



UK EMIR AND UK MiFIR CLEARING MEMBER DISCLOSURE Bank of China (UK) Limited (BOCUK)

CLEARING MEMBER DISCLOSURE UNDER EMIR AND MiFIR

1. INTRODUCTION

- 1.1 As a client of Bank of China (UK) Limited (“**BOCUK**”), you are required to confirm the type of account that you would like BOCUK to maintain in respect of LCH 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.
- 1.2 For the purposes of this disclosure the following definitions used will have the following meanings:
- “**UK EMIR**” means Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories dated 4 July 2012 as it forms part of ‘retained EU law’, as defined in the EUWA, from 1 January 2021.
- “**UK MiFIR**” means Regulation (EU) 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, as it forms part of ‘retained EU law’, as defined in the EUWA, from 1 January 2021.
- “**EUWA**” means the European Union (Withdrawal) Act 2018 (as amended from time to time).

Requirement for disclosure under UK EMIR and UK MiFIR

- 1.3 Article 39(7) of the European Market Infrastructure Regulation as it forms part of “retained EU law” from 1 January 2021 (as amended from time to time) (“**UK 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.
- 1.4 These disclosure obligations also apply where a set of contractual relationships between a CCP, clearing member, client of a clearing member and indirect client allow the client of a clearing member to provide clearing services to an indirect client (an “**Indirect Clearing Arrangement**”). Indirect Clearing Arrangements for OTC derivatives were introduced by EMIR (which has become part of “retained EU law”, as defined in the EUWA, from 1st January 2021 and for exchange traded derivatives were introduced by the Markets in Financial Instruments Regulation (“**MiFIR**”, (which has become part of “retained EU law”, as defined in the EUWA, from 1st January 2021). Making these disclosures in relation to Indirect Clearing Arrangements enables a clearing member to comply with its obligations to disclose the levels of protection available for Indirect Clearing Arrangements under Commission Delegated Regulation (EU) No 2017/2154 supplementing MiFIR with regard to regulatory technical standards on indirect clearing arrangements, and Commission Delegated Regulation (EU) No 2017/2155 amending Commission Delegated Regulation (EU) No 149/2013 which supplements EMIR with regard to regulatory technical standards on indirect clearing arrangements (which have become part of “retained EU law”, as defined in the EUWA, from 1st January 2021, (together, the “**Retained Indirect Clearing RTS**”).
- 1.5 The Retained Indirect Clearing RTS also require a clearing member to publicly disclose the general terms on which it is prepared to facilitate Indirect Clearing Arrangements.
- 1.6 BOCUK is a clearing member of LCH and as such provides clients with access to clearing of certain over-the-counter (“**OTC**”) transactions through this CCP. A CCP for these purposes is a central counterparty authorised under UK EMIR that interposes itself between the counterparties to a contract, becoming the buyer to every seller and the seller to every buyer. BOCUK retains the ability to resign from LCH at any time at its sole discretion.
- 1.7 This document sets out the disclosure of BOCUK as a clearing member. It may be updated from time to time. Updated versions will be shared with clients.

- 1.8 BOCUK also provides details of prices and fees connected with its clearing services, which can be found in the latest tariff provided to BOCUK customers.
- 1.9 You should also refer to the CCP, LCH, for its own disclosures, which BOCUK does not accept any responsibility for.

What does this document cover?

- 1.10 This document considers certain protections and risks that are associated with BOCUK'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 impact on the level of protection that your positions and assets are afforded.
- 1.11 Where BOCUK offers to facilitate Indirect Clearing Arrangements, this document also provides a generic description of the different levels of segregation that are available to your indirect client (i.e. gross omnibus segregation and net omnibus segregation). The type of segregation that your indirect client chooses will impact the level of protection that their positions and assets are afforded.
- 1.12 CCPs may operate a number of different account structures and contractual mechanisms to facilitate segregation and porting under UK EMIR and UK MiFIR. 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 BOCUK 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.
- 1.13 BOCUK is subject to English law. The insolvency related disclosures contained in this document therefore address the position under English law. In addition, 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 UK EMIR porting requirements may not benefit from English law insolvency protections unless they either meet certain requirements set out in the UK Recognition Requirements¹ 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 UK EMIR or, in respect of third country CCPs, recognised by the Bank of England ("BoE").
- 1.14 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?

