NBB-SSS

RIGHTS OF PARTICIPANTS TO SECURITIES HELD IN THE NBB-SSS

March 2018

NationalBank
OF BELGIUM

Eurosystem

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1. INTRODUCTION

The NBB is the operator of the securities settlement system designated under the Settlement Finality Directive as "NBB-SSS" for the settlement of transactions between its Participants in fixed-income securities represented by book entries. The NBB-SSS is connected to TARGET2-Securities (T2S), the Eurosystem platform for securities settlement.

The purpose of this Annex is to provides NBB-SSS' Participants with an overview of the legal protection of securities that they hold with the NBB-SSS.

2. CONTRACTUAL AGREEMENT

The contractual relationship between the NBB-SSS and its Participants is governed by the NBB-SSS Terms and Conditions governing the participation in the NBB-SSS, including their Annexes and sub-Annexes.

The Terms and Conditions are governed by and construed in accordance with the laws of Belgium.

3. APPLICABLE LEGAL ACTS

The entitlement of the Participant on the securities is governed by Belgian Law. This is based on both the provisions governing the Terms and Conditions (Section 2 above) and Article 91, §1 of the Belgian Code of Private International Law of 16 July 2004.

Under Belgian law, the rights on securities held by Participants with the NBB-SSS are governed by the following legislations, depending on the type of securities concerned:

(i) the Law of 2 January 1991 on the market in public debt securities and monetary policy instruments ("the Law of 2 January 1991") : dematerialised government bonds e.g. treasury certificates, linear bonds (OLO's), stripped OLO's, treasury bills, state bonds;

(ii) the Law of 22 July 1991 related to commercial papers and certificates of deposit ("the Law of 22 July 1991") : dematerialised commercial paper and certificates of deposit;

(iii) the Belgian Code of Companies of 7 May 1999 (Article 468 and following): dematerialised corporate bonds (obligaties/obligations) as referred to in Article 485;

(iv) the coordinated Royal Decree n° 62 of 10 November 1967 on the Deposit of Fungible Financial Instruments and the Settlement of Transactions involving such Instruments ("the Royal Decree N° 62"): other fixed-income securities which can circulate under the fungibility regime;

The rules set out in those applicable legal acts are in principle not materially affected by the EU Regulation n° 909/2014 ("the CSDR"). This is confirmed in recital 42 of the CSDR, which states that the CSDR *should not interfere with national law of the Member States regulating the holdings of securities and the arrangements maintaining the integrity of securities issues.*

Recital 38 of the CSDR requires nevertheless the CSDs to segregate the Securities Accounts maintained for its Participants. For each Securities Account, the Participant shall inform the NBB-SSS whether the Securities Account refers to the Participant's Own Account (OW), an Individually Segregated client account (IS) or a joint clients account "Omnibus account" (OM).

4. ASSET PROTECTION

For the purposes of the present Section, securities issued, held and circulating in accordance with the legal acts mentioned in Section 3, (i), (ii), (iii) and (iv) above shall be together designated as the "Securities".

Although the rules provided for by the legal acts mentioned in Section 3, (i), (ii), (iii) and (iv) are not entirely identical, they are nevertheless similar in substance and may be summarised as follows.

Principle : co-ownership right

Securities are exclusively represented by book entries in the records of the NBB-SSS. Rights to such Securities are evidenced by entries in the Securities Accounts of the relevant Participant. Transfers of such rights occur by book entries.

Securities held on Securities Accounts with the NBB-SSS confer to the accountholder a right *in rem* on the securities. This right *in rem* is an intangible right of co-ownership on the pool (universalité/universaliteit) of securities of the same type as those held by all holders on accounts with the NBB-SSS.

Due to this co-ownership right, Participants have specific entitlements with respect to the Securities credited to their Securities Account and in particular a **right of recovery** (droit de revendication/revendicatie recht), *i.e.* a proprietary right to receive back the relevant quantity of securities in the unlikely event of a bankruptcy or another situation of concurrence of creditors against the NBB-SSS. Please note however that the NBB-SSS is operated by the NBB, the National Central Bank of the Kingdom of Belgium.

