



J. SAFRA SARASIN



Sustainable Private Banking since 1841

# Information concerning safeguarding of Client financial instruments or Client funds

September 2022

# Introductory reading

This Information Statement has been prepared to comply with Banque J. Safra Sarasin (Luxembourg) SA's (the "Bank") disclosure obligations under MiFID II in relation to safekeeping of financial instruments and funds. It is not intended to be a complete disclosure of all risks which may arise in relation to the Clients' particular circumstances or as a result of the Bank's relationship with its Clients.

This Information Statement is not intended to be, and should not be relied upon as, legal, financial, tax, accounting or other advice. Unless otherwise expressly

agreed in writing, the Bank is not providing its Clients with any such legal, financial, tax, accounting or other advice and the Clients should consult their own advisors for advice on the matters referred to in this Information Statement, including the impact on the Clients' business and the requirements of, and results of, entering into any transaction.

This Information Statement relates to the Bank's relationship with its Clients when acting as custodian of financial instruments or funds.

# Client financial instruments

In the course of the Bank's dealing with its Clients, the Bank may hold financial instruments on its Clients' behalf.

## **Protection of Client financial instruments**

The Bank holds its Clients' financial instruments in custody subject to the protections provided by MiFID II, unless the Bank has exercised any applicable right of use in relation to those financial instruments. Any financial instruments which are not subject to the rules of MiFID II will be clearly indicated in the investment statements provided to the Clients.

MiFID II requires the Bank to keep accurate records and accounts enabling it to distinguish a Client's financial instruments from those held for other Clients and from the Bank's own assets, to regularly reconcile the Bank's internal records and accounts and those of any third parties with whom its Clients' financial instruments are held, to take the steps outlined below when financial instruments are deposited with third parties and to have adequate organizational requirements to minimize the risk of loss or diminution of the Clients' financial instruments.

## **Use of sub-custodians**

Where the Bank deposits financial instruments with a third party sub-custodian, the Bank carries out due diligence in the selection, appointment and periodic review of the third party and of the arrangements for the holding and safe-keeping of those financial instruments. In particular, the Bank takes into account the expertise and market reputation of the third party as well as any legal requirements related to the holding of financial instruments that could adversely affect Clients' rights. However, the acts, omissions,

default or insolvency of a sub-custodian may result in the loss of the Clients' financial instruments and other losses.

The Bank has set out the allocation of liability in respect of acts and omissions of the relevant sub-custodian in its General Terms and Conditions (GTCs).

## **Omnibus accounts**

Financial instruments held on a Client's behalf by the Bank with a third party sub-custodian may be pooled with financial instruments belonging to the Bank's other Clients in an omnibus account on the books of such sub-custodian. Accordingly a Client will not necessarily have the right to any specific financial instruments but will instead be entitled, subject to any applicable laws, rules and regulations and contractual terms, to the transfer or delivery of an amount of financial instruments of the same description and of the same amount.

As a result of certain of the Bank's other Clients also beneficially owning financial instruments held in the omnibus account, a Client may be exposed to settlement risks arising from the transactions of such other Clients in that financial instrument. Where permitted, a Client's financial instruments may be pooled with financial instruments of the same description of those of other customers, in the course of settlement, and as a result may be used by the Bank for its own account or for the account of other customers.

In the event of a loss of financial instruments held in an omnibus account that was not made good, it is likely that a Client would share in the shortfall together with other Clients of the Bank who hold securities in the omnibus account on a pro rata basis.

**Recording of financial instruments held in custody**

Where a Client's financial instruments are held with a central securities depository or sub-custodian, they may be recorded in the name of a third party or in the Bank's name (rather than in the name of a nominee). In the event of the third party's or the Bank's default those financial instruments may not be as well protected from claims made on behalf of the creditors of the third party or the Bank, as applicable.

**Financial instruments held in third country jurisdictions**

Before investing in a third country jurisdiction (i.e., a country outside the European Economic Area), a Client should independently satisfy itself that it understands and appreciates the significance of the relevant risks, and that such an approach is suitable for the Client.

When Clients' financial instruments are held in a third country jurisdiction, they may be subject to the law of that jurisdiction and to different settlement and regulatory requirements. The Clients' rights relating to those financial instruments may differ accordingly.

Where Clients' financial instruments are held in a third country jurisdiction, the applicable law of that jurisdiction may prevent the Bank from complying with the requirements set out in MiFID II to ensure that any Client financial instruments deposited with a third party are identifiable separately from the financial instruments belonging to the Bank and from financial instruments belonging to that third party.

Where such applicable law prevents the Bank from complying with such requirements, there is a risk that on the Bank's insolvency or that of the third party, the Clients' assets would not be separately identifiable and may therefore be available to the Bank's creditors or those of the third party.

In the event that a valid order were served on the sub-custodian seeking to freeze, attach or otherwise restrict assets belonging to the Bank, a court in such jurisdiction may treat the Clients' financial instruments as assets belonging to the

Bank and open to seizure or arrest and the Clients' beneficial interest may not be recognized or upheld.

