

**Article 38 (5) (6) Central Securities Depositories Regulation (CSDR)  
Participant Disclosure: BNP Paribas Securities Services**

*BELGIUM: Euroclear Bank*

**1. INTRODUCTION**

This document describes the level of protection associated with the two types of segregation accounts that BNP Paribas Securities Services provides in respect of securities that it holds for its clients with Euroclear Bank (hereinafter referred to as the “CSD”), including a description of the main legal implications of the two types of segregation accounts as well as the applicable Belgian insolvency rules.

The disclosure of the information contained in this document is required under Article 38 (5) and (6) of the Central Securities Depositories Regulation (“CSDR”). BNP Paribas Securities Services is subject to these disclosure obligations in its capacity as a Direct Participant (see glossary) of the CSD. The CSD has his own disclosure obligations under the CSDR.

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

**2. BACKGROUND**

The custody of each BNP Paribas Securities Services’ client’s securities is kept through separate client accounts in its books and records. BNP Paribas Securities Services has the obligation to segregate in its books the securities of each of its clients which are themselves segregated from BNP Paribas Securities Services’ proprietary assets.

BNP Paribas Securities Services also opens securities accounts at the level of the CSD and ensures that its clients’ securities are segregated from BNP Paribas Securities Services’ own securities in the books of the CSD, irrespective of the type of accounts described below. The CSD is not permitted to commingle his own assets with securities of his Direct Participants.

BNP Paribas Securities Services is operationally able to establish two types of client securities accounts with the CSD: Individual Client Segregated Account (“ISA”) and Omnibus Client Segregated Account (“OSA”).

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

An ISA is used to hold the securities of one single client of BNP Paribas Securities Services and therefore the securities of that single client are held separately from the securities of BNP Paribas Securities Services’ 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.

For more information on ISAs and OSAs and their respective costs, please click on the following link: [<https://securities.bnpparibas.com/about-us/regulatory-publications/csdr.html>]

### 3. EUROCLEAR BANK

#### 3.1 General

Euroclear Bank is the Belgian CSD for international securities .

Book-entry securities can be held in Belgium under two legal regimes: either full dematerialisation or immobilisation<sup>1</sup>.

Dematerialised securities (“**Dematerialised Securities**”) are governed by the Laws of 2 January 1991 and 22 July 1991, Article 468 and following of the Belgian Companies Code and the coordinated Royal Decree No. 62, whereas fungible securities (“**Immobilised Securities**”) are governed by the coordinated Royal Decree No. 62.

Although the legal regimes for Dematerialised Securities and for Immobilised Securities are governed by different pieces of legislation (please see previous paragraph), the provisions applicable to both types of securities in terms of (i) ownership, (ii) insolvency of the CSD or of the Direct Participant and (iii) shortfall are substantially the same ones (please see respectively points 3.2., 3.3. and 3.4. below).

#### 3.2 Legal rules regarding Securities’ ownership

Dematerialised Securities and Immobilised Securities (together “**Book-entry Securities**”) held by BNP Paribas Securities Services with the CSD are fungible. This means that once the CSD accepts the securities for deposit, it is no longer possible to identify (whether on the CSD’s books or on the CSD depository<sup>2</sup>’s books) a specific security (by means of a serial number or otherwise) as belonging to a particular Direct Participant.

Under Belgian common law rules, the fungibility of the Book-entry Securities held with the CSD would have resulted in a *de plano* incorporation of such securities within the estate of the CSD and, consequently, in BNP Paribas Securities Services (as a Direct Participant) having

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<sup>1</sup> Under the immobilisation regime, the securities are deposited with a financial intermediary (lower tier), and ultimately deposited with an upper-tier central securities depository or an affiliated depository. The ownership of the deposited securities is reflected in a system of securities accounts, thus enabling the securities to be transferred rapidly and safely, while keeping the physical documents safely under deposit with the CSD. Following the Law of 14 December 2005, all listed bearer securities held on securities accounts under the immobilisation regime of Royal Decree No. 62 were automatically transformed into dematerialised securities as from 1 January 2008 resulting in a shift from immobilisation towards dematerialisation of securities in Belgium. However, the immobilisation regime of Royal Decree No. 62 remains important for the safekeeping of foreign securities on a securities account, usually held with Euroclear Bank as international CSD.

