

A close-up photograph of an hourglass with blue sand, set against a solid blue background. The hourglass is positioned vertically, with the top bulb containing a small amount of sand. The sand is falling through the narrow neck into the bottom bulb. The lighting is soft, highlighting the texture of the sand and the glass.

This webinar will begin shortly.

FIA



FIA Webinar (1/2)

FIA Documentation

March 2025



Presenters

Host:

Mitja Siraj, VP Legal, Europe, FIA

Panelist:

Jeremy Walter, Partner, Clifford Chance LLP

Clemens-Emanuel Gutwenger, Senior Associate, Clifford Chance LLP

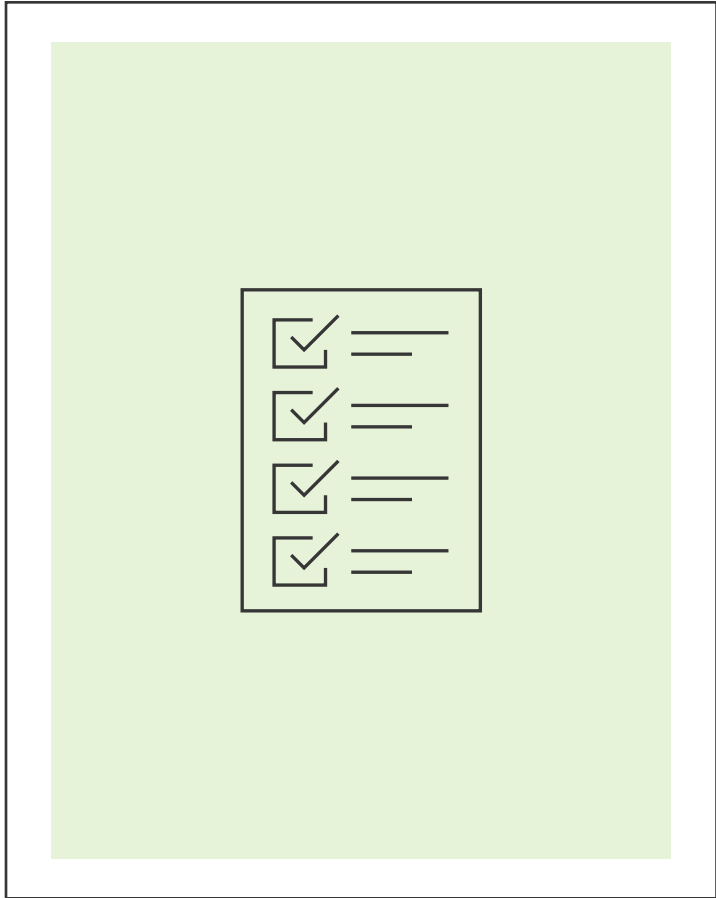
Richard Whiteaway, Senior Associate, Clifford Chance LLP



Reminders

- The webinar will be recorded and posted to the FIA website within 24 hours of the live webinar.
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Agenda



1 Overview of FIA Documentation Services

2 FIA Terms of Business 2018

3 FIA Indirect Clearing Terms



Section

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Overview of FIA Documentation Services

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FIA Indirect Clearing Terms



FIA Documentation Services

FIA Maintains Three Separate Documentation Services:

- European Documentation Library
- US Documentation Library
- CCP Risk Review.

The Three 'Libraries' are Subject to:

- **Different access models**
- Include **different documents**; (legal opinions, template agreements, risk disclosures, CCP rule summary/analysis)
- Serve **different audiences**
- Satisfy **different regulatory requirements and objectives.**

FIA Documentation Services are:

- Available to FIA members and non-members
- Hosted on FIA Documentation Platform – www.fiadocumentation.org
- Some are only available by subscription/purchase.

