Post-trade made easy

Rights of Clients to Securities deposited in the ESES CSDs

July 2017

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1. INTRODUCTION

1.1 The Euroclear Settlement for Euronext-zone Securities ("**ESES**") provides the Euronext-zone Central Securities Depositories, i.e. Euroclear Belgium[1], Euroclear France and Euroclear Nederland[2] (collectively referred to as the "**ESES CSDs**"), with an integrated settlement solution and harmonised custody service for stock exchange and over-the-counter activities. The ESES CSDs are connected to TARGET2-Securities, the Eurosystem platform for securities settlement.

1.2 The purpose of this memorandum is to provide ESES Clients (the "**Clients**") with an overview of the legal protection of the securities they hold with each of the ESES CSDs.

1.3 In this memorandum, the below capitalised terms have the following meaning:

- "**CSD**" means a Central Securities Depository as defined in Article 2(1)(1) of the CSDR
- "**CSDR**" means Regulation (EU) No. 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories, as amended from time to time
- "**Depository**" means any other CSD, third country CSD or other sub-custodian with whom an ESES CSDs holds securities
- "**Settlement Finality Directive**" means Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, as amended from time to time

2. CONTRACTUAL DOCUMENTATION

2.1 The contractual relationship between each ESES CSD and its Clients is governed by the ESES Terms and Conditions (the "**Terms and Conditions**").

The Terms and Conditions are composed of:

- **Book I** which contains the provisions that are common to all ESES CSDs
- **Book II** which contains the provisions that are specific to each ESES CSD
- **Annex I** which provides the definitions of the Terms and Conditions

The Terms and Conditions are supplemented by the Operating Manual (Part I and Part II) and the Detailed Service Descriptions, which form an integral part of the Terms and Conditions.

2.2 The Terms and Conditions are governed by the law of the relevant ESES CSD's jurisdiction. Any dispute arising under the Terms and Conditions may be submitted to the exclusive jurisdiction of the civil or commercial court of the city in which the registered office of the relevant ESES CSD is located.

[1] Euroclear Belgium is the commercial name of Caisse Interprofessionnelle de Dépôts et de Virements de Titres/Interprofessionele Effectendeposito- en Girokas (C.I.K.).
[2] Euroclear Nederland is the commercial name of Nederlands Centraal Instituut voor Giraal Effectenverkeer B.V.

3. EUROCLEAR BELGIUM

In this chapter, all references to:
- 'we', 'us' and 'our' refer to Euroclear Belgium
- 'you' and 'your' refer to you as a Client of Euroclear Belgium

3.1 Regulatory supervision and oversight

3.1.1 Euroclear Belgium is a CSD and as such is subject to the prudential supervision of the National Bank of Belgium ("**NBB**"). It is also subject to the supervision of the Belgian Financial Services and Markets Authority ("**FSMA**") as regards post-trade market rules and conduct of business rules.

3.1.2 We operate a securities settlement system within the meaning of the Settlement Finality Directive and is as such subject to the oversight of the NBB.

3.2 Asset protection

A. Legal framework

i. Applicable laws

3.2.1 The securities you hold with us are governed by the following legislation depending on the type of securities concerned:

a. the coordinated Royal Decree No. 62 on the deposit of financial instruments and the settlement of transactions involving such instruments ("**Royal Decree No. 62**") (see below)
b. Articles 468 et seq. of the Company Code which apply to dematerialised securities issued by certain Belgian companies
c. the Royal Decree of 12 January 2006 on dematerialised securities of companies

3.2.2 The rules set out in the legislation mentioned in paragraph 3.2.1 (b) and (c) above are similar, in substance, to the provisions of Royal Decree No. 62. This section 3.2 therefore only discusses the rules provided for by Royal Decree No. 62.

3.2.3 As a matter of principle, the rules set out in Royal Decree No. 62 are not affected by CSDR. This principle is confirmed by recital 42 of the CSDR, which provides that the CSDR "*(...) should not interfere with the national law of the Member States regulating the holdings of securities and the arrangements maintaining the integrity of securities issues*".

3.2.4 The CSDR however requires CSDs (such as Euroclear Belgium) to segregate the securities accounts maintained for their participants (i.e. Clients) and to offer, upon request of their participants, individual client segregation[3] (see section 3.3 below).

[3] Article 38 of the CSDR.

ii. Conflict-of-law rules

3.2.5 Belgian conflict-of-law rules provide that the law governing an *in rem* right (i.e. a right which is proprietary in nature), such as a co-ownership right (see section 3.2 B below), is the *lex rei sitae*, i.e. the law of the country where the asset is located[4].

When the asset in question is a security recorded in a registry by virtue of law, *in rem* rights on such security are governed by the law of the country where the registry is located[5]. A registry is deemed located at the place of the principal establishment of the person holding the registry (but it may be demonstrated that the registry is located elsewhere).

It is generally considered that this rule applies not only to registered securities but also to dematerialised securities and to securities held under the regime of Royal Decree No. 62.

3.2.6 An entitlement to securities held with us, as represented by entries made to Securities Accounts on our books, is therefore deemed to be located in Belgium (i.e. where our principal establishment is located), regardless of the location of the underlying securities (i.e. regardless of the fact that we sub-deposit the underlying securities with Depositories in Belgium or abroad), and is therefore governed by Belgian law and in particular by Royal Decree No. 62. Currently, we only have one Depository, i.e. Euroclear Bank (a CSD also established under the laws of Belgium) with whom we hold securities on behalf of our Clients via a direct link.

iii. Scope of Royal Decree No. 62

3.2.7 Royal Decree No. 62 applies to all types of securities such as shares, bonds and other types of debt or equity instruments, regardless of the form (e.g. physical, dematerialised, bearer or registered) under which they have been issued in accordance with the law to which they are subject[6].

