

# Article 38 Central Securities Depositories Regulation

## Participant Disclosure:

### BNP Paribas S.A. acting through its New York branch

*Belgium: Euroclear Bank*

#### 1. Introduction

This document describes the level of protection associated with the two types of segregated accounts that BNP Paribas S.A. acting through its New York branch (hereinafter “**BNP Paribas**” or the “**New York Branch**”) provides in respect of securities that it holds for its clients with Euroclear Bank (hereinafter referred to as the “**CSD**”). It includes a description of the main legal implications of the two types of segregated accounts, including applicable U.S. and Belgian insolvency rules.

The disclosure of the information contained in this document is required under Article 38 of the Central Securities Depositories Regulation (“**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.

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

This document is not intended to constitute legal or other advice and should not be relied upon as such. You should seek your own legal advice if you require any guidance on the matters discussed in this document.

#### 2. Background

The custody of each BNP Paribas client’s securities is kept through separate client accounts in BNP Paribas’ books and records. In its books, BNP Paribas segregates each client’s securities from the securities of other clients as well as from BNP Paribas’ proprietary 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 described below. The CSD is not permitted to commingle its assets with securities of 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**”).

An OSA is used to hold the securities of a number of BNP Paribas clients on a collective basis.

An ISA is used to hold the securities of a single BNP Paribas client and therefore the 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 a client any operational rights with respect to that ISA.

### **3. Legal implications of segregation**

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

Euroclear Bank is the Belgian Central Securities Depository for international securities.

The ownership rights to securities held in custody accounts opened by clients with BNP Paribas, acting on behalf of clients with the CSD, are governed by U.S. law and any legal issues concerning title to the securities held in custody shall be decided under New York law.

#### **3.2 Insolvency**

##### Insolvency of the CSD

In accordance with its co-ownership right, BNP Paribas has specific rights with respect to the securities credited to its CSD account, namely:

- a. a right to vote; and
- b. a right of recovery (*droit de revendication/terugvorderingsrecht*), which is a proprietary right to receive back the relevant quantity of securities in the event of the CSD's bankruptcy (or any other proceedings in which the rule of equal treatment of creditors applies).

These two rights are regarded as two essential attributes of ownership under Belgian law and derive from the right *in rem* recognised over the book-entry securities.

Owing to the fungibility of the book-entry securities, Belgian law provides that the above-mentioned right of recovery is a collective right, to be exercised by all Direct Participants that have deposited the relevant securities with the CSD, rather than an individual right to be exercised by each Direct Participant.

Under Belgian law, if BNP Paribas holds securities for its own account, it may assert its co-ownership right against the CSD. BNP Paribas is, however, also in a position to:

- a. assert the rights attached to the securities (e.g. the right to vote or to receive dividends) against the issuer;
- b. in the event of the issuer's bankruptcy or any other proceedings in which the rule of equal treatment of creditors applies, exercise its right of recourse directly against the issuer; and
- c. in the event of the CSD's bankruptcy or any other proceedings in which the rule of equal treatment of creditors applies, bring – together with the other Direct Participants holding the same category of securities – a claim for recovery against the pool of securities of the same category held with the CSD or with the CSD's depository (where applicable) on behalf of the Direct Participants. Subject to any possibly applicable foreign conflict of law rules, the enforcement of this proprietary right shall not be affected by the deposit of such securities, in book-entry form or otherwise, by the insolvent CSD with a Belgian or foreign Central Securities Depository.

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 its clients' financial instruments.

## Insolvency/liquidation of BNP Paribas

BNP Paribas is a direct branch of BNP Paribas S.A. which is incorporated in France. BNP Paribas is licensed by the New York State Department of Financial Services (“**NY DFS**”). If the superintendent of NY DFS (“**Superintendent**”) were to close BNP Paribas should it become insolvent, any insolvency proceedings would take place in New York State in the U.S. and be governed by New York State bank liquidation law.

In the case of insolvency, the NY DFS would liquidate BNP Paribas subject to Article 13 of the New York Banking Law. The securities held in ISAs and OSAs in custody accounts on behalf of customers would not be treated as part of the liquidation estate. Instead, the customers who own the securities would be contacted by the Superintendent who would request instructions as to where to send the securities.

