



## **INSTRUCTION B02/2014**

### **Requirements for Clearing Members**

20.March.2023

## **Versions Index**

### **24.Jun.2014**

Initial Version.

### **14.Mar.2016**

Elimination of the provisions related to bank guarantees and credit lines.

### **13.May.2016**

Modification of the Service provided by OMIClear from “MIBEL Derivatives Market” to “Service on Power Derivatives Contracts”

### **02.Nov.2017**

Introduction of a new requirement regarding the provision of information by the Clearing Members, consisting on their overall exposure to other Central Counterparties.

### **24.Nov.2017**

Instruction update following the inclusion of the Service on Natural Gas Derivatives Contracts.

### **10.Apr.2019**

Introduction of a new requirement regarding the termination request by a Clearing Member.

### **20.Mar.2023**

Introduction of a new requirement for entities applying to assume the role of General Clearing Member.

## **DISCLAIMER**

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Pursuant to articles 30, 31 and 32 of its Rulebook, OMIClear approves this Instruction, which sets the requirements for the admission of Clearing Members wanting to operate in the Service on Power Derivatives Contracts and in the Service on Natural Gas Derivatives Contracts.

### Admission Requirements for Clearing Members

1. The access to the capacity of Clearing Member (CM) is granted to the Entities that meet the following requirements:
  - a) Participate in the TARGET2 Financial Settlement System or enter into a Financial Settlement Agreement with a Financial Settlement Agent;
  - b) Have at their disposal suitable human resources to perform the functions as Clearing Member, in accordance with Section III of OMIClear Rulebook;
  - c) Have at their disposal technical and operational resources appropriate to perform the functions as Clearing Member, in accordance with Section III of OMIClear Rulebook;
  - d) Have entered into a Clearing Member Admission Agreement with OMIClear, as provided in Model C04 in Appendix I;
  - e) Have signed, with OMIClear, the Financial Guarantee Agreement, involving, as appropriate, the fiduciary transfer or the financial pledge, whose draft is made available by OMIClear.
2. The Agreements set out in paragraphs d) and e) above shall be signed in Portuguese, and Spanish and English translations may be provided for purely indicative purposes.
3. To access the category of General Clearing Member, in addition to the provisions in paragraph (1), the Entities must also meet the following specific requirements:
  - a) Be credit institutions or financial intermediaries;
  - b) Have financial resources and a risk level as provided for in this Instruction;
  - c) Establish criteria and arrangements to allow its clients to access the services of OMIClear.
4. To access the category of Direct Clearing Member, in addition to the provisions in paragraph (1), the Entities must also meet the following specific requirements:
  - a) Be legal persons eligible under any of the following categories:
    - i. Qualified investors, as defined in paragraph (1)(a) to (h) of Article 30 of the Portuguese Securities Code;
    - ii. Entities of the Energy Sector;
    - iii. Entities that undertake to only clear the Positions of Energy Sector Entities with which they are in a control or group relationship, in accordance with Article 21 of the Portuguese Securities Code.
  - b) Have financial resources and a risk level as provided for in this Instruction.

### Admission Procedures for Clearing Members

5. For the purpose of obtaining the Clearing Member status, candidates must demonstrate compliance with the admission requirements by submitting the following information, in addition to the requirements established in OMIClear Rulebook:
  - a) Documents attesting that the admission requirements provided accordingly in paragraph (1)(a)(b) and paragraphs (2) and (3) are met, as appropriate;

- b) A statement, included in the Clearing Member admission request, by which the candidate proves or declares that it have the human resources technical and operational conditions provided, respectfully, in paragraphs (1)(b) and (1)(c).
- 6. To complete the admission process, candidates are also required to pay the admission fees and deposit sufficient Guarantees to cover the initial contribution to the Clearing Fund, in accordance with the specific OMIClear Instruction.

