EURONEXT SECURITIES

Description of levels of segregation according to article 38 (6) of regulation n. 909/2014

Detailed description of the different levels of segregation offered by the applicant CSD, a description of the costs associated with each level, the commercial terms on which they are offered, their main legal implications and the applicable insolvency law

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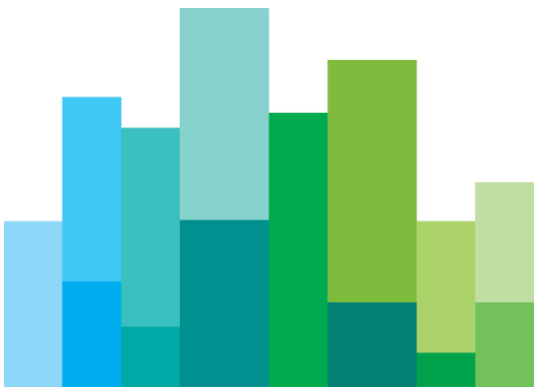
TABLE OF CONTENTS

RELEVENT PROVISIONS



Regulation (EU) n. 909/2014 (CSDR – Level 1)

Article 38 - "Protection of securities of participants and those of their clients"

1. For each securities settlement system it operates, a CSD shall keep records and accounts that shall enable it, at any time and without delay, to segregate in the accounts with the CSD, the securities of a participant from those of any other participant and, if applicable, from the CSD's own assets.

2. A CSD shall keep records and accounts that enable any participant to segregate the securities of the participant from those of the participant's clients.

3. A CSD shall keep records and accounts that enable any participant to hold in one securities account the securities that belong to different clients of that participant ('omnibus client segregation')

4. A CSD shall keep records and accounts that enable a participant to segregate the securities of any of the participant's clients, if and as required by the participant ('individual client segregation').

5. A participant shall offer its clients at least the choice between omnibus client segregation and individual client segregation and inform them of the costs and risks associated with each option.

   However, a CSD and its participants shall provide individual clients segregation for citizens and residents of, and legal persons established in, a Member State where required under the national law of the Member State under which the securities are constituted as it stands at 17 September 2014. That obligation shall apply as long as the national law is not amended or repealed and its objectives are still valid.

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 jurisdictions.

A CSD shall not use for any purpose securities that do not belong to it. A CSD may however use securities of a participant where it has obtained that participant's prior express consent. The CSD shall require its participants to obtain any necessary prior consent from their clients.

Regulation (EU) n. 392/2017 *(CSDR – Level 2)*

Article 26 - "Protection of participants' and their clients' securities"

An application for authorisation shall include the following information concerning the measures put in place to protect the securities of the applicant CSD's participants and those of their clients in accordance with Article 38 of Regulation (EU) No 909/2014:

b) a detailed description of the different levels of segregation offered by the applicant CSD, a description of the costs associated with each level, the commercial terms on which they are offered, their main legal implications and the applicable insolvency law;

c) the rules and procedures for obtaining the consents referred to in Article 38(7) of Regulation (EU) No 909/2014.

ACCOUNT STRUCTURE AND COSTS ASSOCIATED THERETO

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Description of different level of segregation

Article 38 of Regulation (EU) No. 909/2014 ("CSDR") provides that for each securities settlement system, the central securities depository (CSD) shall keep records and accounts that shall enable it, at any time and without delay, to segregate, in the accounts with the same CSD, securities of a participant from those of any other party and, where appropriate, by its own assets. In particular, the CSD shall keep records and accounts enabling each participant (i) to segregate its securities from those of its clients; (ii) to hold in one securities account, the securities from different clients of such participant (omnibus segregation); and (iii) to segregate the securities of each client of the participant, if and as required by the participant (individual client segregation).

According to the above, Monte Titoli offers its participants ("Participants") the following types of account:

- **Proprietary accounts:** intended to record the financial instruments owned by Participants. The proprietary accounts are opened in the name and upon request of the Participant;

- **Third parties accounts:** intended to record financial instruments that Participants hold on behalf of their clients. These accounts could be used:

    - to record financial instruments belonging to different clients of the participants i.e. "omnibus client segregation";

    - to record asset pertaining to a single client of the participant i.e. "individual client segregation". In this case, depending on the structure of the custody chain, the client may be the end investor or an intermediary holding the securities on behalf of other intermediaries or of the end investor.

