

# Article 38 (6) Central Securities Depositories Regulation

## Participant Disclosure: BNP Paribas London Branch

*Belgium: Euroclear Bank*

### 1. INTRODUCTION

This document describes the level of protection associated with the two types of segregated securities accounts that BNP Paribas acting through its London branch (“**BNP Paribas**”, “**we**”, “**our**”, etc.) provides in respect of securities that it holds directly for its clients with Euroclear Bank (hereinafter referred to as the “**CSD**”), a Belgium-based international central securities depository. This document includes a description of the main legal implications of the two types of the securities accounts, as well as the applicable insolvency rules.

The disclosure of the information contained in this document is required under Article 38 of the Central Securities Depositories Regulation EU 909/2014 (“**CSDR**”). BNP Paribas is subject to these disclosure obligations in its capacity as a Direct Participant of the CSD. The CSD has its own disclosure obligations under the CSDR.

Capitalised terms not defined in the text shall have the meaning given to them in the glossary at the end of this document.

### 2. BACKGROUND

The custody of the securities of each of BNP Paribas’ clients is held through separate client accounts in its books and records. BNP Paribas has the obligation to segregate in its books the securities of each of its clients from those of its other clients, as well as from BNP Paribas’ own assets.

BNP Paribas also opens securities accounts at the level of the CSD and ensures that its clients’ securities are segregated from BNP Paribas’ own securities in the books of the CSD, irrespective of the type of account. CSDs are not permitted to commingle their own assets with securities of their Direct Participants.

BNP Paribas offers the option of establishing two types of client securities accounts with the CSD: Individual Client Segregated Accounts (“**ISAs**”) and Omnibus Client Segregated Accounts (“**OSAs**”) with the CSD. An OSA is used to hold the securities of a certain number of BNP Paribas’ clients on a collective basis. An ISA is used to hold securities of a single client of BNP Paribas and therefore any such securities of that single client are held separately from the securities of BNP Paribas’ other clients.

Although each ISA may be named in a way that identifies the client for whom it is maintained, the client does not have any right or ability to give instructions directly to the CSD with respect to that ISA and therefore holding securities through an ISA does not give the client any operational rights with respect to that ISA.

### **3. MAIN LEGAL IMPLICATIONS OF LEVELS OF SEGREGATION**

#### **3.1 Rules regarding ownership of securities**

##### *3.1.1 Legal ownership of securities*

The CSD is the Belgian central securities depository for international securities.

The ownership rights of a) securities held on accounts opened by clients with BNP Paribas are governed by English law, and b) those of securities held on accounts opened by BNP Paribas, acting on behalf of clients with the CSD are governed by Belgian law. As, by virtue of the *lex rei sitae* principle, such accounts are deemed to be located in the United Kingdom and Belgium, respectively.

Under English law, holders of securities accounts have a proprietary interest in respect of securities deposited in their accounts opened with an account keeper in England and Wales. This is in addition to any contractual rights clients may have against BNP Paribas to have the securities delivered to them. The books and records of BNP Paribas would constitute evidence of its clients' beneficial interests in the securities.

Under Belgian law, proprietary interests are determined based on the concept of co-ownership. This means that a client, together with other BNP Paribas' clients who hold securities of the same type, jointly own the securities. Each type of securities account constitutes a so-called collective deposit in the books of the CSD. A client's interest in this deposit and the interest of the other investors are shown by the records (which consist of the individual securities accounts of clients) of the CSD. These collective deposits are segregated from the CSD's assets.

As a general principle the records of the CSD are structured to comply with applicable rules and regulations such as the Markets in Financial Instruments Directive 2014/65/EU which regulates the segregation of a client's assets from those of the CSD and other clients of the CSD. The records of the CSD should therefore be sufficient to determine which securities belong to a client of BNP Paribas.

##### *3.1.2 ISA and OSA*

Given that under Belgian law, proprietary interests are determined based on the concept of co-ownership, it does not make a difference in terms of asset protection for BNP Paribas or its clients whether securities are held on an individual basis in an ISA or collectively in an OSA at the CSD.

