



## **INSTRUCTION A06/2014**

**Management and Evaluation of  
Guarantees**

10.April.2019

## **Versions Index**

### **01.Jul.2014**

Initial Version

### **14.Mar.2016**

Elimination of the provisions related to bank guarantees and credit lines.

### **10.Apr.2019**

Elimination of the provisions related with the acceptance of financial instruments issued by Federal Republic of Germany and Kingdom of Spain.

## **DISCLAIMER**

The English language text below is not an official translation and is provided for information purposes only. The original text of this document is in the Portuguese language (available in [www.omiclear.eu](http://www.omiclear.eu)) and it was registered by the Portuguese Securities Market Commission (Comissão do Mercado de Valores Mobiliários). In the event of any discrepancies between the English translation and the Portuguese original, the Portuguese original shall prevail. Whilst every effort has been made to provide an accurate translation we are not liable for the proper and complete translation of the Portuguese original and we do not accept any liability for the use of, or reliance on, the English translation or for any errors or misunderstandings that may derive from the translation.

This document is available in [www.omiclear.eu](http://www.omiclear.eu)

Pursuant to its Rulebook, OMIClear approves this Instruction which sets the conditions for the constitution, release, allocation and evaluation of Participant's Guarantees.

### General Provisions

1. Guarantees are set up by the Participants and aim to cover their responsibilities thereof in each of the Services provided by OMIClear, in accordance to the applicable rules.
2. OMIClear defines in a specific Instruction for each of its Services, the rules underlying the value of Guarantees required of Participants and their deadlines for constitution.
3. The setting up of Guarantees with OMIClear requires the conclusion of a Financial Guarantee Agreement on the fiduciary transfer of cash collateral and financial pledge of financial instruments between the Participant and OMIClear.
4. For the purpose of setting up the Guarantees, the following will be accepted by OMIClear:
  - a) Cash, in euros; and
  - b) The financial instruments representing the public debt, issued in Euro by countries of the Euro Zone that are published in its Website.
5. Notwithstanding paragraph (4) above, OMIClear may restrict the acceptance of some types of assets for a given Service if its underlying rules so require, or if it considers it more suitable for the safety of the Service concerned.
6. The legal framework for setting up Security Interests with OMIClear varies according to the type of asset:
  - a) Cash collateral is set up through any legally accepted form of fiduciary transfer, in which OMIClear becomes the full owner of said Collateral;
  - b) Guarantees in financial instruments are made by means of a Financial Pledge, with the right of use.

### Constitution, Allocation and Release of Collateral in General

7. For the purpose of this Instruction, Collateral Balance (CB), in a given Service, is the difference between the value of the Guarantees, after the application of haircuts, and the value of the responsibilities of the Participant in that Service.
8. For each constitution or release of Collaterals, the specific Model available on the Website must be sent to OMIClear, duly completed.
9. In the constitution of Guarantees, the Participant uses the model referred to in the preceding paragraph, indicating its allocation with the following disaggregation:
  - a) Service to which the Guarantee is allocated;
  - b) Within each Service and where applicable:
    - i. If the Guarantee is owned by its client, particularly in situations where individual segregation or omnibus segregation is applicable;
    - ii. If it is an own Guarantee, in which case the Participant must also specify if it is intended to cover:
      - I. Own responsibilities;
      - II. The responsibilities of its clients.
10. Pursuant to paragraph (9) above, the allocation of the Guarantee to each Service is made in accordance with the following procedures:

