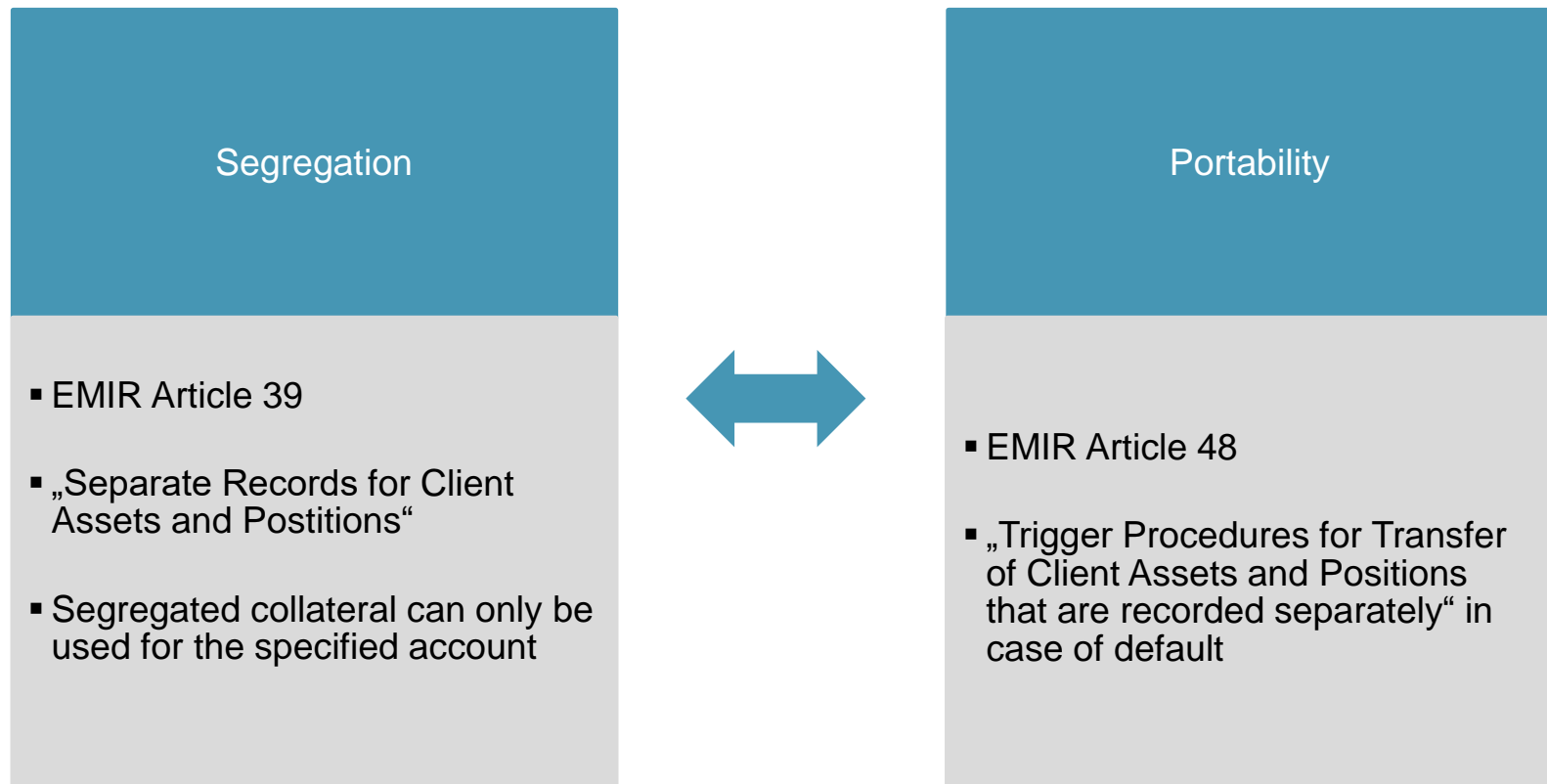


# Segregation at ECC AG

Leipzig, 08/15/2022

# Introduction

## Segregation and Portability



# Segregation Regulatory Framework

**Article 39 EMIR\*** requires that a CCPs shall offer to:

- Keep **separate records and accounts** that shall enable the Clearing Member to **distinguish in accounts with the CCP** between **assets and positions of the Clearing Member** and assets and positions held for the account of his **clients**  
(Article 39 (2) = Omnibus Client Segregation)
- Keep separate records and accounts that shall enable the Clearing Member to distinguish in accounts with the CCP between **assets and positions held for the account of a client** and assets and positions held for the account of **other clients or the Clearing Member**  
(Article 39 (3) = Individual Client Segregation)

