

# **ANNOUNCEMENT**

## **ON THE DIFFERENT LEVELS OF SEGREGATION OF SECURITIES**

**Announcement pursuant to Article 38(6) of the CSDR and  
Section 336(2) of the Capital Market Act  
on the segregation options in accounts with the CSD<sup>1</sup>**

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<sup>1</sup> *The amended provisions of this Announcement, highlighted in italics and grey shadows, indicate changes compared to the Announcement effective from 19 September 2024.*

## 1. Introduction

The purpose of this announcement is to inform clients of OTP Bank Plc. about the segregation options at the level of central securities accounts held with central securities depositories ('CSDs'), in accordance with the CSDR<sup>2</sup> and the Capital Market Act ('Tpt.')<sup>3</sup>, at different levels and the risks and costs associated with each segregation option.

OTP Bank Plc. is a direct participant in the securities settlement system operated by KELER Central Securities Depository Ltd. (registered office: 1074 Budapest, Rákóczi út 70-72; company registration number: 01-10-042346) ('**KELER**'); therefore, in addition to the basic rules on segregation, the segregation options provided by KELER are described in general terms in this announcement. Detailed information on KELER services is available on the KELER website (<https://www.keler.hu>).

OTP Bank Plc. is also a participant in the securities settlement system operated by the central securities depository Clearstream Banking S.A. and, therefore, the segregation options available in relation to Clearstream Banking S.A. are also described in this announcement. The Clearstream Group's prospectus under Article 38 CSDR is available on the Clearstream Group's website at <https://www.clearstream.com/clearstream-en/strategy-and-initiatives/asset-safety/csd-article-38-disclosure>, while detailed information on the relevant services of Clearstream Banking S.A. is summarised in the document available at <https://www.clearstream.com/resource/blob/2434196/f8ab3fa9ac6218a2c46c439e524bc99d/cbl-article-38-disclosure-document-data.pdf>.

## 2. Segregation rules for central securities accounts

The core service of the CSD is to operate a securities settlement system and to maintain so-called securities accounts 'at the top tier level' according to the CSDR, referred to as 'central securities accounts' pursuant to Hungarian legal terminology.

A central securities account is a register of dematerialised securities held by the CSD, by series of securities and by securities account provider. *KELER also records certificated securities deposited with it in the central securities accounts maintained by KELER.* A different account, one tier lower, is a securities account held by a service provider (securities account provider) authorised to hold securities accounts for the benefit of the securities holder and used to record dematerialised securities and the rights attached to them *(and the corresponding securities custody account maintained for the registration of certificated securities).*

Any securities account credit or debit entry that occurs between two securities accounts held by different securities account providers will also affect the central securities account. The securities account provider shall, upon notification by the CSD of the crediting or debiting of the securities account or of a change of data, immediately execute the debiting or crediting or the changing of data (e.g. denomination, type) regarding the dematerialised security.

Both the CSDR and the Capital Market Act impose a multi-directional segregation obligation on CSDs to ensure that their records clearly identify the participant to which a security belongs. In this announcement, the participant ('Participant') shall refer to any participant in the securities settlement system operated by the relevant CSD, as defined in Article 2(f) of Directive 98/26/EC (and Section 2(1)(j) of Act XXIII of 2003 on the Finality of Settlement in Payment and Securities Clearing Systems, implementing that Directive), i.e. the service

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<sup>2</sup> 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

<sup>3</sup> Act CXX of 2001 on the Capital Market

provider authorised to operate securities accounts ('securities account provider'), including OTP Bank Plc.

### Levels of segregation at the CSD

(a) The first level of segregation is the requirement that the CSD's record-keeping and account-keeping for the securities settlement system it operates must at all times and without delay enable it to segregate in its accounts (i) the securities of each Participant from (ii) the securities of other Participants and, where applicable, (iii) the CSD's own assets.

(b) The second level of segregation is the segregation of (i) assets owned by each Participant and (ii) assets owned by the Participant's clients (principals) in the CSD's records. To that end, the CSD shall maintain for each Participant a central securities account to be exclusively reserved for assets owned by such Participant and at least one account to be exclusively reserved for assets of the clients of such Participant.

Accordingly, KELER will open and maintain for the Participants a so-called type A (proprietary) central securities account and a so-called type B (principal's) central securities account.

The type A (proprietary) central securities account is reserved exclusively for securities held by the Participant. The Participant is required to segregate its own securities in the type A central securities account. In that type of securities account, the Participant shall only hold securities owned by the Participant itself, i.e. other than securities held by its principals (clients).

A type B (principal's) central securities account is reserved for securities owned by the Participant's principals (clients).

Clearstream will provide its Participants with Proprietary Main Accounts and Third party Main Accounts to segregate the Participant's own assets from the Participant's assets owned by clients, with the option of further segregation and the opening of further sub-accounts under these main accounts.