- a) For a monetary amount, when the Guarantees are made in cash or;
  - b) For a certain quantity of financial instruments.
11. The above mentioned allocation may also provide a greater level of detail, including other relevant information related to each Service.
  12. When, for any reason, the Participant does not indicate the Service to which a certain Guarantee is assigned, OMIClear will retain that Guarantee, and may use it for any Service if needed.
  13. Any change to the allocation of the Participant's Guarantees:
    - a) Must be made by resending the specific Model available on the Website, duly completed, to OMIClear.
    - b) Cannot generate a negative CB in any of the Services.
  14. If, at some point, the value of responsibilities taken by the Participant in a given Service exceeds the value of the Guarantees allocated to it, i.e., if the CB is negative, the Participant must reinforce the necessary Guarantees in accordance with the applicable rules or, if there is a surplus of Guarantees, re-allocate them, in accordance with the provisions in the preceding paragraph.
  15. The release of excess Guarantees of a Participant, in a given Service, is allowed only if the responsibilities in all other Services in which it participates are covered, i.e., if the CBs concerned are all positive.
  16. Any payment received on behalf of the Guarantees set up by the Participant are assigned proportionally to the Guarantees allocated to the various OMIClear's Services, unless the Participant requests a different allocation.
  17. OMIClear regularly provides to the Participant a report with the breakdown of the assets given as Collateral and their allocation to OMIClear's Services.

#### Use of Guarantees in case of Default

18. If a Participant enters into default regarding a certain Service, OMIClear will adopt the following procedures:
  - a) In a first phase, OMIClear only mobilises the Guarantees allocated to that Service to cope with the default concerned;
  - b) In a second phase, if the Guarantees referred to in paragraph (a) above are insufficient, OMIClear may use the positive CB of other Services to solve the default in the manner it deems more appropriate for the protection of the market.
19. In accordance to paragraph (9) and notwithstanding the provisions in the preceding paragraph, if after the resolution of a default procedure for a given Service it is found that there are still free and available Guarantees, before they are returned to the Participant these Guarantees may be used by OMIClear to solve a possible loss or a negative CB in any other Service in which the Participant is also involved.

#### Constitution, Release and Remuneration of Cash Collateral

20. The constitution of cash collateral with a value date of D must be made before 17:00 of D.
21. The constitution of cash collateral is made by transfer by means of a SWIFT MT202 message which must include:
  - a) In field 58A, the BIC of OMIClear as a Direct Participant: OMICPTPLXXX.
  - b) In field 72, the name of the Participant to which the constitution of the Guarantees refer.

22. Cash collateral will be considered from the moment the OMIClear's Payments Module account on the Shared Single Platform of the TARGET2 system is credited and cumulatively if the specific Model available on the Website is duly completed.
23. To release cash collateral with a value date of D, the Participant must send the specific Model available on the Website duly completed until 11:00 of the previous business day that is not a national holiday in Portugal.
24. When OMIClear proceeds to the financial investment of the cash collateral, it may allocate part of the resulting income to the Participants that have set them up, whatever the modality through which the cash collateral was set up, in accordance with the terms published on the Website.
25. The incomes referred to in paragraph (24) above are incorporated in the cash collateral of the Participant concerned, in accordance with the provisions in paragraph (16).
26. On a yearly basis, OMIClear provide each Participant, the statement of the income paid and tax withheld in the preceding year, in accordance with Participant's taxation.
27. The constitution and release of cash collateral may be subject to the payment of fees, as defined in the Price List.

#### **Constitution, Release and Remuneration of Guarantees in Financial Instruments**

28. For the purpose of Guarantees, OMIClear only accepts financial instruments free of liens and charges, owned by the Participants.
29. OMIClear only accepts the constitution of Guarantees representing public debt corresponding to a nominal value of no less than €10,000 (ten thousand euros).
30. OMIClear evaluates the Guarantees in financial instruments on a daily basis.
31. The value of financial instruments considered for the purpose of Guarantees corresponds to its market value adjusted by a discount (Haircut), plus accrued interest, if applicable, in accordance with the following formula:

$$\text{Value of Guarantee} = \text{Market value} \times (1 - \text{Haircut}) + \text{Accrued Interest}$$

32. Haircuts are defined by the product of a factor (H1) linked to the volatility of asset prices and another factor (H2), determined based on the liquidity of assets and the respective amount deposited by the Participant, being the product of both factors rounded up to the nearest 50 basis points:

$$\text{Haircut} = H1 \times H2$$

33. The values of factors H1 and H2 are published on the Website.
34. In cases of instability or abrupt changes in the relevant market of the financial instruments accepted as Guarantee, OMIClear may, upon notice to the Participants, immediately change the Haircuts, as well as the list of financial instruments accepted as Guarantee, and may even determine the replacement of the financial instruments.
35. The Guarantees constituted in financial instruments are deposited in segregated accounts opened by OMIClear with operators of securities settlement systems recognised in accordance with Directive 98/26/EC of the European Parliament and of the Council, of 19 May 1998.

