



Sociedad de Gestión de los Sistemas de Registro,  
Compensación y Liquidación de Valores, S.A.,  
Sociedad Unipersonal

Circular no. 2/2019, of 26 March

**OPTIONAL FINANCIAL INTERMEDIARY SETTLEMENT  
PROCEDURE**

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

In application of the provisions of Royal Decree 878/2015 of 2 October, the IBERCLEAR Rule Book regulates the special optional financial intermediary settlement procedure. The details of such have been gathered in successive IBERCLEAR Circulars that introduced amendments to the scope and development of this special settlement procedure.

As Royal Decree 827/2017 of 1 September eliminated the provision of Royal Decree 878/2015 that necessarily bound the aforementioned procedure to trades of professional clients, IBERCLEAR amended article 33 of its Rule Book under the same terms and entrusted the implementation of the scope of application of this procedure to the corresponding Circulars.

The Circular currently in force on this special procedure (IBERCLEAR Circular no. 18/2017 of 4 September) limited the subjective scope of this procedure to professional clients. This is now being extended through this Circular, considering that it can be used to settle the trades of retail clients. Additionally, this Circular introduces some minor adjustments to other points in the current regulation of the above-mentioned procedure.

To implement this amendment to the scope of application of the special optional financial intermediary settlement procedure, IBERCLEAR has evaluated its consequences for the settlement and registration procedures for which it is responsible and for the settlement

participants that form part of the settlement and registration system of the Spanish securities market. Such an examination was already carried out when the aforementioned procedure was created in 2016, although it was limited to the fact that it could only be applied at the time to settle trades of professional clients.

The evaluation carried out by IBERCLEAR prior to the adoption of this Circular, considered the risks identified when preparing the current post-trading regime in the Spanish securities market and designing its various settlement procedures.

Likewise, this prior evaluation has taken into account the different risks assumed by clients within the general settlement procedure and the special optional financial intermediary settlement procedure, the extension of the settlement procedures that participants may offer to retail clients, and the new risks that IBERCLEAR and its participants will assume, which derive, precisely, from this amendment to the scope of application of the special financial intermediary settlement procedure.

On this basis, and trying to fully comply with the express obligations legally attributed to IBERCLEAR to identify and mitigate the risks that for itself and its participants derive from the settlement and registration procedures it manages, the general evaluation with which this Circular has been prepared has identified the need for IBERCLEAR to provide, in general terms, adequate information on the characteristics and inherent risks of the special settlement procedure to which reference is being made, and its relationship with the ones that define its general settlement procedure.

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

## **Single Rule. Amendment of the optional settlement procedure for financial intermediaries.**

1. Sections 2, 3, and 6 of Rule 1 - Scope of application - of Circular 18/2017 are hereby amended to read as follows:

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

*"3. For the purposes of determining the possibility of using this optional special procedure, participants shall only consider as Financial Intermediaries those investment firms and credit institutions covered by the legislation of a European Union Member State and entities from third-party States, authorised to provide investment services and, at least, to transmit orders and participate in the resulting settlement of trades".*

*"6. IBERCLEAR will make available to the public and to its participants, and will maintain detailed information on the characteristics, requirements, mode of development and specific risks of the procedure for the investor client, highlighting their differences with respect to the general settlement procedure. This information must be produced on the terms and with the detail that is consistent with each client's specific class. The information needs of retail clients in particular will have to be assessed and may be used by Financial Intermediaries to comply with the obligations that they are legally responsible for by informing their clients about the settlement procedures they place at their disposal."*

2. Section 3 of Rule 2 - Opening of special accounts - of Circular 18/2017 is hereby amended to read as follows:

*"3. If a participant acting as a Financial Intermediary vis-à-vis one 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 IBERCLEAR Regulation, and it shall also identify or, where applicable, request that a Proprietary Account or an Individual Third-Party Account be opened, indicating in both cases whether the account shall be used exclusively for the special financial intermediary procedure. The Participant may also act as a Financial Intermediary through 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 section 1 of this Rule."*

3. The last paragraph of section 3 of Rule 5 - Fail management - of Circular 18/2017 is hereby amended. Rule 2 is substituted by Rule 5. The paragraph shall read as follows:

*"If the Participant states that the balance of securities held in the mentioned Individual Third-Party Account, or part thereof, is necessary to settle trades pending, and these are inherent to the special procedure referred to in this Circular, the regime for subsequent transfer of securities to the Financial Intermediary Special Account stipulated in section 2 of Rule 5 of this Circular shall apply"*.

4. 4. The last paragraph of section 4 of Rule 5 - Fail management - of Circular 18/2017 is hereby amended as follows:

*"The Proprietary Account or the Individual Third-Party Account that receives the aforementioned balances shall remain unavailable and subject to the decisions that may be taken by the bankruptcy judge, the bankruptcy receiver and the Spanish Securities Market Commission"*.

## FINAL PROVISION

This Circular will enter into force on 1 July 2019.

Madrid, 26<sup>th</sup> March 2019

Francisco Béjar Núñez  
Chief Operating Officer