Results of the Consultation on Omnibus Account Structure and Same NIN Trading

September 2019
1. Overview:

With reference to our announcement regarding omnibus accounts and same NIN trading, the Capital Markets Authority (CMA), along with Kuwait Clearing Company and Boursa Kuwait, consulted international investment professionals to determine the approach of expanding the omnibus account currently recognized in Kuwait and same NIN trading to international investors, in addition to exploring other areas of improvements in the market place. The consultation was sent to 155 contacts, of which 15 provided their feedback. Out of the 15, the consultees included were 5 global asset managers, 2 brokers, 7 custodians, and an international Central Security Depository (iCSD). CMA also consulted with an industry professional whose expertise extends to many markets, in order to ensure that the model is in line with international best practices. In addition, some IOSCO members were also consulted in the process.

The majority of the respondents answered “Yes” to whether the omnibus structure explained in the consultation accommodates their needs. Still, some consultees initially proposed an alternative structure, which allows for pooling/aggregating orders, while retaining ownership under different beneficial owner accounts. This pooling/aggregating account structure is applied in some markets that recognizes beneficial ownership structure only. Conversely, Kuwait follows a hybrid market model, where both the beneficial owner and omnibus account structures are recognized. Also, the consultation has revealed many scenarios that must be considered for same NIN trading. Below is a summary of the response to the consultation*:

<table>
<thead>
<tr>
<th></th>
<th>Yes</th>
<th>No</th>
<th>NA</th>
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</thead>
<tbody>
<tr>
<td>Omnibus Accounts Structure</td>
<td>7</td>
<td>2</td>
<td>2</td>
</tr>
<tr>
<td>Omnibus Accounts Definition (KCC Rulebook)</td>
<td>8</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Omnibus Accounts Definition (CMA Bylaws)</td>
<td>8</td>
<td>3</td>
<td>0</td>
</tr>
<tr>
<td>Omnibus Accounts Process (KCC Rulebook)</td>
<td>5</td>
<td>6</td>
<td>0</td>
</tr>
<tr>
<td>Account Opening Conditions (KCC Rulebook)</td>
<td>8</td>
<td>2</td>
<td>1</td>
</tr>
</tbody>
</table>

*this table contains only the answers provided by those who submitted their feedback to the specific questions raised in the consultation. Some consultees provided general feedback (not included above).
2. Same NIN Trading:

The introduction of an omnibus account structure (described below) will allow for easier implementation of same NIN trading. As mentioned in the consultation, an omnibus account can apply for an exemption for same NIN trading, as long as the account is designated for “non-discretionary” trading. This exemption never expires.

However, we received feedback from investment professionals showing that many scenarios can benefit from the same exemption for same NIN trading, those scenarios are accommodated through different mechanisms as described below:

1. Shared investor mandate across different managers: the planned solution for this case is to open multiple trader IDs (each designated to specific manager) by the investor, where those trader IDs will be tied to the investor NIN (Business Partner ID).
2. Investment Funds (ETFs, Mutual Funds, etc): permanent exemption can be attained through application.
3. Other cases are being considered for exemption and are currently under discussion with certain consultees.

3. Omnibus Accounts

3.1 Definitions

We have conducted numerous conference calls with many respondents to discuss their feedback and to explain the omnibus structure recognized in Kuwait and how it differs from pooling or aggregating orders structure that was proposed by a few respondents. The hybrid model followed in Kuwait is used in different jurisdictions.

According to a survey result released in the World CSD Fact Book by the World Forum of CSDs (WFC) in 2017, “Beneficial Owner account structure and Hybrid (with the majority of either omnibus or beneficial owner/segregated accounts) structures are most widely used.” In addition, this report has not identified “the execution pooling account” as a recognized account type.

