

## IMPORTANT INFORMATION BOOKLET

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## 1. RISK DISCLOSURE

### (a) INTRODUCTION

You should not deal in derivative products unless you understand the nature of the contract you are entering into and the extent of your exposure to risk. You should also be satisfied that the contract is suitable for you in the light of your circumstances and financial position.

Although futures and options can be utilised for the management of investment risk, some of these products are unsuitable for many investors. Derivative products will not always act in the same way. Relationships with the broker may differ depending on the product and style of the transaction, and clearing houses may not always owe you a direct commitment. Different products involve different levels of exposure to risk and in deciding whether to trade in such products you should be aware of the following points.

An understanding of different product types should be coupled with an understanding about how your firm finances the purchase of these products, whether it be via a credit line or through the depositing of cash with us. If you are a cash client, we will expect you to deposit with us sufficient funds to be able to meet the costs of your positions; if you are a credit client, we will set out to you in an Account Opening or Facility Letter, how much we are willing to extend to you by way of credit. Credit lines are split between initial margin (IM) and variation margin (VM). IM is one of two types of collateral required to protect a party to a contract in the event of default by the other counterparty. VM – the other type of collateral – is paid daily from one side of the trade to the other, to reflect the current market value of the trade. IM and VM equally apply to cash clients but instead of extending a line of credit to you, we will expect you to deposit sufficient funds with us to cover these amounts.

Exchange-traded futures and options are not subject to a prospectus; they may give rise to liabilities for the investor, calculated in accordance with Market or clearing house rules. Most of the business we conduct is through the London Metal Exchange, we also conduct business Over-the-Counter (OTC).

Your firm may not deal directly in the relevant Market but may act through one or more brokers or intermediaries. In such cases, your positions may be affected by the performance of those third parties in addition to the performance of your firm. In addition, settlement of such transactions may not be effected via the

Market itself but may be effected on the books of your firm or of a broker or intermediary if such transactions can be crossed with equal but opposite orders of another participant transacting through the same firm, broker or intermediary. Your rights in such circumstances differ from those you would enjoy if your transaction was effected in the Market.

The price and liquidity of any investment depends upon the availability and value of the underlying asset, which can be affected by a number of extrinsic factors including, but not limited to, political, environmental and technical. Such factors can also affect the ability to settle or perform on time or at all.

Any payments made or received in relation to any investment may be subject to tax and you should seek professional advice in this respect. Where you are unable to transfer a particular instrument which you hold, to exit your commitment under that instrument, you may have to offset your position by either buying back a short position or selling a long position. Such an offsetting transaction may have to be over the counter and the terms of such a contract may not match entirely those of the initial instrument. For example, the price of such a contract may be more or less than you received or paid for the sale or purchase of the initial instrument.

You should be aware that the product information and advice contained in this booklet is not necessarily a comprehensive description of all aspects of the product. Additionally, specific products may be tailored for a particular client or market and may differ in detail from the outline set forth in this Module. The terms of the particular transactions will prevail over the product description and information given in this disclosure.

This booklet is designed to provide general information on some of the risks of which you should be aware. However, this booklet does not constitute legal or business advice and if you are unsure about any of the products you intend to trade or the manner in which you intend to do business, you should take legal advice immediately.

## **(b) PRODUCT INFORMATION**

### **(i) *Futures/Forwards***

Transactions in futures involve the obligation to make, or to take, delivery of the underlying asset of the contract at a future date, or in some cases to settle the position with cash.

The risk of loss in trading commodity futures contracts can be substantial.

You should, therefore, carefully consider whether such trading is suitable for you in light of your circumstances and financial resources. Placing contingent orders, such as "stop-loss" or "stop-limit" orders, will not necessarily limit your losses to the intended amounts, since market conditions on the exchange where the order is placed may make it impossible to execute such orders.

Under certain market conditions, you may find it difficult or impossible to liquidate a position. This can occur, for example, when the market reaches a daily price fluctuation limit ("limit move").

The 'gearing' or 'leverage' often obtainable in futures trading means that a small deposit or down payment can lead to large losses as well as gains. It also means that a relatively small movement can lead to a proportionately much larger movement in the value of your investment, and this can work against you as well as for you.

Futures transactions have a contingent liability, and you should be aware of the implications of this, in particular the margining requirements. You may sustain a total loss of the funds that you deposit with your broker to establish or maintain a position in the commodity futures market, and you may incur losses beyond these amounts. If the market moves against your position, you may be called upon by your broker to deposit a substantial amount of additional margin funds, on short notice, in order to maintain your position. If you do not provide the required funds within the time required by your broker, your position may be liquidated at a loss, and you will be liable for any resulting deficit in your account.

You should consult your broker concerning the nature of the protections available to safeguard funds or property deposited for your account.

Forwards are essentially the same as futures but instead of being exchange-trade (ETD), they are traded over-the-counter (OTC). These instruments can be more bespoke but you should understand the risks of OTC products before entering into such contracts.

**(ii) Options**

An option provides the right, but not the obligation, to buy or sell metal at set price, on a set date in the future. A buyer of an option pays a known premium, for unlimited potential upside.

Tradeable out up to 63 months (depending on metal) LME options can be exercised any time up to and including the expiry date (American style).

The underlying is the equivalent 3rd Wednesday LME future, itself physically settled.

Traded Average Price Options (TAPOs) are average price (Asian-style) options which, when exercised, result in two futures contracts – one at the ‘fixed’ strike price and the other at the ‘floating’ Monthly Average Settlement Price (MASP). If exercised, the economic effect is to create a cash settlement between the difference of the fixed and floating/average prices.

Certain options Markets operate on a margined basis, under which buyers do not pay the full premium on their option at the time they purchase it. In this situation you may subsequently be called upon to pay margin on the option up to the level of your premium. If you fail to do so as required, your position may be closed or liquidated in the same way as a futures position.

### **(iii) Warrants**

A warrant has different meanings depending on the market in which you operate. In finance more broadly a warrant is a time-limited right to subscribe for shares, debentures, loan stock or government securities and is exercisable against the original issuer of the underlying securities.

In the metals market, LME warrants are a bearer documents of title to the metal. Futures contracts are settled or mature against LME warrants. To acquire a warrant you need to physically settle a long LME contract position – when the contract expires you get a warrant. If metal is not accompanied by an LME warrant (but sits in an LME approved warehouse) then it is “off warrant” and not deliverable against an LME contract.

