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*In case of legal matters the original documents written in Portuguese, and other Portuguese legislation should be consulted.*

## **INTERBOLSA CIRCULAR 1/2022 – Settlement Discipline Regime**

*(as amended by INTERBOLSA Circular 1/2023)*

Under the provisions of Articles 89 and 269 of the Securities Code, as well as Article 1(3) and Article 36(5) of INTERBOLSA Regulation 2/2016, concerning the general operational rules for the operation of the centralised securities systems and settlement systems managed by INTERBOLSA, the Board of Directors of INTERBOLSA - Sociedade Gestora de Sistemas de Liquidação e de Sistemas Centralizados de Valores Mobiliários, S.A. (INTERBOLSA), has decided to approve this Circular:

### **CHAPTER I – GENERAL PROVISIONS**

#### **Article 1**

##### **(Definitions)**

1. Without prejudice to what is specifically provided for in other applicable legal and regulatory provisions, for the purposes of this Circular, the following definitions shall apply:

**"Intended Settlement Date"**, abbreviated **"ISD"** - the date on which the settlement instruction is to be settled;

**"Penalties Business Days"**, abbreviated **"PBD"** – any day of the year except Saturdays and Sundays and the days disclosed by Interbolsa as closing days of the systems managed by it;

**"ESDA Framework"** – - the ECSDA CSDR Settlement Fails Penalties Framework, a document prepared by the European Central Securities Depositories Association (ECSDA) on the CSDR settlement discipline penalties regime, applicable to all CSDs subscribing to it; this document is published by Interbolsa on its Portal;

**"PFOD Instruction"** – the instruction for payment without delivery of securities (*Payment Free of Delivery*);

**"Delegated Regulation (EU) 2017/389"** – the Commission Delegated Regulation (EU) 2017/389 of 11 November supplementing Regulation (EU) 909/2014 of the

European Parliament and of the Council as regards the parameters for calculating cash penalties for settlement fails and the operations of CSDs in host Member States;

**"Delegated Regulation (EU) n.º 2018/1229"** - the Commission Delegated Regulation (EU) 2018/1229 of 25 May 2018 supplementing Regulation (EU) 909/2014 of the European Parliament and of the Council as regards regulatory technical standards on settlement discipline.

2. The definitions provided for in Article 3 of Interbolsa Regulation 2/2016 shall also apply, where relevant.

## **Article 2**

### **(Legal framework)**

1. The Regulation (EU) 909/2014, the Delegated Regulation (EU) 2017/389 and the Delegated Regulation (EU) 2018/1229 establish measures for prevention and treatment of settlement fails in order to improve the safety and efficiency of settlement discipline, as better provided in this circular.
2. The detection of settlement fails and the calculation of the corresponding penalties, as well as their reporting, are processed by the penalty mechanism of the TARGET2-Securities (T2S) platform in accordance with the provisions of the T2S Rules.
3. The operational information related to the management treatment of settlement fails is described in Interbolsa's Operating Manual, related to the Settlement Discipline Framework, as well as in the ECSDA Framework, adopted by Interbolsa in compliance with Article 20 of Delegated Regulation (EU) 2018/1229.

## **CHAPTER II – SETTLEMENT DISCIPLINE**

### **SECTION I – TREATMENT OF SETTLEMENT FAILS**

## **Article 3**

### **(Scope)**

1. Securities integrated in the systems managed by Interbolsa shall be subject to penalties:
  - a) Admitted to trading or traded on a trading venue in the European Union; or
  - b) Cleared or eligible for clearing by a CCP in the European Union.

Excluded from the scope are equities, the principal trading venue of which is located in a third country.

2. Penalties are calculated for settlement fails relating to all settlement instructions, on securities that are subject to the penalty regime, that:
  - a) Match before, on or after the intended settlement date; and
  - b) Fail to settle on or after the intended settlement date.
3. For the purposes of the provisions of the preceding paragraph, and without prejudice to the provisions of Article 283 of the Portuguese Securities Code, in the event of the insolvency of a defaulting Participant, no penalties shall be calculated from the moment when insolvency proceedings are opened.
4. Are exempt from the calculation of penalties, namely, the following settlement fails:
  - a) Settlement instructions that do not qualify as settlement instructions pursuant to the second paragraph of Article 2(i) of the Settlement Finality Directive;
  - b) Settlement instructions in relation to corporate actions on stock (ISO Code Transaction "CORP");
  - c) Technical settlement instructions such as automatic realignments of the T2S platform ("REAL" transaction ISO code); or
  - d) Restrictions on securities processed on the T2S platform from blocking, reservation and earmarking, as provided for in Article 34 of Interbolsa Regulation 2/2016.
5. The penalty regime provided for in Article 7(2) of the CSDR shall not apply to defaulting Interbolsa participants assuming the capacity of CCPs.

#### **Article 4**

##### **(Subcontracting)**

1. Interbolsa uses data service providers for the purpose of collecting the reference data to be used in the calculation of penalties.
2. Interbolsa sends the reference data required for the calculation of daily penalties to the T2S platform on a daily basis.

