

# Procedure in the Event of Member Default

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Procedure in the Event of Member Default	48	--	Procedure

\*EMIR = Regulation (EU) 648/2012; \*\* RTS = del. Regulation (EU) 153/2013

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## Document Information

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### Change Log<sup>1</sup>

Version	Effective Date	Change Description
<b>V2.0</b>	06.06.2014	Derivatives market references have been removed
<b>V2.1</b>	03.05.2016	Adaption of formatting Adjustment pursuant to OeKB CSD GmbH demerger and new GTC wording (e.g. Clearing Facilities)
<b>V2.2</b>	02.05.2018	Adaptions related to migration to T2S system and introduction of standard DVP settlement. Amendments due to extension of buy-in period Harmonisation with GTC wording (buy-in procedure, cash settlement calculation, Clearing Clients)
<b>V2.3</b>	12.04.2019	Annual review
<b>V2.4</b>	29.06.2020	Annual review  Amendments due to (partly) implementation of CSDR RTS Settlement Discipline with the implementation of new Clearing System: <ul style="list-style-type: none"> <li>• “separation procedure” replaced by “extension period”</li> <li>• reference to publications to GTC for extension period of different asset classes</li> <li>• “cash settlement” replaced by “cash compensation”</li> <li>• premium for cash compensation has been removed in accordance with CSDR</li> </ul>
<b>V2.5</b>	22.04.2021	Annual review: new layout

<sup>1</sup> The change log is only kept for finally valid versions; CCP.A internal coordination in the creation or change process are not contained.

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## 1. Introduction

Pursuant to Article 48 EMIR, CCP.A shall define a procedure for the event of default of a Clearing Member. This document describes the procedures that apply if the admission rules are no longer met, the proof of the legal enforceability especially regarding the liquidation and transfer of collateral and the contractual transfer obligations.

The Clearing Members must meet all obligations resulting from their Exchange Membership and their participation in the clearing system and from their transactions as well as all obligations deriving from the Exchange Membership, participation in clearing and the transactions of Clients assigned to them including any taxes and fees.

As security for the resultant claims, the Clearing Members are obliged to deposit clearing collateral and to make contributions to the default fund in a timely manner. Every Clearing Member shall be liable for the fulfilment of the pledged clearing collateral and its contribution to the default fund.

The consequences of a failure to fulfil the obligations are described in the subsequent sections, which constitutes a comprehensible and practical guidance for Clearing Members and is based on the provisions of in the General Terms and Conditions of Business of CCP.A (hereinafter GTC). In the event of a conflict between this document and the GTC of CCP.A, the provisions of the GTC of CCP.A shall prevail.

## 2. Procedure in the Event of Default

This chapter describes the individual types of possible default that may occur and how CCP.A deals with them.

Generally, the Clearing Members are under the obligation to inform CCP.A immediately if they cannot meet their obligations or compliance with these obligations is at risk. This shall apply in particular in the case of imminent insolvency or imminent over-indebtedness of a Clearing Member.

### 2.1. Types of Default (§ 34 GTC)

#### 2.1.1. Default on Acceptance

Default on acceptance of a Clearing Member is deemed given if acceptance of the securities to be received on delivery day is denied or rejected or if it is not possible for reasons not under the control of the Clearing Member concerned.

#### 2.1.2. Default on Payment

Default on payment of a Clearing Member is deemed given if the Clearing Member's cash settlement account with the Settlement Bank (or a cash settlement account maintained by a Clearing Agent or the Payment Agent for the Clearing Member assigned to it) has not sufficient cover in the form of credit balances or credit granted to meet the payment obligations by the time defined in the publications to CCP.A's General Terms and Conditions of Business on delivery day.

#### 2.1.3. Default on Collateral

Every Clearing Member is under the obligation to ensure sufficient cover on its respective cash collateral accounts and/or securities collateral account with the Collateral Custodian or with the Clearing Agent in an amount that covers the requirements for clearing collateral in the margin lists plus the contribution required by CCP.A for the default fund that result from its own CCP-eligible transactions and for the Clearing Clients assigned to it.

CCP.A assumes a default on collateral of a Clearing Member to be given if the Clearing Member fails to meet its obligation in time to deposit sufficient clearing collateral on its respective cash collateral account or securities collateral account with the Collateral Custodian or the Clearing Agent or fails to meet its obligation to transfer the contribution to the default fund of CCP.A.

#### 2.1.4. Other Events of Default

Default is also deemed given if a Clearing Member fails to meet any other obligations under the GTC. Examples are the failure to meet the obligation of a Clearing Member to immediately inform CCP.A in the case of imminent insolvency or imminent over-indebtedness (see § 34 para. 3 GTC) or the obligation to have eligible own funds in the amount which is required at least (see §§ 14 paras. 3 and 4 GTC).

#### 2.1.5. Default on Delivery

Default on delivery of a Clearing Member is deemed given if the Clearing Member's securities settlement account with the CSD (or the securities settlement account managed by a Clearing Agent for the Clearing Members assigned to it) fails to show sufficient cover by the time defined in the publications to CCP.A's General Terms and Conditions of Business on delivery day or settlement is delayed because delivery is blocked.

