

Goldman Sachs International and Goldman Sachs Bank Europe SE EU CCP Recovery and Resolution Regulation Clearing Member Disclosure Statement

Introduction

Throughout this document references to "we", "our" and "us" are references to each of Goldman Sachs International ("**GSI**") and Goldman Sachs Bank Europe SE ("**GSBE**") each as clearing members of several EU central counterparties ("**CCPs**"). References to "you" and "your" are references to the client.

Purpose and Background

This statement is provided in connection with the obligations of GSI and GSBE as clearing members under Article 9(23) and Article 87(7) of Regulation (EU) 2021/23 on a framework for the recovery and resolution of central counterparties ("**CCPR**") which entered into force on 11 February 2021 but which will mostly apply with effect from 12 August 2022.

CCPR establishes a harmonised framework for the recovery and resolution of CCPs and is intended to ensure that both CCPs and their regulators will act decisively in a crisis scenario to keep CCPs providing their critical functions and to limit the impact on the financial system and on public funds.

CCPR requires that CCPs prepare recovery plans setting out measures they would take in crisis scenarios to restore their financial soundness and continue providing their critical functions. Resolution authorities are required to prepare resolution plans setting out the resolution actions they would take if the CCP were likely to fail, in order to keep the CCP providing its critical functions and to limit the impact on the financial system and on public funds. Where a resolution authority identifies obstacles to the resolvability of a CCP in the course of the planning process, it can also require the CCP to take appropriate measures. These measures may include changes to the CCP's operational or legal structure or to its pre-funded loss-absorbing resources.

Whilst the rules under CCPR will mainly affect CCPs, some of the rules will have an impact on us as provider of clearing services onto EU CCPs and on you as our client receiving clearing services in respect of EU CCPs. Provisions introduced under CCPR require us to inform you:

- (a) if and in what way measures in the CCP's recovery plan may affect you; and
- (b) of the potential losses or other costs that you may bear as a result of the application of the default management procedures and loss and position allocation arrangements under a CCP's operating rules including the worst-case losses or other costs you could face should the CCP undertake recovery measures.

Please note that this statement is not intended to amend, supplement or replace the terms of the existing client clearing agreement between you and us ("**Client Clearing Agreement**"). Please note further that this this statement is not intended to override any provisions of a CCP's rulebook and that such rulebooks may be amended, supplemented or replaced from time to time.

Recovery Measures

Article 9(1) of CCPR provides that a CCP’s recovery plan should provide for measures to be taken in both “default events”¹ and “non-default events”² in order to restore the CCP’s financial soundness and continue the provision of their critical functions. CCP Recovery plans are required to include a comprehensive range of:

- (i) capital actions;
- (ii) loss allocation actions (including recovery cash calls and a reduction in the value of gains payable by the CCP to non-defaulting clearing members);
- (iii) position allocation actions; and
- (iv) liquidity actions,

to maintain or restore the viability and financial soundness of the CCP.

The specific measures which may be taken will be set out in the relevant CCP’s rulebook and may supplement the CCP’s existing default management, loss and position allocation procedures and may vary across CCPs. We have provided a broad overview of some of the most impactful recovery measures which could be undertaken by a CCP and the way in which these measures may affect you (including the worst-case losses or other costs you could face should the CCP undertake such measures). Broadly, in view of the limited recourse provisions of the Client Clearing Agreement, where implementation of a CCP’s recovery measures results in reduced or no performance by the CCP under the transactions between ourselves and the CCP (“**CCP Transactions**”), what we pay or deliver to you under the corresponding transactions between you and us (“**Client Transactions**”) may be correspondingly reduced.

Recovery Measures	Impact
<p>Partial Tear-Up</p> <p>This is a measure allowing a CCP to terminate specific contracts and will typically be undertaken by a CCP where its standard default management procedures have failed to restore the CCP to a matched book. The specific mechanisms and procedures to be applied to implement this measure will be set out in the CCP’s rulebook and may differ between exchange traded transactions and over-the-counter transactions.</p>	<p>A partial tear-up may result in the early termination of the CCP Transactions, which may, pursuant to the terms of the Client Clearing Agreement, result in a simultaneous termination of the corresponding Client Transactions. Such early termination may result in you not being able to realise gains which you otherwise would have realised in respect of such Client Transactions. You may incur further losses to the extent the termination of the Client Transactions triggers or necessitates the termination of any hedging or other transactions related to such Client Transactions. You may incur additional costs if you decide to enter into a replacement transaction.</p>
<p>Requests for substitution, additional margin assets and restrictions on re-</p>	<p>Subject to the terms of the Client Clearing Agreement, you may be required to</p>

¹ Article 2(8) of CCPR defines this as an event following which the CCP has declared in default: (i) one or more clearing members; or (ii) one or more interoperable CCPs.

