



The European Agent-Trustee Model (EATM)

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FAQs



THE EUROPEAN AGENT-TRUSTEE MODEL (EATM) – FREQUENTLY ASKED QUESTIONS

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Background

FIA has partnered with a few clearing members to develop a new, alternative client clearing model in Europe, replicating many features of the US FCM clearing model. This initiative was made possible by significant developments and improvements in understanding the legal underpinnings of the US FCM clearing model in the US, including the publication of the revised US FCM netting opinion in November 2021. With the help of external counsel and the CCPs, we are in the process of finalising the European Agent-Trustee Model (**EATM**) for English and German clearing members. This document has been created to provide information about the EATM to market participants and other stakeholders.

1. *What is the EATM?*


The EATM is a new client clearing model for Europe. It has been designed broadly to replicate the US FCM Model and would be complementary to, and not a substitute for, other clearing models available for use in Europe.

The EATM is initially being offered for use by English and German clearing members (“**CMs**”) and their clients (who may be based in any jurisdiction – subject to analysis by the CCPs as clients will be disclosed to the CCP). However, the EATM has been designed (to the extent possible) to be jurisdiction-neutral in nature, such that the core structure can be recreated for use by CMs incorporated in other jurisdictions if the English or

German law structures would be effective on the insolvency of CMs incorporated in those jurisdictions. The EATM has also been designed with a view to its replication under other legal systems if the English or German law structures would not be suitable.

Under the EATM, transactions (“**Client Transactions**”) entered into by a CM with a central counterparty (a “**CCP**”) are held by the CM for the account of one or more Clients. Payments and collateral will fall outside this arrangement (see further Question 16 below).

The precise nature of this arrangement differs as between different versions of the EATM. Under the English law version of the EATM (the “English



Model”), the CM will hold Client Transactions as a trustee. Under the German law version of the EATM (the “German Model”), the CM will hold Client Transactions as a trustee (Treuhand) in connection with a commercial mandate (Geschäftsbesorgungsverhältnis).

2. *How is the EATM different from the Principal Model?*

The main difference between the EATM and the existing client clearing model in Europe (the “**Principal Model**”) is that the back-to-back transactions between the CM and the Client under the Principal Model are replaced under the EATM by an arrangement pursuant to which the Client Transactions between the CM and CCP are held by the CM for the account of each Client and the Client agrees to provide the CM with payments and collateral due to the CCP in respect of the Client Transactions held for its account. Under the EATM, the CM will be party to one transaction – the Client Transaction with the CCP, whereas under the Principal Model, it is party to two transactions – one with the CCP and one with the Client..

3. *How is the EATM different from the US FCM clearing model?*

The EATM has been designed to replicate the US FCM Model and so the differences between the two are not as material as the differences between the EATM and the Principal Model and are also more technical in nature.

The main difference is the fact that, under the EATM, collateral flows are kept outside the applicable client assets regime

in the jurisdiction of the CM (unlike under the US FCM Model).

Unlike under the US FCM Model, under the EATM, the Client will not grant security in favour of the CM over its rights under the client clearing agreement (including the “trust terms” or equivalent thereof). This is because such a security interest would, as a practical matter, not materially mitigate the CM’s credit risk exposure to the Client.

It is also worth noting that, under the US FCM Model, the FCM is an “agent-trustee” which is a form of agency relationship under applicable US law, whereby the FCM holds the Client Transactions for the account of its Client as a trustee that also acts as an agent for the Client. Under the EATM, the CM holds the Client Transactions for the account of its Client(s) as a trustee.

4. *What are the benefits of the EATM for market participants?*

The EATM is critical for bolstering the capacity of CMs offering client clearing in Europe. This has placed particular strain on global systemically important banks (G-Sibs), which face additional capital charges on client clearing activity.

Capacity of CMs has become of particular importance in recent years as the number of CMs in the market reduces. It is hoped that the EATM will provide a welcome solution to this issue.



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5. *Are there any limitations on which CMs, clients and CCPs may participate in the EATM and the location of those entities?*

The governing law of the EATM arrangement is dictated by the jurisdiction of the CM. Specifically, an EATM arrangement may be used by a CM incorporated in any jurisdiction where the effect of the particular arrangement will be respected upon the insolvency of the CM. The EATM is therefore currently available to English CMs (who may offer the English Model) and German CMs (who may offer the German Model) and CMs incorporated in other jurisdictions recognising the effect of the relevant model.

