

# J.P. Morgan Chase Bank, N.A. London Branch

## EMIR Disclosure

---

### 1. INTRODUCTION

---

- 1.1. As a client of JP Morgan Chase Bank, N.A. (“JPMCB, N.A.”), you are required to confirm the type of account that you would like JPMCB, N.A. to maintain in respect of each CCP through which your trades are cleared. It is important that you understand the implications of the different levels of segregation available to you, and how your margin is treated, in order to choose the type of account or accounts that will suit your needs.

#### Requirement for disclosure under EMIR

- 1.2. Article 39(7) of the European Market Infrastructure Regulation (“EMIR”) requires clearing members and CCPs to make certain disclosures in relation to the levels of protection associated with different levels of segregation of clients’ positions and assets (i.e. margin), including a description of the main legal implications of the respective levels of segregation and applicable insolvency law.
- 1.3. JPMCB, N.A. is a national banking association organised under the laws of the United States. The London branch of JPMCB, N.A. (“**JPMCB London**”) is currently a clearing member of LCH.Clearnet Ltd and as such provides clients with access to clearing of certain equities, bonds and exchange-traded funds (“**ETFs**”) transactions through LCH.Clearnet Ltd. However, this disclosure does not deal specifically with the position or default rules of LCH.Clearnet Ltd and instead considers the level of protection provided by and resulting from EMIR in relation to CCPs generally. A CCP for these purposes is a central clearing counterparty authorised under EMIR that interposes itself between the counterparties to a contract, becoming the buyer to every seller and the seller to every buyer. JPMCB, N.A. retains the ability to resign from any CCP at any time at its sole discretion.
- 1.4. This document sets out the disclosure of JPMCB, N.A. as a clearing member. It may be updated from time to time, with the most recent version being made available on the following website: <https://www.jpmorgan.com/pages/disclosures>. You should ensure that you consider the most recent version of the disclosure on the website, which will replace any previous versions.
- 1.5. JPMCB, N.A. also provides details of prices and fees connected with its clearing services, which can be found on the following website: <https://www.jpmorgan.com/pages/disclosures>.
- 1.6. You should also refer to the CCPs for their own disclosures. JPMCB, N.A. does not accept any responsibility for any such disclosure.

## What does this document cover?

- 1.7. This document considers certain protections and risks that are associated with JPMCB, N.A. London's offer of clearing services. In particular, it provides a generic description of the different levels of segregation that are available to you (i.e. omnibus and individual segregation). The type of segregation that you choose will affect the level of protection that your positions and assets are afforded.
- 1.8. CCPs may operate a number of different account structures and contractual mechanisms to facilitate segregation and porting under EMIR. This document does not address any CCP-specific account structures, offerings, protections or risks (including the risk of a CCP defaulting or risks associated with specific mechanisms aimed at facilitating porting); nor does it seek to address any other risks that may be associated with trading, such as market or operational risk, or the default of any other third parties. Additional considerations and risks will also arise where JPMCB, N.A. is not a direct member of a CCP, but instead accesses the CCP via another clearing member. Such arrangements are outside the scope of this document.
- 1.9. JPMCB, N.A. may become subject to US insolvency and bank resolution proceedings which can apply to and affect JPMCB London. In addition, JPMCB, N.A. could also be subject to UK insolvency proceedings (and resolution proceedings following the implementation in the UK of the EU Bank Recovery and Resolution Directive), which would relate in particular to JPMCB London. The insolvency related disclosures contained in this document therefore address the position under both English and US law. In addition, it should be noted that the English law insolvency protections referred to only apply in relation to transactions cleared through CCPs subject to English law recognition orders or EEA or third country CCPs, provided that relevant provisions of such EEA or third country CCP's default rules that go beyond EMIR porting requirements may not benefit from English law insolvency protections unless they either meet certain requirements set out in the UK Recognition Requirements<sup>1</sup> or the CCP has applied for and the Bank of England has made an order recognising that the relevant provisions in the CCP's default rules satisfy those requirements. The CCPs must in each case also have been authorised by the relevant competent authority pursuant to EMIR or, in respect of third country CCPs, recognised by the European Securities and Markets Authority ("**ESMA**").
- 1.10. Considerations or risks arising under other laws which are not considered in this document may also be relevant to your position, such as the law governing the CCP rules or related agreements, the law of the jurisdiction of incorporation of the CCP and the law of the location of any assets.

## What is the status of this document?

- 1.11. This document is provided for information purposes only. It is not a legally binding document and does not constitute part of any agreement between you and JPMCB, N.A. (all such agreements, collectively, "**Agreement**"). As such, it does not amend or vary any

---

<sup>1</sup> Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001, SI 2001/995.

provision of the Agreement or otherwise affect the interpretation of the Agreement. Accordingly the terms of the Agreement will remain unaffected by this document.