Overview of FIA Documentation (NON-US)

Full Document matrix

	Clearing Member (CM) – Direct Client (DC) Arrangement	Direct client (DC) – Indirect client (IC) Arrangement	Clearing Member (CM) – CCP Arrangement
Agreements	<p>FIA Terms of Business 2018 – Version 2.0 (updated 2021)</p> <p>User Guide (updated 2023)</p> <p>Update Patch 2021</p> <p>FIA CM-DC Indirect Clearing Schedules</p> <p><u>Pre-2018 ToBs:</u></p> <p>FIA Clearing Module</p> <p>FIA 2017 Regulatory Patch</p> <p>FIA CM-DC Indirect Clearing Modules</p> <p><u>Other:</u></p> <p>ISDA/FIA Master Regulatory Reporting Agreement (2023)</p> <p>ISDA/FIA Cleared Derivatives Execution Agreement (non-US)</p> <p>ISDA/FIA Client Cleared OTC Derivatives Addendum (non-US)</p>	<p>FIA Terms of Business 2018 – Version 2.0 (updated 2021)</p> <p>User Guide (updated 2023)</p> <p>FIA DC-IC Indirect Clearing Schedules</p> <p><u>Pre-2018 ToBs:</u></p> <p>FIA DC-IC Indirect Clearing Modules</p>	
Legal Opinions	<p>Netting opinions</p> <p>Collateral opinions</p> <p>CRR Article 305 opinions</p>	<p>Netting opinions</p> <p>Collateral opinions</p>	<p>CCP opinions</p> <p>IAS 32 opinions</p>
Disclosures & Questionnaires	<p>EMIR 3.0 disclosure templates (2024)</p> <p>EU CCPRRR disclosure templates (2023)</p> <p>FIA/ISDA EMIR Article 39 risk disclosure</p> <p>FIA CM indirect clearing risk disclosure</p> <p>FIA IC jurisdictional legal due diligence questionnaires</p>	<p>FIA DC indirect clearing risk disclosure</p> <p>EMIR 3.0 disclosure templates (2024)</p> <p>EU CCPRRR disclosure templates (2023)</p>	
Other	<p>Are you a US FCM? Please visit the FIA US Documentation Library</p>		<p>CCP Risk Review</p>



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Overview of FIA Documentation (NON-US)

FIA Terms of Business 2018

	Clearing Member (CM) – Direct Client (DC) Arrangement	Direct client (DC) – Indirect client (IC) Arrangement	Clearing Member (CM) – CCP Arrangement
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FIA Terms of Business 2018 – Version 2.0

Scope

Service

- Execution of ETD
- Clearing of ETD and OTC derivatives – direct client clearing level.

Product

- Cleared derivatives only
- Uncleared OTC derivatives, equities, fixed income, etc. not covered.

Counterparty

- Clearing member providing clearing services to its direct clients
- Direct clients providing clearing services to their indirect clients (when used with the DC-IC Indirect Clearing Schedule)
- No separate retail or ECP terms.

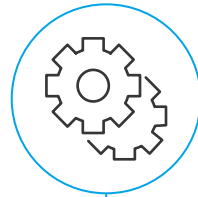
FIA Terms of Business 2018

Building blocks structure



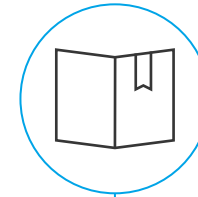
Base Agreement

- 32 Sections – Core Provisions highlighted in yellow
- Annex
- Table A – Agreed CCPs
- Execution Schedule



Schedules and Optional Provisions (in User Guide)

- Agency Schedule
- Trustee Schedule
- Custody Schedule
- *Indirect Clearing Schedules*
- Commodities Provisions
- Two-way Default Provisions
- Two-way Margining Module
- OTC Clearing Provisions
- General Optional Provisions



Other Sections of User Guide

- Overview of the 2018 Terms of Business
- Clause guide to the 2018 Terms of Business
- Retail Client guidance notes
- Sections covering regulatory developments as they relate to FIA Terms of Business 2018, such as FRANDT, EU CCPRRR, BRRD and indirect clearing.