There is no specific obligation to disclose the identity of the Participant's clients to the CSD, since participation to the central maintenance and to the the settlement service is always in the participant's name even if it acts on behalf of third parties and so, as per provisions of the Italian Civil Code, effects of the relationship with Monte Titoli are always produced on the Participant.

However, according to Monte Titoli Rules on settlement service, the identity of the client on behalf of which the Participant holds securities in a third party account that he uses to record asset pertaining to a single client should be disclosed, to Monte Titoli for the sole purpose of qualifying that client as an "indirect participant" in the settlement system. Such identification of clients as "indirect participants", is aimed at managing the insolvency of the indirect participants within the settlement system and neither affect asset protection rules nor is relevant for the purpose of assessing the main legal implications of the level of segregation offered by Monte Titoli as described above, and the insolvency law applicable in case of default of a CSD or of a participant to the CSD as described in paragraph 3.0.

Participants are required to qualify each type of account they hold in Monte Titoli using the "account description" field that shall be populated when opening of a new account and could be modified by the participant itself through Monte Titoli technical platform (CLIMP).

Commercial terms associated to segregation

The first proprietary and third parties accounts are charged EUR 300 monthly (amounting EUR 3.600 each on a yearly basis). These fees are reported in the Price List published on Monte Titoli's website. Additional accounts (proprietary or third parties either omnibus and individual clients segregated) are charged EUR 60 monthly per account (amounting at EUR 720 on a yearly basis per account).

MAIN LEGAL IMPLICATIONS AND APPLICABLE INSOLVENCY LAW

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Conflicts of law rules

Monte Titoli is established and incorporated according to Italian law. Its central manteinance and settlement system and the contractual relationship with its participants are governed by Italian law. According to conflicts of law rules[1], when rights on securities are evidenced by book entries or records in a register, account, or central depository system, the law which governs the entitlement to securities is the law of the jurisdiction in which is located the account in which the book-entries or annotations are executed directly in favor of the party entitled to benefit from the transfer of right.

According to the above, in relation to the securities accounts held by Participants with Monte Titoli, the entitlement to securities held with Monte Titoli is regulated by Italian Law; similarly, the rights *in rem* with respect of securities held by the account holder with an Italian intermediary is regulated by Italian Law.

Effects from a credit book entry

According to Italian law[2], the following legal effects arise from a credit book entry of securities on a securities account opened with an intermediary (hereinafter also referred to as a "bank" or Intermediary):

- the account holder has the full and exclusive title to exercise rights for the securities registered therein according to the legislation applicable to such securities;

- the account holder cannot be subject to any claims or actions by any of the previous owners of the financial instruments, provided that the rights were acquired pursuant to a good title and in good faith.

Rights on securities

Rights on securities are determined at the level of the relationship between the account holder and the Intermediary. The relationship between the account holder and the intermediary is qualified as deposit under Italian law.

In principle, under any such relationship, when securities are deposited with a bank, full title and ownership remain with the account holder who is entitled to ask for "restitution of the securities held on its account.. The bank merely carries out a custody service on behalf of its client without acquiring any entitlement to such securities.

In case of dematerialised securities, the opening of a custody account with an intermediary is, mandated by law. The Intermediary may be a direct participant to the CSD or may participate via one or more upper-intermediary . No physical restitution of the securities from the intermediary is possible. "Restitution" amounts then to the crediting of the relevant securities on a different securities account held with another intermediary.The Intermediary may be a direct participant to the CSD or may participate

[1] See Article 10, Legislative Decree no. 170/ 2004
[2] See Article 83 quinquies, Legislative Decree 58/1998

via one or more upper-intermediary.The account holder does not have a contractual relationship with any upper-tier intermediary nor with the CSD, but only with the Intermediary which is its securities account-keeper: the investor contractually allows the Intermediary to "sub-deposit" (or in case of dematerialized securities, sub-register) such securities with the upper-tier intermediary and hence only such Intermediary creates a contractual relationship with the upper-tier intermediary[3] .