Every Clearing Member is under the obligation to ensure cover on its securities settlement account with the CSD in the amount of the outstanding delivery balances resulting from its own transactions in CCP-eligible securities and of the Non-Clearing Members, Other Clients or Registered Clients assigned to it.

Every Clearing Member assigned to a Clearing Agent is under the obligation to ensure that the Clearing Agent has sufficient cover on its securities settlement account maintained by the Clearing Agent with the CSD for the amount of the outstanding delivery balances resulting from its own transactions in CCP-eligible securities and of the Non-Clearing Members, Other Clients or Registered Clients assigned to it.

If CCP.A has reason to believe that the default on delivery is not due to insolvency or inability to render performance, that the default was not caused intentionally and that the Clearing Member will fulfill its obligations without delay, CCP.A may declare the Clearing Member to be in technical default ('technical default'). In the event of a technical default on delivery, CCP.A proceeds according to the following steps:

- Extension period
- Buy-in procedure
- Cash compensation procedure

#### 2.1.5.1. Extension period

The extension period starts with the first settlement run on delivery day. The duration of the extension period is defined by CCP.A in accordance with CSDR and announced in the Official Publication Medium, it depends on the category of a financial instrument, irrelevant on which market this instrument is traded. The extension period may be prematurely terminated due to ex post delivery, release for delivery or within the course of the buy-in procedure (including the last clearing day of the procedure).

In the extension period, the quantities (per trade day and security type) to be delivered are determined for each clearing day and seller. In the case of insufficient coverage on the securities settlement account in a certain security type, the available partial quantities will be delivered (partial fulfilment). During the extension period, multiple partial fulfilments are possible. In the event of partial fulfilment, the delivery obligations of the seller are determined in the following sequence:

- a) the positions with the lowest price are fulfilled;
- b) the positions with the smallest quantity are fulfilled;
- c) after this, by random selection;
- d) fulfilment is done with due regard to the smallest denomination deliverable.

In the extension period, in the case of a delayed delivery, the available partial quantities of acceptance balances for certain buyers (receiving party) are fulfilled (partial fulfilment). During the extension period, multiple partial fulfilments are possible. In the event of partial fulfilment, the delivery obligations of the seller are determined in the following sequence:

- a) the positions with the highest price are fulfilled;
- b) the positions with the smallest quantity are fulfilled;
- c) after this, by random selection;
- d) fulfilment is done with due regard to the smallest denomination deliverable.

In exceptions (e.g. by netting open positions) the extension period may be prolonged for a shortfall or part of a shortfall and last longer than the duration defined by CCP.A. Also in such cases, CCP.A takes all measures to achieve fulfilment as swiftly as possible in the event of default on delivery.

In the case of partial delivery, the cash amount is adjusted pro rata to the security quantity to be delivered or received.

The non-delivered quantities (shortfalls) of the affected security as well as the according cash balance are recorded by CCP.A in its books.

CCP.A informs each Clearing Member and/or its Clearing Agent concerned of the contents and details of the current extension period.

### 2.1.5.2. Buy-in Procedure

During the extension period, a defaulting Clearing Member shall either arrange for a subsequent delivery of the shortfalls itself or instruct CCP.A by written order to execute an optional buy-in for the shortfalls by the time defined in the table below. Such an order may be terminated by mutual consent.

Subsequent deliveries made by the defaulting Clearing Member or by CCP.A (optional buy-in) must be booked to its securities settlement account to bring the buy-in procedure to successful completion. If the delivery obligation cannot be completed successfully by the time defined in the publications to CCP.A's General Terms and Conditions of Business, CCP.A initiates an obligatory buy-in for the open shortfall.

Deliveries by CCP.A within the framework of the buy-in procedure are booked to a separate securities settlement account of CCP.A in favour of the defaulting Clearing Member and have priority over the fulfilment of deliveries by the Clearing Member in default.

If the buy-in procedure cannot be completed successfully by the Clearing Member in default or by CCP.A by the end of the extension period, the open shortfalls of the concerned

securities category are settled in cash on the clearing day after completion of the extension period by CCP.A (Cash Compensation Procedure, see 2.1.5.3).

If instructed to do so by the defaulting Clearing Member or in the event a buy-in is initiated, CCP.A shall attempt to make a buy-in for the separated shortfall by the clearing day preceding the cash compensation. Partial buy-ins are acceptable. When executing a buy-in CCP.A shall attempt to find a seller for the securities category needed among the Exchange Members while preserving the anonymity of the Clearing Member in default. To this end, CCP.A shall publish the shortfall in the securities category concerned on its website [www.ccpa.at](http://www.ccpa.at) indicating the delivery period. The Exchange Members may place binding offers for the securities being offered in writing by fax or by e-mail. CCP.A has the right (but not the duty) to accept the first bidder's offer; otherwise, when several offers are received in short intervals, the offer at the lower price shall be accepted. CCP.A may also conduct auctions in connection with buy-ins as it deems necessary in the meaning of Article 37 para. 6 EMIR.

