

## Clearing Notice SIX x-clear Ltd

### **Account segregation options and prearranged solutions for NCMs in case of GCM Default**

#### **1.0 Purpose**

The purpose of this Clearing Notice is to inform Members about the options of SIX x-clear (“x-clear”) as regards

- the different types of accounts for Members and their level of protection
- the different options, especially the “prearranged solutions”, in case of Default of the General Clearing Member (“GCM”) to protect the Non-Clearing Member’s (“NCM”) collateral and interests.

As required by article 23a let. f. of the Swiss National Bank Ordinance (NBO), x-clear herewith provides transparency to its Members and their clients (NCMs) over its rules and procedures, as specified in Article 24b NBO, to separately keep, record and transfer the collateral and positions of direct and indirect participants. These disclosure requirements correspond to the respective obligations in European law according to article 39(7) EMIR.

This document shall therefore, on a documentary basis, also facilitate a GCM's and its NCM(s)' evaluation work and guide them in selecting an account structure and portability arrangement that best suits their needs and preferences.

This Clearing Notice consolidates and further elaborates on information already given in the Clearing Notice of 6 June 2014.

#### **2.0 Regulatory information and duties**

x-clear, as a Switzerland-based CCP, is subject to the Swiss rules and requirements with respect to its account segregation and asset protection offerings. This regime ensures full compliance with the Principles for Financial Market Infrastructures as issued by the Committee on Payment and Settlement Systems (CPSS) and the International Organisation of Securities Commissions (IOSCO). It is also considered materially equivalent to the rules of the European Union (EMIR and its standards). Given the importance of its international clientele and within the Swiss regime, x-clear therefore also aligned its offerings consistently with the European standards.

According to Swiss and international legislation, x-clear must ensure that every indirect clearing member, i.e. NCM, is given the choice to hold its positions and collateral with the CCP either in individual account segregation or in omnibus account segregation, unless such segregation from the GCM's positions and assets is already undertaken in the GCM's account structure. A GCM is therefore required to inform each of its current and potential NCMs about the different options for account segregation and prearranged solutions in case of Default (and Termination) of the GCM.

However, such a choice of account segregation must be given to an NCM only if its GCM does not itself effectively undertake (whether due to a regulatory obligation or on a voluntary basis) a segregation of positions and accounts between its own and those of its NCMs.

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### 3.0 Account segregation options and their prearranged solutions

#### 3.1 Common features and general differences

x-clear's account segregation options are contractually regulated by chapter 21.0 of the GTCB and in the Clearing Terms.

The following common features apply to all account segregation options:

- Segregation of an x-clear Member's positions and collateral is always ensured against positions and collateral of a) the CCP itself and b) those of other x-clear Members. The differentiation therefore relates to the separation of accounts of the GCM versus the accounts held by the GCM on behalf of NCMs and accounts held by the GCM on behalf of other NCMs.
- x-clear does not offer any safeguards for an NCM's contribution to the GCM related to the pledges of its GCM to the Default Fund or any other security. Only an NCM's **margin contributions** can be segregated and protected.
- It is the responsibility (and right) of the GCM to decide whether it only offers omnibus solutions or whether it also offers individual client account segregation for NCMs. If an individual solution is offered, the NCM's choice shall be respected.

The options differ in their levels of protection in case of Default and/or Termination of Membership of the GCM as they entail different approaches in insolvency proceedings. Consequently, the availability of prearranged solutions is also limited under the omnibus segregation structures compared to the individual segregation.

Individualization means that positions and collateral can be properly allocated to the account holder and/or to the account's beneficial owner (NCM), and then treated separately according to its instructions.

x-clear takes into consideration the specific constellations and requirements of its Members, especially its GCMs with their NCMs, and offers them the segregation options described below for their Clearing Accounts (positions) and their Collateral Accounts.

