



# Scotiabank

## Central Securities Depositories Regulation (CSDR)

### Article 38 (6) Participant Disclosure

#### 1. Introduction

The purpose of this document is for THE BANK OF NOVA SCOTIA Toronto. (LEI L3I9ZG2KFGXZ61BMYR72) to disclose the levels of protection associated with the different levels of segregation that for THE BANK OF NOVA SCOTIA Toronto. (LEI L3I9ZG2KFGXZ61BMYR72) (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(6) of the Central Securities Depositories Regulation (CSDR) (in relation to CSDs in the EEA). Under CSDR, the CSDs of which we are a direct participant have their own disclosure obligations and we include links to those disclosures in this document. 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

***Article 38 (6). CSDs and their participants shall publicly disclose the levels of protection and the costs associated with the different levels of segregation that they provide and shall offer those services on reasonable commercial terms. Details of the different levels of segregation shall include a description of the main legal implications of the respective levels of segregation offered, including information on the insolvency law applicable in the relevant jurisdiction.***

#### 2. Insolvency

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

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

### **3. Nature of clients' interests**

Although our clients' securities are recorded 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 attributable to that client. 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 securities in the account proportionate to its holding of securities as recorded in our books and records.

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 our insolvency and in the case of an OSA, since no records of individual clients' entitlements would be held by the relevant CSD.

### **4. 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).

### **5. 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. If agreed with the relevant clients, a shortfall may also arise in the case of an OSA as a result of securities belonging to one client being used or borrowed by another client for intra-day settlement purposes.

Where we have been requested to settle a transaction for a client and that client has insufficient securities held with us to carry out that settlement, we generally have two options:

- (i) in the case of both an ISA and an OSA, to only carry out the settlement once the client has delivered to us the securities needed to meet the settlement obligation; or
- (ii) in the case of an OSA, to make use of other securities held in that account to carry out settlement subject to an obligation on the part of the relevant client to make good that shortfall and subject to any relevant client consents required.

Where option (ii) is used, this increases the risks to clients holding securities in the OSA as it makes it more likely that a shortfall in the account could arise as a result of the relevant client failing to meet its obligation to reimburse the OSA for the securities used.

In the case of an ISA, only option (i) above would be available, which would prevent the use of securities in that account for other clients and therefore any resulting shortfall. However, it also increases the risk of settlement failure which in turn may incur additional buy in costs or penalties and/or may delay settlement as we would be unable to settle where there are insufficient securities in the account.

Where clients' securities are held in an OSA, we will use option (ii) in accordance with agreed contractual terms.

## **6. Security interests**

Security interest granted to a 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 a CSD

Whether or not the CSD may benefit from a security interest will be regulated by the CSD's own rules. Such rules may also regulate the CSD's approach to enforcement of such security interest. Should the CSD benefit 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 CASS Rules restrict the situations in which we may grant a security interest over securities held in a client account.

## **7. Corporate actions**

Where securities are held in an ISA and the client is entitled to a fractional entitlement on a corporate action, it is possible that the client would not in practice benefit from that fractional entitlement. However, where securities are held in an OSA, fractional entitlements may be received on an aggregated basis and therefore it is more likely that the clients may be able to benefit from some or all of those fractional entitlements.

Our insolvency may also have an impact on our ability to collect any entitlements, such as dividends, due on clients' securities held in an ISA or OSA or exercise any voting rights in respect of those securities.

## GLOSSARY

- **Bail-in:** - refers to the process under the Banking Act 2009 applicable to failing UK banks and investment firms under which the firm's liabilities to clients may be modified, e.g., 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 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 and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) No 236/2012. The CSDR sets out the rules applicable to CSDs in the EEA and their participants.
- **CASS rules:** - means Chapter 6 of the Financial Conduct Authority's CASS Sourcebook.
- **Direct participant:** - means an entity that holds securities in an account with a CSD and is responsible for settling transactions in securities that take place within a CSD. A direct participant should be distinguished from an indirect participant, which is an entity, such as a global custodian, which appoints a direct participant to hold securities for it with a CSD.
- **EEA:** - means the European Economic Area.
- **ISA:** - means an Individual Client Segregated Account.
- **OSA:** - means an Omnibus Client Segregated Account