# Portability Regulatory Framework

Article 48 EMIR requires that a CCP shall at least **contractually commit itself to trigger the procedures** for the transfer of assets and positions held by a defaulting Clearing Member on behalf of its segregated clients.

This shall happen **without the consent** of the defaulting Clearing Member on request of the segregated clients.

Only **if the transfer cannot be completed** within a transfer period specified by the CCP the **CCP may take all steps to actively manage the risk** in relation to the positions (including liquidating assets and positions).

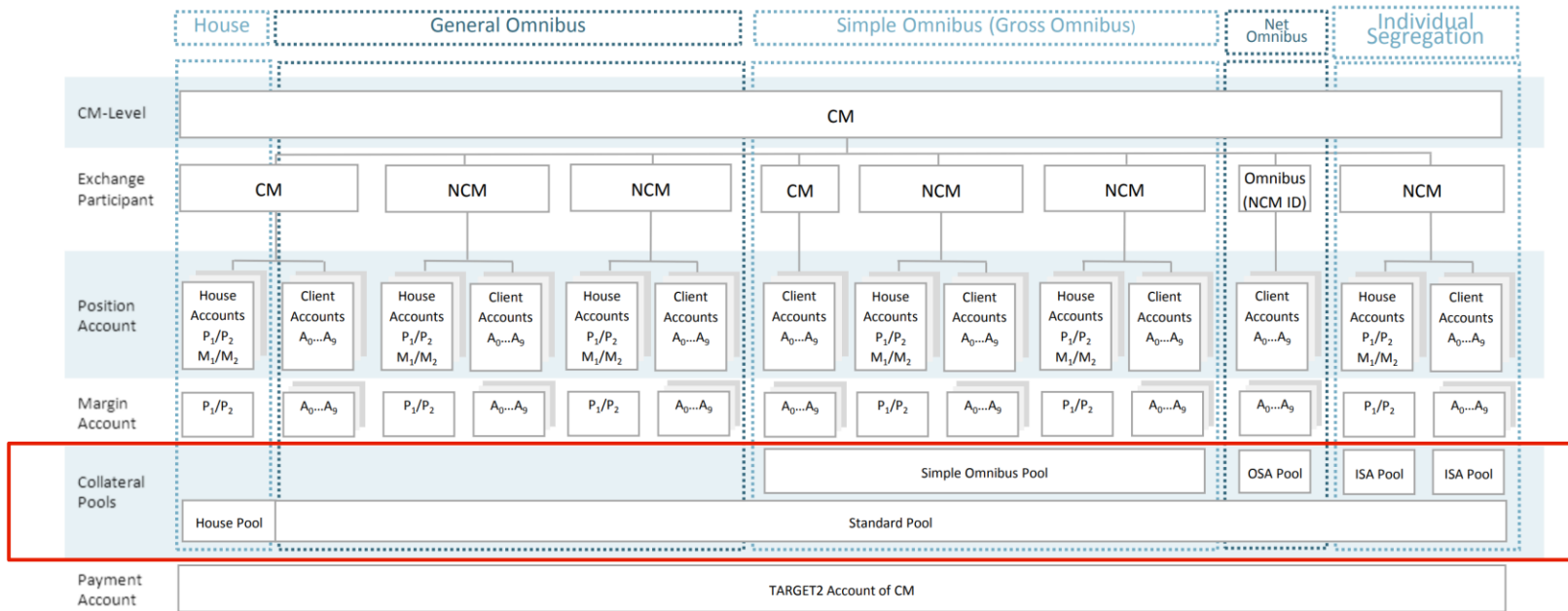
# Segregation

## Requirements on Segregation

- A Clearing Member shall offer its clients at least the choice between individual and omnibus segregation (Article 39 (5))
- The client has to confirm his choice in writing (Article 39 (5))
- When a client opts for individual client segregation, any excess margin shall also be held at the CCP (Article 39 (6))