An omnibus account structure is used to hold securities in custody for multiple beneficial securities holders, and for clearing and settlement purposes. An IOSCO report defines an omnibus account as the following:

“An account containing the collective position of more than one investor”

While Bank for International Settlement (BIS) defines it as the following:
“An account structure where securities or collateral belonging to some or all customers of a particular participant is commingled and held in a single account segregated from that of the participant.”

3.2 Model
In the proposed model, trading, clearing and settlement will be conducted on the omnibus account itself with one unique trader ID. This account will be legally recognized and the same will be applied to the account operator. Split of orders and allocation of trades will depend on the arrangements between the asset manager with its service providers (brokers and custodians), in addition to the account operator. There are three possible scenarios to which type of entity can be an account operator:

- Local Custodian.
- Asset Manager.
- Global Custodian.
- Additional possibilities to be explored.

3.3 Account Opening:
As explained in the consultation, an omnibus account structure has been limited currently to licensed institutions in Kuwait and this structure can be readily available to foreign licensed institutions. However, certain by-laws and rules have to be amended to properly accommodate the proposed model. It is important to note that the client has the choice between beneficial ownership structure and omnibus structure.

Account opening will be restricted to foreign financial institutions that are authorized by securities regulators in jurisdictions that are members of IOSCO and Financial Action Task Force (FATF). Account opening procedures for omnibus accounts will be similar to the current process, with a few minor modifications.

3.3.1 Account type movement:
When introducing the new model, existing clients who currently have trader IDs under the beneficial ownership model can transfer their assets to an omnibus account, Free of Payment (FoP). The opposite movement can also be done when a client wants to move from an omnibus account type to a beneficial ownership account type.

3.4 Other Considerations:
- Many respondents expressed their concern on the periodic submission of beneficiaries’ information. CMA will consider this feedback, and possibly enforce submission upon request by either CMA or KCC, rather than on a periodic basis.
- There will be no internalizing of trades. All trades must be executed through the exchange.
- Fees will still be the same. There will be no discount for trades from the same account.
- Account operators must report certain ownership limit to CMA, Boursa Kuwait, and Kuwait Clearing Company. For example, an account operator must report any client whose ownership exceeds 5% of the issued shares.

Even though the consultation period has ended, the CMA is pleased to continue receiving any feedback or suggestion on any area that would positively contribute to the development of the Kuwaiti financial market. The Capital Markets Authority along with Kuwait Clearing Company and Boursa Kuwait will strive to grow and develop the market to be fair, transparent and efficient, while ensuring compliance with securities regulations in line with best practices.

Below we provide examples (Appendix) of the trade flow summary under the proposed omnibus account model (from order placement to settlement) which covers the three scenarios. As mentioned above, the trade flow will depend on the arrangements between the asset manager and its service providers and the account operator. Trade flow might differ from the examples shown below, due to the flexibility of the structure and the options provided.
4. Appendix:

Trade Cycle:

Below is the trade cycle based on the proposed model depending on the account operator (level of the omnibus account). However, details of the trade allocation depends on the set-up between the asset manager and its service providers (brokers and custodians)

1) Local Custodian

1. The asset manager/client places an order using the omnibus account number through a local broker or a global broker.  
   (The asset manager can provide the break-up of orders to the executing broker, if he chooses to. In all cases, orders will be placed using the omnibus account number)
2. The executing broker submits the order to the Exchange using the omnibus account number.

3. Orders are matched on the Exchange, and trade confirmation is sent to the executing broker and Kuwait Clearing Company on an omnibus account level.  
   (The executing broker can provide trade confirmation to the asset manager and/or local custodian)

4. KCC sends obligation & position reports to the local custodian on an omnibus account level.  
   (Depending on the set-up, the executing broker or asset manager must provide the allocation of trades to the local custodian)
5. Clearing and Settlement at KCC will be at the omnibus account.
6. Shareholder registrar in the CSD books will be updated on omnibus account level
7. Segregation of clients’ assets with the omnibus account will be done at the local custodian.

