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Rights of Participants to Securities deposited in the Euroclear System

July 2017

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1. INTRODUCTION

Throughout this document, all instances of:

- ‘we’, ‘us’, ‘our’ refer to Euroclear Bank SA/NV (“**Euroclear Bank**”)
- ‘you’ and ‘your’ refer to you as a Participant of the Euroclear System

1.1 The Euroclear System is the securities settlement system operated by Euroclear Bank.

1.2 The contractual relationship between us and you, as a Participant, is governed by the Terms and Conditions governing use of Euroclear (the “**Terms and Conditions**”).

The Terms and Conditions are supplemented by the Operating Procedures of the Euroclear System (the “**Operating Procedures**”), which form an integral part of the Terms and Conditions.

1.3 The Terms and Conditions are governed by Belgian law. Any dispute arising under the Terms and Conditions may be submitted to the non-exclusive jurisdiction of the Brussels courts.

2. ASSET PROTECTION**2.1 Legal framework****A. Article 4 (a) of the Terms and Conditions: applicable laws**

2.1.1 According to Article 4 (a) of the Terms and Conditions, securities held in the Euroclear System are governed by the following legislation depending on the type of securities concerned:

- a. the coordinated Royal Decree No. 62 on the deposit of financial instruments and the settlement of transactions involving such instruments (“**Royal Decree No. 62**”) (see below)
- b. the Act of 2 January 1991 on public debt securities and monetary policy instruments which applies to dematerialised debt instruments issued by the Belgian federal government or other public-sector entities
- c. the Act of 22 July 1991 on treasury bills and certificates of deposit which applies to certain short- or medium-term dematerialised debt instruments issued by Belgian issuers or foreign issuers that have specifically chosen to use one of these types of securities or
- d. Article 468 et seq. of the Company Code which apply to dematerialised securities issued by certain Belgian companies.

2.1.2 The rules set out in the legislation mentioned in paragraph 2.1.1 (b), (c) and (d) above are similar, in substance, to the provisions of Royal Decree No. 62. This memorandum therefore only discusses the rules provided for by Royal Decree No. 62.

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- 2.1.3 As a matter of principle, the rules set out in Royal Decree No. 62 are not affected by 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 (the “CSDR”).

This principle is confirmed by recital 42 of the CSDR which provides that the CSDR “(...) *should not interfere with the national law of the Member States regulating the holdings of securities and the arrangements maintaining the integrity of securities issues*”.

- 2.1.4 The CSDR however contains specific rules regarding the obligation of Central Securities Depositories (“CSDs”) (such as Euroclear Bank) to segregate the securities accounts maintained for their participants and to offer, upon request of their participants, further segregation of the accounts of the participants' clients¹ (see section 3 below).

B. Conflict-of-law rules

- 2.1.5 Belgian conflict-of-law rules provide that the law governing an *in rem* right (i.e. a right which is proprietary in nature), such as a co-ownership right (see section 2.2 below), is the *lex rei sitae*, i.e. the law of the country where the asset is located².

When the asset in question is a security recorded in a registry by virtue of law, *in rem* rights on such security are governed by the law of the country where the registry is located³.

A registry is deemed located at the place of the principal establishment of the person holding the registry (but it may be demonstrated that the registry is located elsewhere).

It is generally considered that this rule applies not only to registered securities but also to dematerialised securities and to securities held under the regime of Royal Decree No. 62.

- 2.1.6 An entitlement to securities held in the Euroclear System, as represented by entries made to Securities Clearance Accounts⁴ on our books, is therefore deemed to be located in Belgium (i.e. where our place of principle establishment is located), regardless of the location of the underlying securities (i.e. notwithstanding the fact that we sub-deposit these securities with sub-custodians in Belgium or abroad, including local CSDs (referred to as ‘receiving CSDs’ in CSDR terminology) (“**Depositories**”)), and is therefore governed by Belgian law and in particular by Royal Decree No. 62.

¹ Article 38 of the CSDR.

² Article 87, §1 of the Private International Law Code.

³ Article 91, §1 of the Private International Law Code.