On the day the buy-in falls due, the payment obligations of the seller in default increase by the respective higher price consisting of the original price of the shortfall of the concerned securities category at which the transaction was concluded, on the one hand, and the buy price for the buy-in, on the other, including the fees and charges incurred by CCP.A plus the processing fee pursuant to the *Schedule of Fees* of CCP.A.

### 2.1.5.3. Cash compensation procedure

If a shortfall is not covered subsequently and to a sufficient extent during the extension period, the remaining shortfall determined on the last day of the extension period shall be settled by CCP.A in cash on the subsequent clearing day. If the last day of the extension period defined and announced by CCP.A is after the end of a subscription rights period, then the cash compensation for subscription rights is carried out already on the last day of the subscription rights period.

The cash compensation amount for an open shortfall in securities is determined by comparing the respective price of three exchange prices ('MaxPrice'): price of the delivering member instruction (failing settlement instruction), price of the receiving member instruction (buyer settlement instruction) and the

market value. The affected buyer(s) are compensated in case of adverse price development (increase of price).

Should delivery of the security underlying the transaction be unexpectedly impossible during the extension period for a reason relating to the security and for which none of the Clearing Members that are party to the transaction are responsible (e.g. knock out of the certificate, liquidation of the investment fund, exchange for a security not admitted to listing on the Exchange Operating Company), and, CCP.A gains knowledge of this fact, it will separate the shortfall and settle the transactions in cash. The transaction is then deemed fulfilled.

The cash compensation is settled rounded off to two decimal places in the settlement currency of the instrument. Instruments traded in foreign currencies and settled in EURO shall be converted at the ECB's published reference exchange rate on the relevant day.

The cash compensation amount on an open shortfall in subscription rights<sup>2</sup> is calculated taking into account the special features of the product. In this context, the shortfall in subscription rights is multiplied by the "Exchange ratio" and multiplied by the difference of "Higher price" and the "New price". The exchange ratio is the number of new shares divided by the number of old shares (i.e., new/old). The higher price is defined as the respective higher price of two exchange prices: the *SumsPrice* [derived from the subscription price plus the price of the subscription right (standardised for one new share) on the last rights trading day] and the New Price. The new price refers to the first official closing price of the concerned new issue after the close of the subscription period.

Should there be no closing price for the open shortfall in subscription rights until the close of trading on the last day of the extension period, then the theoretical value of the subscription right (subscription right discount) is used for determining the *SumsPrice*. If a subscription right grants the holder the right to acquire different securities, the subscription price (as the sums price) and the new price is standardised in each case volume-weighted and to one security.

In those cash compensation cases which are not specifically regulated, the calculation of the cash compensation amount is done analogously to the aforementioned.

The Cash Compensation amount to be paid by the defaulting Clearing Member is debited on the instructions of CCP.A from its cash settlement account with the Settlement Bank plus any processing fee in accordance with the *Schedule of Fees* of CCP.A and credited to the cash settlement account(s) of the concerned buyer(s) less the processing fee by the time defined in the table below:

Type of instrument	Cash Settlement
Subscription rights	Subsequent day after the first official closing price of the concerned new issue after the close of the subscription period
All other CCP-eligible securities	Subsequent day after unsuccessful obligatory buy-in (unless extension period prolonged due to any exception)

Subsequent (partial) deliveries during the extension period are deemed (partially) fulfilled. Open positions settled in cash after the end of the extension period are also deemed fulfilled.

<sup>2</sup> Explanation: Cash compensation amount (subscription rights) = *shortfall* \* *exchange ratio* \* (1.1\**higher price* – *new price*).



## 2.2. Consequences of Default (§ 35 GTC)

In the event of default, CCP.A must immediately inform the Exchange Operating Company and the Austrian Financial Market Authority of the detected default and additionally sends a formal default notification to the Exchange Operating Company. In such case, the right to take part in trading is suspended for all Exchange Members that take part in clearing through the Clearing Member in default. The Exchange Operating Company blocks access to the trading system for the concerned Exchange Members and deletes all open orders in the trading system. CCP.A has the right to block access of the concerned Clearing Member to the clearing system. The Exchange Operating Company initiates expulsion proceedings against the Clearing Member. The default status of the Clearing Member is displayed in the clearing system and indicated by the account status as well.

CCP.A transfers the assets and positions held on segregated accounts of Clearing Clients ('Individual Client Segregation') to Clearing Members not affected who have given their prior consent to accept the positions and assets (back-up Clearing Members).

For omnibus client accounts ('Omnibus Client Segregation'), CCP.A triggers the procedures for the transfer of the assets and positions held by the defaulting Clearing Member for the account of its Clients to another Clearing Member designated by all of those Clients, on their request and without the consent of the defaulting Clearing Member.

All remaining open positions of the concerned Exchange Member shall be cleared and closed out according to the GTC with every effort being made to minimise the damage as much as possible. Settlement instructions submitted to T2S after the insolvency declaration are cancelled even if their trading date was before the declaration of default. Currently, it is not possible to settle trades from SD-1 (previous trading date) and they are subject to the close-out procedure of the CCP.A.