- 1.12. This document provides a high level analysis of several complex and/or new areas of law, whose effect will vary depending on the specific facts of any particular case, some of which have not been tested in the courts. It does not provide all the information you may need to make your decision on which account type or level of segregation is suitable for you. It is your responsibility to review and conduct your own due diligence on the relevant legal regimes, rules, legal documentation and any other information provided to you on each of our client account offerings and the CCP on which JPMCB, N.A. clears trades for you. You may wish to appoint your own professional advisors to assist you with this.
- 1.13. This document contains JPMCB, N.A.'s own interpretation of the matters considered. It does not constitute any form of legal or other advice, and accordingly must not be relied upon by you or any third party as such. You should seek your own legal advice in relation to the matters covered by this document and the Agreement.
- 1.14. JPMCB, N.A. will not in any circumstances be liable, whether in contract or tort, for breach of statutory duty or otherwise, for any losses or damages that may be suffered as a result of using or relying on this document. Such losses or damages include (a) any loss of profit or revenue, damage to reputation or loss or any contract or other business opportunity or goodwill and (b) any indirect loss or consequential loss. No responsibility or liability is accepted for any differences of interpretation of legislative provisions and related guidance on which it is based. However, this paragraph does not exclude liability for, or disclaim any remedy in respect of, fraudulent misrepresentation.

#### **What will you need to do?**

- 1.15. You are strongly encouraged to consider carefully the segregation options that are available to you. JPMCB, N.A. will require a reasonable period of time to facilitate any changes to your account structure. In times of market stress, changes to account structure may be difficult or even impossible to implement, which means JPMCB, N.A. may not be able to fulfil any request for change at such times. You should therefore ensure that you do not delay assessing the options available to you.
- 1.16. You may also wish to consider putting in place arrangements with a back-up clearing member, and carrying out operational testing in respect of those arrangements, in order to facilitate porting of positions and assets in the event of a default by JPMCB, N.A. In the event that such back-up arrangements are not put in place (or transfers do not take place within a period specified by the CCP), then CCPs may take steps to manage their risk in the event of a default by JPMCB, N.A., including liquidating the assets and positions held by JPMCB, N.A. in respect of your transactions.
- 1.17. JPMCB, N.A. will seek to ensure that your choice of omnibus or individual segregation (as further described below) is reflected in JPMCB, N.A.'s client accounts at the CCP level. However, CCPs may offer a variety of different account structures, and JPMCB, N.A. may not (and is not required to) support all of these. JPMCB, N.A. will inform you separately of the types of CCP account structures that it supports, and you must then confirm the type

of account that you would like JPMCB, N.A. to maintain in respect of the CCP through which JPMCB, N.A. clears your trades.

## 2. AN OVERVIEW OF THE DIFFERENT LEVELS OF SEGREGATION

---

- 2.1. JPMCB London offers its clients a choice between omnibus client segregation and individual client segregation. This is replicated at the CCP level, although the exact account structure will depend on the CCP's own offering. CCPs are, however, obliged under EMIR to offer to keep separate records and accounts that enable JPMCB, N.A., as a clearing member, to distinguish in accounts with the CCP:
  - a) the assets and positions of JPMCB, N.A. from those held for the account of its clients ("**omnibus client segregation**"); and
  - b) the assets and positions held for the account of a client from those held for the account of other clients ("**individual client segregation**").
- 2.2. Under EMIR, CCPs must upon request also offer to open more accounts in the name of the clearing member or for the account of the clearing member's clients.
- 2.3. The requirement under EMIR to distinguish assets and positions in the accounts with the CCP is satisfied where:
  - a) the assets and positions are recorded in separate accounts, as set out in paragraph 2.1;
  - b) the netting of positions recorded on different accounts is prevented; and
  - c) the assets covering the positions recorded in an account are not exposed to losses connected to positions recorded in another account.

## 3. AN OVERVIEW OF TITLE TRANSFER MARGIN

---

- 3.1. When clearing transactions for you through a CCP, JPMCB, N.A. usually enters into two separate transactions: (i) a principal-to-principal transaction with the CCP; and (ii) a principal-to-principal transaction with you. As the principal to the CCP, JPMCB, N.A. is required to provide assets to the CCP as margin.
- 3.2. JPMCB, N.A. will in turn require margin from you to support your cleared positions. In accordance with the Agreement, this margin will be transferred by you to JPMCB, N.A. on a title transfer basis. The level of protection resulting from title transfer transactions is further described in the sections on omnibus client segregation and individual client segregation below.

### How do title transfer collateral arrangements work?

- 3.3. When you transfer cash or securities margin to JPMCB, N.A. pursuant to a title transfer collateral arrangement, then the margin will become the absolute property of JPMCB, N.A., free from any equity, right, title or interest that you may have.

- 3.4. Subject to the terms of the Agreement, JPMCB, N.A. will have a contractual obligation to repay an equivalent amount of cash or to redeliver equivalent securities to you. You will have no right to any specific cash or securities, whether held with JPMCB, N.A., posted to a CCP or otherwise.
- 3.5. Cash transferred on a title transfer basis will not be subject the Financial Conduct Authority's (the "**FCA**") Client Money Rules (the "**Client Money Rules**"), which form part of the FCA's Client Assets Sourcebook.
- 3.6. Securities transferred on a title transfer basis will not be subject to the FCA's Custody Rules (the "**Custody Rules**"), which also form part of the FCA's Client Assets Sourcebook.