#### Request for Termination as Clearing Member

- 7. The capacity of being a Clearing Member may terminate at the initiative of the interested party when there are no open positions cleared by the said member and provided that the request is submitted to OMIClear, in writing, within at least 20 (twenty) Clearing Days prior to the termination date.
- 8. Regarding the General Clearing Members, the termination request mentioned in the previous paragraph must be preceded by a termination request of the agreements that have been signed with their clearing clients, Registration Agents or Clients of OMIClear, with a minimum pre-notice of 90 (ninety) Clearing Days.
- 9. Following the request for termination by the Clearing Member, all amounts owed by the Member to OMIClear will immediately be demandable and fully paid. The Member has no right to recover the amounts paid in that capacity, except as regards the contribution to the Clearing Fund, which will be returned in case it has not been used, until the termination date.

#### Clearing and Settlement Manager

- 10. Candidates for Clearing Members must appoint at least one Clearing and Settlement Manager to ensure the operational representation of the Clearing Member with OMIClear and the other Members in respect of registered Positions.
- 11. More than one Clearing and Settlement Manager may be registered, each having equal individual acting capacity.
- 12. Clearing Members may replace the Clearing and Settlement Manager, but the replacement only takes effect after OMIClear is notified in writing and approves it.
- 13. Any alteration in the names and professional addresses of a Clearing and Settlement Manager only takes effect after a specific form is completed in the Members Corner on the Website.
- 14. The Clearing Member will ensure that a Clearing and Settlement Manager is available during and until the end of the clearing and settlement procedures on the Clearing Day.
- 15. Notwithstanding any specific terms that may be set by OMIClear, if a Clearing and Settlement Manager is accepted, it will be assumed that the candidate:
  - a) Is fit and proper for performing its functions;
  - b) Has passed the OMIClear exam or, on a reasoned request, is waived from making such exam, based on the proven professional experience in similar functions.
- 16. The registration terms and conditions, including the requirements for the exam referred to in paragraph (14)(b) are defined by a specific Instruction.
- 17. OMIClear may, at any time, suspend the registration of a Clearing and Settlement Manager for a period of no more than six months, or terminate the registration in the following conditions:
  - a) Non-compliance of conditions required for its registration, under paragraph (15);
  - b) Violation of its duties established in OMIClear's Rules;
  - c) At a written request submitted by the Clearing Member;

- d) Following a written request submitted by the Supervision Entity pursuant to National Regulations.

### Clearing and Settlement Operators

- 18. Clearing Member applicants must appoint at least one person to operate as a Clearing and Settlement Operators, by completing a specific form on the Members Corner on OMIClear's Website, identifying their names and contacts.
- 19. Clearing Members will keep the information referred to in the preceding paragraph constantly updated, notifying OMIClear in writing, sufficiently in advance, of the termination of functions of the Operators and the appointment of new Operators.
- 20. OMIClear reserves the right to refuse the assignment of Clearing and Settlement Operator capacity to any person appointed to that effect, informing, in writing, the applicant or the Clearing Member its decision and the reasons thereof.

### Capital Requirements

- 21. To acquire and maintain the status of Direct Clearing Member (DCM) Entities must hold, at all times, equity capital to the amount of at least 7 (seven) million euros.
- 22. When the DCM fails to comply with the provision set up in the preceding paragraph, but own equity capital equal to or more than 5 (five) million euros, it must provide an Additional Guarantee with the value of the difference to the 7 (seven) million euros.
- 23. The capital requirements defined for the DCM can be satisfied by a third entity, provided it satisfies the following conditions:
  - a) Holds, at least, 90% of the DCM capital;
  - b) Explicitly states, in a comfort letter accepted by OMIClear, that in case of a default by the DCM, if required, it will assume the responsibilities of the DCM with OMIClear arising from the management, by OMIClear, of a default;
  - c) Meets the capital requirements, in accordance with paragraphs (21) or (22).
- 24. For certain types of qualified investors, OMIClear may replace or complement the concept of equity capital with one or several other measures more relevant to them, including assets under management in the case of collective investment undertakings.
- 25. General Clearing Members (GCM) must hold, at all times, equity capital to the amount of at least 20 (twenty) million euros.
- 26. When the GCM fails to comply with the provision set up in the preceding paragraph, but owns equity capital equal to or more than 15 (fifteen) million euros, it must provide an Additional Guarantee with the value of the difference to the 20 (twenty) million euros