#### 3.2 For an Individual Clearing Member (ICM)

For an Individual Clearing Member (ICM) the account structure is always as follows:

|                    |  |
|--------------------|--|
| Description        | One house account and one client account are established.  |
| Margin calculation | Each Clearing Account requires a margin calculation. The ICM is liable itself for sufficient collateral. |

#### 3.3 For a General Clearing Member and its NCMs

For a GCM with one or more indirect participants (NCMs), x-clear provides the following account segregation options (for a graphical representation see the schemes in the Clearing Terms):

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### 3.3.1 Omnibus client segregation (OCS)

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| Description  | The positions and the collateral of the GCM are segregated from the ones related to its NCM(s); the latter being set up on behalf and designated jointly to the NCMs. Thus, segregation of Collateral and Clearing Accounts of GCM and NCMs is ensured. However, the OCS model is only a partial segregation, whereby all NCMs of a GCM use one Clearing Account. The cross-netting (cross-margining) of positions takes place on Clearing Account level. OCS is the standard solution offered by x-clear. |
| Collateralization and Margin calculation                               | Each Clearing Account requires a margin calculation. For the separate coverage of the client omnibus Clearing Account the Member can use a cash and/or a securities Collateral Account(s).<br>From a risk management and default management point of view, the account set-up is looked at on a credit group level, which means that on a technical level the Clearing Account(s) are combined with the respective Collateral Account(s) to a transfer (portability) or close-out unit.                    |
| Protection of NCM's positions and collateral in case of Default of GCM | Only <u>Porting</u> is available as a prearranged solution:<br>Collective positions and margins of all NCMs will be ported in a bulk transfer from the accounts of a defaulting GCM to collective Clearing and Collateral Accounts with the Back-up GCM. Accounts with the Back-up GCM will have been prearranged on behalf of the respective NCMs. The GCM elects the Back-up GCM after consultation with the NCMs.   |

### 3.3.2 Mini omnibus client account segregation (Mini OCS)

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| Description  | The GCM positions and collateral are segregated from the ones related to its NCMs. Similar to the OCS model, the Mini OCS solution provides one or several additional Omnibus Clearing Account(s) for the GCM. The additional omnibus account(s) allow(s) GCMs to offer their NCMs different prearranged back-up solutions. Thus, segregation of Collateral and Clearing Accounts of GCM and NCMs is ensured. However, the Mini-OCS model is only a partial segregation, whereby a group of NCMs of a GCM use one Clearing Account. The cross-netting (cross-margining) of positions takes place on Clearing Account level. |
| Collateralization and Margin calculation                               | Each Clearing Account requires a margin calculation. For the separate coverage of the mini omnibus client Clearing Account the Member can use a cash and/or a securities Collateral Account(s).<br>From a risk management and default management point of view, the account set-up is looked at on a credit group level, which means that on a technical level the Clearing Account(s) are combined with the respective Collateral Account(s) to a transfer (portability) or close-out unit.  |
| Protection of NCM's positions and collateral in case of Default of GCM | Only Porting is available as a prearranged solution:<br>Collective positions and margins of the respective group of NCMs will be ported in a bulk transfer from the accounts of a defaulting GCM to collective Clearing and Collateral Accounts with the Back-up GCM. Accounts with the Back-up GCM will have been prearranged on behalf of the respective NCMs. The GCM elects the Back-up GCM after consultation with the NCMs.   |

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### 3.3.3 Individual client account segregation (ICS)

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| Description  | <p>The GCM positions and collateral are segregated from the ones related to its NCM(s). In addition, the positions and collateral related to each NCM is segregated from other NCM(s). The account structure for the ICS model allows dedicated individual and segregated Clearing and Collateral Accounts to be held that show receivables and liabilities in terms of positions and collateral related to that NCM.</p> <p>The cross-netting (cross-margining) of positions takes place on Clearing Account level.</p> <p>The collateral of the GCM is always segregated from the collateral related to the individually segregated NCM. The GCM has to pass through the collateral amount or positions requested from the NCM if the collateral fulfils the collateral eligibility requirements of x-clear.</p>  |
| Collateralization and Margin calculation                               | <p>For positions related to the GCM and each NCM, individual margin requirements are calculated. For each NCM the Member must use a cash and/or a securities Collateral Account(s) for the separate coverage of each individual client Clearing Account.</p> <p>From a risk management and default management point of view, the account set-up is looked at on a credit group level. The credit group combines, on a technical level, Clearing Account(s) with respective Collateral Account(s) to a transfer (portability)/close-out unit.</p>  |
| Protection of NCM's positions and collateral in case of Default of GCM | <p>The individualized segregation of positions and collateral (margins) enables x-clear in the event of the GCM's default to allocate them to the NCM (who is the beneficial owner), port them to the designated Back-up GCM (portability) or facilitate the Close-out Procedure and if applicable, pay out any positive amount to the individually segregated NCM. Under ICS, the GCM shall post the value of any margin payment in excess of the NCM's requirement to x-clear (on the Collateral Account referable to that NCM) and it shall be distinguished from the Margins of any Member or any other NCM. Thus, it will not be exposed to losses connected to positions recorded in another account.</p> <p>ICS offers the highest level of protection to the interests in the positions and the collateral of an NCM.</p> <p>The following prearranged solutions can ensure protection:</p> <p><u>Porting</u><br/>Positions and collateral will be ported individually from the accounts of a defaulting GCM to the Clearing and Collateral Accounts with the Back-up GCM. Accounts with the Back-up GCM will have been prearranged on behalf of and clearly designated to the respective NCM.</p> <p><u>Self-standing Membership</u><br/>An independent membership will be established with account structures according to the NCM's preferences (provided that the NCM fulfils x-clear's admission criteria).</p> <p><u>Close-out</u><br/>Individual positions related to the NCM will be closed out and set off against the individualized collateral related to the NCM.</p> |

