

**Information Document**

Pursuant to Article 38 (5) and (6) of EU Regulation No. 909/2014 of 23 July 2014 on improved securities settlement and settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No. 236/2012 ("Central Securities Depository Regulation" CSDR).

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## 1 Introduction

### *1.1 Definitions of terms*

Any reference in this document to "Berenberg", "Bank", "we" and "us" means Joh. Berenberg, Gossler & Co. KG, which acts as a participant in the securities delivery and settlement system of the respective central securities depository. The terms "you" and "yours" refer to the client.

### *1.2 Background and Purpose of this Document*

Participants must, in accordance with Article 38(5) of the CSD Regulation, at least offer their clients the choice between a bus client account separation and an individual account separation and inform them of the costs and risks associated with each of these options.

Furthermore, pursuant to Article 38(6) of the CSD Regulation, the levels of protection and the costs associated with the degree of segregation offered must be disclosed, and these services must be offered on commercial terms.

This information document shall contain the explanations required by the above-mentioned Regulation on the forms of account segregation offered, information on the level of protection and the essential legal framework for the respective degree of account segregation offered, including information on relevant parts of the insolvency law of the respective jurisdiction.

We will be pleased to inform you about the costs associated with the respective offered client account separation models in a separate form upon request.

The current version of this information document is available on our website.

### *1.3 What do you as a client have to bear in mind when reading this document and selecting the account separation model?*

Before you decide on a client account separation model that deviates from the Special Conditions for Securities Transactions, you should use this information document and the information provided by the respective central securities depositories to obtain an overview of the client account separation models offered, the main differences that exist here and the general legal framework. If you require additional information or legal advice, please contact a third party.

This document is intended as a guideline for you, but does not constitute or be construed as legal or other advice. In particular, this statement, which is required under supervisory law, does not constitute any obligation on the part of the Bank to advise you as a client. This document describes the essential legal framework, the effects of which will, however, vary

depending on the circumstances of the individual case. It must also be borne in mind that the specific structure of the client account separation model offered necessarily depends on the respective central securities depositories. Against this background, you may need additional information not contained in this document to help you decide which client account separation model is right for you. It is your responsibility to carefully review the relevant requirements, contractual documentation and any other information provided to you regarding any of the client account separation models we offer. If necessary, you should consult competent advisors.

As a precaution, we would like to point out that the Bank accepts no liability for the accuracy and completeness of this information document.

## **2 Offering omnibus client account separation or individual client account separation to CSDs in accordance with Article 38(5) of the CSD Regulation**

Levels of protection associated with the degree of separation offered:

### *2.1 Aim of this document*

In this document, we present you with the account separation models available for selection, disclose the associated level of protection and describe the essential legal framework of the degree of separation offered in each case, including information on the applicable insolvency law.

The CSDs, of which we are a direct participant (see Glossary<sup>1</sup>), also have their own disclosure obligations. Below is a list of these CSDs with a link to their respective websites.

### *2.2 Account separation models*

In our books and records we record the individual claims of the individual client to the securities which we hold for him in a separate client account. We also open accounts with central securities depositories in our own name (or in the name of our nominee) to hold our clients' securities portfolios. Currently, we offer two types of accounts with CSDs to clients: accounts managed in accordance with the Single Client Account Separation ("Single Client Accounts") and accounts managed in accordance with the Omnibus Client Account Separation ("Omnibus Client Accounts").

The individual client account shall be used to hold the securities of an individual client. The client's securities are therefore also held at the CSD separately from the securities of other clients and our own holdings.

The Omnibus client account is used for the joint custody of the securities of several clients with the CSD. However, we do not hold our own portfolios in Omnibus client accounts.

### *2.3 Essential legal framework conditions of the degrees of segregation*

### *2.3.1 Insolvency*

Subject to the applicable local insolvency laws, our insolvency should not affect the legal rights of clients to the securities we hold for them directly with central securities depositories, regardless of whether the securities are held in individual client or bus client accounts.

In practice, the allocation of securities in the event of insolvency depends on a number of factors. The most important will be discussed below.

### *2.3.2 Application of insolvency law in our jurisdiction*

If we become insolvent, insolvency proceedings would take place in our legal system and be subject to local, i.e. German, insolvency law. Under German insolvency law, securities which we hold in custody on behalf of clients would not be allocated to the insolvency assets to be distributed to creditors if these securities were owned by the clients. Rather, they would have to be surrendered to the clients in accordance with their respective ownership rights or shares.

