

Securities segregation levels offered by KDPW

Public information issued in accordance with Article 38(6) of 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

Direct participation is connected with a specific type or types of participation in the depository system within a specific type of activity, attributed to the participant under the participation agreement (§ 24 of the KDPW Rules). In each type of direct participation, the participant holds a depository account, a securities account or an omnibus account managed in KDPW, in which securities may be recorded.

Securities records are maintained by KDPW based on registration accounts, which are opened under depository accounts, securities accounts or omnibus accounts managed for direct participants.

Registration accounts are set up in KDPW separately for each type of activity and participation type attributed to each direct participant. A dedicated participation type is used to record own securities of the direct participant; consequently, own securities and securities of the participant's clients are recorded in separate sets of registration accounts managed in KDPW.

Registration accounts are defined by:

- 1) the participation type in a given type of activity; the set of accounts so defined is referred to as a "formal account";
- 2) attributes defined in the depository system to designate the purpose of the registration account or to separate securities recorded in the account; the set of accounts so defined is referred to as an "entity account".

KDPW manages registration accounts for a direct participant after the attributes of the "formal account" are defined in the depository system.

The "entity account" is opened on the basis of the relevant system message sent to KDPW by the direct participant. The message defines all attributes of the account to be opened.

The required attributes defined when opening the "entity account" include:

- 1) designation of the holding type of securities, necessary to determine whether the securities are held by the participant or by the participant's clients;
- 2) designation of the client segregation type, necessary to determine whether the account is used to record securities held by a group of clients or by an individual client;
- 3) designation of the feature of a client or a group of clients indicating their tax status or residence or their classification by other criteria, if applicable, for the purposes of separate recording of securities according to KDPW regulations.

Direct participants are not subject to any restrictions in the opening of entity accounts based on those attributes. Each individual entity account has a unique account identifier which the direct participant uses in settlement orders for transactions in the depository system operated by KDPW.

Under those mechanisms, each direct participant:

- must hold separate registration accounts for own securities and securities held by clients;
- may, in relevant types of participation, record securities held by all clients in a single account (aggregation) or in multiple accounts (group client segregation);

- may, in relevant types of participation, record securities held by individual clients in separate accounts (individual client segregation);
- may, in relevant types of participation, use mixed models including both group client segregation and individual client segregation

Due to KDPW's reporting and tax obligations, additional attributes are used, which requires the use of separate entity accounts for individual clients or groups of clients.

KDPW charges fees to participants for management of entity accounts in amounts defined in the Table of Fees which is attached to the KDPW Rules: the fee for management of an entity account is defined in point 2 of the Table of Fees charged to KDPW direct participants.

The basic segregation level, where separate registration accounts are managed by KDPW in individual participation types and types of activity, ensures that securities held by individual direct participants are separated from securities held by clients of such participants and that (for participants operating in Poland) securities deposited by the participant for clients in the participant's brokerage activities are separated from securities held in the participant's custodial activities. That protects clients of direct participants in a given type of activity of the participant from the risk of error or non-compliance in the other type of activity. However, the basic segregation level in general excludes the risk of securities held by the participant or its clients being used without their consent to meet obligations arising from settlement orders entered into the depository system by other participants. It also excludes the risk at KDPW level that competent authorities would enforce debt of a participant holding a securities account managed in KDPW using securities which are not held by such participant, are not a part of its bankruptcy assets in the case of declaration of bankruptcy or a part of its creditor arrangement assets or recovery assets in the case of relevant proceedings being opened against the participant, as well as the risk that securities not held by such participant would be inadvertently used for purposes of its involuntary restructuring.

The basic segregation level where securities held by all clients are recorded in a single account (aggregation) generates the risk that securities held by clients could be used for the settlement of transactions of other clients of the direct participant.

An increased level of segregation of securities held by clients of a direct participant by recording securities of groups of clients in dedicated accounts (group client segregation) mitigates the risk that securities held by clients could be used for the settlement of transactions of other clients of the direct participant. Where securities held by clients of a direct participant are recorded in individual accounts managed by KDPW (individual client segregation), the risk is excluded provided that the participant properly identifies registration accounts for settlement of transactions in settlement orders entered into the depository system.

