



Regulation Safeguarding Collateral Foundation

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Regulation Safeguarding Collateral Foundation



1. General

1.1 In this Regulation Safeguarding Collateral Foundation, the following terms shall be understood as follows:

“Bank Account Safeguarding Collateral Foundation” . A bank account held for the Clients at a credit institution in the name of Safeguarding Collateral Foundation, for the Clients who entered into a Foreign Exchange Derivatives Service Provision Agreement with Franx.

“Margin Account”

an administrative account in the name of the Client, who entered into a Foreign Exchange Derivatives Service Provision Agreement with Franx and through which the Margin, deposited by the Client, is administered.

1.2 Insofar as not otherwise defined in this Regulation Safeguarding Collateral Foundation, terms that are written with a capital letter in this Regulation Safeguarding Collateral Foundation have the same meaning as set forth in the General Terms and Conditions, the CFEDSP (Conditions of the Foreign Exchange Derivatives Service Provision) or the Regulation Safeguarding Payment Funds Foundation.

1.3 This Regulation Safeguarding Collateral Foundation shall be read in conjunction with the General Terms and Conditions, the Foreign Exchange Derivatives Service Provision Agreement, the CFEDSP and the Regulation Safeguarding Payment Funds Foundation.

2. Margin Account

2.1 At the moment that the Client concludes a Foreign Exchange Derivatives Service Provision Agreement and has complied with the other formalities, as required by Franx, the Safeguarding Collateral Foundation will open a Margin Account, through which the Client may obtain claims against the Safeguarding Collateral Foundation up to the amount of the Margin. The Margin, administered through the Margin Account, represents and consists of the obligations of the Safeguarding Collateral Foundation towards the respective Client. Insofar as in this document, further mention is made of a Client, this will refer to a Client who concluded a Foreign Exchange Derivatives Service Provision Agreement.

2.2 The claims of the Client against the Safeguarding Collateral Foundation to the amount of the Margin are obtained by the deposit of the Margin, executed by Franx on behalf of the Client, which is transferred from the Safeguarding Account of the Client to the Margin Account of the Client. The Safeguarding Collateral Foundation holds a Margin Account for each Client. The balance shown on the Franx Payment Account of the Client corresponds with the balances on the Safeguarding Account and the Margin Account. The Client shall not have a corresponding claim against Franx.

2.3 Safeguarding Collateral Foundation shall always maintain an amount of money in the Bank Account Safeguarding Collateral Foundation that corresponds with the total of the Margin administered in all the Margin accounts.

2.4 Safeguarding Collateral Foundation acts exclusively in the interests of the Clients. Costs that arise from or are related to the funds held by Safeguarding Collateral Foundation shall be at the expense of Franx, so that Safeguarding Collateral Foundation shall not run any economic or commercial risks with regards to the funds it holds.

2.5 A Client is not a beneficiary or the owner of the funds that are held by Safeguarding Collateral Foundation for the Client in the Bank Account Safeguarding Collateral Foundation. These are funds that belong to Safeguarding Collateral Foundation. For the record: the Client is entitled to the funds that are administered in the Margin Account.

2.6 In the context of and for the purpose of the services provided by Franx to the Client, including the provision of collateral, Franx and Safeguarding Collateral Foundation have, insofar as necessary for the Client, free disposal of the Margin Account of the Client. This means, among other things, that the Margin, administered through the Margin Account, may be re-transferred to the Safeguarding Account of the Client.

2.7 Safeguarding Collateral Foundation shall be liable towards the Clients for the damage they incurred, insofar as such damage is the result of imputable non-compliance with its obligations.

3. Free disposal of margin

3.1 Clients do not have free disposal of the Margin deposited. Franx will re-transfer the Margin to the Safeguarding Account of the Client when the Foreign Exchange Derivative Transaction is settled and there are no longer any outstanding obligations of the Client towards Franx.

