



BNY MELLON

## THE BANK OF NEW YORK MELLON SA/NV

### ARTICLE 38(6) CSDR AND ARTICLE 73 FMIA PARTICIPANT DISCLOSURE

#### 1. Introduction

The purpose of this document is to disclose the levels of protection associated with the different levels of segregation that we provide in respect of securities that we hold directly for clients with Central Securities Depositories within the EEA and Switzerland (**CSDs**), including a description of the main legal implications of the respective levels of segregation offered and information on the insolvency law applicable. This disclosure is required under Article 38(6) of the Central Securities Depositories Regulation (**CSDR**) (in relation to CSDs in the EEA) and Article 73 of the Swiss Financial Markets Infrastructure Act (**FMIA**) (in relation to CSDs in Switzerland).

Under CSDR, the CSDs of which we are a direct participant (see Glossary) have their own disclosure obligations and may make their own disclosures from time to time.

Where we hold clients securities and participate in CSDs through our branches in Germany, Ireland, Luxembourg and the Netherlands, this document is supplemented by the relevant Annex set out at the end of this document.

This document (including the Annexes) 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.

#### 2. Background

In our own books and records, we record each client's individual entitlement to securities that we hold for that client in a separate client account. We also open accounts with CSDs in our own (or in our nominee's) name in which we hold clients' securities. We currently make two types of accounts with CSDs available to clients: Individual Client Segregated Accounts (**ISAs**) and Omnibus Client Segregated Accounts (**OSAs**).

An ISA is used to hold the securities of a single client and therefore the client's securities are held separately from the securities of other clients and our own proprietary securities.

An OSA is used to hold the securities of a number of clients on a collective basis. However, we do not hold our own proprietary securities in OSAs.

#### 3. Main legal implications of levels of segregation

Under Belgian law, clients' rights in respect of securities held in an ISA and the protections available to them are not materially different from their rights and protections in respect of securities held in an OSA.

##### ***Insolvency***

Clients' legal entitlement to the securities that we hold for them directly with CSDs would in principle not be affected by our insolvency, whether those securities were held in ISAs or OSAs.

The distribution of the securities on an insolvency would, in practice, depend on a number of factors, the most relevant of which are discussed below.

##### ***Application of Belgian insolvency law***

In accordance with article 365 of the Belgian Law of 25 April 2014 on the supervision of credit institutions (the Banking Law), were we to become insolvent, our insolvency proceedings would take place in Belgium and be governed by Belgian insolvency law.

However, article 369, 4° of the Banking Law provides that, in deviation from article 365 of the Banking Law, *“the exercise of ownership rights on financial instruments [...] whose existence or transfer requires an entry in a register, in an account or with a centralised depository [...], will be exclusively governed by the laws of the member state where the register, the account or the centralised depository where these rights were entered, is held or located [...]”*.

To the extent that Belgian insolvency law is applicable, under such law, assets that we hold on behalf of clients would not form part of our estate on insolvency for distribution to creditors, provided that they remain the property of the clients (see “Nature of client’s interests” below and, in relation to securities held through our branches, in the Annexes). Rather, they would be deliverable to clients in accordance with each client’s proprietary interest in the securities.

Securities that we hold on behalf of clients and that remain the property of the clients would also not be subject to any bail-in process (see Glossary), which may be applied to us if we were to become subject to resolution proceedings (see Glossary).

Accordingly, where we hold securities in custody for clients and those securities are considered the property of those clients rather than our own property, they should be protected on our insolvency or resolution. This applies whether the securities are held in an OSA or an ISA.

#### *Nature of clients’ interests*

Fungible assets (such as securities) that are deposited with us, would become our property. Clients have a contractual right against us to deliver the securities to them.

This applies both in the case of ISAs and OSAs.

However, a special regime has been created under Belgian law in the case of the deposit of fungible financial instruments. Under this regime each client has a co-ownership right in the entire pool of financial instruments of the same type which have been deposited with the direct participant proportionate to its holding of securities.

As a general rule, each co-owner will be able to recover the number of securities to which it is entitled. This will only be possible, however, once the bankruptcy trustee has verified all ownership rights.

Our books and records constitute evidence of our clients’ (co-)ownership rights to the securities. The ability to rely on such evidence would be particularly important on insolvency. In the case of either an ISA or an OSA, an insolvency practitioner may require a full reconciliation of the books and records in respect of all securities accounts prior to the release of any securities from those accounts. In the case of an ISA, this reconciliation will likely be able to occur more efficiently and less onerously than in the case of an OSA.