#### **Article 5**

##### **(Calculation and reporting)**

1. For each settlement fail, the penalties are calculated, on a daily basis, by Interbolsa, through the penalty mechanism operated by the T2S platform. The calculation is performed for each business day on which the transaction remains unsettled.
2. For the calculation of penalties, the business days announced by Interbolsa for the opening of the settlement systems it manages as well as the opening days defined by the payment systems of the relevant currencies are considered as business days.
3. Following the calculation made, Interbolsa sends Participants, respectively:

- a) Daily reports, which contain information on the penalties calculated, as well as the penalties that have been modified, eliminated or reinserted; and
- b) Monthly reports by the 14th PBD of the following month containing the calculation of aggregate penalties for the previous month. If the 14th day is not a PBD, the report shall be sent on the immediately preceding day that is a PBD. The report shall specify for each Participant and counterparty the net calculation of penalties for the preceding month.

## **Article 6 (Appeals Period)**

- 1.** Participants may submit to Interbolsa an appeal regarding the calculation of penalties up to the 10th PBD of the month following the month in which the penalty was calculated. If the 10th day is not a PBD, the appeal shall be received by Interbolsa on the immediately preceding day that is a PBD. Once this period has elapsed, no appeals regarding penalties calculated and reported for the previous month may be submitted and accepted by Interbolsa.
- 2.** The following situations, or any other similar situation, are grounds for submitting appeals:
  - a) The suspension of an ISIN trading or settlement code;
  - b) The impossibility of financial settlement due to the closure of the relevant payment system;
  - c) The occurrence of technical problems in Interbolsa's systems that prevent the settlement from being processed.
- 3.** For the purposes of paragraph 1 of this Article, the Participant must send Interbolsa the following information:
  - a) The identification of the Participant;
  - b) The date on which it became aware of the reported or amended penalty;
  - c) The T2S reference of the calculated penalty;
  - d) The Penalty-Type-Code;
  - (e) The grounds for the claim;
  - (f) The T2S ID of the underlying settlement instruction;
  - (g) The ISO code of the transaction;
  - (h) The intended settlement date (ISD);
  - (i) The Participant's securities account number (T2S format);
  - (j) The expected amount of the cash penalty to be collected (optional information).

4. In case of acceptance of the appeal by Interbolsa, the changes made are communicated to the Participant and sent to the T2S platform for the processing of the due adjustment.

#### **Article 7**

##### **(Collection and distribution)**

1. Without prejudice to the following Article, the collection and distribution of the net amount of penalties, corresponding to a credit or debit per participant and per CSD counterparty, is carried out, on a monthly basis, and processed by sending PFOD settlement instructions to the T2S platform.
2. The Participant must have the Dedicated Cash Account (DCA) properly provisioned by the 18th PBD of the month following the month in which the penalties are calculated, in order to ensure the timely settlement of PFOD settlement instructions relating to the calculated penalties.
3. Payment shall be made on the 18th PBD, unless this is not a business day for Interbolsa or the relevant payment system, in which case payment shall be made on the first following business day.
4. Interbolsa first proceeds to the collection of the penalties due, and only after the collection is completed will the process of distribution of the penalties begin. For the purpose of collection, Interbolsa holds a segregated cash account dedicated for this purpose.
5. Whenever there is a default in the process of collecting the penalties, Interbolsa shall initiate a contingency process that allows the collection and distribution process to be carried out until the end of the month following the month in which the penalties were calculated.

#### **Article 8**

##### **(Penalties where the participant is a CCP)**

Where the defaulting or receiving participant is a Central Counterparty (CCP), Interbolsa:

- a) Calculates and reports to the CCP the penalties relating to the failed settlement instructions submitted by the CCP;
- b) The CCP processes, on a monthly basis, the collection and distribution of the penalties reported regarding clearing members, respectively, responsible for or affected by settlement fails;
- c) After processing the collection and distribution referred to in the preceding paragraph, the CCP shall send Interbolsa information about the conclusion of the

collection and distribution or, if applicable, about its non-execution, identifying, in this case, the reasons for the non-execution.

**Article 9**  
**(Interbolsa's liability)**

Without prejudice to Interbolsa's duties of control and verification of information, namely those arising from the applicable outsourcing legal regime, Interbolsa shall not be liable for any type of losses or damages, whether direct or indirect, including loss of profits and moral damages suffered by the Participant as a result of an error, incompleteness or outdatedness of the referential data made available by the data service provider to Interbolsa, as well as any error or delay in the calculation and reporting of penalties by the T2S platform, as well as due to delay in the collection and distribution of penalties to/from the defaulting participant/recipient.

**SECTION II – SUSPENSION**

**Article 10**  
**(Suspension of participants)**

- 1.** Interbolsa may suspend a participant who consistently and systematically fails to deliver, on the intended settlement date, the securities due under the terms defined in Article 7, paragraph 9 of Regulation (EU) 909/2014 and Article 39 of Delegated Regulation (EU) 2018/1229.
- 2.** Interbolsa shall consult CMVM prior to taking a suspension decision, and shall inform it of the decision to be taken prior to its public disclosure.
- 3.** Prior to the public announcement of the suspension decision, Interbolsa shall inform and request the Participant to comment on the suspension decision if it so wishes.
- 4.** In all other matters not expressly provided for in this article, the provisions of article 9 of Interbolsa's Regulation 1/2016 shall apply.
- 5.** The regime provided for in Article 7(9) of the CSDR shall not apply to defaulting Interbolsa participants that are CCPs.

**CHAPTER III – FINAL PROVISIONS**

**Article 11**  
**(Entry into force)**



This Circular shall enter into force on 1 February 2022.

INTERBOLSA  
*The Board of Directors*