

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

**Disclosure Letter – Portugal**

**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 the Portuguese central securities depository Interbolsa<sup>1</sup> (hereinafter “**Interbolsa**”), including a description of the main legal implications of the two types of segregation accounts as well as the applicable Portuguese 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 EU 909/2014 (“**CSDR**”). BNP Paribas Securities Services is subject to these disclosure obligations in its capacity as a Direct Participant (see glossary) of Interbolsa. Interbolsa has its 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 Interbolsa and ensures that its clients’ securities are segregated from BNP Paribas Securities Services’ own securities in the books of Interbolsa, irrespective of the type of accounts described below. Interbolsa is not permitted to commingle its own assets with securities of its Direct Participants.

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

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<sup>1</sup> Interbolsa is the commercial name of the company Interbolsa - Sociedade Gestora de Sistemas de Liquidação e de Sistemas Centralizados de Valores Mobiliários, S.A.

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. PORTUGAL (INTERBOLSA)**

#### **3.1 Legal rules regarding securities' ownership**

Securities issued in Portugal must be nominative (*nominativos*) and may be represented by certificates (*títulos*) or book entry records in the accounts maintained by a financial intermediary or the issuer. In case of securities admitted to trading in a regulated market the integration and registration of the securities in a centralised system is mandatory.

Title over securities registered in the Portuguese Central Securities System (*Central de Valores Mobiliários* – “CVM”) managed by Interbolsa is determined at the level of the individual securities account held by the financial intermediaries which are authorised to hold control accounts with Interbolsa (the so-called “**Affiliate Members**” or “**Direct Participants**”), as is the case of BNP Paribas Securities Services, and not at the level of Interbolsa.

The securities may only be transferred upon their registration in an individual securities account held with an Affiliate Member of Interbolsa and, as a rule, each person shown in the records of an Affiliate Member of Interbolsa shall be deemed to be the owner of the securities.

Therefore, the books and records of BNP Paribas Securities Services constitute evidence of its clients' title to the securities. The ability to rely on such evidence would be particularly important on the insolvency of BNP Paribas Securities Services, as no records of individual clients' titles would be held by Interbolsa.

#### **3.2 ISA and OSA**

Interbolsa provides to its Affiliate Members the possibility to segregate between “omnibus client segregation” and “individual client segregation”, according to article 38 (3) and (4) of the CSDR, and to identify the type of segregation of their securities accounts in Interbolsa's systems.

BNP Paribas Securities Services is subject to the client asset rules set out in the Portuguese Securities Code (*Código dos Valores Mobiliários*), the regulations of the Portuguese Securities Commission (“**CMVM**”) and Interbolsa regulations and procedures, which contain strict and detailed requirements as to the maintenance of accurate books and records and the reconciliation of BNP Paribas Securities Services’ records against those of Interbolsa. As long as books and records are maintained in accordance with the applicable rules, clients should receive the same level of protection from both ISAs and OSAs.

### **3.3 Insolvency**

#### *3.3.1 Insolvency of Interbolsa*

If Interbolsa becomes subject to insolvency proceedings, the securities registered in the CVM cannot be claimed by Interbolsa’s creditors as Interbolsa does not hold any ownership rights on those securities.

Accordingly, in case of an insolvency of Interbolsa, the fact that securities are held through an ISA opened in the books of Interbolsa on behalf of a particular client of BNP Paribas Securities Services does not give that client more protection than in the case of clients who hold their securities through an OSA.

#### *3.3.2 Insolvency of BNP Paribas Securities Services*

If BNP Paribas Securities Services were to become insolvent, the insolvency proceedings would take place in France and be governed by French insolvency laws.

BNP Paribas Securities Services must segregate its own securities from securities of its clients. This segregation is a key principle under French law as well as Portuguese law. If BNP Paribas Securities Services becomes subject to insolvency proceedings, proprietary rights over financial instruments are determined at the level of the securities account (*compte-titres*) held by BNP Paribas Securities Services and not at the level of the accounts held at Interbolsa. BNP Paribas Securities Services’ clients securities cannot be claimed by BNP Paribas Securities Services’ own creditors and can only be claimed by the clients of BNP Paribas Securities Services.

Accordingly, in case of a potential insolvency event affecting BNP Paribas Securities Services, the fact that securities are held through an ISA opened in the books of Interbolsa on behalf of a particular client of BNP Paribas Securities Services does not give that client more protection than in the case of clients who hold their securities through an OSA.