- 1.15 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 BOCUK (the "**Agreement**"). As such, it does not amend or vary any provision of the Agreement or otherwise affect the interpretation of the Agreement. Accordingly, the terms of the Agreement will remain unaffected by this document.
- 1.16 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 those of the CCP on which BOCUK clears trades for you. You may wish to appoint your own professional advisors to assist you with this.
- 1.17 This document contains BOCUK'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.
- 1.18 BOCUK 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 of any contract or other business

¹ Financial Services and Markets Act 2000 (Recognition Requirements for Investment Exchanges and Clearing Houses) Regulations 2001.

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. This paragraph does not extend to an exclusion of liability for, or remedy in respect of, fraudulent misrepresentation.

What will you need to do?

- 1.19 You are strongly encouraged to carefully consider the segregation options that are available to you. BOCUK 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 BOCUK may not be able to fulfil any request for change at such times. You should therefore ensure that you do not delay the assessment of the options available to you.
- 1.20 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 BOCUK. 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 BOCUK, including liquidating the assets and positions held by BOCUK in respect of your transactions.
- 1.21 BOCUK will seek to ensure that your choice of omnibus or individual segregation (as further described below) is reflected in BOCUK's client accounts at the CCP level. However, CCPs may offer a variety of different account structures and BOCUK may not (and is not required to) support all of these. BOCUK 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 BOCUK to maintain in respect of each CCP through which BOCUK clears your trades.
- 1.22 Where BOCUK offers to facilitate Indirect Clearing Arrangements, you will also need to confirm to BOCUK whether you intend to provide clearing services through BOCUK to your indirect clients and inform BOCUK of your indirect clients' choice of indirect client accounts.

2. AN OVERVIEW OF THE DIFFERENT LEVELS OF SEGREGATION

- 2.1 BOCUK 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 BOCUK, as a clearing member, to distinguish in accounts with the CCP:
 - (a) the assets and positions of BOCUK 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 UK 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 UK 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 clause 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.
- 2.4 Where BOCUK offers to facilitate Indirect Clearing Arrangements BOCUK offers its clients, and they in turn may offer their indirect clients, a choice between gross omnibus client segregation and net omnibus 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 UK EMIR and UK MiFIR to keep separate records and accounts that enable BOCUK, as a clearing member, to distinguish in accounts with the CCP:
- 2.5 the assets and positions of BOCUK and BOCUK's client from those held for the account of its indirect clients ("**net omnibus client segregation**"); and
- 2.6 the assets and positions of BOCUK and BOCUK's client from those held for the account of its indirect clients where the positions of one indirect client do not offset the positions of another indirect client, and where the assets held

for the account of one indirect client cannot be used to cover the positions of another indirect client (“**gross omnibus client segregation**”).

- 2.7 Individual client segregation is not available for Indirect Clearing Arrangements with BOCUK. Gross omnibus client segregation is only available for Indirect Clearing Arrangements with CCPs authorised under UK EMIR.
- 2.8 When gross omnibus client segregation is used, BOCUK shall ensure that the CCP has all the necessary information to identify the positions held for the account of each indirect client on a daily basis, provided that you in turn ensure that BOCUK has all the necessary information to identify the positions held for the account of each indirect client on a daily basis (you are required to do this under the Retained Indirect Clearing RTS).

3. AN OVERVIEW OF TITLE TRANSFER AND SECURITY INTEREST MARGIN

- 3.1 When clearing transactions for you through a CCP, BOCUK 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, BOCUK is required to provide assets to the CCP as margin.
- 3.2 BOCUK will in turn require margin from you to support your cleared positions. Depending on the Agreement, this margin may be transferred to BOCUK on a title transfer basis or by way of security interest.
- 3.3 Where BOCUK offers to facilitate Indirect Clearing Arrangements, in addition to the structure described above, there will usually be a principal-to-principal or agency transaction between you and your indirect client. You may require margin from your indirect client in order to support their cleared positions and the manner by which you transfer margin to BOCUK may have an impact on whether you require margin from your indirect client on a title transfer basis or by way of security.
- 3.4 The way in which BOCUK holds your margin will impact on the protections that your assets are afforded under the different levels of segregation. This is further described in the sections on omnibus client segregation and individual client segregation below.

How do title transfer collateral arrangements work?

- 3.5 If you transfer cash or securities margin to BOCUK pursuant to a title transfer collateral arrangement, then the margin will become the absolute property of BOCUK free from any equity, right, title or interest that you might otherwise have.
- 3.6 Subject to the terms of the Agreement, BOCUK 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 securities or cash, whether held with BOCUK, posted to a CCP or otherwise.
- 3.7 Cash transferred on a title transfer basis will not be subject to the Financial Conduct Authority (the “**FCA**”)’s Client Money Rules (the “**Client Money Rules**”), which form part of the FCA’s Client Assets Sourcebook.
- 3.8 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.