With the interruption of access to trading after the default notification to the Exchange Operating Company, no new trades of the Clearing Member or the concerned Non-Clearing Member will be accepted by CCP.A for clearing.

The Exchange Operating Company may declare the Membership suspended for the duration of the expulsion proceedings. If the reasons are of a temporary or curable nature and if the Clearing Member is not grossly at fault, instead of expulsion, Membership may be declared suspended for as long as such reasons persist.

CCP.A shall retain, as additional clearing collateral, the securities to be accepted by the concerned Clearing Member (acceptance balances) as well as its credit-side cash balances. In the event of default, CCP.A is authorised to realise the collateral deposited and the acceptance balances as well as the credit-side cash balances of the Clearing Member in default. CCP.A ensures that the assets covering the positions recorded in Client accounts are not exposed to losses connected to positions recorded in the Clearing Member's proprietary account(s). If the collateral provided by a Clearing Member is realised by CCP.A, then the Clearing Member must replenish the clearing collateral in cash by 10:00 AM of the next banking day, whereby failing to do so results in default on collateral.

For the duration of default, penalty interest and interest on arrears shall be payable for individual types of default on the amount outstanding for exchange transactions.

### **3. Suspension, Termination of Participation in Clearing (§§ 18 et seq GTC)**

#### **3.1. Withdrawal from Participation in Clearing**

When the obligation of a General Clearing Member to take over the clearing of transactions of a Non-Clearing Member ends, the Non-Clearing Member shall be under the obligation to immediately furnish a letter of commitment of another General Clearing Member or to become a Clearing Member itself. Until this time, the right to take part in trading of the Non-Clearing Member is suspended. The Exchange Operating Company blocks access to the trading system for the concerned Non-Clearing Member and cancels all open orders.

The withdrawal from the clearing system and the termination shall become effective only after all transactions and positions for which the Clearing Member has assumed clearing responsibility have been fulfilled or have been transferred to another Clearing Member, and all obligations resulting from its Exchange Membership and transactions in CCP-eligible transactions as well as all obligations resulting from the Exchange Membership and CCP-eligible transactions of Non-Clearing Members assigned to it have been settled including any taxes and fees.

#### **3.2. Suspension of Membership**

Should the Exchange Operating Company declare the Membership of a Clearing Member suspended, the concerned Clearing Member must notify its Clearing Clients so that they may take the appropriate measures to either contract another Clearing Member to transfer all of its open positions and collateral to this Clearing Member or to become a Clearing Member itself.

If the Exchange Operating Company declares the Membership of a Non-Clearing Member suspended, this Non-Clearing Member must notify its General Clearing Member so that it can take the appropriate measures. The General Clearing Member must ensure the proper clearing of all affected transactions of a Non-Clearing Member, but does not accept any further transactions of the Non-Clearing Member.

If Exchange Membership is suspended or terminated, the right of (Non-) Clearing Members to take part in clearing also ends. However, the clearing of those transactions executed prior to the termination of Membership must still be completed pursuant to the GTC. The termination or suspension of the Clearing Agreement shall not release the concerned Clearing Member from the rights and obligations under already concluded exchange transactions, which the Clearing Member is under the obligation to clear. CCP.A ensures the proper clearing of open transactions of the Clearing Member and of any Non-Clearing Members assigned to it, but does not accept any further transactions of the Clearing Member or any Non-Clearing Members assigned to it. The extinction of the Clearing Agreement means that the requirements in the meaning of § 19 (1) Stock Exchange Act are no longer met.

With the termination of the Clearing Agreement, the right of the Clearing Member to take part in clearing also ends. CCP.A shall inform the Exchange Operating Company immediately of any termination of a Clearing Agreement.

Nonetheless, the withdrawing Clearing Member shall be liable, even if no new contributions have been made to the default fund and after termination of participation in clearing, with an amount up to fivefold the amount of its contribution to the default fund for any cases of default that occurred until the time (day) of its withdrawal, on a pro rata basis in accordance with the provisions applicable to the default fund.

### **3.3. Stop Status**

A General Clearing Member has the right to suspend the corresponding Clearing Agreement with a Non-Clearing Member for a limited period if the Non-Clearing Member fails to meet its duties and obligations under the Clearing Agreement or only partially meets these or with a delay.

The temporary suspension of the Clearing Agreement shall be notified immediately by the General Clearing Member to the Exchange Operating Company and CCP.A. With this notification, the General Clearing Member declares that it is no longer willing to carry out the clearing of the transactions of the concerned Non-Clearing Member. The Exchange Operating Company, or in the case of imminent danger, CCP.A shall set the status of the concerned Non-Clearing Member to "Stop Status".

The Stop Status is reversed by the Exchange Operating Company (Release Button) as soon as the General Clearing Member declares to the Exchange Operating Company and CCP.A that it is again willing to carry out the clearing of transactions of the concerned Non-Clearing Member in the respective market segment.