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### 4.0 Additional information on the prearranged solutions

#### 4.1 Preliminary remarks of principle

In case of a GCM Default, x-clear will carry out the prearranged solution selected by the GCM and/or the NCM within 48 hours of the declaration of Default, if the requirements as described in clause 30.1.1 GTCB are met. In that process, x-clear will strictly act according to the Applicable Laws and the instructions received from the respective GCM, the NCM and the Back-up GCM (if any).

x-clear provides its account segregation and its prearranged solution offerings (i.e. Portability, establishment of a Self-standing Membership and Close-out) irrespective of the legal arrangements between the GCM and the NCM. x-clear only stipulates that the GCM/NCM Agreement shall contain the elements and regulations as per Annex 2 GTCB.

In particular, it is the GCM's and its NCMs' concern how they ascertain the provision of collateral of the NCM to the GCM – as a transfer of title (ownership) or as a security interest (pledge) arrangement. Under an omnibus or mini omnibus client account segregation, x-clear will not bear any responsibility for an NCM's rights and remedies to individually exclude or reclaim its interest in positions transacted by it and its collateral given to the GCM from the estate of a defaulting GCM. Under an individual client account segregation, protection of the NCM's rights will be individually ensured within the prearranged solution chosen (see section 3.3.3 above).

#### 4.2 Portability to a Back-up GCM

##### 4.2.1 Contractual basis and procedural requirement

Porting is contractually regulated in chapters 5.0 and 30.0 and Annex 2 of the GTCB. For a graphical representation, see schemes in annexes 1a and 1b (here attached).

In the case of execution of a portability process, a confirmation from the Back-up GCM concerning its unconditional agreement to the porting must be on hand. This confirmation must be issued within eight business hours of the Back-up GCM being informed by x-clear of the occurrence of the Default of the x-clear GCM and the amount of the outstanding claims and liabilities as well as the Margins that must be transferred in the form of Permissible Collateral.

##### 4.2.2 Purpose

The purpose of portability is to transfer positions (in the GTCB referred to as Outstanding Contracts) and Collateral (Margins) related to an NCM to a Back-up GCM. This not only ensures that the economic interest in the positions related to the NCMs are protected, but also that they remain in the Clearing process and continue to be processed via the Back-up GCM. This also minimizes any delays in the trading and clearing business to the greatest degree possible.

The causes for portability not only include events of Insolvency, but any reason that leads to a Default pursuant to the contractual agreements between the GCM and x-clear in

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accordance with chapter 29.0 of the GTCB – in particular, the loss of licenses, disciplinary proceedings, significant payment difficulties etc.

### 4.2.3 **Soundness and enforceability**

Portability to a Back-up GCM and the Close-out Procedure (as provided by x-clear) of NCMs' positions and collateral were examined and deemed sound and enforceable by legal opinions from reputable local law firms in the case of Default of GCMs domiciled in the following jurisdictions:

- England
- Germany
- France
- Netherlands

Further countries might be evaluated in cooperation with the potential x-clear Member.

In Switzerland, the legal basis for portability is provided for in the National Bank Ordinance, but not yet firmly ensured under otherwise applicable insolvency law. It is possible that porting may not be allowed by the restructuring agent or liquidator of a defaulting GCM or that such a procedure may not be recognized by the responsible bankruptcy judge. Clarification shall be brought by the enactment of the Financial Market Infrastructure Act (FinfraG) which is expected to become effective in the second half of 2015. Nevertheless, x-clear deems the selection and establishment of a prearranged solution an essential instrument of protection of an NCM's positions and collateral.