² Article 2(9) of CCPR defines this as a scenario where a CCP incurs losses for any reason other than a default event including but not limited to, business, custody, investment, legal or operational failures or fraud including failures resulting from cyber-attacks.

<p>delivery of margin assets by the CCP</p> <p>This includes measures allowing the CCP to:</p> <ul style="list-style-type: none"> (i) request substitution of non-cash margin with cash margin; (ii) call for additional cash margin; and (iii) reject requests for the retransfer or release of cash margin to the clearing member. 	<p>substitute existing margin assets transferred to us in respect of the Client Transactions or transfer additional assets in order to satisfy the CCP's request.</p> <p>To the extent any cash margin has not been retransferred to us following a request made by us in respect of a CCP Transaction in accordance with the relevant provisions of the CCP's rulebook, such cash margin may not be returned by us to you under the corresponding Client Transaction in accordance with the limited recourse provisions in the Client Clearing Agreement. In the worst-case scenario, such cash margin may never be returned to us by the CCP, in which case you may lose the entire amount of cash margin posted to us in respect of some or all of the Client Transactions. In the event of the insolvency of the CCP, it is unlikely that you will have a direct claim against the CCP for the return of this cash margin because of the principal-to-principal model of clearing described in Part One A of our clearing member risk disclosure statements ("CM Risk Disclosure Statements").³ For further information on the consequences of the insolvency of the CCP, please see the section headed "<i>Insolvency of the CCPs and others</i>" on pages 23-24 of the GSI CM Risk Disclosure Statement and pages 22-23 of the GSBE CM Risk Disclosure Statement.</p> <p>Subject to the terms of the Client Clearing Agreement, to the extent we have substituted margin assets you have delivered to us, with our own assets in order to satisfy the CCP's substitution request, you may be required to indemnify us for any losses we incur as a result of any failure or delay by the CCP to return our assets.</p>
<p>Reduction in the value of gains payable by the CCP to non-defaulting clearing members</p> <p>This is a measure pursuant to which the CCP can reduce the value of the amount the CCP owes to non-defaulting clearing members in respect of variation margin</p>	<p>The implementation of this measure may result in us not receiving the full value of variation margin gains or amounts owed by the CCP in respect of settled-to-market payments under the CCP Transactions. In the worst-case scenario, we may not receive any variation margin gains or settled-to-market amounts in respect of</p>

³ In respect of GSI, available here: <https://www.goldmansachs.com/disclosures/mifid/docs/gsi-clearing-member-disclosure-doc-dir-and-indir.pdf> and in respect of GSBE, available here: <https://www.goldmansachs.com/disclosures/mifid/docs/gsbe-clearing-member-risk-disclosure.pdf>

<p>gains or settled-to-market payments due to such clearing members in respect of their CCP Transactions.</p>	<p>such CCP Transaction. Consequently, you may not receive the full value of the variation margin gains or the full amount owed in respect of settled-to-market payments under the corresponding Client Transactions or in the worst-case scenario, you may not receive any such variation margin gains or settled-to-market amounts under such Client Transactions.</p>
<p>Service Closure</p> <p>This measure entails the closure of a particular clearing service provided by the CCP.</p>	<p>The impact of this measure is that all CCP Transactions in respect of that clearing service may be early terminated and the impact of such early termination on you will be the same as described above under the heading “<i>Partial-Tear Up</i>”. Further, no new transactions may be submitted for clearing in respect of such clearing service.</p>

Default management procedures

In summary, if a clearing member is declared to be in default by a CCP, the CCP will, at your request, try to transfer (port) transactions and assets related to the clients of that clearing member to another clearing member. If porting cannot be achieved, the CCP will terminate the transactions related to the clients of that clearing member and perform a close-out calculation in respect of them. If there is an amount owed by the CCP, the CCP may pay such amount directly to such clients subject to certain conditions, including if it knows their identity. If the CCP does not pay directly to such clients, it will pay such amount to the defaulting clearing member (or its insolvency practitioner) for the account of the clearing member's clients.