As the concerned Non-Clearing Member, does not have any effective Clearing Agreement during the temporary suspension, the access to trading of the Non-Clearing Member concerned is automatically and with immediate effect interrupted by the Exchange Operating Company or in the case of imminent danger by CCP.A. Once the temporary suspension of the Clearing Agreement ends, the Exchange Operating Company shall automatically and with immediate effect restore access of the Non-Clearing Member to the trading system.

During the suspension of access to the trading system, the Non-Clearing Member cannot enter any further orders, quotes, or changes to orders into the system or give instructions to do so. Orders and quotes already in the system of the concerned Non-Clearing Member are automatically cancelled from the trading system by the Exchange Operating Company.

Any transactions concluded prior to the suspension of the Non-Clearing Member shall be cleared by the General Clearing Member in accordance with the GTC. The concerned Non-Clearing Member shall not have the right to access the clearing system and its functions for the duration of the suspension of the Clearing Agreement.

In the case of suspension of a Clearing Agreement or reversal of suspension, the General Clearing Member is under the obligation to immediately send a written statement including documentation to the Exchange Operating Company and CCP.A. This statement must include sufficient information on the matter and the details of the reason for the suspension or reversal of suspension.

When the obligation of a General Clearing Member to clear the transactions of a Non-Clearing Member ends, the Non-Clearing Member shall be under the obligation to immediately furnish a letter of commitment of another General Clearing Member or to itself become Clearing Member. Until that time, the right to participate in trading of the Non-Clearing Members shall be suspended. The Exchange Operating Company blocks access of the concerned Non-Clearing Member to the trading system and deletes all open orders pursuant to the General Terms and Conditions of Business of the Exchange Operating Company.

### **3.4. Termination of the Clearing Agreement by CCP.A**

CCP.A has the right to cancel the Clearing Agreement with immediate effect without a period of notice for material reasons. Material reasons may be

a) Insolvency or similar proceedings initiated against a Clearing Member or an application to open such proceedings has been dismissed due to a lack of assets or a credit institution has been

placed under receivership according to § 83 Austrian Banking Act or a court has ordered similar proceedings;

- b) There are reasons that pose or may pose a risk to the fulfilment of the transactions of a Clearing Member or of a Clearing Client for whom it has agreed to clear transactions.
- c) The concerned Clearing Member does not maintain the clearing collateral to cover its transactions or to cover the transactions of a Clearing Client for whom it has agreed to clear transactions or its contribution to the default fund at the required level and thus falls into default.
- d) The Clearing Member repeatedly commits a breach of the provisions of the GTC of CCP.A or despite being requested to, does not immediately remedy the situation.
- e) It becomes apparent *ex post* that the requirements for the conclusion of a Clearing Agreement were not met at the time the Agreement was signed or if these requirements cease to be given posteriorly; or
- f) The requirements pursuant to the GTC of CCP.A are no longer met by the Clearing Member; or
- g) The financial stability of CCP.A is at risk or a risk to the clearing system or to the orderly execution of clearing is perceived. If the cause can be identified and such action seems sufficient for eliminating the risk, then as a first step the Clearing Agreement with the Clearing Member who causes the risk is terminated.

When a Clearing Member no longer meets the admission criteria, the termination shall be notified in writing based on an extensive risk analysis and with sufficient grounds being given. If CCP.A believes that the Clearing Member is not in a position to fulfil its future obligations, it shall immediately notify the competent bodies before declaring default or initiating the corresponding procedures. In any other cases or in the case of imminent danger, it shall be terminated with immediate effect by CCP.A giving a statement of the reasons.

## 4. Transfer and Realisation

### 4.1. Account Structure and Position Management

Every Clearing Member shall maintain cash accounts and securities accounts with the Clearing Facilities, if necessary, via a Clearing Agent or a Payment Agent, for the settlement and collateralization of its transactions.

The following cash and securities accounts shall be opened:

- a) Cash settlement accounts and securities settlement accounts:
  - (i) One or more cash settlement accounts for each clearing currency for clearing cash amounts and
  - (ii) One or more securities settlement accounts for clearing securities transactions.
- b) Cash collateral accounts and securities collateral accounts:
  - (i) One or more cash collateral accounts for cash collateral and/or
  - (ii) One or more securities collateral accounts for the custody of the securities deposited as collateral.

The required number of cash and securities accounts depends on the account structure desired by the Clearing Clients (separate cash collateral accounts and securities collateral accounts for Non-Clearing Members (when the separate deposit of clearing collateral is selected) and/or Registered Clients) and are set up by the Clearing Member upon request.

A Clearing Agent shall take appropriate measures to ensure that CCP.A gains technical access to cash, securities, collateral and securities collateral accounts managed by the Clearing Agent. General Terms and Conditions of Business of the Clearing Facilities shall apply to the cash settlement accounts, securities settlement accounts, cash collateral accounts, and securities collateral accounts. As regards segregated cash collateral accounts and securities collateral accounts for each Clearing Client, the respective Clearing Member shall ensure that netting between the diverse cash collateral accounts and securities collateral accounts is not possible and therefore eliminated.