### Risk Requirements

- 27. Based on its credit risk management policy, OMIClear:
  - a) Evaluates internally and on a regular basis the credit risk of its Clearing Members;
  - b) Sets exposure limits of each Clearing Member that confronts with the induced exposure as such, adding other responsibilities assumed before OMIClear;
  - c) May determine risk mitigating measures of the Clearing Member, namely with the provision of an Additional Guarantee defined by OMIClear and / or specific requirements regarding the collateral provided as Guarantee;

- d) Being requested, provides the obtained results to the Clearing Member.
28. Only Clearing Members who have low credit risk are accepted, not being accepted those whom, in the scale 1 to 8 established in the credit risk management policy by OMIClear, have been assigned a Risk Level (RL) of 8.
29. If a Risk Level of 6 or 7 has been assigned to a Clearing Member, it shall deposit or reinforce the Additional Guarantee for an amount, determined in accordance with that Risk Level, the mean value of the Initial Margins set by them and a minimum value, as expressed in the following Table.

RL	Value of the Additional Guarantee	
	% of the mean of the Initial Margins	Minimum Value (€)
6	20%	200.000
7	50%	500.000

30. Notwithstanding OMIClear can update the calculation in a different moment, the mean value of the Initial Margins, referred to in the preceding paragraph, is updated in the first five (5) Clearing Days of January, April, July and October, based on the Initial Margins owed by the Clearing Member in the quarter prior to the calculation date.

### Change in the Financial Capacity and Risk

31. Any deterioration of the financial capacity or of the credit risk, namely assessed by the Rating provided by an external agency of a Clearing Member or of a third entity that guarantees it, namely under the terms in paragraph (23), with meaning or impact on the admission conditions:
- a) Must be reported to OMIClear within 3 (three) Clearing Days as from the date of change;
  - b) OMIClear evaluates the impact of the change as to the need of an Additional Guarantee, and informs the CM;
  - c) The Clearing Member has 10 (ten) Clearing Days following the notification referred to in paragraph (30)(b) to set up or update, if necessary, the Additional Guarantee.
32. Notwithstanding the provisions in the preceding paragraphs, if the economic and financial situation of a Clearing Member significantly changes, OMIClear may determine the application of terms different from the ones stipulated in this Instruction.
33. If a Clearing Member no longer meets the equity capital and/or risk requirements, and/or its economic and financial situation significantly changes, and according to the evaluation by OMIClear no longer fits the admission requirements set, the Clearing Member loses the capacity to act as such, and may be suspended or excluded from OMIClear, and OMIClear will inform it of such fact.
34. Regardless of the communication to be made by the holders of OMIClear registration accounts offset by the Clearing Member, taking note of their loss of offsetting, following the communication referred to in paragraph (32), the Clearing Member must adopt the following procedures, if applicable:
- a) Immediately report the matter to its Clients so that they can, within no more than 30 (thirty) Clearing Days as from the said communication of OMIClear, close or transfer its Positions to another Clearing Member who will ensure the offsetting of the Positions;

- b) Within the same period, close or transfer its Positions to a Clearing Member who will ensure the offsetting of its Positions.
- 35. If, following a process as defined in paragraph (33), Positions are found to be registered with the Clearing Member at the end of the deadline referred to therein, a default is said to exist and the Positions will be dealt with accordingly.

### Provision of Information

- 36. The Clearing Members must report the information on their activity and quarterly financial results to OMIClear, within 30 (thirty) Clearing Days following the end of the corresponding quarter.
- 37. When the equity capital of the Clearing Member is 5 (five) times greater than the limits referred to in paragraphs (21) and (25), reporting as mentioned in paragraph (35) may be waived, but the Clearing Member must always provide it at the request of OMIClear.
- 38. The Clearing Members must also provide OMIClear with the annual audit financial statements, and half-yearly statements, if applicable, within 20 (twenty) Clearing Days following the approval of the competent Board.
- 39. The information reporting referred to in the preceding paragraphs must be provided in the Members Corner on the OMIClear Website.
- 40. Whenever the Clearing Member benefits from the fact of being integrated into a group and be guaranteed by a third entity, namely according to the provisions in paragraph (22), the Clearing Member is responsible for attaching the information of the third entity to its own.
- 41. The Clearing Members must also report to OMIClear, within the period established in paragraph (38) the information on the overall exposure to other Central Counterparties, with reference to the end of each year, in accordance with Model C40 in Appendix II.
- 42. The information referred to in the preceding paragraph must be updated within 30 (thirty) Clearing Days from the date to which the new information relates, whenever the values show variations of more than 15% in relation to the values previously reported.

