

Circular nº 05/2017 of 4 September

**PROCEDURE FOR THE LOSS AND SUSPENSION OF
PARTICIPANT STATUS.BANKRUPTCY OF PARTICIPANTS.**

Please note that only the Spanish version of this Circular produces legal effect. Any translation is provided for commercial purposes only.

Title III of the IBERCLEAR Regulation governs the regime applicable to participants in IBERCLEAR systems. Article 12 sets out the cases in which status as a participant might be lost or suspended, whilst article 13 sets out the action to be taken by IBERCLEAR in the event of the bankruptcy of a participant, pursuant to the specific provisions set down in general regulations applicable to IBERCLEAR.

This Circular develops the provisions of article 12.3 of the IBERCLEAR Regulation, setting out: the procedures in the event of loss or suspension of participant status; how IBERCLEAR becomes aware of the causes of such situation; and the timetable for the resulting actions, the information to be furnished to the CNMV and the precautionary measures and guarantees required for the orderly transfer of the securities held by the entity involved.

Pursuant to Article 13 of the IBERCLEAR Regulation, this Circular also develops the rules and procedures applicable in the event of bankruptcy of one or more participants.

Therefore, the Board of Directors of IBERCLEAR has approved the following:

Rule 1. Scope of application

The procedures and actions set forth in this Circular will apply in the event of loss or suspension of participant status in the event of bankruptcy of one or more participants.

Rule 2. Loss of participant status

1. Participant status will be lost as a result of the following:

- a) By resignation;
- b) Loss of the condition as a result of which participant status was granted;
- c) Failure to adapt to technical requirements arising from modifications or improvements to the keeping of the Book-Entry Registry and participation in ARCO System;
- d) Serious and repeated failure to comply with obligations.

In cases a) and b) above, the participant informs IBERCLEAR of the situation. In cases c) and d), as part of its remit to oversee and monitor the activities of participants, IBERCLEAR monitors the performance of the entity's activities and verifies that it is not possible for it to continue to meet its obligations as a participant.

2. The loss of participant status takes effect from the day on which IBERCLEAR accepts the resignation filed by the participant, from the day on which the circumstance giving rise to the effect in case b) occur, or the day on which IBERCLEAR adopts the relevant resolution, in cases c) and d).

3. Prior to adopting the resolution of loss of participant status in the cases set out in items c) and d) of section 1 above, IBERCLEAR will inform the CNMV of the situation and the circumstances giving rise to the loss of participant status. It will also provide information on the number and type of securities accounts held by the entity in the Central Registry.

4. Once the loss of participant status becomes effective, IBERCLEAR will notify this to the CNMV, the governing bodies of the Markets or multilateral trading facilities and the central counterparties with which IBERCLEAR has an agreement as set out in Title IX of the IBERCLEAR Regulation and will be published to its participants through an IBERCLEAR informative memo.

5. Loss of participant status does not release the participant from the obligation to complete any transactions in progress and carry out any registration activities that may result in a decrease in the volume of securities registered in the Central Registry and the second-tier registers for which it is responsible, and the transfer of the securities and orderly closure of the accounts.

Rule 3. Suspension of participant status

1. IBERCLEAR may suspend a participant in the following cases:

- a) The participant consistently and systematically fails to meet its settlement obligations, either because of a failure to deliver securities or failure to meet the obligation of making cash payments;
- b) The participant repeatedly fails to comply with its book-entry registration obligations.
- c) Failure to comply with the obligation of always have at least one dedicated cash accounts linked to its securities account.

The suspension could be limited to those operations affected by the circumstances which determine it.

2. In such cases, IBERCLEAR will consult the CNMV with regard to the suspension of participant status, informing it of the circumstances which determine the suspension. The participant will be given a hearing to, within one day, justify the situation and submit its observations and provide any information that it deems relevant.

3. The suspension of participant status will take effect from the day on which IBERCLEAR adopts the suspension resolution, which it will report immediately to the CNMV. It will also notify this situation to the governing bodies of the markets or multilateral trading facilities and the central counterparties with which IBERCLEAR has an agreement as set out in Title IX of the IBERCLEAR Regulation and will be published to its participants through an IBERCLEAR informative memo.

4. Suspension of participant status will not release the entity from the obligation to complete any transactions in progress and will not affect any orders for the transfer of securities that it might receive from the holders thereof.

5. Once the non-compliance giving rise to the suspension has been corrected and the suspended entity has guaranteed compliance with its obligations, a resolution to lift the suspension, or other measures contributing to the efficiency of settlement processes, may be adopted.

Rule 4. Bankruptcy of one or more participants.

1. In the event of the opening of an insolvency proceeding against a participant, IBERCLEAR will act in accordance with the specific provisions set out for such cases in the general provisions referred to in article 2 of the IBERCLEAR Regulation.

2. IBERCLEAR will not accept any transfer orders from a participant involved in an insolvency proceeding once IBERCLEAR has become aware of that proceeding pursuant to Act 41/1999, of 12 November, on payment and securities settlement systems.

If IBERCLEAR becomes aware of the opening of the insolvency proceeding by other means, such as communication by the participant themselves or by a market, multilateral trading facility, central counterparty or central securities depository, with whom IBERCLEAR has signed an access or link Agreement, or through the TARGET2-Securities technical support when a Central Bank or central securities depository that is aware of the insolvency proceeding makes it known to the other users of TARGET2-Securities, or by any third party that knows of the insolvency, IBERCLEAR shall adopt the necessary measures to verify the accuracy of the information received.

3. IBERCLEAR will immediately inform its participants, the CNMV and the Bank of Spain, as well as the markets, multilateral trading facilities, central counterparties and other central securities depositories with which it has signed an access or link Agreement, of any communication IBERCLEAR receives in accordance with Act 41/1999. This notification will take the form of an informative memo.

If IBERCLEAR receives the information by other means, it shall not publish the informative memo until it has verified the accuracy of the information, in accordance with the requirements set out in the second subparagraph of section 2 above.

IBERCLEAR will also disclose this situation immediately to the rest of the Central Banks and the central securities depositories that use TARGET2-Securities, through the means and procedures established by TARGET2-Securities.

4. Transfer orders that meet the requirements set down in article 31 of the IBERCLEAR Regulation will be settled, in accordance with the operating regulations of the ARCO System.

5. IBERCLEAR will test and review the actions referred to in the previous points, and its communication systems with the CNMV, Bank of Spain and participants, and any others that might be established, in accordance with the access or link Agreement signed with central counterparties and central securities depositories.

7. These tests and reviews are carried out once a year and when it is necessary after the amendment of the general provisions mentioned in section 1.

REPEALING PROVISION



Circular 3/2016, of 29 January, on procedure for the loss and suspension of participant status. Bankruptcy of participants, is repealed.

FINAL PROVISION

This Circular shall enter into force on the day following its publication.

Madrid, 4 September 2017

Jesús Benito Naveira
Consejero Delegado