

## Circular nº 18/2017, of 4 September

### OPTIONAL PROCEDURE FOR FINANCIAL INTERMEDIARY

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

Title V of the Regulation of Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.U. (hereinafter, IBERCLEAR) sets out general provisions for the Securities Registration and Settlement System (hereinafter, the ARCO System) applicable to the settlement of securities and cash in the system.

This Circular develops the elements that comprise the special and optional procedure for settlement involving a Financial Intermediary, referred to in Articles 32 and 33 of IBERCLEAR Regulation and the instrumental transitory book entry in its own name in the financial intermediary special accounts that make use of that procedure. Likewise, it establishes the connections between these special accounts and the account of the financial intermediary, planning the eventual transfers of remaining balances of securities in cases where there is no entries in the name of clients of the Financial Intermediary.

Therefore, the IBERCLEAR Board has approved the following Circular:

#### **Rule 1<sup>a</sup>: Scope of application**

1. The special and optional procedure for the communication, acceptance and execution of orders involving Financial Intermediaries may be used by participants when this is agreed between IBERCLEAR and the market or trading system or the central counterparty in the Agreement signed for access to its settlement services, pursuant to Circular regarding Agreements with markets, multilateral trading facilities, central counterparties and other entities. This Agreement will coordinate the actions of IBERCLEAR and the market or trading system or the central counterparty in their respective areas, including, in any case, the requirement for special accounts and their mutual obligations of information and the provision of information to supervisors.

2. The use of this procedure in the context of the Agreement referred to in the preceding subsection will always be optional for the participant, the Financial Intermediary and the professional client on whose behalf the Financial Intermediary is acting.

3. For the purpose of determining the possibility of using this optional special procedure, the participants will consider to be Financial Intermediaries those investment firms or credit institutions authorised to provide services to professional clients and, at least, for the transmission of orders on behalf of those clients and to participate in the resulting settlement of trades, whether they are trading members that participate in a market or trading system or clients of such members.

4. Participants that offer this procedure shall verify that Financial Intermediaries make use of it according to the conditions and requirements set out in Article 33 of the IBERCLEAR Regulation and in this Circular.

5. Participants shall require the Financial Intermediary that provides proof of being authorised, in accordance with the applicable legislation and which immediately informs of the circumstances that could affect the requirements necessary to make use of the special procedure referred to in this Circular and, among them, its declaration of bankruptcy. As soon as they are aware of the declaration of insolvency of a Financial Intermediary to which they were providing services in the framework of the aforementioned procedure, participants shall be obliged to notify IBERCLEAR of such circumstance.

6. Furthermore, the agreements that participants enter into with Financial Intermediaries must include the obligation for the latter to comply with the cases and requirements set down by IBERCLEAR, expressly undertaking the obligation to adequately inform their clients of the characteristics, requirements and performance of the procedure, informing them of how it differs from the general settlement procedure, so that they can understand and compare the basic characteristics and risks involved.

7. The participants will establish the internal procedures needed to verify compliance by the Financial Intermediary with the obligations and limitations set out in the preceding subsections.

## **Rule 2<sup>a</sup>. Opening of special Accounts.**

1. Before using this procedure, participants must apply to IBERCLEAR to open a Financial Intermediary special Account in the Central Register for each Financial Intermediary to whom they offer the special and optional settlement procedure, as set out in the second paragraph of article 19.2.d) of the IBERCLEAR Regulation. Participants will also identify an individual third-

party Account, or, where applicable, request that such an account be opened, for the Financial Intermediary indicating in both cases whether that account will be used exclusively for the special financial intermediary procedure. The Financial Intermediary special Account will be held in the name of the Financial Intermediary and it will be used for the transitional accounting entries required for execution of the transfer orders resulting from the settlement instruction.

2. Given the instrumental and transitional nature of the entries in the Financial Intermediary special Accounts, balances of securities may not be held in the accounts once the daily settlement processes have been completed. In case there are fails in the settlement that cause the remaining balances of securities in a Financial Intermediary special Account, IBERCLEAR will proceed in accordance with Rule 5 of this Circular.