The holder of LME registered metal stored in an LME approved warehouse can put his/her metal “on warrant” at any time by providing warranting instructions to the warehouse. Putting the metal “on warrant” makes it deliverable against an LME contract.

To take physical delivery of warrants against an LME contract you need to have an LME clearing and warrant account (and financing to pay for the warrants). Because of the liquid nature of LME warrants, financing is cheaper for metal on-warrant versus off-warrant but rent is more expensive.

### **(iv) Contracts For Difference**

Futures and options contracts can also be referred to as a contract for difference. These can be options and futures on the FTSE 100 index or any other index, as well as currency and interest rate swaps. However, unlike other futures and options, these contracts can only be settled in cash. Investing in a contract for differences carries the same risks as investing in a future or an option. Transactions in contracts for differences may also have a contingent liability and you should be aware of the implications of this.

**(v) Foreign Markets**

Foreign markets will involve different risks from the UK markets. In some cases the risks will be greater. While we carry out a majority of our business on the LME, we may engage in OTC business. If we trade with you in any non-UK market, your firm must provide an explanation of the relevant risks and protections (if any) which will operate in any foreign markets, including the extent to which it will accept liability for any default of a foreign firm through whom it deals. The potential for profit or loss from transactions on foreign markets or in foreign denominated contracts will be affected by fluctuations in foreign exchange rates. Such transactions may also be affected by exchange controls that could prevent or delay performance.

**(vi) Contingent Liability Transactions**

Contingent liability transactions, which are margined, require you to make a series of payments against the purchase price, instead of paying the whole purchase price immediately.

If you trade in futures, contracts for differences or sell options you may sustain a total loss of the margin you deposit with your firm to establish or maintain a position. If the market moves against you, you may be called upon to pay substantial additional margin at short notice to maintain the position. If you fail to do so within the time required, your position may be liquidated at a loss and you will be responsible for the resulting deficit.

Even if a transaction is not margined, it may still carry an obligation to make further payments in certain circumstances over and above any amount paid when you entered the contract.

**(vii) Limited Liability Transactions**

Before entering into a limited liability transaction, you should obtain from your firm, or the firm with whom you are dealing, a formal written statement confirming that the extent of your loss liability on each transaction will be limited to an amount agreed by you before you enter into the transaction.

The amount you can lose in limited liability transactions will be less than in other margined transactions, which have no predetermined loss limit. Nevertheless, even though the extent of loss will be subject to the agreed limit, you may sustain the loss in a relatively short time. Your loss may be limited, but the risk of sustaining a total loss to the amount agreed is substantial.

**(viii) Suspensions of Trading**

Under certain trading conditions it may be difficult or impossible to liquidate a position. This may occur, for example, at times of rapid price movement if the price rises or falls in one trading session to such an extent that under the rules of the relevant Market trading is suspended or restricted or if the systems of the relevant Market cannot function for any reason. Placing a stop-loss order will not necessarily limit your losses to the intended amounts, because market conditions may make it impossible to execute such an order at the stipulated price.

## 2. BEST EXECUTION POLICY

### (a) INTRODUCTION

This policy sets out the approach taken by Toyota Tsusho Metals (“TTM”) to ensure that the best outcome is obtained for its clients on a consistent basis when executing client orders. It has been produced in accordance with the Markets in Financial Instruments Directive 2014/65/EU (“MiFID II”).

The UK’s approach to implementing MiFID II was by directly transferring the relevant provisions into the Financial Conduct Authority (“FCA”) Handbook at Chapter 11.2A of the FCA’s Conduct of Business Sourcebook (“COBS”).

This policy applies to the execution or transmission of client orders in financial instruments set out below. It also applies solely to clients classified as per se or elective professional clients.

#### *(i) What is Best Execution?*

Best execution is obtaining the best possible result for clients when executing client orders. This does not apply to each individual order but, when best execution applies, TTM must comply with this policy and meet its best execution obligations on a consistent basis.

The original Markets in Financial Instruments Directive (“MiFID”) imposed a requirement on firms to take ‘all reasonable steps’ to achieve the best possible results for their clients on execution. MiFID II has enhanced this standard by requiring that firms take ‘all sufficient steps’ to obtain the best possible result for its clients on a consistent basis when executing client orders. This, according to the European and Securities and Markets Authority (“ESMA”), means strengthening ‘accountability and systems and controls’ and monitoring ‘not only the execution quality but also the quality and appropriateness of execution arrangements and policies’.

#### *(ii) Classes of Financial Instrument Covered by this Policy*

MiFID II provides, at Section C of Annex 1, a classification of financial instruments. The following classes of financial instruments fall under this policy:

- Commodity Futures
- Commodity Options
- Commodity Swaps
- FX Forwards
- FX Swaps

#### *(iii) Execution Venues*

Firms are permitted to rely on a single venue or broker to execute client orders. TTM uses the following execution venues on the London Metal Exchange (“LME”) and, unless specifically instructed, take all sufficient steps to use the venue preferred by the client:



- LME Market Floor: open from 11:45 – 17:00 London time
- LME Electronic Trading Platform: open from 01:00 – 19:00 London time

When TTM can only execute an order on a single execution venue, TTM will focus on the other aspects of trade execution which it can control in order to achieve the best outcome for the client. This will include the instructions attached to the trade, the timing of the trade, or whether to divide the trade into smaller orders. The options will be assessed in line with the execution factors and criteria discussed below.

TTM will, on occasion, execute orders outside of a trading venue. The client should be aware that there may be more risk involved in these transactions. However, when best execution applies, TTM will execute orders in accordance with the execution factors and criteria set out below, as well as using our experience and professional judgement to determine which counterparties to approach to quote a price.

#### ***(iv) The Market Models***

For those trades executed on the LME, TTM will operate in what is referred to as either ‘dual capacity’ or ‘agency execution’.

