



Goldman Sachs Bank Europe SE (formerly known as Goldman Sachs AG)

CSD Participant Disclosure Document

German Law

This document is based on the industry disclosure template which was developed by AFME with the support of external legal counsel (Freshfields Bruckhaus Deringer). Certain sections herein have been applied or disappplied in accordance with the drafting notes to reflect our business model.

1. Introduction

The purpose of this document is for Goldman Sachs Bank Europe SE (formerly known as Goldman Sachs AG (referred to as “we”, “us” or “GSBE”) to disclose the levels of protection associated with the different levels of segregation that we provide in respect of securities that we hold directly for clients with central securities depositories within the EEA, Switzerland and the UK (each a “CSD”), 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(5) and (6) of the EU Central Securities Depositories Regulation (“CSDR”), in relation to CSDs in the EEA; Article 73 of the Swiss Financial Markets Infrastructure Act (“FMIA”), in relation to CSDs in Switzerland; and the corresponding regulation implemented in the UK, in relation to CSDs in the UK (the “UK CSD Regulation”). Together the CSDR, the FMIA and the UK CSD Regulation comprise the “CSD Legislation”.

Under the CSD Legislation, the CSDs at which we are a direct participant (see glossary¹) have their own disclosure obligations. For convenience only and where the relevant CSD disclosures have become available, we have included links to those, at the end of this document. In the event that any of the links do not work or you cannot find the relevant disclosures, you should contact the relevant CSD directly.

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.

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 CSDs in our own (or in our nominee’s) name in which we hold clients’ securities. 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. However, we do not hold our own proprietary securities in OSAs.

3. Main legal implications of levels of segregation

Insolvency

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

¹ At the end of this document is a glossary explaining some of the technical terms used in the document.

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.

Application of German insolvency law

Were we to become insolvent, our insolvency proceedings would take place in Germany and be governed by German insolvency law.

Under German 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 clients². Rather, they 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 (other than securities in respect of which Goldman Sachs Bank Europe SE is the issuer) should also not be subject to any bail-in process (see glossary), which may be applied to us if we were to become subject to resolution proceedings (see glossary).

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.

In addition, clients may in certain situations also have a priority right in respect of certain of our own assets in insolvency proceedings where the client does not hold a proprietary interest in a security at the time of our insolvency proceedings but has met its obligations to us under the relevant securities transaction. These situations can occur where a client acquires securities as part of a securities transaction but has not yet received a proprietary interest in these securities, or we have unlawfully infringed the client's proprietary interest in the securities.

In these cases, a client would have a priority right, if upon commencement of the insolvency proceedings:

- (i) the client has fully satisfied its obligations to us under the relevant securities transaction; or
- (ii) the client has not fully satisfied its obligations, but the non-performed part does not exceed 10 percent of the value of its securities delivery claim and the client fully satisfies its obligations within one week from the insolvency practitioner's request.

In such cases, the client's priority claim would be settled separately prior to the claim of general unsecured creditors. The claim would be settled from existing securities of the same type that form part of our estate or claims that we have for the delivery of securities of the same type to our estate. Clients would be required to make a claim in our insolvency as a priority creditor in respect of those securities.

Nature of clients' interests

Although our clients' securities are registered 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 proprietary interest in those securities. This is in addition to any contractual right clients may have against us to have the securities delivered to them.

The specific nature of the client's proprietary interest may differ and also depends on whether the securities are ultimately held with a German CSD or a depository located outside Germany:

- (i) where we hold clients' securities with a German CSD our clients are considered to have a co-ownership interest in all securities of the same type that are held in collective safe custody by the CSD according to the proportionate share of the client's holding of securities of this type.

² 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.

This applies both in the case where the proportionate share of the client's holding in these securities is recorded in an ISA and in the case where it is held in an OSA;

- (ii) where we hold clients' securities with a depositary located outside Germany our clients will generally receive a beneficial proprietary interest; and
- (iii) in both cases, we are required to protect the client's rights (proprietary interest) in its securities which we hold in custody, and to separate the client's rights (proprietary interest) from our own rights.