#### 4. OMNIBUS CLIENT SEGREGATION

---

##### What are the main features of omnibus client segregation?

- 4.1. As described above, under the omnibus client segregation option, the assets and positions that are held at a CCP for JPMCB, N.A.'s own account will be held in a separate account (and therefore will be distinguished) from assets and positions held with at the CCP for the account of JPMCB, N.A.'s clients. This means that your positions and assets will be recorded in a separate client omnibus account and not commingled with JPMCB, N.A.'s own positions and assets.
- 4.2. This account structure (to the extent reflected in the CCP's default rules) offers the protection that the netting of positions recorded on different accounts should be prevented even in the event of a UK (or US) insolvency proceeding in respect of JPMCB, N.A. and the assets covering the positions in the client omnibus account should not be exposed to losses connected with the positions in JPMCB, N.A.'s own account or any other account with the CCP.
- 4.3. Your positions and assets will, however, be credited to and commingled in an account with the positions and assets of other clients of JPMCB, N.A. that have opted for omnibus segregation. JPMCB, N.A. may operate several client omnibus accounts with the same CCP.
- 4.4. When you transfer cash margin to JPMCB, N.A. pursuant to a title transfer collateral arrangement, JPMCB, N.A. will credit an equivalent amount in an account at the CCP to which is also credited sums derived from other JPMCB, N.A. clients who provide cash margin on this basis.
- 4.5. The client omnibus accounts at the CCP level will reflect the positions and assets of all JPMCB, N.A.'s clients that have opted for omnibus client segregation and have cleared positions with that CCP. As such, one of the risks of the omnibus account structure is that your assets may be exposed to losses connected with the positions of other clients in the relevant client omnibus account, as the assets in the account can be used in relation to any position in that omnibus account (whether it relates to you or to any of JPMCB, N.A.'s other clients).

- 4.6. JPMCB, N.A. will keep separate records and accounts that enable it to distinguish, both in the accounts held with the CCP and in its own accounts, assets and positions held for its own account from the assets and positions held for the account of its clients at the CCP.
- 4.7. JPMCB, N.A. would not usually net clients' positions off against each other when clearing the positions with a CCP. However, when a CCP calls for margin to cover the positions in an omnibus account, it will normally call for a net amount needed to support the net of all the positions in the omnibus account ("**net omnibus account**"). As a consequence, JPMCB, N.A. will generally handle client margin on a pooled omnibus basis. Some CCPs also offer accounts where margin is called by the CCP on the basis of the gross positions recorded in the omnibus account ("**gross omnibus account**").
- 4.8. Depending on the Agreement, the pool of margin that JPMCB, N.A. holds may be applied to margin client omnibus accounts at the different CCPs in respect of which JPMCB, N.A. may provide clearing services. JPMCB, N.A. may also call for margin in respect of your cleared transactions related to a number of different CCPs simultaneously and without making any distinction between them. A feature inherent in these structures is that your margin will not be applied solely to your positions and there may not be a connection between your trading decisions and the locations at which your margin is placed. Timing differences between the time at which a CCP calls for margin and the time at which JPMCB, N.A. receives margin from you may also contribute to different margin being provided to the CCP from that which you provided.
- 4.9. When calculating the margin required from you, JPMCB, N.A. may do so on the basis of each of your positions alone and call for margin on a gross basis (i.e. JPMCB, N.A. will not take into account any other clients' positions in the omnibus account). Unless a gross omnibus account is used, the CCP will usually call for a net amount needed to support the net of all the positions in the omnibus account, which may result in JPMCB, N.A. holding a surplus of margin received from you that is not passed to a CCP. A margin surplus may also arise if you pre-fund margin with JPMCB, N.A. in anticipation of entering into certain trades, but some or all of that margin is not required to be passed to a CCP (e.g. because you do not enter into the relevant trades). Any surplus margin in relation to your cleared positions over and above the CCPs' margin requirements that is held by JPMCB, N.A. rather than with a CCP is referred to in this disclosure as "**gross excess margin**". JPMCB, N.A. may also hold margin for you where you do not transfer margin to JPMCB, N.A. sufficiently in advance of when the margin has to be transferred to the relevant CCP.

#### **What protections and risks would be associated with an omnibus account on a default and insolvency of JPMCB, N.A.?**

##### *Introduction*

- 4.10. In the event of JPMCB, N.A. becoming subject to insolvency (or resolution) proceedings and a default under the CCP's default rules, you would face a number of risks, including delays in your ability to access assets equivalent to those you have transferred to JPMCB, N.A. and a risk of shortfalls in recoveries. To the extent that English law applies, certain protections granted to clients where a clearing member of a CCP becomes insolvent and the CCP's default rules take effect should operate to ensure that statutory provisions which could otherwise have prevented or unwound any transfer of positions and assets

to another clearing member or the payment of balances to you directly by a CCP would not apply. This is further described below.