### 4.3 **Alternative prearranged solutions**

If portability is not possible, x-clear is obliged, in the event of Default of a GCM, to also offer alternative measures for the protection of positions and collateral related to the NCMs. The following solutions are available as alternative processes with a comparable level of protection:

#### 4.3.1 **Self-standing Membership** (only for individual client segregation)

An NCM can apply for its own membership and – provided that x-clear's admission requirements are met – receive the full status of an ICM, even if it intends to continue carrying out some or all of its clearing activities via its GCM. In the case of Default of the GCM, the positions and collateral related to such an NCM will be transferred as quickly as possible to its own account structure at x-clear, and such an NCM will henceforth act as an ICM.

#### 4.3.2 **Close-out**

Close-out is contractually regulated in clause 29.5 and 30.2 GTCB and in the Termination and Suspension Procedure Rules. For a graphical representation, see scheme in annex 2 (here attached).

If – due to a selection not being made or for legal, technical or any other reasons – neither porting nor a transfer to its own account structures can be carried out, or cannot be

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implemented in time, the positions and collateral referable to NCMs will be subject to the Close-out Procedure of the defaulting GCM. The proceeding is similar to the procedure defined in section 29.5 lit. d. GTCB, except under ICS where a positive Close-out Settlement Amount and any unrealized collateral resulting from the NCM's Clearing and Collateral Accounts will not be credited to the defaulting GCM, but directly to the NCM. If the Close-out Settlement Amount is negative, the negative amount is netted against the realized value of the collateral which was provided by the GCM and relates to the NCM, and if the collateral is not sufficient to offset the negative Close-out Settlement Amount, the remaining value will be invoiced to the defaulting GCM's estate.

### 5.0 Timeline of implementation (effective dates)

**All GCMs** of x-clear are requested to decide and/or confirm their preferred account segregation.

All GCMs are requested to inform their NCMs about the account segregation options, their offering(s) and the NCM's options for a prearranged solution in case of their Default and/or Termination of Membership. The NCM shall be given the right to decide about its level of protection, i.e. select the solution of its choice.

GCMs shall communicate this information to x-clear in writing using **Form 007 by 31 December 2014**. A separate form for each NCM shall be completed and co-signed by the respective NCM. The form is available from <http://www.six-securities-services.com/en/home/clearing/forms-and-guides/forms/six-x-clear.html>

**All Back-up GCMs** elected by a GCM (under an omnibus segregation) or elected by an NCM (under an individual segregation) shall confirm their status by giving x-clear a respective order (based on the example as provided in Annex 2 of the GTCB).

### 6.0 Contacts

For further assistance, please contact:

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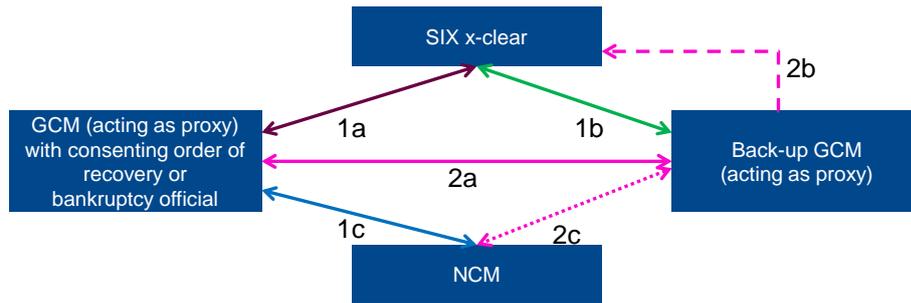
or

your Relationship Manager  
see under: [www.six-securities-services.com](http://www.six-securities-services.com) > Login > SIX SIS Private > contacts > list of contacts > Customer Relations).