FIA Terms of Business 2018

Key provisions of the Base Agreement

1

Relationship, service and settlement provisions

2

Margin and collateral

3

Reps, warranties and covenants

4

Termination events, close-out netting, payment netting and set-off

5

Limitation of liability, limited recourse, indemnity, confidentiality, information collection, data protection and FATCA

6

Voluntary termination, governing law/ jurisdiction and interpretation



RECENT DEVELOPMENTS

FIA continuously monitors EU and UK regulatory developments as they may impact our documentation, including FIA terms of business

USER GUIDE UPDATES (2023)

In 2023, we updated the User Guide to the FIA Terms of Business 2018 (Version 2.0), as follows:

- optional language for the Clause 9.4 (Retained Margin);
- amendments to the two-way default provisions in respect of indirect clearing arrangements;
- a new Bank Recovery and Resolution Directive (BRRD) section;
- a new Indirect Clearing section; and
- a new EU CCP Recovery and Resolution Regulation (EU CCPRRR) section; and
- consequential amendments.

The updated User Guide to the FIA Terms of Business 2018 (Version 2.0) in clean and blackline can be found [here](#) and is available to all existing subscribers free of charge.

EMIR 3.0 and CCPRRR DISCLOSURE TEMPLATES (2024 & 2025)

- FIA has worked with members and external counsel to produce [industry standard disclosure templates](#) that help clearing firms comply with certain requirements in EU CCPRRR and EMIR 3.0.
- Published documents address requirements on clearing firms set out in EU CCPRRR Articles 9(23), 87(7) and 63, as well as EMIR Articles 7c(1), 38(8) and 38(9).

ANALYSIS OF IMPACT OF REGULATORY CHANGE ON FIA DOCUMENTATION (2023, 2024 & 2025)

- [Consumer Duty](#) (2023)
- [DORA ICT Services Memo](#) in the context of FIA ToBs 2018 (2024)
- [Operational Continuity \(OCIR\) Related Requirements in Respect of Clearing Services](#) (2023)
- [FIA ToBs 2018 Review for Operational Resilience Scenarios](#) (2024)



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FIA Indirect Clearing Terms

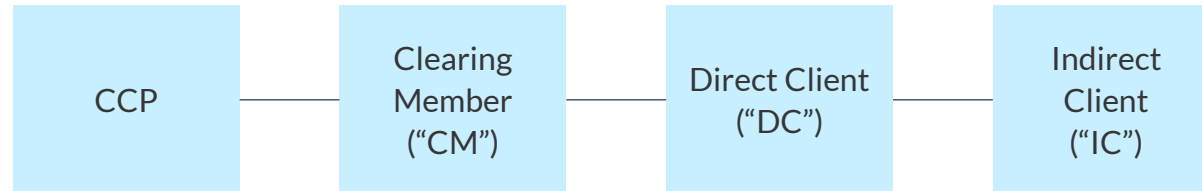
Overview of FIA Documentation (NON-US)

FIA Terms of Business 2018

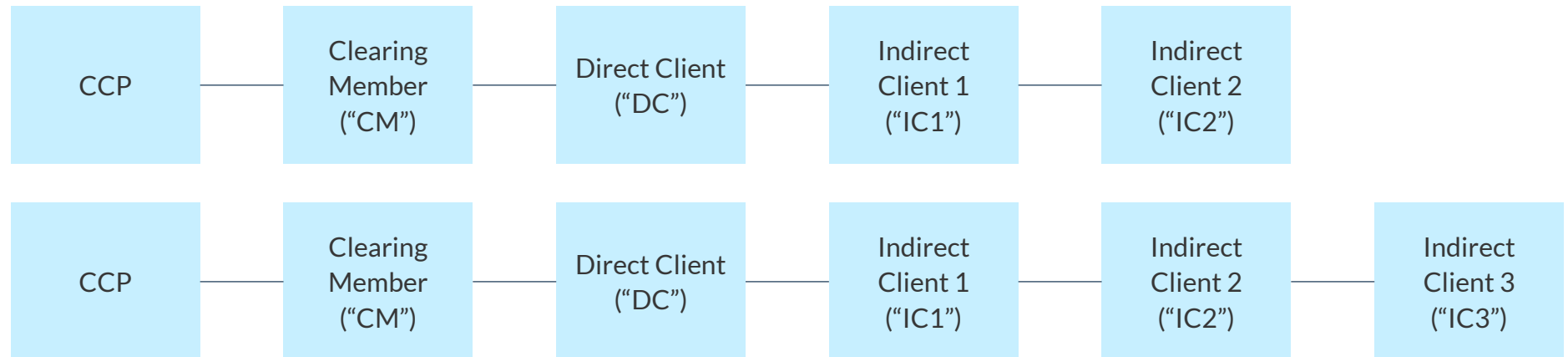
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Other	Are you a US FCM? Please visit the FIA US Documentation Library		CCP Risk Review