## **3.2 Insolvency**

### *3.2.1 Insolvency of the CSD*

If the CSD were to become subject to insolvency proceedings, any such insolvency proceedings would be opened in Belgium and be governed by Belgian law. Securities held by BNP Paribas on behalf of its clients and sub-deposited with the CSD would not form part of the insolvency estate of the CSD. There would be no difference of treatment between securities held in an ISA or an OSA.

Because collective deposits do not form part of the CSD's assets, clients' securities are protected in the event of the insolvency of the CSD. In the event of such insolvency, an insolvency trustee will be appointed. The insolvency trustee will, on the basis of the records of the CSD, first determine who is entitled to which securities and then proceed to return the securities to their legitimate owners.

Additionally, the CSD is under strict prudential supervision by the National Bank of Belgium in its capacity as the Belgian supervisory authority. If the CSD does not function properly, does not comply with the law, is at risk of becoming insolvent or could disrupt the Belgian or international markets, the government can impose several measures, such as the disposal (i.e., transfer or sale) of assets and liabilities, including the transfer of the CSD's clients' financial instruments.

### *3.2.2 Insolvency of BNP Paribas*

Belgian law would not apply in the context of the insolvency of BNP Paribas, which is a French credit institution, including with respect to the implementation of one or several reorganisation measures.

Were BNP Paribas to become insolvent, the insolvency proceedings would take place in France and be governed by French insolvency law, subject to certain exceptions.

Under French insolvency law, securities that BNP Paribas, as a custodian, held on behalf of clients would not form part of its estate on insolvency for distribution to creditors, subject to any security interest over the securities and provided that they remained the property of the clients. Rather, they would be deliverable to other custodians appointed by clients in accordance with each client's proprietary interests in the securities.

As a result, it would not be necessary for clients to make a claim in BNP Paribas' insolvency as creditors in this respect.

In any event, where BNP Paribas holds securities in custody for clients and those securities are considered the property of those clients rather than BNP Paribas' own

property, they should be protected in the event of BNP Paribas' insolvency. This applies whether the securities are held in an OSA or an ISA.

Securities that BNP Paribas holds on behalf of clients would also not be subject to any process that may limit or reduce any of BNP Paribas' contractual obligations towards securities owners if it was to become subject to Resolution Proceedings in France.

Under English insolvency law, securities that BNP Paribas, as a custodian, held on behalf of clients in England and Wales would not form part of its estate on insolvency for distribution to creditors, subject to any security interest BNP Paribas may have and provided that the securities remained the property of the clients. Rather, the securities would be deliverable to clients in accordance with each client's proprietary interests in the securities.

As a result, it would not be necessary for clients to make a claim in BNP Paribas' insolvency as creditors in this respect.

Accordingly, where BNP Paribas holds securities in custody for clients in England and Wales and those securities are considered the property of those clients rather than BNP Paribas' property, they should be protected in the event of BNP Paribas' insolvency.

### **3.3 Shortfall**

A shortfall could arise for a number of reasons such as an administrative error, intraday movements or counterparty default.

#### *3.3.1 At the level of the CSD*

The risk of shortfall at the level of the CSD is limited by the fact that account keepers such as CSDs, as a matter of Belgian law, are under the obligation to hold either on their books or with another account keeper the same number and type of securities as are credited on the securities accounts they maintain for their account holders.

Royal Decree Number 62 includes an arrangement for the situation where the number of securities of a particular type for which BNP Paribas has credited its clients exceeds the number of securities of that type for which BNP Paribas is credited in the books of the relevant CSD. If there is such a shortfall and BNP Paribas holds with the same CSD securities of the same type, the securities of that type for which BNP Paribas is credited in the books will be used by priority to reimburse the clients. If after this there is still a shortfall, the client will not receive all its securities, but only part thereof, in proportion to its share in the collective deposit. This applies whether the securities are held in an OSA or an ISA.

#### *3.3.2 At the level of BNP Paribas*

If a shortfall were to arise on accounts held by the clients with BNP Paribas, Belgian law would not be applicable. Article L.211-10 of the French Monetary and Financial Code provides that, in case of a judicial reorganisation proceeding (*redressement judiciaire*) or a winding-up proceeding (*liquidation judiciaire*) against an intermediary acting as a custody account keeper, the insolvency administrator or liquidator shall verify, for each financial security, that the number of securities held in an account with a CSD or with another intermediary on behalf of the defaulting intermediary, regardless of the nature of the accounts opened with them, is sufficient to enable the defaulted custodian to meet its obligations towards the account holders.

