

Central Securities Depositories Regulation (CSDR), Article 38(5) and Article 38(6) Participant Disclosure Document: J.P. Morgan Bank (Ireland) PLC

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 (**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(5) and Article 38(6) of the Central Securities Depositories Regulation (**CSDR**) (in relation to CSDs in the EEA).

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

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 or a nominee of our affiliate'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.

Main legal implications of levels of segregation

Application of Irish insolvency law

Were we to become insolvent, insolvency proceedings relating to J.P. Morgan Bank (Ireland) plc would take place in Ireland and be governed by Irish insolvency law ¹.

¹ Directive 2001/24/EC (Credit Institutions Winding-up Directive).

Under Irish insolvency law, securities that we held on behalf of clients would not form part of our estate on insolvency for distribution to creditors, provided that they remained the property of the clients. Rather, they would be deliverable to clients in accordance with each client's proprietary interests in the securities.

As a result, it would not be necessary for clients to make a claim in our insolvency as a general unsecured creditor in respect of those securities. Securities that we held on behalf of clients would also not be subject to any bail-in process² (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.

Insolvency proceedings may, however, delay the restitution of the securities to the client because 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.

Nature of clients' interests

Although our clients' securities are registered in our name at the relevant CSD, we hold them on behalf of our clients, who are considered as a matter of 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.

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.

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. 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.

We are subject to the European Communities (Markets in Financial Instruments) Regulations 2007 (and from January 2018, the European Union (Markets in Financial Instruments) Regulations 2017) (MiFID Regulations) 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

² Regulation 80(2)(c) of the European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No 289 of 2015) excludes client assets held by an institution (which would include JP Morgan Bank (Ireland) plc) from the scope of bail-in processes, where those client assets are held on trust.

books and records are maintained in accordance with the MiFID Regulations, clients should receive the same level of protection from both ISAs and OSAs.³

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

A shortfall could arise for a number of reasons including 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 obligations to reimburse the OSA for the securities used or borrowed.

Treatment of a shortfall

In the case of an ISA⁴, 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 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.

³ Regulations 160 and 161 of the MiFID Regulations 2007; Schedule 3 of the MiFID Regulations 2017.

⁴ Clients should note that for the purposes of this section if a client elects for an ISA as part of an intra-fund arrangement whereby the assets of that client and any assets of any of its related funds are “ring-fenced” from the assets of other clients that are not related funds, then this type of ISA may be treated as an OSA if there is a shortfall notwithstanding the client’s election of an ISA.

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 interest granted to third party

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.

Security interest granted to 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 shortfall) 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 MiFID Regulations restrict the situations in which we may grant a security interest over securities held in a client account.⁵

⁵ Regulation 162 of the MiFID Regulations 2007 and Schedule 3 of the MiFID Regulations 2017.

Glossary

Bail-in refers to the process under the European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No 289 of 2015), applicable to failing Irish banks and investment firms under which the firm's liabilities to clients may be modified, for example by being written down or converted into equity.

Central Securities Depository or **CSD** is an entity which records legal entitlements to dematerialised securities and operates a system for the settlement of transactions in those securities.

Central Securities Depositories Regulation or **CSDR** refers to EU Regulation 909/2014 which sets

Resolution proceedings are proceedings for the resolution of failing Irish banks and investment firms under the European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No 289 of 2015).

Segregated Accounts means an ISA and/or an OSA, as the case may be.

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