Allocation of trades depend on the set-up where either the broker or the asset manager can provide this information to local custodian who is responsible for assets segregation.
2) **Asset Manager**

<table>
<thead>
<tr>
<th>Step</th>
<th>Description</th>
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</thead>
<tbody>
<tr>
<td>1.</td>
<td>The asset manager/client places an order using the Omnibus Account number through a local broker or a global broker. (<em>Asset manager can provide the break-up of orders to the executing broker, if he chooses to. In all cases, orders will be placed using the omnibus account number</em>)</td>
</tr>
<tr>
<td>2.</td>
<td>The executing broker submits the order to the Exchange using the omnibus account number.</td>
</tr>
<tr>
<td>3.</td>
<td>Orders are matched on the Exchange, and trade confirmation is sent to the executing broker and Kuwait Clearing Company on an omnibus account level. (<em>The executing broker must provide trade confirmation to the asset manager</em>)</td>
</tr>
<tr>
<td>4.</td>
<td>KCC sends obligation &amp; position reports to the local custodian on an omnibus account level.</td>
</tr>
<tr>
<td>5.</td>
<td>Clearing and Settlement at KCC will be at the Omnibus account.</td>
</tr>
<tr>
<td>6.</td>
<td>Shareholder registrar in the CSD books will be updated on omnibus account level</td>
</tr>
<tr>
<td>7.</td>
<td>The asset manager will ensure segregation of clients’ assets within the omnibus account.</td>
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**Order Placement**

**Trade Execution**

**Trade Clearing and Settlement**

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**Case 2: Asset Manager Omnibus**

- Asset manager opens omnibus account for its clients/funds directly with the CSD.
- Segregation of clients' assets/obligation of trades within the Omnibus account will be done by the Asset Manager.
- The executing broker will submit the order using the Omnibus account number.
- The executing broker will submit the order using the Omnibus account number.
- sharesholder registrar will be updated at Omnibus account level.

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**Diagram**

- Local Custodian
- Global Custodian
- Execution Broker
- International Broker
- Asset Manager Omnibus Account 1
- Asset Manager Omnibus Account 2
- Client 1
- Client 2
- Client 3
- Fund 1
- Fund 2
- Fund 3

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3) Global Custodian.

1. The asset manager/client places an order using the omnibus account number through a local broker or a global broker. *(Asset manager can provide the break-up of orders to the executing broker, if he chooses to. In all cases, orders will be placed using the omnibus account number)*

2. The Executing broker submits the order to the Exchange using the Omnibus Account number.

3. Orders are matched on the Exchange, and trade confirmation is sent to the executing broker and Kuwait Clearing Company on an omnibus account level. *(The executing broker can provide trade confirmation to the asset manager and/or global custodian)*

4. KCC sends Obligation & position reports to the Local Custodian on Omnibus Account level. *(Depending on the set-up, the executing broker or asset manager must provide the allocation of trades to the global custodian)*

5. Clearing and Settlement at KCC will be at the omnibus account.

6. Shareholder registrar in the CSD books will be updated on omnibus account level

7. Segregation of clients’ assets within the omnibus account will be at the global custodian or the assigned specific custodian.

- Clearing and settlement will be done by KCC with local custodian who arranges with global custodian to settle on an omnibus account level.
Final records of settlement

Omnibus Scenario

- Asset Manager Scenario – Clients record at his level
- Global Custodian Scenario – Clients record at his level
- Local Custodian Scenario – Clients records at his level
- KCC – Depository Records

Omnibus Account Type

- Omnibus of Client/ Group of Clients A
- Omnibus of Client/ Group of Clients A and B
- Omnibus of Client/ Group of Clients A, B and C
- Only omnibus account will appear in the depository books and records

Beneficial Owner Account Type

- Client/ Group of Clients D
- Client/ Group of Clients D
- Client/ Group of Clients D
- The beneficial owner will appear in the depository books and records