The cash collateral accounts and securities collateral account are pledged in favour of CCP.A or established as security in another form acceptable to CCP.A. CCP.A shall have sole signature authority of cash collateral and securities collateral accounts; to other participants (including the Clearing Member) the signatory right is not delegated.

CCP.A keeps segregated records and position accounts for each Clearing Member, providing a transparent overview of the position accounts between the assets and positions held in the name of one Clearing Member from the assets and positions held for the account of any other Clearing Member, as well as CCP.A's own assets.

Furthermore, CCP.A keeps separate records and position accounts, enabling each Clearing Member to distinguish in the position accounts with CCP.A the assets and positions of that Clearing Member from those held for the accounts of its Clients ('omnibus client segregation').

In addition, CCP.A offers to keep segregated records and accounts, making it possible to differentiate the assets and positions held for the account of one Clearing Client from those held for the account of Other Clients ('individual client segregation').

Likewise, upon request CCP.A offers Clearing Members the option of maintaining further position accounts for assets and position held in their own name or in the name of their Clients. The desired account structure is notified to CCP.A in writing (Annex 2 of the Clearing Agreement) and includes the names of the parties for whom CCP.A keeps these position accounts (as well as other cash, securities, collateral and securities collateral accounts it maintains).

When a Clearing Member opts for individual client segregation, any margin in excess of the client's requirements shall also be posted to CCP.A 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.

CCP.A has publicly disclosed the levels of protection<sup>3</sup> and the cost associated<sup>4</sup> with the different levels of segregation that CCP.A provides and offers those services on reasonable commercial terms. Details of the different levels of segregation include a description of the main legal implementations of the respective level of segregation offered including information on the insolvency law applicable in the relevant jurisdiction.

CCP.A maintains position accounts for the management of positions, which serve as a basis for the calculation of collateral. The position accounts shall contain all not yet settled transactions and open

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<sup>3</sup> Account Structure:

[https://www.ccpa.at/uploads/u/ccpa/PDF/Download\\_Area/Account\\_Structure\\_V1.2.pdf](https://www.ccpa.at/uploads/u/ccpa/PDF/Download_Area/Account_Structure_V1.2.pdf)

<sup>4</sup> CCP.A Fee Schedule: <https://www.ccpa.at/en/membership/fees/>

positions, running as of the trading day until actual delivery. Transactions in default shall be taken into consideration in the position accounts until they are settled in cash.

For transactions concluded by Clearing Members for Clearing Clients, CCP.A maintains one or more position accounts in its clearing system depending on the account structure selected. The position accounts may be one of the following:

- a) Proprietary trading accounts for transactions concluded for their own account, or
- b) Individual client accounts for transactions that are carried out on the instructions of a Non-Clearing Member or a Registered Client (Clearing Clients), or
- c) Omnibus client accounts for transactions that are ordered by Other Clients

With respect to the position accounts of a Clearing Member or the position accounts of a Clearing Agent assigned to it, in the case of standard omnibus client segregation, all eligible positions of the Clearing Member itself are booked to one or more proprietary trading accounts and those positions relating to agent orders of Other Clients of the Clearing Member are collected for the account of the Clearing Member and booked to one or several omnibus client accounts. Positions relating to orders of Non-Clearing Members and of Registered Clients are each recorded on separate individual client accounts for the account of the Clearing Member (individual client segregation).

## 4.2. Transfers

If the assets and positions of a Clearing Member (ie. resp. its Other Clients), Non-Clearing Member or Registered Client are held on segregated position and settlement accounts in the clearing system of CCP.A, in the event of default or insolvency of a Clearing Member, CCP.A initiates the procedure for transferring the assets and positions held by the defaulting Clearing Member for Clearing Clients or Other Clients, upon request of those Clients and without the consent of the defaulting Clearing Member, to another Clearing Member named by these Clients. This other Clearing Member shall agree to the transfer of such assets and positions only if it has a prior contractual agreement with the respective Clients to this effect. If, for any reason whatsoever, the transfer to another Clearing Member is not carried out within three hours; CCP.A may start with the realization of the collateral.

When assets and positions of Clearing Clients are kept on separately registered cash or securities settlement accounts, CCP.A initiates, in the case of a default or insolvency of the Clearing Member, the procedures to transfer the assets and open positions, which the defaulting Clearing Member maintains for its Clearing Clients to another Clearing Member designated by these Clearing Clients, upon the request of said Clearing Clients and without the consent of the concerned Clearing Member.

To declare its willingness to accept such assets and open positions, the accepting Clearing Member shall enter into a contract with the Clearing Client ('back-up Clearing Agreement').

For omnibus client accounts, CCP.A triggers the procedures for the transfer of the assets (or the equivalent collateral value) and positions held by the defaulting Clearing Member for the account of its Clients to another Clearing Member designated by all of those Clients, on their or their representatives' request and without the consent of the defaulting Clearing Member.

CCP.A transfers the assets and open positions of the concerned Clients to the accepting Clearing Member upon their request and in the case of a Trigger Event within one clearing day as of the request of the Clearing Client(s).

