

Chapter 3

Commission Delegated Regulation (EU) 2017/2154

Article 4 Obligations of clearing members

(1) A clearing member that provides indirect clearing services shall do so on reasonable commercial terms and shall publicly disclose the general terms and conditions under which it provides those services.

The general terms and conditions referred to in the first subparagraph shall include the minimum financial resources and operational capacity requirements for clients that provide indirect clearing services.

(2) A clearing member that provides indirect clearing services shall open and maintain at least the following accounts in accordance with the request of the client:

(a) an omnibus account with the assets and positions held by that client for the account of its indirect clients;

(b) an omnibus account with the assets and positions held by that client for the account of its indirect clients, in which the clearing member shall ensure that the positions of an indirect client do not offset the positions of another indirect client and that the assets of an indirect client cannot be used to cover the positions of another indirect client.

(3) A clearing member holding assets and positions for the account of several indirect clients in an account as referred to in paragraph 2(b) shall provide the CCP on a daily basis with all the necessary information to allow the CCP to identify the positions held for the account of each indirect client. That information shall be based on the information referred to in Article 5(4).

(4) A clearing member that provides indirect clearing services shall at least open and maintain in the CCP the following accounts in accordance with the request made by the client:

(a) a segregated account for the exclusive purpose of holding the assets and positions of indirect clients held by the clearing member in an account as referred to in paragraph 2(a);

(b) a segregated account for the exclusive purpose of holding the assets and positions of indirect clients of each client held by the clearing member in an account as referred to in paragraph 2(b).

(5) A clearing member shall establish procedures to manage the default of a client that provides indirect clearing services.

(6) A clearing member holding the assets and positions of indirect clients in an account as referred to in paragraph 2(a) shall:

(a) ensure that the procedures referred to in paragraph 5 allow for the prompt liquidation of those assets and positions following the default of a client, including the liquidation of those assets and positions at the level of the CCP, and include a detailed procedure to communicate to the indirect clients the default of the client and the expected period of time to liquidate the assets and positions of those indirect clients;

(b) after the completion of the default management process for the default of a client, readily return to that client, for the account of the indirect clients, any balance owed from the liquidation of those assets and positions.

(7) A clearing member holding assets and positions of indirect clients in an account as referred to in paragraph 2(b) shall:

(a) include in the procedures referred to in paragraph 5:

(i) the steps to transfer the assets and positions held by a defaulting client for the account of its indirect clients to another client or to a clearing member;

(ii) the steps to pay each indirect client the proceeds from the liquidation of the assets and positions of that indirect client;

(iii) a detailed procedure to communicate to the indirect clients the default of the client and the expected period of time to liquidate the assets and positions of those indirect clients;

(b) contractually commit itself to trigger the procedures for the transfer of the assets and positions held by a defaulting client for the account of its indirect clients to another client or clearing member that has been designated by the relevant indirect clients of the defaulting client at the request of those indirect clients and without obtaining the consent of the defaulting client. That other client or clearing member shall be obliged to accept those assets and positions only where that other client or clearing member has previously entered into a contractual relationship with those relevant indirect clients committing to do so;

(c) ensure that the procedures referred to in paragraph 5 allow for the prompt liquidation of those assets and positions following the default of a client, including the liquidation of those assets and positions at the level of the CCP, in case the transfer referred to in point (b) has not taken place for any reason within a predefined transfer period specified in the indirect clearing arrangement;

(d) following the liquidation of those assets and positions, contractually commit itself to trigger the procedures for the payment of the liquidation proceeds to each of the indirect clients;

(e) where the clearing member has not been able to identify the indirect clients or to complete the payment of the liquidation proceeds referred to in point (d) to each of the indirect clients, readily return to the client for the account of the indirect clients any balance owed from the liquidation of those assets and positions.

(8) A clearing member shall identify, monitor and manage any material risks arising from the provision of indirect clearing services that could affect its resilience to adverse market developments. The clearing member shall establish internal procedures to ensure that the information referred to in Article 5(8) cannot be used for commercial purposes.