How do margin transfers by way of security work?

- 3.9 If you transfer cash margin to BOCUK on a security interest basis, you will, subject to the Agreement, retain an interest in the cash, which will be held for you on trust by BOCUK as client money in accordance with the Client Money Rules.
- 3.10 If you transfer securities margin to BOCUK on a security interest basis, you will, subject to the Agreement, retain an interest in the securities. These securities will be held for you by BOCUK in custody in accordance with the Custody Rules.
- 3.11 If you default, BOCUK will be entitled to exercise its security interest in accordance with the Agreement, e.g. by selling or realising the securities or by taking the cash margin and using it to discharge your liabilities.
- 3.12 BOCUK may, subject to the Agreement, exercise a right to transfer full title to securities that you have transferred to it by way of security to itself, at which point they will become the absolute property of BOCUK and cease to be subject to the Custody Rules. BOCUK may then transfer title to those securities to a CCP or may itself use the securities and fund the margin at the CCP with cash or other assets.

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 of BOCUK that are held at a CCP will be distinguished from those held for the account of BOCUK's clients. This means that your positions and assets will be recorded in a separate client omnibus account and not commingled with BOCUK's own positions and assets.
- 4.2 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 client omnibus account should not be exposed to losses connected with the positions in BOCUK's own account or any other account with the CCP.
- 4.3 Your positions and assets will, however, be commingled in an account with the positions and assets of other clients of BOCUK that have opted for omnibus segregation. BOCUK may operate several client omnibus accounts with the same CCP.
- 4.4 Clients who transfer cash margin to BOCUK pursuant to a title transfer collateral arrangement will have their assets and positions recorded in an account at the CCP together with other BOCUK clients who provide cash margin on this basis.
- 4.5 Clients who have client money protection in respect of their cash margin will have their positions and assets recorded in an account at the CCP together with other client money clients of BOCUK.
- 4.6 The client omnibus accounts at the CCP level will reflect the positions and assets of all BOCUK'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 BOCUK's other clients).
- 4.7 BOCUK 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 its clients at the CCP.
- 4.8 BOCUK 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, BOCUK 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**").
- 4.9 Depending on the Agreement, the pool of margin that BOCUK holds may be applied to margin client omnibus accounts at the different CCPs in respect of which BOCUK provides clearing services. BOCUK 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 BOCUK receives margin from you may also contribute to different margin being provided to the CCP from that which you provided.
- 4.10 When calculating the margin required from you, BOCUK may do so on the basis of each of your positions alone and call for margin on a gross basis (i.e. BOCUK 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 BOCUK 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 BOCUK 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 BOCUK rather than with a CCP is referred to in this disclosure as "**gross excess margin**". BOCUK may also hold margin for you where you do not transfer margin to BOCUK 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 of BOCUK?

- 4.11 A key risk for you in respect of your cleared positions is the default of your clearing member. BOCUK's insolvency

would involve a number of risks to your assets, including delays in your ability to access your assets and shortfalls in assets affecting BOCUK's creditors (and, in respect of client money or assets, shortfalls being shared amongst BOCUK's clients). The operation of statutory provisions may also prevent or unwind any transfer of your positions and assets to another clearing member or the payment of balances to you directly by a CCP. However, recent changes to English law are intended to address this, as further described below.

4.12 In the event of BOCUK's insolvency, the position is likely to be as follows:

Would assets be exposed to losses on other accounts?

- (a) Your assets covering positions in the client omnibus account will not be exposed to losses connected with the positions in BOCUK's own account or any other account with the CCP.
- (b) 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?

- (c) If you have back-up arrangements in place with another clearing member, the insolvency of BOCUK should not prevent the porting of the positions and assets that are held in the relevant omnibus account at the CCP to the account of that other clearing member, provided that the porting takes place in accordance with UK EMIR and the CCP's default rules. Despite UK EMIR originally being a regulation, and therefore directly applicable in the United Kingdom, prior to becoming part of "retained law" as defined in the EUWA English law has been amended to seek to facilitate the provisions on segregation and portability of accounts in UK EMIR. The protections 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. Your transactions with BOCUK 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.
- (d) 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 BOCUK'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.
- (e) 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. UK EMIR does not provide for porting of any gross excess margin that may be held by BOCUK. However, although it is not clear, it is possible that the amendments to English insolvency law referred to in paragraph (c) above could also protect such transfers if the back-up porting arrangements clearly provide for it and BOCUK agrees to transfer the gross excess margin.
- (f) 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?