- The dual capacity model works on the basis that the client requests an order that cannot be directly matched by a published, liquid price on the exchange. Therefore, the contract provided to the client and the contracts which TTM executes, to mitigate some or all of TTM’s associated risk, may be different. This means that TTM may be providing liquidity but is also taking on an element of risk so the price will reflect this
- The agency execution model means that TTM trades the same contract with the market as with the client; the market can provide a price to match the clients instructions so TTM facilitates the transaction(s) without any risk. The nature of the order means that there is a liquid market and published price transparency

#### ***(v) When Does Best Execution Apply?***

There is no definitive rule of when best execution will or will not apply. The key issue is whether ‘the client legitimately relies on the firm to protect his or her interests in relation to the pricing and other elements of the transaction – such as speed or likelihood of execution and settlement – that may be affected by the choices made by the firm when executing the order’ (EU Commission Opinion, ESC-07-2007 which we still refer to given the UK’s adoption of many EU market rules).

This gives rise to the fourfold ‘legitimate reliance’ test which poses the following questions:

- Which party initiated the transaction? It is more likely that best execution will apply if TTM approaches a client to initiate the transaction
- Is it market practice to shop around? If clients can conventionally approach several dealers for a quote, it is less likely that best execution will apply

- What are the levels of transparency? Where TTM has access to prices that clients do not, this is more likely to give rise to best execution
- What information has TTM provided and has any agreement been reached? Where our arrangements and agreements with you do not indicate or suggest a relationship of reliance, it is less likely that you will be placing reliance on us

From these questions, TTM must determine whether the client is legitimately relying on TTM. If so, best execution will apply. If there is any doubt, it is TTM's policy to adopt best execution and, at all times, act honestly, fairly and professionally in the client's best interest, properly managing conflicts of interest and adhering to the rules on inducements.

## **(b) DETERMINING BEST EXECUTION**

In order to determine how to achieve best execution TTM will take into account the following:

### **- Execution Factors**

TTM seeks the best possible result for its client in relation to each trade. What constitutes 'the best possible result' however may vary depending on the situation, and this may not always equate to obtaining the best price or the lowest cost. TTM is therefore required to consider and assess the relative importance of the relevant 'execution factors' in respect of each class of financial instrument in which it trades. The execution factors are:

- Price
- Costs
- Speed
- Likelihood of execution and settlement
- Size
- Nature of the order and any other considerations relevant to the efficient execution of the order

### **- Execution Criteria**

TTM must also consider 'execution criteria' when executing an order. These are the particular characteristics of each order which need to be taken into account before applying TTM's execution process to achieve the best possible result for the client, defined by reference to TTM's prioritisation of the execution factors set out above. The execution criteria will vary potentially from client to client and from trade to trade and will therefore need to be assessed on a continual basis. TTM will consider the characteristics of the:

- Client including categorisation as a professional client
- Client order
- Financial instrument or product to which the order relates
- Execution venues

This policy sets out in the following sections how TTM applies the execution factors and execution criteria to achieve the best possible results for its clients on a

consistent basis.

## (c) THE EXECUTION PROCESS

### *(i) TTM's Approach*

In terms of the relative importance attached to the execution factors, TTM has a general approach which it adapts based on the particular characteristics of each order. This ensures that TTM adheres to best execution factors as well as best execution criteria.

The ranking of the execution factors should typically be as follows:

- Price
- Likelihood of execution and settlement

The remaining execution factors – cost, speed, order size, nature of the order and any other consideration relevant to the efficient execution of your order – are given equal ranking.

However, where there are specific circumstances, our typical approach to the ranking of execution factors may need to be reassessed. These situations include but are not limited to:

- Large and/or illiquid transactions: where the order is large and/or there is limited liquidity in the market, trades may be executed in a manner which: (i) prioritises likelihood of execution and settlement and/or (ii) takes into account the size of the order to achieve a higher executed quantity
- Market crises: where there is an interruption in trading or turbulent market conditions, speed and/or the likelihood of settlement may become the most important settlement factor
- Volatile markets: where markets are seen to be particularly volatile then the speed of execution will be escalated in importance. This is because, in this situation, the price could move rapidly against TTM meaning that any delay in execution could result in either a worse price being achieved or the order not being completed at all

### *(ii) Specific Client Instructions*

Clients should be aware that specific instructions provided to TTM in relation to execution may impair our ability to pursue best execution in accordance with this policy. If TTM receives specific client instructions on the execution of an order then, subject to our legal and regulatory obligations, TTM will execute the client's order in accordance with these specific instructions. This means that, to the extent of the specific instructions, TTM's obligation of best execution will be satisfied by executing the order in accordance with the specific instructions.

Where a specific instruction covers only a portion of an order and TTM has discretion over the other elements of the order, TTM will continue to owe an obligation of best execution in respect of the remaining elements of the order that are not covered by the specific instruction.

## (d) GOVERNANCE AND MONITORING

### *(i) The Three Lines*

TTM implements a three lines of defence approach to best execution governance. This policy acts as part of the first line, along with adherence to it and monitoring by the trading desk. Independent scrutiny is carried out by the Legal & Compliance team, which forms the second line. The third line is provided by senior management and oversight.

- First line: the ongoing monitoring of execution quality and ‘first line’ controls are undertaken by our trading desk. TTM’s front-office staff fully understand our best execution policies and processes, seeking to deliver best execution on a consistent basis. TTM’s trading desk has a suite of tools in order to assist in the delivery of best execution including trading systems. The first line monitoring of execution quality takes place on a daily basis, as well as ongoing monitoring occurring in real-time as the trading is taking place. The output of these checks is used in the second line monitoring described below.
- Second line: independent monitoring of the quality of execution is undertaken by the Legal & Compliance team as the ‘second line of defence’. Testing is undertaken on a sample basis and if issues arise these are discussed with the trader in the first instance. Where immediate remedial action can be taken this is implemented and the results form part of the periodic reports submitted to the senior management team. Any actions which cannot be immediately rectified will be reported to the senior management team immediately.
- Third line: the senior management team is ultimately responsible for this policy and ensuring compliance with it. It bases its decisions on information provided to it by the first and second lines and, where appropriate, its own investigations. Senior management will meet on an ad hoc basis to deal with issues as they arise and, at least, annually to discuss and review this policy and the performance of TTM in complying with it over the last 12 months.

### *(ii) Review and Oversight of this Policy*

The design and review of this policy (referred to as ‘ex-ante monitoring’) and ensuring that TTM is correctly applying this policy (referred to as ‘ex-post monitoring’) is carried out collectively, with input from all three lines of defence in order to ensure a comprehensive approach.