# Segregation Account Models



- Positions of NCMs have always been recorded on separate position accounts at ECC. Those accounts already fulfill the EMIR requirements and therefore remain unchanged.
- NEW:** Assets (i.e. collateral in cash or securities) were recorded on Clearing Member level only prior to EMIR; this had to be changed -> ECC introduced collateral pool concept. Each position account can be allocated to a specific collateral pool. This collateral pool only holds assets to cover risk from the allocated position account.
- Margin and payment accounts are not covered by EMIR

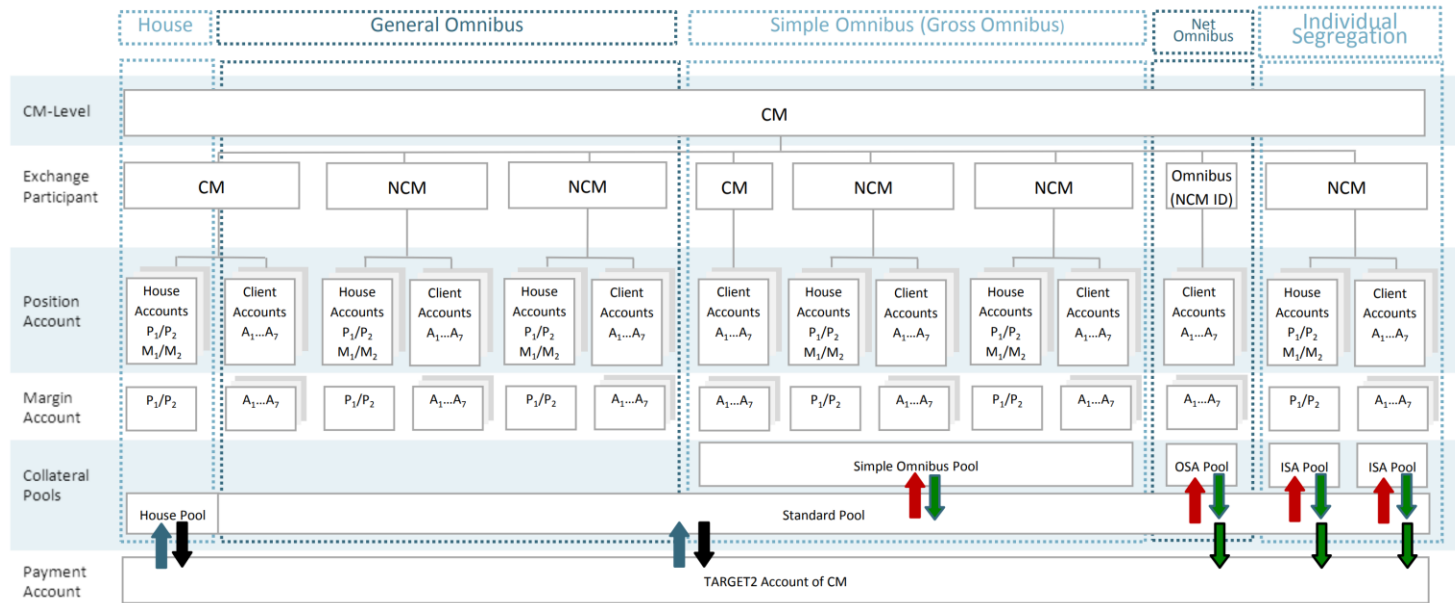
# Segregation

## Main Characteristics of the Account Models

House Account	Individual Segregation (ISA)	Net Omnibus Segregation (OSA)	General Omnibus (GOS) / Simple Omnibus (SOS)
<ul style="list-style-type: none"> <li>▪ For CM Positions</li> <li>▪ Own Collateral Pool or by value segregation</li> </ul>	<ul style="list-style-type: none"> <li>▪ For a single NCM</li> <li>▪ Own Collateral Pool</li> <li>▪ Assets (collateral) are passed through to ECC</li> <li>▪ Only collateral accepted by ECC can be used</li> </ul>	<ul style="list-style-type: none"> <li>▪ For multiple clients (not NCM) in an A-Account of a CM</li> <li>▪ Own Collateral Pool for all clients in the OSA</li> <li>▪ Assets (collateral) are passed through to ECC</li> <li>▪ Only collateral accepted by ECC can be used</li> </ul>	<ul style="list-style-type: none"> <li>▪ For multiple NCM and clients in an A-Account of a CM</li> <li>▪ Shared Collateral Pool for all clients and NCM in the GOS / SOS</li> <li>▪ By value segregation</li> <li>▪ Assets (collateral) is posted by CM</li> </ul>

The minimum and default level of segregation is the GOS. All other account models are optional.

# Segregation – Collateral / Margin Flows



- ➡ Margins are only called from TARGET2 Account of the CM into the Standard Pool; if a separate House Pool has been set up then calls for the house account will be made separately into the house pool
- ➡ Transfer of Collateral into the Simple Omnibus and ISA/OSA Pools has to be effected immediately by the CM from the standard pool manually or by file-upload.
- ➡ Releasing collateral from the ISA or OSA requires consent of client or omnibus representative and are returned to CM for their clients immediately after release
- ➡ Release from other House or Standard Pool requires consent of ECC (sufficient coverage).