⁴ As defined in Section 1 of the Terms and Conditions

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C. Scope of Royal Decree No. 62

- 2.1.7 Royal Decree No. 62 applies to all types of securities such as shares, bonds and other types of debt or equity instruments, regardless of the form (e.g. physical, dematerialised, bearer or registered) under which they have been issued in accordance with the law to which they are subject⁵.
- 2.1.8 Royal Decree No. 62 applies to all Belgian and foreign securities (other than those listed in paragraph 2.1.1 (b), (c) and (d) above) that our Participants deposit with us, irrespective of:
- (i) whether the securities have been initially deposited with us or have first been deposited with another CSD before being transferred to a Securities Clearance Account opened on our books, and
 - (ii) whether we sub-deposit (i.e. hold) these securities with Depositories in Belgium or abroad⁶.
- 2.1.9 In practice, the securities credited to Securities Clearance Accounts are sub-deposited with Depositories. We hold these securities on behalf of our Participants with the Depositories.
- a. The securities are credited to omnibus accounts opened in our name or that of our nominees⁷ acting on behalf of our Participants.
 - b. When we sub-deposit securities in the local markets through an indirect link, the Depositories must, in turn, deposit the securities in a segregated account opened with the local securities settlement system (where possible).
 - c. When we hold proprietary securities with a Depository, the securities are held on a segregated account where only transactions in proprietary securities are booked.
 - d. Our Participants are not parties to the agreements between us and the Depositories.
 - e. As mentioned, the fact that we sub-deposit the securities held by our Participants in the Euroclear System with a Depository, does not affect the legal rights of our Participants with respect to the securities they deposited in the Euroclear System under Royal Decree No. 62⁸.

⁵ Article 2 of Royal Decree No. 62.

⁶ Article 4 of Royal Decree No. 62.

⁷ The nominee company is a fully owned subsidiary of Euroclear Bank, established under English law. Securities are entrusted by Euroclear Bank under a trust agreement governed by English law. Such structure is used in some markets to further ensure the protection of our Participants' securities against claims from our creditors, if any. Whether securities are held through the nominee company is mentioned in the Online Market Guide available on www.my.euroclear.com

⁸ Article 5 of Royal Decree No. 62.

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2.2 Co-ownership right**A. Fungibility**

2.2.1 The securities we hold on our Participants' behalf are fungible⁹. This means that once we accept the securities for deposit in the Euroclear System, it is no longer possible to identify (whether on our books or the books of the relevant Depository) a specific security (by means of a serial number or otherwise) as belonging to a particular Participant of ours.

2.2.2 Were it not for Royal Decree No. 62, the fungibility of the securities held in the Euroclear System would have resulted in you only having contractual rights against us.

These contractual rights would be similar to the right of a person who deposits cash with a credit institution, i.e. an unsecured right for the return of an equivalent amount of cash and/or securities.

2.2.3 Royal Decree No. 62 offers a much greater protection to holders of book-entry securities. You are granted an intangible co-ownership right over the pool of book-entry securities in the relevant category that we hold on behalf of all our Participants holding securities in that category¹⁰.

2.2.4 Owing to their fungibility, securities held in the Euroclear System are treated on a book-entry basis. Rights to such securities are evidenced by entries to your Securities Clearance Account(s). Transfers of such rights occur by mere book entries.

2.2.5 Your rights concern not only the underlying securities you initially deposited or transferred to your Securities Clearance Account under the fungibility regime but also the co-ownership rights related thereto.

The deposit of securities with us is, indeed, the exchange by the depositor of an ownership interest in the securities for the intangible co-ownership right referred to above.

Only this co-ownership right is the subject of the book-entry transfers. In other words, although documentation and common parlance speak of the transfer of securities between accounts, in fact the only things transferred are the co-ownership rights.

However, if you request the delivery of the securities out of the Euroclear System, you will receive the underlying securities and such delivery would satisfy the recovery claim you have against us which was evidenced by the credit to your Securities Clearance Account.

⁹ Article 6 of Royal Decree No. 62.

¹⁰ Article 2 of Royal Decree No. 62.

