

Circular nº 14/2017, of 4 September

**IBERCLEAR ACCESS TO OTHER CENTRAL SECURITIES
DEPOSITORIES: ESTABLISHMENT OF LINKS**

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

Article 98.4 of the consolidated text of the Securities Market Act approved by Royal Legislative Decree 4/2015, of 23 October, and Section 2 of Chapter III of Title III of Regulation (EU) nº 909/2014, of 23 July, on improving securities settlement in the European Union and on central securities depositories (hereinafter, the Central Securities Depositories Regulation) provide for Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.U. (hereinafter IBERCLEAR) entering into agreements with other Central Securities Depositories to establish links.

Title IX of IBERCLEAR Regulation sets out the regime for such agreements and requires that before the link is established, and permanently once the agreement has been signed, IBERCLEAR shall identify and evaluate the possible sources of risk both for IBERCLEAR itself and for its participants, and monitor and manage these risks.

The link will allow IBERCLEAR to access to the registration and settlement services of another Central Securities Depository, by opening a securities account in its registry system and its participation in its settlement system.

The purpose of this Circular is to update the legislative framework applicable to the establishment of links to the requirements of the Central Securities Depositories Regulation and to the necessary adaptations for the migration of the Clearing and Settlement System for transactions carried out in the Book-Entry Public Debt Market and the AIAF Fixed Income Market (CADE System) to the ARCO Settlement System (hereinafter, ARCO System) and the connection of IBERCLEAR to the TARGET2-Securities technical support.

The Board of Directors of IBERCLEAR has approved the following:

Rule 1. Access of IBERCLEAR to the services of other central securities depository.

1. IBERCLEAR may request for access to another central securities depository through the establishment of a link, which involves opening a securities account in the system operated by the central securities depository. In deciding to request access, IBERCLEAR shall regard considerations relating to opportunity, the general interests of the markets and reciprocity by the other central securities depository.

2. Without prejudice to the fact that the access conditions and the service delivery framework of the central securities depository are subject to the rules governing the activities of that central securities depository and its system, IBERCLEAR shall observe the provisions of this present Circular in the application process.

3. The registration of securities originating from other central securities depositories in the ARCO System, along with their inclusion and exclusion, shall be governed by the provisions of this Circular.

Rule 2. Procedure and scope of access to the services of the central securities depository.

1. IBERCLEAR will assess the operating environment for access to the services of each central securities depository on a case-by-case basis, agreeing the procedures required to ensure correct operations with each central securities depository, pursuant to Article 48 of IBERCLEAR Regulation.

2. IBERCLEAR will seek a legal opinion on the System managed by the other central securities depository. This opinion will assess aspects relating to the position assumed by IBERCLEAR when opening an account in the other System; how rights to securities are recognised and demonstrated in such accounts; the eventual custody and settlement risks for transactions; the legal regime for securities in the book-entry register kept by IBERCLEAR through the account in the other System; and the regulatory, fiscal and other liabilities and obligations IBERCLEAR might incur or assume in performance of the agreement, including the criteria permitting their graduation in each case. The legal opinion will also assess the transposition into domestic law of EU or other regulations which are applicable in determining the moment of entry and irrevocability of securities and cash transfer orders in the System operated by the central securities depository, together with applicable domestic regulations.

3. IBERCLEAR may undertake by mutual agreement with the central securities depository, whose services it has requested access to, the tests it considers necessary to ensure the correct working of these services.

4. IBERCLEAR shall then proceed, taking into account the characteristics of the access and the service delivery terms and conditions in accordance with the provisions of the Central Securities Depositories Regulations and Article 48 of IBERCLEAR Regulation, either to notify establishment of the link or to request authorisation from the Spanish National Securities Market Commission (CNMV) to do so as the case may be. If authorisation is required, it shall send a copy of the legal opinion and a copy of the proposed agreement, along with, where appropriate, the results of the tests carried out to the CNMV.

Once the notification has been made or authorization received from the CNMV, IBERCLEAR shall sign the corresponding agreement.

Rule 3. Registration, deposit and withdrawal of securities in the ARCO System.

1. The balance that reflects the securities account opened by IBERCLEAR in the other System shall coincide with that which IBERCLEAR recognises for all participants in the ARCO System. If the law applicable to the transfer of securities requires it, IBERCLEAR may open the securities account in their name.

2. IBERCLEAR shall register the securities balances in its registry system and shall maintain them in accordance with the provisions of Title IV of IBERCLEAR Regulation.

3. Pursuant to the terms of the agreement reached and the procedure to be approved through an Instruction, IBERCLEAR shall coordinate with the other central securities depository the settlement of transfer orders involving the inclusion or exclusion of securities to and from the accounts referred to in this Circular as a result of the delivery of securities, whether free or against a cash payment, between the respective participants. IBERCLEAR will only accept transfer orders involving a deposit of securities in the ARCO System, when it has evidence that the transfer orders have been entered and are irrevocable in the central securities depository where they come from. In this case, once IBERCLEAR has received notification of the effectiveness of the transfer of the securities from the relevant central securities depository, IBERCLEAR shall immediately recognise the book entries for the securities transferred in the securities accounts of its participants.

Rule 4. Cash movements between systems.

1. The cash movements resulting from delivery versus payment transactions carried out between IBERCLEAR participants and participants of the other System shall in general be made through the dedicated cash accounts open at the Bank of Spain, the European Central Bank or the Central



Bank of another member State of the European Union whose System is connected to the Bank of Spain within the European System of Central Banks.

2. The cash movements resulting from financial transactions carried out on securities included in the account opened by IBERCLEAR in the other System shall be made between them either through the dedicated cash accounts or the TARGET2 payments module account open at the Bank of Spain, the European Central Bank or the Central Bank of another member State of the European Union whose system is connected to the Bank of Spain within the European System of Central Banks, or through a financial institution acting as a correspondent.

Rule 5. Financial transactions and other services.

1. In accordance with information received from the System in which IBERCLEAR holds an account, IBERCLEAR shall manage the reporting of information to its participants on financial transactions involving the securities included in the account.

2. IBERCLEAR may also manage with its participants the collections and payments arising from the financial transactions involving securities included in the account held in the other System, and perform other actions related to these transactions.

3. IBERCLEAR may provide, where applicable, its participants with access to tax-related services that relate to the securities registered in the account held in the other System.

4. Pursuant to Title VIII of its Regulation, IBERCLEAR may agree with the central securities depository operating the other System the provision of other services for the securities registered in the account in that System.

Rule 6. IBERCLEAR's liability before its participants

1. In the performance of the functions of registry, management of the settlement of transfer orders, processing of financial transactions and others that IBERCLEAR provides to its participants as a result of the link established in accordance with the criteria included in this Circular, IBERCLEAR will be liable before its participants for any damage caused by the corresponding central securities depository, in the same terms as the liability the latter undertakes with regard to IBERCLEAR through the agreement between the two. Any liability for wilful misconduct or negligence shall be claimable.



2. In the cases referred to in the previous section, IBERCLEAR will act with due diligence in the recovery of the securities belonging to participants, and in limiting the damage and losses that they might suffer as a result of the actions of the said central securities depository.

REPEALING PROVISION

Circular 4/2010, of 29 September, partially amending Circulars 9/2016, of 29 September, and 23/2016, of 18 September, on opening of accounts by IBERCLEAR in other central securities depositories and clearing and settlement systems, 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