Indirect clearing chains

Four-party Chain



Longer Chain Combinations

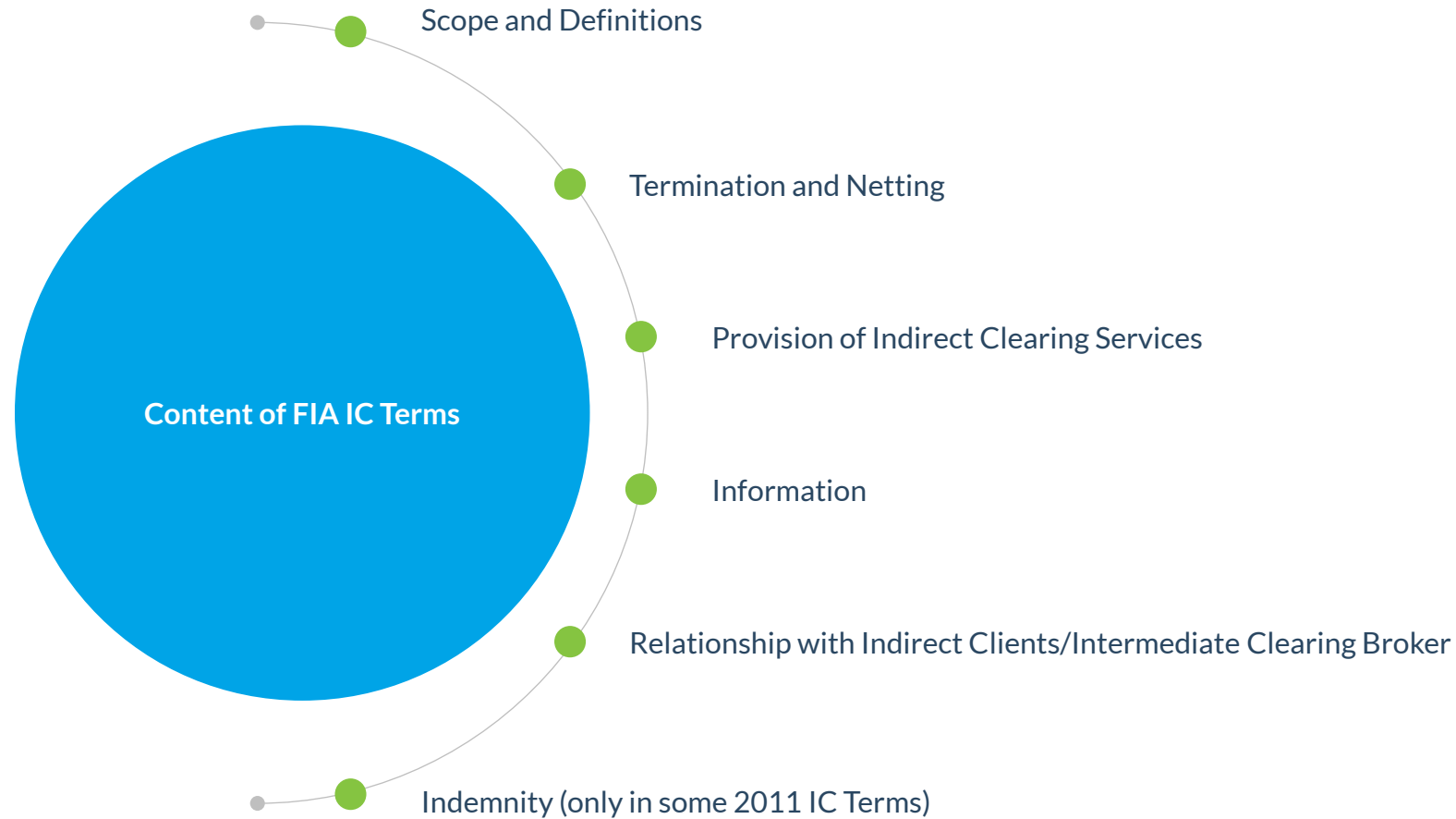


The MiFIR and EMIR Indirect Clearing RTS set out the conditions under which indirect clearing services can be provided.

