions and assets*

The registration of positions and assets of a Client in a ISA account enables, at any time and without delay, to distinguish these positions and assets both from those of the related Clearing Member, both from those of other clients of the same Clearing Member, both from those registered in the accounts of the other Clearing Members, both from those of CC&G.

#### *Netting of positions*

The positions held in each ISA account can be netted, at any time and without delay, with positions held in the same ISA account only.

#### *House account and Client account of the “Segregated Client” accounts*

The registration in the context of an ISA account of positions and assets of the client in two accounts (“House account” and “Client account” ) enables, at any time and up to the activation of the default procedure, to distinguish the positions and assets registered in one account from those registered in the other account. Netting occurs till the initiation of the default procedure separately for the two accounts.

#### *Usage of Assets recorded into the “Segregated Client” account for covering margins*

The assets registered in a ISA account are used only as guarantee of margins computed for the positions registered in such account.

If in the context of the ISA account the positions and assets are registered in the two accounts “House account” and “Client account”, the assets registered in the “House” account are used as guarantee of the margins computed for the positions registered in the same “House” account and the assets registered in the “Client” account are used as guarantee of the margins computed for the positions registered in the same “Client” account.

#### *Activation of the default procedure: portability and close out of positions*

The assets and positions registered in a ISA account are ported to the Designated Clearing Member by the Client if:

- at the moment of the activation of the default procedure the documentation required for the portability has already been transmitted to CC&G;
- if within 5 CC&G open days from the activation of the default procedure the documentation required for the portability is transmitted to CC&G and in this period the Client has always duly paid the margins.

If the portability has not taken place, the positions are closed out according to the default procedure.

In this phase positions possibly registered in the “House” and “Client” account of the ISA account are netted together. However, it remains still the inability to compensate for the positions recorded in the ISA account with the positions recorded in other accounts (“House”, MOA, AOA and other ISA) of the defaulting Clearing Member.

#### *Activation of the default procedure: usage of the assets deposited in the “Segregated Client” account*

If the portability has not taken place, the assets deposited in each ISA account are used only for the closure of the positions registered in such account.

If in the context of an ISA account, the positions and the assets have been registered in the “House” account and the “Client” account, the assets can be used for the closure of the positions resulting from the netting of the positions registered in the “House” and “Client” account of the same ISA account.

At the end of the default procedure (close out), any possible asset registered in each ISA account in excess of the amount necessary to cover any losses and the costs and expenses sustained for the closure of the corresponding ISA account are returned by CC&G to the Client.

## **VII. Insolvency Law**

CC&G is enabled to take action for the management of the default in accordance with the Consolidated Law on Finance (Italian law n. 58 of 24 February 1998 called T.U.F) and with the article 48 of the European Rules n. 648/2012 (EMIR).

Such rules allow CC&G to set a procedure and to take action accordingly in the event of default or insolvency of one or more Clearing Members in order to ensure the stability and efficiency of the system managed.

According to what has been described in the paragraphs above, the procedure for failure to fulfill obligations applied by CC&G pursuant to Article B.6.2.1 of CC&G Regulation provides that, in accordance with the EMIR rules on segregation and portability, CC&G transfer to a another participant guarantees and positions of the accounts that fall in the conditions laid down in Article 48 of EMIR.

According to CC&G Regulation, in order to proceed with the transfer of positions and collateral in a “Client Omnibus” account (MOA or AOA), CC&G must have received the documentation on the identification of the Participant receiving the transfer (Designated Participant) before the failure. This assumes that the customers of the Participant whose positions and collateral flow into the same account have previously reached an agreement in relation to the Participant for receiving the transfer of positions and collateral.

With regard to the transfer of positions and collateral in an ISA account, however, the Customer that has not already sent to CC&G the documentation identifying the Designated Participant before the default or insolvency of his own Participant benefits of a period of five days to provide for the designation.

In the period between the default and the transfer, he becomes "Participant Pro-tempore" of CC&G and is required to pay the margins, in order to enable a proper risk management of his positions (article B.6.2.1, paragraph 1), letter c) and article B.2.4.2 of CC&G Regulation).

In relation to the contractual positions and guarantees recorded on accounts for which the conditions mentioned above are not satisfied and, therefore, do not benefit from portability, possible availability of the defaulting Participant in excess of the amount necessary to cover the losses incurred will be refunded by CC&G to the party entitled (the Participant, the client or the liquidating authority under the circumstances) at the end of the defaulting procedures. More precisely, warranties arising from MOA and AOA accounts will be returned to the Participant, specifying its nature and origin. The warranties arising from ISA accounts will be returned to Customers themselves.

In this regard it is noted that, in an insolvency scenario, CC&G would be in a position to immediately and exactly identify and return to the Client the assets and positions registered on a “Segregated Client” account (ISA) because that account only contains assets and positions of a single Client. Instead, with reference to the assets and positions registered into a “Client Omnibus” account (MOA and AOA), while still being able to instantly and accurately identify the assets and positions recorded in the account, CC&G is not in condition to directly proceed with the restitution as these accounts contain the assets and positions of a variety of clients and CC&G does not know the identity of each client.

The Italian law ensures that both porting and the right of the Client to receive back the guarantees registered into an ISA account, t would be enforceable against a defaulting Clearing Member (including in the event of insolvency proceedings being opened against such Clearing Member).

We refer here to Article 70 of T.U.F. , as recently modified, that establish: "The margins and other benefits acquired by a central counterparty as collateral for fulfilling the obligations arising from compensation carried out in favor of its participants cannot be subject to enforcement or precautionary actions by creditors of the single Participant or the entity that manages the central counterparty, even in case of

opening of insolvency proceedings. The acquired collateral may be used only in accordance with Regulation (EU) No. 648/2012. "

In particular, Article 70 of the Consolidated Financial Act clearly protects the collateral acquired by CC&G in harmony with the requirements of EMIR, including the event of the insolvency of a participant. Since Article 48 (5-6) of EMIR provides the mechanism of portability and Article 48 (7) of EMIR provides that any outstanding balances must be returned to the Customers of the defaulting Participant, it follows that Article 70 of the Consolidated Financial Act recognizes, indeed demands, that CC&G use collateral recorded in segregated accounts only for such purposes, even in a scenario of default.

### **VIII. Cost implications**

Because of the legal, operational and system impacts that an ISA account setup and running has, additional costs, on top of the already agreed clearing fees, can be charged by the CCP and the CM.

#### **CCP costs**

These costs are publicly disclosed by the CCP and will be charged by the CCP to the CM. As CM we will pass these costs to our clients.

#### **Intermonte costs**

For all clients wishing to move to an ISA structure, we will charge some extra costs, on top of the existing clearing fees and in addition to the CCP costs that will be passed to you.

#### **Clients choices**

Clients may at any time send us a letter asking for a change of account set up on any CCP.

### **Important notice**

Unless you request a change of structure in writing, Intermonte will continue to maintain the existing account structure we currently have in place for you.