- (g) If gross excess margin is held for you by BOCUK as client money, it will be held on trust for you and other client money clients and form part of the notional client money pool upon a "primary pooling event" (such as BOCUK's insolvency) having occurred under the Client Money Distribution Rules, which form part of the FCA's Client Assets Sourcebook. That pool will be available for distribution to you and BOCUK's other

clients with client money claims, but will not be available to BOCUK's general creditors. You will receive a sum which is rateable to your client money entitlement, subject to the ability of BOCUK to enforce any security interest or treat any money as properly due and payable to BOCUK (in which case it is not client money). If there is a shortfall in the client money pool, you and the other client money clients will share in that shortfall pro rata in accordance with your entitlements. You may be able to claim for any shortfall as an unsecured creditor in BOCUK's insolvency.

- (h) If the gross excess margin held for you by BOCUK has been provided pursuant to a title transfer collateral arrangement, it will form part of BOCUK'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 BOCUK's insolvency. Return of any gross excess margin would also be subject to the ability of BOCUK to enforce any security interest or the application of set-off.
- (i) The position would be similar in circumstances where you have transferred margin to BOCUK, 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 BOCUK. Depending on whether the margin represented client money or title transfer margin, you would either have a client money claim or a claim as an unsecured creditor. The amount of the claim would be subject to the terms of the Agreement, the enforcement of any security interest and the application of any set-off. Conversely, BOCUK will have a claim against you if BOCUK 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 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 BOCUK for the account of its clients. If you are due a payment from BOCUK as a result of close-out calculations relating to the transactions between you and BOCUK, the amount due from BOCUK 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 4.9 above, any assets returned directly to you by the CCP may not be the same as the assets that you provided to BOCUK. English law has been amended to seek to protect the return of such balances directly to clients by CCPs, 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 are therefore unlikely to be able to return balances directly to you.
- (k) Except as described below, any balance representing client money that is remitted by a CCP to BOCUK in respect of an omnibus client account will be held on trust as client money and form part of BOCUK's notional client money pool. As such, the balances will be available for distribution only to BOCUK's clients with client money claims and not to its general creditors. If you have a client money claim, you will receive a sum which is rateable to your client money entitlement, subject to the ability of BOCUK to enforce any security interest or treat any money as properly due and payable to BOCUK (in which case it is not client money). If there is a shortfall in the client money pool, you and the other client money clients will share in that shortfall pro rata in accordance with your entitlements. You may be able to claim for any shortfall as an unsecured creditor in BOCUK's insolvency. However, in certain circumstances a balance representing client money that is remitted by a CCP to BOCUK in respect of an omnibus client account may be distributed by BOCUK to the relevant clients for whom the omnibus account was held in accordance with the information provided by the CCP (subject to a deduction for costs, where applicable). This will only be the case where no client money in excess of the amount recorded in the relevant omnibus client account is held by BOCUK as margin in relation to the positions recorded in that omnibus client account and the amount attributable to each client is readily apparent from information provided to BOCUK from the CCP.
- (l) If you have transferred securities margin to BOCUK on a security interest basis, then you will retain an interest in those securities (provided BOCUK has not subsequently exercised a right to transfer title to those securities to itself) and therefore, subject to any right of BOCUK to enforce the security interest, have a claim for those securities in the insolvency of BOCUK.

- (m) In relation to title transfer clients, it is unclear what effect (if any) the reference in UK EMIR to the return to a clearing member of balances 'for the account of its clients' will have and, in particular, whether clients would have any interest in the balances returned. In the absence of definitive judicial or regulatory guidance, it is arguable that the better view is that title transfer clients would not have any proprietary interest in the balances returned and UK EMIR merely imposes on BOCUK an obligation to use the balances received from the CCP to discharge its obligation to the clients. This statutory obligation may also be binding on an insolvency officeholder appointed to BOCUK. In the absence of this language, it would seem clear that any balance returned to BOCUK in respect of title transfer clients would form part of BOCUK's own assets and be available for distribution to BOCUK's general creditors. If you have transferred margin to BOCUK on a title transfer basis, you may need to claim for the balance as an unsecured creditor in the insolvency of BOCUK, subject to any available rights of set-off and the ability of BOCUK to enforce any security interest.
- (n) However, it is possible that any close-out mechanism in the Agreement could take effect, which would mean that your trades with BOCUK 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 BOCUK to you or by you to BOCUK. In the event that a close-out amount is payable by you, your rights will also be subject to the enforcement by BOCUK of any security interest under the Agreement. This may override many of the considerations set out above. Insolvency set-off may apply in place of any close-out under the Agreement.