The EATM is CCP neutral and can be used at any UK or EU CCP which offers the EATM. Initially, the EATM will be made available at LCH Limited ("LCH") and Eurex Clearing AG ("Eurex Clearing"). LCH and Eurex Clearing each plan to offer the English Model and German Model.

Any client, regardless of their jurisdiction may use the EATM (subject to analysis by the CCPs).

6. *Is the EATM available for all product types?*

The EATM has been designed for initial implementation in respect of OTC contracts, but with a view to its extension to exchange/venue traded contracts.

It is product agnostic.

7. *Is the EATM available for collateralised-to-market (CTM) and settled-to-market (STM) transactions?*

Yes, the EATM is available for CTM and STM transactions.

8. *Is the EATM available for indirect clearing?*

The EATM is not currently available for indirect clearing.

9. *Can a client clear under both models (EATM and Principal Model) with the same CM?*

- A Client **will not** be able to clear under both the EATM and Principal Model with the same CM at the same CCP in respect of the same CCP service.
- A Client **can** clear under both the EATM and Principal Model at different CCPs via the same CM.

- A Client **can also** clear under both the EATM and Principal Model at the same CCP via the same CM, provided that this is in respect of different CCP services offered by that CCP.
- Clients may access the same CCP service (and, therefore, the same CCP) using different CMs who may provide their clearing services through different models (the EATM or Principal Model). A Client could, therefore, be offered the EATM through one CM and the Principal Model through another CM at the same CCP (and even in respect of the same CCP service). However, in certain cases a CCP may restrict a Client from clearing at that CCP via different CMs using different models. Therefore, if that were to be the case and a Client only clears at a single CCP, it will need to elect whether it uses the EATM or Principal Model for each CCP service offered by that CCP (and in respect of which the CM provides clearing services).

10. Can clients migrate from the principal model to the EATM (and vice versa)?

Yes, Clients can migrate from the Principal Model to the EATM and vice versa. Provisions have been included in the CCA to enable this in a non-default scenario.

Following the default of a CM, Clients can port from the Principal Model to

the EATM and vice versa (see further Question 17 below).

11. How is the EATM documented? Do Clients need to enter into a new Client Clearing Agreement with their CMs?

Due to its unique nature, it is not possible to document the EATM under existing template client clearing documentation available in Europe (without substantive amendments being made to such documentation).

The FIA is publishing a new form of client clearing agreement for the EATM, based on the FIA 2018 Terms of Business, as supplemented by “Segregated Asset Terms” which set out the terms of the arrangement pursuant to which the CM will hold Transactions on behalf of its Client.

When drafting the client clearing agreement for the EATM, the existing terms of the FIA 2018 Terms of Business have been retained to the extent possible, but amendments have had to be made to accommodate the EATM (e.g. as there is no back-to-back transaction governed by the client clearing agreement, it has been necessary to create additional payment obligations under the client clearing agreement pursuant to which the Client will fund amounts due under the Transaction between CM and CCP and



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the CM will pass on amounts received from the CCP to the Client).

12. Will CMs or Clients have to make significant operational changes to accommodate the EATM (versus the principal model)?

As the EATM has not yet been fully finalised or implemented by the CCPs and CMs, it is not possible to answer this question with certainty, however it is not anticipated that CMs or Clients will have to make significant operational changes to accommodate the EATM.

However, it should be noted that, under the EATM all collateral must be transferred between CMs and Clients by way of title transfer, so this may necessitate operational changes for those CMs who currently require Clients to transfer collateral by way of security or offer a client asset arrangement in respect of collateral.

Further, depending on CMs' existing approach to maintenance of books and records, some amendments may need to be made to CMs' records to clearly record that each Client Transaction is held on behalf of their Clients (pursuant to a trustee arrangement or otherwise, according to the relevant version of the EATM being used).

13. Will there be significant changes in the regulatory reporting of transactions under the EATM (versus the Principal Model)?

As the EATM has not yet been fully finalised or implemented by the CCPs and CMs, it is not possible to answer this question with certainty, however it is anticipated that CMs and Clients will report Client Transactions under the EATM in the same manner as under the Principal Model (despite the lack of a back-to-back transaction between the CM and Client).

14. Will the EATM necessitate significant changes to CCP rulebooks and operational processes?

As the EATM has not yet been fully finalised or implemented by the CCPs, it is not possible to answer this question with certainty, however it is not anticipated that CCPs will have to make significant operational changes to accommodate the EATM.