If we are declared to be in default by a CCP, you may incur costs and losses as a result of the implementation of the CCP's default management procedures, the most relevant of which we expect to be the following:

- (a) If the CCP Transactions and assets related to you (or where applicable, your underlying clients) are ported, you may incur incidental costs for transferring such positions and assets to another clearing broker.
- (b) If the CCP Transactions are terminated and the resulting sum is paid directly to you, you may incur incidental costs for closing out of such transactions and paying the resulting sum directly to you, and you may incur additional costs to the extent the termination of the CCP Transactions necessitates the termination of any hedging or other related transactions. You may also incur additional costs if you decide to enter into replacement transactions.
- (c) If the CCP Transactions relating to you (or where applicable, your underlying clients) are terminated and the resulting sum is paid to us, you may incur the

costs and losses described in the paragraph above and additional losses resulting from our insolvency (which are explained in more detail in Part One C of the GSI and GSBE CM Risk Disclosure Statements respectively).

Please also refer to Part One B of the GSI and GSBE CM Risk Disclosure Statements under the heading, "*Will you get back the same type of asset as you originally provided to us as margin for a Client Transaction?*" for a description of the type of compensation you may receive under a CCP's default management procedures.

CCP loss and position allocation tools

If the CCP implements one or more of the loss and position allocation arrangements under its operating rules, you may incur costs and losses, the most relevant of which we expect to be in respect of the "*Partial Tear-Up*" measure and the "*Reduction in the value of gains payable by the CCP to non-defaulting clearing members*" measure outlined in the first and third rows of the Recovery Measures table above.

Resolution Tools

CCPR gives resolution authorities resolution tools to manage the failure of a CCP in an orderly way and to ensure that essential clearing functions and services are preserved.

Specifically, CCPR envisages the following resolution tools:

- (a) the **position and loss allocation tools**, including:
 - (i) the **tear-up tool**: this tool allows the resolution authority to terminate specific clearing contracts to balance the books of the CCP.
 - (ii) the **variation margin gains haircut (VMGH) tool**: this is a tool allowing the resolution authority to reduce the amount the CCP owes a clearing member in respect of post-resolution variation margin gains due to a clearing member and is similar to the recovery measure set out in the first and third rows of the Recovery Measures table above.

The impact of the implementation of these position and loss allocation tools may be similar to the impact of the measures described in the first and third row of the Recovery Measures table above.

- (b) the **write-down and conversion tool**: this tool allows the resolution authority to write down or convert instruments of ownership, debt instruments or other unsecured liabilities of the CCP.
- (c) the **sale of business tool**: this tool allows the resolution authority to sell all or part of the failing CCP to another entity.
- (d) the **bridge CCP tool**: this tool allows the resolution authority to separate out essential functions of a CCP and transfer them to a new CCP (the bridge CCP), which is controlled by the resolution authority.

To apply the resolution tools, resolution authorities are given wide resolution powers, including the power to:

- (a) close out and terminate financial contracts;
- (b) reduce the amount of variation margin due to a clearing member;
- (c) cancel or modify the terms of a contract with the CCP;
- (d) suspend payment and delivery obligations;
- (e) restrict security interest enforcement; and
- (f) suspend termination rights.

Further Information

You may also want to refer to the CCPR recovery measures as set out in the rulebooks of the following CCPs:

Eurex Clearing AG

<https://www.eurex.com/ec-en/find/circulars/clearing-circular-3140368>

Nasdaq Clearing AB

<https://www.nasdaq.com/solutions/rules-regulations-derivatives-rules>

EuroCCP

https://www.euroccp.com/euroccp_resources/news_flash/clearing-rules-consultation-of-rule-book-changes-july-2022

Please reach out to your GS Sales coverage for any further questions you may have on this document or our clearing services.

Important

Please note that there is only limited information made available by CCPs to us to date and so this document will be amended and updated from time to time as the respective CCPs disclose information about their recovery plans or update their rulebooks in connection with CCPR.

Recovery plans are not public and clearing members have to rely on voluntary disclosures by CCPs. Additionally, CCPs may take actions which are not reflected in the information they have provided. Therefore, there may be other ways in which a CCP's recovery plan may impact you which are not reflected in this notification.

This notification does not constitute legal or any other form of advice and must not be relied on as such. This notification provides a high-level overview of a complex and new area of law, the effect of which will vary depending on the specific facts of any particular case. You and, where applicable, your clients may wish to appoint independent professional advisors to advise you on this.

This notification is not an exhaustive information document, please also refer to other disclosure documents on other aspects of CCPR and EMIR.

We shall not in any circumstances be liable, whether in contract, tort, breach of statutory duty or otherwise for any losses or damages that may be suffered as a result of using 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 opportunity or goodwill and (b) any indirect loss or consequential loss.

No responsibility or liability is accepted for any description of CCPR and its impact as set out herein. This paragraph does not extend to an exclusion of liability for, or remedy in respect of, fraudulent misrepresentation.