Omnibus Client Segregation for Indirect Clearing Arrangements – default of BOCUK

- 4.13 Where BOCUK offers to facilitate Indirect Clearing Arrangements BOCUK offers its clients, and they in turn may offer their indirect clients, a choice between gross omnibus client segregation and net omnibus client segregation.
- 4.14 When using net omnibus client segregation, the assets and positions of BOCUK and BOCUK's client that are held at the CCP will be distinguished from those held for the account of BOCUK's client's indirect clients. This means that indirect clients' positions and assets will be recorded in a separate client omnibus account and not commingled with BOCUK's own, or your own, positions and assets.
- 4.15 The main features of the omnibus client segregated account set out in clauses 4.2 – 4.10 above will also apply to a net omnibus client segregated account.
- 4.16 The protections and risks associated with an omnibus client segregated account on a default of BOCUK set out in clauses 4.11 and 4.12 will also apply to a net omnibus client segregated account.
- 4.17 When using gross omnibus client segregation, the assets and positions of BOCUK and BOCUK's client that are held at the CCP will be distinguished from those held for the account of BOCUK's client's indirect clients and the positions of one indirect client will not offset the positions of another indirect client, and the assets held for the account of one indirect client cannot be used to cover the positions of another indirect client. This means that indirect clients' positions and assets will be recorded in a separate client omnibus account and not commingled with BOCUK's own, or your own, positions and assets.
- 4.18 The main features of the individual client segregated account set out in clauses 5.1 – 5.7 below will also apply to a gross omnibus client segregated account, save that more than one indirect client can have their positions and assets held in one single gross omnibus client segregated account rather than separate accounts as is the case for individual client segregation (even though each indirect client's positions and assets in that single account are not used to offset the positions of other indirect clients in the account nor to cover positions of other indirect clients in the account). Therefore, references in clauses 5.1 – 5.7 to separate accounts for each client should be read as references to separate positions and assets of each indirect client within a single gross omnibus client segregated account. You should also refer to the CCP for their own disclosures, for which BOCUK does not accept any responsibility.
- 4.19 The protections and risks associated with an individual client segregated account on a default of BOCUK set out in clauses 5.8 and 5.9 will also apply to a gross omnibus client segregated account. You should also refer to the CCP for their own disclosures, for which BOCUK does not accept any responsibility.

Omnibus Client Segregation for Indirect Clearing Arrangements – default of BOCUK's client

- 4.20 The Retained Indirect Clearing RTS contain additional requirements in the case of a default of BOCUK's client. You are required to disclose to your indirect clients the details of the different levels of segregation and a description of the risk involved with the respective levels of segregation offered, including upon your default.
- 4.21 When the assets and positions of one or more indirect clients are managed by BOCUK in a net omnibus client

segregated account, BOCUK shall ensure that there are procedures for a prompt liquidation of the assets and positions of indirect clients following your default, which shall include liquidating the positions of the indirect clients at the level of the CCP. After the completion of the default management process, BOCUK shall readily return to you, for the account of the indirect clients, any balance owed from the liquidation of the assets and positions of the indirect clients. BOCUK expects that the period of time to liquidate the assets and positions of indirect clients may vary from one to ten business days, although this will depend on a number of factors, including the size of indirect client assets and positions (including those held in net omnibus segregated accounts, gross omnibus segregated accounts and with non-UK CCPs) as well as general market conditions.

