

**Circular nº 02/2020, 27 of April**

**OPTIONAL SETTLEMENT PROCEDURE FOR FINANCIAL INTERMEDIARIES**

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

In accordance with the provisions of Royal Decree 878/2015, of 2 October, the IBERCLEAR Rules and Regulations regulate the special and optional procedure for the settlement of a financial intermediary, the details of which are contained in Circular 18/2017, of 4 September, on "Optional procedure for financial intermediaries", partially modified by Circular 2/2019, of 26 March.

One of the provisions contained in the above-mentioned Circular establishes a series of IBERCLEAR actions on receipt of the notification of a situation of insolvency from the financial intermediary. After reviewing the scope of the actions and their suitability within the specific working group set up at the behest of the CNMV to analyse possible improvements in the special and optional financial intermediary settlement procedure, it was concluded that these actions, far from facilitating management and optimising the settlement of the transactions under settlement by the participant that managed the financial intermediary's account, they could in fact cause additional difficulties for the appropriate management of the insolvency situation. That is why the above-mentioned working group proposed to eliminate these actions.

In any case, the participant will continue to be responsible for the management of the transactions during the settlement and will be the one who controls the orderly settlement of pending auxiliary transactions and will provide the bankruptcy authority with all the information that it requires.

As a result of this, the Board of Directors of IBERCLEAR approved the following Circular:

## Single Rule. Modification of the optional settlement Procedure for financial intermediary

1. Modification of section 5 of Rule 1 –Scope of application- of the Circular 18/2017, which reads as follow:

*“5. Participants shall require the Financial Intermediary that provides proof of being authorized, 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”*

2. Removal of sections 3 and 4 of Rule 5<sup>a</sup> – Fail Management- of the Circular 18/2017, which reads as follows:

*“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. 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.”*

## **ADDITIONAL PROVISION**

For informational purposes, enclosed as annex to this Circular the updated version of the Rules of the Circular 18/2017, partially modified by the Circular 2/2019 and the present Circular:

## **FINAL PROVISION**

This Circular will enter into force the next day to its publication

Madrid, 27 April 2020.

Francisco Béjar  
Deputy General Manager