

Circular nº 12/2017, of 4 September

AGREEMENTS WITH MARKETS, MULTILATERAL TRADING FACILITIES, CENTRAL COUNTERPARTIES AND OTHER ENTITIES

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

Article 53 of Regulation (EU) nº 909/2014 of the European Parliament and of the Council, of 23 July 2014, on improving securities settlement in the European Union and on central securities depositories and amending Directives 98/26/EC and Regulation (EU) nº 236/2012, hereinafter, the “Central Securities Depositories Regulation”), stipulates that Central Securities Depositories shall provide transparent and non-discriminatory access to their securities settlement systems for central counterparties and trading venues.

Subsection 4 of article 98 of the consolidated text of the Securities Market Act approved by Royal Legislative Decree 4/2015, of 23 October (hereinafter, the LMV or Securities Market Act), empowers Central Securities Depositories to establish agreements with, among others, central counterparties, regulated markets and multilateral trading facilities, pursuant to the provisions of the aforementioned Central Securities Depositories Regulation, the LMV, its implementing regulation, and the internal regulation of the central securities depository.

Title IX of the Regulation of Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.U. (hereinafter, IBERCLEAR) sets down the regime through which IBERCLEAR may establish such agreements, setting out the minimum provisions they must contain. Subsection 4 of article 47 of the aforementioned Regulation, provides for IBERCLEAR to establish such provisions as it deems necessary for adequate regulation of aspects relating to the scope and execution of such agreements.

As a result of the second phase of the Reform of the Securities Settlement, Clearing, and Registration System of the Spanish securities market, settlement has now been included in the ARCO Settlement System (hereinafter, ARCO System), of those securities which until now were part 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"), and the connection of IBERCLEAR to the TARGET2-Securities technical support managed by the European Central Bank and the group of euro area Central Banks, will now proceed. It is, therefore, necessary to reflect on the circumstances and requirements resulting from these changes.

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

Rule 1. Scope of application and general principles

1. This Circular sets down the scope and execution of the agreements that IBERCLEAR enters into with markets, multilateral trading facilities, central counterparties and other entities to provide access to ARCO System and other services.
2. In entering into such agreements, IBERCLEAR shall consider the appropriateness of the service covered by the agreement, and the general interests of the markets.

Rule 2. Scope of the services provided under the agreement

1. IBERCLEAR will set out in each agreement the services it will provide to the entities listed in Rule 1 of this Circular for the access to the securities settlement system and its services.
2. These services may include the opening and keeping of accounts at IBERCLEAR, the settlement of some or all of the trades agreed in the markets and multilateral trading facilities for securities and financial instruments, or the trades arranged bilaterally, and such other activities and services of IBERCLEAR that may deem appropriate for the mutual interests of both parties.

Rule 3. Minimum content of an agreement with a market infrastructure

Pursuant to subsection 4 of article 47 of the IBERCLEAR Regulation, the agreements covered by this Circular must, as a minimum, set down provisions with regard to the following areas:

- a) the subject matter of the agreement and obligations of the parties;
- b) the manner of, and requirements for, accessing the services covered by the agreement;
- c) connectivity and communications procedures;
- d) settlement and registration procedures, deadlines and timeframes;
- e) coordination procedures for risk-management and non-compliance mechanisms;
- f) coordination of the rules to determine the moment of acceptance and the irrevocability of securities and cash transfer orders;

- g) procedures for monitoring and controlling, where applicable, the activities covered by the agreement;
- h) service fees and their payment method;
- i) the duration of the agreement;
- j) the manner of resolving disputes among the parties;
- k) the information that an entity signing the agreement must provide to IBERCLEAR for the purposes of the functions legally entrusted to the latter as operator of the Information, transmission and storage data system and, as applicable, for this to be sent to the appropriate supervisory authority, and the procedure for obtaining and forwarding it.

Rule 4. The book-entry register for securities

In cases where the agreements subject to this Circular involve the opening and keeping of accounts in IBERCLEAR, the registry of securities in such accounts will be subject to the provisions of the Securities Market Act, Royal Decree 878/2015, of 2 October, and other related regulation.

Rule 5. Cash accounts

1. In cases where an agreement under this Circular involves settlement of trades by the signatory entity, that entity will be required to designate one or more dedicated cash accounts linked to each of the securities accounts held in the Central Register, in accordance with the requirements of Rule 4 of this Circular.

IBERCLEAR shall order the credit and debit of payments resulting from trade settlements. To do this, the signatory entity of the agreement may use its own dedicated cash accounts or have the settlement debited against the cash account of another entity, that must be open at the Bank of Spain, European Central Bank or other Central Bank of another member State of the European Union whose system is connected to that of the Bank of Spain through the Eurosystem Central Banks framework. The entity shall also provide IBERCLEAR with due authorisation to register such entries in the said account.

2. This cash account must allow, in any case, IBERCLEAR to order cash credits and debits pursuant to IBERCLEAR's general procedures.

Rule 6. Coordination procedures for non-compliance and risk-management mechanisms

In the light of the scope of the services to be provided under the agreements subject to this Circular, and its relation to the ARCO System according to the applicable rules, the agreements will include coordination procedures for managing any risks and non-compliance.

Rule 7. Information to be provided by the signatory entity of the agreement to IBERCLEAR

1. In those cases in which, pursuant to the stipulations of Title VI of IBERCLEAR Regulation, the entity signing the agreement must provide IBERCLEAR with information for the purposes of the functions legally entrusted to it as the operator of the Information, transmission and storage data system, and, as applicable, for this to be sent to the appropriate supervisory authority, the agreement will set out the information that the signatory entity has to provide and the procedure for obtaining and forwarding it.

2. The agreement will also stipulate the access regime for the entities set out in Rule 1 of this Circular to the Information system regulated by articles 114 to 117 of the LMV, together with the obligations to which such entities are subject and the information that they, their members or participants must provide in order to comply with the objectives of the said Information system.

Rule 8. Procedure and execution. Assessment

1. On receiving an application for access from one of the entities stipulated in this Circular, IBERCLEAR will assess the appropriateness of entering into an agreement as set out in Rule 1 of this Circular, undertaking a thorough analysis of the risks involved in its signing and subsequent execution, pursuant to the provisions of the regulatory technical standards and implementing provisions set forth in subsection 3 of article 47 of the IBERCLEAR Regulation.

2. The agreements covered by this Circular will come into effect once the entity has demonstrated the existence of adequate resources and connection systems to carry out the activity set out in the functional and technical scope of the agreement. IBERCLEAR will notify the Comisión Nacional del Mercado de Valores ("Spanish Securities Market Commission") of the signature of such agreements.

3. In addition, during the term of such agreements, IBERCLEAR may monitor and manage such risks as might arise from their execution, and may carry out the tests it deems appropriate to verify and ensure on-going compliance with access requirements and the adequacy and suitability of the technical and functional resources to the access.

REPEALING PROVISION

Circular 8/2016, of 29 January, on agreements with markets, multilateral trading facilities, central counterparties and other entities, is repealed.

TRANSITORY PROVISION

The agreements signed pursuant to Circular 8/2016, of 29 January, before the coming into force of this Circular shall remain in effect.

FINAL PROVISIONS

1. This Circular shall enter into force on the day following its publication.
2. The development of operating procedures, communication formats, deadlines and other technical aspects as might be required to implement the provisions of this Circular by Instruction is hereby authorised.

Madrid, 4 September 2017

Jesús Benito Naveira
Consejero Delegado