

# Article 38 Central Securities Depositories Regulation

## Participant Disclosure:

### BNP Paribas S.A. acting through its London branch

*Luxembourg: Clearstream Banking Luxembourg*

#### 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 Clearstream Banking Luxembourg (“**CBL**”), a Luxembourg-based international central securities depository and central securities depository, including a description of the main legal implications of the two types of 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 (see glossary) of CBL. CBL 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 BNP Paribas’ own assets.

BNP Paribas also opens securities accounts at the level of each central securities depository (each a “**CSD**”) it uses and ensures that its clients’ securities are segregated from BNP Paribas’ own securities in the books of each 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 CSDs: Individual Client Segregated Accounts (“ISAs”) and Omnibus Client Segregated Accounts (“OSAs”).

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**

##### Legal ownership of securities

The ownership rights of securities held on accounts opened a) by clients with BNP Paribas are governed by English law, and b) by BNP Paribas, acting on behalf of clients, with CBL are governed by Luxembourg law as, by virtue of the *lex rei sitae* principle, such accounts are deemed to be located in the United Kingdom and Luxembourg, 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 right a client 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 Luxembourg law, holders of securities accounts have a right *in rem* over securities deposited in their accounts opened with a Luxembourg account keeper. It is an intangible right of ownership over the whole pool of securities of the same type held by all account holders with the same account keeper. The right can only be exercised by the account holders. This means that where BNP Paribas has sub-deposited securities held on behalf of its clients with CBL, in principle, none of these clients shall be entitled to directly exercise any rights against CBL.

## ISA and OSA

Given that account holders who deposit securities with a Luxembourg account keeper are granted a right *in rem* in the form of an intangible right of ownership over all securities of the same type held on account(s) opened and operated by the account keeper on behalf of all account holders, 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 CBL.

### **3.2 Insolvency**

#### Insolvency of the CSD

If CBL were to become subject to insolvency proceedings, any such insolvency proceedings would be opened in Luxembourg and be governed by Luxembourg law. Securities held by BNP Paribas on behalf of its clients and sub-deposited at CBL would not form part of the insolvency estate of CBL. There would be no difference of treatment between securities held in an ISA or an OSA. BNP Paribas, as account holder, would have a right of recovery (*droit de revendication*) i.e., a proprietary right to receive back the relevant number of securities. Such right would be exercised in a collective manner against the pool of securities of the same category held with all the account holders at CBL. The restitution process would be managed by a receiver on behalf of all the account holders. If the relevant pool of securities were not sufficient to ensure the full restitution of all the securities held on account with CBL, it would be allocated between the account holders in proportion to their rights. If CBL holds as part of its own assets securities of the same type, these securities would be added to the aggregate amount of securities to be allocated to the account holders. CBL would only be entitled to keep the number of securities remaining after all the securities on the accounts have been returned to the account holders.

The above-described rights could only be exercised by BNP Paribas. Its clients would in principle not have a direct right of recourse against CBL as a matter of Luxembourg law.

From a Luxembourg law perspective, in case of insolvency of CBL, it would not make a difference for the clients of BNP Paribas, in terms of asset protection, whether the securities are held by CBL in ISAs or OSAs.

### Insolvency/liquidation of BNP Paribas

Luxembourg 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 a creditor 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 on BNP Paribas' insolvency. This applies whether the securities are held in an OSA or an ISA.

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 a creditor 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 on 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.

### At the level of the CSD

The risk of shortfall at the level of CBL is limited by the fact that account keepers such as CBL, as a matter of Luxembourg 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.

Where a negative holding cannot be covered, CBL, as account keeper, would have to either increase the number of securities it holds or reduce the number of securities held on the securities accounts of its account holders. If despite this statutory protection against shortfalls, a shortfall were to occur at the level of CBL, BNP Paribas (but not its clients) would be entitled to exercise its *rights in rem* (described under 3.1) over all securities of the same type as those in respect of which the shortfall arose and which are deposited on account(s) held with CBL, whether such accounts are ISAs or OSAs. Given the asset protection granted by Luxembourg law, additional segregation of assets in the form of an allocation of securities to an ISA, as opposed to an OSA, will, as a matter of principle, not result in a greater asset protection for BNP Paribas or its clients.

### At the level of BNP Paribas

If a shortfall were to arise on accounts held by the clients with BNP Paribas, Luxembourg law would not be applicable. Article L.211-10 of the French Monetary and Financial Code provides that, in case of a judicial reorganization 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 central depository 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, in the opinion of 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.

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 CBL 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**

CBL, 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.

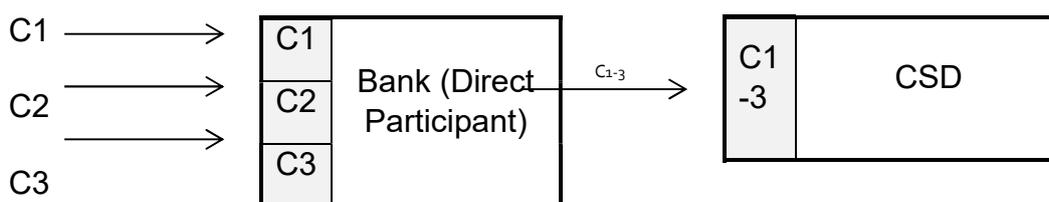
**Individual Client Segregated Account (ISA)** means an account used to hold the securities of a single client.

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

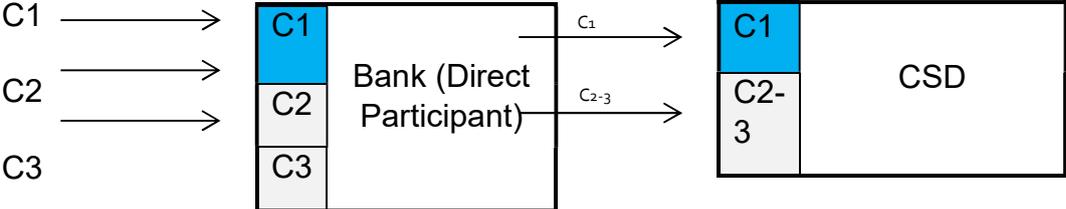
**Participant** means, as applicable, a Direct Participant or an Indirect Participant.

### 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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