3.2.8 Royal Decree No. 62 applies to all Belgian and foreign securities (other than those listed in paragraph 3.2.1 (b) and (c) above) that our Clients deposit with us, irrespective of:

a. whether the securities have been initially deposited with us or have first been deposited with another CSD before being transferred to a Securities Account opened on our books
b. whether we sub-deposit (i.e. hold) these securities with Depositories in Belgium or abroad[7]

3.2.9 When we hold securities credited to Securities Accounts (as defined in the Terms and Conditions) with Depositories, we hold these securities on behalf of our Clients with the Depositories, in the books of whom the securities are credited to omnibus accounts opened in our name acting on behalf of our Clients.

B. Securities ownership

[4] Article 87, §1 of the Private International Law Code.
[5] Article 91, §1 of the Private International Law Code.
[6] Article 2 of Royal Decree No. 62.
[7] Article 4 of Royal Decree No. 62.

i. Principle: co-ownership right

3.2.10 The securities held by us on behalf of our Clients are fungible[8]. This means that once we accept the securities for deposit with us, it is no longer possible to identify (whether on our books or our Depository's books) a specific security (by means of a serial number or otherwise) as belonging to a particular Client.

3.2.11 Were it not for Royal Decree No. 62, the fungibility of the securities Clients hold with us would have resulted in our Clients having only a contractual right against us. 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 and/or securities.

3.2.12 Royal Decree No. 62 offers a much greater protection to holders of book-entry securities. You are granted an intangible co-ownership right over the pool of book-entry securities in the relevant category that we hold on behalf of all our Clients that hold securities in that category[9].

3.2.13 Owing to their fungibility, securities held with us are treated on a book-entry basis. Rights to such securities are evidenced by entries to the Securities Account of the relevant Client. Transfers of such rights occur by mere book entries.

3.2.14 Your rights not only concern the underlying securities initially deposited or transferred to a Securities Account under the fungibility regime but also the co-ownership rights related thereto.

The deposit of securities with us is, indeed, the exchange by the depositor of an ownership interest in the securities for the intangible co-ownership right referred to above. Only this co-ownership right is the subject of the book-entry transfers.

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.

However, if you request the delivery of the securities out of our CSD System, you will receive the underlying securities and such delivery would satisfy the recovery claim you have against us which was evidenced by the credit to your Securities Account.

ii. Consequences of the co-ownership right

3.2.15 Due to this co-ownership right, you have specific rights with respect to the securities credited to your Securities Account, which would not otherwise arise under Belgian law in favour of holders of pure contractual rights, namely:

[8] Article 6 of Royal Decree No. 62.
[9] Article 2 of Royal Decree No. 62.

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 our 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.

3.2.16 Owing to the fungibility of the securities deposited with us, Royal Decree No. 62 provides that the above-mentioned right of recovery is a collective right, to be exercised by all Clients that have deposited the relevant securities (rather than an individual right to be exercised by each Client) with us.

3.2.17 In accordance with Article 12 of Royal Decree No. 62, if you hold securities for your own account[10], you may only assert your co-ownership right against us (as a settlement institution). You may however:

a. directly assert the rights attached to the financial instruments (e.g. the right to vote or to receive dividends) against the issuer[11]
b. in the event of the issuer's bankruptcy or any other proceedings in which the rule of equal treatment of creditors applies, exercise your right of recourse directly against the issuer[12] and
c. in the event of our bankruptcy or any other proceedings in which the rule of equal treatment of creditors applies, bring - together with the other Clients holding the same category of securities - a claim for recovery against the pool of securities of the same category held with us or with our Depository by us on behalf of our Clients; subject to any possibly applicable foreign conflict of law rules[13], the enforcement of this proprietary right shall not be affected by the deposit of such securities, in book-entry form or otherwise, by us with a Belgian or foreign Depository.

3.2.18 Article 12 of Royal Decree No. 62 provides further that if the pool is insufficient to allow complete restitution of all due securities held on account, it must be allocated among our Clients in proportion to their rights, as represented by the credits to their accounts. Pursuant to Article 12, if we own a number of securities of the same category, we will only be entitled to the number of securities remaining after the total number of securities of the same category which we held for third parties has been returned. Please note however that we do not hold any proprietary securities in the CSD System.

[10] Although Royal Decree No. 62 only refers to Clients holding securities for their own account, you may exercise the same rights on behalf of your own underlying clients with respect to the securities you hold on their behalf.
[11] This right applies at least with respect to Belgian issuers; for other issuers, the application of this principle will depend on whether the law of the issuer recognises such right.
[12] This right applies at least with respect to Belgian issuers; for other issuers, the application of this principle will depend on whether the law of the issuer recognises such right.
[13] Although Belgian conflict-of-law rules will point to Belgian law as *lex concursus*, it may not be excluded that enforcement proceedings are brought before a foreign court (for instance in case securities have been sub-deposited with a foreign Depository) and that the conflict of law rules applicable in that jurisdiction point to another law than Belgian law. Please note however that since, as mentioned, we currently only holds securities on behalf of our Clients with Euroclear Bank and since Euroclear Bank is also established in Belgium, no foreign conflict-of-law rules should as a matter of principle interfere with the above analysis.