Accordingly, securities which we hold for clients of which we are not the issuer and which are considered to be the property of such clients and not our property should be protected in the event of our insolvency or liquidation. This applies irrespective of whether the securities are held in an Omnibus client account or an individual client account.

Securities which we hold in safe custody for clients but of which we are the issuer may, however, be subject to bail-in, of which we will inform you separately.

In the event of insolvency proceedings, clients may also have a priority claim with respect to certain assets. This would be the case if, at the time of our insolvency proceedings, the client does not yet have ownership of a security but has already fulfilled his obligations to us under the relevant securities transaction. Such a situation could arise if a client acquires securities in a securities transaction but has not yet acquired ownership of those securities, or if we have unlawfully infringed the client's ownership of the securities. In these cases, a client would have a priority claim if, at the beginning of the insolvency proceedings, he or she

- has fully discharged its obligations to us under the relevant securities transaction, or
- has not completely fulfilled his obligations, but the part not fulfilled corresponds to less than 10 per cent of the value of his securities delivery claim and the client meets his obligations within one week of being requested to do so by the insolvency administrator.

In such cases, the client's priority claim would be satisfied separately from the claims of non-preferred unsecured creditors. The claim would be settled from existing securities of the same type that are part of our insolvency estate or from claims we have in relation to the delivery of securities of the same type in our insolvency estate. In the event of our insolvency, clients would then have to assert a claim as senior creditors in respect of these securities.

### *2.3.3 Type of client claims*

The "Announcement on the Requirements for the Proper Performance of Securities Deposit Transactions and the Fulfilment of Delivery Obligations" of 21 December 1998 published by the Federal Financial Supervisory Authority (BaFin) and the local laws for the protection of assets provide that we protect the legal claim of the client (right of ownership) to the securities held in safe custody by us and separate the client's legal claim from our own rights.

Even if our clients' securities are registered on our behalf with the relevant central securities depository, we hold them on behalf of our clients, who are legally entitled to ownership of these securities. In addition, a client may under certain circumstances assert a contractual right to delivery of the securities against us.

This applies both to individual client accounts and to Omnibus client accounts.

In some markets<sup>4</sup> our clients are granted a co-ownership share of all securities of the same type held in collective custody by the CSD, pro rata to the client's holdings of securities of the same type. This applies both if the share of the client portfolio in these securities is held in an individual client account and in a custodian client account.<sup>5</sup>

In other markets<sup>6</sup>, the rights of clients differ according to the custody in individual client accounts and bus client accounts. In the case of individual client accounts, the Client shall be entitled to all securities held in the individual client account. In the case of an Omnibus Client Account in which the Securities are held jointly in a single account, each Client shall normally be deemed to have title to all Securities in the Account pro rata to its securities portfolio.

Subject to applicable local law, our books and records serve as evidence of our clients' claims to the securities. The reliability of this evidence would be particularly important in the event of insolvency. For both an individual client account and an Omnibus client account, an insolvency administrator may require a comprehensive reconciliation of the books and records relating to all securities accounts before securities are released from those accounts.

<sup>4</sup> This includes Germany and the Netherlands.

<sup>5</sup> Please note that there may be another type of client right if the securities are ultimately held by a custodian domiciled outside these markets.

<sup>6</sup> These include the United Kingdom, Hungary and the Czech Republic.

In accordance with the above notice on custody requirements in connection with applicable local asset protection laws, we are required to maintain accurate books and records that enable us to distinguish securities held for one client from securities held for another client and our own. In addition, our compliance with these rules is monitored through regular audits. As long as the books and records are kept in accordance with the applicable rules, individual client accounts and Omnibus client accounts should provide the same level of protection to clients.

#### *2.4 Shortfalls*

If there is a shortfall in an individual client account or Omnibus client account between the number of securities we have to deliver to our clients and the number of securities we hold

on their behalf, fewer securities may be returned to clients than they are entitled to in the event of our insolvency. The manner in which a shortfall may arise may vary between Individual Client Accounts and Omnibus Client Accounts (as set out below).

#### *2.4.1 Emergence of Deficits*

A shortfall may arise for various reasons, including administrative errors, underground movements or the default of a counterparty after the exercise of rights to re-use. However, we do not allow clients to use or borrow securities belonging to another client for underground settlement purposes, even if the securities are held in an Omnibus client account. The systems and controls used for settlement reduce the risk of shortfalls resulting from the fact that the client in question does not have a sufficient number of securities in the account held with us to meet its settlement obligations. Accordingly, we are of the opinion that the protection offered for Omnibus client accounts and individual client accounts does not differ significantly. However, this concept also results in an increased risk of failed settlement, which in turn may lead to additional buy-in costs or default surcharges or delays in settlement, as we cannot settle if there are insufficient securities available in the account.