4. Derivative assets

4.1 As the Margin is safeguarded by Safeguarding Collateral Foundation, if Franx were to go bankrupt, the Margin will not form part of the bankruptcy estate of Franx.

4.2 If a Client enters into a Foreign Exchange Derivative Transaction with Franx, Franx will act as the contracting party of the Client. If Franx were to go bankrupt, this would, in principle, mean that any claims (positions) of the Client against Franx would also form part of the bankruptcy estate of Franx on the basis of the Foreign Exchange Derivative Transaction. However, these claims are protected against the bankruptcy of Franx in another way, as elucidated below.

4.3 In the context of Foreign Exchange Derivative Transactions, Franx will act as an intermediary, within the meaning of the Securities Giro Transactions Act (in Dutch: Wet giraal effectenverkeer (Wge)), by entering into derivative transactions with a third party, which correspond with the Foreign Exchange Derivative Transactions, as a result of which the Client will enjoy the protection afforded to them under the Securities Giro Transactions Act.

4.4 This protection entails that Franx will be deemed to have derivative assets. The derivative assets form a separate part of the assets of Franx. The derivative assets contain the corresponding positions, which Franx entered into with a third party in relation to the Foreign Exchange Derivative Transactions, concluded by the Client with Franx, insofar as it concerns the rights and obligations that relate to the clauses that designate the core of the performance. The core of the performance concerns, among other things, the dates on which payments take place, the term of the Foreign Exchange Derivative Transaction and the nominal amount to which the Foreign Exchange Derivative Transaction relates.

4.5 In its administration, Franx will record which corresponding positions pertain to the derivative assets, and for each corresponding position which is the associated Foreign Exchange Derivative Transaction.

4.6 The Client will only be able to recover any claims on the basis of Foreign Exchange Derivative Transactions from the derivative assets. This means that any

claim of the Client against Franx that arises after the termination of a Foreign Exchange Derivative Transaction will, insofar as possible, be recoverable from the derivative assets. As regards the non-recovered part, the Client will have a claim against Franx, which, in the case of the bankruptcy of Franx, the Client may submit to the official receiver for verification.

4.7 For the sake of clarity, the Client does not have a claim against Safeguarding Collateral Foundation, other than any claim(s) with respect to the Margin deposited by the Client.

5. Parallel structure

5.1 In order to enable Safeguarding Collateral Foundation to safeguard the Margin, Franx and Safeguarding Collateral Foundation have to create a parallel structure, which is elaborated below, pursuant to legislation and regulations. However, this structure does not detract from the fact that the Client, in principle, has to directly fulfil their obligations to Franx on the basis of the Foreign Exchange Derivative Transactions. Furthermore, this parallel structure does not change the magnitude of the financial obligations of the Client, as further elucidated below.

5.2 Herewith, the Client irrevocably and unconditionally undertakes to accept any debt of the Client towards Franx, as from time to time incurred on any basis whatsoever, including on the basis of the Foreign Exchange Derivative Transactions entered into by the Client, to also be a debt towards the Safeguarding Collateral Foundation. Each such debt of the Client towards Safeguarding Collateral Foundation is called a "Parallel Debt".

5.3 A Parallel Debt will become payable at the same moment as the corresponding debt of the Client towards Franx (hereinafter: the "Corresponding Debt"). A failure to pay the Corresponding Debt in due time will also lead to a failure to pay the Parallel Debt in due time.

5.4 Although a Parallel Debt concerns a debt towards Safeguarding Collateral Foundation, which is independent and separate from the Corresponding Debt, and constitutes a claim of Safeguarding Collateral Foundation against the Client, a Parallel Debt will never be higher than the Corresponding Debt. In other words, if the Client pays (a part of) their debt to Franx, the debt of the Client towards Safeguarding Collateral Foundation will be paid (for the same part).