A participant that holds Securities directly with the NBB-SSS can only exercise its co-ownership rights against the NBB-SSS. The Participant may however:

(a)   in the event of bankruptcy of the NBB-SSS or any other proceedings in which the rule of equal treatment of creditors apply, exercise its recovery right against the pool of security of the same category held with the NBB-SSS. This recovery right is exercised on a collective manner meaning that the relevant pool of Securities will be segregated from the bankruptcy estate of the NBB-SSS and that the restitution process will be managed by the bankruptcy trustee on behalf of all Participants holding securities of the same category.

   If the relevant pool of securities is not sufficient to allow the complete restitution of all Securities held on account with the NBB-SSS, it must be allocated among the Participants in proportion of their rights, as represented by the credits to their Securities Accounts.

   To the extent that the NBB-SSS would itself be the owner of a number of Securities of the same type, it would only be entitled to receive the number of Securities remaining after the full reimbursement of all Securities of the same type held by the NBB-SSS for the account of the Participants.

(b)   exercise any rights attached to the Securities (e.g. right to vote or to receive interests) against the issuer;

(c)   in the event of bankruptcy or another situation of concurrence of creditors affecting the issuer of the Securities, the Participant may exercise its rights under the Securities directly against the issuer.

The applicable legal acts mentioned under Section 3 provide for equivalent rules <u>where the Participants are holding securities for the account of their underlying clients</u>, such clients may in principle only exercise their co-ownership rights directly against the Participant. In the case of a bankruptcy or another situation of concurrence of creditors against the Participant, the Participant's client may exercise a recovery right against the pool of securities of the same category held in custody by the Participant at the NBB-SSS.

No attachment

Pursuant to the applicable legal acts mentioned under Section 3, the attachment of Securities Accounts opened with the NBB-SSS is not permissible.

5. SEGREGATION

In accordance with Article 38 of the CSDR:

· the NBB-SSS keep records and accounts that segregate the Participants' securities from those of other Participants in its books and from the NBB's own assets;

· the NBB-SSS allows Participants to segregate their own securities from those of their underlying clients. According to Article 4.1.1 of the Terms and Conditions, Participants may open one or more Securities Accounts. For each Securities Account, Participants shall inform the NBB-SSS whether the Securities account refers to the Participant's Own Account (OW), an Individually Segregated client account (IS) or a joint clients account "Omnibus account" (OM).

It should be noted that, given the asset protection already granted by the legislation as referred to in Section 4 above, additional segregation of the securities held with the NBB-SSS will not in principle result in a greater asset protection for Participants or their underlying clients.

Indeed, Participants and their 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 recorded in the books of the NBB-SSS on behalf of all our Participants (and their own clients) that hold securities in that category, regardless of the fact that such securities are segregated or not.

It is also to be noted that the different types of Securities Account (OW, IS and OM) do not involve different risks stemming from the NBB-SSS for the Participants (be it from an operational, financial or legal point of view). The type of Securities Account linked to an operation has no impact on the way this operation is processed by the NBB-SSS.

6. NO REUSE

As provided for in Articles 5.2.8 of the Terms and Conditions, the NBB does not use for any purpose securities that belong to Participants or client's Participants.

7. STATUTORY LIEN

Without prejudice to the Terms and Conditions and pursuant to Article 31 of the Belgian law of August 2, 2002 relating to the supervision of the financial sector and financial services and as provided for in Article 11.10 of the Terms and Conditions, the NBB has a statutory lien on all the financial instruments, currencies and other rights it holds on account as own assets of any Participant. The statutory lien guarantees any claim of the NBB on the Participant arising in connection with the settlement of transactions through, or in connection with the operation of the NBB-SSS. The NBB waives the statutory lien on all the financial instruments, currencies and other rights it holds on Securities Accounts separately and expressly identified as client assets of any Participant.