3.2.19 Article 13 of Royal Decree No. 62 provides for equivalent rules in favour of the owners of securities (i.e. your underlying clients): such owners may

a. only assert their co-ownership right against the Client in whose books they hold the securities
b. directly assert the rights attached to the financial instruments (e.g. the right to vote or to receive dividends) against the issuer[14]
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[15]
d. in the event of your bankruptcy or any other proceedings in which the rule of equal treatment of creditors applies, bring - together with your other underlying clients holding the same category of securities - a claim for recovery against the pool of securities of the same category you hold with us or another Client on behalf of your underlying clients.

Also, if the pool of securities you hold is insufficient to allow complete restitution of all due securities held on account, it must be allocated among your underlying clients in proportion to their rights, as represented by the credits to their accounts.

If you are yourself the owner of a number of securities of the same category, you 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.

3.2.20 As regards the right to vote attached to securities held with us, Article 15 of Royal Decree No. 62 provides that the depositors of these securities may attend general meetings and vote at these meetings without having to produce the certificates representing the securities they hold.

Belgian companies must allow their attendance and permit them to vote on the basis of a certificate evidencing that the person in question holds a specified number of the relevant securities. 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.

iii. No attachment

3.2.21 Pursuant to Article 11 of Royal Decree No. 62, the attachment of Securities Accounts opened with us is not permissible. Moreover, no attachment of securities deposited by us with Euroclear Bank or other Depositories is permissible.

3.2.22 In addition, Article 14 of Royal Decree No. 62 provides that the cash paid to us by issuers of the securities held with us as dividends, interests and principal amounts relating to fungible securities may not be attached by our creditors.

3.3 Segregation

[14] This right applies at least with respect to Belgian issuers; for other issuers, the application of this principle will depend on whether the law of the issuer recognises such right.
[15] This right applies at least with respect to Belgian issuers; for other issuers, the application of this principle will depend on whether the law of the issuer recognises such right.

3.3.1 In accordance with Article 38 of the CSDR:

a. we keep records and accounts that segregate your securities from those of other Clients on our books
b. if we would hold our own securities in the CSD System - which we do not - we would have to segregate such securities from our Clients securities on our books and our Depositories' books
c. on our books, we allow you to segregate your own securities from those of your underlying clients. You may either hold the securities of your underlying clients in one single Securities Account (omnibus client segregation) or segregate the securities of any of their underlying clients (individual client segregation)

3.3.2 The Terms and Conditions provide for your right to request us to segregate the securities you hold with us in two or more Securities Accounts and to open additional Securities Accounts. You may also further organise your account structure by opening one or more sub-accounts.

3.3.3 It should be noted that, given the asset protection already granted to you by Royal Decree No. 62 (see section 3.2 above), additional segregation of the securities you deposit with us will not in principle result in a greater asset protection for you or your underlying clients.

Indeed, you (and your underlying clients) are granted, by operation of the law, an intangible co-ownership right over the pool of book-entry securities in the same category we hold on behalf of all our Clients (and their own clients) that hold securities in that category, regardless of the fact that such securities are segregated or not.

3.4 No Reuse

3.4.1 In accordance with the CSDR and as provided for in the Terms and Conditions, we do not use, for any purpose, securities that we hold on behalf of our Clients unless and to the extent we have obtained the relevant Client's express prior consent.

3.5 Statutory Lien

3.5.1 Pursuant to Article 31, §2 of the Act of 2 August 2002 on the supervision of the financial sector and on financial services, we are the beneficiary of:

a. a statutory lien over the securities and other rights you hold with us on your own account as proprietary assets, which secures any claim we have over you existing in connection with the settlement of securities transactions and
b. a statutory lien over the securities and other rights you hold with us on behalf of your underlying clients, which secures our claims over you existing in connection with the settlement of securities transactions you carried out on behalf of your underlying clients.

3.6 Conclusion for Belgium

3.6.1 You have a proprietary right to the securities you hold with us. 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 we hold on behalf of all our Clients (and their underlying clients) that hold this type of assets with us, irrespective of whether we hold these assets on behalf of our Clients with one or more Belgian or foreign Depositories.

The portion of this pool belonging to you (and your underlying clients) is represented by a credit to the Securities Account(s) opened in your name on our books.

3.6.2 We do not have any proprietary right on the securities credited to your Securities Account(s). This is confirmed by Article 3 of Royal Decree No. 62 which provides that we, as the settlement institution (Euroclear Belgium), are the Depository, for the sole account of our Clients, of the securities that we hold on behalf of our Clients under the fungibility regime. Also, we cannot use the securities we hold on your behalf without your express prior consent.

3.6.3 Due to this co-ownership, you (and your underlying clients) have specific rights with respect to the securities, in particular a right to vote and a right of recovery. In addition, the securities you hold with us may not be attached by your creditors (and a fortiori by your underlying clients' creditors).

3.6.4 You may request us to segregate the securities you hold with us in accordance with Article 38 of the CSDR. Given the protection granted by Royal Decree No. 62 to you (and your underlying clients), additional segregation will not itself result in greater asset protection for you (and your underlying clients).

4. EUROCLEAR FRANCE

In this chapter, all references to:
- 'we', 'us' and 'our' refer to Euroclear France
- 'you' and 'your' refer to you as a Client of Euroclear France

4.1 Regulatory supervision and oversight

4.1.1 Euroclear France is a **CSD** within the meaning of the French Monetary and Financial Code ("**FMFC**") which refers to the definition of CSDR.

4.1.2 We are authorised by, and subject to the supervision of, the *Autorité des Marchés Financiers* ("**AMF**").

4.1.3 As a CSD, we also operate a securities settlement system within the meaning of the FMFC which refers to the Settlement Finality Directive. As such, we are authorised and supervised by the AMF and is also subject to the oversight of the *Banque de France*.