4.11. In the event of JPMCB, N.A.'s insolvency, the position is likely to be as follows:

*Appointment of FDIC as conservator or receiver and English winding up procedures*

- a) Upon the insolvency of JPMCB, N.A., it would likely become subject to a conservatorship or receivership administered by the Federal Deposit Insurance Corporation (“**FDIC**”) in the United States.<sup>2</sup> The FDIC would be appointed as conservator or receiver.
- b) Given the operations of JPMCB London, the FDIC, as conservator or receiver, might present a petition in the English courts for a winding-up order with respect to JPMCB, N.A. This may lead to the appointment in England of a provisional liquidator or a winding-up order in respect of JPMCB, N.A. (it would be possible for a provisional liquidator to be appointed before and without the need for a winding-up order).
- c) If JPMCB, N.A. is subject to the appointment of a provisional liquidator or a winding-up order, the proceedings in England are likely to be ancillary in the sense that they will in practice be conducted with a view to assisting the FDIC conservatorship or receivership and are likely to be conducted only or primarily with respect to the assets and liabilities of JPMCB, N.A. relating to JPMCB London. The treatment of your assets and positions in such circumstances is therefore expected to be as set out in paragraphs e) to q) below.
- d) When the FDIC is appointed conservator or receiver for an insolvent insured depository institution such as JPMCB, N.A., the FDIC “succeeds to all rights, titles, powers and privileges of the insured depository institution”. The FDIC as conservator or receiver is generally in the same position as the depository institution prior to the insolvency and therefore takes subject to the pre-insolvency rights of third parties. The rights and obligations arising under English law title transfer agreements with respect to securities, cash and margin transferred to JPMCB, N.A. and credited to and held in accounts with the CCP will generally be governed by English law, including the applicable provisions of EMIR, although you may be required to act in accordance with and subject to applicable US law governing the FDIC conservatorship or receivership and the US resolution proceedings particularly if you are subject to the jurisdiction of the US courts. It should be noted, that following the implementation in the UK of the EU Bank Recovery and Resolution Directive, the Bank of England will have the power to give effect and to recognise and enforce in the UK the US resolution proceedings.

---

<sup>2</sup> The purpose of the conservatorship or receivership is to limit the effect on the financial system when a depository institution fails. The FDIC as conservator may take such action as may be necessary to put the depository institution in a sound and solvent condition and appropriate to carry on the business of the institution and preserve and conserve the assets and property of the institution. The receiver's mandate would be to return deposits to customers as soon as possible (and thereby minimise risk to the deposit guarantee fund operated by the FDIC) and liquidate the assets of JPMCB, N.A. for the benefit of its creditors.

*Would assets be exposed to losses on other accounts?*

- e) Your assets covering positions in the client omnibus account will not be exposed to losses connected with the positions in JPMCB, N.A.'s own account or any other account with the CCP.
- f) However, your assets may be exposed to losses connected with the positions of other clients in the same client omnibus account given that all margin in such an account can be used to meet losses connected with any position in that account.

*Could positions and assets be ported?*

- g) If you have back-up arrangements in place with another clearing member, the commencement of insolvency proceedings in respect of JPMCB, N.A. should not prevent the porting of the positions and assets that are held in the relevant omnibus account at the CCP to an account with the CCP of that other clearing member, provided that the porting takes place in accordance with EMIR and the CCP's default rules.
- h) The law which facilitates segregation and porting and prevents insolvency proceedings from interfering with or invalidating porting is contained both in EMIR (which as an EU regulation is directly applicable in all EU Member States) and English domestic law. The protections created by English domestic law include the disapplication of a number of insolvency law provisions that may otherwise apply in respect of transactions at undervalue, preferences, transactions defrauding creditors, mutual credit and set-off, disclaimer of property, rescission of contracts and avoidance of property dispositions. Recital 64 of EMIR also provides that the requirements in EMIR on segregation and portability of clients' positions and assets should prevail over any conflicting laws, regulations and administrative provisions of the Member States that prevent the parties from fulfilling them, including provisions of insolvency law. While this overriding of insolvency law is not contained within an operative provision of EMIR but only in a recital, the recital should ensure that the operative provisions relating to porting are interpreted so that they apply, and are given effect, irrespective of the provisions of English domestic insolvency law.
- i) This means that your transactions with JPMCB, N.A. could be replaced by transactions with the back-up clearing member, whilst the positions and assets at the CCP level that relate to those transactions could be transferred to a client omnibus account of the back-up clearing member. The ability to port will depend on the ability of the relevant CCP to support the porting process and the existence of viable back-up arrangements with a new clearing member who is willing to accept the transfer. If you have not appointed a back-up clearing member, you may be able to agree with the CCP that it may choose a back-up clearing member on your behalf. However, if you have not appointed a back-up clearing member prior to JPMCB, N.A.'s default or agreed with the CCP that it may appoint one on your behalf, then this may mean that porting is less likely to occur. Porting of positions and assets in omnibus accounts may be limited to circumstances where all clients represented in the relevant omnibus account have reached an



agreement with the same new clearing member and they all request the CCP to port the positions of assets to that clearing member. Shortfalls in the omnibus account may prevent porting from taking place or cause the new clearing member to call for additional margin. For these reasons, it may be difficult to achieve porting in respect of an omnibus account.