However, as Client Transactions subject to the EATM cannot be commingled in an account with Client Transactions under the Principal Model, it is anticipated that CCPs will need to set up separate client accounts for Client Transactions subject to the EATM. These accounts should be

able to mirror the CCP's current account offering for the Principal Model (as the EATM does not require a different level of segregation or account set-up than the Principal Model).

As noted in Question 9 above, if a CCP were to restrict a Client from clearing at that CCP via different CMs using different models, a Client would have to elect whether to clear under the EATM or Principal Model at a CCP.

15. What constitutes “trust property” under the EATM?

The “trust property” (or its equivalent) under each version of the EATM comprises the claims that a CM has against the CCP in respect of Client Transactions. In more precise terms, the trust property will be each claim that a CM has against a CCP in respect of each such Client Transaction, including any right of the CM to any payment or delivery under such Client Transactions and any right of the CM to the transfer or re-transfer of margin either in respect of an individual Client Transaction or multiple Client Transactions.

For the avoidance of doubt, any assets or cash (whether payments under Client Transactions or transfers of collateral) transferred to the CM by a CCP will not be trust property (other than, in the case of the English Model, for the very brief

period when first received by the CM from the CCP). On receipt of such assets or cash, the CM will assume a contractual delivery obligation to the relevant Client for equivalent assets under the client clearing agreement with such Client (and, in the case of the English Model, such assets or cash will immediately cease to be subject to the trustee arrangement).

Under the English Model, there will be a single trustee arrangement over all Client Transactions entered into with all CCPs by a single CM on behalf of each of its EATM Clients (i.e. there is one trust per CM, rather than one trust per Client, account or CCP).

Under the German Model, there will be a trust per account at each CCP.

16. How is client margin/collateral treated under the EATM?

Collateral will be transferred between the CM and CCP in accordance with the CCP's rulebook, which could be by way of security or title transfer.

Collateral will be transferred between the CM and Client by way of title transfer. There is currently no ability for Clients to transfer collateral to their CMs under the EATM by way of security or for CMs to offer a client asset solution in respect of transfers of collateral. Transfers of collateral between the CM and Client



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should operate (from an operational perspective) in the same manner as any transfers by way of title transfer would under the Principal Model, although there are some legal differences in the way transfers of collateral are treated under the EATM.

Under the EATM client clearing agreement, the Client is required to transfer to the CM such amounts by way of margin as the CM may demand. For these purposes, calls from the CM to the Client for payments due from the CM to the CCP under the Client Transactions are also included in the margin calls. To the extent the CM has not transferred equivalent margin to the CCP (in order to satisfy any obligations of the CM to transfer collateral to the CCP in respect of any Client Transactions) or made payments due under the Client Transactions to the CCP, the CM will have a contractual obligation to account to the Client for margin equivalent to the amount it receives from the Client. If the CM has transferred equivalent margin to the CCP, it will cease to have a contractual obligation to account to the Client for equivalent margin, as the Client's rights in respect of such equivalent margin will be reflected in its rights to the trust property. However, if the CM then receives margin (or payments under the Client Transactions) from the CCP in respect of the Client's Client Transactions, it will have a contractual obligation to account

to the Client for margin or payments equivalent to the margin or payments received from the CCP.

As noted in the answer to Question 15, although the CM's right to the transfer of collateral will be held for the Client subject to the EATM trustee arrangement, the collateral actually transferred by the CCP to the CM will not be held subject to the EATM trustee arrangement (other than, in the case of the English Model, for the very brief period when first received by the CM from the CCP).

To the extent that the CM funds excess collateral on behalf of one or more Clients out of its own resources and that excess collateral is recorded to a client account at the CCP (but attributed to the CM in the CM's books and records), the CM will have a beneficial interest under the EATM trustee arrangement equal to that which derives from such excess collateral and will not be required to account to the Client upon receiving collateral equivalent to such excess collateral from the CCP.

17. What happens on: (i) a client default (including porting and leapfrog payments), (ii) a CM default and (iii) a CCP default under the EATM?

A. Client Default

Under the EATM, the CM has the right to deal with Client Transactions as

principal on the default of the Client. It can therefore take any of the steps it typically would under the Principal Model should its Client default (e.g. moving the Client Transactions to its house account, entering into offsetting transactions with the CCP).

The CM will account to the Client for any amounts it receives from the CCP in respect of the Client Transactions or gains that it makes from liquidating or closing out the Client Transactions of a defaulting Client and will require payment from the Client (or otherwise deduct such amount from the Client's collateral balance) for any costs or losses incurred by the CM in respect of such Client Transactions, including any amounts owed to the CCP by the CM.