We are subject to the client asset rules as set out in Directive 2014/65/EU (MiFID II) as implemented into Belgian law by the Royal Decree of 19 December 2017 (the **Client Asset Rules**), which contain strict and detailed requirements as to the maintenance of accurate books and records and the reconciliation of our records against those of the CSDs with which accounts are held. We are also subject to regular audits in respect of our compliance with those rules. As long as books and records are maintained in accordance with the Client Asset Rules, clients should receive the same level of protection from both ISAs and OSAs.

#### **Shortfalls**

If, despite the record-keeping and reconciliation requirements referred to above, there were a shortfall between the number of securities that we are obliged to deliver to clients and the number of securities that we hold as a depository on their behalf in either an ISA or an OSA, this could result in fewer securities than clients are entitled to being returned to them on our insolvency. The way in which a shortfall could arise would be different as between ISAs and OSAs (see further below). However, we believe that the treatment of a shortfall in an insolvency situation does not differ between ISAs and OSAs as each client has a co-ownership right in the entire pool of financial instruments of the same type which have been deposited with the direct participant proportionate to its holding of securities (see above and further below).

#### *How a shortfall may arise*

A shortfall may arise in limited circumstances as a result of administrative error, intraday movements or counterparty default following the exercise of rights of reuse.

We do 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, in order to reduce the chances of a shortfall arising as a result of the relevant client failing to meet its obligation to reimburse the OSA for the securities used or borrowed.

### *Treatment of a shortfall*

If there is a shortfall of securities, the shortfall would be shared among clients having a co-ownership right in the pool of securities of the same type which have been deposited with us, whether clients' securities are held in an ISA or an OSA. Therefore, a client may be exposed to a shortfall even where securities have been lost in circumstances which are completely unrelated to that client. The risk of a shortfall arising is, however, mitigated as a result of our obligation under the Client Asset Rules in certain situations to set aside our own cash or securities to cover shortfalls identified during the process of reconciling our records with those of the CSDs with which securities are held.

If a shortfall arose and was not covered in accordance with the Client Asset Rules, clients may have a claim against us for any loss suffered. If we were to become insolvent prior to covering a shortfall, clients would rank as general unsecured creditors for any amounts owing to them in connection with such a claim. If we were to become subject to resolution procedures under the Banking Law, clients' claims against us may become subject to bail-in. Clients would therefore be exposed to the risks of our insolvency or resolution, including the risk that they may not be able to recover all or part of any amounts claimed.

In these circumstances, clients could be exposed to the risk of loss on our insolvency.

In the case of a shortfall, any securities held by the direct participant for its own account would be added to the pool of securities available for distribution to clients. In the case of a remaining shortfall, available securities would be distributed to the co-owners pro rata to their entitlements.

In order to calculate clients' shares of any shortfall, each client's entitlement to securities in the pool of securities of the same type would need to be established as a matter of law and fact based on our books and records. Any shortfall in a particular security would then be allocated among all clients with a co-ownership right in that security. It may therefore be a time-consuming process to confirm each client's entitlement. This could give rise to delays in returning securities and initial uncertainty for a client as to its actual entitlement on an insolvency. Ascertaining clients' entitlements could also give rise to the expense of litigation, which could be paid out of clients' securities.

### **Security interests**

#### *Security interests granted by clients to third parties outside the custody chain*

Security interests granted over clients' securities could have a different impact in the case of ISAs and OSAs.

Where a client grants a security interest over securities held with us and we hold the relevant securities in an OSA, if the security interest was asserted against the CSD 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.

#### *Security interests granted by us to a 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 permanent loss) 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.

Furthermore, the Client Asset Rules restrict the security interests that we may grant over securities held in a client account to those securing debts relating to clients or the provision of services to clients, except where security interests are required by applicable law.