36. At the request of the Participant, the segregation referred to in the preceding paragraph can take an individual nature, at the level of the account with the operator of securities settlement system.
37. The moving instructions as well as the settlement of the moving involving the constitution or release of financial instruments depend on the type of assets and on the operator of financial instruments settlement systems, so the references published on the Website must be used.
38. At the beginning of each calendar year, OMIClear issues, directly or indirectly, the annual income tax returns relating to the financial instruments set up in the previous year by each Participant, taking into account their tax regime.
39. Regarding the remuneration of the Guarantees set up in financial instruments, including interest, if the Participant does not request its release, the Guarantee will be made as cash collateral, subject to applicable rules, and the Participant will be responsible for allocating it to a given Service, if not the provisions in paragraph (16) will apply.
40. To exercise the rights in respect of financial instruments set up as Guarantees, the Clearing Members must, where applicable, replace them in due time with other financial instruments, to ensure the exercise thereof.
41. The constitution, custody, maintenance and release of Guarantees in financial instruments are subject to the payment of fees, as defined in the Price List.

#### Concentration Limits – General Provisions

42. The values of Guarantees deposited by a Participant with OMIClear exceeding their responsibilities are not subject to concentration limits and, for each Participant and, if applicable, for a given Service or set of Services, responsibilities are covered successively by cash and financial instruments. As such, a Participant may, for example, have set up Guarantees in financial instruments that are not subject to concentration limits because all their responsibilities are already covered by cash.
43. Pursuant to the preceding paragraph:
  - a) References to the different types of Guarantees of a given Participant for the purpose of concentration limits shall be made only for the portion intended to cover the responsibilities of the Participant, unless specifically provided otherwise;
  - b) The coverage of responsibilities by the various assets within each type of collateral is done on a pro-rata basis, or according to any other basis, whichever is more favourable for the Participant.
44. The limits involving financial instruments take their market value discounted by the respective Haircuts.
45. In exceptional cases, OMIClear may apply the provisions in the following paragraphs differently, regarding the concentration limits if, based on a reasoned analysis, this is safer for the Service or set of Services; such a decision must be reported to the CMVM.
46. The provisions in the following paragraphs may be adapted if OMIClear limits some type of assets from being accepted for a given Service.
47. For the purpose of concentration limits:
  - a) The relevant values of entities belonging to the same group are aggregated;
  - b) The relevant values of clients benefiting from the individual segregation or omnibus segregation regime are analysed individually;
  - c) The baseline is the Collateral deposited with OMIClear concerning all Services.

48. OMIClear regularly monitors the concentration limits, at least every month.

#### **Concentration Limits Applicable to Issuers**

- 49. OMIClear cannot hold as Guarantees provided by its Participants more than 5% of a given issue of financial instruments, and this is one of the grounds for refusing that asset as collateral.
- 50. Should there be a reduction in the liquidity of a given financial instrument or set of financial instruments, OMIClear may impose more stringent limits than those mentioned in the preceding paragraph, and/or aggravate the Factor H2 referred to in paragraphs 32 and 33.
- 51. The share of Guarantees in financial instruments issued by a single issuer cannot exceed 25% of all the Guarantees held by OMIClear. This amount may increase to 40% if the issuer is an EU country or equivalent.
- 52. The total amount of Guarantees represented by financial instruments under paragraph 42 cannot exceed 85% of all the Collateral deposited with OMIClear.

#### **Concentration Limits Applicable to Participants**

- 53. Without prejudice to the provisions in the preceding paragraphs, Collateral set up by means of cash or financial instruments is not subject to concentration limits per Participant, i.e., the Participant may set up Guarantees exclusively through any of those assets.

#### **Entry into Effect**

- 54. This Instruction has been registered with CMVM on March 12<sup>th</sup>, 2019 and enters into effect on April 10<sup>th</sup>, 2019.