### Sanctions

- 43. OMIClear will apply a warning in the event of a delay in sending the information referred to in paragraphs (36), (38), (40), (41) and (42) in due time.
- 44. After the fourth warning given, a financial sanction will be cumulatively owed in the amount of 1,000 (one thousand) euros per warning.
- 45. The accumulation of warnings may give rise to the suspension or even exclusion of the CM.

### Entry into Effect

- 46. This Instruction has been communicated to CMVM on February, 24<sup>th</sup> 2023 and enters into effect on March, 20<sup>th</sup> 2023.

*The Board of Directors*

## Appendix I

### Model C04

#### Clearing Member Admission Agreement

Between:

OMIClear, C.C., S.A., with Head Office at Avenida Casal Ribeiro nº 14 – 8º, 1000-092 Lisboa, Portugal, share capital of € 7.500.000,00, registered at the Lisboa Commercial Registry under sole taxpayer reference number 506956318, hereby represented by \_\_\_\_\_ (*name*), \_\_\_\_\_ (*position*) hereafter designated as FIRST PARTY,

and

(...), with head office at \_\_\_\_\_, and a share capital of \_\_\_\_\_, company number \_\_\_\_\_, registered in the \_\_\_\_\_ Commercial Registry Office under the number \_\_\_\_\_, represented in this act by \_\_\_\_\_ (*name*), \_\_\_\_\_ (*position*) hereinafter SECOND PARTY.

Whereas:

1. The FIRST PARTY is the managing entity acting as Central Counterparty and Settlement System of Positions registered with it;
2. The SECOND PARTY satisfies all the requirements set in OMIClear's Rules in order to perform the duties of \_\_\_\_\_ [*category: Direct or General*] Clearing Member;
3. The SECOND PARTY participates in the Settlement Systems used by the FIRST PARTY.

or

4. The SECOND PARTY has entered into a Financial Settlement Agreement with a Financial Settlement Agent.

This Agreement is made and entered into and is governed by the following clauses:

#### FIRST CLAUSE

The SECOND PARTY has the right to operate as \_\_\_\_\_ [*category: Direct or General*] Clearing Member with the FIRST PARTY, performing the duties and taking on the responsibilities laid down in OMIClear's Rules and in this Agreement.

#### SECOND CLAUSE

1. The SECOND PARTY represents and warrants to the FIRST PARTY that:



- a) It is an entity incorporated as \_\_\_\_\_ [*specify the type*] and is legally set up under \_\_\_\_\_ [*Nationality*] law;
  - b) Its representatives are statutorily empowered to sign this Agreement and, as such, accept the SECOND PARTY's obligations arising from it;
  - c) There is no limitation, legal, administrative, statutory or otherwise, that obstructs the full conclusion of this Agreement, or that is exceeded as a result of this Agreement;
  - d) The accepted obligations and the guarantees referred to in this Agreement are valid and binding, and there are no restrictions that hinder its full and timely compliance or feasibility
  - e) The conclusion and execution of this Agreement does not violate any law, rule, regulation, statute or rulings to which the SECOND PARTY is bound, nor does it constitute a breach of any other agreement or contract in which the SECOND PARTY is a stakeholder or to which it is bound;
  - f) No event or circumstance which constitutes or may constitute a non-compliance of this Agreement has occurred.
2. The SECOND PARTY declares that it has full knowledge and accepts expressly and unreservedly the provisions in the National Regulations and in OMIClear's Rules, composed by the Rulebook and Instructions, applicable to the Positions registered with the FIRST PARTY, namely:
- a) The responsibilities arising from the condition of taking on the role of counterparty of the FIRST PARTY in all the Positions registered by the SECOND PARTY;
  - b) The procedures in case of default, under OMIClear's Rules and applicable National Regulations.