### **3.4 Shortfall**

#### *3.4.1 At the level of Interbolsa*

The CVM consists of interconnected groups of accounts through which the issue and transfer of securities is processed, and which ensure control over the amount of securities in

circulation and their inherent rights. The CVM comprises, *inter alia*, (i) the issue account opened by the issuer in the CVM, which reflects, at all times, the full amount of securities issued, (ii) the individual securities accounts opened by the clients with the Affiliate Members of Interbolsa and (iii) the control accounts opened by each of the Affiliate Members of Interbolsa, which reflect, at all times, the aggregate nominal amount of securities held in the individual securities accounts opened by holders of securities with such Affiliate Members of Interbolsa.

All securities issued and registered in the CVM are distributed among the control accounts of each of the Affiliate Members of Interbolsa and each of the Affiliate Members must always keep record of the entity or person to which the securities in its control accounts belong. The Interbolsa procedures are defined to ensure a permanent balance between the issue account and the control accounts of the Affiliate Members, which protects the rights of every holder.

Under the Portuguese Securities Code, Interbolsa, in its capacity as manager of the CVM, must take the necessary measures to prevent and correct any divergence between the number of securities issued and the number of securities in circulation. In addition, Interbolsa shall be liable for any damage caused to financial intermediaries and issuers as a result of omission, irregularity, error, insufficiency or delay in the performance of the records for which it is responsible, and the information it must provide, unless it proves that there was fault of the affected parties.

Notwithstanding, pursuant to Interbolsa's Operation Manual, the opening, maintenance and closing of securities accounts, "omnibus client segregation" or "individual client segregation", is in both cases the responsibility of the Affiliate Member, who creates and operates the account in the centralized system in accordance with the client's instructions and the terms of the individual registration account, and Interbolsa does not assume any type of responsibility towards the client, nor gives any kind of guarantee.

#### 3.4.2 *At the level of BNP Paribas Securities Services*

If there were a shortfall between the number of securities that BNP Paribas Securities Services is obliged to deliver to clients and the number of securities held in either an ISA or an OSA, this could result in fewer securities than clients are entitled to being returned to them on the insolvency of BNP Paribas Securities Services.

BNP Paribas Securities Services does not permit clients to make use of or borrow securities belonging to other clients for intra-day settlement purposes, even where the securities are held in an OSA. Therefore, where BNP Paribas Securities Services is requested to settle a transaction for a client and that client has insufficient securities held with BNP Paribas Securities Services to carry out that settlement, in the case of both an ISA and an OSA, BNP Paribas Securities Services will only carry out the settlement once the client has delivered the securities needed to meet the settlement obligation.

Notwithstanding, a shortfall could arise as a result of an inadvertent administrative error or operational issues.

The Portuguese Securities Code provides that financial intermediaries must keep records that enable them to distinguish the assets of a client from its own assets and to distinguish the assets belonging to a client from those belonging to another client. However, it does not contain any specific rules dealing with the allocation of a shortfall of securities, in particular in the event of insolvency of the financial intermediaries.

Pursuant to Interbolsa's Operation Manual, in the event of insolvency of an Affiliate Member, and taking into account the segregation per client, Interbolsa shall only act in accordance with the instructions of the insolvency administrator, *inter alia* in what concerns the transfer of securities recorded in the client accounts with "individual client segregation" to another Affiliate Member.

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 (BNP Paribas Securities Services is considered as one), the insolvency administrator or liquidator administrator 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 intermediary 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 Securities Services with Interbolsa. Accordingly, in case of a potential insolvency event affecting BNP Paribas Securities Services, the fact that securities are held through an ISA opened in the books of Interbolsa on behalf of a particular client of BNP Paribas Securities Services does not give that client more protection than in the case of clients who hold their securities through an OSA.

**This Participant Disclosure document is dated June 15, 2018.**

## 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** (or **Affiliate Member**) means an entity that is authorised to hold securities in an account with Interbolsa and is responsible for settling transactions in securities that take place within the Interbolsa's securities settlement systems. A Direct Participant should be distinguished from an indirect Participant (i.e. an entity such as a global custodian, which appoints a Direct Participant to hold securities for it with Interbolsa).

**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.

### *Disclaimer*

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