- 4.22 Porting is not available for net omnibus client segregated accounts due to the risk, identified in the Retained Indirect Clearing RTS, that the information on the positions held for the account of each indirect client is not passed on to all the entities involved in the Indirect Clearing Arrangement so, in the case of the default of the client, the identification of which assets and positions belong to which indirect client might not be unequivocally and quickly determined. In such a situation porting would be unrealistic and the time taken to attempt porting would introduce delays and risk to the adequate management of the default, including the liquidation of the assets and positions in the account.
- 4.23 When the assets and positions of one or more indirect clients are managed by BOCUK in a gross omnibus client segregated account, BOCUK shall ensure that there are procedures to conduct a transfer of the assets and positions held by you for the account of your indirect clients to another client or clearing member (i.e. porting) and, where there is no porting, procedures to initiate the payment of the proceeds from a liquidation of the assets and positions of indirect clients to each of those indirect clients.
- 4.24 BOCUK will contractually commit to at least trigger the porting procedures for the transfer of the assets and positions held by you for the account of your indirect clients to another client or clearing member designated by all the indirect clients whose assets and positions are being transferred, on the relevant indirect clients' request and without your consent. That other client or clearing member shall be obliged to accept those assets and positions only where it has previously entered into a contractual relationship with the relevant indirect clients by which it has committed itself to do so.
- 4.25 BOCUK will require that a porting request is made by an indirect client within four hours of the notification by BOCUK to the indirect client on the default of the client. BOCUK will then attempt to carry out the porting within one day to minimise the risk of under-collateralisation should the value of any margin relating to that indirect client fluctuate (although BOCUK will retain the right to attempt porting for a longer period where it considers it an appropriate course of action). The porting request must be made in writing by a suitably authorised individual and details of the client or clearing member who will receive the positions and assets being ported must be provided. BOCUK will always retain the right to not attempt porting where it determines that it is not possible or not an appropriate course of action.
- 4.26 Where porting does not take place for any reason within BOCUK's predefined transfer period, BOCUK shall ensure the prompt liquidation of the assets and positions of indirect clients following your default, which shall include liquidating the positions of the indirect clients at the level of the CCP. Following the liquidation, BOCUK shall contractually commit to at least trigger the procedures for the payment of the liquidation proceeds to each of the indirect clients directly.
- 4.27 The Retained Indirect Clearing RTS recognise that, in some circumstances, the direct return of the liquidation proceeds to the indirect client cannot be conducted, such as in the case of the failure of a client providing indirect clearing services that is established in a third country where the insolvency regime would not allow the direct return of the liquidation proceeds. In addition, BOCUK will only trigger the payment of the liquidation proceeds provided that BOCUK is able to identify the indirect clients in a manner that is acceptable to BOCUK (including through anti-money laundering and other similar checks on an indirect client), and is not prevented by Applicable Law (as determined by BOCUK in its sole discretion) or otherwise from completing the payment.
- 4.28 After the completion of the default management process for your default and when BOCUK has not been able to identify the indirect clients or to complete the payment of the liquidation proceeds to each of the indirect clients, BOCUK shall readily return to you, for the account of the indirect clients, any balance owed from the liquidation of the assets and positions of the indirect clients.
- 4.29 It is possible for each indirect client under the gross omnibus client segregated account structure to be treated differently – some may have their positions and assets ported, some may receive liquidation proceeds directly and



others may have their liquidation proceeds transferred to the client on their behalf.

5. INDIVIDUAL CLIENT SEGREGATION

What are the main features of individual client segregation?

- 5.1 As described above, under the individual client segregation option BOCUK 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 BOCUK'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 BOCUK's own account or any other account, including any client omnibus account.
- 5.3 BOCUK 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, BOCUK 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 BOCUK. Where no CCP is indicated in respect of any part of a margin transfer, BOCUK may determine how to treat such margin in accordance with the Agreement.
- 5.5 In certain circumstances, BOCUK will not be required to transfer assets you provide to BOCUK to a CCP. In accordance with the Agreement, BOCUK will not be required to transfer to a CCP any assets you provide to BOCUK 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 BOCUK 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), BOCUK will not be under any obligation to transform such assets into assets that would be eligible to be posted to the CCP. BOCUK 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 BOCUK in the form of a bank guarantee in favour of BOCUK, then BOCUK 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 BOCUK. 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 BOCUK may not always be able to transfer margin to the relevant CCP. As such, if you do not transfer margin to BOCUK sufficiently in advance of when the margin has to be transferred to a relevant CCP, margin subsequently received by BOCUK from you may, in BOCUK's sole and absolute discretion in accordance with the Agreement, be returned to you or held by BOCUK until such time that it can be transferred to the CCP.
- 5.7 If you pre-fund margin with BOCUK 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 BOCUK to recall any excess from the CCP. BOCUK may, in its sole and absolute discretion in accordance with the Agreement, recall such margin from the CCP even in the absence of your instructions and hold it 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 BOCUK?