If, at the time of the Trigger Event, the cash collateral accounts or securities collateral account maintained separately for a Clearing Client do not have sufficient cover, the transfer of positions and assets assigned to this Clearing Client shall be excluded from any transfer and will be closed out

separately from the assets and positions of the Clearing Member, in accordance with the provisions of § 51 GTC (Realisation of Clearing Collateral) and the assigned clearing collateral realised if necessary. Any surplus resulting therefrom shall be transferred to the Clearing Client separately.

If such transfer does not occur, CCP.A may take measures to actively manage its risk exposure with respect to the concerned positions, which includes the liquidation of the assets and positions that the defaulting Clearing Member maintains for the account of its respective Clearing Clients. Nevertheless, CCP.A ensures that the assets covering the positions recorded in Client accounts are not used to cover losses connected to positions recorded in the Clearing Member's proprietary account(s).

### 4.3. Realisation of Clearing Collateral and Default Fund

Upon default, CCP.A has the right to realise the clearing collateral deposited to cover all open liabilities including any open interest on arrears, fees of the Exchange Operating Company pursuant to the Schedule of Fees of the Exchange Operating Company as well as the fees set out in the *Schedule of Fees* of CCP.A and to cover any damage caused by the (Non-) Clearing Member.

Use of the default fund is governed by the rules set out in *Default Waterfall* (<https://www.ccpa.at/en/risk-management/default-management/>).

The collateral of Clients may only be used as collateral for the positions held for these Clients.

Clearing collateral shall be realised in the following order of precedence:

- a) cash collateral and all cash balances that would result in amounts being credited to the Clearing Member's cash accounts on the delivery day;
- b) securities collateral and securities for which the defaulting Clearing Member is to accept delivery;
- c) all default fund contributions of the defaulting Clearing Member.

The transactions to be executed may be carried out by CCP.A through Exchange Members or be offered anonymously by CCP.A itself.

As of the fifth (5<sup>th</sup>) clearing day after the occurrence of default, CCP.A has the right to realise the default fund contributions of the defaulting Clearing Member even if the realisation of the clearing collateral has not yet been finalised.

Pursuant to § 6 Financial Collateral Act, CCP.A has the irrevocable right to carry out the realisation of the clearing collateral without requiring any further consent of the Clearing Member and without the need for a court order or the consent to the terms of realisation and without conducting an auction, without requiring realisation to be threatened or any waiting period observed. The realisation or valuation of the collateral by CCP.A is carried out according to the principles of fair business dealings at the market price of the collateral on the day of realisation or valuation. After full coverage of all open liabilities and potential additional margin obligations for additional collateral, any surplus is surrendered to the Clearing Member or credited to its account. After completion of all steps of the procedure in case of a default of a Clearing Member, CCP.A immediately returns any surplus remaining on segregated Client accounts to the respective Clients, as far as these are known to it. If the Clients are not identified, the collateral is returned to the Clearing Member for the account of its Clients.

CCP.A has the right, in the event of default, to sell securities pledged without the purchase price having to be paid immediately and in cash, or to transfer them to one of its securities accounts for appropriation pursuant to § 5 para. 2 Financial Collateral Act and subsequently offset their value against the open liabilities of the Clearing Member or to use them in lieu of payment. Pledged cash collateral may be offset against open liabilities of a Clearing Member or used in lieu of payment. Realisation is permissible

also in cases in which insolvency or liquidation proceedings, composition proceedings or a receivership, reorganization proceedings or a reorganization measure, the business supervision or similar proceedings have been initiated or are still open against the assets of the Clearing Member, the Non-Clearing Member, Registered Client or Other Client.

In the event of realisation or termination, the collateral provided or the assets replacing it may be included in the netting procedure on termination.

Any credit-side cash balances (cash balances in the meaning of § 4 para. 1 Financial Collateral Act) and securities to be accepted by the Clearing Member (acceptance balances, securities balances in the meaning of § 4 para. 1 Financial Collateral Act) that are to be withheld by CCP.A as additional clearing collateral in the event of default in accordance with the GTC of CCP.A shall likewise be pledged and realised where necessary.

#### **4.4. Use of the Default Fund Contributions of Other Clearing Members**

The use of the default fund is governed by the rules set out in *Default Waterfall*, (<https://www.ccpa.at/en/risk-management/default-management/>).

a) When the realisation of the clearing collateral, as well as the contributions of the default fund of the defaulting Clearing Member pursuant to 4.3 has been completed and additional liabilities of a Clearing Member remain unsettled, CCP.A shall use own dedicated resources, which are calculated pursuant to Art. 45 EMIR.

b) If there are still open liabilities after this, CCP.A starts using the default fund contributions of all other Clearing Members. CCP.A shall proceed in the following order:

- i) calculate the preliminary amount of the remaining open liabilities of the Clearing Member, compare it with the remaining default fund and calculate the percent share of the liabilities;
- ii) realise the contributions to the default fund of all Clearing Members in the amount of the percentage calculated;
- iii) cover all open liabilities from the contributions realised.