3. If a participant who is acting as a Financial Intermediary vis-à-vis certain of its clients uses this procedure, it must apply to IBERCLEAR to open a Participant Financial Intermediary special Account in the Central Register, as referred to in paragraph two of article 19.2.a) of the IBERCLEAR Regulation, and it will also identify a Proprietary Account or, where applicable, request that such an account be opened, indicating in both cases whether that account will be used exclusively for the special procedure for Financial Intermediary. The participant may also act as a Financial Intermediary through the use of a Financial Intermediary special Account, as referred to in paragraph two of Article 19.2, d), of IBERCLEAR Regulation, in which case it shall be opened as stated in Rule 1.

### **Rule 3<sup>a</sup>. Settlement procedure specialities**

1. Transfer of securities shall be effected in two or more phases, via the entry of two or more account transfers, corresponding to one settlement instruction and one or more Auxiliary Transactions.

2. The market or trading system, or where appropriate, the central counterparty shall send the respective settlement instructions in accordance with that established in the general settlement procedure of transactions executed in a market or trading system or those in which a central counterparty is involved, respectively. Such general procedures will also be applicable to the settlement of securities transfer orders arising from settlement instructions sent by the market or trading system or central counterparty; i.e., via a transitory credit or debit of securities in the Financial Intermediary special Account.

3. Auxiliary Transactions that are instructed between the Financial Intermediary special Account and the account of the client thereof or the special Account of another Financial Intermediary (if more than one is involved in the process) will be considered transfer orders. The same procedure will apply to transfers that are instructed between the Financial



Intermediary special Account and an account opened in the Financial Intermediary's name. The participants will notify IBERCLEAR of the Auxiliary Transactions that complete the securities transfer process as soon as they get the ownership details for these orders. These Auxiliary Transactions must be matched by the counterparty participant, as applicable.

4. In securities purchase transactions, the first stage in the procedure is the execution of the transfer orders arising from the settlement instruction set out in subsection 2 above; this precedes the execution of the Auxiliary Transactions between the Financial Intermediary special Account and the client's account. The settlement process is only completed when the latter have been settled and the corresponding book-entries have been made.

5. In securities sale transactions, the first stage in the procedure is the execution of the transfer orders arising from the Auxiliary Transactions from the client's account to the Financial Intermediary special Account; this precedes the transfer orders arising from the settlement instruction set out in subsection 2 above. The settlement process is only completed when the orders arising from both the Auxiliary transactions and the settlement instructions have been settled.

#### **Rule 4<sup>a</sup>. Notification of linkages**

Participants will report all linkages between the Auxiliary Transactions settled and the trades included in the settlement instructions sent by the corresponding market or trading system or central counterparty. If more than one Financial Intermediary is involved in the process, the linkage must also include the Auxiliary transaction settled between the Financial Intermediaries and the Auxiliary transactions in favour of the final investors.

#### **Rule 5<sup>a</sup>. Fail management**

1. IBERCLEAR will manage any fails that occur in the settlement of transfer orders arising from the settlement instructions sent by the market or trading system or central counterparty, applying the general procedures set out in this Circular and Circular in those Circulars relating to the general procedure for settlement of trades executed in a market or trading system, or in which a central counterparty is involved.

2. In the event that any securities remain in the Financial Intermediary special Accounts on completion of the daily processes as a result of incidents involving transfer orders arising from Auxiliary Transactions, these securities will automatically be transferred, where applicable, to the individual third-party account or Proprietary Account referred in subsections 1 and 3 of Rule 2 of this Circular. Subsequent transfers of such remaining balances may be made to the



Financial Intermediary special Accounts for settling trades of the Intermediary involved, in accordance with the requirements and manner included in the IBERCLEAR procedures.