- j) In addition, in respect of net omnibus accounts, the back-up clearing member is likely to require additional margin to cover its exposure to each of the clients in the omnibus account individually on a gross basis. EMIR does not provide for porting of any gross excess margin that may be held by JPMCB, N.A.. However, although it is not clear, it is possible that the protections provided under English domestic law referred to in paragraph h) above could also protect such transfers if the CCP's default rules and the back-up porting arrangements clearly provide for it and the conservator or receiver agrees to transfer the gross excess margin.
- k) It is possible that porting may be easier to achieve in respect of gross omnibus accounts. This is because the CCP is more likely to have sufficient assets to facilitate the porting of the positions and assets that relate to you and those that relate to other clients separately if it has called margin on a gross basis. However, whether this is feasible will depend on considerations such as the exact account structure and the records of the CCP.

*How would gross excess margin be treated?*

- l) Gross excess margin held by JPMCB, N.A. that has been provided pursuant to a title transfer collateral arrangement will form part of JPMCB, N.A.'s own assets and will be available for distribution to its general creditors. If you have provided margin on a title transfer basis, you will need to claim for the gross excess margin as an unsecured creditor in JPMCB, N.A.'s insolvency. Return of any gross excess margin would also be subject to the ability of JPMCB, N.A. to enforce any security interest or the application of set-off in respect of other obligations owing by you.
- m) The position would be similar in circumstances where you have transferred margin to JPMCB, N.A., but equivalent margin has not been passed to the CCP due to the timing of the insolvency or the timing of the margin transfer from you and any CCP cut-off times for margin transfers. In such circumstances you will also need to claim that amount from JPMCB, N.A. as an unsecured creditor. The amount of the claim would be subject to the terms of the Agreement, as well as the enforcement of any security interest and the application of any set-off in respect of other obligations owing by you. Conversely, JPMCB, N.A. will have a claim against you if JPMCB, N.A. has prefunded a margin call from the CCP without having received the margin from you.

*What would happen if the positions and assets could not be ported?*

- n) If you do not wish to port your positions and assets to a back-up clearing member or those positions and assets cannot be ported in accordance with the relevant CCP's rules (e.g. because the porting cannot take place within a predefined transfer period), the CCP may take steps to manage its risks. This may include

liquidating the positions and assets in the omnibus account. Any positive balance may be returned to you directly when the CCP knows how much of the balance is owed to each client and your identity is known to the CCP or, if not, to JPMCB, N.A. for the account of its clients (it is possible that the CCP will have the right under its default rules to obtain details of your identity from the clearing member).

- o) If you are due a payment from JPMCB, N.A. as a result of close-out calculations relating to the transactions between you and JPMCB, N.A., the amount due from JPMCB, N.A. to you will be reduced by any amount that you receive (or are deemed to receive) directly from the CCP. Given the features of the omnibus account described in paragraph 4.7 above, any assets returned directly to you by the CCP may not be the same as the assets that you provided to JPMCB, N.A.. English law seeks to protect the right of the CCP to return such balances directly to clients, including by virtue of the disapplication of a number of insolvency law provisions that may otherwise apply. However, CCPs will not usually know the identity of the clients in an omnibus account and therefore may be unable to return balances directly to you (although, it is possible that the CCP will have the right under its default rules to obtain details of your identity from the clearing member).
- p) EMIR provides that where the CCP does not know the identity of clients, any balance owed by the CCP after completion by the CCP of the clearing member's default management process shall be returned to the clearing member "for the account of its clients." In relation to title transfer clients, it is unclear what effect (if any) this reference in EMIR to the return to a clearing member of balances "for the account of its clients" will have. In the absence of any judicial or regulatory guidance, the position is unclear; but it is arguable that while the provision in EMIR is not intended to, and does not give, title transfer clients any proprietary interest in the balances returned to the clearing member, so that clients would only have an unsecured claim in JPMCB, N.A.'s insolvency, EMIR imposes on JPMCB, N.A. an obligation to use the balances received from the CCP to discharge its obligation to the clients which obligation may be binding on JPMCB, N.A.'s insolvency officeholder. If you have transferred margin to JPMCB, N.A. on a title transfer basis, you may need to claim for the balance as an unsecured creditor in the insolvency of JPMCB, N.A., subject to any available rights of set-off and the ability of JPMCB, N.A. to enforce any security interest.
- q) However, it is possible that any close-out mechanism in the Agreement could take effect, which would mean that your trades with JPMCB, N.A. would be subject to the operation of netting and set-off and the calculation of a close-out amount, which would either be payable by JPMCB, N.A. to you or by you to JPMCB, N.A.. In the event that a close-out amount is payable by you, your rights will also be subject to the enforcement by JPMCB, N.A. of any security interest under the Agreement. This may override many of the considerations set out above.

