

## Article 38 (6) Central Securities Depositories Regulation

### Participant Disclosure: BNP Paribas Securities (Japan) Limited

*Belgium: Euroclear Bank*

*\* The original language of this document is English. Any Japanese language translation of this document has been prepared for reference purposes only and in the case of any inconsistency between the English language version and the Japanese translation, the English language version shall prevail.*

#### 1. INTRODUCTION

This document describes the level of protection associated with the two types of segregated securities accounts that BNP Paribas Securities (Japan) Limited (“**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 Japanese 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 Japan and Belgium, respectively.

Under Japanese law, the ownership rights in respect of securities deposited in their accounts opened with BNP Paribas are attributable to the owners of securities. We hold securities in custody for clients and, as a Financial Instruments Business Operator engaged in a Type 1 Financial Instruments Business ("**Type 1 Financial Instruments Business Operator**"), we are subject to the Financial Instruments and Exchange Act (Act No. 25 of 1948, as amended) (the "**FIEA**"). The FIEA requires us to segregate client securities from our own assets through a method prescribed in the FIEA ("**segregation management requirements**"). We continue to comply with such segregation management requirements.

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 Japanese Type 1 Financial Instruments Business Operator, 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 Japan and be governed by Japanese insolvency law.

Under Japanese insolvency law, once the insolvency proceeding is commenced, various restrictions are imposed upon the rights and interests of creditors, lien holders, equity holders, and other parties. However, an owner of property that is held by the bankruptcy trustee (or other similar body in other insolvency procedures in Japan) as a part of the bankruptcy estate (or other similar estate in other insolvency procedures in Japan) may make a claim for return of the property as long as such property is specified.

Accordingly, even if we become insolvent, in principle this will have no effect on client securities held on accounts opened by clients with BNP Paribas regardless of whether it takes the form of ISA or OSA. A client, as an owner of securities, may make a claim for the return of the securities.

### Deposit Insurance Act

As a Type 1 Financial Instruments Business Operator, we are covered by the following specified measures Items (i) and (ii) under the Deposit Insurance Act of Japan (Act No. 34 of 1971, as amended) (the “**DIA**”). Under the DIA, the Prime Minister may, following deliberations by the Financial System Management Council, authorize the implementation of the measures if he or she finds that, if the following measures are not taken, it may lead to the extreme disruption of the financial market of Japan or other financial systems. Depending on the financial situation of the relevant financial institutions, two different types of measures, as indicated below, may be taken.

(1) Measures for financial institutions that are not capital deficient (specified measures Item (i))

Specified measures Item (i) includes: (A) special supervision (in which the Deposit Insurance Corporation (*yokin hoken kikou*) (DIC) supervises the conduct of business and the management and disposition of assets by the failed financial institution); and (B) the provision of loans and the subscription for shares by the DIC.

(2) Measures for financial institutions that are capital deficient or possibly capital deficient (specified measures Item (ii))

Specified measures Item (ii) includes: (A) special supervision (as referred to in (1)); and (B) special financial assistance by the DIC for the resolution of a failed financial institution, such as a business transfer or merger of a failed financial institution to another financial institution.

## **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. If there is a shortage in client assets which we actually hold a separate examination will be necessary. For the amount of the shortage, a client may not make a claim for the return of securities themselves equivalent to the amount of such shortage outside insolvency proceedings (see 3.2.2). Therefore, the client would have to exercise its own rights with respect to such shortage in accordance with the relevant insolvency proceedings.

### *Japan Investor Protection Fund*

Regardless of the segregation managements requirements, in the event that an insolvent Type 1 Financial Instruments Business Operator cannot smoothly return client securities due to violation of segregation management requirements, Japan Investor Protection Fund (*nihon toushisha hogo kikin*) (JIPF) pays compensation for unreturned money and securities which fall within client assets (*kokyaku shisan*) up to JPY 10 million per general client (*ippan kokyaku*). With respect to the assets deposited from clients whose amount exceeds JPY 10 million, clients, as general creditors, are prohibited from enforcing their rights to return of this portion outside of the relevant insolvency proceedings, and need to exercise their rights in accordance with the relevant insolvency proceedings.

## **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.

## **3.5 Security Interests**

### *3.5.1 Security interest granted to third party*

Security interests granted over clients' securities could have a different impact in the case of ISAs and OSAs. Where a client purported to grant a security interest over its interest in securities held in an OSA and the security interest was asserted against the CSD with which the account was held, there could be a delay in the return of securities to all clients holding securities in the relevant account, including those clients who had not granted a security interest, and a possible shortfall in the account. However, in practice, we would expect that the beneficiary of a security interest over a client's securities would perfect its security by notifying us rather than the relevant CSD and would seek to enforce the security against us rather than against such CSD, with which it had no relationship. We would also expect CSDs to refuse to recognise a claim asserted by anyone other than ourselves as account holder.

### *3.5.2 Security interest granted to CSD*

Where the CSD benefits from a security interest over securities held for a client, there could be a delay in the return of securities to a client (and a possible shortfall) in the event that we failed to satisfy our obligations to the CSD and the security interest was enforced. This applies whether the securities are held in an ISA or an OSA. However, in practice, we would expect that a CSD would first seek recourse to any securities held in our own proprietary accounts to satisfy our obligations and only then make use of securities in client accounts. We would also expect a CSD to enforce its security rateably across client accounts held with it.

## **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.

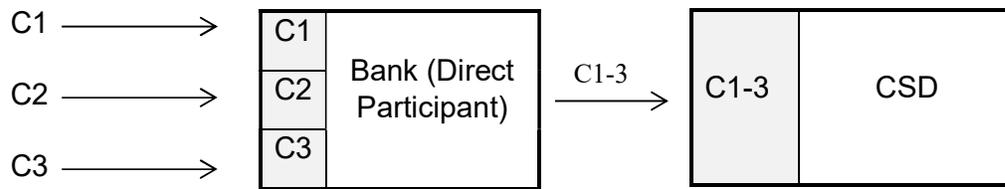
**Individual Client Segregated Account** or **ISA** means an account used to hold the securities of a single client.

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

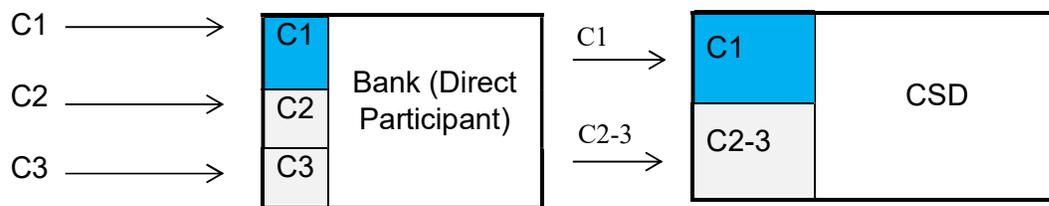
**Participant** means, as applicable, a Direct Participant or an Indirect Participant.

### 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)



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