#### *2.4.2 Handling a subportfolio*

In the case of an individual client account, the entire sub-stocks on that account would be credited to the client for whom the account is held and not to other clients for whom we hold securities. Accordingly, the client would not have to carry a sub-stock on an account held for one or more other clients.

In the case of an Omnibus Client Account, a shortfall would be distributed pro rata among all Clients who have claims to the Securities on that account (see below). Thus, a Client may be affected by a subportfolio, even if he is in no way responsible for the circumstances under which the Securities were lost.

If there is a shortage which has arisen or cannot be covered through our fault, the Clients shall, under certain circumstances, have a claim against us for compensation for the loss incurred in accordance with the respective custody agreement between them and us. If we become insolvent prior to covering the shortfall, the clients shall rank as general unsecured insolvency creditors for all amounts owed under this claim. As a result, clients would be exposed to the risks of our insolvency, including the risk of not recovering or not recovering all of the amounts claimed.

If the securities were held in an individual client account, the entire loss would be borne by the client for whom the account was held. If the securities were held in a client account of Omnibus, the loss would be allocated to the clients with a claim on that account.

In order to determine the clients' share of the sub-stocks in an Omnibus Client Account, each client's claims to the securities in that account would have to be established legally and factually on the basis of our books and records. Any sub-stocks of a particular security held in an Omnibus client account would then be allocated to all clients with a claim to that security in that account. It is likely that this sub-stock would be allocated pro rata to the clients with a claim to that security on the Omnibus client account, although it can be argued that the sub-stock of a particular security on a Omnibus client account should in certain

circumstances be attributed to one or more particular clients. Confirming each client's claim can therefore be a time-consuming process. This may lead to delays in the return of securities and to initial uncertainty on the part of the client as to his actual claims in the event of insolvency.

## *2.5 Security interests*

### *2.5.1 Security interests granted to a third party*

Security interests in client securities may have different effects on individual client accounts and Omnibus client accounts.

If a client has allegedly created a security interest in his rights in securities held in a client account of Omnibus and the security interest is enforced against the CSD keeping the account, the return of securities to all clients for whom securities are held in the account concerned could be delayed - including those clients who have not provided a security interest - and could result in a shortage of securities in the account. However, in practice, we would expect the beneficiary of a security interest in the client's securities to attempt to ensure its effectiveness by notifying us and not the relevant CSD and to seek to enforce the security interest against us and not against the CSD with whom he has no business relationship.

### *2.5.2 Security interests granted to a CSD*

If the CSD is the beneficiary of a security interest which we have granted it in securities held by us for a client, the return of securities to the client may be delayed (and a shortfall may arise) if we fail to meet our obligations to the CSD and the security interest is enforced. This applies irrespective of whether the securities are held in an individual client account or an Omnibus client account. However, in practice, we would expect the CSD to first use the securities in our own portfolio to meet our liabilities before using the securities in the client accounts for this purpose. We would also expect the CSD to use its client accounts proportionately to enforce its security interest.

## *2.6 Disclosures by CSDs*

Below are links to the websites of the CSDs where Berenberg is a participant on the date of this document. We expect the respective CSDs to make their own disclosures in accordance with Article 38 of the CSD Regulation. All disclosures on these websites are made by the respective CSDs. We have not reviewed this information or subjected it to due diligence. Clients who rely on CSD disclosures do so at their own risk.

CSDs and Websites:

Euroclear Bank SA/NV

Homepage:

<https://www.euroclear.com/en.html>

Clearstream Banking SA and Clearstream Banking AG

Homepage:

<http://www.clearstream.com>

### 3 Glossary

**CSD:** an entity which holds legal claims to securities in dematerialised form and which operates a system for settling transactions in such securities.

**CSD Regulation:** the EU Regulation 909/2014, which lays down the rules applicable to CSDs and their participants.

**Direct participant:** an entity that holds securities in an account with a CSD and is responsible for the settlement of securities transactions that take place through a CSD. A direct participant shall be distinguished from an indirect participant which is an entity, e.g. a global custodian, which designates a direct participant to deposit securities for it with a CSD.

**EEA:** the European Economic Area.