**Lien and security interests – security which a Client grants to the Bank**

The security which a Client grants to the Bank, and the terms on which such security is granted, is set out in the relevant agreement.

**Lien and security interests – security which the Bank grants to sub-custodians**

The Bank may grant security interests, liens or right of set-off over Clients' financial instruments enabling a third party sub-custodian to dispose of Clients' financial instruments in order to recover debts that relate to the Bank's Clients or the provision of services to our Clients, or otherwise where this is required by applicable law in a third country jurisdiction in which the Clients' financial instruments are held.

Where a Client's financial instruments are held in third country jurisdictions which require the grant of such security interests or liens, there is a risk that, if the Bank fails or is unable to make any payment due to a third party sub-custodian, Client's financial instruments could be applied to discharge the Bank's liability to the extent required by the relevant law.

Where a Client's financial instruments are affected by peculiarities in their ownership status, for instance due to such a security interest, the Bank will make available to the Client a list of sub-custodians benefiting from a security interest or lien over the Client's financial instruments under the terms of their sub-custody agreement with the Bank.

**Lien and security interests - security which the Bank grants to central securities depositories**

Where the Bank or a sub-custodian has appointed a central securities depository on the Client's behalf to hold its financial instruments, the central securities depository may hold a security interest or lien over the Client's financial instruments.

Where the Client's financial instruments are held in third country jurisdictions which require the grant of such security interests or liens, there is a risk that, if the Bank or a sub-custodian fails or is unable to make any payment due to a central securities depository, the Client's financial instruments could be applied to discharge the Bank's or the sub-custodian's liability to the extent required by the relevant law.

#### **Securities financing transactions**

The Bank may be authorized to enter into securities financing transactions in relation to the financial instruments which it holds on the Client's behalf. Where the Client provides financial instruments under a securities financing transaction, the Client may not have the right to any specific financial instruments but will instead be entitled, subject to any applicable laws, rules and regulations, to the transfer or delivery of an amount of financial instruments of the same description and amount.

Those financial instruments will not be held in accordance with Client asset rules and the Client's ability to exercise rights (such as voting rights, corporate events and receipt of payments or distributions) attaching to the financial instruments may also be limited. The tax treatment that would have otherwise applied in relation to the financial instruments or any payments may differ. Further, the Client's protections in the event of the entry into insolvency or resolution of the counterparty to the transaction may not be available.

To the extent that the Bank enters into securities financing transactions in relation to financial instruments held by the Bank on the Clients' behalf, or the Bank uses such financial instruments for its own account or for the account of another Client, such financial instruments shall be returned in accordance with the terms agreed between the client and the Bank.

To date, the Bank is not offering securities financing transactions.

# Client funds

## **Protection of Client funds**

The Bank will hold Client funds as Client money on trust, on the terms set out in the relevant agreement. Accordingly, the Bank may deposit such funds in one or more accounts maintained with third party banks selected by the Bank on behalf of its Clients (each, a “Client Account”). The Bank will take the steps outlined below when depositing the funds with third parties.

The Bank will request each third party bank to acknowledge that all money standing to the credit of the Client Account is held by the Bank as trustee and that the third party bank is not entitled to combine the account with any other account or to exercise any right of set-off or counterclaim against money in that account in respect of any sum owed to the Bank on any of its other accounts.

The Bank will maintain records and accounts and carry out reconciliations on such records and accounts as to enable it to distinguish Client money from other Clients’ money and from the Bank’s own money.

## **Depositing Client funds**

Where the Bank deposits its Clients’ funds with a credit institution or bank authorized in a non-EEA jurisdiction, it carries out due diligence in the selection, appointment and periodic review of the entity with which the Bank deposits the funds. The Bank takes into account the need for diversification of funds as part of their due diligence. However, the

default or insolvency of an entity with which the Bank deposits its Clients’ funds may result in the loss of those funds.

Subject to the Bank’s responsibility in respect of due diligence, as described above, it is not responsible for the acts and omissions or for the solvency of any entity with which it deposits Client funds.

## **Funds held in third country jurisdictions**

When Client funds are held in a third country jurisdiction (i.e., a jurisdiction outside the EEA), they may be subject to the law of that jurisdiction and to different settlement and regulatory requirements. The Clients’ rights relating to those funds may differ accordingly.

## **Lien and security interests - Security which the Bank grants to entities with which funds are deposited**

The Bank may grant security interests, liens or rights of set-off in relation to the Clients’ funds in favor of entities with which the funds are deposited but only in respect of properly incurred charges or liabilities arising from the operation of the account in which the Clients’ funds are held.

## **Lien and security interests - Security which the Bank grants to central securities depositories**

Where the Bank or a sub-custodian has appointed a central securities depository on the Clients’ behalf to hold their funds, the central securities depository may hold a security interest, lien or right of set-off over those Clients’ funds.

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