## GLOSSARY

<i>Bail-in</i>	refers to the process under the Banking Law applicable to failing Belgian credit institutions under which a credit institution's liabilities to clients may be modified, for example by being written down or converted into equity.
<i>Central Securities Depository or CSD</i>	is an entity which records legal entitlements to dematerialised securities and operates a system for the settlement of transactions in those securities.
<i>Central Securities Depositories Regulation or CSDR</i>	refers to EU Regulation 909/2014 which sets out rules applicable to CSDs and their participants.
<i>Direct participant</i>	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, which is an entity, such as a global custodian, which appoints a direct participant to hold securities for it with a CSD.
<i>EEA</i>	means the European Economic Area.
<i>FDIC</i>	means the U.S. Federal Deposit Insurance Corporation.
<i>Financial Markets Infrastructure Act or FMIA</i>	refers to FinfraG (Finanzmarktinfrastukturgesetz), a Swiss law which sets out rules applicable to CSDs and their participants.
<i>Resolution proceedings</i>	are proceedings for the resolution of failing Belgian credit institutions under the Banking Law.

## ANNEX I

### GERMANY

This annex relates to circumstances in which clients' securities are held with our German branch.

This Annex supplements the disclosure set out in the main body of this document (the **Main Disclosure**) and should be read together with it. Where sections have been included below, the relevant section of the Main Disclosure should be disregarded

#### Main legal implications of levels of segregation

##### **Insolvency**

###### *Application of Belgian insolvency law*

As mentioned in the Main Disclosure, were we to become insolvent, our insolvency proceedings would take place in Belgium and be governed by Belgian insolvency law. Nevertheless, where we record a client's entitlement to securities that we hold for that client in a separate client account of our German branch, we would expect German law to govern certain aspects of our relationship to our client.

###### *Nature of clients' interests*

In general, our clients' securities that we hold with a CSD located in Germany (i.e. Clearstream Banking AG, CBF) are held in collective safe custody (*Sammelverwahrung*) by **CBF** (section 5 para. 1 German Safe Custody Act (**DepotG**)). This applies irrespective of whether the securities are issued in the form of individual physical securities (*Einzelurkunden*) or global certificates (*Globalurkunde*) or are dematerialised book-entry rights (for example, collective debt register claims (*Sammelschuldbuchforderungen*)). While the accounts in which our clients' securities are held at CBF are registered in our name, we hold these securities on behalf of our clients. Under the rules of the DepotG, our clients are considered to have a co-ownership interest in all securities of the same type that are held in collective safe custody (*Sammelverwahrung*) by CBF according to the proportionate share of the client's holding of securities of this type (section 6 para. 1 DepotG). This is in addition to any contractual right that a client may have against us to have the securities delivered to them.

This applies both in the case where the proportionate share of the client's holding in these securities is held in an ISA and in the case where they are held in an OSA.

Where the security is not eligible for collective safe custody (*Sammelverwahrung*), or where the client specifically instructs us so, CBF will hold the relevant securities visibly identifying the depositor separated from its own and third party holdings in special safe custody (*Sonderverwahrung*). In this case, the client's securities can be wholly attributed to the client, and the client (or its clients, where they are the ultimate owners of the securities held in the ISA) would be deemed the owner of all securities held in the ISA. However, securities held in such form are typically not tradeable on exchanges or MTFs.

The nature of clients' interests may be different when securities are held outside Germany.

##### **Shortfalls**

If there were a shortfall between the number of securities that we are obliged to deliver to clients and the number of securities that we hold on their behalf with CBF, this could result in fewer securities than clients are entitled to being returned to them on our insolvency.

###### *How a shortfall may arise*

The circumstances in which a shortfall may arise are set out in the Main Disclosure.

Further, a shortfall may arise at different levels of the custody chain. For example, a shortfall may arise if the number of securities of the same type which we and other participants hold in collective safe custody (*Sammelverwahrung*) with CBF is greater than the total pool of securities of this type held by CBF (which may happen where not all securities are ultimately held directly by CBF but, for example, if some are held with a foreign CSD). A shortfall may also arise in relationship between us and our clients, where the number of securities that we hold on behalf of our clients according to our books and records is greater than the number of securities that we hold with CBF.

###### *Treatment of a shortfall*

Under German law if the number of securities of a certain type held in collective safe custody (*Sammelverwahrung*) with a depository falls short of the aggregate number of securities of the same type to which the depositors are entitled, such shortfall will generally be apportioned in proportion to the share of

each depositor in the aggregate number of securities of this type held with the depositary<sup>1</sup>. Therefore, a client may be exposed to a shortfall even where the shortfall has occurred due to circumstances which are unrelated to that client.