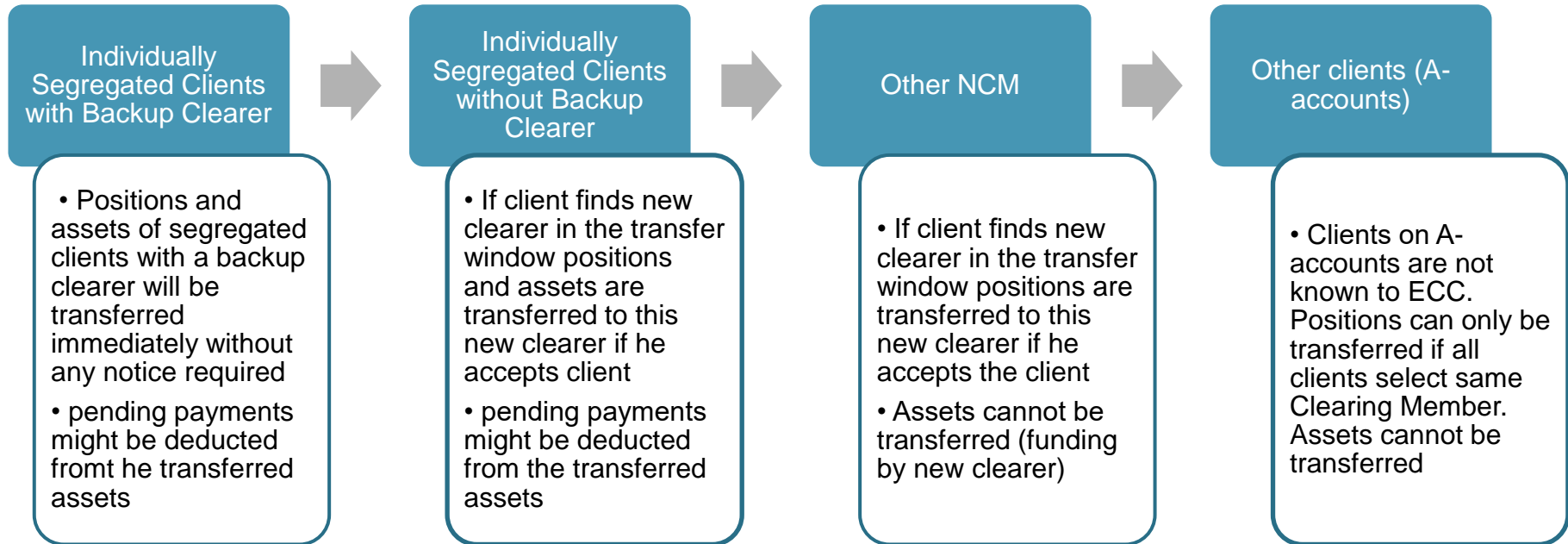


# Segregation – Major Model Characteristics

	GOS/SOS Omnibus	OSA Omnibus	ISA
Who will the CCP Transactions recorded in the account relate to?	Assets and CCP Transactions that relate to one or more undisclosed Clients as well as one or more disclosed Clients	Assets and CCP Transactions that relate to one or more undisclosed Clients	Only assets and CCP Transactions that relate to one specific Client
Which losses can assets recorded in the account be used for?	Assets recorded in the account can be used to cover losses for the CCP Transactions recorded for all Clients covered by this account. Fellow client risk exists		Assets recorded in the account can only be used to cover losses for the CCP Transactions recorded in this account
Will the CCP know which CCP Transactions and types of assets relate to you?	The CCP does not know which assets have been posted by each Client		Yes
Will the CCP record the assets provided by value only or will it identify the type of asset provided by each Client?	The CCP will only record the value for the Omnibus Account and not allocated assets to specific Clients		The CCP will record each asset as provided by the Client
Are CCP Transactions recorded in the account netted?	No		yes
Will margin be calculated gross or net for the account?	gross across accounts, net within account	net	net
Does the client need to execute any legal arrangements directly with the CCP?	For undisclosed Clients there is no legal arrangement directly with the CCP. For disclosed Clients (NCM) there is a tri-party arrangement (NCM agreement).	There is a tri-party arrangement between Omnibus Representative, CCP, and Clearing Member.	There is a tri-party arrangement between CCP, Client and Clearing Member.

# Portability General Process

The Clearing Member default will be managed according to the default procedure. The Default Management Committee establishes a transfer window depending on market conditions and size/complexity of the portfolio of the defaulting clearer.



All remaining positions are liquidated and the collateral pools are used according to the specific segregation model; remaining collateral in ISA/OSA collateral pools is returned to the known clients; collateral in SOS/GOS pool can be (re)claimed by the known clients of the CM to a certain extent; remainder is distributed to the CM on account of his clients.

# Portability

## Loss Allocation for Remaining Positions/Assets

Example

House	<b>Standard Pool</b> GOS/SOS	ISA/OSA
100	100	100

Collateral in Pool

Example 1

House	GOS	ISA/OSA/SOS
150	75	75
-50 ↓	+25 ↓	+25 ↓
Default Fund	GOS Clients	ISA/OSA /SOS