- 5.8 A key risk for you in respect of your cleared positions is the default of your clearing member. BOCUK's insolvency would involve a number of risks to your assets, including delays in your ability to access your assets and shortfalls in assets affecting BOCUK's creditors (and, in respect of client money or assets, shortfalls being shared amongst BOCUK's clients). The operation of statutory provisions may also prevent or unwind the transfer of your positions and assets to another clearing member or the return of balances to you directly by a CCP. However, recent changes to English law are intended to address this, as further described below.
- 5.9 In the event of BOCUK's insolvency, the position is likely to be as follows:

Would assets be exposed to losses on other accounts?

- (a) Your assets covering positions in an individual client account will not be exposed to losses connected with the positions in BOCUK's own account or any other account with the CCP, including client omnibus accounts.

Could positions and assets be ported?

- (b) If you have back-up arrangements in place with another clearing member, the insolvency of BOCUK should not prevent the porting of the positions and assets that are held in the relevant individual client account at the CCP to the account of that other clearing member, provided that the porting takes place in accordance with UK EMIR and the CCP's default rules. Despite UK EMIR originally being a regulation, and therefore directly applicable in the United Kingdom, prior to becoming part of "retained law" as defined in the EUWA English law has been amended to seek to facilitate the provisions on segregation and portability of accounts in UK EMIR. The protections 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. Your transactions with BOCUK could be replaced by transactions with the back-up clearing member and the 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.
- (c) 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 BOCUK'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 BOCUK, 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 BOCUK sufficiently in advance of when the margin has to be transferred to the relevant CCP, in which case BOCUK 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?

- (d) You would generally not need to claim separately for any gross excess margin held by BOCUK, 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 BOCUK 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 BOCUK. This would also be the case if BOCUK has recalled surplus margin from a CCP, but has not yet transferred it to you. Depending on whether the margin represented client money or title transfer margin, you would either have a client money claim or 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, the enforcement of any security interest and the application of any set-off. Conversely, BOCUK 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?

- (e) 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 BOCUK for the account of the client. If you are due a payment from BOCUK as a result of close-out calculations relating to the transactions between you and BOCUK, the amount due from BOCUK 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 return of such balances directly to clients by CCPs, including 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.

- (f) Any balance representing client money that is returned by a CCP to BOCUK in respect of an individual client account will be held on trust as client money. It will not form part of BOCUK's notional client money pool upon a primary pooling event having occurred under the Client Money Distribution Rules, which form part of the FCA's Client Assets Sourcebook, or be available to BOCUK's general creditors, but will be segregated and promptly distributed to the relevant client, subject to the enforcement of any security interest or the treatment or any money as properly due and payable to BOCUK (in which case it is not client money).
- (g) If you have transferred securities margin to BOCUK on a security interest basis, then you will retain an interest in those securities (provided BOCUK has not subsequently exercised a right to transfer title to those securities to itself) and therefore, subject to any right of BOCUK to enforce the security interest, have a claim for those securities in the insolvency of BOCUK.
- (h) In relation to title transfer clients, it is unclear what effect (if any) the reference in UK EMIR to the return to a clearing member of balances 'for the account of its clients' will have and, in particular, whether clients would have any interest in the balances returned. In the absence of definitive judicial or regulatory guidance, it is arguable that the better view is that title transfer clients would not have any proprietary interest in the balances returned and UK EMIR merely imposes on BOCUK an obligation to use the balances received from the CCP to discharge its obligation to the clients. This statutory obligation may also be binding on an insolvency officeholder appointed to BOCUK. In the absence of this language, it would seem clear that any balance returned to BOCUK in respect of title transfer clients will form part of BOCUK's own assets and be available for distribution to BOCUK's general creditors. If you have transferred margin to BOCUK on a title transfer basis, you may need to claim for the balance as an unsecured creditor in the insolvency of BOCUK, subject to any available rights of set-off and the ability of BOCUK to enforce any security interest.
- (i) However, it is possible that any close-out mechanism in the Agreement could take effect, which would mean that your trades with BOCUK 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 BOCUK to you or by you to BOCUK. In the event that a close-out amount is payable by you, your rights will also be subject to the enforcement by BOCUK of any security interest under the Agreement. This may override many of the considerations set out above. Insolvency set-off may apply in place of any close-out under the Agreement.

6. SPECIAL RESOLUTION REGIME FOR BANKS

- 6.1 Bank of China Limited is a global systemically important financial institution ("G-SIFI") and BOCUK is subject to the UK special resolution regime for banks. In addition to bank insolvency and bank administration procedures, this regime includes the possibility of three stabilisation options being employed in respect of BOCUK. These are transfer to a private sector purchaser, transfer to a bridge bank and transfer to temporary public ownership. In the event of one of these stabilisation options being used, there will be questions as to the continuation or transfer of the clearing membership of each of the CCPs. It is possible that these arrangements may involve different considerations and outcomes than those outlined above.