However, the senior management team will decide whether any changes made to our processes represent a ‘material change’ which need to be notified to clients. A ‘material change’ is described as such where disclosure is sufficiently important to enable the client to make a properly informed decision about continuing to use TTM’s services and this may, for example, lead TTM to change the relative importance of the execution factors set out above.

## **(e) CLIENT COMMUNICATIONS AND DISCLOSURES**

### ***(i) Disclosure of Appropriate Information to Clients***

It is an FCA requirement that TTM provides clients with ‘appropriate information’ on its best execution policy, which explains how orders will be executed in a way that is clear, provides sufficient detail and that can be easily understood by clients.

It is our aim that this document provides clients with that appropriate information but if you have any questions, please contact us at [Compliance@ttmetals.com](mailto:Compliance@ttmetals.com)

### ***(ii) Client Consent to TTM’s Best Execution Policy***

As part of client onboarding and review, TTM aims to obtain express consent on its best execution policy before executing orders on behalf of clients.

Where TTM provides appropriate information on its execution policy to a client, if a client chooses to continue with the business relationship and/or investment after having received this information then, based on the client’s best interests and contractual duties in place, TTM will consider whether it is appropriate to proceed without having obtained express consent. If TTM decides to continue without express consent, best execution will apply. However, if TTM is directly executing trades outside a trading venue then express consent is imperative and will form part of TTM’s agreement with the client.

### ***(iii) Fees and Inducements***

In accordance with FCA requirements and LME rules and guidelines, TTM discloses, based on the client’s preferences and instructions, all costs and related charges that will apply in providing its services and strictly adheres to the rules on inducements.

Benefits (which includes monetary and non-monetary) will only be accepted if they enable or are necessary for the provision of investment services, or where a third party receipt or payment of a benefit will enhance the quality of the service provided to clients and does not impair compliance with TTM’s duty to act honestly, fairly and professionally in the client’s best interests. TTM is not permitted to receive any benefit for routing client orders to a particular trading or execution venue as this could be considered an inducement. Payment for order flow is also therefore prohibited and TTM does not engage in this practice.

### ***(iv) Demonstrating Best Execution to Clients and the FCA***

TTM can demonstrate to clients, on request, that all trades have been executed in accordance with this policy. In addition, there is a further new requirement that TTM must be able to demonstrate to the FCA, upon request, that best execution has been achieved.

TTM considers that this policy, along with the detailed monitoring of execution quality, daily reports uploaded to recognised repositories along with annually published reports and senior management oversight, are sufficient to demonstrate TTM’s adherence to this policy and to demonstrate more widely that

TTM has taken all sufficient steps to provide best execution to its clients and that this has been delivered on a consistent basis.

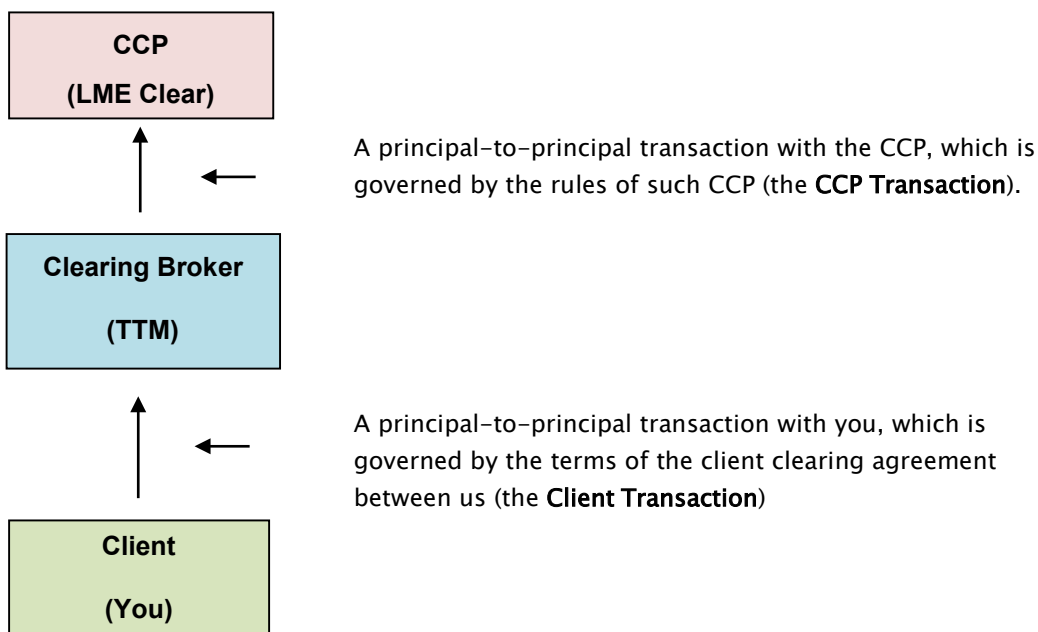
### 3. CLEARING

#### (a) INTRODUCTION

The market distinguishes two main types of clearing models: the “agency” model and the “principal- to-principal” model. The CCP we use adopt the “principal-to-principal” model, and this document assumes all transactions are cleared according to this model.

#### The “principal-to-principal” clearing model

When clearing transactions for you through the CCP, we usually enter into two separate transactions:



The terms of each Client Transaction are equivalent to those of the related CCP Transaction, except that (i) each Client Transaction will be governed by a client clearing agreement between you and us and (ii) we will take the opposite position in the CCP Transaction to the position we have under the related Client Transaction.

Under the terms of the client clearing agreement between you and us, a Client Transaction will arise without the need for any further action by either you or us, as soon as the CCP Transaction arises between us and the CCP. Once both of those transactions have been entered into, your transaction is considered to be “cleared”.

As the principal to the CCP, we are required to provide assets to the CCP as margin for the CCP Transactions that relate to you and to ensure the CCP has as much margin as it requires at any time.

We may therefore ask you for margin and, where you provide it in a form which we cannot transfer to the CCP, we may transform it. If you have provided us with margin

assets, you may face what we call “transit risk” – this is the risk that, if we were to default prior to providing such assets to the CCP, the assets that should have been recorded in your account at the CCP will not have been and will not benefit from the protections described below under “What happens if we are declared to be in default by a CCP?”. Transit risk may be mitigated where we hold margin in the form of cash as client money (see “What is the impact if we treat cash you transfer to us as client money in accordance with the FCA client money rules?” below).