## 5. INDIVIDUAL CLIENT SEGREGATION

---

### What are the main features of individual client segregation?

- 5.1. As described above, under the individual client segregation option JPMCB, N.A. will be able to distinguish in the accounts held at the CCP the assets and positions held for the account of one client from those held for the account of other clients. This means that your positions and assets will be recorded in a separate individual client account and not commingled with JPMCB, N.A.'s or any other clients' positions and assets.
- 5.2. This account structure offers the protection that the netting of positions recorded on different accounts should be prevented and the assets covering the positions in the individual client account should not be exposed to losses connected with the positions in JPMCB, N.A.'s own account or any other account, including any client omnibus account.
- 5.3. JPMCB, N.A. will keep separate records and accounts that enable it to distinguish both in the accounts held with the CCP and in its own accounts its assets and positions from the assets and positions held for the account of each of its clients with individual segregation at the CCP.
- 5.4. If you opt for individual segregation, JPMCB, N.A. will seek to ensure that all margin that you provide in respect of cleared positions will be posted to the CCP or CCPs indicated by you and distinguished from the margins of other clients or clearing members. It is your responsibility to ensure that you always indicate the relevant CCP or CCPs in respect of all margin transfers that you make to JPMCB, N.A.. Where no CCP is indicated in respect of any part of a margin transfer, JPMCB, N.A. may determine how to treat such margin in accordance with the Agreement.
- 5.5. In certain circumstances, JPMCB, N.A. will not be required to transfer to a CCP assets provided by you to JPMCB, N.A.. In accordance with the Agreement, JPMCB, N.A. will not be required to transfer to a CCP any assets you provide to JPMCB, N.A. that are not related to individually segregated clearing activities at a CCP, provided that the assets are not dedicated to cover current positions with a CCP and that they are clearly identifiable as such. Additionally, if you transfer margin to JPMCB, N.A. in excess of the margin required by the relevant CCP and that excess margin is not in the form of assets that are eligible to be posted to the CCP (in accordance with the CCP's rules), JPMCB, N.A. will not be under any obligation to transform such assets into assets that would be eligible to be posted to the CCP. JPMCB, N.A. will transfer such non-eligible assets to the CCP only if the CCP has the operational and technical means to receive them. However, the assets will not be eligible to meet the CCP's margin requirement. If you transfer margin to JPMCB, N.A. in the form of a bank guarantee in favour of JPMCB, N.A., then JPMCB, N.A. will not be required to post to the CCP an amount of eligible margin equal to that value of the bank guarantee that exceeds the margin called from the client by JPMCB, N.A.. This disclosure does not address in any further detail the treatment of assets that are not transferred to the CCP.
- 5.6. CCPs have cut-off times and there are protocols, customs and usages in relation to the operations of CCPs, which means that JPMCB, N.A. may not always be able to transfer margin to the relevant CCP. As such, if you do not transfer margin to JPMCB, N.A.

sufficiently in advance of when the margin has to be transferred to a relevant CCP, margin subsequently received by JPMCB, N.A. from you may, in JPMCB, N.A.'s sole and absolute discretion in accordance with the Agreement, be returned to you or held by JPMCB, N.A. until such time that it can be transferred to the CCP.

- 5.7. If you pre-fund margin with JPMCB, N.A. in anticipation of entering into certain trades, but some or all of that margin is not required by the CCP (e.g. because you do not enter into the relevant trades), then it is your responsibility to instruct JPMCB, N.A. to recall any excess from the CCP. JPMCB, N.A. may, in its sole and absolute discretion in accordance with the Agreement, recall such margin from the CCP in the absence of your instructions and hold such assets itself until it is able to return it to you.

## **What protections and risks would be associated with an individual account on a default of JPMCB, N.A.?**

### *Introduction*

- 5.8. In the event of JPMCB, N.A. becoming subject to insolvency (or resolution) proceedings and a default under the CCP's default rules, you would face a number of risks, including delays in your ability to access assets equivalent to those you have transferred to JPMCB, N.A. and a risk of shortfalls in recoveries. To the extent that English law applies, certain protections granted to clients where a clearing member of a CCP becomes insolvent and the CCP's default rules take effect should operate to ensure that statutory provisions which could otherwise have prevented or unwound any transfer of positions and assets to another clearing member or the return of balances to you directly by a CCP would not apply. This is further described below.