4.2 Asset protection

A. Legal framework

i. Applicable law(s)

4.2.1 The FMFC and the General Regulation of the AMF ("**RGAMF**") govern our activities in our capacity as (i) a CSD and as (ii) an operator of a securities settlement system in France.

4.2.2 The FMFC and RGAMF must be read in conjunction with the CSDR that is directly applicable under French law. The CSDR also sets out specific requirements regarding the obligation of CSDs (such as Euroclear France) to segregate the securities accounts maintained for their Clients and to offer, upon request by Clients, further segregation of the accounts[16] (see section 4.3) below).

4.2.3 With respect to the application in France of both the FMFC and RGAMF on the one hand and the CSDR on the other, please note that the CSDR will not prejudice the application of the FMFC and RGAMF governing the holdings of securities and the protection of rights over securities, pursuant to the principle laid down under recital 42 of the CSDR which provides that the CSDR "*(...) should not interfere with the national law of the Member States regulating the holdings of securities and the arrangements maintaining the integrity of securities issues*".

[16] Article 38 of the CSDR.

ii. Conflict-of-law rules

4.2.4 Under French conflict-of-law rules[17], it is generally considered that the law applicable to the holding of securities is determined by the law of the place where the securities account (*compte-titres*) is located[18] i.e. the *lex rei sitae*.

4.2.5 According to the FMFC, the rights and obligations relating to financial collateral are determined by the law of the place where the securities account is located.

4.2.6 Where a member of a securities settlement system located in the European Economic Area (EEA) is subject to a safeguard proceeding (*procedure de sauvegarde*), a judicial reorganisation (*redressement judiciaire*) or a winding-up proceeding (*liquidation judiciaire*), the rights and obligations resulting from or relating to the participation to such a system shall be determined by the law governing the settlement system, provided that such law is the law of a jurisdiction located in the EEA.

4.2.7 According to the FMFC, the law applicable to financial instruments in the context of a securities settlement system, including where financial instruments are provided as financial collateral, is the law of the place where these financial instruments are registered.

4.2.8 Finally, where a credit institution or an investment service provider is subject to a winding-up proceeding (*liquidation judiciaire*) or a reorganization measure (*mesure d'assainissement*) within the meaning of the FMFC, the enforcement of rights in financial instruments the existence or transfer of which presupposes their recording in a register, an account or with a centralised deposit system in a Member State of the European Union, is governed by the law of the Member State where such register, account, or centralised deposit system in which those rights are recorded is held or located.

iii. Scope

4.2.9 Securities (*titres financiers*) issued in France and governed by French law (which are dematerialised since 1984)[19] are solely represented by book-entry records in the accounts maintained by the issuer or the custody account keeper.

4.2.10 The registration of securities (*inscription en compte*) in an account in the name of the holder of the securities applies to all securities issued in France and governed by French law.

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[17] Please note that the CSDR does not establish rules on the law applicable to proprietary aspects in relation to the securities held in the accounts maintained by CSDs. See recital 57 of the CSDR: "*In view of the increasing cross-border holdings and transfers of securities enhanced by this Regulation, it is of the utmost urgency and importance to establish clear rules on the law applicable to proprietary aspects in relation to the securities held in the accounts maintained by CSDs. Nevertheless, this is a horizontal issue which goes beyond the scope of this Regulation and could be dealt with in future Union legislative acts*."

[18] See in particular H. Synvet and A. Tenenbaum, "Rép. Dalloz, Droit International – Instruments financiers", January 2009. Please also note that certain French legal scholars take the view that the applicable law could be either the law governing the securities account agreement or the law where the custodian is located (See L. d'Avout, "Rép. Dalloz Droit International – Biens", April 2010).

[19] See Article 94, II of the *loi de finances* No. 81-1160 of 30 December 1981 and the implementation decree No. 83-359 of 3 May 1983.

4.2.11 French law provides for account holder protection rules regarding securities held by a custody account keeper (*teneur de compte conservateur*). These protection rules apply to all French and foreign securities in accordance with the RGAMF.

4.2.12 Under French law, it is generally considered that as the French CSD, we are not a custody account keeper and are consequently not subject to the regulations applicable to custody account keepers[20]. As the French CSD, we only hold accounts which mirror the securities accounts opened in the books of the custody account keepers (see below).

B. Securities ownership

i. Principle: the securities are owned by the holder of the securities account opened in the books of the issuer or a custody account keeper

4.2.13 Pursuant to the FMFC, securities issued in France and governed by French law are solely represented by book-entry records in the accounts maintained by the issuer or the custody account keeper.

4.2.14 Under French law, the proprietary rights over securities are materialised at the level of the securities account opened in the books of the issuer or a custody account keeper. Therefore, proprietary rights over securities are determined at the level of the securities account held by the custody account keeper or the issuer (depending on the nature of the securities).

4.2.15 As the French CSD, we record in a specific account the entirety of the financial instruments issued by an issuing entity and we open current accounts for custody account keepers. We must verify at any time that the total amount of each issue accepted for its operations and recorded in the specific account referred to above is equal to the sum of the financial instruments recorded on the current accounts of the custody account keepers.

4.2.16 Under French law, it is generally considered that as the French CSD, we are not a custody account keeper and consequently not subject to the regulations applicable to account keepers[21]. We only hold accounts which mirror the securities accounts opened in the books of the custody account keepers. As a result, we do not hold title to the securities recorded in the accounts opened on our books.