If a shortfall arose at the level of CBF, we expect that it would be apportioned in proportion to the share of each participant and their clients in the aggregate numbers of securities of the same type with CBF, irrespective of whether the client's securities of this type are held in an ISA or an OSA. If a shortfall arose between our clients and us, a different allocation may take precedence:

If a shortfall resulted from a transaction that can be attributed to a specific client account of our German branch, the shortfall should be borne by the relevant account holder. Where a shortfall occurred in relation to an OSA that cannot (or not to the full extent) be attributed to a specific client account, it is arguable that the shortfall should only be shared among the clients with an interest in the securities held in the relevant OSA, and should not be apportioned to securities of the same type that are recorded in an ISA.

A shortfall that occurs in relation to an OSA or an ISA should, in any case, not apply to securities that CBF holds in special safe custody (*Sonderverwahrung*).

In order to calculate clients' shares of any shortfall, each client's entitlement to the relevant securities held in collective deposit would need to be established as a matter of law and fact based on our books and records. It may be a time-consuming process to confirm each client's entitlement. This could give rise to delays in returning securities and initial uncertainty for a client as to its actual entitlement on an insolvency. In this respect, establishing a client's entitlement to shares held in collective safe custody would be easier where the proportionate share is reflected in an ISA and, thereby, also segregated in the books and records of CBF.

If a shortfall arose, clients may have a claim against us for any loss suffered. In this case, we would be required to use our own securities of the same type to cover shortfalls. However, clients could be exposed to the risk of loss on our insolvency.

### **Security interests**

#### *Security interests granted by clients to third parties outside the custody chain*

Clients may grant security interests over their securities to third parties, irrespective of whether they are held in an ISA or an OSA. In both cases, we would expect that the beneficiary of a security interest over a client's securities would perfect its security by notifying us rather than CBF and would seek to enforce the security against us rather than against CBF, with which it had no relationship. We would also expect CBF to refuse to recognise a claim asserted by anyone other than ourselves as account holder.

#### *Security interests granted by us to CBF*

Where CBF 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 irrespective of 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.

Furthermore, the rules of Directive 2014/65/EU (MiFID II) and the German Safe Custody Act restrict the security interests that we may grant over securities held in a client account to those securing debts incurred for the provision of services in relation to clients' securities, except where security interests are required by applicable law and provided that clients authorise us to grant such security interests accordingly.

### **Client Asset Rules**

Please note that the Client Asset Rules described in the Main Disclosure in relation each of the sections set out above will apply where clients' securities are held with our German branch.

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<sup>1</sup> Please note that the treatment for shortfalls that occur in relation to securities held outside of Germany may be different from the principles set out in this section.

## GLOSSARY

*CBF*

refers to Clearstream Banking AG, the German CSD located in Frankfurt.

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*DepotG*

refers to the German Safe Custody Act (*Depotgesetz*), a German law which sets out rules governing the safeguarding of client securities.

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## ANNEX II

### LUXEMBOURG

This annex relates to circumstances in which clients' securities are held with our Luxembourg branch.

This Annex supplements the disclosure set out in the main body of this document (the **Main Disclosure**) and should be read together with it. Where sections have been included below, the relevant section of the Main Disclosure should be disregarded.

#### **Main legal implications of levels of segregation**

##### ***Insolvency***

###### *Application of Belgian insolvency law*

As mentioned in the Main Disclosure, were we to become insolvent, our insolvency proceedings would take place in Belgium and be governed by Belgian insolvency law. Nevertheless, where we record a client's entitlement to securities that we hold for that client in a separate client account of our Luxembourg branch, we would expect Luxembourg law to govern certain aspects of our relationship to our client.

References to Securities "remaining the property of clients" in the Main Disclosure should be read as references to clients keeping proprietary interests in such Securities. As a result of the insolvency regime described in the Main Disclosure, it would not be necessary for clients to make a claim in our insolvency as a general unsecured creditor in respect of the securities in which clients keep a proprietary interest.

###### *Nature of clients' interests*

The nature of the clients' interests in securities held with our Luxembourg branch is governed by Luxembourg law.

Fungible assets (such as securities) that are deposited with us, would become our property. Clients have a contractual right against us to deliver the securities to them.

This applies both in the case of ISAs and OSAs.

However, a special regime has been created under Luxembourg law in the case of the deposit of fungible financial instruments. The deposit of the securities will be subject to the fungibility regime set out in the law of 1st August 2001 on the circulation of securities (the **Law on the Circulation of Securities**). Under the Law on the Circulation of Securities, each client has a right in rem (a proprietary interest) of an intangible nature up to the number of securities booked to its securities account held with us, on the entire pool of securities of the same type held in accounts by us (the "securities entitlement") as the immediate account provider, i.e. as the account provider who has opened the client's securities account. This is in addition to any contractual right a client may have against us to have the securities delivered to them.