<sup>2</sup> I.e. the CSD where the securities initially deposited with the insolvent CSD have been sub-deposited by such insolvent CSD.

only a contractual right (claim) against the CSD. This contractual right would be similar to the right of a person who deposits cash with a credit institution, i.e. an unsecured right for the return of an equivalent amount of cash.

In order to avoid such detrimental situation, Belgian law expressly provides that the Dematerialised Securities and Immobilised Securities represent a right *in rem* (an ownership right) of an intangible nature. Therefore, the beneficial owners of the Book-entry Securities enjoy an undivided right *in rem* (i.e. a co-ownership right) on the pool of similar securities held in the books of the CSD, a Direct Participant or an Indirect Participant, as the case may be, which is to be exercised against the Participant who keeps their accounts.

As a consequence, Belgian rules offer a specific protection to holders of Book-entry securities and BNP Paribas Securities Services is granted an intangible co-ownership right over the pool of Book-entry Securities in the relevant category that the CSD holds on behalf of all his clients that hold securities in that category.

Owing to their fungibility, securities held with the CSD are treated on a book-entry basis. Rights to such securities are evidenced by entries in securities account and transfers of such rights occur by mere book entries. The investor's title is therefore the book entry and not the underlying physical or dematerialised security.

In other words, although documentation and common parlance speak of the transfer of securities between accounts, in fact the only things transferred are the co-ownership rights.

BNP Paribas Securities Services has therefore a proprietary right over the securities held with the CSD. This is however not a right of ownership in a physically identifiable or traceable asset, but rather a co-ownership right in a pool of assets of the same category held by the CSD on behalf of all its Direct Participants (and their clients) that hold this type of assets with the CSD, irrespective of whether the CSD holds these assets on behalf of its Direct Participants with one or more Belgian or foreign CSD. The portion of this pool on which the co-ownership right applies is represented by a credit to the accounts opened in the name of BNP Paribas Securities Services in the books of the CSD (the “**BPSS CSD Accounts**”).

As a result of the existence of the undivided right *in rem*, the CSD does not have any proprietary right on the securities credited to the BPSS CSD Accounts. In addition, the CSD is not authorised to use the securities held by BNP Paribas Securities Services without its express prior consent.

Additionally, Belgian law expressly prohibits so-called upper-tier attachment of securities accounts that are maintained with the CSD or with the CSD's depository. As a consequence, the Securities held with the CSD are by virtue of law immune from attachment by creditors of the Direct Participants and any third party. The same rule applies *mutatis mutandis* to the Securities deposited by the CSD with the CSD's depository.

As regards the right to vote attached to securities held with the CSD, Belgian law provides that the CSD or the relevant Direct Participant or Indirect Participant must deliver a certificate which states the number of securities credited on the securities account of the depositors. Belgian companies must allow the attendance of the depositors to the general meetings and permit them

to vote on the basis of such certificate. This certificate is generally issued by the recognised account holder in whose books the shareholder holds its securities. For non-Belgian issuers, this certificate may not be sufficient as the conditions required to vote and attend the general meetings will be governed by the *lex societatis* applicable to the relevant issuer.

### 3.3 Insolvency

- Insolvency of the CSD

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

- a. a right to vote; and
- b. a right of recovery (*droit de revendication/terugvorderingsrecht*), i.e. a proprietary right to receive back the relevant quantity of securities in the event of the CSD 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 (rather than an individual right to be exercised by each Direct Participant) with the CSD.

Under Belgian rules, if BNP Paribas Securities Services holds securities for its own account, it may assert its co-ownership right against the CSD. BNP Paribas Securities Services 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<sup>3</sup> on behalf of the

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<sup>3</sup> I.e. the CSD where the securities initially deposited with the insolvent CSD have been sub-deposited by such insolvent CSD.