However, in many cases you may not actually face transit risk because the CCPs often call margin from us early in the morning so we will often use our own funds to satisfy the margin call and then seek to recover such amount from you. In these cases, it is rather that we are exposed to you for the interim period. The arrangements between you and us relating to how the margin calls will be funded will be set out in the client clearing agreement between you and us.

## **(b) TRANSFER**

### *What if you want to transfer your Client Transactions to another clearing broker?*

There may be circumstances where you wish to transfer some or all of your Client Transactions to another clearing broker on a business as usual basis (ie. in the absence of us having been declared in default by a CCP). We are not obliged to facilitate this under UKMIR but we may be willing to do so subject to our ability to transfer the CCP Transactions to which they relate and the margin provided to the CCP in connection with them (which will depend on the relevant CCP’s rules) and any conditions set out in our client clearing agreement. You will also need to find a clearing broker that is willing to accept such Client Transactions and the related CCP Transactions and assets.

It may be easier to transfer Client Transactions and CCP Transactions that are recorded in an Individual Client Account than those recorded in an Omnibus Client Account (both types of account being described in more detail in Part One B) for the same reasons as set out below under “Will the CCP Transactions and assets relating to you be automatically ported to a back-up clearing broker?”

## **(c) PORTING**

### *What happens if TTM is declared to be in default by a CCP?*

If we are declared to be in default by a CCP, there are two possibilities with respect to the CCP Transactions and assets related to you:

- the CCP will, at your request, try to transfer (port) to another clearing broker (a back-up clearing broker), such CCP Transactions and assets; or, if this cannot be achieved
- the CCP will terminate the CCP Transactions that relate to you (see “What happens if porting is not achieved” below).



The porting process will differ depending on the CCP but it is likely to involve a close-out (with us) and a re-establishment (with the back-up clearing broker) of the CCP Transactions or a transfer of the open CCP Transactions and related assets from us to the back-up clearing broker. In some cases CCPs will support this structure legally by requiring us to grant a security interest to you over some or all of our related rights against the CCP (the security interest) but in other cases where CCPs can rely on UKMIR and local legislation, this is not necessary.

*Will the CCP Transactions and assets relating to you be automatically ported to a back-up clearing broker?*

No, there will be a number of conditions which must be satisfied before the CCP Transactions and assets that relate to you can be ported to a back-up clearing broker. These conditions will be set by the CCPs and will include obtaining your consent. In all cases you will need to have a back-up clearing broker that has agreed to accept the CCP Transactions. You may wish to appoint a back-up clearing broker upfront as part of your clearing arrangements but the back-up clearing broker is unlikely to be able to confirm that it is willing to accept the CCP Transactions until the default occurs. The back-up clearing broker may also have conditions that they require you to meet.

If porting is achieved, your Client Transactions with us will terminate in accordance with our client clearing agreement. We would expect your back-up clearing broker to put in place new client transactions between itself and you.

The type of account and level of segregation you choose will have an impact on the ability to port CCP Transactions and assets to a back-up clearing broker upon our default.

If you choose an Omnibus Client Account (described in more detail in Part One B), in most cases, all of our clients who have CCP Transactions and assets relating to them recorded in the same Omnibus Client Account will have to agree to use the same back-up clearing broker, and the back-up clearing broker will have to agree to accept all of the CCP Transactions and assets recorded in that Omnibus Client Account. It is therefore likely to be difficult to achieve porting in relation to an Omnibus Client Account.

It should be easier to achieve porting if you choose an Individual Client Account (described in more detail in Part One B), because you can appoint a back-up clearing broker with respect to just your CCP Transactions and the related assets.

*What happens if porting is not achieved?*

Each CCP is permitted to specify a period of time after which, if it has not been able to achieve porting, it will be permitted to actively manage its risks in relation to the CCP Transactions. This period of time will vary across CCPs. If you want to port your CCP Transactions, you will need to notify the CCP and show that you can satisfy the other conditions within this period.

Otherwise, the CCP will terminate the CCP Transactions and perform a close-out calculation in respect of them in accordance with the CCP rules. If there is an amount owed by the CCP in respect of the CCP Transactions, to the extent that the CCP knows your identity and how much of that amount relates to you, the CCP may pay such amount directly to you. If the CCP does not know your identity and/or does not know how much of the amount relates to you, the CCP will pay it to us (or our insolvency practitioner) for the account of our clients.

It is more likely that a CCP will be able to pay any such amount directly to you if you select an Individual Client Account (described in more detail in Part One B). This is because your identity will typically be disclosed to the CCP in this case.

If the CCP terminates the CCP Transactions, then the Client Transactions between us are also likely to terminate. The termination calculations in respect of those Client Transactions will be performed in accordance with the client clearing agreement between us and such calculations will likely mirror those performed by the CCP in respect of the CCP Transactions. If you are due a payment from us as a result of the close-out calculations in respect of our Client Transactions, the amount due from us to you will be reduced by any amount that you receive (or are deemed to receive) directly from the CCP.

#### Clearing House Protections

On many Markets, the performance of a transaction by your firm (or third party with whom he is dealing on your behalf) is 'guaranteed' by the Market or clearing house. However, this guarantee is unlikely in most circumstances to cover you, the client, and may not protect you if your firm or another party defaults on its obligations to you. Not all Markets act in the same way. Further specific information about trading on the London Metal Exchange ("LME") can be found at [www.lme.co.uk](http://www.lme.co.uk).

## 4. ACCOUNT TYPE

### (a) INTRODUCTION

Reference to accounts means the accounts in the books and records of the CCP. The CCP uses these accounts to record the CCP Transactions that we enter into in connection with the clearing of your related Client Transactions and the assets that we provide to the CCP in respect of such CCP Transactions.