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B. Consequences of the co-ownership right

2.2.6 Due to this co-ownership right, you have specific rights with respect to the securities credited to your Securities Clearance Account, which would not otherwise arise under Belgian law in favour of holders of pure contractual rights, namely:

- a. a right to vote and
- b. a right of recovery (*droit de revendication/terugvorderingsrecht*), i.e. a proprietary right to get back the relevant quantity of securities in the event of our bankruptcy (or any other proceedings in which the rule of equal treatment of creditors applies).

These two rights are regarded as two essential attributes of ownership under Belgian law.

2.2.7 Owing to the fungibility of the securities deposited with us, Royal Decree No. 62 provides that the above-mentioned right of recovery is a collective right, to be exercised by all Participants that have deposited the relevant securities with us (rather than an individual right to be exercised by each Participant).

In the event of our bankruptcy, the right of recovery is as a matter of principle to be exercised by the receiver on behalf of all Participants holding securities in the relevant category.

In accordance with Article 12 of Royal Decree No. 62, if you hold securities for your own account¹¹, you may only assert your co-ownership right against us (as settlement institution). You may however:

- a. directly assert the rights attached to the financial instruments (e.g. the right to vote or to receive dividends) against the issuer¹²
- b. in the event of the issuer's bankruptcy or any other proceedings in which the rule of equal treatment of creditors applies, exercise your right of recourse directly against the issuer¹³ and
- c. in the event of our bankruptcy or any other proceedings in which the rule of equal treatment of creditors applies, bring - together with other Participants holding the same category of securities - a claim for recovery against the pool of securities of the same category held with us or with our Depository on behalf of our Participants; subject to any foreign conflict of law rules¹⁴, the enforcement of this proprietary right shall not be affected by the deposit of such securities, in book-entry form or otherwise, by us with a Belgian or foreign Depository.

2.2.8 Article 12 of Royal Decree No. 62 provides further that if the pool is insufficient to allow complete restitution of all due securities held on account, it must be allocated among the

¹¹ Although Royal Decree No. 62 only refers to Participants holding securities for their own account, you may exercise the same rights on behalf of your underlying clients with respect to the securities you hold on their behalf.

¹² This right applies at least with respect to Belgian issuers. For other issuers, the application of this principle will depend on whether the law of the issuer recognises such right.

¹³ This right applies at least with respect to Belgian issuers. For other issuers, the application of this principle will depend on whether the law of the issuer recognises such right.

¹⁴ Although Belgian conflict of law rules will point to Belgian law as *lex concursus*, it may not be excluded that enforcement proceedings are brought before a foreign court (for instance in case securities have been sub-deposited with a foreign Depository) and that the conflict of law rules applicable in that jurisdiction point to another law than Belgian law.

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Participants in proportion to their rights, as represented by the credits to their accounts.

If we own a number of securities of the same category, we will only be entitled to the number of securities remaining after the total number of securities of the same category which we held for third parties has been returned.

2.2.9 Article 13 of Royal Decree No. 62 provides for equivalent rules in favour of the owners of securities (i.e. your underlying clients): such owners may

- a. only assert their co-ownership right against the Participant in whose books they hold the securities
- b. directly assert the rights attached to the financial instruments (e.g. the right to vote or to receive dividends) against the issuer¹⁵
- c. in the event of the issuer's bankruptcy or any other proceedings in which the rule of equal treatment of creditors applies, exercise their right of recourse directly against the issuer¹⁶
- d. in the event of your bankruptcy or any other proceedings in which the rule of equal treatment of creditors applies, bring - together with your other underlying clients holding the same category of securities - a claim for recovery against the pool of securities of the same category you held with us or another Participant on behalf of your underlying clients.

Also, if the pool of securities you hold is insufficient to allow complete restitution of all due securities held on account, it must be allocated among the clients in proportion to their rights, as represented by the credits to their accounts.

If you are yourself the owner of a number of securities of the same category, you will only be entitled to the number of securities remaining after the total number of securities of the same category which you held for third parties has been returned.

2.2.10 As regards the right to vote attached to securities held in the Euroclear System, Article 15 of Royal Decree No. 62 provides that the depositors of these securities may attend general meetings and vote at these meetings without having to produce the certificates representing the securities they hold.