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 CSD.

Additionally, the CSD would be placed under a strict prudential supervision by the National Bank of Belgium<sup>4</sup>. In case the CSD does not properly function or 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, among which disposal (i.e. transfer or sale) of assets and liabilities, including the transfer of the client assets consisting of financial instruments.

- Insolvency of BNP Paribas Securities Services

Belgian law provides for equivalent rules in favour of BNP Paribas Securities Services' clients who will be in a position to:

- a. assert their co-ownership right against BNP Paribas Securities Services;
- b. assert the rights attached to the securities (e.g. the right to vote or to receive dividends) against the issuer;
- c. in the event of the issuer's bankruptcy or any other proceedings in which the rule of equal treatment of creditors applies, exercise their right of recourse directly against the issuer;
- d. in the event of the bankruptcy of BNP Paribas Securities Services or any other proceedings in which the rule of equal treatment of creditors applies, bring - together with BNP Paribas Securities Services' other clients holding the same category of securities - a claim for recovery against the pool of securities of the same category held by BNP Paribas Securities Services with the CSD or another Direct Participant on their behalf.

It should be noted that, in our opinion and from a strict legal perspective, given the asset protection already granted by Belgian law, the use of an ISA in lieu of an OSA at the level of the CSD will not in principle result in a greater asset protection for BNP Paribas Securities Services or its clients. This opinion stems from the recognition under Belgian law of an intangible co-ownership right over the pool of book-entry securities in the same category held by the CSD on behalf of all its Direct Participants (and their own clients) that hold securities in that category, regardless of the fact that such securities are held on segregated accounts or not.

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<sup>4</sup> In its capacity of Belgian supervisory authority.

### **3.4 Shortfall**

#### **a. At the level of the CSD**

There may be situations where the number of securities held by the CSD with the CSD's depository<sup>5</sup> is inferior to the sum of the positions of the Direct Participants in the books of the CSD. Belgian law provides that in such a case the pool of securities must be allocated among the Direct Participants in proportion to their rights, as represented by the credits to their accounts in the books of the CSD.

In addition, if the CSD owns a number of securities of the same category with the CSD's depository, the CSD will only be entitled to the number of securities remaining after the total number of securities of the same category which the CSD held for third parties has been returned.

#### **b. At the level of BNP Paribas Securities Services**

If the pool of securities held by BNP Paribas Securities Services with the CSD is inferior to the sum of the positions of BNP Paribas Securities Services' clients in the books of BNP Paribas Securities Services, it must be allocated among BNP Paribas Securities Services' clients in proportion to their rights, as represented by the credits to their accounts in the books of BNP Paribas Securities Services.

In addition, if BNP Paribas Securities Services is the owner of a number of securities of the same category, BNP Paribas Securities Services will only be entitled to the number of securities remaining after the total number of securities of the same category which it held for third parties has been returned. Please note that the law of 2 June 2010 has modified the above described regime by introducing a new subordination regime. Under this new regime a distinction shall be made according to whether or not clients have agreed to the reuse of securities. If the shortfall occurred without clients' consent to reuse the securities, the current regime will apply (i.e. : the ensuing losses will be collectivised to all securities holders, as the available securities will be attributed to them in proportion to their holdings and, if the insolvent intermediary personally holds securities of the same nature, the securities holders may exercise the remainder of their claims on these securities, held by the intermediary with the CSD or an affiliated intermediary). If, on the contrary, the client has given his consent to the reuse of his securities by the intermediary, the client's claim would be subordinated to those of the clients who did not grant permission to reuse, and therefore such client will only be admitted to claim his securities on the omnibus account after all other clients have been compensated. The entry into force of the provisions organising this new regime has however still to be determined by way of Royal Decree.

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<sup>5</sup> I.e. the CSD where the securities initially deposited with the insolvent CSD have been sub-deposited by such insolvent CSD.

## 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)** is used to hold the securities of a single client.

**Omnibus Client Segregated Account (OSA)** is 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.

This Participant Disclosure document is dated 5 December, 2019.

### *Disclaimer*

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