

SPECIAL AND OPTIONAL SETTLEMENT PROCEDURE FOR FINANCIAL INTERMEDIARY AND GENERAL SETTLEMENT PROCEDURE

GENERAL PUBLIC INFORMATION

In compliance with and under application of Rule 1, section number 6, of its Circular No. 18/2017, dated 4 September, on the special and optional settlement procedure for financial intermediary (in the wording given by its Circular No. 2/2019, of 26 March), IBERCLEAR makes publicly available the following detailed information regarding the characteristics, requirements, development and specific risks of the special and optional settlement procedure for financial intermediary, highlighting the differences between the special procedure and the general settlement procedure.

This information refers to the regulations that IBERCLEAR has established for its general settlement procedure and its special and optional settlement procedure for financial intermediary of market transactions. Users of these procedures must consider that settlement of their trades may also be affected by the practices and conditions applied by their entities and intermediaries based on their operating models.

I. GENERAL SETTLEMENT PROCEDURE

1. Scope of application

- Purpose: The general procedure is applicable to the settlement of trades executed on markets or securities trading systems for which IBERCLEAR provides settlement and registration services, regardless of whether settlement of the executed trades requires the prior intervention of a central counterparty, as well as those that are communicated directly by IBERCLEAR participants.

- Subjective scope: The procedure envisages the involvement of 2 intervening parties: client-investors and IBERCLEAR participants.

2. Structure and development of the procedure. The general procedure consists of a single phase in which two basic actions are carried out simultaneously:

- IBERCLEAR proceeds to settle the trades, making the corresponding debits and credits of securities and cash to accounts opened by participants in the central register of book entries.

- Simultaneously, the participants enter the corresponding securities and cash debits and credits in the corresponding second-tier register accounts held in the name of their respective investor-clients.

Depending on the practices and conditions of each entity, according to their operating models, the client-investor's securities may later be transferred to their custodian if the participant settling the trade is not the depository of the securities.

Consequently, the transfer of the securities associated with the settled trades takes place by means of the immediate annotation of those securities in the account of the client-investor identified as the buyer in the corresponding trade.

3. Failures in the general settlement procedure. In the event that a trade cannot be fully or partially settled on the intended settlement date, the corresponding transfer order will remain in the system until it can be settled (recycled).

4. Settlement risk. The risks that are accepted when using the general settlement procedure include:

- The possibility that the trade cannot be settled, fully or partially, on the intended settlement date, with a subsequent delay relative to the dates anticipated by the parties involved.
- The possibility that, following the recycling periods, settlement of the trade proves impossible or the parties involved decide to render it null and void, leading to frustrated expectations regarding the trade and compensation being established by the responsible parties.

In strict regard to the settlement, the immediate delivery and recording of the securities when the corresponding trade is settled means definitive ownership of the securities subject to acquisition is unquestioned from the moment that the trade is settled.

This ownership is likewise safeguarded should the corresponding IBERCLEAR participant be involved in any insolvency situation, as in this case Spanish securities market legislation and Spanish bankruptcy law, which are applicable to the settlement system and book-entry register managed by IBERCLEAR, safeguard the ownership of the securities included in the registries of the participant concerned and offer the holders of the securities specific and express procedures to separate their securities from those corresponding to the participant, and to transfer them to another participant.

II. SPECIAL AND OPTIONAL SETTLEMENT PROCEDURE FOR FINANCIAL INTERMEDIARY SETTLEMENT

1. Scope of application

- Purpose: The procedure is applicable to the settlement of trades executed in markets or trading systems for which IBERCLEAR provides settlement and registration services, regardless of whether the settlement of the executed trades requires the prior intervention of a central counterparty.
- Subjective scope. The procedure envisages the involvement of up to 3 intervening parties: The financial intermediaries that hold relations with their client-investors, the latter and IBERCLEAR participants that make use of the special procedure. There may be as few as 2 intervening parties if the financial intermediaries also hold IBERCLEAR participant status. In any case, the financial intermediaries acting on behalf and under the mandate of client-investors must be credit institutions, investment firms or equivalent figures of third-party States, authorised to provide investment services and, therefore, subject to the obligations set out in European standards regarding the safeguarding of client securities and funds.

The procedure is voluntary or optional for participants, financial intermediaries and client-investors. Therefore, should the client-investor opt not to apply this special procedure, their trades will be settled via the general procedure. As a result, the client-investor's decision to use this special procedure must be preceded by an assessment of whether the structure and development of the same would be right for the relations, conditions and operating practices to which it has agreed.

2. Structure and development of the procedure. The structure and development of the special financial intermediary procedure are different from those of the general procedure. Specifically, the procedure is carried out in two successive and sequenced phases:

- In the first or transitional phase, the trades are settled in special accounts that financial intermediaries must open in IBERCLEAR. This phase can be reduced to the involvement of a single financial intermediary or include several financial intermediaries depending on the practices and conditions applied by the intervening entities and intermediaries based on the models that they use.
- In the second or final phase, the trade settlement is finalised in the client-investor account.

In ordinary use of this special procedure these are two sequenced and consecutive phases, which take place on the same settlement day and in accordance with the procedural rules.

Consequently, as far as client-investors are concerned, their trades are settled via the financial intermediary procedure as follows:

- In purchase trades, the securities are initially entered into the accounts of the financial intermediary or the various intermediaries involved (transitional phase), from where they are sent for entry into the client-investor account (final phase).
- In sales trades, the securities originating from the client-investor account are initially entered into the special accounts of the financial intermediary or the various intermediaries involved (transitional phase), from where they are sent for final settlement of the trade (final phase).

3. Failures during the procedure. For the special financial intermediary procedure, failure means the inability to complete the final phase, and therefore at the end of the settlement date the securities remain held in the financial intermediary special account into which they were recorded during the transitional phase. In these cases, said securities will automatically be transferred to an account opened in the name of the intermediary designated for these purposes, with the transfer of the respective securities and cash amounts taking place in said account. Nevertheless, the securities may subsequently and successively be returned to the financial intermediary special account to attempt to complete the client-investor's trade settlements.

4. Settlement risk. As the special procedure for financial intermediaries consists of two successive and sequenced phases (transitional and final), only at the conclusion of the latter, in the case of purchases, will the transfer of the securities be effective in favour of the client-investor.

For this reason, should failures occur that prevent the final phase from being completed on the intended settlement date or at a later time, and the securities remain in the accounts opened in the name of the financial intermediaries, the potential rights and interests of the client-investor with respect to the securities will be subject to the agreements, practices and contracts applied by the parties (financial intermediaries and client-investors) as part of their relations, while participants (in case the financial intermediary is different from participants) will not be involved in said actions as they do not hold relations with the client-investors.

In the above cases, client-investors may be affected by specific risks should their intermediaries be involved in an insolvency situation, as in such cases the potential rights and interests of the client-investors should be enforced via the applicable bankruptcy legislation, with the scope and consequences determined therein. In such cases, and depending on the specific legislation to which the financial intermediary is subject, bankruptcy legislation other than Spanish legislation may be applicable.