- 5.9. In the event of JPMCB, N.A.'s insolvency, the position is likely to be as follows:

### *Appointment of FDIC as conservator or receiver and English winding up procedures*

- a) Upon the insolvency of JPMCB, N.A., its assets would likely become subject to a conservatorship or receivership administered by the FDIC in the United States.<sup>3</sup> The FDIC would be appointed as conservator or receiver.
- b) Given the operations of JPMCB London, the FDIC, as conservator or receiver, might present a petition in the English courts for a winding-up order with respect to JPMCB, N.A. This may lead to the appointment in England of a provisional liquidator or a winding-up order in respect of JPMCB, N.A. (it would be possible for a provisional liquidator to be appointed before and without the need for a winding-up order).
- c) If JPMCB, N.A. is subject to the appointment of a provisional liquidator or a winding-up order, the proceedings in England are likely to be ancillary in the sense that they

---

<sup>3</sup> The purpose of the conservatorship or the receivership is to limit the effect on the financial system when a depository institution fails. The FDIC as conservator may take such action as may be necessary to put the depository institution in a sound and solvent condition and appropriate to carry on the business of the institution and preserve and conserve the assets and property of the institution. The receiver's mandate would be to return deposits to customers as soon as possible (and thereby minimise risk to the deposit guarantee fund operated by the FDIC) and liquidate the assets of JPMCB, N.A. for the benefit of its creditors.

will in practice be conducted with a view to assisting the FDIC conservatorship or receivership and are likely to be conducted only or primarily with respect to the assets and liabilities of JPMCB, N.A. relating to JPMCB London. The treatment of your assets and positions in such circumstances is therefore expected to be as set out in paragraphs e) to l) below.

- d) When the FDIC is appointed conservator or receiver for an insolvent insured depository institution such as JPMCB, N.A., the FDIC “succeeds to all rights, titles, powers and privileges of the insured depository institution”. The FDIC as conservator or receiver is generally in the same position as the depository institution prior to the insolvency and therefore takes subject to the pre-insolvency rights of the parties. The rights and obligations arising under English law title transfer agreements with respect to securities, cash and margin transferred to JPMCB, N.A. and credited to and held in accounts with the CCP will generally be governed by English law, including the applicable provisions of EMIR, although you may be required to act in accordance with and subject to applicable US law governing the FDIC conservatorship or receivership and the US resolution proceedings particularly if you are subject to the jurisdiction of the US courts. It should be noted that, following the implementation in the UK of the EU Bank Recovery and Resolution Directive, the Bank of England will have the power to give effect to and to recognise and enforce in the UK the US resolution proceedings.

*Would assets be exposed to losses on other accounts?*

- e) Your assets covering positions in an individual client account will not be exposed to losses connected with the positions in JPMCB, N.A.’s own account or any other account with the CCP, including client omnibus accounts.

*Could positions and assets be ported?*

- f) If you have back-up arrangements in place with another clearing member, the commencement of insolvency proceedings in respect of JPMCB, N.A. should not prevent the porting of the positions and assets that are held in the relevant individual client account at the CCP to an account with the CCP of that other clearing member, provided that the porting takes place in accordance with EMIR and the CCP’s default rules.
- g) The law which facilitates segregation and porting and prevents insolvency proceedings from interfering with or invalidating porting is contained both in EMIR (which as an EU regulation is directly applicable in all EU Member States) and English domestic law. The protections created by English domestic law include the disapplication of a number of insolvency law provisions that may otherwise apply in respect of transactions at undervalue, preferences, transactions defrauding creditors, mutual credit and set-off, disclaimer of property, rescission of contracts and avoidance of property dispositions. Recital 64 of EMIR also provides that the requirements in EMIR on segregation and portability of clients’ positions and assets should prevail over any conflicting laws, regulations and administrative provisions of the Member States that prevent the parties from fulfilling them, including provisions of insolvency law. While this overriding of insolvency law is not contained within an

operative provision of EMIR but only in a recital, the recital should ensure that the operative provisions relating to porting are interpreted so that they apply, and are given effect, irrespective of the provisions of English domestic insolvency law.

- h) This means that your transactions with JPMCB, N.A. could be replaced by transactions with the back-up clearing member, whilst positions and assets at the CCP level that relate to those transactions could be transferred to an individual client account of the back-up clearing member. The ability to port will depend on the ability of the relevant CCP to support the porting process and the existence of viable back-up arrangements with a new clearing member who is willing to accept the transfer. If you have not appointed a back-up clearing member, you may be able to agree with the CCP that it may choose a back-up clearing member on your behalf. However, if you have not appointed a back-up clearing member prior to JPMCB, N.A.'s default or agreed with the CCP that it may appoint one on your behalf, then this may mean that porting is less likely to occur. Porting of positions and assets in an individual client account is, however, not dependent on other clients having reached an agreement with the same new clearing member and may therefore be more readily facilitated than for omnibus accounts. Shortfalls in the individual client account may prevent porting from taking place or cause the new clearing member to call for additional margin. However, shortfalls in an individual client account would not be due to the failures of any other clients and are likely to only reflect the change in value of the positions from the time of the last margin call until the time of porting. As there is generally no gross excess margin held by JPMCB, N.A., issues surrounding CCPs' netting of client positions when calling for margin or the ability to port gross excess margin should not arise, except where you have not provided margin to JPMCB, N.A. sufficiently in advance of when the margin has to be transferred to the relevant CCP, in which case JPMCB, N.A. may, in its sole and absolute discretion and in accordance with the Agreement, hold margin it subsequently receives from you.