As a general rule, each client would be able to recover the number of securities to which it is entitled. This would only be possible, however, once the bankruptcy trustee has verified all ownership rights.

According to Luxembourg law, the securities entitlement can only be exercised by the client against its immediate account provider, even if the latter has sub-deposited the securities in its name with a higher tier intermediary. This means that the client can generally only exercise its rights in relation to the securities entitlements against us and not against CSDs with which we hold accounts, whether the client's securities are held in ISAs or OSAs.

Our books and records constitute evidence of our clients' proprietary interests in the securities. The ability to rely on such evidence would be particularly important on insolvency. In the case of either an ISA or an OSA, an insolvency practitioner may require a full reconciliation of the books and records in respect of all securities accounts prior to the release of any securities from those accounts. In case of an ISA, this reconciliation will likely be able to occur more efficiently and less onerously than in case of an OSA.

##### ***Shortfalls***

If there were a shortfall between the number of securities that we are obliged to deliver to clients and the number of securities that we hold on their behalf in either an ISA or an OSA, this could result in fewer securities than clients are entitled to being returned to them on our insolvency. The way in which a shortfall could arise would be different as between ISAs and OSAs (see further below).

###### *How a shortfall may arise*

The circumstances in which a shortfall may arise are set out in the Main Disclosure.

### *Treatment of a shortfall*

The treatment of shortfalls may vary depending on whether the securities are held by us in an ISA or OSA. In case of an ISA, the whole of any shortfall on that ISA would be attributable to the client for whom the account is held and would not be shared with other clients for whom we hold securities. Similarly, the client would not be exposed to a shortfall on an account held for another client or clients.

In the case of an OSA, the shortfall would be shared among the clients in relation to the securities held in the OSA (see further below). Therefore, a client may be exposed to a shortfall even where securities have been lost in circumstances which are completely unrelated to that client.

The risk of a shortfall arising is mitigated as a result of our obligation, in case the available quantity of specific securities is insufficient, to cover the loss by securities of the same nature belonging to us in certain circumstances and within the limits set out by law.

If a shortfall arose and was not covered in accordance with the Client Asset Rules, and we did not hold a sufficient amount of securities of the same nature belonging to us, clients may have a claim against us for any loss suffered. If we were to become insolvent prior to covering a shortfall, clients would rank as general unsecured creditors for any amounts owing to them in connection with such a claim. Clients would therefore be exposed to the risks of our insolvency, including the risk that they may not be able to recover all or part of any amounts claimed.

In these circumstances, clients could be exposed to the risk of loss on our insolvency. If securities were held in an ISA, the entire loss would be borne by the client for whom the relevant account was held. If securities were held in an OSA, the loss would be allocated between the clients with an interest in that account.

In order to calculate clients' shares of any shortfall in respect of an OSA, each client's interests in relation to securities held within that account would need to be established as a matter of law and fact based on our books and records. Any shortfall in a particular security held in an OSA would then be allocated among all clients with an interest in relation to that security in the account. It is likely that this allocation would be made rateably between clients with an interest in relation to that security in the OSA, although arguments could be made that in certain circumstances a shortfall in a particular security in an OSA should be attributed to a particular client or clients. It may therefore be a time-consuming process to confirm each client's entitlement. This could give rise to delays in returning securities and initial uncertainty for a client as to its actual entitlement on an insolvency. Ascertaining clients' entitlements could also give rise to the expense of litigation, which could be paid out of clients' securities.

### **Security interests**

#### *Security interest granted by clients to third parties outside the custody chain*

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.

### **Client Asset Rules**

Please note that the Client Asset Rules described in the Main Disclosure in relation each of the sections set out above will apply where clients' securities are held with our Luxembourg branch.

## ANNEX III

### THE NETHERLANDS

This annex relates to circumstances in which clients securities are held with our Dutch branch.

This Annex supplements the disclosure set out in the main body of this document (the **Main Disclosure**) and should be read together with it. Where sections have been included below, the relevant section of the Main Disclosure should be disregarded.