Loss allocated

After Liquidation

Example 2

House	GOS	ISA/OSA/SOS
0	125	125
+50 ↓	-25 ↓	-25 ↓
Administrator	House	House

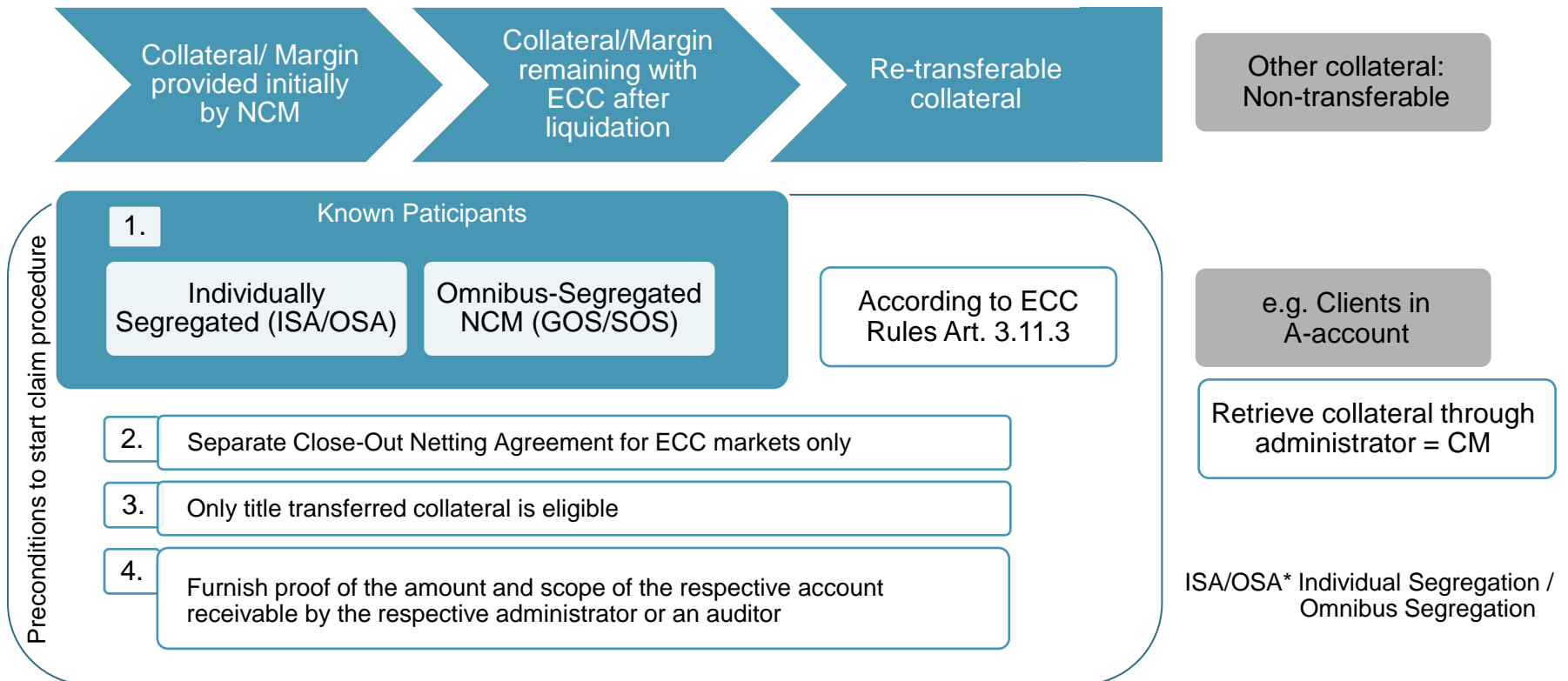
Loss allocated

After Liquidation

- Liquidation is performed on the net position over all accounts (one netting set).
- The Liquidation result is allocated to position accounts (maximum the amount that would result when only liquidating that account).
- If the allocated loss in the house position account exceeds the allocated collateral (see previous slide), this shortfall cannot be covered with GOS or ISA/OSA/SOS collateral.
- If the allocated loss in the ISA/OSA/SOS position account exceeds ISA/OSA/SOS collateral + allocated collateral from the standard pool, this shortfall cannot be covered with other GOS or ISA/OSA/SOS collateral.
- Any loss of a non ISA/OSA/SOS position account will be covered with GOS.
- Collateral allocated to house position accounts can be used to cover loss of any other position account.

# Portability Reclaim Procedure

ECC has established a claim procedure for non ISA/OSA\* segregated collateral remaining with ECC after liquidation in the standard collateral pool, the simple omnibus pool or the general omnibus pool. Known Participants can request to be paid a redemption in respect of the collateral provided to their Clearing Member under certain conditions



# Segregation and Portability Risk Related to Different Models

Risk	Explanation
Transit Risk	Whether the Client is exposed to losses at any point in the process of providing or receiving margin in respect of Client Transactions.
Fellow Client Risk	Whether assets provided as collateral could be used to cover losses in CCP Transactions relating to another client.
Liquidation Risk	Whether, if the CCP Transactions and assets relating to them were to be ported, there is a risk that any non-cash assets would be liquidated into cash. If this were to happen, the value given to such assets by the CCP may differ from what the Client perceives to be the full value of the assets.
Haircut Risk	Whether the value of the assets that relate to CCP Transactions might be reduced or not increase by as much as the Clients expects because the CCP applied a haircut that did not fully or properly reflect the value of the asset.
Valuation Mutualisation Risk	Whether the value of the assets that relate to CCP Transactions could be reduced or not increase by as much as the Clients expects because the assets posted in relation to other clients' CCP Transactions have decreased in value.
CCP Insolvency Risk	Whether the Client is exposed to the insolvency or other failure of the CCP.
Legal Risk	Whether the rules and procedures when finally decided upon a competent court of law fully reflect the intention of all parties.