*How would gross excess margin be treated?*

- i) You would generally not need to claim separately for any gross excess margin held by JPMCB, N.A., as all margin related to your current positions at a CCP would usually be passed to the CCPs. However, where you have transferred margin to JPMCB, N.A. and equivalent margin has not yet been passed to the CCP due to the timing of the insolvency or the timing of the margin transfer from you and any CCP cut-off times, then you would need to claim for that separately from JPMCB, N.A.. This would also be the case if JPMCB, N.A. has recalled surplus margin from a CCP, but has not yet transferred it to you. Where the margin represented title transfer margin, you would have a claim as an unsecured creditor in respect of that amount. The amount of the claim would be subject to the terms of the Agreement, as well as the enforcement of any security interest and the application of any set-off in respect of other obligations owing by you. Conversely, JPMCB, N.A. will have a claim against you if it has prefunded a margin call from the CCP without having received the margin from you.

*What would happen if the positions and assets could not be ported?*

- j) If you do not wish to port your positions and assets to a back-up clearing member or those positions and assets cannot be ported in accordance with the relevant CCP's

rules (e.g. because the porting cannot take place within a predefined transfer period), the CCP may take steps to manage its risks. This may include liquidating the positions and assets in the individual client account. Any positive balance may be returned directly to the client when known to the CCP or, if it is not, to JPMCB, N.A. for the account of the client (it is possible that the CCP will have the right under its default rules to obtain details of your identity from the clearing member).

- k) If you are due a payment from JPMCB, N.A. as a result of close-out calculations relating to the transactions between you and JPMCB, N.A., the amount due from JPMCB, N.A. to you will be reduced by any amount that you receive (or are deemed to receive) directly from the CCP. English law has been amended to seek to protect the right of the CCP to return such balances directly to clients, including by virtue of the disapplication of a number of insolvency law provisions that may otherwise apply. CCPs may be more likely to know the identity of the client in respect of an individual client account than in respect of an omnibus client account and therefore be able to return assets directly to you.
- l) EMIR provides that where the CCP does not know the name of clients any balance owed by the CCP after completion by the CCP of the clearing member's default management process shall be returned to the clearing member "for the account of its clients." In relation to title transfer clients, it is unclear what effect (if any) this reference in EMIR to the return to a clearing member of balances "for the account of its clients" will have. In the absence of any judicial or regulatory guidance, the position is unclear; but it is arguable that while the provision in EMIR is not intended to, and does not give, title transfer clients any proprietary interest in the balances returned to the clearing member, so that clients would only have an unsecured claim in JPMCB, N.A.'s insolvency, EMIR imposes on JPMCB, N.A. an obligation to use the balances received from the CCP to discharge its obligation to the clients which obligation may be binding on JPMCB, N.A.'s insolvency officeholder. If you have transferred margin to JPMCB, N.A. on a title transfer basis, you may need to claim for the balance as an unsecured creditor in the insolvency of JPMCB, N.A., subject to any available rights of set-off and the ability of JPMCB, N.A. to enforce any security interest.
- m) However, it is possible that any close-out mechanism in the Agreement could take effect, which would mean that your trades with JPMCB, N.A. would be subject to the operation of netting and set-off and the calculation of a close-out amount, which would either be payable by JPMCB, N.A. to you or by you to JPMCB, N.A.. In the event that a close-out amount is payable by you, your rights will also be subject to the enforcement by JPMCB, N.A. of any security interest under the Agreement. This may override many of the considerations set out above.

## **6. RESOLUTION REGIME FOR BANKS**

---

- 6.1. J.P. Morgan Chase & Co. is a global systemically important financial institution ("G-SIFI") and JPMCB, N.A. is subject to the FDIC resolution regime for banks. Under this regime the FDIC may commence resolution proceedings in respect of JPMCB N.A. and such proceedings may involve a transfer of all or some of the assets and liabilities of JPMCB, N.A. to a bridge bank. In such circumstances, the FDIC may apply for the appointment in

England of a provisional liquidator in respect of JPMCB, N.A. to assist with the US resolution proceedings. It should be noted that, following the implementation in the UK of the EU Bank Recovery and Resolution Directive, the Bank of England will have the power to give effect and to recognise and enforce in the UK the FDIC resolution proceedings and also, in cases where it does not recognise the US resolution proceedings, exercise its own resolution powers in respect of JPMCB London.

## **7. THE DEFAULT FUND AND OTHER RESOURCES**

---

- 7.1. To limit its exposures to its clearing members, CCPs are required under EMIR to maintain a pre-funded default fund to cover losses that exceed those to be covered by margin requirements arising from the default of one or more clearing members, including in an insolvency. The default fund should at least enable the CCP to withstand (under extreme but plausible market conditions) the default of the clearing member to which it has the largest exposures or of the second and third largest clearing members, if the sum of their exposures is larger. Each clearing member is required to contribute to the default fund. CCPs are also required to maintain other financial resources.
- 7.2. If another clearing member fails, JPMCB, N.A. and its clients may therefore benefit from the protections that the CCP's margin requirements, default fund and other financial resources provide.