3. In the event that IBERCLEAR receives notification certifying the bankruptcy of a Financial Intermediary, the balances of remaining securities at that time in the Financial Intermediary special Account that the corresponding Participant has opened will be transferred by IBERCLEAR to the individual third-party Account that the Participant had indicated will be used exclusively for the settlement of trades of this procedure. If the participant had not indicated such exclusive use, IBERCLEAR will proceed to open an individual third party Account for the Financial Intermediary, and shall transfer to it the balance which, at that time, is in the corresponding Financial Intermediary special Account. If the notification certifying the bankruptcy of the Financial Intermediary were received by IBERCLEAR at a time when there was no balance of securities in its Financial Intermediary special Account, the balance of securities existing in its individual third-party Account and which originated from the Financial Intermediary special Account, will be transferred by IBERCLEAR to a new individual third-party Account, unless the participant had indicated that the individual third-party Account of the Financial Intermediary was to be used exclusively for the Financial Intermediary procedure.

In all cases indicated in the previous paragraph, the individual third-party Account that was indicated to be used exclusively for the aforementioned procedure or the new individual third-party Account opened by IBERCLEAR will remain unavailable and subject to the decisions adopted by the bankruptcy judge, the bankruptcy receiver and the Spanish National Securities Market Commission.

If the participant states that it is necessary to have the balance of securities held in this individual third party Account or with part of it to settle pending trades and that they are inherent to the special procedure referred to in this Circular, the regime of subsequent securities transfers to the Financial Intermediary special Account set out in Rule 2, subsection 2 of this Circular shall apply.

4. In the event that IBERCLEAR receives notification certifying the bankruptcy of a Participant that acts as a Financial Intermediary, the remaining balances of securities at that time in the Participant Financial Intermediary special Account will be transferred by IBERCLEAR to the Proprietary Account or the individual third-party account of the participant that it had indicated should be used exclusively for the settlement of trades of this procedure. If the participant had not indicated such exclusive use, IBERCLEAR will proceed to open a Proprietary Account for the participant, and shall transfer to it the balance which is in its Financial Intermediary special Account at that time. If the notification certifying the bankruptcy of that participant were received by IBERCLEAR when there was no balance of securities in its Financial Intermediary special

Account, the balance of securities existing in its Proprietary Account or the individual third-party account and which originated from the Financial Intermediary special Account, will be transferred by IBERCLEAR to a new Proprietary Account, unless the participant had indicated that the Account in question was to be used exclusively for the Financial Intermediary procedure.

The Proprietary Account that receives the aforementioned balances shall remain unavailable and subject to the decisions adopted by the bankruptcy judge, the bankruptcy receiver and the Spanish National Securities Market Commission.

5. IBERCLEAR will duly identify the transfer orders arising from the settlement instructions sent by the market or trading system or central counterparty and the Auxiliary Transactions that could not be settled, as well as the securities balances which, in applying that set forth in the previous sections, have been transferred. When IBERCLEAR becomes aware of the bankruptcy of a Financial Intermediary, it will make this information available to the bankruptcy judge, bankruptcy receiver and the Spanish National Securities Market Commission.

## **Rule 6<sup>a</sup>. Supplementary application of the general procedures**

1. Additionally, the general procedure on communication, acceptance and execution of securities and cash transfer orders set out in Circular relating to the general procedure for settlement of trades executed in a market or trading system, shall apply to Financial Intermediary trades executed in markets or trading systems without the involvement of a central counterparty.

2. Additionally, the general procedure on communication, acceptance and execution of securities and cash transfer orders set out in Circular relating to the general procedure for settlement of trades involving central counterparties, shall apply to Financial Intermediary trades involving a central counterparty.

## **REPEALING PROVISION**

Circular 20/2016, of 28 July, on optional procedures for financial intermediaries and amendment of Circular of 13/2016, of 29 January is repealed.

## FINAL PROVISIONS

1. This Circular shall enter into force on the day following its publication.
2. The ARCO System Procedures Manual sets out the operating procedures, forms of communication, time frames and other technical aspects set down by IBERCLEAR for implementing the provisions of this Circular. Compliance with this manual is mandatory for all participants.

Madrid, 4 September 2017

Jesús Benito Naveira  
Consejero Delegado