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## 1.0 Annex 1a

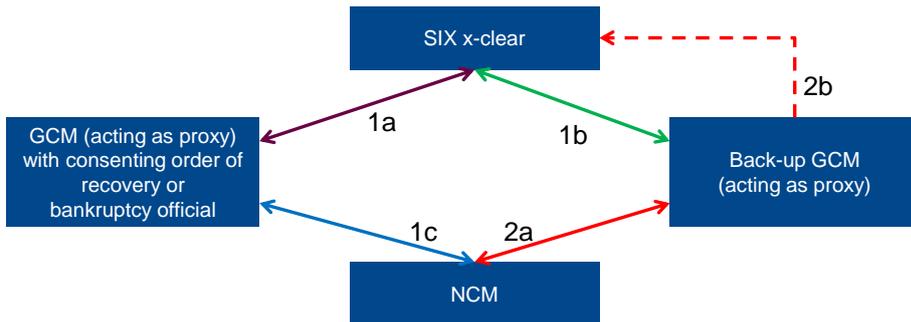
SIX x-clear prearranged solution (based on Art. 24b para. 2 NBO and Art. 39(2) EMIR)  
 Omnibus client segregation - Portability



|    |   |  |
|----|---|--|
| 1a | ↔ | existing Clearing Services Contractual Relationship of x-clear with GCM                        |
| 1b | ↔ | existing Clearing Services Contractual Relationship of x-clear with Back-up GCM                |
| 1c | ↔ | existing GCM/NCM Agreement between GCM and NCM   |
| 2a | ↔ | pre-arranged GCM/Back-up GCM Accord in case of omnibus segregation; GCM acting as proxy to NCM |
| 2b | → | mandate by Back-up GCM to SIX x-clear to establish account structure for all NCMs              |
| 2c | → | pre-arranged Back-up GCM/NCM Agreements with each NCM under omnibus segregation                |

## 2.0 Annex 1b

SIX x-clear prearranged solution (based on Art. 24b para. 2 NBO and Art. 39(3) EMIR)  
 Individual client segregation - Portability

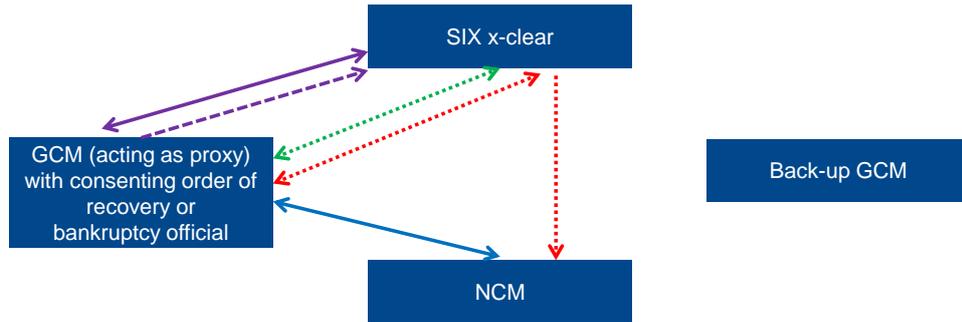


|    |   |  |
|----|---|--|
| 1a | ↔ | existing Clearing Services Contractual Relationship of x-clear with GCM                  |
| 1b | ↔ | existing Clearing Services Contractual Relationship of x-clear with Back-up GCM          |
| 1c | ↔ | existing GCM/NCM Agreement between GCM and NCM   |
| 2a | ↔ | pre-arranged Back-up GCM/NCM Agreement in case of individual segregation                 |
| 2b | → | mandate by Back-up GCM to SIX x-clear to establish account structure for respective NCMs |

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## 3.0 Annex 2

SIX x-clear Close-out solutions (in accordance with Art. 24b para. 3 NBO)



|    |  |  |
|----|--|--|
| 1  |  | Individual client segregation, before GCM's Default:<br>existing GCM/NCM Agreement between GCM and NCM with NCM's selection to close-out   |
| 2  |  | Individual and omnibus client segregation, at GCM's Default:<br><ul style="list-style-type: none"> <li>existing Clearing Services Contractual Relationship of x-clear with GCM</li> <li>defaulting GCM or bankruptcy official acting as proxy of NCM(s) gives consenting order to close-out</li> </ul> |
| 3a |  | Individual client segregation, after GCM's Default and receipt of consenting order to close-out:<br><ul style="list-style-type: none"> <li>Close-out Settlement Amount directly credited to NCM or</li> <li>Close-out Settlement Amount set-off against GCM's collateral</li> </ul>                    |
| 3b |  | Omnibus client segregation, after GCM's Default and receipt of consenting order to close-out:<br><ul style="list-style-type: none"> <li>Close-out Settlement Amount credited to GCM or set-off against GCM's collateral</li> </ul>   |