7. THE DEFAULT FUND AND OTHER RESOURCES

- 7.1 To limit its exposures to its clearing members, CCPs are required under UK 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, BOCUK and its clients may therefore benefit from the protections that the CCP's margin requirements, default fund and other financial resources provide.

8. INDIRECT CLEARING ARRANGEMENTS INVOLVING LONG CHAINS

- 8.1 The Retained Indirect Clearing RTS introduce new rules where there is either:
 - (a) a set of contractual relationships between a CCP, a clearing member, the client of a clearing member, an indirect client and the client of an indirect client, which arrangement allows these entities to provide clearing services to an end indirect client; or

- (b) a set of contractual relationships between a CCP, a clearing member, the client of a clearing member, an indirect client, the client of an indirect client and its client, which arrangement allows these entities to provide clearing services to an end indirect client.
- 8.2 These arrangements are known as long chains and do not change the protections and risks as between you and BOCUK, save that only net omnibus segregated accounts are permitted in long chains.
- 8.3 As part of a long chain arrangement, BOCUK may (i) provide clearing services (as clearing member) to another Bank of China Limited group entity (as the client of BOCUK as the clearing member), or (ii) receive clearing services (as the client of a clearing member) from a third party (as clearing member). In such situations, you may be treated as the indirect client by BOCUK (in situation (i)) or by the third party (in situation (ii)). This does not change the protections and risks as between you and BOCUK (save that only net omnibus segregated accounts are permitted in long chains), however you should also refer to any third party for its own disclosures. For the avoidance of doubt, references in this paragraph to “third party” may include Bank of China Limited group entities. Please see further the Schedule of Risk Disclosures for CCPs and Indirect Clearing Providers.

9. GENERAL TERMS ON WHICH BOCUK IS PREPARED TO FACILITATE INDIRECT CLEARING ARRANGEMENTS

- 9.1 BOCUK is required, without prejudice to the confidentiality of contractual arrangements with individual clients, to publicly disclose the general terms on which it is prepared to facilitate Indirect Clearing Arrangements, including minimum financial resources and operational capacity requirements for clients that provide Indirect Clearing Arrangements.
- 9.2 BOCUK will apply the following considerations:
 - (a) *Authorisations*: clients must be duly authorised and have in place appropriate licenses and approvals to conduct Indirect Clearing Arrangements in their jurisdictions.
 - (b) *General Due Diligence Requirements*: BOCUK may use certain criteria to assess the client, taking into account the nature, scale and complexity of the client’s business and shall include but not be limited to the following:
 - (i) credit strength, including any guarantees given; (ii) internal risk control systems ; (iii) intended trading strategy; (iv) payment systems and arrangements that enable the client to ensure a timely transfer of assets or cash as margin, as required by BOCUK in relation to the clearing services it provides; (v) systems settings and access to information that helps the client to respect any maximum trading limit agreed or set by BOCUK in accordance with the agreement; (vi) any collateral provided to BOCUK by the client shall be in accordance with the agreement; (vii) operational resources, including technological interfaces and connectivity to; (viii) any involvement of the client in a breach of the rules ensuring the integrity of the financial markets, including involvement in market abuse, financial crime or money laundering activities.Where following an assessment, the Client is not able to meet the criteria set out above, BOCUK may take such measures as permitted in accordance with and provided for elsewhere under the agreement.
 - (c) *Clients Agreements with their clients*: Where applicable clients will need to demonstrate that they have adequate arrangements in place with their clients which give effect to the Indirect Clearing Arrangements.

SCHEDULE OF CCP LINKS

Please click on the links below to access the CCP websites which will have sections containing the Article 39 disclosures required by UK EMIR in respect of CCPs upon UK EMIR authorisation. Links to CCP Rulebooks are also added as reference. Please note that each CCP, not BOCUK, maintains these links.

London Clearing House, LCH

Website:

<https://www.lch.com/>

CCP Rulebook:

<https://www.lch.com/resources/rulebooks/lch-limited>



中國銀行
BANK OF CHINA

SCHEDULE OF RISK DISCLOSURE FOR CCPs AND INDIRECT CLEARING PROVIDERS

This document was updated in August 2022.