As stated above, rights over securities are determined at the level of the securities account maintained by the account holder with the Intermediary.

Accordingly, the right of the account holder to request any "restitution" of the securities as described above, can be enforced only towards the Intermediary having a direct contractual relationship with the account holder, not towards the CSD or any other upper- tier intermerdiary.

De facto, the securities accounts opened in the books of the upper-tier intermediaries, up to the CSD, mirror the securities accounts opened in the books of the Intermediary. The CSD does not acquire any kind of entitlement to thesecurities initially registered in book entry form with the CSD.

No reuse

Further, according to article 38(7) of Regulation (EU) no. 909/2014 Monte Titoli is prevented to use financial instruments recorded in the account of its participants without having acquired the previous written consent from each participant.

Under the current regulatory and contractual framework Monte Titoli is not allowed to use participants' asset for any purpose so no such a consent has been acquired.

Segregation

Italian law provides for segregation rules applicable to intermediaries aimed at protecting the assets they hold on behalf of their clients against the insolvency of the intermediary itself or of any upper-tier intermediary.

The Intermediary is required to maintain full segregation of the securities of its clients form its own securities and segregation must be evidenced in the accounting record of the Intermediary. Moreover, the Intermediary shall record, for each account holder the financial instruments held, their transfer, the rights exercised and any restrictions in separate accounts, separated from each other and with respect to any of the relevant accounts of the Intermediary itself.[4]

[3] Cfr. Legal Certainty Group Questionnaire, Italy, available at https://ec.europa.eu/info/publications/comparative-survey-legal-certainty-group_it
[4] See art. 83-quater, para. 3 of the Consolidated Financial Law

According to art. 22 of the Consolidated Financial Law, in the provision of the investment services and ancillary services, the financial instruments belonging to their clients, held for any reason by investment firms and banks for any reason are for any purpose separate estate from that of the intermediary and of other clients. Actions in respect of such assets may not be brought by creditors of the intermediary or on behalf of such creditors, or by creditors of the depositary or the sub-depositary5, if any, or on behalf of such creditors.

Similarly segregation rules are laid down in article 36(4) of the Consolidated Financial Law in relation to securities pertaining to mutual investment funds. The mentioned provision states that each mutual investment fund represents a separate estate from that of the asset management company and from that of each investor, as well as from any other assets managed by the same company. Claims on such assets by creditors of the asset management company or in the interests of the same, or by creditors of the custodian or sub-custodian or in the interests of the same are not admitted.

Based on the aforementioned segregation rules, Intermediaries must hold at any sub-depositary the securities belonging to the clients in one or more accounts opened in their own name, with an indication that the securities belong to third parties. Moreover, such accounts must be segregated from the Intermediaries' own account.

The operation of segregation rules applicable to intermediaries, as described above, together with segregation Rules set forth in article 38 of CSDR prohibit without exception:

- the creditors and the liquidator ("commissari liquidatori") of the Intermediary form claiming form any "sub-depositary" securities belonging to the Intermediaries's clients and

- the creditors and the liquidator of the CSD to exercise any actions or attachments thereon.

Reconciliation

As a supplementing measure requested by CSDR with the asset protection measures, [6]Monte Titoli performs daily reconciliation of account balances and sends Participants the relative account statement. Participants are entitled to disagree with the account statement within one day. After such term the account statement is considered approved. In this case according to article 64(5) of Commission Delegated Regulation (EU) 2017/392 of 11 November 2016 ("RTS") A CSD shall ensure that, upon its request, its participants, other holders of accounts in the CSD and the account operators provide the CSD with the information that the CSD deems necessary to ensure the integrity of the issue, in particular to solve any reconciliation problems. Moreover according to article

[5] See also Regulation of the Bank of Italy and Consob on Deposit and Sub deposit of client securities of 29 October 2007

[6] Commission Delegated Regulation (EU) 2017/392 of 11 November 2016 supplementing Regulation (EU) No 909/2014 of the European Parliament and of the Council with regard to regulatory technical standards on authorisation, supervisory and operational requirements for central securities depositories

65 of the RTS, a CSD shall analyse any mismatches and inconsistencies resulting from the reconciliation process and endeavour to solve them before the beginning of settlement on the following business day

Insolvency of an Intermediary

According to Italian Law, Intermediaries, although they cannot be adjudicated bankrupt, may become subject to *compulsory administrative liquidation* under the supervision of liquidators appointed by the Bank of Italy.

