

Information on protection of derivative positions in case of insolvency of ING Bank N.V.

Introduction

In dealings with you in derivative transactions, we may act either as a principal which means that we act as your **counterparty** and enter into the transaction on our own account **or** we may act as your or a third party's **agent** which would mean that we enter in to a transaction on your behalf and for your account. Depending on the capacity in which we act you will gain protection in case of bankruptcy of ING Bank N.V. or not.

As of 1 April 2016, certain derivative positions entered into and/or administered by banks on behalf of its clients gain protection due to the amendment of the the Dutch Securities Giro and Transfer Act (*Wet giraal effectenverkeer* ("**Wge**"). This legislative change is relevant in case of bankruptcy of a bank having its registered seat in the Netherlands (such as the bankruptcy of Van der Hoop Bankiers in 2005). Up to 1 April 2016, the derivative positions of banks were not segregated from their own funds as a result of which those positions were not protected in case of bankruptcy.

From 1 April 2016 onwards certain derivative positions are protected against bankruptcy of banks having their registered seat in the Netherlands as they will no longer be part of the assets of the bank in liquidation. Banks must therefore separate derivative positions and, if applicable, also the associated collateral (margin) from their own funds. The protection is similar to the protection other securities already gain from the Wge.

With regard to the majority of our derivative products we will act as your counterparty. The wording under "**A**" is applicable. When we act as your agent or clearing broker the wording under "**B**" is applicable.

We are required to provide you with this

information pursuant to the Dutch Financial Supervision Act (*Wet op het financieel toezicht*).

A. Consequences of insolvency when we enter into a derivative transaction as your counterparty

Will your derivative position gain protection?

No, in case we act as your counterparty in our dealings with you your position will not gain legislative protection. In this case we enter into the transaction for our own account and risk. Your derivative positions will not be segregated from our own funds. This means that in case we become insolvent your derivative positions will be part of the assets of our bank in liquidation. Further explanation is provided below.

Capacity in which ING Bank acts

We will enter into a derivative transaction with you, for example regarding options, futures or swaps. We enter into this derivative transaction as your counterparty and for our own risk and account. This means that you have certain obligations towards us as agreed upon in the documentation covering the derivative transaction. We subsequently have independent obligations towards you as agreed upon in the documentation. These obligations can entail that you need to provide collateral to us consisting of cash or liquid securities, dependent on the change in value of the derivative transactions and your agreement with us.

Insolvency of ING Bank – impact on your derivative transaction(s) and collateral

The fact that the bank is your counterparty in the derivative transactions results in the situation that you cannot claim legislative protection for the derivative transaction(s) when we become insolvent. This means that when ING Bank becomes insolvent, you may still have a claim against us. This claim may imply that you are entitled to restitution of (a

part of) the provided collateral and/or payment of the value of the derivative transaction(s). This claim will not gain the legislative protection however it will be part of the bankruptcy estate of the bank in liquidation. The result of the insolvency is that you will need to file your claim with the trustee in bankruptcy (*curator*). This makes you an unsecured creditor of ING Bank with no preferred treatment with regard to your derivative positions.

In case sufficient funds are available after the settlement of the claims of preferential creditors, the trustee in bankruptcy will need to settle your claim pro rata with the creditors of the same ranking.

B. Consequences of insolvency when we enter into a derivative transaction as your agent or clearing broker

Will your derivative position gain protection?

Yes, in case we act as your agent or clearing broker in our dealings with you your position will gain legislative protection. In this case we enter into the transaction on your behalf and for your account and risk. Your derivative positions will be segregated from our own funds. This also means that in case we become insolvent your derivative positions and potentially also associated collateral will not be part of the bankruptcy estate of ING Bank. These segregated derivative positions will in case of insolvency of ING Bank be transferred to another bank or separately settled.

Further explanation is provided below.

Capacity in which ING Bank acts

When we enter into derivative transaction(s) with a third party we will do that according to your instruction and for your account and risk. This can relate to transactions in for example listed options and futures. You may be obligated to provide collateral to us consisting of cash or liquid securities, depending on the change in value of the derivative transactions and your agreement with us.

Your agreement with us provides you with a client position entailing certain rights and obligations. For the purpose of this client position, the bank will – in the capacity of agent – enter into an agreement with a third party or act as your clearing broker. The position of this third party is called the corresponding position, because this position is mirrored to the position resulting from the agreement between you and us.

Your rights and obligations resulting from the derivative transaction(s) and the associated collateral (if any) are part of the so-called segregated derivative funds of our bank. We will administrate which client positions are equivalent to the various corresponding positions and which corresponding positions are part of the derivative funds.

By way of security that the corresponding positions and client positions are available for you, it is legally prohibited that these derivative funds can be seized (*beslaglegging*).

Insolvency of ING Bank – impact on your derivative transaction(s) and collateral

In case ING Bank becomes insolvent, you can ask the trustee in bankruptcy to early terminate your derivative position(s) if your agreement with us provides for this option. This termination will have the result that your claims following from your client positions will be recovered from the corresponding positions. The trustee in bankruptcy can also assign the positions (client positions and corresponding positions) including collateral (if any) to another bank. This enables you to continue your derivative positions with another bank.

If the trustee in bankruptcy cannot transfer your derivative positions he will most likely terminate your derivative transactions. This results in early termination because the derivative position will end prior to the contractual termination date. Early termination (also called "closing out") may occur (i) at your request, (ii) at the request of the trustee in bankruptcy, but also (iii) when you are no longer capable to meet your obligations. Early

termination results in final settlement. After termination, you may still have a residual claim on the bank, consisting of a claim in connection with collateral (if any) and depends on the contractual agreements between you and the bank. A possible residual claim (consisting of cash) will be paid by the bank from the residual claim that the bank has in relation to the third party, following from the termination of the corresponding position. If your derivative position is prematurely terminated but the corresponding position is not, your residual claim on the former corresponding position will be preferential to other creditors.

In case you have deposited collateral with us, and we have subsequently deposited less collateral with a third party or CCP than you deposited with the bank, you have the right to file a claim with the trustee in bankruptcy to receive the difference. This claim will be part of the assets of the bank in liquidation. This means that you will not gain preferential treatment to other creditors of the bank. If sufficient funds are available after the settlement of the claims of preferential creditors, the trustee in bankruptcy will pay your claim pro rata with the creditors of the same ranking.

If you have agreed with us that your derivative transaction(s) and the associated collateral will be administrated at a so-called individual client account as referred to in Regulation (EU) 648/2012 (EMIR), you will be entitled to restitution of the collateral provided by you to the bank in connection with your derivative transaction(s), save for any restrictions following from further insolvency and or international private law regulations.