There are additional restrictions on longer chains – more detail is set out in the longer chains memorandum. The Indirect Clearing RTS prohibit longer chains which extend past IC3.

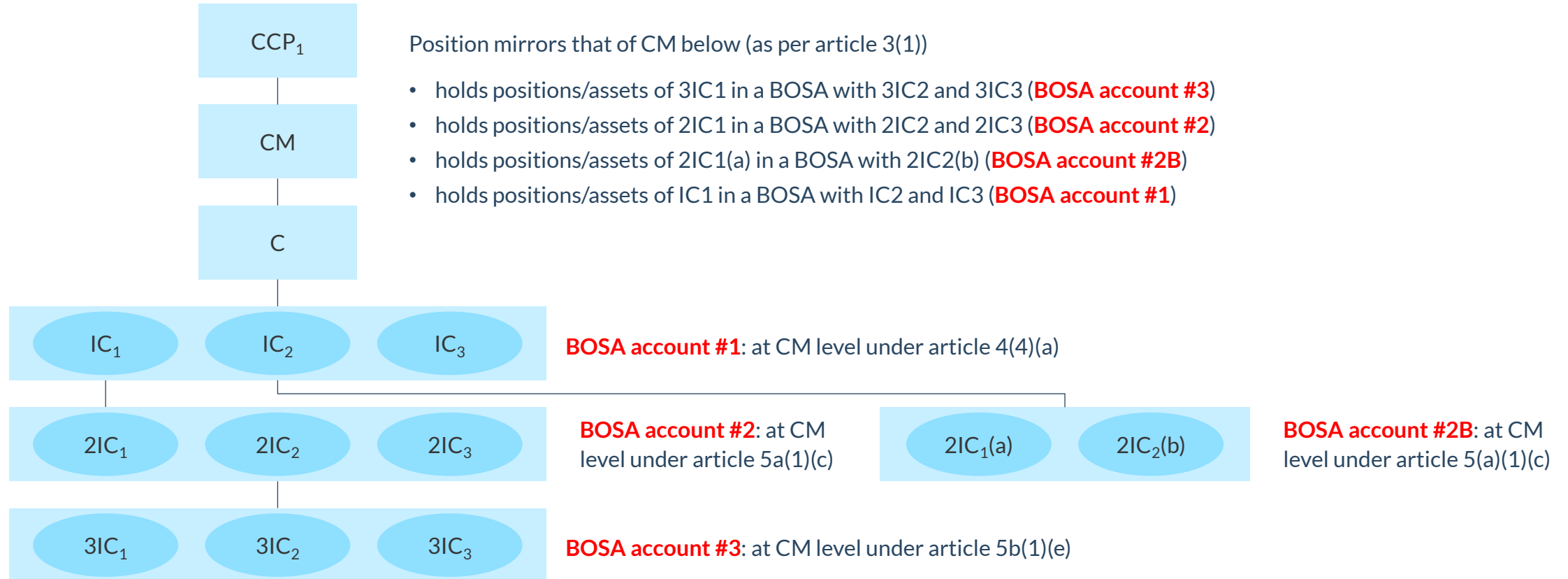
Content of FIA Indirect Clearing Terms

Content has been designed to comply with RTS.