# Segregation and Portability Risk Related to Different Models

	GOS/SOS Omnibus	OSA Omnibus	ISA
Transit Risk	Yes	Yes	Yes
Fellow Client Risk	Yes	Yes	No
Liquidation Risk	Yes	Yes (unless assets are ported and transferred to Clients before liquidation)	Yes (unless assets are ported and transferred to the Client before liquidation)
Haircut Risk	Yes	Yes	Yes
Valuation Mutualisation Risk	Yes	Yes	No
CCP Insolvency Risk	Yes	Yes	Yes
Legal Risk	Yes	Yes	Yes
How likely is that a transfer will be completed?	Transfer only for positions; it is unlikely that it can be achieved for all NCM. For undisclosed clients on A-Accounts porting is only possible if all clients transfer to the same Clearing Member.	If preconditions (e.g. back-up Clearing Member) are fulfilled it is more likely that porting of assets and positions can be achieved	

# Legal Framework

## ISA/OSA Close Out Netting Arrangements

### Individual documentation based on standard market documentation

- German Master Agreement for Financial Services Transactions (Deutscher Rahmenvertrag für Finanztermingeschäfte)
- Clearing Master Agreement (Clearing-Rahmenvereinbarung) of the German Banking Association (BdB) may be used to determine relationship between CM and NCM/Client in the future. In relation to ECC this Agreement might have to be used together with a special ECC-Annex.
- ECC will rely on the legal opinions commissioned by industry association (German Banking Association).

### Individually agreed client documentation

- Individual close out netting provisions between CM and ECC can remain in place but have to be in compliance with the regulatory EMIR framework for segregation to ensure that an NCM/OSA is fully protected in a default situation of a CM.
- ECC has to approve the relevant agreements.

# Legal Framework Forms and Agreements

## Individual documentation based on standard market documentation

- The legal framework between a CM and his NCMs/clients can remain.
- The standard set up is that all existing NCMs/client positions are allocated to the Standard Pool and the house positions are segregated by value.
- For an ISA account the existing NCM agreement can remain in place, but the following amendments are required:
  - Trilateral **NCM02c Collateral Agreement** as **appendix** to the NCM-Agreement;
  - **NCM06 Close-out Netting Agreement** (optional but recommended);
- For OSA the following amendments are required:
  - **CM02c Omnibus Representative Agreement**: agreement between the Omnibus Representative\*, the Clearing Member and ECC
- For SOS and a separate House Pool only a simple form is required:
  - **CM02d Setup of House Account**
  - **CM02e Setup of Simple Omnibus Account**

\* Acts on behalf of the OSA clients towards ECC in the following cases: In default of a CM he initiates the transfer and the reclaim procedure. In daily operations he approves the release of collateral from the OSA collateral pool. The Omnibus Representative can be a client from the OSA, a notary, lawyer or another third party, but not the CM itself.



# Legal Framework

## Relevant Sections of the Clearing Conditions

The Clearing Conditions Release 23a which was published on 20 June 2014 contains major amendments resulting from EMIR requirements. The main rules for segregation and portability can be found in the following sections of the rulebook:

- Definition of Terms,
- Definition of Clients, which are not Non-Clearing Members (section 2.3),
- Margin requirements and provisions of collateral (section 3.5.1),
- Provision of Collateral in Cash (section 3.5.4),
- Provision of Collateral in Securities (section 3.5.5),
- Passing Through of Collateral (section 3.5.6),
- Collateral in Cash in passing-through of Collateral (section 3.5.7),
- Collateral in Securities in passing-through of Collateral (section 3.5.8),
- Pledges in relation to the passing through of Collateral (section 3.5.9),
- Collateral Clearing Account (section 3.6.7),
- Transfer of Positions and Collateral, Closing and Utilisation of Collateral (section 3.11.1),
- Utilisation of Collateral (section 3.11.2) and
- Transfer and Distribution of Cash Collateral and Utilisation Proceeds (section 3.11.3)