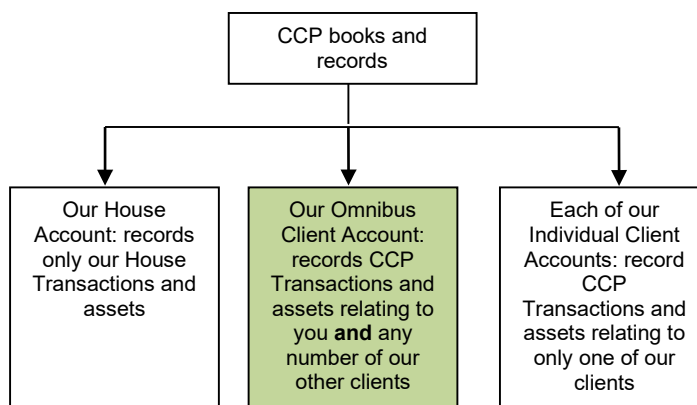
There are two basic types of client account available – Omnibus Client Accounts and Individual Client Accounts.

The main differences are set out in section (a) and (b) below but here is a quick summary of the differences between the accounts in relation to netting:

	OSA	ISA
Can CCP Transactions and related collateral be netted with our House Transactions and assets?	No	No
Can CCP Transactions and related assets be netted with those relating to our other clients?	Yes (provided the other clients' CCP Transactions and assets are recorded in the same Omnibus Client Account)	No

### (b) OMNIBUS CLIENT ACCOUNT (OSA)

Under this account type, the CCP Transactions and assets that relate to them in the CCP's accounts are segregated from any CCP Transactions we have cleared for our own account (our House Transactions) and any assets we have provided as margin for those House Transactions at the CCP. However, the CCP Transactions and assets that relate to you will be commingled with the CCP Transactions and assets relating to any of our other clients that are recorded in the same Omnibus Client Account.



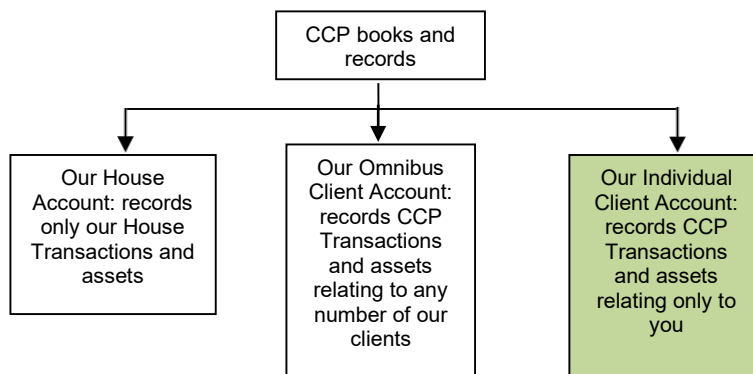
The CCP will agree not to net the CCP Transactions relating to you with our House Transactions or any CCP Transactions not recorded in the same Omnibus Client Account, nor use the assets relating to such CCP Transactions with respect to any House Transaction or CCP Transaction recorded in any other account.

However, both we and the CCP will net the CCP Transactions that are recorded in the same Omnibus Client Account. The assets provided in relation to the CCP Transaction recorded in the same Omnibus Client Account can be used in relation to any CCP Transaction (whether it relates to you or to any of our other clients) credited to that Omnibus Client Account.

OSAs are currently only available on a net basis (rather than a gross basis) meaning that the margin called by the CCP in respect of the CCP Transactions is called on the basis of the net CCP Transactions recorded in the Omnibus Client Account.

### (c) INDIVIDUAL SEGREGATED CLIENT ACCOUNT (ISA)

Under this account type, the CCP Transactions and assets that relate to you in the CCP's accounts are segregated from those relating to our House Transactions and to the CCP Transactions and assets that relate to any of our other clients.



The CCP will agree not to net the CCP Transactions relating to you with our House Transactions, nor use the assets relating to such CCP Transactions in relation to our House Transactions.

Further, and in contrast to an Omnibus Client Account, the CCP will agree not to net the CCP Transactions relating to you that are recorded to an Individual Client Account with those of any other client recorded to any other account, nor use the assets related to such CCP Transactions in relation to the CCP Transactions relating to any of our other clients.

### (d) CLIENT MONEY

TTM is authorised by the Financial Conduct Authority (FCA) in the United Kingdom. We are required to maintain certain permissions to carry out our services. As part of those permissions, we have the permission to hold client

money. However, we hold all cash or assets under Title Transfer Collateral Arrangements (TTCA) which means that the legal title to such cash or assets passes to us which means that the FCA client money rules do not necessarily apply as you might expect.

*Assets provided to us on a TTCA basis.*

Where the client clearing agreement provides for the transfer of assets by way of title transfer, when you transfer assets (Transferred Assets) to us, we become the full owner of such assets and you lose all rights in such assets. We will record in our books and records that we have received such Transferred Assets from you with respect to the applicable Client Transaction. We will be obliged to deliver to you equivalent assets to such Transferred Assets (Equivalent Assets) in the circumstances set out in the client clearing agreement.

We may either transfer such Transferred Assets on to the CCP with respect to the CCP Transaction related to the Client Transaction, or we may transfer other assets to the CCP with respect to such CCP Transaction.

You bear our credit risk with respect to our obligation to deliver Equivalent Assets to you. This means that if we were to fail, unless we are declared to be in default by the CCP, you will have no right of recourse to the CCP or to any assets that we transfer to the CCP and you will instead have a claim against our estate for a return of the assets along with all our other general creditors. Even if we are declared to be in default by the CCP, the extent of your rights in relation to the CCP, if any, will depend on the particular CCP.

*Will you provide cash or non-cash assets as margin for the Client Transactions?*

A clearing member of the CCP, we are required to transfer assets to the CCP in respect of the CCP Transactions related to your Client Transactions. CCPs only accept certain types of liquid cash and non-cash assets as margin.

As is market practice, we will decide what types of assets to accept from you as margin for your Client Transactions. This will be set out in the client clearing agreement between us. What we will accept from you as margin for the Client Transactions will not necessarily be the same type of assets that the CCPs will accept from us for the CCP Transactions, in which case we may provide you with a collateral transformation service, under which we transform the assets you provide to those which we can pass onto the CCP.

What is the impact if we treat cash you transfer to us as client money in accordance with the FCA client money rules?

This question is separate to the question of what level of segregation you want and results from the FCA's client money regime rather than EMIR. However, if we hold your cash as client money, your choice of account type could impact how any cash balance returned to us (or our insolvency practitioner) on our default is

treated. Whether or not we will treat cash collateral that we receive from you or on your behalf as client money will be set out in the client clearing agreement related to the applicable Client Transaction.