Longer chains

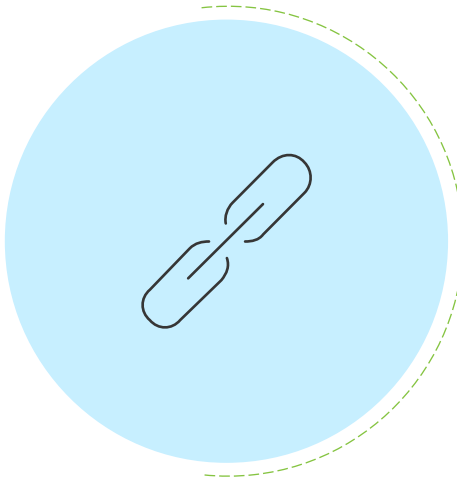
IC structure (BOSA only)



At each level separate records have to be kept of BOSA account at level below and prop positions.

Longer chains documentation

BOSA only



- 6 documents, 3 for 2018 ToBs, 3 for 2011 PCA.
- Cater for longer chains under articles 6 and 7 RTS – terms amended to reflect RTS longer chains requirements.
- **New FIA IC Terms structure (2021 and 2023) – Longer chain IC Terms for use in multiple capacity scenarios**
 - **CM-DC level is the top-tier document**
 - **DC-IC level operates as end of chain document**
 - **Created new middle links document that can be used at any level in between.**
- Netting sets concept retained as per old documents – by reference to CCP level.
- What do I need to look out for when using these documents?
 - Length of chain – consider whether requirements of article 7(1)(b) and 6(2) are met.
 - Where am I in the chain?
 - Make sure that all my documentation works together – for example, look at documents with ICB.
 - What capacity am I acting in?
- For 2011 middle link document, addition of some FIA Clearing Module mechanics relating to calculation of CSTA (which at CM-DC module is done through use of FOA Clearing Module but at this level Firm is not acting as CM so provisions won't be in place).

FIA Indirect Clearing Terms

Overview

	FIA Professional Client Agreement 2011				FIA Terms of Business 2018			
	CM-DC	DC-IC1	IC1-IC2	IC2-IC3	CM-DC	DC-IC1	IC1-IC2	IC2-IC3
BOSA-only Terms	✓	✓	N/A	N/A	✓	✓	N/A	N/A
BOSA/ GOSA Terms	✓	✓	N/A	N/A	✓	✓	N/A	N/A
Longer chains CM-DC Terms ^[1]	✓	N/A	N/A	N/A	✓	N/A	N/A	N/A
Longer chains 'middle links' Terms ^[2]	N/A	✓	✓	N/A	N/A	✓	✓	N/A
Longer chains 'end of chain' Terms ^[3]	N/A	✓	✓	✓	N/A	✓	✓	✓

^[1] These terms cover the following links in the chain: CCP - CM - DC - IC1 - IC2, CCP - CM - DC - IC1 - IC2 - IC3 and also CCP - CM - DC - IC.

^[2] These terms cover the following links in the chain: CCP - CM - DC - IC1 - IC2 and CCP - CM - DC - IC1 - IC2 - IC3.

^[3] These terms cover the following links in the chain: CCP - CM - DC - IC1 - IC2, CCP - CM - DC - IC1 - IC2 - IC3 and also CCP - CM - DC - IC.

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Thank you for joining us!

Upcoming Webinar:



CFTC Self-Reporting, Cooperation, and Remediation Advisory: A Game-Changer
10:00 – 11:00 AM ET



Exchange Briefing: ASX
09:00 – 10:00 AM AEDT



Looking Forward: Shifting Priorities at the CFTC and SEC
10:00 – 11:00 AM ET

FIA

The logo consists of three letters: 'F', 'I', and 'A'. The 'F' is a solid dark grey. The 'I' is a solid dark grey. The 'A' is formed by two overlapping shapes: a light green triangle pointing upwards and a light blue triangle pointing downwards. The background features large, overlapping geometric shapes in light green, light blue, and light grey.