Our books and records constitute evidence of our clients' proprietary interest 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 client asset rules of the German Custody Act, the German Securities Trading Act and the Official Requirements regarding Safe Custody Business, 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 regular audits in respect of our compliance with those rules. As long as books and records are maintained in accordance with these rules, clients should receive the same level of protection from both ISAs and OSAs.

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 may be different as between ISAs and OSAs (see further below).

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.



Treatment of a shortfall

The treatment of shortfalls, and resulting loss, may differ depending on whether a client's securities are held in an ISA or OSA and on the circumstances in which a shortfall arises.

In the case of an OSA, there are arguments that, notwithstanding each client's co-ownership interest in all securities of the relevant type held at the CSD (see above), a shortfall, and resulting loss, that can actually be attributed to an OSA should only be shared among the clients whose securities are held in that OSA, and not be apportioned among clients holding securities in ISAs. Any shortfall in a particular security held in an OSA would be allocated among all clients with an interest in that security in the account. It is likely that this allocation would be made ratably between clients with an interest in that security in the OSA, although arguments could be made that in certain circumstances a shortfall in a particular security in an OSA should be attributed to a particular client or clients.

In the case of an ISA, there are arguments that, notwithstanding each client's co-ownership interest in all securities of the relevant type held at the CSD (see above), 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.

If a shortfall arose, clients may have a claim against us for any loss suffered. If we were to become insolvent prior to covering a shortfall, clients may, in certain situations, also have a priority claim in our insolvency proceedings (see above). Where this is not the case, 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 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. It may therefore be a time consuming process to confirm each client's entitlement. This could give rise to delays in returning securities and 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.

Security interests

Security interest granted to third party (other than a CSD)

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, unless such claim had been notified and/or registered with the relevant CSD in accordance with the rules of such CSD and applicable law.

Security interest granted to 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 German Custody Act and the German Securities Trading Act restrict the situations in which we may grant a security interest over securities held in a client account.

4. CSDs and Disclosures

As of the date of this disclosure, during the first quarter 2019, the CSDs at which GSBE is a participant at and directly holds securities for clients, will expand to include the following CSDs:

CSD	Country
Clearstream Banking AG, Frankfurt	Germany
Clearstream Luxembourg S.A., Luxembourg	International CSD (located in Luxembourg)
Euroclear Bank SA/NV	International CSD (located in Belgium)
Euroclear UK & Ireland	UK
SIX SIS Ltd	Switzerland

You should review the information in the relevant disclosures made available by the CSDs at which we are a direct participant.

GLOSSARY

bail-in process refers to the process under the German Recovery and Resolution Act of 2014 applicable to failing German banks and investment firms under which the firm's liabilities to clients may be modified, for example by being written down or converted into equity.

Central Securities Depository or **CSD** is an entity which records legal entitlements to demobilised or 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.

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.

Financial Markets Infrastructure Act or **FMIA** refers to FinfraG (Finanzmarktinfrastrukturgesetz), a Swiss law which sets out the rules applicable to Swiss CSDs and their participants.

German Custody Act refers to the German Safe Custody Act of 1995, as amended from time to time.

German Securities Trading Act refers to the German Securities Trading Act of 1998, as amended from time to time.

Official Requirements regarding Safe Custody Business refers to "Amtliche Anforderungen an das Depotgeschäft – Bekanntmachung über die Anforderungen an die Ordnungsmäßigkeit des Depotgeschäfts und der Erfüllung von Wertpapierlieferungsverpflichtungen" as of 21 December 1998, guidelines on safe custody business originally published by the German Federal Banking Authority (BaKred) but maintained by the German Federal Financial Supervisory Authority (BaFin).

resolution proceedings are proceedings for the resolution of failing German banks and investment firms under the German Recovery and Resolution Act of 2014, as amended from time to time.

UK CSD Regulation refers to the UK regulation which corresponds to the CSDR and the FMIA, as implemented in the UK, which sets out the rules applicable to UK CSDs and their participants.

UK means the United Kingdom.