If we do treat cash transferred to us as client money, then we will follow the FCA client money rules in respect of such cash. In this case, unless we are declared to be in default by a CCP, the FCA client money rules apply in the same way to cash you provide to us as margin for Client Transactions as they apply to cash we treat as client money in relation to other types of business. We will be permitted to transfer client money held as margin to a CCP.

However, if we are declared to be in default by a CCP and the CCP cannot port or return the balance to you directly and the balance has instead to be returned to us (or our insolvency practitioner) for the account of our clients, there are some important differences in how the FCA client money rules would apply.

- If you select an Individual Client Account, then to the extent that any cash is paid to us by the CCP for your account, it will not form part of the client money pool and will instead be distributed to you.

The client money pool is the mechanism through which our insolvency practitioner would normally gather together the client money relating to most of our clients for which we hold client money, wherever it is held, and from which it would distribute that client money in accordance with the FCA client money rules.

If you select an Omnibus Client Account, any cash paid to us by the CCP for the account of our clients is likely to form part of the client money pool and be subject to the normal client money rules on distribution

*How will any excess margin we call from you be treated?*

We are required to treat excess margin in a particular way in relation to an Individual Client Account. Excess margin is any amount of assets we require from you or you provide to us in respect of a Client Transaction that is over and above the amount of assets the CCP requires from us in respect of the related CCP Transaction.

If you choose an Individual Client Account we are required to pass all excess margin on to a CCP. The details of this will be set out in the client clearing agreement between you and us.

If you choose an Omnibus Client Account, we are not required to pass any excess margin on to the CCP. Depending on the terms on which we hold excess margin, you may take credit risk on us in respect of it.

*Will you get back the same type of asset as you originally provided to us as margin for a Client Transaction?*

In a business as usual situation, whether we will deliver the same type of asset to you that you originally provided to us will be governed by the client clearing agreement between us.

In the event of our default, if you are due a payment, you may not receive back the same type of asset that you originally provided to us. This is because the CCP is likely to have wide discretion to liquidate and value assets and make payments in various forms, and also because the CCP may not know what form of asset you originally provided to us as margin for the Client Transaction and as a result of any asset transformation services we may provide. This risk is present regardless of what type of client account you select.

## 5. INSOLVENCY

### (a) INTRODUCTION

If we enter into insolvency proceedings, you may not receive all of your assets back or retain the benefit of your positions and there are likely to be time delays and costs (e.g. funding costs and legal fees) connected with recovering those assets. These risks arise in relation to both Individual Client Accounts and Omnibus Client Accounts because:

- Except for CCP-specific porting solutions described earlier and the comments below under “Margin rights”, you will not have any rights directly against the CCP; and you will only have contractual claims against us (i.e. rather than being able to recover particular assets as owner)
- Our insolvency proceedings are most likely to be a version of a process called administration (although it is possible for us to enter into liquidation and other proceedings). In administration, subject to a few exceptions, you will not be able to take any action against us without court or insolvency official consent (which can be a time-consuming process with an uncertain outcome)
- Any stage of a cleared transaction (e.g. Client Transactions, CCP Transactions and porting) may be challenged by our insolvency official if, broadly speaking, it was not on arm’s length terms. If successful, the court has broad powers to unwind or vary all of those stages

Please also note that:

- Insolvency law may override the terms of contractual agreements, so you should consider the legal framework as well as the terms of disclosures and legal agreements
- A large part of your protection comes from CCP arrangements and the legal regimes surrounding them. Therefore, you should understand these in order to evaluate the level of protection that you have on our default. It is important that you review the relevant disclosures by the CCP in this respect

Except as set out in the following paragraphs, this disclosure deals only with our insolvency. You may also not receive all of your assets back or retain the benefit of your positions if other parties in the clearing structure default – e.g. the CCP itself, a custodian or a settlement agent.

In relation to CCP insolvency, broadly speaking our (and therefore your) rights will depend on the law of the country in which the CCP is incorporated (i.e. not necessarily English law) and the specific protections that the CCP has put in place. You should review the relevant CCP disclosures carefully in this respect and take legal advice to fully understand the risks in this scenario.

In addition, please note the following:



- we expect that an insolvency official will be appointed to manage the CCP. Our rights against the CCP will depend on the relevant insolvency law and/or that official
- it will be difficult or impossible to port CCP Transactions and related margin, so it would be reasonable to expect that they will be terminated at CCP level. The steps, timing, level of control and risks relating to that process will depend on the CCP, its rules and the relevant insolvency law. However, it is likely that there will be material delay and uncertainty around when and how much assets or cash we will receive back from the CCP. Subject to the bullet points below, it is likely that we will only receive back only a percentage of assets available depending on the overall assets and liabilities of the CCP
- it is unlikely that you will have a direct claim against the CCP because of the principal-to-principal model described above
- under the client clearing agreement, Client Transactions will terminate at the same time as the matching CCP Transactions unless the relevant CCP rules provide otherwise. This will result in a net sum owing between you and us. However, your claims against us are limited recourse so that you will only receive amounts from us in relation to Client Transactions if we receive equivalent amounts from the CCP in relation to relevant CCP Transactions
- if recovery of margin in this scenario is important, then you should note that these tend to be offered only in relation to Individual Client Accounts and generally involve either:
  - you or us retaining assets in your/our name and only giving a security interest over that margin to the CCP (i.e. it allows the CCP to apply margin if we default but should keep the assets out of the CCP's insolvency if it defaults); or
  - the CCP holding the assets in a blocked or controlled margin account and giving a security interest (or similar legal right) over the margin back to us, to you and/or to a trustee on our behalf.

It is beyond the scope of this disclosure to analyse such options but your due diligence on them should include analysis of matters such as whether other creditors of the type described in “Porting – preferential creditors” below will have priority claims to margin; whether margin or positions on one account could be applied against margin or positions on another account (notwithstanding the contractual agreement in the CCP's rules); the likely time needed to recover margin; whether the margin will be recovered as assets or cash equivalent; and any likely challenges to the legal effectiveness of the structure (especially as a result of the CCP's insolvency).

## **(b) MARGIN RIGHTS**

If you have transferred the assets to our name by way of security then you bear more risk if there is a shortfall in any of the assets that we are holding. Generally speaking, your risk of loss will be highest in relation to non-client money cash margin; lower in relation to securities held by us in an omnibus account; and lower still if securities are segregated in our books and records and at custody level identifying you as the client.

