DAVY

Article 38(6) Central Securities Depositories Regulation Public Disclosure

Davy Group

Content

1. Introduction

The purpose of this document is to disclose the levels of protection associated with the different levels of segregation in respect of securities held directly for clients with Central Securities Depositories (CSDs) within the European Union (EU). This document includes a description of the main legal implications of the respective levels of segregation offered as well as 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 domiciled in the EU.

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

2. 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 a CSD in our own name (J&E Davy) or in the name of our nominees companies in which we hold clients' securities in accordance with the Client Assets Regulation. As a general rule, 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.

3. Main legal implications of levels of segregation Application of Irish Insolvency Law

Insolvency proceedings relating to J&E Davy Unlimited Company (trading as Davy) would take place in Ireland and be governed by Irish insolvency law.

Under Irish insolvency law, securities that we hold 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.[1] Rather, the securities that we hold on behalf of clients 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 hold on behalf of clients would also not be subject to any "bail-in process" which may be applied to us if we were to become subject to resolution proceedings.[2]

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 clients' securities are registered in our own name or in the name of our nominees companies at the relevant CSD, we hold them on behalf of our clients, who are considered as a matter of law to have beneficial proprietary interest in those securities. This is in addition to any contractual right a client may have against us, to have these 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 Union (Markets in Financial Instruments) Regulations 2017 (MiFID II 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 the Client Asset Regulations (SI 604/2017) which stipulates the reconciliation requirements, segregation rules and the reporting of the Client Asset Examination performed annually by an independent auditor and reported to the Board of J&E Davy Unlimited Company and to the Regulator.

1 When a client has sold, transferred or otherwise disposed of their legal entitlement to securities that we hold for them (for example, under a right to use or title transfer collateral arrangement), the securities will no longer be the property of the client.
2 European Union (Bank Recovery and Resolution) Regulations 2015 (S.I. No 289 of 2015), applicable to failing investment firms under which the firm's liabilities to clients may be modified, for example by being written down or converted into equity.

Shortfalls

Notwithstanding these requirements, 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 could arise. This could result in fewer securities than clients are entitled to being returned to them on our insolvency.

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. (This reduces the chance of a shortfall arising as a result of the relevant client failing to meet its obligation to reimburse the OSA for the securities used or borrowed.)

The ways in which a shortfall could arise would be different as between ISAs and OSAs.

In the case of an ISA, 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. If securities were held in an ISA, the entire loss would be borne by the client for whom the relevant account was held

In the case of an OSA, the shortfall would be shared among the clients with an interest in the securities held in the OSA (as described in the next paragraph). 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 OSA, the loss arising from the shortfall would be allocated between the clients with an interest in that account. 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. It may be a time-consuming process to confirm each client's entitlement, which could give rise to 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.

4. Security interests

Security interest granted to third party

Where a client purported to grant a security interest over its interest in securities held in an OSA, there could be a delay in the return of securities to all clients holding securities in the relevant account and a possible shortfall in the account. Beneficiaries of security interests over a client's securities are required to notify us should they wish to perfect or seek to enforce a security interest. Beneficiaries shall not engage directly with the relevant CSD. Similarly, the relevant CSD shall refuse to process any claims asserted against assets held in an OSA without first receiving approval from Davy and the relevant account holder.

Security interest granted to a 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.

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The Davy Group is Ireland's leading provider of wealth management, asset management, capital markets and financia-l advisory services. We work with private clients, small businesses, corporations and institutional investors.

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