During settlement, direct participants identify entity accounts (provide account identifiers) in which securities are recorded that are to be used in the execution of the settlement order. KDPW executes settlement orders only using securities available in the identified entity accounts; securities recorded in other accounts of the participant cannot be used, including securities in other registration accounts under the same entity account, marked with an assets status other than "available", which flags such assets as locked.

According to Article 11 of the Act on Settlement Finality in Payment and Security Settlement Systems, in the event of a declaration of bankruptcy or the opening of restructuring against a direct participant, the participant's rights and obligations relating to participation in the securities settlement system operated by KDPW are governed by Polish law.

The segregation level applied by the direct participant to securities of its clients in registration accounts in KDPW as a rule does not affect the rights of such clients in such securities or the possibility and

methods of enforcing such rights. Registration accounts in KDPW in which securities of clients of direct participants are recorded are anonymous, also where the participant follows the individual client segregation model. Entries in such accounts should be reflected in securities accounts of clients managed by the direct participant or in other records managed by the direct participant outside Poland, as the case may be; however, by themselves, they do not result in the acquisition of rights in securities by the client or group of clients. According to Polish law, rights in securities are acquired upon the entry of the securities in a securities account of the buyer; such accounts in KDPW are only managed for direct participants. Beneficial owners of securities recorded in a registration account or accounts opened under an omnibus account managed in KDPW for a direct participant are the persons named as such by the participant; the participant cannot name itself as a beneficial owner. Such persons cannot raise claims directly against KDPW.

The basic segregation level in KDPW where registration accounts are managed in individual participation types and types of activity, ensuring that securities held by a direct participant are separated from securities held by the participant's clients, provides the appropriate protection of clients' assets in the event of default of the direct participant. Consequently, whatever segregation level is applied by the direct participant to securities held by its clients (client aggregation, group client segregation, individual client segregation), that protection remains unaffected. Under Polish law, entering securities into a registration account or accounts used to record securities of clients, managed for a direct participant under an omnibus account or under a depository account, does not meet the criteria necessary to include such securities in bankruptcy assets of the direct participant or any other assets available to its creditors to enforce debt in the event of its actual or threatened default. Securities entered into registration accounts used to record securities of clients, managed in KDPW for a direct participant under a depository account, should be entered into securities accounts or omnibus accounts managed by the participant for clients, which precludes such securities being used by creditors of the participant to enforce its debt. That possibility could only arise if a client's securities were recorded in the participant's securities account as a result of an error or unlawful action of such participant. In that case, in the event of the participant's default, the affected client could claim compensation from the compensation scheme referred to in Articles 132 – 146 of the Act of 29 July 2005 on Trading in Financial Instruments. However, investors who hold in their portfolios financial instruments issued by financial institutions which may be subject to involuntary restructuring under the Act of 10 June 2016 on the Banking Guarantee Fund, the Deposit Guarantee Scheme and Involuntary Restructuring, should be aware that the Bank Guarantee Fund may, during such restructuring or in certain cases defined in the Act without restructuring being opened, cause such instruments to be transferred to other entities, redeemed, or converted.

In the case of securities recorded in registration accounts managed under an omnibus account, the Act excludes the application of Polish law to the determination of beneficial owners of such securities. Consequently, there is a risk that, in the event of default of a participant holding an omnibus account in KDPW, its creditors in jurisdictions outside Poland may seek to enforce debt using securities recorded in that account under foreign law. Such risk arises because securities recorded in an omnibus account may be also recorded by the participant holding such account, and possibly also by clients of the participant, in accounts and/or records managed by them under foreign law if so allowed by that law. However, in Poland, creditors of a participant holding an omnibus account cannot enforce their debt using securities recorded in that account.

Default of KDPW generates no risk for securities recorded in registration accounts managed for direct participants, held by such participants or their clients. Such securities are not part of KDPW's assets; consequently, KDPW's creditors cannot use them to enforce its debt.