B. CM Default

As under the Principal Model, on the default of the CM, the CCP will try to port the Client Transactions and associated collateral held by the CCP to another CM of the Client. Client Transactions and associated collateral can either be ported to a CM and maintained under the EATM or be ported and become subject to the Principal Model.

If porting is not possible, the Client Transactions will be closed out. In accordance with its obligations under EMIR or UK EMIR, the CCP will be required to transfer any amounts owed

by the CCP in respect of the terminated Client Transactions directly to the Client. If this is not possible, the CCP will be required to transfer any such amounts to the CM for the account of the Client. If any amounts are owed from the Client to the CM, the Client will be required to pay the CM (or such amounts will be deducted from the collateral balance held by the CM and owed by the CM to the Client) in accordance with the terms of the client clearing agreement.

C. CCP Default

Upon the default of the CCP, any amount owed by the CCP to the CM will be held by the CM subject to the EATM trustee arrangement on behalf of the Client. Once payment is made by the CCP to the CM, the CM will be under a contractual duty to account for such amount to the Client pursuant to the terms of the client clearing agreement.

If any amounts are owed from the CM to the CCP, the CM may claim such amounts from the Client under the client clearing agreement (or such amounts will be deducted from the collateral balance held by the CM and owed by the CM to the Client).

18. How does close-out netting operate under the EATM?

Close-out netting between the CCP and CM in respect of the Client Transactions will operate in accordance with the provisions of the CCP rulebook. The EATM trustee arrangement is over the rights of the CM against the CCP under the CCP's rulebook in respect of the Client Transactions (and associated collateral) and designed in a way that maintains mutuality between the CM and the CCP for purposes of close-out netting and set-off. Therefore, the EATM trustee arrangement should not impact the operation of netting or set-off under the CCP rulebook.

There will be no close-out netting in respect of amounts owing under the client clearing agreement between the CM and Client because the client clearing agreement does not give rise to separate underlying transactions between the CCP and the CM. Instead, the CM will maintain a running balance of what it owes to the Client, or what the Client owes to it (referred to in the client clearing agreement as the "Title Transfer Balance"). This will cover all payments, margin and other amounts owing between the CM and Client. The liability of the CM and the Client to each other in respect of the Title Transfer Balance reflects the net liability between the CM and the Client.

19. How is the EATM compliant with the EMIR account types and segregation requirements?

Under the English Model, although there is a single trust per CM, each Client has a beneficial entitlement in trust assets equal to: (x) the CM's rights (which include rights in respect of collateral) against any CCP in respect of Client Transactions recorded to any individual segregated accounts ("ISAs") attributable to that Client; and (y) the portion of the rights of the CM against any CCP in respect of Client Transactions recorded to any omnibus segregated accounts ("OSAs") attributable to that Client. The beneficial entitlement of each Client reflects the segregation dictated by EMIR (i.e. that any assets held in an ISA on behalf of a Client are segregated from the assets of the CM and all other Clients of the CM and that any assets held in an OSA on behalf of a Client are commingled with other Clients in that account but otherwise segregated from the assets of the CM and all other Clients of the CM).

Under the German Model, there will be a trust per account at the CCP. Each Client's beneficial entitlement in the trust assets comprising each trust will be the same as that described above for the English Model.

Such beneficial entitlement of each Client is determined by reference to the CM's

books and records showing its Clients' entitlements to Client Transactions held in the ISAs and OSAs at the CCP. If the beneficial entitlement of the Client is correctly recorded, this should be sufficient to comply with the EMIR segregation requirements.

20. Are the FIA commissioning new legal opinions for the EATM and what will they cover?

Yes, the FIA are commissioning new legal opinions which will cover the enforceability of the EATM client clearing agreement, including the trustee arrangement, close-out provisions and margin provisions.

Opinions will be commissioned covering enforceability of the EATM pre and post insolvency of the Client, CM and CCP for each jurisdiction in which Clients and CMs may be located.



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Please contact eatm@fia.org with any further questions not covered in this FAQ.

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BRUSSELS

Office 502
Square de Meeûs 37
1000 Brussels

LONDON

Level 28
One Canada Square Canary Wharf
London E14 5AB

SINGAPORE

Level 49
One Raffles Quay North Tower
Singapore 048583

WASHINGTON, DC

2001 K Street NW
Suite 725, North Tower
Washington, DC 20006