(c) The third level of segregation at the CSD level is the segregation of (i) the assets of each Participant's clients (ii) from the assets of the Participant's other clients. This announcement aims to provide a comprehensive overview of such solutions for segregation.

### 3. Segregation options available to clients

The CSDR provides for two types of segregation options: a so-called **omnibus** client segregation and the **individual** client segregation; the latter is provided for in the Capital Market Act as segregation on an individual sub-account.

According to the CSDR, '**omnibus client segregation**' means the service whereby a Participant holds securities belonging to different clients in a single securities account in the central securities depository's records and accounts.

According to the CSDR, '**individual client segregation**' means the service whereby the CSD's records and accounts enable any Participant to segregate [the securities of that client from the securities of other clients] if and as requested by a client. In the Capital Market Act, this is provided for in a manner that the CSD must, in the context of the operation of the securities settlement system, establish a record-keeping and account-keeping system that enables the Participant to ensure that, upon a client's request, the securities of the client can be held by the CSD in an **individual sub-account**, which is reserved for the recording of securities notified by the Participant and owned by such Participant's client having submitted a request to that effect.

Pursuant to Article 38(5) of the CSDR and Section 336(3) of the Capital Market Act, OTP Bank Plc., as a Participant of the CSD, is obliged to offer its customers a choice at least between omnibus client segregation and individual client segregation (segregation on an individual sub-account at the CSD).

According to the DEFINITIONS chapter of the Investment Services Business Regulations, **Central Securities Depository** means KELER Ltd. and other entities that originate securities, issue securities codes (ISINs), maintain Central Securities Accounts and keep Central Securities Registers.

As of the date of entry into force of this Announcement, the definition of central securities depository in the Investment Services Business Regulations includes, in addition to KELER Ltd., Clearstream Banking S.A.

On the basis of the above, KELER provides the Participant with the option to further segregate (i.e. to further subdivide into individual sub-accounts) central securities accounts with principal's segregation (i.e. type B securities accounts).

If the Participant holds the securities of more than one client in a type B central securities account, such central securities account shall be a segregated omnibus client segregation and the Participant shall report such central securities account to KELER as an omnibus principal's securities account.

If the Participant exclusively holds the securities of one particular client (principal) in a type B central securities account, such central securities account is regarded as a service constituting an individual client segregation/individual sub-account and such central securities account must be reported by the Participant to KELER as an individual principal's securities account.

Clearstream Banking S.A. also provides for further segregation of accounts with a principal's segregation by allowing the opening of Omnibus Client Segregation ('OCS') and Individual Client Segregation ('ICS') (sub)accounts.

The detailed rules for the sub-accounts that implement omnibus client segregation or individual client segregation held by the CSD are laid down in the CSD's policies.

KELER's General Terms and Conditions<sup>4</sup> and its Securities Note<sup>5</sup> containing such rules are available on KELER's website, while Clearstream Banking S.A.'s Prospectus<sup>6</sup> is available on the Clearstream Group's website.

The individual CSD account referred to in Section B.I1.15. of the Investment Services Business Regulations shall be deemed as an individual sub-account within the meaning of Section 336(2) of the Capital Market Act for both the **KELER sub-account** referred to above, and the **sub-account with Clearstream Banking S.A.**, which corresponds to individual client segregation under the CSDR.

#### **4. Risks associated with each segregation option and the levels of protection**

Solutions for segregating client assets may become relevant in the event of insufficient assets available for the settlement of client transactions (default).

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<sup>4</sup> <https://english.keler.hu/Key%20documents/Regulatory%20documents/General%20Business%20Rules/>

<sup>5</sup> <https://english.keler.hu/Key%20documents/Depository%20Announcements/KELER%20Announcement%20-%20Detailed%20rules%20for%20account%20management/>

<sup>6</sup> <https://www.clearstream.com/resource/blob/2434196/f8ab3fa9ac6218a2c46c439e524bc99d/cbl-article-38-disclosure-document-data.pdf>

While the assets managed in the omnibus client segregation account can be used in case of settlement or default of all clients'/any client's transactions included in the omnibus client segregation account, the assets registered in the individual sub-account / KELER sub-account / ICS type account can only be used in case of settlement or default of the client who has opted for individual client segregation (segregation in individual sub-account / KELER sub-account). In that manner, a client who has opted for individual client segregation (segregation in an individual sub-account / KELER sub-account) is insured against the consequences of the default of the Participant's (securities account provider's) other clients (who are not registered in the individual sub-account / KELER sub-account).

In the event of a default relating to the Participant's (the securities account provider's) own transactions, the client assets managed in omnibus client segregation cannot be used, which means that omnibus client segregation is not riskier than individual client segregation with respect to the Participant's (the securities account provider's) default.