In the event such procedure is initiated pursuant to article 91 of the Consolidated Banking Law, investors have, in principle, a right to obtain "restitution" of their securities from the Intermediary having the direct contractual and account relationship with the investor. For this purpose, they are recorded in a special separate section of the Intermediary's statement of liabilities.

Depending on whether – and to what extent – the segregation rules have been complied with by the Intermediary, the following scenarios apply:

1) If segregation rule have been properly and fully complied with by the Intermediary, (i.e., both segregation of the securities of the relevant client from the securities belonging to the Intermediary and segregation of the client's securities from other clients' securities have been implemented) and the segregated securities are sufficient, the client can enforce its right to obtain that its securities are "returned" to it.

2) In the event that the securities belonging to the client have been segregated from the securities belonging to the Intermediary, but

    a. have been commingled with securities of other clients, or

    b. the segregated securities are nonetheless insufficient to effect full restitution,

each client shall have a right to receive securities back on a pro-rata basis with other clients; in such percentage as the portion of the segregated securities owned by that client.

3) In the event that the securities belonging to the client have ben commingled with the securities belonging to the Intermediary, the client has only an unsecured claim against the Intermediary estate, ranking *pari-passu* with the other unsecured claims. The same applies in case the implemented segregation in the scenario under 2) above only allows for partial restitutions. In this latter case, clients are entitled to claim against the Intermediary for such portion of the rights which has not been satisfied according to point 2) above.

In case of insolvency of an Italian intermediary or a domestic branch of a foreign intermediary, the aforementioned discipline will apply. Such discipline does not

specifically consider whether at CSD level the relevant financial instruments are registered in an individually client segregated account or in an omnibus segregated account and so it seems to be applicable irrespective of the level segregation at CSD level.

This procedure applies in case of insolvency of any upper-tier intermediary *mutatis mutandis* allowing the same level of asset protection.

Crisis of the CSD

In case of insolvency of the central securities depository, Article 79-*vicies* of the Consolidated Financial Law comes into consideration, regulating the cases of crisis of the central securities depository. It provides that if (i) the CSD is declared insolvent pursuant to Article 195 of the Italian Bankruptcy Law or (ii) its authorization has been withdrawn, the Ministry of economy and Finance issues a decree ordering the compulsory administrative liquidation according to the provisions of articles 80, paragraphs 3, 4, 5 and 6, 81, 82, 83, 84, with the exception of paragraph 2, and articles 85 to 94 of the Consolidated Banking Law, where compatible. Such compatibility has to be verified, in particular, in respect of the provisions of CSDR.

According to article 20 of CSDR the competent authority of the home Member State shall withdraw the authorization where *inter alia* the CSD has seriously or systematically infringed the requirements laid down in CSDR or, where applicable, in Directive 2014/65/EU or Regulation (EU) No 600/2014.

According to article 20 paragraph 5 of CSDR, in the event of withdrawal of authorization, the timely and orderly settlement and transfer of the assets of clients and participants to another CSD must be contemplated; for this purpose, a CSD shall establish, implement and maintain adequate procedures.

In any case, it is reasonable to argue that irrespective of whether the compulsory administrative liquidation is triggered by insolvency pursuant to article 79 vicies the Consolidated Financial Law or by the withdrawal of the authorization pursuant to art. 20(5) of CSDR, the consequence will be a transfer of assets of clients and participants as envisaged under art. 20.5 of CSDR to be enforced by the commissioner appointed to manage the compulsory administrative liquidation.

Against this background, it must be highlighted that, in case of CSD insolvency/withdrawal of the authorization, the above mentioned transfer of assets will concern both omnibus and individual segregated accounts.

Therefore, also in case of insolvency/withdrawal of authorization of the CSD both types of segregation at the CSD level would prove to be **equivalent in terms of asset protection.**

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