#### Main legal implications of levels of segregation

##### **Insolvency**

###### *Application of Belgian insolvency law*

As mentioned in the Main Disclosure, were we to become insolvent, our insolvency proceedings would take place in Belgium and be governed by Belgian insolvency law. Nevertheless, where we record a client's entitlement to securities that we hold for that client in a separate client account of our Dutch branch, which is governed by Dutch law, certain aspects of our relationship with our client will be governed by Dutch law accordingly, as further set out below.

###### *Nature of clients' interests*

Under Dutch law, in accordance with the Securities Depository Act (*Wet giraal effectenverkeer*) (**SDA**), a distinction needs to be made between securities that are held in giro form through Euroclear Netherlands, the Dutch CSD (**Euroclear**), and securities that are not. Almost all types of securities including foreign securities are dematerialised and are held and cleared through Euroclear. This disclosure only covers dematerialised securities that are held and cleared through Euroclear.

Fungible assets (such as securities) that are deposited with us would become part of our collective depot. Clients that have accounts with us for securities that are part of the collective depot have an *in rem* right to those securities.

The Euroclear system consists of two layers of custody; a collective depot (*verzameldepot*) held by associated institutions and a giro depot (*girodepot*) held by Euroclear. Accountholders have a right in rem (*goederenrechtelijk recht*) as well as a contractual claim on the securities held in the giro depot.

The securities held in both the collective depot and in the giro depot are separated from the estate of the associated institution and will therefore also not be part of the bankruptcy estate of the associated institution, irrespective of whether the securities were held in ISAs or OSAs, as long as such accounts hold securities that are subject to the SDA and which are kept in custody in accordance with the SDA.

As a general rule, each co-owner will be able to recover the number of securities to which it is entitled. This will only be possible in the case of our bankruptcy, however, once the bankruptcy trustee has verified all ownership rights.

Our books and records constitute evidence of our clients' beneficial interests in the securities. The ability to rely on such evidence would be particularly important on insolvency. A bankruptcy trustee may require a full reconciliation of the books and records in respect of all securities accounts prior to the release of any securities from those accounts.

##### **Shortfalls**

If there were a shortfall between the number of securities that we are obliged to deliver to clients and the number of securities that we hold on their behalf, this could result in fewer securities than clients are entitled to being returned to them on our insolvency.

The treatment of a shortfall does not differ between ISAs and OSAs as each client has a co-ownership right in the entire pool of financial instruments of the same type which have been deposited with the direct participant proportionate to its holding of securities (see above and further below).

###### *How a shortfall may arise*

The circumstances in which a shortfall may arise are set out in the Main Disclosure.

###### *Treatment of a shortfall*

Under Dutch law if the securities held in the collective deposit (*verzameldepot*) amount to less than the aggregate number of securities to which clients are entitled, such shortfall would be apportioned in proportion

to the share of each client in the collective deposit. Therefore, a client may be exposed to a shortfall even where securities have been lost in circumstances which are completely unrelated to that client.

If a shortfall arose and was not covered in accordance with the Client Asset Rules, clients may have a claim against us for any loss suffered. If we were to become insolvent prior to covering a shortfall, clients would rank as general unsecured creditors for any amounts owing to them in connection with such a claim. Clients would therefore be exposed to the risks of our insolvency, including the risk that they may not be able to recover all or part of any amounts claimed.

In order to calculate clients' shares of any shortfall, each client's entitlement to securities held within that account would need to be established as a matter of law and fact based on our books and records. It may be a time-consuming process to confirm each client's entitlement. This could give rise to delays in returning securities and initial uncertainty for a client as to its actual entitlement on an insolvency. Ascertaining clients' entitlements could also give rise to the expense of litigation, which could be paid out of clients' securities.

This applies both in the case of ISAs and OSAs.

### ***Security interests***

As a result of the dematerialisation and immobilisation of securities held in the Euroclear system, individual securities cannot be pledged, other than in the manner as provided in the SDA. The SDA provides, exhaustively, that accountholders may pledge their claim on the collective depot by registration with the associated institution. Therefore, a claim against an associated institution cannot be validly pledged through the creation of a foreign law governed security right. This applies whether securities are held in an ISA or an OSA.

#### *Security interests granted by clients to third parties outside the custody chain*

Security interests granted over clients' securities (through creating security over part of the collective deposit to which the relevant client is entitled) do not have a different impact in the case of ISAs or OSAs.

#### *Security interests granted by us to a CSD*

The SDA does not provide for the possibility to create a security interest over the giro deposit for the benefit of the CSD. This applies whether securities are held in an ISA or an OSA.