### THIRD CLAUSE

The SECOND PARTY undertakes in particular to inform:

- a) Immediately, and in writing, the FIRST PARTY of any change of its statutes, legal nature or financial situation, especially those that relate to the admission requirements underlying the category of Clearing Member;
  - b) Immediately, and in writing, the FIRST PARTY of any defaults incurred by the Entities with which they are in a relationship of control or as a group, and on behalf of which it acts; [*applicable to Direct Clearing Members*]
- or
- c) Immediately, and in writing, the FIRST PARTY of any defaults incurred by its clients with which it has entered into a Clearing Agreement. [*applicable to General Clearing Members*]
  - d) Its clients on the National Regulations and OMIClear's Rules applicable to the Positions, and the fact that it will no longer act as a Clearing Member with the FIRST PARTY. [*applicable to General Clearing Members*]

### FOURTH CLAUSE

The SECOND PARTY authorises the FIRST PARTY to:

- a) To communicate to its Financial Settlement Agent the general movements related to the settlement of Positions, the payment of fees and setting up of Guarantees inherent to the Positions it has registered, without prejudice to its responsibility to also report the respective movements to the said Agent. [*when the SECOND PARTY used a Financial Settlement Agent*]
- b) To monitor, by whatever means it deems more appropriate, the full compliance of its obligations, undertaking to adopt the behaviours and provide all the elements necessary for that purpose.

- c) To request from the Supervisory Entities the information that it deems necessary to check the requirements on the basis of which its admission and maintenance as Clearing Member depends, and to provide to such Entities its own details as they may require;
- d) Adopt the procedures laid down in the National Regulations and in OMIClear Rules in case the SECOND PARTY or one of its clients fail to comply;
- e) To record all telephone communications, including instructions and requests conveyed, and use those recordings to prove that they were made, and for supervisory purposes by the FIRST PARTY or competent Entities.

#### FIFTH CLAUSE

The SECOND PARTY declares that it is aware of and expressly accepts without reservations that the FIRST PARTY will not be responsible for any losses it may incur:

- a) Due to the adverse development of market conditions, as well as those arising from unforeseeable circumstances, force majeure or the interruption, suspension or exclusion of the trading of a specific Contract;
- b) Arising from the implementation of provisions in OMIClear's Rules;
- c) Resulting of technical faults, power failures, damages caused by fire or water, or any other events beyond the control of the FIRST PARTY.

#### SIXTH CLAUSE

1. This Agreement takes effect from the date it is signed, is valid for an indefinite period of time and ceases:
  - a) By termination of any of the PARTIES, in writing, with the notice period specified in OMIClear's Rules;
  - b) By termination of the SECOND PARTY'S capacity as Clearing Member, pursuant to OMIClear's Rules.
2. The termination, for whatever reason, of this Agreement does not preclude the duty to comply with all obligations of the SECOND PARTY related to the Positions for which it is responsible.
3. The SECOND PARTY will no longer be able to register Positions from the date of termination of this Agreement, or when the FIRST PARTY so determines, in accordance with the applicable OMIClear Rules.

#### SEVENTH CLAUSE

This Agreement is governed by the Portuguese law.

#### EIGHTH CLAUSE

For the resolution of any disputes concerning the validity, interpretation or application of this Agreement, the PARTIES expressly waive any other jurisdiction and agree to submit them to the Civil Court of Lisbon.

This Agreement is done in two copies and signed by both PARTIES in acceptance thereof.

Lisbon, \_\_\_\_\_

The FIRST PARTY

The SECOND PARTY

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*OMIClear, C.C., S.A.*

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*(identification of the SECOND PARTY)*

## Appendix II

### Model C40

#### Information on the overall exposure to other Central Counterparties

(Euro millions)

	<b>Exposure<sup>1</sup></b>	
	<b>Pre-funded resources</b> (Default Fund contributions)	<b>Non-pre-funded resources</b> (Assessment powers committed)
XX/XX/XXXX <sup>2</sup>		

<sup>1</sup> – Exposure means the amount of losses that the Clearing Member is exposed to, due to its participation in all the other Central Counterparties.

<sup>2</sup> – Date to which the information reported refers to.