6. Termination

6.1 In case of termination of the relationship

between Franx, Safeguarding Collateral Foundation and the Client, or termination of the Foreign Exchange Derivatives Service Provision Agreement, insofar as not restricted on the basis of any (limited) right of Franx, the funds that form the basis of the claim of that Client against Safeguarding Collateral Foundation will be transferred from the Bank Account Safeguarding Collateral Foundation to the Counter Account of that Client via the Franx payment account of that Client.

- 6.2 If Franx is declared bankrupt or has been granted a suspension of payments, then Safeguarding Collateral Foundation shall transfer all the Margin on the Bank Account Safeguarding Collateral Foundation, insofar as not restricted under any (limited) right of Franx, directly into the Counter Account of the Client.

7. Non-transferability

A Client is not permitted to transfer its claims against Safeguarding Collateral Foundation to third parties or to pledge such claims or to otherwise encumber such claims with a limited right, other than to, or for the benefit of, Franx or Safeguarding Collateral Foundation. This article has a property effect within the meaning of Article 3:83 (2) of the Dutch Civil Code.

8. Pledging

- 8.1 Based on the CFEDSP, the Client has granted a right of pledge to Franx on all current and future rights and claims of the Client against Safeguarding Collateral Foundation for any existing or future claims of Franx against the Client. Safeguarding Collateral Foundation is hereby informed of this right of pledge. Franx may authorise and instruct Safeguarding Collateral Foundation to transfer funds from the Margin Account of a Client to the Safeguarding Account of that Client.

9. Guarantee

Franx guarantees the Clients that Safeguarding Collateral Foundation will comply with all its obligations towards the Clients.

10. Cooperation with regulatory authorities

Safeguarding Collateral Foundation may be instructed by the AFM and DNB to offer its full cooperation, including the provision of information that is necessary for the correct fulfilment by the AFM and DNB of their statutory tasks and responsibilities. In accordance with the General Terms and Conditions, the Client hereby grants permission to Safeguarding Collateral Foundation to provide information or

to otherwise provide all the cooperation required for the AFM and DNB to correctly exercise their statutory tasks and responsibilities.

11. Administration

- 11.1 In accordance with the General Terms and Conditions, Safeguarding Collateral Foundation may outsource its own administration, the administration of the Franx payment accounts or the factual execution of its other tasks and actions, in whole or in part, to Franx or to a third party, to be designated with the prior written permission of Franx. The Client hereby grants its consent to Safeguarding Collateral Foundation for this.

12. Contract transfer or debt assumption

- 12.1 The Client grants its cooperation and consent in advance for a whole or partial contract transfer or the assumption of debt by a third party of its legal relationship with Safeguarding Collateral Foundation, respectively the funds that Safeguarding Collateral Foundation owes to the Client.

13. Choice of law and jurisdiction

- 13.1 This Regulation Safeguarding Collateral Foundation shall exclusively be governed by Dutch law.
- 13.2 All disputes which may arise in connection with this Regulation Safeguarding Collateral Foundation between the Client, Franx and/or Safeguarding Collateral Foundation shall exclusively be submitted to the competent court in Amsterdam.

14. General information on Franx and Safeguarding Collateral Foundation

- 14.1 The full statutory name of Franx is Franx B.V. The registered office of Franx is located in Amsterdam and its place of business is located in Amsterdam at the Hessenbergweg 73, P.O. Box 22200, 1100 CX Amsterdam. Franx is registered in the trade register of the Chamber of Commerce under number 67283101.
- 14.2 The full statutory name of Safeguarding Collateral Foundation is Stichting Derdengelden Franx Collateral. The registered office of Safeguarding Collateral Foundation is located in Amsterdam and its place of business is located in Amsterdam at the Hessenbergweg 73, P.O. Box 22200, 1100 CX Amsterdam. Safeguarding Collateral Foundation is registered in the trade register of the Chamber of Commerce under number 67372821.

This Regulation Safeguarding Collateral Foundation shall come into effect on 1 September 2018.