

# Article 38 Central Securities Depositories Regulation

## Participant Disclosure:

### BGL BNP Paribas

*Luxembourg: Clearstream Banking Luxembourg*

#### 1. INTRODUCTION

The purpose of this document is to describe the levels of protection associated with the two types of segregated securities accounts that BGL BNP Paribas (“**BGL**”, “**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, including a description of the main legal implications of the two types of securities accounts as well as the applicable insolvency rules.

BGL has however outsourced the vast majority of its securities and custody operations to BNP Paribas, Switzerland. This document is not intended to describe securities held or deposited with intermediaries, custodians or global custodians in other jurisdictions.

The disclosure of the information contained in this document is required under Article 38 of the Central Securities Depositories Regulation EU 909/2014 (“**CSDR**”). BGL is subject to these disclosure obligations in its capacity as a Direct Participant (see glossary) of CBL. CBL has also its own disclosure obligations under the CSDR.

The disclosure included in this document is for information purposes only. This document is not intended to constitute legal or other advice and should not be relied upon as such. Clients should seek their own legal advice if they require any guidance on the matters discussed in this document.

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 BGL’s clients is held through separate client accounts in its books and records. BGL has the obligation to segregate in its books the securities of each of its clients from those of its other clients, as well as BGL’s own assets.

BGL also opens securities accounts at the level of the central securities depository (the “**CSD**”) it uses and ensures that its clients’ securities are segregated from BGL’s 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.

BGL 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 BGL’s clients on a collective basis.

An ISA is used to hold securities of a single client of BGL and therefore any such securities of that single client are held separately from the securities of BGL’s 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 BGL are governed by Luxembourg law, and b) by BGL, 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 Luxembourg.

Under Luxembourg law (the law of 1st August 2001 on the circulation of securities, as amended), 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 against the account keeper. This means that where BGL 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.

#### **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 BGL 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. BGL, 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. If the account holder has not been able to obtain the return of all the securities credited to his securities account on the date of opening of insolvency proceedings, he shall declare his claim as an unsecured creditor for an amount equal to the value of the securities not returned on the date of opening of proceedings.

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

### Insolvency/liquidation of BGL BNP Paribas

Luxembourg law would apply in the context of the insolvency of BGL BNP Paribas, which is a Luxembourg credit institution, including with respect to the implementation of one or several reorganisation measures.

Under Luxembourg insolvency law, securities that BGL 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 remain the property of the clients.

As a result, it would not be necessary for clients to make a claim in BGL BNP Paribas' insolvency as a creditor in this respect.

In any event, where BGL BNP Paribas holds securities in custody for clients and those securities are considered the property of those clients rather than BGL BNP Paribas' own property, they should be protected on BGL 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, BGL 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.

#### At the level of BGL BNP Paribas

If a shortfall were to arise on accounts held by the clients with BGL BNP Paribas, Luxembourg law would be applicable.

If, in the opinion of the 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.

### **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.

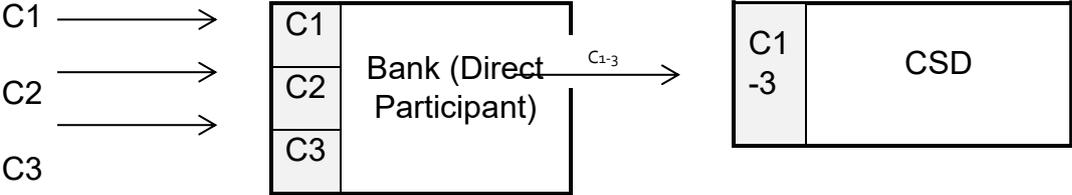
**Individual Client Segregated Account (ISA)** means an account used to hold the securities of a single client.

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

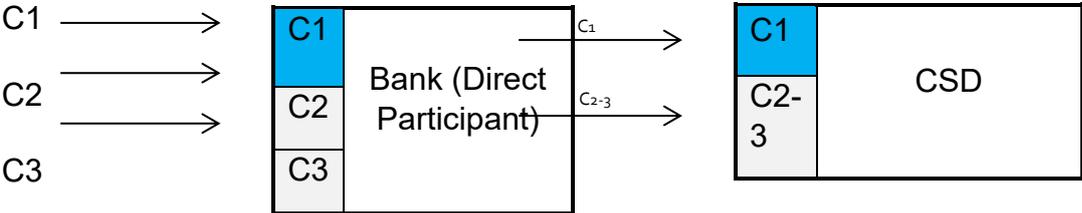
**Participant** means, as applicable, a Direct Participant or an Indirect Participant.

**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 Luxembourg banks and investment firms under the Luxembourg Law of 18 December 2015, as amended on the resolution, reorganisation and winding up measures of credit institutions and certain investment firms and on deposit guarantee and investor compensation schemes.

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