Furthermore, accepted claims, amounts due and other liabilities owed to other offices or affiliates of BNP Paribas S.A. will be paid only after all accepted claims, amounts due and other liabilities owed have been fully paid to such creditors and other claimants of BNP Paribas that are not other offices or affiliates of BNP Paribas S.A..

Finally, should BNP Paribas S.A. itself be closed and liquidated in France, under New York Banking Law, the NY DFS would remain the liquidator of the New York Branch. Any funds that may be left over after a liquidation of the New York Branch would be shared first with the other receivers/liquidators of BNP Paribas S.A. branches in the U.S. that are also undergoing liquidation by their relevant U.S. state regulator. After, any remaining funds would be sent to the liquidator of BNP Paribas S.A..

### **3.3 Shortfall**

In the unlikely event there is a discrepancy between the number of securities that BNP Paribas is required to deliver to a client and the number of securities held by BNP Paribas with the CSD or the CSD’s depository (where applicable) in either an ISA or OSA, fewer securities may be returned to the client than those to which the client is actually entitled.

While BNP Paribas takes steps to reduce the chances of a shortfall, a shortfall could still result from, among other things, inadvertent administrative errors or operational issues at the CSD level.

If a shortfall arises for which BNP Paribas is liable to clients and BNP Paribas cannot cover the shortfall, clients may be required to make a claim against the New York Branch.

There is no distinction in treatment between assets maintained for a client in an ISA as opposed to an OSA. Accordingly, BNP Paribas understands that in the case of a shortfall on accounts at the CSD, the shortfall would likely be shared among all

affected clients on a pro rata basis and regardless of whether the securities are held through an ISA or an OSA at an EEA Central Securities Depository. Therefore, a client may be exposed to a shortfall even where securities have been lost in circumstances which are unrelated to that client.

A number of factors would be taken into account in order to determine a client's share of any shortfall. Each client's entitlement to securities within an account would need to be established and any shortfall would then be allocated among clients with an interest in that security in the account. There are arguments which can be made that in certain circumstances a shortfall in a particular security should be attributed to a particular client or clients. This could be a lengthy process which may cause delays in returning securities.

## **GLOSSARY**

**Central Securities Depository** means an entity that 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** means 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.

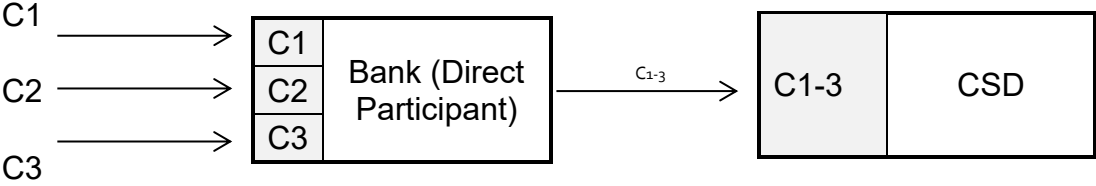
**Direct Participant** means an entity that holds securities in an account with a Central Securities Depository and is responsible for settling transactions in securities that take place within a Central Securities Depository. A Direct Participant should be distinguished from an Indirect Participant.

**Indirect Participant** means an entity, such as a global custodian, that appoints a Direct Participant to hold securities for it with a Central Securities Depository.

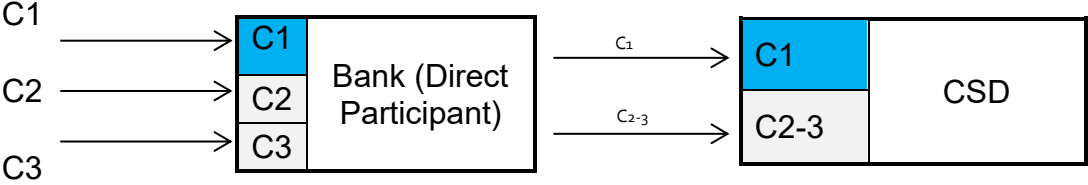
**Participant** means, as applicable, a Direct Participant or an Indirect Participant.

**Graphic representation of OSAs and ISAs:**

OSA (example with three clients C1-C3)



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



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## ***BNP Paribas S.A., New York branch***

BNP Paribas S.A. is a *société anonyme* incorporated under the laws of France with a New York branch validly existing as a foreign banking organization under the laws of the State of New York and licensed by the New York State Department of Financial Services.

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