## **5. Related costs**

In the case of individual client segregation, the client is obliged to bear the additional costs related to such segregation, which are set out in Annex C to OTP Bank Plc.'s Investment Services Business Regulations (ANNOUNCEMENT ON FEES) until 31 July 2023, and in Annex D1 to OTP BANK Plc.'s Investment Services Business Regulations (ANNOUNCEMENT ON FEES) after 31 July 2023.

## **6. How to choose between the segregation options available to clients**

A client may declare in writing to OTP Bank Plc. which segregation service he/she wishes to choose; however, in the case of omnibus client segregation, no separate declaration is required.

**Please note that unless the client declares otherwise in writing, his/her assets will be managed according to omnibus client segregation.**

If the client opt for individual client segregation (KELER sub-account, ICS sub-account providing individual client segregation at the level of Clearstream Baking S.A.), he/she has the option to do so as described in Section B.I.1.15 of the Investment Services Business Regulations.

Individual client segregation (KELER sub-account, ICS sub-account providing individual client segregation at the level of Clearstream Baking S.A.) may be terminated in the cases and in the manner described in Section B.I.1.15 of the Investment Services Business Regulations.

The client acknowledges that, in addition to the administration time specified by KELER and Clearstream, the use of individual client segregation and the termination of individual client segregation, will take a minimum of 5 and a maximum of 10 business days.

## **7. Insolvency**

In the context of the segregation options offered above, account should also be taken of the insolvency rules under Article 38(6) CSDR.

The Hungarian insolvency rules apply to OTP Bank Plc. and KELER (however, it cannot be excluded that the insolvency of a foreign CSD may also affect the assets of OTP Bank Plc.'s clients, the liquidation of which CSD may be subject to regulations other than as provided for by Hungarian law). The provisions of the Bankruptcy Act<sup>7</sup> shall apply (i) in the event of the

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<sup>7</sup> Act XLIX of 1991 on Bankruptcy and Liquidation Proceedings

winding-up of OTP Bank Plc. unless otherwise provided for in the Act on Credit Institutions and Financial Enterprises<sup>8</sup> and (subject to Section 3(2) of the Investment Firms Act<sup>9</sup>) unless otherwise provided for in the Investment Firms Act, (ii) and unless otherwise provided for in the Capital Market Act in the event of the winding-up of KELER.

Within the meaning of Section 136(1) of the Investment Firms Act, which governs OTP Bank Plc., financial assets and funds deposited by the client with the investment firm, financial assets and funds owned by or belonging to the client and assets which are the subject of commodity exchange services in any account held for the client with the investment firm or the commodity exchange service provider shall not form part of the liquidation assets.

The investment firm may, with the consent of the liquidator, take measures to release the assets independently of the winding-up proceedings, provided that there are no circumstances which would prevent settlement with clients on the basis of the records kept by the investment firm and the matching of investor claims.

If, either because of a lack of consistency between the records and the investor's claims or due to other impediments, it is not possible to apply the provisions of Section 136(1) of the Investment Firms Act simultaneously in respect of all clients, the liquidator shall *pursuant to Section 136(2) of the Investment Firms Act* proceed as follows in respect of the financial instruments and the assets which are the subject of the commodity exchange service:

(a) if the owner or the depositor of a financial instrument or of an instrument which is the subject of a commodity exchange service can be identified individually without any doubt, it shall deliver the instrument to the owner or the depositor,

(b) the liquidator shall classify the financial instruments held in a principal's account or custody account or assets subject to commodity exchange services which cannot be disbursed to the client as provided for in point (a) (hereinafter referred to as 'assets') into homogeneous groups and shall disburse them to the client in accordance with the disbursement ratios under Section 136(3) of the Investment Firms Act,

(c) if the instrument cannot be disbursed on the basis of points (a) and (b), then - notwithstanding the order of satisfaction set out in Section 57 of the Bankruptcy Act, after the liquidation costs have been satisfied, the assets of the investment firm or commodity exchange service provider shall first be used to satisfy such claim in accordance with the provisions of Section 136(3) of the Investment Firms Act.

A homogeneous group is a group of assets with identical characteristics in all their individual features, or of assets that will replace them after the start of the liquidation. The liquidator shall set the disbursement ratios for the assets in a homogeneous group in the trust or escrow account in such a way as to ensure that the disputed claims are also satisfied. To that end, the liquidator shall create a reserve for disputed claims from the homogeneous group.