The actual result will be highly fact specific and will depend on, amongst other things, the exact terms of our legal arrangements; how we have operated accounts; and claims that other intermediaries (e.g. custodians and settlement systems) have to those assets.

## **(c) PROTECTION OF CLEARING AND SETTLEMENT PROCESSES**

Companies Act 1989, Part VII is designed to ensure that the rules that regulate the operation of the financial markets are not disrupted by the operation of the UK's general insolvency law.

Part VII applies because we are an English company (generally speaking, it does not apply to non-English companies) and gives specific protection against some of the legal risks that arise on our insolvency. Generally speaking, if we are declared in default by a CCP that has the benefit of Part VII protection, then our insolvency official cannot challenge actions taken by the CCP against us under its default rules:

- to settle our CCP Transactions or to transfer those CCP Transactions and related assets to a back-up clearing broker; or
- to transfer our Client Transactions with you and related assets to the same back-up clearing broker.

This Part VII protection generally applies to actions taken by English CCPs that have been (re)authorised by the European Securities and Markets Authority (ESMA). It can also protect actions taken by non-English CCPs that have been authorised by ESMA with two limitations – it only protects the position/ asset transfers contemplated in EMIR (not other actions taken under default rules) and those rules need to have been approved by the Bank of England (and the authorisation not withdrawn).

In either case, Part VII focuses on protecting counterparties from our default. It is not clear that it would provide any wider protection – eg. if the CCP itself became insolvent.

Please note that Part VII is a complex and unclear piece of legislation and this summary is not a substitute for detailed legal analysis – particularly of Part VII in the context of the relevant CCP's regulatory authorisations and default rules – with your professional advisors.

The protection is from insolvency law so will not necessarily help, for example, with the issue described under “Porting – preferential creditors” below because

that relates, at least in part, to security law.

#### **(d) CLOSE-OUT NETTING**

If we default and the CCP cannot port the CCP Transactions and collateral (e.g. because a back-up clearing broker cannot be found) then we would expect it to terminate and net our CCP Transactions and apply related assets.

You and we would want this to work differently from normal, bilateral close-out netting that would apply to all positions and assets between us and the CCP – e.g. assets on an Individual Client Account relating to you could be netted with our house or another client account at the CCP.

There is a risk that this netting across accounts could happen automatically as a result of ordinary English insolvency law. However, to the extent that the CCP has Part VII protection, this should not occur.

A similar risk occurs between us and you in relation to Client Transactions.

It is most likely to materialise in a pre-porting period during which English law may automatically set off Client Transactions and collateral relating to one CCP with Client Transactions and collateral relating to another. This risk arises regardless of what you and we may provide for in our clearing documentation. Whilst the resulting termination amount should represent our net exposure to each other, it will make porting difficult or impossible.

It is unclear whether Part VII provides you protection in this case. However, there are certain industry-wide legal opinions that are being prepared on the effectiveness of close-out provisions in standard client clearing agreements. You should seek legal advice and/or access to such opinions for more information in this respect.

Please also note more generally that your freedom to close out Client Transactions is more limited under the client clearing agreement than in other arrangements that you may be used to. In particular, the main termination event under our client clearing agreement is that the relevant CCP has declared us to be in default under the CCP's rules. The intention is to match the treatment of CCP Transactions and Client Transactions as much as possible. However, this may mean that – unless the CCP declares a default under its rules – you cannot terminate Client Transactions for common reasons such as a payment or insolvency default on our part.

Under the ISDA Master Agreement, if in place between us, close-out netting is a bilateral consideration and involves a three-stage process: (i) early termination of transactions, (ii) valuation of terminated transactions, and (iii) calculation of a single net sum to be paid by one party to the other.

#### **(e) PORTING**

As mentioned above, except in specific (e.g. physically segregated) structures, a CCP only owes us (not you) obligations in relation to CCP Transactions and

related assets.

As a result, when these contracts and assets are transferred to a back-up clearing broker, there is a risk of insolvency challenge because our rights have effectively been taken from us on or around the time of our insolvency. Applicable laws may not permit this and there is a risk that the courts may therefore not permit, or may unwind, any porting and related Client Transactions with your back-up clearing broker.

That said, we expect the risk of challenge to be low in relation to CCP Transactions and matching transfer of Client Transactions that are ported in accordance with the default rules of a CCP that has Part VII protection. This is especially true as we are an LME Member and therefore these risks are known as part of being a member.

A CCP's porting structure may be based on or supported by a security interest. This can take different forms but generally involves us creating security over our rights against the CCP in relation to an Individual Client Account or Omnibus Client account in your favour or in favour of another person (e.g. an independent trustee) to hold the security on your behalf. Broadly speaking, the security interest should support the argument that these assets are not part of our insolvency estate (i.e. are not to be shared with our other creditors).

However, depending on the exact structure, insolvency law gives certain statutory creditors priority over secured creditors. This means that some creditors may have a claim on client account assets ahead of you. Statutory creditors are likely to include, amongst others, our insolvency official (e.g. in respect of its costs and expenses), a relatively small amount of unsecured creditors, some employee salaries and pension contributions.

#### Mismatch of CCP/Client Transactions and assets

It could be that our net assets in relation to CCP Transactions do not match our net obligations to each other in relation to the matching Client Transactions. This can slow down or make porting impossible either operationally or legally.

For example, it may occur at CCP level as a result of Fellow Client Risk (see the explanation of this term in Part Two of this document) in an Omnibus Client Account, with the result that there are insufficient assets available for porting to satisfy our obligations to you in relation to the Client Transactions.

Alternatively, it could be that all of your Client Transactions with us are netted automatically as a result of English insolvency law (please see above under "Close-out netting").

#### Banking Act 2009

The Banking Act 2009, as amended by the Financial Services Act 2012, applies because we are an English company that falls within its scope. As a result, in serious and outstanding circumstances, we could fall into temporary public

ownership or we (or any of our assets and liabilities) may be transferred to a third party by a combination of the Treasury, Bank of England or FCA. In that case, your counterparty and/or your counterparty risk may change. It is unlikely that you will be able to stop such transfer or to enforce any early termination rights against us as a result of such transfer.