4.2.17 This view is based on the FMFC[22] and shared by most French legal authors who consider that *in rem* rights are not created by entries in our books, such entries being only "mirror accounts" (*comptes miroirs*) which mirror the entries in the securities accounts[23] opened in the books of the custody account keepers.

[20] See A. Maffei, *De la nature juridique des titres dématérialisés intermédiés en droit français*, *Revue de droit uniforme*, 2005-1/2, page 237.
[21] However, legal academics T. Bonneau and F. Drummond consider that custody would be characterised in the case where the Client deposits its own securities with EF. See T. Bonneau and F. Drummond, *Droit des marchés financiers*, No. 237-1, Economica 2010. See also A. Maffei, *op. cit*. page 237. For the purpose of this note, this case has not been covered.
[22] The FMFC specifies that the attachment of accounts opened in the our books is prohibited.
[23] T. Bonneau and F. Drummond, *op. cit*., No. 86-1.

4.2.18 Consequently, we do not hold title to the securities recorded in the accounts opened in our books in our Clients' names.

4.2.19 With respect to accounts opened in our books in the name of foreign Clients (i.e. in a situation where the securities accounts are held outside France), the ownership rights on those securities will not be determined by French Law (but by the law of the place where such accounts are located in accordance with the *lex rei sitae* principle).

4.2.20 In accordance with the CSDR, we may also open an account in another CSD. For the securities deposited with a foreign CSD with which we have maintained or established a link, we must ensure that the foreign CSD has no beneficial interest in the securities held in the foreign CSD depository system, in accordance with the principles laid down in Article 48 of CSDR. The holders of the securities registered in the securities account of the custody account keeper shall keep their ownership rights over the securities.

ii. Consequences

4.2.21 If we become subject to insolvency proceedings[24], the securities deposited in our books cannot be claimed by our creditors as we do not hold any ownership rights on those securities.

4.2.22 If you become subject to insolvency proceedings, the securities you deposited in our books (in the name of your underlying clients) cannot be claimed by the your creditors as you do not hold title to the securities recorded in the accounts opened on our books in the name of your underlying clients.

4.2.23 Finally, the FMFC provides that, in case of a judicial reorganization measure (*redressement judiciaire*) or a winding-up proceeding (*liquidation judiciaire*) against a Client, if in the opinion of the insolvency administrator or liquidator the aggregate number or amount of securities of any description allocated to the Client's clients (the account holders) is less than the aggregate number or amount of securities of that description credited to such account holder(s), the 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.

iii. No attachment

4.2.24 Pursuant to the FMFC, attachment of the accounts maintained in a CSD is prohibited. Accordingly, attachment of our Clients' accounts with us will not be permitted. In particular, our 'creditors and our Clients' creditors will not be able to freeze, restrict or impound the securities credited to our Clients' accounts with us.

[24] Insolvency proceedings for all this section relating to Euroclear France refer to bankruptcy, insolvency or winding-up and any other collective insolvency proceedings as provided under Title IV of Book VI of the French Commercial Code.

4.3 Segregation

4.3.1 In accordance with Article 38 of the CSDR:

a. we keep records and accounts that segregate your securities from those of other Clients on our books
b. if applicable, our own securities shall be segregated from our Clients securities in our books and our Depositories' books
c. on our books, we allow you to segregate your own securities from those of your underlying clients. You may either hold the securities of your underlying clients in one single Securities Account (omnibus client segregation) or segregate the securities of any of their underlying clients (individual client segregation).

4.3.2 The Terms and Conditions provide for your right to request us to segregate the securities you hold with us in two or more Securities Accounts and to open additional Securities Accounts. You may also further organise your account structure by opening one or more sub-accounts.

4.3.3 In terms of asset protection, segregation requirements apply in the first instance to the French custody account keepers who must, in particular, segregate their own securities from their underlying clients' securities. This segregation is key under French law[25] since proprietary rights over financial instruments are determined at the level of the securities account held by the custody account keeper (as indicated in 4.2.14 above).

4.3.4 The RGAMF expressly provides that the custody account keeper shall ensure that the assets of its clients are segregated from its own assets in the books of the CSDs of which it is a member.

4.3.5 Last, as mentioned above, the FMFC provides that, in case of a judicial reorganization measure (*redressement judiciaire*) or a winding-up proceeding (*liquidation judiciaire*) against a custody account keeper, 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*".

4.4 No reuse

4.4.1 The CSDR provides that a CSD cannot use for any purpose securities that it holds on behalf of Clients unless and to the extent it has obtained the Client's express prior consent. This being recalled, under French law, the account(s) you open in our books are only "mirror accounts". Accordingly, we cannot use securities that we do not hold.

4.5 Conclusion for France

[25] As indicated in 4.2.19 above, with respect to accounts opened in our books in the name of foreign Clients (i.e. in a situation where the securities accounts are held outside France), the ownership rights on those securities will not be determined by French Law (but by the law of the place where such accounts are located in accordance with the *lex rei sitae* principle).

4.5.1 Under French law, proprietary rights over securities are materialised at the level of the securities account opened in the books of the issuer or a custody account keeper. The securities are owned by the holder of the securities account opened in the books of the issuer or a custody account keeper.

4.5.2 It is generally considered that no *in rem* rights are created in our books as we only hold "mirror accounts" which mirror the securities accounts opened in the books of the custody account keepers. As a result, we do not hold title to the securities recorded in the accounts opened on our books.

4.5.3 If we become subject to insolvency proceedings, the securities deposited in our books cannot be claimed by our creditors as we do not hold any ownership rights on those securities.

4.5.4 If you become subject to insolvency proceedings, the securities you deposited in our books (in the name of your underlying client) cannot be claimed by your creditors.

