FINANCIAL MARKETS LAW COMMITTEE

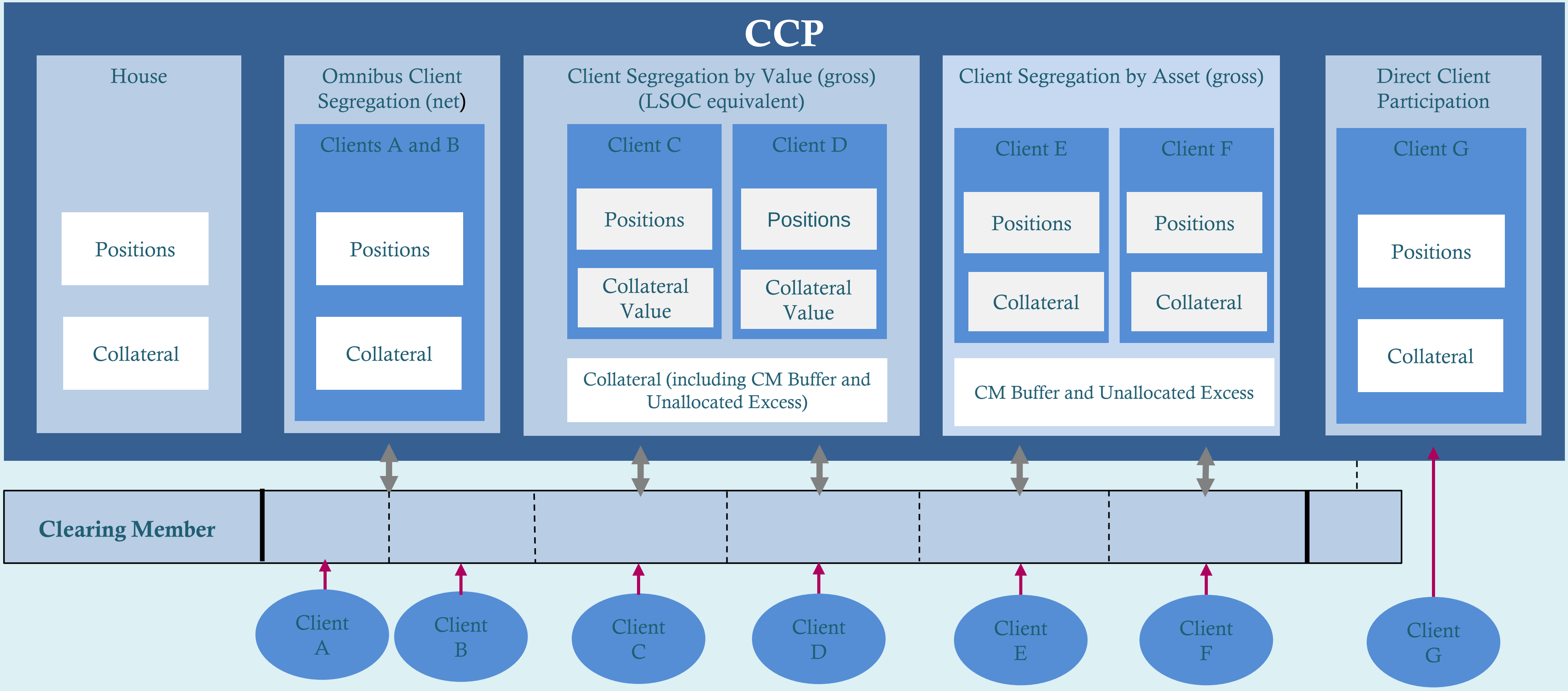
CLEARING AND THE COORDINATION OF INTERNATIONAL FINANCIAL REGULATION

Richard Hay
Linklaters LLP

Outline

1. Clearing models
2. Instances of regulatory divergence
   a) Capital requirements
   b) Scope
   c) Other issues
3. Possible solutions

Clearing models



CM’s trade exposures

Two possible regimes where qualifying CCP (Article 301(2) CRR)

- Articles 306 to 308 CRR (Method 1):
  - For house account, risk weight is generally **2%**
  - For client account:
    - On the CCP leg, risk weight is **zero** assuming limited recourse
    - On the client leg, risk weight is the same as for **uncleared** transactions
- Article 310 CRR (Method 2)

Client's trade exposures

Possible regime where qualifying CCP:

- Risk weight of **2%** (Article 303(4) and Article 305(2)) if:
  - **Portable**
  - Positions and assets **distinguished and segregated**
  - **Bankruptcy remote** in effect requires direct recourse to CCP (via security, agency or statute)
- Risk weight of **4%** (Article 305(3) CRR)
  - conditions as above, **except**
  - client not protected if **both** CM and other clients insolvent

Client's trade exposures

- **Query where break comes?** Possibly as follows:
  - Individual Segregation by Asset – **2%?**
  - Individual Segregation by Value/LSOC/gross omnibus (socialising of asset risk, but not position risk)
  - Net omnibus – **4%** or as for **uncleared transactions?**

2% or 4%?

Regulatory divergence continued

- Mutual recognition and substituted compliance
- Scope: territorial and product
- Further issues

Possible solutions

- Bottom-up approach
- Common principles as to deference
- Advisory committees