### ***Client Asset Rules***

Please note that the Client Asset Rules described in the Main Disclosure in relation each of the sections set out above will apply where clients' securities are held with our Dutch branch.

## **ANNEX IV**

### **IRELAND**

This annex relates to circumstances in which clients' securities are held with our Irish branch.

This Annex supplements the disclosure set out in the main body of this document (the **Main Disclosure**) and should be read together with it. Where sections have been included below, the relevant section of the Main Disclosure should be regarded as modified by this Annex.

#### **Main legal implications of levels of segregation**

##### ***Insolvency***

###### *Application of Belgian insolvency law*

As mentioned in the Main Disclosure, were we to become insolvent, our insolvency proceedings would take place in Belgium and be governed by Belgian insolvency law. Nevertheless, where we record a client's entitlement to securities that we hold for that client in a separate account of our Irish branch, we would expect Irish law to govern certain aspects of our relationship to our client in respect of those securities.

References to Securities "remaining the property of clients" in the Main Disclosure should be read as references to clients keeping proprietary interests in such Securities<sup>2</sup>.

###### *Nature of clients' interests*

We hold securities for clients at our Irish branch by recording clients' entitlement to those securities in an account of our Irish branch. Clients whose entitlement to securities is so recorded are considered as a matter of Irish law to have a beneficial proprietary interest in those securities. This is in addition to any contractual right a client may have against us to have the securities delivered to them. Although our clients' securities are registered in our name at the relevant CSD, this would not affect clients' beneficial proprietary interest in those securities.

This applies both in the case of ISAs and OSAs. However, the nature of clients' interests in ISAs and OSAs is different. In relation to an ISA, each client is beneficially entitled to all of the securities held in the ISA. In the case of an OSA, as the securities are held collectively in a single account, each client is normally considered to have a beneficial interest in all of the securities in the account proportionate to its holding of securities.

##### **Shortfalls**

If there were a shortfall between the number of securities that we are obliged to deliver to clients and the number of securities that we hold on their behalf in either an ISA or an OSA, this could result in fewer securities than clients are entitled to being returned to them on insolvency. The way in which a shortfall could arise would be different as between ISAs and OSAs (see further below).

###### *How a shortfall may arise*

The circumstances in which a shortfall may arise are set out in the Main Disclosure.

###### *Treatment of a shortfall*

In the case of an ISA, the whole of any shortfall on that ISA would be attributable to the client for whom the account is held and would not be shared with other clients for whom we hold securities. Similarly, the client would not be exposed to a shortfall on an account held for another client or clients.

In the case of an OSA, the shortfall would be shared among the clients with an interest in the securities held in the OSA (see further below). Therefore, a client may be exposed to a shortfall even where securities have been lost in circumstances which are completely unrelated to that client.

If a shortfall arose clients may have a claim against us for any loss suffered. If we were to become insolvent, clients would rank as general unsecured creditors for any amounts owing to them in connection with such a

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<sup>2</sup> This assumes that under 369,4 of the Banking Law the rights of the client to securities on an insolvency would be governed by Irish law

claim. Clients would therefore be exposed to the risks of our insolvency, including the risk that they may not be able to recover all or part of any amounts claimed.

In these circumstances, clients could be exposed to the risk of loss on our insolvency. If securities were held in an ISA, the entire loss would be borne by the client for whom the relevant account was held. If securities were held in an OSA, the loss would be allocated between the clients with an interest in that account.

In order to calculate clients' shares of any shortfall in respect of an OSA, each client's entitlement to securities held within that account would need to be established as a matter of law and fact based on our books and records. Any shortfall in a particular security held in an OSA would then be allocated among all clients with an interest in that security in the account. It is likely that this allocation would be made rateably between clients with an interest in that security in the OSA, although arguments could be made that in certain circumstances a shortfall in a particular security in an OSA should be attributed to a particular client or clients. It may therefore be a time consuming process to confirm each client's entitlement. This could give rise to delays in returning securities and initial uncertainty for a client as to its actual entitlement on an insolvency. Ascertaining clients' entitlements could also give rise to the expense of litigation, which could be paid out of clients' securities.

### **Security interests**

#### *Security interests granted by clients to third parties outside the custody chain*

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.

### **Client Asset Rules**

Please note that the Client Asset Rules described in the Main Disclosure in relation to each of the sections set out above will apply where clients' securities are held with our Irish branch.