4.5.5 Attachment of the accounts maintained in a CSD is prohibited under French law. Accordingly, attachment of your account(s) with us will not be permitted.

4.5.6 You are entitled to request us to segregate the securities you hold with us in accordance with Article 38 of the CSDR.

5. EUROCLEAR NEDERLAND

In this chapter, all references to:
- 'we', 'us' and 'our' refer to Euroclear Nederland
- 'you' and 'your' refer to you as a Client of Euroclear Nederland

5.1 Regulatory supervision and oversight

5.1.1 Euroclear Nederland is a CSD and has its seat in the Netherlands.

5.1.2 We operate a securities settlement system within the meaning of the Settlement Finality Directive and is as such subject to the oversight of De Nederlandsche Bank (DNB).

5.2 Asset protection

A. Legal framework

i. Applicable laws

5.2.1 We will be subject to the CSDR where it concerns its regulatory position and the settlement of transactions and is subject to the Dutch Securities Giro Transfer and Administration Act ("**SGATA**") where it concerns the protection of end-investors' assets. The SGATA arranges for protection of end-investors' assets via a layered tier system of rights in rem.

5.2.2 As a matter of principle, the rules set out in the SGATA are not affected by the CSDR. This principle is confirmed by recital 42 of the CSDR which provides that the CSDR "*(...) should not interfere with the national law of the Member States regulating the holdings of securities and the arrangements maintaining the integrity of securities issues*".

5.2.3 The CSDR however requires CSDs (such as Euroclear Nederland) to segregate the securities accounts maintained for their participants (*i.e.* Clients) and to offer, upon request of their participants, individual client segregation[26].

ii. Conflict-of-laws rules

5.2.4 Under Dutch conflict-of-laws rules, the proprietary regime relating to book-entry securities (including, in our opinion, the nature of the proprietary entitlement thereto) is governed by the laws of the jurisdiction in which the account in which the securities are administered, is maintained[27].

5.2.5 A Dutch court will, for purposes of identifying the country where the relevant account is maintained, initially look to the place that has been agreed between the account holder and the account provider with whom the relevant account is maintained, provided that the account provider's maintenance of the account is subject to regulatory supervision in the place so agreed.

[26] Article 38 of the CSDR.
[27] Section 10:141 of the Dutch Civil Code.

If the place of the relevant account provider cannot be determined under this rule, it will be determined on the basis of various factors, such as the location of the office or branch where the relevant account provider treats the securities account as being maintained for regulatory purposes, accounting or internal or external reporting or, the location of any office or branch of the account provider with which the account holder deals or, the terms of account statements or other reports prepared by the relevant account provider that reflect the balance of the account holder's interest in the securities account.

5.2.6 With a view to the above, the Securities Accounts we hold must be deemed to be maintained in the Netherlands, regardless of the location of the underlying securities (*i.e.* notwithstanding the fact that we may sub-deposit these securities with Depositories in the Netherlands or abroad and therefore that the proprietary regime relating to securities held in such accounts will be governed by Netherlands law and in particular by the SGATA.

5.2.7 Similarly, the proprietary regime relating to securities entitlements we hold through another CSD will be governed by the laws of that other CSD.

iii. Scope of the SGATA

5.2.8 Without the SGATA, bearer securities which an intermediary holds for the benefit of its clients will form part of the assets of that intermediary if the individual numbers of the securities are not administered separately for each client or if the securities are not in any other way identifiable as the client's property. The same applies to registered securities if these securities are registered in the name of the intermediary. The consequence of this is that, in the event that the intermediary becomes insolvent, the securities will fall within the bankruptcy estate.

5.2.9 The system created by the SGATA eliminates the intermingling of securities held on behalf of clients and an intermediary's own assets for all types of financial instruments as defined under a, b, or c of the definition of "financial instrument" in Section 1:1 of the Dutch Financial Supervision Act ("**FSA**"), *i.e.* securities (shares, bonds and other types of debt or equity instruments), money market instruments and participation rights in investment schemes, and other financial instruments we designated (being the central institute (*centraal instituut*) within the meaning of the SGATA) as being capable of forming part of a giro deposit (*girodepot*) within the meaning of the SGATA, irrespective of whether these financial instruments have been issued under Dutch law or under foreign law ("**Securities**")[28], and that are held with an intermediary (*intermediair*) within the meaning of the SGATA which under the FSA is allowed to provide investment services or to carry out the business of a bank.

[28] As per 1 January 2011, the SGATA has been amended in order to provide for so-called mandatory dematerialisation. As a part of this amendment, Section 8 SGATA now provides that bearer securities can only form part of a giro deposit if held by us in the form of a global certificate (*verzamelbewijs*) or by a foreign CSD in our name. A new Section 50d SGATA provides that as of 1 January 2013 co-ownership interests in a giro deposit corresponding to bearer securities that do not have the form of a global certificate can no longer be delivered by way of book-entry. Section 50d SGATA imposes an obligation on issuers of bearer securities in the form of individual certificates that have been included in a giro deposit to convert such individual certificates into a global certificate or into registered securities before 1 January 2013.

5.2.10 In order for Securities to be held with us, we must have designated the Securities as being capable of forming part of a giro deposit within the meaning of the SGATA in accordance with Section 34 (2) SGATA and have been deposited with us by a Client - which may be an intermediary but may also be another CSD – where we must admit such Client as an 'admitted institution' (*aangesloten instelling*) within the meaning of the SGATA. The admitted institution must have accepted the Terms and Conditions.

