

EU CCP Recovery and Resolution Regulation (CCPR)

We are writing to you to inform you that relevant requirements under the EU CCP Recovery and Resolution Regulation ("**CCPR**")¹ have come into force on 12 August 2022.

Whilst the rules under CCPR will mainly affect EU central counterparties ("**CCPs**"), some of the rules will have an impact on us as provider of clearing services in respect of EU CCPs and on you as our client receiving clearing services in respect of EU CCPs.

The purpose of this notification is to inform you (i) about how measures in a CCP's recovery plan may affect you (Article 9(23) CCPR), and (ii) 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 the CCP's operating rules (Article 38(8) of the European Market Infrastructure Regulation (EMIR), which is introduced by Article 87(7) CCPR).

I. CCPR

CCPR establishes a harmonised framework for the recovery and resolution of EU CCPs. CCPR 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 comprises the following three pillars:

1. Preparation

(a) Recovery plans

CCPs are required to prepare recovery plans setting out measures they would take in crisis scenarios to restore their financial soundness and continue providing their critical functions. Recovery plans are not standardised and will likely differ from CCP to CCP. 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

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021R0023&from=EN>

- (iv) liquidity actions,

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

(b) **Resolution plans**

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.

(c) **Resolvability**

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.

2. **Early intervention**

Where a CCP is about to breach its prudential requirements, CCPR gives regulators powers to intervene before the problems become critical and the financial situation deteriorates irreparably. These powers may include requiring a CCP to undertake specific actions envisaged in its recovery plan or to make changes to its business strategy or legal or operational structure.

3. **Resolution**

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 resolution tool allows the resolution authority to terminate specific clearing contracts to balance the books of the CCP. In practice, this tool would be used by a resolution authority if a clearing member defaults and its positions cannot be auctioned off. In these circumstances, the resolution authority would terminate corresponding opposing positions to re-balance the CCP's books.
 - (ii) the **variation margin gain haircut (VMGH) tool**: This resolution tool allows the resolution authority to reduce the amount the CCP owes a clearing member in respect of post-resolution variation margin gains due in accordance with the CCP's process for paying variation margin.

- (b) the **write-down and conversion tool**: This resolution 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 resolution tool allows the resolution authority to sell all or part of the failing CCP to another entity.
- (d) the **bridge CCP tool**: This resolution 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.

The application of the resolution tools and powers under CCPR is subject to certain safeguards (such as the 'no creditor worse off' principle). CCPR does not apply these safeguards to the recovery plans or default management procedures discussed in Section II below.

II. Impact on you

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.

The measures described below may affect transactions we are clearing for ourselves as well as transactions we are clearing for you. The clearing agreement between us provides that we are only required to perform and pay our obligations to the extent the CCP performs and pays its

corresponding obligations to us. Therefore, if the measures below are exercised, what we pay or deliver to you may be correspondingly reduced.

In addition to the specific costs and losses set out below, you may incur further costs and losses as a result of any market disruptions ensuing from the financial difficulties of the relevant CCP or clearing member (such as increased margin requirements or stressed market circumstances which may adversely impact the value of your transactions).

1. **CCP recovery plan measures**

If the CCP implements one or more of the measures contemplated in CCPR in its recovery plan, you may incur costs and losses, the most relevant of which we expect to be the following:

- (a) **Tear-up measures:** The CCP's recovery plan may include tear-up measures similar to the resolution tear-up tool described in paragraph I.3(a)(i) above. If the CCP implements tear-up measures in respect of a transaction we are clearing for you, the CCP will terminate the relevant transaction, perform a close-out calculation and pay any positive resulting sum to us. In this context, you may incur incidental costs in the process of the closing out of your transactions and you may incur additional costs if you decide to enter into a replacement transaction.
- (b) **VMGH measures:** The CCP's recovery plan may also include VMGH measures similar to the VMGH tool described in paragraph I.3(a)(ii) above. If the CCP implements VMGH measures in respect of your variation margin, you may lose the entire variation margin gain since the last variation margin call.

2. **Default management procedures**

In summary, if a clearing member is declared to be in default under a CCP's default management procedures, the CCP will usually 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, you may incur costs and losses, the most relevant of which we expect to be the following:

- (a) If your transactions and assets are ported, you may incur incidental costs for transferring your positions and assets to another clearing broker.
- (b) If your transactions are terminated and the resulting sum is paid directly to you, you may incur incidental costs for closing out your transactions and paying the resulting sum directly to you, and you may incur additional costs if you decide to enter into replacement transactions.
- (c) If your transactions 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.

For more information on default management processes please see our clearing risk disclosures, available here: <https://sebgroup.com/our-offering/investor-services/nordic-financial-institutions/derivatives-clearing>

3. 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 tear-up measures and VMGH measures. We have explained the relevant losses and costs in those circumstances in paragraph II.1 above.

III. Disclaimer

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.

The information in this notification is based on the general provisions of CCPR and EMIR. There is only limited information made available by CCPs to us to date:

- Eurex client communication "Impact of Recovery and Resolution Tools on Clearing Members" dated July 2022;
- EuroCCP website disclosure "Clearing Rules - consultation of rule book changes July 2022" dated 4 July 2022;²

² https://www.euroccp.com/euroccp_resources/news_flashes/clearing-rules-consultation-of-rule-book-changes-july-2022

- Nasdaq Clearing client communication "Notice Regarding Proposed Amendments to the Clearing Rules of Nasdaq Derivatives Markets" dated 2 August 2022³.

This notification may be updated from time to time as CCPs disclose information about their recovery plans or to reflect regulatory guidance. Clients are therefore advised to consult the latest version of this notification, which will be available here: <https://sebgroup.com/our-offering/investor-services/nordic-financial-institutions/derivatives-clearing>

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.

If you have questions in the meantime, please contact your usual relationship manager.

³ [Rules & Regulations - Derivatives Rules | Nasdaq](#)