Belgian companies must allow their attendance and permit them to vote on the basis of a certificate issued by us evidencing that the person in question holds a specified number of the relevant securities. For non-Belgian issuers, this certificate may not be sufficient. In this case, we may, for instance, provide an admission card so as to allow the relevant Participant to attend and vote.

C. No attachment

¹⁵ This right applies at least with respect to Belgian issuers. For other issuers, the application of this principle will depend on whether the law of the issuer recognises such right.

¹⁶ This right applies at least with respect to Belgian issuers. For other issuers, the application of this principle will depend on whether the law of the issuer recognises such right.

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- 2.2.11 Pursuant to Article 11 of Royal Decree No. 62, the attachment of Securities Clearance Accounts opened with us is not permissible. Moreover no attachment of securities we deposit with Depositories is permissible. Any deviation due to local legislation applicable to Depositories is documented in the "Online Market Guide".
- 2.2.12 In addition, Article 14 of Royal Decree No. 62 provides that the cash paid to us by issuers of securities held in the Euroclear System as dividends, interests and principal amounts relating to fungible securities may not be attached by our creditors.

3. SEGREGATION

In accordance with Article 38 of the CSDR:

- a. we keep records and accounts that segregate your securities from the securities of other Participants
- b. our own securities are segregated from our Participant's securities on our books and on our Depositories' books and
- c. on our books, we allow you to segregate your own securities from those of your underlying clients. You may hold either your clients' securities in one single securities account (omnibus client segregation) or segregate the securities of any of your underlying clients (individual client segregation).

- 3.1 Section 2.2.3 of the Operating Procedures provides for your right to request us to segregate securities held in the Euroclear System in two or more Securities Clearance Accounts and to open additional Securities Clearance Accounts.

Each additional Securities Clearance Account will have its own related Cash Account¹⁷. We will open each additional Securities Clearance Account under the same name as your main account.

Upon request, we can add a designation to help distinguish your Securities Clearance Accounts from one another. The costs associated to the different accounts are described in our *General Fees* brochure (available on my.euroclear.com).

- 3.2 Please note that, given the asset protection already granted to our Participants by Royal Decree No. 62 (please also refer to section 2.2 above), additional segregation of the securities you deposit with us will not in itself result in a greater asset protection for you (and your underlying clients).

Indeed, you (and your 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 we hold on behalf of all our Participants (and their underlying clients) that hold securities in that category, regardless of the fact that such securities are segregated or not.

¹⁷ As defined in Section 1 of the Terms and Conditions

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4. CONCLUSION

- 4.1** You have a proprietary right to the securities you hold in the Euroclear System. This is however not a right of ownership in a physically identifiable or traceable asset, but rather a co-ownership right in a pool of assets of the same category we hold on behalf of all our Participants (and their underlying clients) that hold this type of assets with us, irrespective of whether we hold these assets on behalf of our Participants with one or more Belgian or foreign Depositories.

The portion of this pool belonging to you (and your underlying clients) is represented by a credit to the Securities Clearance Account(s) opened in your name on our books.

- 4.2** We do not have any proprietary right on the securities credited to your Securities Clearance Account(s). This is confirmed by Article 3 of Royal Decree No. 62 which provides that we, as a settlement institution, are the depository, for the sole account of our Participants, of the securities that we hold on our Participants' behalf under the fungibility regime.

Section 2.4.2 of the Operating Procedures confirms further that we do not acquire any ownership right over securities deposited by Participants in the Euroclear System.

- 4.3** Due to this co-ownership, you (and your underlying clients) have specific rights with respect to the securities, in particular a right to vote and a right of recovery. In addition securities held in the Euroclear System may not be attached by your creditors (and a fortiori by your underlying clients' creditors).
- 4.4** You may request us to segregate the securities you hold in the Euroclear System in accordance with Article 38 of the CSDR. Given the protection granted to you (and your underlying clients) by Royal Decree No. 62, additional segregation will not in itself result in a greater asset protection for you (and your underlying clients).



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