5.2.11 The above applies irrespective of:

a. whether the securities have first been deposited with us or have first been deposited with another CSD before having been transferred to a Securities Account opened in our books, and
b. whether we sub-deposit (i.e. holds) these securities with Depositories in the Netherlands or abroad

B. Securities ownership

i. Principle: co-ownership right

5.2.12 Pursuant to the SGATA, Securities that have been deposited on behalf of a Client with an intermediary, form part of a collective deposit (*verzameldepot*) of Securities of the same kind, *i.e.* Securities which are mutually interchangeable, deposited with that intermediary on behalf of clients. By virtue of the SGATA, if you have deposited your Securities with an intermediary, you give up your individual ownership of the Securities deposited, and become co-owners (*deelgenoten*) in a community (*gemeenschap*) formed by the relevant collective deposit, *pro rata* to the quantity of Securities deposited.

5.2.13 On the same basis as the collective deposits are established with intermediaries, giro deposits are established with us. Just as a collective deposit is a pool consisting of Securities of a particular kind deposited with an intermediary by its clients (and those of the intermediary itself) and administered by the intermediary, a giro deposit is a pool consisting of Securities of a particular kind deposited by Clients with us and administered by us. In such giro deposit, the end-investors in the relevant Securities become co-owners (*deelgenoten*), together with the other co-owners in the giro deposit at that time.

5.2.14 The interest of a Client in a giro deposit with us forms part of the collective deposit of Securities of the same kind held by the relevant Client. Therefore, your underlying clients that hold positions in Securities of the same kind are co-owners of the relevant giro deposit. The same applies for underlying clients of other Clients that hold Securities of the same kind with their Client. They are co-owners of the relevant giro deposit as well, because they are co-owners of a collective deposit of the Client where they hold their Securities and via the Securities Account of such Client with us, of the giro deposit.

5.2.15 Securities that belong to the giro deposit can be held in our own custody or be given into the custody of third parties (*e.g.* pursuant to links with foreign CSDs or any subcontracting arrangement put in place from time to time). The SGATA prescribes that only registered securities and securities in the form of global certificates ("*verzamelbewijs*") can be held in custody with us. The deposit or withdrawal of Securities is only possible in specific circumstances as mentioned in the SGATA. Once included into our giro deposit system, Securities embodied in a global certificate and registered securities are treated identically.

5.2.16 We hold certain securities via its CSD -link with Euroclear Bank and Euroclear UK & Ireland. For such sub-deposits, we must ensure that the asset protection regime applicable to the sub-deposited securities is equivalent to the asset protection regime in place in the Netherlands.

ii. Consequences of the co-ownership right

5.2.17 Collective deposits are segregated from the assets of an intermediary by operation of law. Since a collective deposit does not form part of the assets of the intermediary, the Securities are not available to the intermediary's trustee in bankruptcy if the intermediary becomes insolvent, and are therefore protected. Each co-owner of a collective deposit has a claim *in rem* against the intermediary with respect to the Securities deposited.

5.2.18 Just as collective deposits are segregated from the assets of an intermediary by operation of law, giro deposits are segregated from our assets by operation of law. Just as a collective deposit does not form part of the assets of the intermediary, a giro deposit does not form part of our assets. And just as Securities held with an intermediary are not available to the intermediary's trustee in bankruptcy if the intermediary becomes insolvent, and are therefore protected, the Securities you hold with us are not available to our trustee in bankruptcy if we become insolvent and are therefore protected.

5.2.19 Clients of an intermediary will assert their co-ownership rights against the intermediary. In the event of the intermediary's bankruptcy they will – together with the other clients of the intermediary – submit their claim with the intermediary's trustee in bankruptcy. Since only our Clients maintain Securities Accounts with us, the names of the underlying clients of the Client are not known to us and, in fact, no relationship exists between those underlying clients and us. Only our Clients can, as account holders in a giro deposit, exercise the rights ensuing from such co-ownership interest against us, also if the relevant Securities are held by the Client on behalf of its clients. In the event of our bankruptcy they will – together with the other Clients – submit their claim with our trustee in bankruptcy. If a collective deposit is held by an intermediary, not being our Client, the intermediary holds no position in the giro deposit we manage. In that case, the end-investors will merely assert their co-ownership right against the intermediary.

5.2.20 Where under Dutch law with respect to co-ownership in general it would be the co-owners that are to manage the community of ownership jointly, the SGATA provides that the management of the collective deposit lies with the intermediary and that it is the intermediary that exercises the rights of the co-owners against third parties if this contributes to a proper management. This entails that it is the intermediary that exercises the rights attached to the Securities, such as the right to receive dividends and corporate actions. Furthermore, the SGATA prescribes that the intermediaries must procure that end-investors will be able to vote on the Securities held on their behalf and that we must enable our Clients to comply herewith.

Dispositions

5.2.21 A transfer of Securities which are held in custody pursuant to the SGATA, is effected in book entry form only. From a legal perspective, such transfer does not constitute a transfer of securities, but a transfer of an interest in a community or part of an interest in a community. If there is a transfer between two clients of the same intermediary, we will not be involved in such transfer. In that situation, the delivery of the co-ownership interest in the relevant collective deposit shall be effected by means of a book entry in the name of the transferee in the appropriate records of the relevant intermediary. As soon as an entry is made by the intermediary, the transferor relinquishes and the transferee acquires a co-ownership interest in the relevant collective deposit.

