

Circular nº 13/2017, of 4 September

**CSD ACCESS TO IBERCLEAR'S SERVICES:
ESTABLISHMENT OF LINKS**

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

Article 98.4 of the consolidated text of the Securities Market Act approved by Royal Legislative Decree 4/2015, of 23 October, and Section 2 of Chapter III of Title III of Regulation (EU) nº 909/2014, of 23 July, on improving securities settlement in the European Union and on central securities depositories (hereinafter, the Central Securities Depositories Regulation) provide for Sociedad de Gestión de los Sistemas de Registro, Compensación y Liquidación de Valores, S.A.U.(hereinafter IBERCLEAR) entering into agreements with other Central Securities Depositories to establish links.

Title IX of IBERCLEAR Regulation sets out the regime for such agreements and requires that before the link is established, and permanently once the agreement has been signed, IBERCLEAR shall identify and evaluate the possible sources of risk both for IBERCLEAR itself and for its participants, and monitor and manage these risks.

For its part Title VIII of IBERCLEAR Regulation covers the provision of the ancillary services referred to in article 3.2 of IBERCLEAR Regulation to, among others, entities that perform similar functions to IBERCLEAR.

The link will allow a Central Securities Depository to access IBERCLEAR's registration and settlement services by opening a securities account in its registry system and its participation in the ARCO Settlement System (hereinafter, ARCO System). Likewise, it may include the provision of additional technical and operational services.

The purpose of this Circular is to update the legislative framework applicable to the establishment of links to the requirements of the Central Securities Depositories Regulation and to the necessary adaptations for the migration 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) to the ARCO System and the connection of IBERCLEAR to the TARGET2-Securities technical support.

The Board of Directors of IBERCLEAR has approved the following:

Rule 1. Access of central securities depositories to IBERCLEAR services.

1. The access of a central securities depository requires a securities account to be opened in IBERCLEAR.
2. The purpose of opening these accounts shall be the maintenance of securities and the settlement of transactions relating to them, according to the scope and reach determined in the agreement referred to in Rule 5 of this Circular.
3. In processing the access request, IBERCLEAR shall regard considerations relating to opportunity and the general interests of the markets. IBERCLEAR shall deny access in those cases which fail to comply with the established criteria, or when such access constitutes a threat to the correct and orderly working of the financial markets or may lead to systemic risk.

Rule 2. Technical and functional requirements.

1. Prior to the establishment of the link and the subsequent opening of accounts, IBERCLEAR shall identify and evaluate the possible sources of risk stemming from it, and shall establish, where appropriate, suitable measures for monitoring and managing this risk.
2. Accounts cannot be opened until the applicant central securities depository has demonstrated it has adequate resources both to carry out the activity in the functional and technical scope of the agreement referred to in Rule 5 of this Circular, and to guarantee the correct and secure operation of a central depository or securities settlement system.
3. IBERCLEAR may carry out the tests it deems appropriate to verify and ensure compliance with the criteria set out in the previous section.

Rule 3. Registration of securities in accounts.

The registration of securities in accounts opened in accordance with this Circular, shall be subject to the provisions of Royal Decree 878/2015, of 2 October, and other applicable regulations.

Rule 4. Cash accounts.

The central securities depository must notify IBERCLEAR of one or more dedicated cash accounts linked to each of the securities accounts it holds in the Central Register in which IBERCLEAR shall order the credit and debit of payments resulting from settlement of transactions. To do this, the central securities depository may use its own dedicated cash accounts or have the credits/debits resulting from the settlement of the transactions debited against the cash account of another entity, that must be opened at the Bank of Spain, the 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 European System of Central Banks. Furthermore, due authorisation to register such entries in the said account shall be provided to IBERCLEAR.

These cash accounts must allow IBERCLEAR to process cash credits and debits pursuant to its general procedures.

Rule 5. Formalisation of account opening.

1. The applicant central securities depository must sign an agreement as per the model included as an Appendix to this Circular. In particular, this agreement shall contain provisions in relation to its termination and the subsequent closure of the corresponding account, which cannot take place until all the securities registered in it have been transferred.

The Operational Section of this agreement shall be drafted by IBERCLEAR and approved by the Board for each specific case according to the activities that the entity intends to carry out. Nevertheless, the minimum content that this Operational Section should have shall be the following:

- Categories of securities included in the agreement.
- Type of transactions that will be carried out with the central securities depository, detailing the operating procedures that are applicable in each of them.
- List of services that IBERCLEAR shall provide in areas such as the exercise of economic and voting rights.
- The way in which it intends to operate when carrying out financial transactions in general.
- The communication solutions and the type of messages that are going to be exchanged between IBERCLEAR and the central securities depository.

- Fees and their payment method

- The information that the central securities depository must provide IBERCLEAR with, 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, and the procedure for obtaining and forwarding it.

- And any other aspects that may affect operational development between the two.

2. When the access request requires the establishment of mutual technical solutions for settlement (interoperable link), the agreement signed by IBERCLEAR with the applicant central securities depository shall be adjusted for the special features that result from the link in connection with the necessary technical developments, the risk management models and the insolvency rules and procedures that must be established.

Rule 6. Technical and operational services

1. IBERCLEAR may offer, directly or through agreements with third parties, the entities with whom it has signed the agreement referred to in the previous Rule, those technical and operational services that, being related to the services of registration, clearing and settlement of securities, may be in the common interest of both parties.

2. To ensure the effective provision of these services, IBERCLEAR shall regard considerations relating to opportunity and the general interests of the markets.

3. The terms and conditions of the provision of these services shall be those set out in the agreement signed by both parties that must, necessarily, consider the services included in the agreement, their governance by Spanish law unless, exceptionally, it is considered more appropriate that they be governed by a different legal system, and the liability regime applicable in the provision of these services, quantifying IBERCLEAR's maximum economic liability for the damages and losses suffered that are directly attributable to its actions in the execution of the aforementioned agreement.

Rule 7. Procedure.

1. Once IBERCLEAR has assessed the appropriateness of entering into the agreement referred to in Rule 5, it shall then proceed, taking into account the type of link to be made in accordance with the provisions of the Central Securities Depositories Regulation and Article 48 of



IBERCLEAR Regulation, to notify either its intention to establish a link or to request authorisation from the Spanish National Securities Market Commission (CNMV) to do so as the case may be.

2. Once the notification has been made or authorisation received from the CNMV, IBERCLEAR shall sign the corresponding agreement, along with its operational section.

REPEALING PROVISION

Circular 3/2010, of 29 September, on opening accounts for other entities that perform similar functions to IBERCLEAR, is repealed.

FINAL PROVISION

This Circular shall enter into force on the day following its publication.

Madrid, 4 September 2017

Jesús Benito Naveira
Consejero Delegado