c) Default fund contributions used pursuant to letter b) must be replaced by each Clearing Member within 10 banking days or within any other period specified by CCP.A after realisation by furnishing new default fund contributions up to fivefold the amount to date, unless the Clearing Member notifies to CCP.A the termination of its Clearing Membership in the clearing system no later than 5 banking days after the use of its default fund contributions.

d) Nonetheless, a Clearing Member withdrawing pursuant to letter c) shall be liable even if no new contributions have been made to the default fund and after termination of participation in clearing on a pro rata basis, in analogy to the provisions applicable to the default fund, for any cases of default having occurred until the time of its withdrawal.

e) The amounts remaining after coverage of all open liabilities shall be returned in the corresponding percentages to the Clearing Members by CCP.A within 5 banking days after the provision of new contributions to the default fund.

Should a defaulting Clearing Member provide the resources it owes fully or in part after CCP.A has used the contributions of other Clearing Members to the default fund, CCP.A shall refund these to the other Clearing Members in proportion to how it has been used.



## 4.5. Offsetting due to Realisation or Termination

In the event of realisation or termination, CCP.A has the right to determine the value of financial obligations between itself as the central counterparty and the Clearing Member concerned by netting/offsetting so that the party with the higher liabilities has to pay the calculated net balance to the other party.

The netting due to termination shall also be effective pursuant to § 9 para. 1 Financial Collateral Act even when liquidation proceedings, composition proceedings or a receivership, reorganization proceedings or a reorganization measure, the business supervision or similar proceedings have been initiated or are still open against the assets of the Clearing Member and the rights underlying the netting have been assigned due to termination or by court order or by any other order.

Offsetting upon termination may be affected without prior warning, judicial approval or consent, without auction and without having to observe a waiting period.

## 5. Financial Collateral

The Clearing Members shall open one or more blocked accounts for making cash deposits with OeKB AG as the Collateral Custodian as well as one or more securities collateral accounts for depositing securities with OeKB CSD GmbH as Collateral Custodian.

The Clearing Member declares to pledge all such cash deposits and securities to CCP.A as collateral for all liabilities arising at present or in future from the Clearing Member's participation in clearing pursuant to the GTC of CCP.A.

CCP.A has the right, in the event of default pursuant to the GTC of CCP.A, to satisfy its claims from the pledged cash deposits and the pledged securities. CCP.A has the irrevocable right pursuant to § 6 Financial Collateral Act to carry out the realisation of the collateral without requiring any further consent of the Clearing Member and without the need for a court order or the consent to the terms of realisation and without conducting an auction, without requiring realisation to be threatened or any waiting period observed.

Realisation or valuation of the collateral shall be carried out by CCP.A in accordance with the principles of fair dealing in accordance with the market or trading value of the collateral on the day of realisation or valuation. After full coverage of all open liabilities and potential additional margin obligations for additional collateral, any surplus shall be surrendered to the Clearing Member or credited to its account.

CCP.A has the right, in the event of default, to sell securities pledged without the purchase price having to be paid immediately and in cash, or to transfer them to one of its securities accounts for appropriation pursuant to § 5 para. 2 Financial Collateral Act and subsequently offset their value against the open liabilities of the Clearing Member or to use them in lieu of payment. Pledged cash collateral may be offset against open liabilities or used in lieu of payment.

Realisation is permissible also in cases in which insolvency or liquidation proceedings, composition procedures or such a measure, or receivership or similar proceedings have been initiated or are still open against the assets of the Clearing Member.

In the event of realisation or termination, the collateral provided or the assets replacing it may be included in the close-out netting procedure upon termination pursuant to the GTC of CCP.A.

In accordance with the GTC of CCP.A, any credit-side cash balances (cash balances in the meaning of § 4 para. 1 Financial Collateral Act) and securities to be accepted by the Clearing Member (acceptance

balances, securities balances in the meaning of § 4 para. 1 Financial Collateral Act) that are to be withheld by CCP.A as additional clearing collateral in the event of default shall likewise be pledged and realised where necessary.

In the pledge declaration (Annex to Clearing Agreement), the Clearing Member shall irrevocably instruct OeKB AG and OeKB CSD GmbH as pledgees to record the pledge in the cash accounts and securities accounts as well as in its books, to allow the collateral provided to be disposed of only subject to co-signing by CCP.A, and, in the event of realisation, to transfer the securities and the cash balances as instructed by CCP.A either to CCP.A or to third parties designated by CCP.A.

The Clearing Member shall release the Clearing Facilities from banking secrecy to the extent necessary for them to fulfil its tasks as Settlement Bank, CSD or Collateral Custodian in accordance with the GTC of CCP.A or for the Financial Market Authority (FMA) and, where applicable, competent foreign supervisory authorities to fulfil their supervisory function. The Clearing Facilities herewith declare to waive any pledge, retention or offsetting rights, be they statutory or agreed in a contract or under GTC, relating to all the cash deposits made to the cash collateral account and securities held on the securities collateral account.