If there is a transfer between clients of different intermediaries, which are our Clients, we will be involved in the transfer. In that situation, the transfer will be effected via a series of successive book entries. Firstly, the securities account of the transferor with its intermediary will be debited for the Securities. Subsequently, the Securities Account of the intermediary of the transferor - such intermediary being our Client - with us will be debited for the Securities and the Securities Account of the intermediary of the transferee - such intermediary also being our Client - with us will be credited. Lastly, the securities account of the transferee with its intermediary will be credited for the Securities. This is in accordance with the SGATA, pursuant to which a transfer of a co-ownership interest in a giro deposit shall be effected by means of a book entry in the name of the acquiring Client in our appropriate records (Section 41 SGATA). Finally, the transferee is credited in the books of its intermediary. We also come into play if the transfer does not involve underlying clients but is between two of our Clients.

5.2.22 Pursuant to Section 20 SGATA, the creation of a pledge on an interest in a collective deposit in favour of a third party shall be effected by means of a book entry in the name of the pledgee in the appropriate records of the intermediary. A pledge on such interest in favour of the intermediary will be created by way of agreement between the pledgor and the intermediary (Section 21 SGATA).

5.2.23 In respect of the above, it should be noted that the SGATA does not specifically provide for a power of the Client - which, depending on the applicable asset protection rules under the law governing the proprietary regime relating to book-entry securities administered on securities accounts your underlying clients hold with you, may not be the owner of the co-ownership interest in the giro deposit - to dispose of such co-ownership interest.

However, it is likely that you have the power to dispose of a co-ownership interest in a giro deposit that you do not own where such disposition takes place for the performance of an instruction of the owner of the co-ownership interests.

Withdrawal from the giro deposit

5.2.24 The owner of a co-ownership interest in a collective deposit or a giro deposit is on the basis of Section 26 and 45 SGATA entitled to delivery (*uitlevering*) of the corresponding Securities held by the intermediary or, as the case may be, us. However, such delivery may only take place:

a. where the relevant securities are delivered for inclusion in a deposit of a foreign CSD or
b. if all securities of the relevant class are delivered for inclusion in the collective deposit of an intermediary within the meaning of the SGATA or, where the issuing institution has consented, in the deposit of a foreign custodian which is admitted to a foreign CSD

5.2.25 In addition, temporary delivery out of the collective deposit or, as the case may be, the giro deposit may take place at the request of a co-owner or, as the case may be, a Client, if such delivery is necessary for the co-owner to be able to exercise rights connected to the relevant Securities (section 26 (4) and 45 (4) SGATA). The Securities must be redelivered to the relevant deposit immediately as soon as it is no longer necessary for the relevant co-owner to hold the Securities in its own name for exercising the aforementioned rights.

Shortfalls and surpluses

5.2.26 Section 27 and 46 of the SGATA provide that if the quantity of Securities in a collective deposit or, as the case may be, a giro deposit is insufficient to permit the delivery to each co-owner of the quantity of Securities corresponding to its co-ownership interest, each co-owner shall receive the maximum quantity of such Securities, *pro rata* to its interest in the relevant deposit, which is compatible with the rights of the other co-owners.

iii. No attachment

5.2.27 Attachment is prohibited on the securities registered in your account(s) with us.[29]

5.3 Segregation

5.3.1 In accordance with Article 38 of the CSDR:

a. we keep records and accounts that segregate your securities from those of other Clients on our books
b. if applicable, our own securities shall be segregated from our Clients securities in our books and our Depositories' books
c. on our books, we allow you to segregate your own securities from those of your underlying clients. You may either hold the securities of your underlying clients in one single

[29] Section 44 of the SGATA.

Securities Account (omnibus client segregation) or segregate the securities of any of their underlying clients (individual client segregation).

5.3.2 The Terms and Conditions provide for your right to request us to segregate the securities you hold with us in two or more Securities Accounts and to open additional Securities Accounts. You may also further organise your account structure by opening one or more sub-accounts.

5.3.3 It should be noted that, given the asset protection already provided for by the SGATA, additional segregation of the Securities you deposited in our books will not in principle result in a greater asset protection for you or your underlying clients. Indeed, you (and your underlying clients) are granted, by operation of the law, an intangible co-ownership right over the pool of book-entry securities in the same category held by us on behalf of all our Clients (and their underlying clients) that hold securities in that category, regardless of the fact whether such securities are segregated or not in our books.

5.4 Reuse

5.4.1 In accordance with the CSDR and as provided for in the Terms and Conditions, we do not use for any purpose securities that we hold on behalf of our Clients unless and to the extent we have obtained your express prior consent.

5.5 Statutory Lien

5.5.1 Dutch Law does not provide for any statutory liens in our favour.

5.6 Conclusion for the Netherlands

5.6.1 Pursuant to the SGATA, each client of an intermediary has a co-ownership right with respect to Securities held on behalf of such client by its intermediary and through the intermediary by us, if such intermediary is an Admitted Institution, such as a Client. 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 us on behalf of our Clients (and their underlying clients) that hold this type of assets with us, irrespective of whether we hold these assets on behalf of our Clients with one or more Dutch or foreign Depositories. The portion of this pool belonging to the relevant Clients (and their underlying clients) is represented by a credit to the Securities Account(s) opened in its name on our books.

5.6.2 We do not have any proprietary right on the securities credited to such Securities Account(s).

5.6.3 Due to this co-ownership, you (and your underlying clients) have specific rights with respect to the Securities, in particular a right of recovery. In addition securities held with us may not be attached by your creditors (or your underlying clients' creditors) and do not form part of our bankruptcy estate.

5.6.4 You may request us to segregate the securities you hold with us in accordance with Article 38 of the CSDR. Given the protection granted by the SGATA, additional segregation will not in principle result in a greater asset protection.

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