If, either because of a lack of consistency between the records and the investor's claims or due to other impediments, Section 136(1) of the Investment Firms Act cannot be applied, the liquidator shall proceed as follows in respect of the funds:

(a) release to the owner the amount that is actually available in the segregated and individually named account or deposit sub-account,

(b) the funds held in the client's trust or custody account which cannot be disbursed to the client as provided for in point (a) shall be grouped by the liquidator according to currency and

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<sup>8</sup> Act CCXXXVII of 2013 on Credit Institutions and Financial Enterprises

<sup>9</sup> Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers and on the Regulations Governing their Activities

shall be disbursed to the client in accordance with the disbursement ratios under Section 136(3) of the Investment Firms Act,

(c) if the funds cannot be disbursed on the basis of points (a) and (b), then - notwithstanding the order of satisfaction set out in Section 57 of the Bankruptcy Act, after the liquidation costs have been satisfied, the assets of the investment firm or commodity exchange service provider shall first be used to disburse such claim in accordance with the provisions of Section 136(3) of the Investment Firms Act.

If, with regard to the disbursement of a financial asset, funds or an asset which is the subject of a commodity exchange service under Section 136(1) of the Investment Firms Act, the liquidator disputes the claim of the owner, the disputed claim of ownership may be enforced in the liquidation proceedings. The liquidator will send the disputed property claim to the court ordering the liquidation within 15 business days for adjudication. The court will decide on the property claim according to the rules applicable to the settlement of a disputed creditor's claim.

In view of the above, in the case of individual client segregation, the liquidator is more likely to identify the client's claim beyond reasonable doubt and individually and it is presumably quicker and easier to release the client's assets than in the case of clients in omnibus client segregation, but there is no substantive difference between the legal situation related to the two segregation options, as the legal basis for the obligation to release the client's assets is the same in both cases. Individual client segregation may, however, in a given situation, facilitate the clear and unique identification of the client and its assets, which may be relevant in the absence of matching of records and investor claims or other impediments.

If, in the event of the liquidation of OTP Bank Plc., the securities accounts held by it would be transferred to another service provider, the securities accounts held by the principal in favour of OTP Bank Plc. at KELER would be transferred to the receiving service provider, so in such a case the provisions on the issuance of securities would not be relevant. However, in the absence of matching of records and investor claims or other impediments, individual client segregation may still facilitate the unique identification of the assets of the client who opts for it.

In the event of the liquidation of KELER, OTP Bank Plc. may enforce its claims against KELER (and thus the indirect claims of its customers) in accordance with the provisions of the Bankruptcy Act and the Capital Market Act. Pursuant to Section 345(3) of the Capital Market Act, in the course of the liquidation of a CSD, the securities deposited by the Participants with the CSD and securities registered in the Participants' securities accounts or securities deposit accounts shall not form part of the liquidation assets. During the liquidation proceedings, the cash claim replacing the Participant's securities claim shall be treated in the same way as the original securities claim. In the case of liquidation proceedings against a CSD, the assets of the CSD in liquidation shall not include the bail provided for in Article 338 of the Capital Market Act. Pursuant to Section 345(4) of the Capital Market Act, if the client's assets belonging to the Participants as defined in paragraph (3) cannot be returned to the Participants in whole or in part, then, notwithstanding the order of satisfaction set out in Section 57 of the Bankruptcy Act, the claims of these Participants shall be satisfied first from the assets of the CSD after the liquidation costs have been satisfied. This means that such claims precede other creditor claims and other debts of the CSD in the order of satisfaction. Taking into account that the client of OTP Bank Plc. will not enter into a legal relationship with the CSD reached through OTP Bank Plc. as Participant, and therefore the client is not entitled to assert claims directly against the CSD, this right is reserved against OTP Bank Plc. as Participant. In the event of the CSD's insolvency, the level of segregation chosen by the client has no material practical significance.

Clearstream Banking S.A. is a company governed by the law of the Grand Duchy of Luxembourg and in the event of its insolvency, the provisions of Luxembourg law shall apply. The main rules applicable in the event of the insolvency of Clearstream Banking S.A. are set out in Chapter 4 of the Clearstream Banking S.A. Prospectus<sup>10</sup>.

## **8. Additional obligation to obtain prior information**

It should be stressed that while OTP Bank Plc. summarises the information on the different account segregations and the risks associated with each type of account in this announcement, this announcement cannot be considered legal or other advice and should not be relied upon as such. While this announcement provides an overview of omnibus client segregation and individual client segregation, it does not contain all the information a client may need to choose between segregation options depending on his or her individual situation. It is the responsibility of the client to make independent enquiries regarding the relevant rules (including but not limited to the rules of the CSD and any other service provider providing services in relation to the client's transactions) and documents and to take into account their own particular circumstances. OTP Bank Plc. excludes liability for any loss or damage resulting from the client's exclusive reliance on this announcement in making an investment decision. OTP Bank Plc. accepts no liability in connection with different interpretations of the legal provisions and guidelines taken into account.

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<sup>10</sup> <https://www.clearstream.com/resource/blob/2434196/f8ab3fa9ac6218a2c46c439e524bc99d/cbl-article-38-disclosure-document-data.pdf>