If, after verification by the insolvency administrator or liquidator, there is a shortfall, that shortfall shall be borne by all the account holders to whom the relevant securities have been allocated, in proportion to the respective number or amount of securities of that description credited to their securities accounts. It would not be necessary for account holders to make a claim in BNP Paribas' insolvency as creditors in respect of this shortfall.

The pro-rata allocation as described above applies irrespective of the type of account (ISA/OSA) opened by BNP Paribas with the CSD. Accordingly, in case of a potential insolvency event affecting BNP Paribas, the fact that securities are held through an ISA opened in the books of CSD on behalf of a particular client of BNP Paribas does not give that client more protection than in the case of clients who hold their securities through an OSA.

### **3.4 Statutory lien**

The CSD, as operator of a securities settlement system, is granted a statutory lien over all securities, monies and other rights it holds as client assets of a participant to the system it operates. The lien guarantees exclusively its claims on the participants arising from the clearing or settlement of securities transactions or from the netting of such transactions carried out by the participants on behalf of their clients.

## GLOSSARY

**Central Securities Depository (CSD)** is an entity which operates a securities settlement system and provides at least one other core service listed in Section A of the Annex of the CSDR.

**Central Securities Depositories Regulation or CSDR** refers to Regulation (EU) 909/2014 of the European Parliament and of the Council dated 23 July 2014 on improving securities settlement in the European Union and on central securities depositories.

**Direct Participant** means an entity that holds securities in an account with a CSD and is responsible for settling transactions in securities that take place within a CSD. A Direct Participant should be distinguished from an Indirect Participant.

**Indirect Participant** means an entity, such as a global custodian, which appoints a Direct Participant to hold securities for it with a CSD.

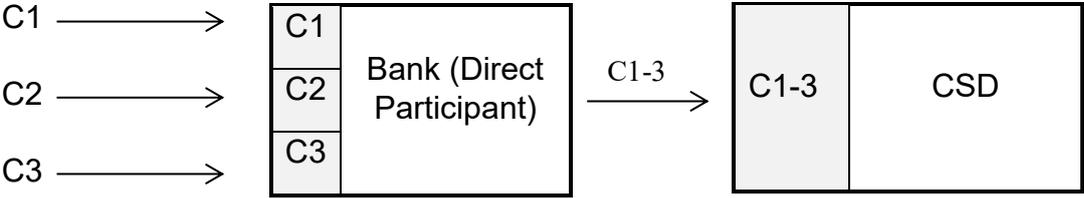
**Individual Client Segregated Account or ISA** means an account used to hold the securities of a single client.

**Omnibus Client Segregated Account or OSA** means an account used to hold the securities of a number of clients on a collective basis.

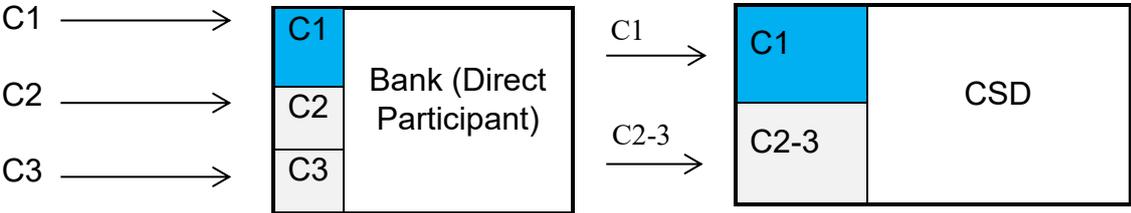
**Participant** means, as applicable, a Direct Participant or an Indirect Participant.

**Graphic representation of OSA and ISA:**

OSA (example with three clients C1-C3)



ISA (Example with client C1 while clients' C2 and C3 securities are held through an OSA)



**Resolution Proceedings** are proceedings for the resolution of failing French banks and investment firms under Book VI, Chapter III of the Monetary and Financial Code.

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