

Regulation Segregation and Portability

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1. Introduction

This Regulation is enacted pursuant to and in accordance with articles 5.1.1 and 10.4.1(e) of the Clearing Rule Book.

Capitalised terms used in this Regulation, and not otherwise defined herein, shall have the meaning ascribed thereto in the Clearing Rule Book.

This Regulation applies as of 24 July 2019.

Changes to this Regulation will be implemented in accordance with the EuroCCP Procedure Changes to Clearing Rules as published on EuroCCP's website.

2. Purpose

This regulation only applies to Individual Client Position Account(s) and Omnibus Client Position Account(s). EuroCCP offers segregation and portability for these Accounts pursuant to this Regulation and the Default Procedures.

EuroCCP shall trigger the procedures for the transfer of the assets and positions held by the defaulting Clearing Participant in these Accounts, to another Clearing Participant in accordance with this Regulation.

Residual Collateral Balances held in Client Collateral Accounts with EuroCCP will be dealt with in accordance with this Regulation.

3. Portability

The procedures for portability can only be triggered at the request of the client(s). The portability procedures are limited to the position accounts and cash collateral accounts in the books of EuroCCP and bonds transferred to EuroCCP as collateral designated as covering client positions. Portability of collateral held with third parties cannot be done by EuroCCP and must be arranged by the Clearing Participant and / or the relevant clients separately.

The conditions for porting of positions and collateral held under individual or omnibus client segregation are:

1. The request of the client concerned (or the trustee on behalf of all clients in an omnibus account);
2. The existence of alternative clearing arrangements for the client(s) with a back up clearing participant as required under the clearing rules, including the Clearing Agreement referred to in article 5.2.1 which is to be entered into between a General Clearing Participant and a Trading Participant¹;
3. The unconditional acceptance of the back-up clearing participant of all positions;
4. A legal opinion on file on the on-going validity of authority to port granted by the defaulting clearing participant and the (non) applicability of anti-deprivation and/or avoidance rules, or the written consent of the insolvency practitioner appointed for the defaulting clearing participant;

¹ The alternative clearing arrangements are not necessarily required to be in place prior to the issuance of the Notice of Default, but of course need to be in place prior to any actual porting. However, if these arrangements are not in place ahead of the issuance of the Notice of Default, the likelihood of porting will be further reduced.

5. Satisfactory certainty that all pending settlements with the defaulting clearing participant will be cancelled, and that new equivalent instructions with the back up clearing participant will settle with good value.

A time window of 4 hours for ascertaining whether these conditions are met applies. This time window commences as from the sending of the Notice of Default.

If EuroCCP –in its sole discretion- is of the opinion that the requirements are not met and will not be met within this timeframe, EuroCCP can proceed with the applicable measures in case of a declaration of a default foreseen in the Clearing Rule Book without further delay.

4. Return of unused residual client collateral

4.1. General

In the event of clearing participant default any unused collateral remaining after completion of the default procedures will remain in the relevant Collateral Account.

4.2. Individually Segregated Collateral

If individually segregated client collateral is held in the books of EuroCCP, collateral balances owed by EuroCCP after completion of default procedures shall be readily returned to the client.

We will require a pledge agreement with the Clearing Participant as pledgor and the individual client as pledgee to protect the interest of the client(s) involved and EuroCCP. Any payments will be made in accordance with the Pledge Agreement. It is the obligation of the Clearing Participant to see to it that such documentation is in place well in advance.

In the absence of such arrangements, payment of residual collateral to the client will only be made with the express consent of the insolvency practitioner of the defaulting Clearing Participant. In the absence of such consent, payment will be made to the defaulting Clearing Participant for account of the client.

4.3. Omnibus Collateral

In the case of Omnibus Client Collateral Accounts, EuroCCP cannot distinguish individual claims on collateral pooled in the Account and therefore has no legal and operational means to return collateral to the clients.

EuroCCP therefore requires pre arranged procedures with a trustee acting on behalf of the joint clients, a pledge agreement with the Clearing Participant as pledgor and the client (trustee) as pledgee as well as a clean legal opinion on these documents in order to protect the clients and EuroCCP. In the absence of such arrangements, payment of residual collateral can not be made to the clients directly and will be made to the defaulting Clearing Participant for account of the clients.